JUDGMENT OF THE COURT

of 10 December 2010

in Case E-1/10

Periscopus AS v Oslo Børs ASA and Erik Must AS

(Directive 2004/25/EC — Acquisition of control — Mandatory bid — Adjustment of the bid price — Clearly determined circumstances and criteria — Reference to market price)

(2011/C 141/13)

In Case E-1/10 between Periscopus AS and Oslo Børs AS and Erik Must AS — REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Oslo tingrett (Oslo District Court), Norway, concerning the interpretation of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, as adapted to the EEA Agreement by Protocol 1 thereto, the Court, composed of Carl Baudenbacher, President and Judge-Rapporteur, Thorgeir Örlygsson and Henrik Bull, Judges, gave judgment on 10 December 2010, the operative part of which is as follows:

The second subparagraph of Article 5(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids precludes national legislation which provides that the price to be offered in a mandatory bid must be adjusted to be at least as high as the 'market price' in situations where it is clear that the 'market price' is higher than the price calculated according to the main rule prescribed in accordance with the first subparagraph of Article 5(4), without further clarification of the term 'market price'. In particular, further clarification is needed of the time interval relevant for determining the 'market price', whether or not the 'market price' must be calculated on the basis of a volume-weighted average, and whether actual trades are necessary or standing buy or sell orders suffice in order to establish a 'market price'.