SAMKEPPNISEFTIRLITIÐ

Oligopoly in small economies

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Dear guests,
It is beyond any doubt that oligopoly and highly concentrated markets are common in the Icelandic economy. The expansion in the Icelandic business sector in recent months and years, particularly in the financial sector, has added to this development. Strong banks, easier access to favourable financing, as well as a favourable economic climate in other respects, have given businesses the strength to embark on new ventures and investments, with the results that conglomerates have grown both in strength and number. The consequences are, on the one hand, increased domestic concentration and, on the other hand, increased cross-border expansion.

One method of measuring concentration in individual markets is to use the Herfindahl-Hirschman Index (HHI), which is used both in US and European competition cases. [The HHI represents the combined multiple of the market share of each of the undertakings operating in a specific market. The value of the index can lie between the figures 0 and 10,000. The higher the index the greater the concentration.] The Index shows clearly the high concentration in many of the most important markets in Iceland. The assumption is that figures [under 1000 indicates a low level of market concentration; HHI between 1000 and 1800 corresponds to an average level of concentration, while figures] above 1800 reflect a high level of concentration, often resulting in restrictions to competition.

One indication of developments towards greater concentration is the current increase in the number of merger cases. In the first quarter of this year we have received a greater number of significant merger notifications than ever before. There is good reason to believe that this trend will continue. Powerful conglomerates are likely to add further undertakings to their flora. [While conditions for investments remain favourable the concentration is likely to increase. And if conditions deteriorate there is a risk that dominant undertakings will attempt to strengthen their position still further at the expense of their competitors - and often at the expense of consumers.]

[In a small economy which is characterised by oligopoly, cross-ownership is inevitable. Mutual ownership relations between undertakings which are not organised as consolidated companies obviously make the protection of consumer interests more complex.]

The trend towards concentration and oligopoly is a source of concern. It is because of such concerns that the Competition Authority has organised this conference to discuss issues relating to oligopoly, particularly in smaller economies. Let me just say that

we are truly honoured by the participation of my distinguished co-speakers here today. Their input has shead a better light on the issue.

One of the questions that have to be answered is the following: Can the Icelandic Competition Authority respond efficiently to the harmful effects of oligopoly? In my mind the answer depends mainly on three factors:

- Firstly; does the Competition Act provide for the instruments necessary at any time to oppose harmful oligopoly or respond to its consequences?
- Secondly; does the Competition Authority have sufficient funds available to perform its tasks in an effective manner?
- And thirdly; do the priorities and management of the Competition Authority ensure the best possible utilisation of the resources available and of the mechanisms available to the Authority pursuant to law.

These factors have to fit nicely together to make a strong enforcement of Competition Law. Let us look briefly at each of these factors:

1) Current legislation – desirable changes

The Competition Authority has according to existing law at its disposal tools to react to the undesirable effects of oligopoly. These are investigations and possible actions against mergers, actions against abuse of dominant position and actions against cartel activities.

[Let us look further into these tools:

First, oligopoly and its effects come under consideration in the investigation of mergers. In such cases, the Competition Authority can annul a merger or establish conditions for a merger if the Authority believes that the merger will restrict effective competition. This is the only recourse available to the Competition Authority to oppose harmful oligopoly in advance.

Second, the Competition Authority responds to any abuse of dominant position; it can impose fines on undertakings found guilty of such conduct, require changes in the behaviour of the undertakings in question or issue instructions on changes in their organisation.

Third, the Competition Authority responds in the same way to unlawful collusion between undertakings or associations of undertakings. Experience has shown that collusion is common in oligopolistic markets, as it is a general rule easier to collude where there are few competitors.]

In light of the current developments it is worth consideration whether the conditions in Iceland call for changes in the current legislation. The Competition Authority is of this opinion. Let us reflect upon the following:

First; there is reason in my mind to take a firmer stand in handling and investigating of merger cases. It is far too common for undertakings to neglect their legal

obligation to report mergers. And under the current legislation it is not possible to impose administrative fines on undertakings which are guilty of such neglection. This needs to be improved.

It is also far to common that information submitted to the Competition Authority along with notifications of mergers is imprecise or misleading. This causes considerable difficulties for the Competition Authority in its investigations of merger cases, which are subject to strict time limits pursuant to law. Greater discipline could be imposed on the communications between undertakings and the Competition Authority by permitting searching of premises in connection with mergers. Such powers are not provided for in the current legislation. However other competition authorities have powers of this kind , fx. the European Commission. In short, further improvements of merger provisions to allow for administrative fines and dawn raids, should be considered.

Second; the remedies available to investigators in cartel cases need to be strengthened. According to the current legislation, dawn raids by the Competition Authority are limited to the establishments of undertakings. Experience in other countries has shown that information which is significant for the investigation of violations of competition legislation is often found elsewhere. It is worth mentioning that according to the EEA-Agreement, the EFTA Surveillance Authority is permitted to search the homes of managers in Iceland in the course of its enforcement of European competition legislation, even though the Icelandic Competition Authority is not permitted to do so in its investigations under similar domestic competition rules. In my view it is obvious that the Competition Authority should have similar powers.

Thirdly and finally; it is worth considering to incorporate into the Icelandic legislation provisions similar to those that permit the British competition authorities to react against oligopolies, even when the undertakings in question or conglomerates have not been found guilty of actual abuse of their dominant positions or of any other breaches the british competition law. In a small economy like Iceland, the size of an undertaking alone, in a specific market, can present a barrier to competition, even in the absence of actual abuse of dominant position. Provisions of this kind would at least serve as a reminder to undertakings not to tread lightly their dominant position. And they can be necessary to create conditions for effective competition in certain markets, especially in a small economy like Iceland. Authorisation of this kind would need to be carefully considered and prepared, both the content and the way in which powers would be executed, so that it would serve the objectives of the Competition Act.

2) Adequate funding

The second deciding factor when assessing enforcement of competition law is the resources of competition authorities.

Current budget allocations to the Competition Authority provide for a staff of just under 20 employees. It is necessary to review periodically the staff needs of the Competition Authority, taking into consideration the trends in the market at any given

time. Obviously, increased work related to the investigation of mergers will affect the scope available to the Authority to attend to other investigations. It is also reasonable to assume that oligopolistic trends such as those that characterise the Icelandic competitive environment will lead to an increased workload.

The Financial Supervisory Authority, which I chaired for some years, currently employs about 40 people. From my experience of both these regulatory bodies in Iceland I can say for certain that based on the workload and the interests involved, the difference in size between these two agencies should be considerably less or none. It should also be borne in mind that the conduct of competition proceedings against large corporations with a host of experts in their service is both time-consuming and complex. If the Competition Authority is to be able to deal in a firm manner with all the competition issues that could result from increasing oligopoly, its activities will need to be strengthened still further for the future.

3) Priorities of the Competition Authority

Dear guests,

Potential legislative reform and possibilities for increased budget allocations are not within the domain of the Competition Authority. We who are working in the service of the Authority are primarily responsible for making the most of the cards that we are dealt. Proper priorities, precise project management and transparency in our activities are the measure of the strength of our surveillance.

Our objective is to enforce the current competition legislation as firmly as possible. With this objective in mind we will focus in particular on the following:

- Firstly, we intend to study carefully all further mergers in the markets that bear the characteristics of oligopoly and its harmful effects. It is vital for the merger provisions of the Competition Act to be used to halt all further anti-competitive concentration in the market where there are grounds for doing so.
- Secondly, we wish to strengthen an environment in the Icelandic economy where no one can take part in illegal collusion without deep worries. Anonymous tips submitted on the Authority's website, the possibility of reduced fines for whistle-blowers, heavy fines and criminal liability will provide deterrents which will render activities of this kind unattractive.
- Thirdly, we believe it is important to address restrictive practices which have the potential of reducing competition in oligopolistic markets. Examples of such practices are cross-ownerships of competitors and their joint ownership of certain undertakings. Another example is unreasonably close co-operation within the interest groups of individual market sectors.
- Fourthly, we wish to take hard action when undertakings which have achieved a dominant position, abuse their positions and thereby disrupt competition. In such cases the sanctions provided for in the Competition Act may be expected to be imposed to their full extent.

I have now briefly described our plans. This represents rather a sizable undertaking considering the size of the Authority and its legal powers. It is quite clear that the

Competition Authority will not always be able to take on all tasks within the best possible timeframe. And it is also not likely, given unchanged circumstances, that the pace of investigations and proceedings will be to everyone's satisfaction. But through careful prioritisation and with the support of the legislature and the budgetary authorities the Competition Authority should be able to defend the public interests in Iceland for the future.