ORDER OF THE COURT
26 July 2019

(Taxation of costs – Recoverable costs – Default interest)

In Case E-1/17 COSTS,

Nettbuss AS, established in Oslo, Norway, represented by dr. juris Olav Kolstad, advocate, and Camilla Borna Fossem, advocate,

applicant,

v

Konkurrenten.no AS, established in Evje, Norway, represented by Jon Midthjell, advocate,

defendant,

APPLICATION for the taxation of costs awarded by the Court to Nettbuss AS in its order of 22 December 2017 in Case E-1/17 *Konkurrenten.no* v *ESA* [2017] EFTA Ct. Rep. 989,

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann and Ola Mestad (ad hoc), Judges,

Registrar: Ólafur Jóhannes Einarsson,

makes the following

Order

I Legal background

1 Article 66 of the Court's Rules of Procedure ("RoP") reads:

> *1. A decision as to costs shall be given in the final judgment or in the order which closes the proceedings.*
>
> *2. The unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings.*
>
> *…*
>
> *4. The EFTA States, the EFTA Surveillance Authority, the Union and the European Commission which intervene in the proceedings shall bear their own costs.*
>
> *The Court may order an intervener other than those mentioned in the preceding subparagraph to bear his own costs.*

2 Article 69 RoP reads:

> *Without prejudice to [Article 68], the following shall be regarded as recoverable costs:*
>
> *…*
>
> *(b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.*

3 Article 70(1) RoP reads:

> *If there is a dispute concerning the costs to be recovered, the Court shall, on application by the party concerned and after hearing the opposite party, make an order.*

4 Article 71 RoP reads:

> *1. Sums due from the cashier of the Court shall be paid in the currency of the country where the Court has its seat.*
>
> *At the request of the person entitled to any sum, it shall be paid in the currency of the country where the expenses to be refunded were incurred or where the steps in respect of which payment is due were taken.*
>
> *2. Other debtors shall make payment in the currency of their country of origin.*

3. Where costs to be recovered have been incurred in a currency other than the euro or where the steps in respect of which payment is due where taken in a country of which the euro is not the currency, conversions of currency shall be made at the European Central Bank's official rates of exchange on the day of payment.

II Facts, procedure and forms of order sought

5 By Decision No 179/15/COL of 7 May 2015, the EFTA Surveillance Authority ("ESA") closed a formal investigation of aid to public bus transportation in the County of Aust-Agder in Norway. ESA concluded that State aid was being granted under an existing aid scheme. However, certain payments to the bus transport operator Nettbuss Sør AS (which later changed its name to Nettbuss AS, hereinafter "Nettbuss") had been made outside the remits of the existing aid scheme from 2004 to 2014 and constituted unlawful State aid. ESA ordered the Norwegian authorities to recover that unlawful State aid. In September 2016, the Norwegian authorities and Nettbuss reached an agreement whereby Nettbuss would pay NOK 5 million as recovery.

6 In January 2017, the bus transport operator Konkurrenten.no AS ("Konkurrenten") brought an action against ESA pursuant to the second paragraph of Article 36 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"). Konkurrenten requested the Court to annul Decision No 179/15/COL ("Decision") and to order ESA and any intervener to pay the costs of the proceedings. Konkurrenten essentially argued that Nettbuss had received more payments outside the existing aid scheme than ESA had concluded, and that, in any event, the existing aid scheme had been altered and become a new aid scheme.

7 In its defence, ESA requested the Court to dismiss the application as inadmissible, or alternatively to dismiss it as unfounded, and, in any event, to order Konkurrenten to pay the costs of the proceedings. The Kingdom of Norway, the County of Aust-Agder and Nettbuss intervened in support of ESA. They all argued in their statements of intervention that Konkurrenten was not individually concerned by the contested decision and therefore lacked standing to challenge it pursuant to Article 36 SCA. In its observations on the statements in intervention, Konkurrenten disputed that it lacked standing. Konkurrenten, ESA and the interveners maintained their views in a second round of pleadings initiated by the Court.

8 On 22 December 2017, the Court made the following order in Case E-1/17:

1. The application is dismissed as inadmissible.

2. Konkurrenten.no AS is to bear its own costs, and the costs incurred by the EFTA Surveillance Authority, the County of Aust-Agder and Nettbuss AS.

3. The Kingdom of Norway bears its own costs.

9 On 5 March 2018, Nettbuss sent an email to Konkurrenten claiming costs in the amount of NOK 396 450. Konkurrenten responded by a letter of 16 March 2018, in which it stated that it had not been provided with any basis to assess the claim.

10 By a letter of 25 May 2018, Nettbuss maintained its claim, and explained that it was based on 90 hours of work at mixed rates. Nettbuss notified Konkurrenten that it would bring the matter to the Court pursuant to Article 70(1) RoP should Konkurrenten fail to make payment within 14 days. Konkurrenten responded by a letter of 1 June 2018, in which it maintained that Nettbuss had still not provided any basis to assess the claim.

11 On 7 February 2019, Nettbuss sent Konkurrenten a draft application for taxation, including an overview of the costs claimed. Nettbuss requested that Konkurrenten pay the costs within 14 days. Konkurrenten responded by a letter of 21 February 2019, in which it maintained that, in the absence of copies of the alleged invoices, it had not been afforded a real basis to assess the costs claim.

12 By an application of 26 February 2019, Nettbuss brought an action pursuant to Article 70(1) RoP for the taxation of costs.

13 On 6 March 2019, Nettbuss sent a revised application for taxation of costs. Nettbuss stated that in its application of 26 February 2019 it had referred in two paragraphs of its application for costs to certain information in two of its annexes, and that the information in one of those two annexes was included in a third annex. Nettbuss stated that following an email from Konkurrenten's counsel of 1 March 2019, and subsequent discussions, Nettbuss was revising its application as far as those statements and annexes were concerned. Nettbuss stated that the reason for the revisions resulted from section 4.5 of the Code of Conduct for Lawyers of the Norwegian Bar Association, which provides that counsel may not disclose a proposed settlement from the other party unless the other party has agreed to this. It indicated that this Code of Conduct was mandatory for all practising lawyers in Norway, and must apply where such lawyers appear before the EFTA Court. Nettbuss acknowledged that the revised application for costs would be served on Konkurrenten and could result in a later time limit for Konkurrenten's reply. In its revised application for costs Nettbuss requests the Court to make the following order:

Konkurrenten.no will pay to Nettbuss AS the amount of NOK 442 125 (or equivalent in EURO) in addition to the relevant default interest rates.

14 Konkurrenten submitted its observations on the revised application on 15 April 2019. Konkurrenten requests that the Court should:

1. *Dismiss the claim from Nettbuss AS due to lack of any supporting invoices.*

2. *In the alternative: set the costs owed to no more than EUR 3 000.*

3. *And in any event: order Nettbuss AS to bear the costs of Konkurrenten.no AS in the taxation proceedings.*

III Law and assessment of the case

Arguments of the parties

Nettbuss

15 Nettbuss submits that it has legal costs for the intervention, which exceed the amount being claimed from Konkurrenten. As Nettbuss has chosen not to claim for the full costs incurred, it has reduced its claim to the costs presented to Konkurrenten. Nettbuss has provided an overview of the costs claimed which have been extracted from Schjødt Law Firm's billing system, Maconomy. The overview sets out all the costs that are claimed. It includes the relevant date, the name of the lawyer, the number of hours worked, the hourly rate and a description of each task. In addition, an explanation of the work undertaken for each phase in the case has been provided, which itself was presented to Konkurrenten on 7 February 2019. In addition, Nettbuss has presented an overview of all other costs, such as shipping and translation. These costs detail the exact amount and the date on which they were incurred. On this basis, Konkurrenten has been presented with all the necessary information to be able to assess the claim.

16 Nettbuss submits that the extraction from the billing system is based on the practice for claiming costs in Norwegian courts, and the inclusion of the overview of each hour worked exceeds the regular practice of those courts.

17 Nettbuss submits that the conditions set out in Article 69(b) RoP that recoverable costs be limited to the necessary expense incurred by the parties for the purpose of the proceedings before the Court are fulfilled. In that regard, it refers to Case E-14/10 COSTS *Konkurrenten.no* v *ESA* [2012] EFTA Ct. Rep. 900, Case E-14/11 COSTS *DB Schenker* v *ESA* [2017] EFTA Ct. Rep. 485, and Joined Cases E-4/12 and E-5/12 COSTS *ESA* v *Risdal Touring and Konkurrenten.no* [2014] EFTA Ct. Rep. 934.

18 Nettbuss submits that the Court must make an unfettered assessment of the facts of the case taking into account the purpose and nature of the proceedings, their significance from the point of view of EEA law, as well as the difficulties presented by the case, the amount of work generated by the proceedings for the agents and advisers involved and the financial interests which the parties had in the proceedings. In that regard, it refers to Case E-15/10 COSTS *DB Schenker* v *Posten Norge* [2014] EFTA Ct. Rep. 616, paragraph 95, and Joined Cases E-4/12 and E-5/12 COSTS *ESA* v *Risdal Touring and Konkurrenten.no*, cited above, paragraph 112.

19 Nettbuss submits that the costs incurred and number of hours spent were necessary for the purpose of the proceedings, having regard to the scope and facts of the case. Konkurrenten contributed to the scope of the work by producing extensive documentation, new submissions and extra rounds of objections. Nettbuss had a substantial financial interest in the proceedings as it was the subject of the recovery claim under the ESA Decision which Konkurrenten had sought to have annulled. Having a financial interest that is material may justify the considerable work involved in the proceedings (reference is made to Case E-14/10 COSTS *Konkurrenten.no* v *ESA*, cited above, paragraph 33).

20 Nettbuss claims costs for a total of 97.75 hours of legal work spent on the intervention, amounting to NOK 388 511. In Nettbuss's view, the number of hours was necessary for the purpose of the proceedings, is within the range of what the Court has granted in previous cases, and is below the actual number of hours spent on the case. Nettbuss submits that in Case E-15/10 COSTS *DB Schenker* v *Posten Norge*, cited above, the intervener was granted 474.25 hours of legal fees; in Case E-9/04 COSTS *The European Banking Federation* v *ESA* [2007] EFTA Ct. Rep. 74 the intervener was granted 80 hours of legal fees; in Case E-14/10 COSTS *Konkurrenten.no* v *ESA*, cited above, the Court granted 189 hours of legal fees; and in Case E-14/11 COSTS *DB Schenker* v *ESA*, cited above, the Court granted 223 hours of legal costs. The number of hours claimed is broken down to 12 hours for the application for leave to intervene, 71.75 hours for the statement in intervention and 14 hours for the second round of pleadings.

21 Of the total of 97.75 hours claimed, 66 hours have been charged at a rate of NOK 4 860 (approx. EUR 503), while the remaining 31.75 hours have been charged at a rate varying from NOK 2 205 to 2 655 (approx. EUR 228 to 275). The average hourly rate is NOK 3 975 (approx. EUR 411). In Nettbuss's view, both the average rate and the separate rates are within the rates accepted in case law.

22 The 12 hours claimed for the application for leave to intervene consisted in establishing Nettbuss's direct and existing interest in the outcome of the case and must be considered proportionate and necessary for that purpose. This required legal research and argument, in addition to obtaining and translating relevant required attachments presented together with the application. This claim is based on 2 hours at partner rates and 10 hours at associate rates.

23 As regards the 71.75 hours claimed for the statement in intervention, valued at NOK 299 306, Nettbuss contends that it had to acquaint itself with Konkurrenten's application, including 49 annexes, ESA's defence and the Commission's written observations. Some of these documents had formed part of a previous case complex. It was necessary to provide an accurate description of the relevant circumstances and to correct Konkurrenten's misrepresentation of the case. These hours consist of 52 hours at partner rates, and 19.75 hours at associate rates. Considerable effort was required to explain that the services for which aid was granted were not related to the market in which Nettbuss and Konkurrenten were competitors, that the entire amount of unlawful State aid had been recovered following ESA's decision, and that Nettbuss was not under criminal investigation

in Norway as alleged by Konkurrenten. Moreover, extensive legal research had to be undertaken in order to establish that Konkurrenten lacked legal standing, as this issue had not been raised in ESA's defence. This work was highly relevant since the Court decided the case on the issue of inadmissibility, mainly based on arguments raised by Nettbuss. Finally, Nettbuss incurred legal work related to the substantive pleas raised by Konkurrenten.

24 As regards the 14 hours for the second round of pleadings, Nettbuss claims NOK 62 730. These hours consist of 12 hours at partner rates, and 2 hours at associate rates. Nettbuss had to consider additional written observations from ESA and Konkurrenten and draft its own observations. Konkurrenten's observations raised additional questions relating to legal standing, which required Nettbuss to conduct extensive research.

25 Nettbuss submits that its claim is based on an average hourly rate of NOK 3 975 (approx. EUR 411). Nettbuss was aided by two lawyers: a partner, who must be considered to be an experienced lawyer, who charged an hourly rate of NOK 4 860/4 050 (approx. EUR 503/417) and an associate, who is less experienced, who charged an hourly rate of NOK 2 205/1 837.5 (approx. EUR 228/189). A second associate, who has extensive experience and who charged an hourly rate of NOK 2 655 (approx. EUR 275), performed legal research on the question of legal interest. These hourly rates are within the bounds of the case law both on average and separately. In Case E-15/10 COSTS *DB Schenker* v *Posten Norge*, cited above, DB Schenker was awarded an average hourly rate of EUR 390; in both Case E-14/11 COSTS *DB Schenker* v *ESA*, cited above, and Case E-7/12 COSTS *DB Schenker* v *ESA* [2017] EFTA Ct. Rep. 519, an hourly rate of EUR 428 was granted.

26 Nettbuss also seeks to recover a total of NOK 5 693 for shipment, translation and other costs connected to the proceedings in Case E-1/17. This comprises NOK 3 173 in shipment costs and fees for obtaining relevant documentation, and NOK 2 520 for translations.

27 Finally, Nettbuss claims expenses in relation to the present proceedings, conducted by two lawyers, in the amount of NOK 47 920, representing 14 hours of legal work at an average rate of NOK 3 423 (approx. EUR 352).

28 In conclusion, Nettbuss seeks to recover NOK 442 125 in addition to default interest from the date of the notification of the order until the date of payment. It contends that the applicable interest rate must be calculated on the basis of the interest rate applied by the European Central Bank to its principal refinancing operations in force on the first calendar day of the month in which payment is due, increased by three and a half percentage points (reference is made to Case E-7/12 COSTS *DB Schenker* v *ESA*, cited above, paragraph 123, and Case E-14/11 COSTS *DB Schenker* v *ESA*, cited above, paragraph 126).

Konkurrenten

29 Konkurrenten refers to Article 69(b) RoP and submits that it mirrors Article 144(b) of the Rules of Procedure of the Court of Justice of the European Union and Article 140(b) of the Rules of Procedure of the General Court. The Court has held that these provisions must be interpreted in the same way unless specific circumstances justify different treatment according to the principle of procedural homogeneity, see Case E-9/04 COSTS II *Bankers' and Securities' Dealers Association of Iceland* v *ESA* [2007] EFTA Ct. Rep. 220, paragraph 28, and Case E-14/10 COSTS *Konkurrenten.no* v *ESA*, cited above, paragraph 23.

30 It follows from Article 69(b) RoP that Nettbuss's recoverable costs in this case are limited, first, to those incurred for the purpose of the proceedings and, second, to those which are necessary for that purpose.

31 Konkurrenten submits that Nettbuss has refused to provide any supporting invoices for its costs claim. Nettbuss has only offered what it describes to be extractions from its law firm's billing system. However, the documents presented are not invoices but time descriptions, and seem to have been edited for the purpose of the present application, as opposed to being part of records of an actual billing. Nettbuss has contended only that it had higher costs than it has chosen to claim. However, in Konkurrenten's view, even if that may be correct, which is impossible to ascertain without the invoices, it would still not provide a valid reason for withholding the invoices from scrutiny. The responsibility rests with any applicant to substantiate its own claims. Nettbuss has failed to present evidence that it has actually incurred the alleged costs, and the application should, therefore, be dismissed on that basis (reference is made to the order in *Comunidad Autónoma de la Rioja*, C-465/09 P-DEP to C-470/09 P-DEP, EU:C:2013:112, paragraphs 26 to 28).

32 In any event, Konkurrenten submits that Nettbuss should not be awarded more than EUR 3 000. Konkurrenten emphasises that Nettbuss played a modest role in the main proceedings as one of three interveners, that Nettbuss's counsel had represented it throughout the administrative procedure, and that the case did not give rise to any novel or complex issues of EEA law.

33 Konkurrenten submits that, according to established case law, account must be taken of the fact that, as a general rule, the procedural task of an intervener is significantly aided by the work of the main party in support of which it has intervened. As an intervention is, by its nature, subordinate to the main action, it cannot therefore present as many difficulties as that action, save in exceptional cases (reference is made to Case E-15/10 COSTS *DB Schenker* v *Posten Norge*, cited above, paragraph 61 and case law cited). Furthermore, account must also be taken of whether the counsel of an intervener had previously represented the party in the administrative procedure (reference is made by comparison to *Kish Glass* v *Commission*, T-65/96 DEP, EU:T:2001:261, paragraph 25 and case law cited).

34 Konkurrenten submits that Nettbuss's counsel had represented it from 2015 onwards both during the administrative procedure before ESA and before the Court. The fact that Nettbuss nevertheless claims costs for a team of four lawyers, whereas Konkurrenten was represented by a single counsel, should lead to a strict review of the necessity of the alleged costs, in particular when none of the invoices have been presented. In that regard it is immaterial that Nettbuss has invoked a significant financial interest in the case. Moreover, the argument that the claim is within the range of what the Court has granted in previous cases is irrelevant since the taxations in those cases were the result of a review of the actual invoices and the specific circumstances in those cases.

35 Turning to the specific claims, Konkurrenten submits that a claim for 12 hours for the application for leave to intervene, by two lawyers, is excessive. The application consisted of only two pages, and Konkurrenten did not contest that an aid recipient has standing as an intervener. In Konkurrenten's view, only two hours by a single lawyer should be considered recoverable.

36 As regards the 71.75 hours claimed for the statement in intervention prepared by three lawyers, Konkurrenten submits that the extent of the annexes to its application cannot justify Nettbuss's claim, since Nettbuss's lawyers were already familiar with the evidence submitted. The timesheets submitted by Nettbuss log only three hours as "perusal of documents" on 28 July 2017. Moreover, Nettbuss only addressed Konkurrenten's first and second pleas, and not the third plea, which arguably was the only new issue in the case. Nor did the statement in intervention contain any rebuttal evidence. Furthermore, Konkurrenten disputes the necessity of the costs incurred in researching whether Nettbuss was under criminal investigation. Nor should the work involved in challenging Konkurrenten's standing be considered necessary under Article 69(b) RoP since this went beyond the pleas of the party that Nettbuss had intervened to support. In any event, since the issue concerning standing turned on the evidence, the work on standing cannot justify an extensive number of legal hours. Therefore, Konkurrenten submits that only 14 hours for a single counsel should be recoverable.

37 As regards the 14 hours claimed for two lawyers for the second round of pleadings, Konkurrenten submits that Nettbuss was not entitled to submit additional information to the Court at this stage pursuant to Article 89(5) RoP. The second round of pleadings was triggered by Konkurrenten's request to be able to comment on ESA's observations on Konkurrenten's standing. This had already been addressed by Nettbuss and its decision to submit a letter in the second round of pleadings should, therefore, not be considered necessary under Article 69(b) RoP. In any event, only two hours of legal work should be considered recoverable.

38 In the absence of any supporting invoices, there is no basis to verify the actual hourly rates that Nettbuss may have been charged. Consequently, the hourly rate for all recoverable legal work should be set at no more than EUR 150.

39 As regards shipment, translation and other costs claimed at EUR 589 connected to the proceedings in Case E-1/17, Konkurrenten submits that no supporting evidence

has been submitted to verify the existence and necessity of these cost items. On that basis, the recoverable costs should be set no higher than EUR 100.

40 In conclusion, Konkurrenten requests, therefore, that the recoverable costs be set no higher than EUR 3 000.

41 Konkurrenten submits that the claim of 14 hours (EUR 4 930 by two lawyers) between 26 February 2018 and 4 February 2019 in relation to the present taxation proceedings is excessive, and that recoverable costs should correspond to no more than 3 hours of legal work by a single lawyer. However, rather than recover these costs, Nettbuss should be ordered to bear Konkurrenten's own costs by extension of Article 66(3) RoP. Nettbuss has not offered a legitimate justification for its refusal to submit the alleged invoices and has needlessly complicated the taxation procedure, undermining Konkurrenten's right to present its rebuttal effectively. Therefore, a deduction of three hours should be made for Konkurrenten's costs.

Findings of the Court

42 As a preliminary matter, in light of Nettbuss's revised application for taxation of costs of 6 March 2019, which was lodged following discussions between the parties concerning the disclosure of offers of amicable settlement pursuant to section 4.5 of the Code of Conduct for Lawyers of the Norwegian Bar Association, the Court has not had regard to Nettbuss's application of 26 February 2019.

43 Under Article 70(1) RoP, the Court shall, if there is a dispute concerning the costs to be recovered, on application by the party concerned and after hearing the opposite party, make an order.

44 According to Article 69(b) RoP, expenses necessarily incurred by the parties for the purpose of the proceedings, including the remuneration of lawyers, shall be regarded as costs which are recoverable from the party ordered to pay the costs. Thus, recoverable costs are limited, first, to those incurred for the purpose of the proceedings before the Court and, second, to those which are necessary for that purpose (see Case E-14/10 COSTS *Konkurrenten.no* v *ESA*, cited above, paragraph 26 and case law cited). In that regard, a party to a case before the Court is free to make use of the services of more than one lawyer. However, to the extent this results in duplication of work and thus higher legal fees in total, those extra costs are not recoverable, since they cannot be considered as necessarily incurred for the purpose of the proceedings (see Case E-9/04 COSTS II *Bankers' and Securities' Dealers Association of Iceland* v *ESA*, cited above, paragraph 33).

45 The costs claimed must be substantiated by evidence that is sufficiently precise and detailed so as to enable assessment by the Court. Nettbuss has provided an overview of the hours worked at the different stages of the proceedings, and of the hourly rate charged.

46 The Court recalls that the only requirement in this regard is that evidence presented must substantiate the claims made by the applicant and be sufficiently precise and

detailed so as to enable assessment by the Court. There are no further requirements as to the manner in which the evidence shall be presented. In particular, there are no conditions for when the account of the hours should have been drafted (see Case E-7/12 COSTS *DB Schenker* v *ESA*, cited above, paragraph 74 and case law cited).

47 The Court finds, contrary to Konkurrenten's objections, that this evidence submitted is thus, in principle, sufficient to substantiate the cost claims made and lacks neither such an appropriate level of detail nor such a level of precision which would prevent the Court from carrying out its assessment (see Case E-7/12 COSTS *DB Schenker* v *ESA*, cited above, paragraph 75).

48 When taxing the recoverable costs, the Court must, in the absence of EEA provisions laying down fee-scales, make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings; their significance from the point of view of EEA law as well as the difficulties presented by the case; the amount of work generated by the proceedings for the lawyers involved; and the financial interests which the parties had in the proceedings (see Case E-7/12 COSTS *DB Schenker* v *ESA*, cited above, paragraph 86).

49 Nettbuss seeks to recover in total 97.75 hours of legal work spent on the intervention, conducted by four lawyers (three associates and one partner) at an average hourly rate of NOK 3 975. Konkurrenten submits that only 18 hours, at an hourly rate of EUR 150 by a single counsel, are recoverable.

50 The Court notes that the proceedings in Case E-1/17 consisted of a written stage only, albeit with a second round of pleadings initiated by the Court and concerning legal standing. Konkurrenten's application was dismissed as inadmissible on this basis, as had been argued by Nettbuss. The legal test leading to this result was well known from existing case law. However, that test needed to be applied to the facts of the case, which were reasonably complex for the field of State aid. The issue of legal standing had not been raised by ESA in the defence, but was initially raised by the various interveners.

51 As regards Nettbuss's interests in the proceedings, the Court notes that the subject of the contested decision was aid granted by the Norwegian authorities to Nettbuss Sør AS which had been merged, or incorporated, into Nettbuss AS. Consequently, Nettbuss had a direct and existing interest in supporting the defendant in the case.

52 Nettbuss claims an average hourly rate of NOK 3 975. This rate presupposes that the work was carried out by an experienced lawyer in the relevant field. The Court finds that rate justified. The fact that remuneration at these rates is taken into account requires in return a strict assessment of the total number of hours' work essential for the purposes of the proceedings in question (see Joined Cases E-4/12 and E-5/12 COSTS *ESA* v *Risdal Touring and Konkurrenten.no*, cited above, paragraph 123 and case law cited).

53 Having regard to that hourly rate, the Court finds that the total of 97.75 hours is somewhat excessive and that only 75 hours of legal work can be considered

essential for the purposes of the proceedings in Case E-1/17. The recoverable costs for legal work are therefore fixed at NOK 298 125.

54 The Court also finds that the shipment and translation costs of NOK 5 693 were necessary for the purpose of the proceedings in Case E-1/17.

55 Finally, in fixing recoverable costs the Court takes account of all the circumstances of the case up to the signing of the order on taxation of costs, including the expenses necessarily incurred in relation to the taxation proceedings. The Court finds that the 12 hours claimed for this purpose at an average rate of NOK 3 423, amounting in total to NOK 47 920, are recoverable.

56 The total amount of recoverable costs to be paid by Konkurrenten to Nettbuss is therefore NOK 351 738. Since the costs have been incurred in Norwegian crowns, and both Nettbuss and Konkurrenten are Norwegian companies, the Court sees no need for a conversion to euro, pursuant to Article 71 RoP.

57 Nettbuss has also claimed default interest. The obligation to pay default interest, and the fixing of the applicable rate, fall within the jurisdiction of the Court under Article 70(1) RoP. Therefore, default interest may be granted for the period between the date of notification of the order of taxation of costs and the date of actual recovery of the costs (see Case E-7/12 COSTS *DB Schenker* v *ESA*, cited above, paragraphs 119 and 120 and case law cited).

58 The Court must, in the absence of EEA provisions laying down interest rates, make an unfettered assessment to determine a reasonable and proportionate default interest rate (see Case E-7/12 COSTS *DB Schenker* v *ESA*, cited above, paragraph 121).

59 As the costs order allocates the amount in NOK, the Court may refer, in order to determine the base rate, to the policy rate applied by the Norwegian Central Bank in force on the first calendar day of the month in which payment is due.

60 The Court finds that the applicable interest rate shall be calculated on the basis of the Norwegian Central Bank’s policy rate in force on the first calendar day of the month in which payment is due, increased by three and a half percentage points.

On those grounds,

THE COURT

hereby orders:

1. **The costs to be paid by Konkurrenten.no AS to Nettbuss AS are fixed at NOK 351 738.**

2. **Default interest shall be due on the amount from the date of notification of the present order until the date of payment; the applicable interest rate shall be calculated on the basis of the Norwegian Central Bank's policy rate in force on the first calendar day of the month in which payment is due, increased by three and a half percentage points.**

Páll Hreinsson Bernd Hammermann Ola Mestad

Luxembourg, 26 July 2019

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President