



Samkeppniseftirlitið

## Key points in Competition law enforcement in Iceland – Tools in the ICA toolbox. What are they for? How are they used?

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## Topics


- Importance of competition rules and the environment.
- The toolbox and its application.
- Items of debate



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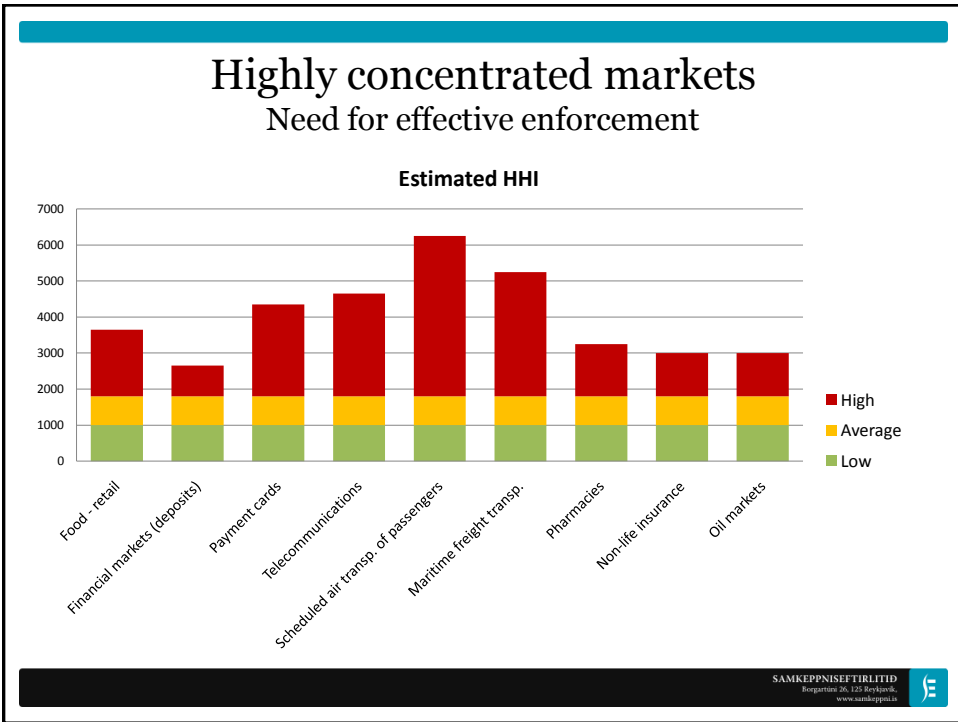
## Active competition....



- ....brings increased prosperity
- ....underpins dynamic businesses
- ....boosts employment
- ....improves conditions

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## Competition speeds up economic recovery



Joaquín Almunia, Commissioner for Competition, EU:  
"Competition policy is a tool that can help us overcome the crisis." (2010)



Christine A. Varney, Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice:  
"Antitrust must be among the frontline issues in the Government's broader response to the distressed economy." (2009)



Angel Gurría, Secretary-General of the OECD:  
"Governments must resist protectionism and keep markets open to competition as they seek ways to get their economies going again" (2009)



A joint report from by Nordic competition authorities:  
"The report emphasizes the importance of continued, vigorous competition enforcement and to stand firm on competition policy also in times of global economic crisis." (2009)



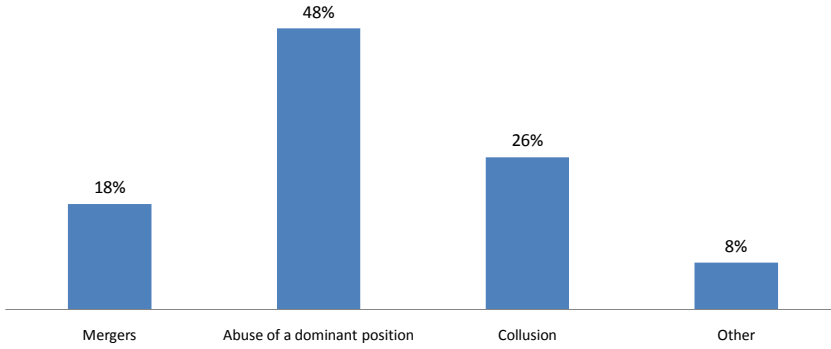
## The economic crisis

- ↓ Banking collapse and economic crisis ↓
- ↓ Companies over-leveraged – contraction in demand and income ↓
- ↓ Danger of increased concentration ↓
- ↓ Temptation to violate the prohibition rules of the competition act ↓
- ↓ Damage transferred to clients and consumers ↓



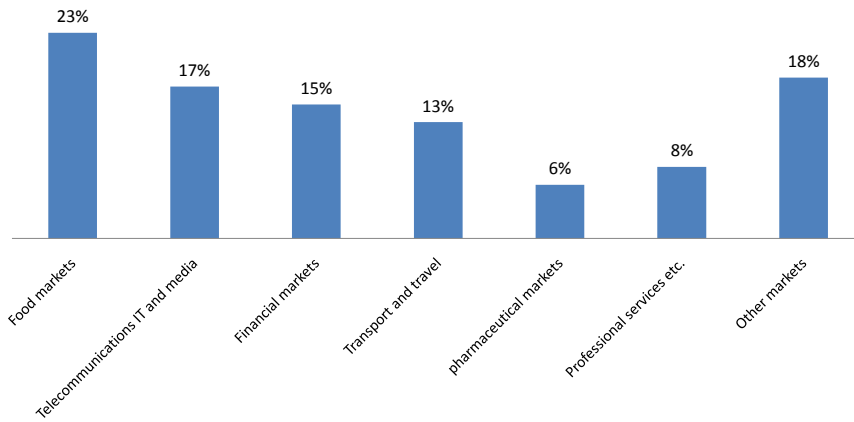
## Oligopolistic markets give rise to investigations on possible abuses of dominant positions


Time spent on tasks  
2010




## Emphasis on consumers and transport

Time spent on markets  
2010






## Mergers with negative effects on competition must be counteracted



- Since 2005:
  - 8 mergers annulled
  - 46 approved upon conditions
- Bank takeovers of companies
  - 26 decisions with conditions to avoid harm to competition



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## Illegal collusion is never tolerated



Administrative fines levied by the Competition Authority last 10 years, agg.	<b>4.502.600.000 ISK</b>
Numer of fined companies last 10 years	<b>29</b>
Highest single fine on a company (after review of the Appeals Committee and courts)	<b>560.000.000 ISK</b>
Lowest single fine	<b>100.000 ISK</b>

Associations of undertakings should avoid any form of illegal collusion

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## Abuse of a dominant position is not tolerated



Administrative fines levied by the Competition Authority last 10 years, agg.	<b>1.715.400.000 ISK</b>
Numer of fined companies last 10 years	<b>13</b>
Highest single fine on a company (after review of the Appeals Committee and courts)	<b>315.000.000 ISK</b>
Lowest single fine	<b>400.000 ISK</b>



## The administration has a responsibility



STJÓRNARRÁÐ ÍSLANDS

- Measures taken by State or local government affect recovery
- Competition assessment
  - “Government should make a competition assessment in connection with drafting and passing legislation and administrative rules.”

(Formal opinion addressed to the Prime Minister, 2009).



## New tool in the toolbox



- Enables the ICA to take action against any situation or behaviour that restricts competition
- Violation of the prohibition rules is not a prerequisite
- Similar options to those found in the UK and Norway



## Issues of debate

### The new powers

#### Criticism:

- Too unclear, undefined
- Unconstitutional
- Scares away investors

#### Answers:

- Based on foreign models, worded in general terms.
- Not possible to specify in advance all circumstances.
- Urgent protection of public interests call for such a power.
- Investors have scarier things to worry about.  
F.ex. zombie firms.



## Issues of debate

### Interpretation of the ban on abuse of a dominant position

- Guidance on Commission enforcement priorities in applying Article 82 to exclusionary conduct by dominant firms.
- Will it bring a change in the enforcement of competition law?



### The form-based approach:

- Objectives of economic freedom
- Looks at the conduct and its nature
- German success story?

### The effects-based approach:

- Looks at the likely or actual effects
- Consumer welfare
- Better results?
- Or sacrificing greater benefits for less?
- Laissez-faire?

The Obama administration's change of the interpretation of the Sherman Act (Section 2):



[The Bush administration's interpretation ]...*"went too far in evaluating the importance of preserving possible efficiencies and understated the importance of redressing exclusionary and predatory acts that result in harm to competition, distort markets, and increase barriers to entry."*





## The Competition Authority will keep an eye on the development



ESA decision  
in Norway  
Post (14/7  
2010):



General  
Court  
Judgement  
in Tomra  
(9/9 2010)



Opinion of  
AG Kokott in  
Solvay (14/4  
2011)

„The effect to which the case-law does not necessarily relate to the concrete or actual effect of the abusive conduct complained of.“ (Para 477)

„...the Commission did not attempt to base its finding of an infringement of Article 82 EC on that consideration of the actual effects of the applicants' practices on each of the national markets examined but that it merely complemented its finding of infringement with a brief examination of the likely effects of those practices.“ (Para 288)

„...for the purposes of establishing an infringement of Article 82 EC, it is not necessary to show that the abuse under consideration had an actual impact on the relevant markets ...“ (Para 299)

„Solvay's (ill-substantiated) complaint to the effect that the case-law of the Court of Justice concerning fidelity rebates is formalistic and has no economic basis is also unfounded.“ (Para 80)



## In closing:

Viewpoints are welcomed

