

# **Competition Law No 44/2005.**

## **Chapter I Objectives and scope**

### **Article 1**

The objective of this Act is to promote effective competition and thereby increase the efficiency of the factors of production of society. This objective shall be achieved by:

- a. preventing unreasonable barriers and restrictions on freedom of economic operation;
- b. preventing harmful oligopoly and restriction of competition;
- c. facilitating the entry of new competitors into the market.

### **Article 2**

This Act shall apply to any economic operation, including the manufacturing industry and trade in goods and services, irrespective of whether such operation is conducted by individuals, companies, public entities or others.

This Act shall not apply to wages or other employment terms of wage earners pursuant to labour agreements.

### **Article 3**

This Act shall apply to agreements, terms and actions with effect, or intended effect, in Iceland.

Subject to the provisions of Chapter VII and the provisions governing trade within the common market of the European Economic Area, this Act shall not apply to agreements, terms or actions which are solely intended to have an effect outside Iceland.

The Competition Authority shall provide assistance in implementing the competition provisions of other states and international organizations in accordance with mutual obligations provided for in international conventions to which Iceland is a party.

## **CHAPTER II Definitions**

### **Article 4**

The following definitions shall apply in this Act:

1. *Economic operation* shall mean any commercial activity, irrespective of form of ownership and irrespective of the nature of the goods, services or rights exchanged or managed for a consideration.

2. *Undertaking* shall mean any individual, company, public party or other party engaged in economic operation.

3. A *group of undertakings* shall refer to undertakings connected by an ownership structure characterized by one undertaking owning a share in another undertaking or undertakings which is sufficiently large to confer on it the majority of voting rights. The owning undertaking shall be regarded as the parent undertaking, and the other undertaking or undertakings as subsidiaries. A group of undertakings shall also mean an undertaking where the parent undertaking and subsidiary, or one or more subsidiaries, together have sufficient shares or holdings to control the majority of voting rights.

4. A *dominant position* shall mean a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and consumers.

5. *Market* shall mean the area within which goods and their substitute goods, and/or a service and its substitute services, are sold. Substitute goods or services shall mean goods or services which may, completely or to a significant extent, take the place of other goods or services.

6. *Consumer* shall mean any individual person purchasing goods or services for a consideration, provided his purchase is not made for the purpose of business operation.

[7.....]

8. *Sales stage*: production shall be regarded as the first sales stage, wholesale the second stage, retail sale the third stage, etc.

9. *Goods* shall in this Act mean any real or personal property, including vessels, aircraft, gaseous substances, electricity or other energy sources.

10. *Price* shall mean the return provided for goods or services, i.e. any consideration irrespective of the term used, such as remuneration, wages, commission, freight, shipping charges, tariff, rent or the like.

[11.....]

12. *Service* shall mean any facilitation, work or service rendered for a consideration, excluding work rendered for wages in the service of another.

In the event of any dispute as to the scope of these terms, the dispute shall be settled by the Competition Authority.

### **CHAPTER III Administration**

#### **Article 5**

The Minister for Commerce is responsible for the implementation of this Act, but surveillance pursuant to this Act and day to day administration of matters within the scope of the Act is entrusted by the Minister to a separate agency, the Competition Authority.

The Board of the Competition Authority is composed of three members appointed by the Minister for a term of four years at a time. Three alternates shall be appointed in the same manner. The Minister appoints the Chairman of the Board and decides the remuneration of the members of the Board.

The role of the Board of Directors is to establish priorities in the work of the Competition Authority and monitor its activities and operation. Major material decisions shall be submitted to the Board for approval or rejection. The Board of Directors shall establish its own rules of procedure, which shall include provisions on what constitutes major decisions. The rules shall be published in Section B of the Law and Ministerial Gazette.

#### **Article 6**

The Director of the Competition Authority shall be appointed by the Board of Directors of the Authority. The Director is in charge of the day-to-day activities and operation of the Authority. The Board of Directors shall decide the terms of employment of the Director and his/her terms of reference.

The Director shall appoint the employees of the Authority.

#### **Article 7**

Members of the Board shall possess expert knowledge of competition and business matters and an education which is relevant to this field.

The Director shall possess a university degree and extensive knowledge and experience in competition matters.

Members of the Board of Directors and the Director shall be legally competent to manage their own affairs and shall have no record of deprivation of control of their estate. They shall possess an unblemished reputation, and shall not have been convicted in a court of law for any

sanctionable conduct with regard to economic operation pursuant to the Penal Code or statutory law on limited liability companies, private limited companies, annual accounts or competition.

Members of the Board of Directors and the Managing Director shall not participate in the conduct of any affair where they have a material interest or any affair relating to any parties which are financially or personally related to them.

## **Article 8**

The functions of the Competition Authority are as follows:

- a. to enforce the provisions and prohibitions of this Act, and grant exceptions pursuant to the Act;
- b. to decide on measures to be taken against anti-competitive behaviour of undertakings;
- c. to observe that measures taken by public entities do not restrict competition, and to indicate to the authorities any means by which competition can be made more effective and the entry of new competitors into the market facilitated;
- d. to monitor the development of competition and trade practices in individual Icelandic market sectors and investigate the management and ownership links between undertakings; this shall be done, inter alia in order to evaluate whether there are in the Icelandic business sector any characteristics of trusts, undesirable links or concentrations of power that may inhibit competition; the authority shall publish reports on its investigations and take measures to promote active competition where necessary.

The Competition Authority shall establish its own rules of procedure.

The Competition Authority shall decide whether complaints submitted to the Authority give adequate grounds for investigation. In processing cases according to this Act the Competition Authority is authorised to prioritise cases.

## **Article 9**

The decisions of the Competition Authority may be appealed to a separate committee, the Competition Appeals Committee. A written appeal must be received within four weeks from the time the party in question was informed of the decision. The decision of the Competition Appeals Committee shall be rendered within six weeks from the date of appeal.

The Competition Appeals Committee shall be composed of three members with three alternates, appointed by the Minister following nomination by the Supreme Court. The chairman and his alternate, who shall also serve as vice-chairman, shall meet the conditions for qualification as Supreme Court judges, but the other members shall possess professional expertise in the field of competition and business.

The term of the appointment of the Competition Appeals Committee shall be the same as that of the Board of Directors of the Competition Authority.

## **CHAPTER IV**

### **Ban on restrictive practices**

#### **Article 10**

Any agreement or resolution between undertakings, whether binding or guiding, and concerted practices which have as their object or effect the prevention, restriction or distortion of competition are prohibited.

This prohibition includes any agreements, resolutions and concerted practices which:

- a. directly or indirectly affect prices, discounts, margins or any other trading conditions;
- b. limit or control production, markets, technical development, or investment;
- c. share markets or sources of supply;
- d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### **Article 11**

Any abuse by one or more undertakings of a dominant position is prohibited.

Abuse according to Paragraph 1 may, inter alia, consist in:

- a. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- b. limiting production, markets or technical development to the prejudice of consumers;
- c. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- d. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### **Article 12**

It is prohibited for associations of undertakings to institute restrictions on competition or to advocate restrictions prohibited under this Act, or conflicting with decisions taken in accordance with Articles 16-18.

This prohibition extends also to the directors of such associations, their staff members, and to persons in positions of trust within such associations.

### **Article 13**

Agreements between undertakings do not fall under the prohibition in Article 10 if the aggregate market share held by all of the participating undertakings does not exceed, on any of the relevant markets:

- a. A 5% threshold, where the agreement is made between undertakings operating at the same level of production or of marketing (horizontal agreement);
- b. A 10% threshold, where the agreement is made between undertakings operating at different levels of production or marketing (vertical agreement).

In the case of a mixed horizontal and vertical agreement, or where it is difficult to classify the agreement as either horizontal or vertical, the 5% threshold applies.

Agreements according to Paragraph 1 do not fall under the prohibition of Article 10 even when the market share exceeds the thresholds according to Paragraph 1 if the share does not exceed 5.5% in horizontal agreements or 11% in vertical agreements for two successive fiscal years.

Participating undertakings according to Paragraph 1 are undertakings that are parties to the agreement, undertakings that the parties to the agreement control directly or indirectly or undertakings that control directly or indirectly parties to the agreement.

The provisions of this Article apply also to concerted practices according to Article 10 and decisions by associations of undertakings according to Article 12.

The provisions of this Article do not apply where in a relevant market competition is restricted by the cumulative effects of similar agreements in the market.

### **Article 14**

In the case of public undertakings or undertakings operating to some extent under exclusive rights or protection granted by the State, the Competition Authority may order financial segregation on the one hand between part of the operation of the undertaking conducted under exclusive rights or protection and on the other hand the operation conducted in free competition with other parties. Measures shall be taken to ensure that the operation in competition is not subsidised by the operation conducted under exclusive rights or protection.

### **Article 15**

The Competition Authority may grant exemptions from the provisions of Articles 10 and 12. The conditions for such exemptions are that agreements, resolutions, concerted practices or decisions pursuant to Articles 10 and 12

- a. contribute to improving the production or distribution of goods or services or promote technological or economic progress;
- b. allow consumers a fair share of the resulting benefit;
- c. do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and
- d. do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products or services in question.

Conditions may be set for an exemption. The Competition Authority may require that applications for exemptions according to Paragraph 1 should be presented on a special form.

The Competition Authority may withdraw an exemption or change its conditions if:

- a. the grounds underlying the exemption have changed;
- b. the exemption has been granted on the basis of incorrect or misleading information; or
- c. an undertaking violates the conditions set for the exemption.

The Competition Authority shall establish rules concerning exemption from the provisions of Articles 10 and 12 to certain categories of agreements which satisfy the requirements of Paragraph 1. (group exemption).

## **CHAPTER V**

### **Control of restrictive practices**

#### **Article 16**

The Competition Authority may take measures against:

- a. agreements, terms and any actions constituting infringement of Articles 10, 11 and 12;
- b. acts of public entities to the extent that they may have detrimental effects on competition, provided that no special legislation contains any specific provisions regarding authorisation or obligation for such acts.

Action taken by the Competition Authority may include any measures needed to bring an end to violations of the provisions of this Act or to respond to actions of public entities which may be detrimental to competition. The Competition Authority may take action both to change behaviour

and structure in proportion to the infringement committed and as necessary to bring such infringement effectively to an end. However, structural remedies may only be imposed if it is shown that no effective behavioural remedy exists or if an equally effective behavioural remedy will be more burdensome for the party in question than a structural remedy.

The Competition Authority may also decide provisionally on individual matters if

- a. it is probable that the conduct or circumstances under investigations will infringe the provisions of the Competition Act or decisions taken on the basis of the Act or if the actions of public entities have a detrimental impact on competition; and
- b. it is likely that waiting for a final decision of the Competition Authority will lead to distortion of competition which will be prevented by a final decision or the matter is urgent in other respects.

Interim decisions shall be effective for a specific period time and may be renewed if necessary.

#### **Article 17**

A merger is regarded as having taken place where a change of control on a lasting basis results from:

- a. the merger of two or more previously independent undertakings or parts of undertakings;
- b. an undertaking taking over another undertaking;
- c. the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more undertakings;
- d. the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

For the purposes of paragraph 1, control shall be constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- a. ownership or the right to use all or part of the assets of an undertaking;
- b. rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Control is acquired by persons who:

- a. are holders of rights or entitled to rights under the contracts concerned; or
- b. while not being holders of such rights or entitled to rights under such contracts, have the option to exercise such rights.

#### **Article 17(a)**

Notification is required of mergers meeting the following conditions:

- a. the combined turnover of the undertakings in question in Iceland is ISK 2 billion or more; and
- b. at least two of the undertakings participating in the merger have a minimum annual turnover of ISK 200 million respectively in Iceland.

Turnover pursuant to paragraph 1 shall include the turnover of parent undertakings and subsidiaries, undertakings within the same group of undertakings, and the turnover of undertakings directly or indirectly controlled by the parties to the merger.

The Competition Authority shall be notified of a merger before it takes effect but after the conclusion of an agreement on the proposed merger, the public announcement of a takeover bid or the acquisition of a controlling interest in an undertaking. A merger falling within the scope of the provisions of this Act shall not take effect while it is being examined by the Competition Authority.

The Competition Authority may, on request, grant an exception from the obligation that a merger should be not take effect while it is being examined by the Competition Authority, provided that it is established that delaying the implementation of the merger could harm the undertakings concerned or its business partners and threaten competition. Such a request shall be in writing and reasoned. An exception may be made subject to conditions in order to ensure effective competition.

A merger notification shall include information on the merger, the undertakings concerned, the relevant markets and other details necessary for assessing the competitive effects of the merger. The Competition Authority shall lay down rules further specifying the information to be included in a notification.

A short form may be used for the purpose of notifying a merger where one of the following conditions is met:

- a. the markets affected by the merger are not related;
- b. two or more of the parties to the merger are engaged in business activities in the same product and geographic market (horizontal merger), provided that their combined market share is less than 20%;
- c. two or more of the parties to the merger are operating in product markets which are upstream or downstream of a product market in which either party to the merger is operating (vertical merger), provided that their individual or combined market share is less than 30%;
- d. the merger in question is a merger within the meaning of subsection (d) of paragraph 1 of Article 17, which has a limited effect in Iceland;
- e. a party acquires sole control of an undertaking over which it already had joint control.

The following information shall accompany a notification submitted in short form:

- a. an overview of the undertakings directly or indirectly controlled by the parties to the merger;
- b. a description of the product, service and geographic markets which are affected by the merger and a reasoned assessment of the market share of the undertakings in question in such markets;
- c. a reasoned assessment of the competitive impact of the merger;
- d. copies of all contracts and other instruments upon which the merger is based, together with copies of the annual financial reports of the undertakings which are parties to the merger.

#### **Article 17(b)**

In the case of a merger in the understanding of subsection (a) of paragraph 1 of Article 17, or the acquisition of joint control in the understanding of subsection(c) of paragraph 1 of Article 17, the parties to the merger, or the parties obtaining control, as applicable, shall jointly prepare the notification of the merger.

If an undertaking acquires a controlling share in another undertaking, the undertaking initiating the takeover shall prepare the notification of the merger. In the case of a takeover bid for an undertaking, the bidder shall prepare the notification.

If the Competition Authority is of the opinion that there is a significant probability that a merger which has already taken place, while failing to meet the conditions of subsections (a) and (b) of paragraph 1 of Article 17 (a), may substantially reduce effective competition, the Authority may require the merging parties to submit a notification of the merger, provided that the combined annual turnover of the undertakings concerned exceeds ISK 1 billion. After the requirement has been made, the time limit pursuant to Article 17(d) shall begin on the first working day following the receipt by the Competition Authority of a notification meeting the conditions of Article 17(a) and rules established pursuant to the provision.

In the event that parties to a merger which fails to comply with the conditions of subsections (a) and (b) of paragraph 1 of Article 17 (a) notify the Competition Authority in writing that the merger has taken place, the Competition Authority shall decide within 15 working days whether to exercise the powers provided for in paragraph 3.

In other respects, the procedure and powers of the Competition Authority for intervening in a merger requiring notification shall be subject to the provisions of Articles 17 (a) – 17 (e)

#### **Article 17(c)**

If the Competition Authority is of the opinion that a merger will obstruct effective competition by giving one or more undertakings a dominant position or by strengthening such a position, or will result in a significant distortion of competition in the market in other respects, the Authority may annul the merger. In addition, technological and economic progress shall be taken into account when assessing the lawfulness of a merger, provided that such progress is to customers' advantage and does not form an obstacle to competition. The Competition Council may also establish conditions for such a merger that must be met within a given time. When assessing the lawfulness of a merger the Competition Council shall take into account the extent to which the competitive position of the merged undertaking is affected by international competition. Moreover, when assessing the lawfulness of a merger account shall be taken of whether the market is open or whether market access is obstructed.

#### **Article 17(d)**

The Competition Authority shall, within 25 working days, notify a party that has submitted a notification of a merger if it sees reason for further investigation of the competitive impact of the merger. This time limit shall begin on the first working day following the receipt by the Competition Authority of a notification meeting the conditions of paragraph 6 of Article 17(a) and rules established pursuant to the provision. If no notification pursuant to the first sentence is received from the Competition Authority within the established period, the Competition Authority cannot annul the merger. A decision on the annulment of a merger shall be made no later than 70 working days from the time that a notification pursuant to the first sentence has been sent to the party notifying the merger. If it is necessary to obtain further information, the Competition Authority may extend this time limit by up to 20 working days.

In the event of the receipt of a notification in short form, the Competition Authority may, within 15 working days of receiving such a short form, require a longer form if the conditions of paragraph 6 of Article 17(a) have not been met or if this is regarded as necessary for assessing the competitive impact of the merger. In such cases the time limit pursuant to paragraph 1 will begin at the time that a notification in a longer form is received.

If the Competition Authority fails to make a decision on whether to annul or establish conditions for a merger within the time limits prescribed pursuant to this Article, the Authority can neither annul the merger nor make it subject to conditions.

### **Article 17(e)**

In the event that the Competition Authority decides to disallow a merger the Authority may, concurrently with a decision based on Article 17(c) or by a separate decision, require a dissolution of the merged undertakings or assets or the cessation of joint management or any other action that may be appropriate in order to restore conditions for effective competition. In the event that the Competition Appeals Committee or a court of law quashes a decision to disallow a merger or set conditions for a merger on the grounds of procedural defects, the Competition Authority may re-open its investigation of the merger. The notifying parties shall promptly submit a new merger notification to the Competition Authority if any changes have occurred in market conditions. Where there are no such changes, the parties shall report this fact to the Competition Authority without delay. The Competition Authority shall make a decision on whether to disallow a merger or set conditions for a merger in a reopened case no later than 30 working days after a final conclusion has been reached with regard to the quashing of the Authority's decision.

In the event that the Competition Authority has found that a merger does not distort competition or has approved a merger subject to conditions, the Competition Authority may revoke such a decision where:

- a. the decision is based on incorrect information for which one of the merging parties is responsible or where it has been obtained by deceit; or
- b. the undertakings concerned violate the conditions attached to the merger.

In the event that a decision is withdrawn pursuant to paragraph 3, the Competition Authority shall reassess the merger in question and exercise the powers conferred by Article 17(c) if deemed necessary. The provisions of the Act with respect to procedure and time limits do not apply in such cases.

### **Article 17(f)**

In the event that any undertaking or association of undertakings has violated the provisions of this Act or any decisions of the Competition Authority grounded in this Act, the Competition Authority is authorised, with the consent of the parties involved, to conclude the matter by a settlement. The same applies in the case of mergers that obstruct effective competition, cf. Article 17 and Articles 17 (a)-17 (e) . A settlement is binding for the party involved once it has been accepted and its substance confirmed by the party's signature.

The Competition Authority shall lay down further rules on the implementation of the Article.

### **Article 18**

If the Competition Authority is of the opinion that any provisions of law or administrative provisions are contrary to the objectives of this Act and detrimental to free competition in trade, the Minister shall be informed of this opinion. Such an opinion shall also be notified to the public in an adequate manner, e.g. by a news release to the public media, after the Minister has been informed.

## **CHAPTER VI**

### **Obligation to provide information**

#### **Article 19**

The Competition Authority may request from individual undertakings or groups or associations of undertakings covered by this Act any information regarded as necessary for the investigation of individual cases. Information may be requested in oral or written form, and shall be provided within a reasonable time limit set by the Authority.

The Competition Authority may, under the same conditions as those laid down in Paragraph 1, require the surrender of documents for inspection. Such documents shall be delivered within a reasonable time limit established by the Authority.

In the course of its functions the Competition Authority may request information and documents from other administrative authorities, including the tax and customs authorities, irrespective of their duty to maintain confidentiality.

The Competition Authority may also impose on the parties referred to in Paragraph 1 the obligation of providing the Authority with regular information concerning matters relevant to the implementation of this Act. The Competition Authority may issue such orders by public announcement.

#### **Article 20**

The Competition Authority may, in the course of the investigation of a case, carry out the necessary inspections on the premises of an undertaking and associations of undertakings and seize documents and other evidence when there are compelling reasons to believe that this Act or the decisions of the competition authorities have been violated.

The provisions of the Code of Criminal Procedure concerning search and seizure of articles shall apply to the procedure of such actions.

## **CHAPTER VII**

### **Implementation of competition rules etc. pursuant to the Agreement on the European Economic Area**

#### **Article 21**

The Competition Authority, the Competition Appeals Committee and Icelandic courts of law shall apply Articles 53 and 54 of the EEA Agreement, cf. Act No. 2/1993 on the European Economic Area, as provided by law, inter alia Articles 25-28 of this Act. The application by the EFTA Surveillance Authority and the EFTA Court of the competition rules of the EEA shall conform, inter alia, to the provisions of this Chapter.

Any party so requested shall provide the EFTA Surveillance Authority and the EFTA Court with the information necessary for these institutions to implement the Agreement on the European Economic Area and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice in matters concerning competition. The same applies to the carrying out of orders issued as authorised by Article 32.

The Competition Authority may also request the information referred to in Paragraph 2, and may establish time limits for its delivery.

## **Article 22**

The EFTA Surveillance Authority may, following the procedures provided for in Protocol and Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and Court of Justice relating to the functions and powers of the EFTA Surveillance Authority in the field of competition, perform on-the-spot investigations.

The agents of the EFTA Surveillance Authority and the agents of the European Commission responsible for matters concerning competition may, within the limits set by the Agreement on the European Economic Area and its ancillary agreements, attend and take part in on-the-spot investigations conducted by the Competition Authority. The same applies to the agents of the Competition Authority and the European Commission when the EFTA Surveillance Authority conducts on-the-spot investigations in Iceland.

Decisions of the EFTA Surveillance Authority or the Competition Authority to conduct on-the-spot investigations may be enforced by means of enforcement proceedings.

## **Article 23**

The confidentiality obligations of Icelandic authorities prescribed by law shall not constitute a hindrance to their providing the EFTA Surveillance Authority or the agents of the European Commission with any information necessary for the implementation of the competition provisions of the Agreement on the European Economic Area.

## **Article 24**

The EFTA Surveillance Authority and the EFTA Court may impose fines to be paid by undertakings, associations of undertakings or individuals by reason of intentional or negligent infringements of Articles 53, 54 or 57 of the Agreement on the European Economic Area, of the provisions of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice, or of rules issued in accordance with Article 32 of this Act.

The same applies to the European Commission and the European Court of Justice when these parties have jurisdiction in a case pursuant to the Agreement on the European Economic Area.

The same parties may also impose penalty payments in order to ensure compliance with decisions taken on the basis of the competition rules, cf. the provisions of Paragraph 1.

Decisions concerning fines and penalties pursuant to the above are enforceable by law.

## **Article 25**

The Competition Authority and the Competition Appeals Committee shall, within the limits set by the EEA Agreement, ensure the observance of Articles 53 and 54 of the EEA Agreement. The provisions of this Act shall than also apply as applicable.

In deciding on agreements, decisions or practices pursuant to Articles 53 and 54 of the EEA Agreement which have already been addressed in a decision of the EFTA Surveillance Authority in the same case, the Competition Authority and the Competition Appeals Committee are not authorised to take a decision which contradicts a decisions approved by the Surveillance Authority.

The Competition Authority may decide that a group exemption pursuant to Paragraph 3 of Article 53 of the EEA Agreement does not apply to a specific undertaking with the conditions contained in the EEA Agreement, the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice and government regulations issued pursuant to Article 32 of this Act.

If it is the opinion of the Competition Authority that the EFTA Surveillance Authority should handle a case, the case shall be forwarded to the Surveillance Authority.

## **Article 26**

If the Competition Authority, the Competition Appeals Committee or the courts of law apply the provisions of this Act to agreements of undertakings, decisions by associations of undertakings or concerted practices within the meaning of Paragraph 1 of Article 53 of the EEA Agreement, which may affect trade between Contracting Parties to the EEA Agreement, they shall also apply the provisions of Article 53 of the EEA Agreement as regards such agreements, decisions or concerted actions.

If the Competition Authority, the Competition Appeals Committee or the courts of law apply the provisions of this Act to any abuse of dominant position prohibited by Article 54 of the EEA Agreement they shall also apply the provisions of Article 54 of the EEA Agreement.

The Competition Authority and the Competition Appeals Committee shall not prohibit agreements, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties to the EEA Agreement but which do not restrict competition in the meaning of Paragraph 1 of Article 53 of the EEA Agreement, which meet the conditions of Paragraph 3 of Article 53 of the EEA Agreement or which fall within the scope of a group exemption concerning the application of Paragraph 3 of Article 53 of the EEA Agreement. The provisions of this Paragraph shall not prevent the Competition Authority and the Competition

Appeals Committee from applying stricter legislation prohibiting unilateral decisions of undertakings or permitting the imposition of fines on undertakings for such decisions.

Subject to general principles and other provisions of the EEA Agreement, this Article applies neither when the Competition Authority, Competition Appeals Committee and courts apply Article 17 and Articles 17(a) – 17(e) of this Act, nor does it prevent the application of provisions which predominantly pursue objectives different from those pursued by Articles 53 and 54 of the EEA Agreement.

### **Article 27**

When a court is ruling on agreements, decisions or practices under Article 53 and Article 54 of the EEA Agreement which are already the subject of a decision by the EFTA Surveillance Authority, the court ruling shall not run counter to that decision. The court shall furthermore avoid giving decisions which would conflict with a decision contemplated by the EFTA Surveillance Authority in proceedings it has initiated. The court may stay its proceedings for this purpose.

The provision of Paragraph 1 is without prejudice to the right of the court to seek an advisory opinion from the EFTA Court under Article 34 of the Surveillance and Court Agreement.

### **Article 28**

The Competition Authority, acting on its own initiative, may submit written observations in the course of court proceedings relating to the application of Articles 53 and 54 of the EEA Agreement. With the permission of the court, the Competition Authority may also submit oral observations.

Where the coherent application of Article 53 and Article 54 of the EEA Agreement so requires, the EFTA Surveillance Authority, acting on its own initiative, may also submit written observations. With the permission of the court, the Surveillance Authority may also submit oral observations.

For the purpose of the preparation of their observations only, the Competition Authority and the EFTA Surveillance Authority may request the relevant court to transmit or ensure the transmission to them of any documents regarded as necessary for the assessment of the case.

### **Article 29**

The provisions of Article 17 and Articles 17(a) – 17(e) of this Act will be applied with the limits deriving from the provisions of the EEA Agreement concerning control of concentrations, cf. Article 57 of the main body of the Agreement, Protocols 21 and 24 to the Agreement and Annex XIV to the Agreement, as well as Chapters XIII and XIV of Part III of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

### **Article 30**

If state aid covered by Article 61 of the EEA Agreement has been notified to the EFTA Surveillance Authority, Icelandic authorities shall not be competent to decide whether such aid conforms to allowed financial assistance from public sources until after the EFTA Surveillance Authority has stated its opinion in the matter. The same applies in case of financial assistance granted from municipal funds which may fall within the scope of Article 61 of the Agreement.

### **Article 31**

A municipality intending to provide an undertaking with aid of the nature envisaged in Article 61 of the EEA agreement shall notify the Competition Authority of such planned aid.

In the event that the EFTA Surveillance Authority considers that aid which a municipality has decided to provide is contrary to Article 61 of the EEA agreement, the Competition Authority shall notify the municipal government. The Competition Authority may ensure compliance with such decision by the imposition of fines as provided for in Paragraph 3 of Article 24.

In the event that a decision on state aid or other financial support from public funds needs to be withdrawn on the grounds of provisions in the Agreement on the European Economic Area, the authorities shall, following a recovery decision from the EFTA Surveillance Authority, take measures to recover the aid from the beneficiary. The beneficiary of the aid shall pay interest, as decided by the EFTA Surveillance Authority, on the amount claimed. Interest shall be payable from the date on which the aid was at the disposal of the beneficiary until the date of its recovery. Withdrawal pursuant to this Paragraph shall not give rise to liability on the part of the municipality or the State Treasury for damages to the party affected by the decision or any party claiming losses as a result of the withdrawal.

### **Article 32**

The Minister, having obtained the opinion of the Competition Authority, may issue a government regulation concerning further details of the implementation of the provisions relating to competition contained in the Agreement on the European Economic Area and the Agreement between the EFTA States on the Establishment of the Surveillance Authority and Court of Justice. The Minister for Finance may also issue further rules governing the implementation of the provisions of the EEA agreement concerning state aid to parties in Iceland.

## **CHAPTER VIII General Provisions**

### **Article 33**

Any agreements conflicting with the prohibitions in this Act are null and void.

However, any contractual provisions deemed to be independent, as regards substance and enforceability, from the provisions conflicting with the prohibitions in this Act shall be deemed to

be valid. Any dispute in this respect may be referred to the Competition Authority within one month from the date of the invalidation of an agreement in accordance with Paragraph 1.

#### **Article 34**

Persons acting on behalf of administrative authorities in implementing this Act are prohibited from disclosing information on confidential matters obtained by them in the course of their functions. This confidentiality shall remain in force even if employment is terminated.

#### **Article 35**

The Competition Authority is authorised to deliver to competition authorities of other states information and data as necessary for the enforcement of Icelandic or foreign competition law in accordance with Iceland's obligations under international agreements.

On delivery of information and data to authorities referred to in Paragraph 1 the Competition Authority shall set as conditions that:

- a. the recipients will treat the information and data as confidential;
- b. The information and data may only be used for the purposes provided for in the international agreement in question; and
- c. the information and data may only be delivered to other parties with the consent of the Competition Authority and only for the purpose stated in the consent.

The Minister for Commerce may lay establish further rules concerning the surrender by the Competition Authority of data and information to authorities and organisations according to Paragraph 1.

#### **Article 36**

In the implementation of this Act, the Competition Authority may publish information on agreements, terms and actions which restrict or are intended to restrict competition.

However, account shall be taken of the legitimate interests of undertakings in keeping their commercial and technological information secret.

### **IX. CHAPTER IV Sanctions**

#### **Article 37**

The Competition Authority will impose administrative fines on undertakings or groups of undertakings that violate:

- a. A prohibition pursuant to Articles 10 or 12;

- b. A prohibition pursuant to Article 11;
- c. Instructions from the competition authorities based on Article 14;
- d. Conditions established by the competition authorities for the granting of an exemption pursuant to Article 15;
- e. Measures, actions or provisional decisions pursuant to Article 16;
- f. An instruction or conditions of the competition authorities pursuant to paragraph 4 of Article 17(a), Article 17(c) and paragraph 1 of Article 17(e).
- g. A prohibition on the taking effect of a merger and the obligation to notify pursuant to Article 17(a), paragraph 3 of Article 17(b) and paragraph 2 of Article 17(e);
- h. A settlement between the Competition Authority and a party pursuant to Article 17(f);
- i. The obligation to provide information or surrender documents pursuant to Article 19;
- j. A prohibition pursuant to Articles 53 or 54 of the EEA Agreement.

Fines may amount to up to 10% of the total turnover of the preceding business year of any undertaking or association of undertakings involved in a violation. If the violation of an association of undertakings relates to the activities of its members the fine shall not exceed 10% of the total turnover of active members in the market affected by the violation of the association. In deciding the amount of fines, account shall be taken of the nature, and extent of the violations, duration and whether repeated violations are involved. The fines shall accrue to the Treasury, net of collecting costs. If an administrative fine is not paid within one month from the decision of the Competition Authorities, penalty interest shall be paid on the amount of the fine. The determination and calculation of penalty interest is subject to statutory law on interest and price-level indexation.

Fines may be reduced if an undertaking has taken the initiative in providing information or documents to the Competition Authority concerning violations of Articles 10 or 12, which, in the opinion of the Authority, constitute an important addition to the evidence already in its possession, subject to further conditions established by the Competition Authority in its Rules.

A decision to impose a fine may be waived if a violation is regarded as insignificant, or for other reasons if no need is seen for such fines for the purpose of promoting and strengthening effective competition. Furthermore, the imposition of a fine may be waived if an undertaking took the initiative in providing the Competition Authority with information or documents relating to violations of Articles 10 and 12 which, in the opinion of the Authority, could lead to investigation or proof of a violation and subject to further conditions laid down by the Competition Authority in its Rules.

A decision of the Competition Authority to impose fines may be appealed to the Competition Appeals Committee.

### **Article 37 a**

The authorisation of the Competition Authority to impose administrative fines pursuant to this Act shall lapse when seven years have passed since the behaviour in question was discontinued.

The limitation period pursuant to Paragraph 1 is interrupted if the Competition Authority notifies a party of the launch of an investigation of an alleged violation or when a search is conducted at the place of business of an undertaking or association of undertakings pursuant to Article 20. The interruption of the limitation period has legal effect for all parties involved in a violation.

### **Article 38**

In the event of non-compliance with a decision taken in accordance with this Act the Competition Authority may decide to impose periodic penalty payments on the party or parties at which the decision is directed, until the decision is complied with. The party in question shall be notified of a decision to impose periodic penalty payments by letter in a verifiable manner.

### **Article 39**

A decision to impose periodic penalty payments may be appealed to the Competition Appeals Committee within fourteen days from the date of notification of the party at which the decision is directed. Periodic penalty payments shall not accrue prior to that deadline. In the event that a decision is appealed to the Competition Appeals Committee periodic penalty payments shall not accrue until the Committee returns a conclusion.

### **Article 40**

The decision of the Competition Authority can not be referred to the courts until the conclusion of the Competition Appeals Committee has been rendered.

### **Article 41**

A party not willing to accept the decision of the Competition Appeals Committee may instigate legal action for annulment before the courts of law. Such action shall be brought within six months after the party obtained knowledge of the Committee's decision. Such action shall not suspend the entry into force of the Committee's decision, nor shall it preclude formal enforcement proceedings. However, legal action before the courts shall postpone the legal effect of a decision by the Appeals Committee concerning structural changes pursuant to Paragraph 2 of Article 16.

### **Article 41 a**

Any employee or director of an undertaking or association of undertakings who carries out, incites to or gives instructions on collusion which violates Articles 10 and/or 12 and relates to the issues specified in paragraphs 2 and 3 shall be subject to fines or imprisonment up to six years.

The provisions of paragraph 1 apply to the following violations of Articles 10 or 12 by undertakings or associations of undertakings operating at the same sales stage:

- a. collusion on prices, discounts, margins or other trading conditions;
- b. collusion on restriction or control of supply, production, markets or sales;
- c. Collusion on sharing out sources of supply or markets, e.g. by region or customer;
- d. Collusion on the preparation of tenders;
- e. Collusion on avoiding business with specific undertakings or consumers;
- f. Provision of information on the matters in subsections (a) to (e).

The provision in paragraph 1 also applies to collusion between undertakings which has the purpose of avoiding the commencement of competition between undertakings.

Collusion in this Article refers to agreements, resolutions, decisions or concerted practices of undertakings or associations of undertakings.

Suspension of licence pursuant to Article 68 of the Penal Code, and confiscation of assets pursuant to Article 69 of the Code, may be adjudged in proceedings that have their origins in violations of Articles 10, 12 and 41(b) of this Act.

An attempt to commit or participation in violations pursuant to this Article is subject to sanctions as prescribed in the Penal Code.

#### **Article 41 b**

Any person who, in connection with the collection of information pursuant to Articles 19 and 20, and rules established pursuant thereto, destroys, falsifies, suppresses or otherwise renders unusable any documents which are significant for an investigation by the Competition Authorities shall be subject to fines or imprisonment up to three years, unless more severe sanctions are provided for under other legislation.

Any person who, in the course of providing information pursuant to Article 19, supplies to the Competition Authority false, misleading or inadequate information shall be subject to fines or imprisonment up to two years. Any person who in other respects provides the Competition Authority with false, misleading or inadequate information shall be subject to the same sanctions.

A legal person may be subjected to fines pursuant to the provisions of Chapter II of the Penal Code for violations of paragraphs 1 and 2 of this Article.

#### **Article 42**

Violations of this Act are subject to criminal investigation only following a complaint submitted by the Competition Authority to the police.

If an alleged violation of this Act is subject to both administrative fines and criminal sanctions, the Competition Authority shall, with reference to the seriousness of the violation and viewpoints relating to the protection of legal rights, assess whether the part of the case which is subject to the criminal liability of a natural person should be reported to the police. Conformity shall be observed in the resolution of similar cases.

The Competition Authority may decide not to report a natural person if the natural person, or the undertaking where he or she is employed or serves as a director, has taken the initiative in supplying the Competition Authority with information or documents relating to violations of Articles 10 or 12 which could lead to an investigation or proof of a violation and which constitute an important addition, in the opinion of the Competition Authority, to the evidence already in its possession, subject to compliance with further conditions established by the Competition Authority in its Rules.

The report of the Competition Authorities should be accompanied by copies of the documents forming the basis of their suspicion of a violation. The provisions of Chapters IV – VII of the Administrative Procedures Act do not apply to decisions of the Competition Authority to report a case to the police.

The Competition Authority is permitted to supply to the police and prosecuting authority any information and documents obtained by the Authority and relating to the violations falling within the scope of paragraph 2. The Competition Authority is permitted to participate in police actions relating to the investigation of violations falling within the scope of paragraph 2.

The police and prosecuting authorities are permitted to supply to the Competition Authority information and documents obtained by them and relating to the violations falling within the scope of paragraph 2. The police are permitted to participate in the actions of the Competition Authority relating to the investigation of violations falling within the scope of paragraph 2.

The prosecuting party may send cases relating to violations of the Competition Act and related documents to the Competition Authority for processing and decision.

#### **Article 42 a**

The Competition Authority is permitted to restrict access by the parties to a case to documents relating to the investigation of alleged criminal violations of this Act if there is a risk that such access will obstruct a criminal investigation. However, this restriction shall always be removed in a timely fashion before the Competition Authority makes a final decision in the case.

It is not permitted to use information supplied by the representative of an undertaking to the Competition Authority as evidence in criminal proceedings initiated against him/her on the grounds of the violations specified in Article 41(a).

### **Article 43**

Decisions of the Competition Authority relating to the imposition of administrative fines or periodic penalty payments to be paid by undertakings or associations of undertakings, or the annulment of a merger of undertakings as provided for in Article 17(c), as well as the payment of related legal costs, are enforceable by law.

An appeal to the Competition Appeals Committee will suspend enforcement, but the decisions of the Committee are enforceable by law.

In the event of enforcement procedures pursuant to decisions of the Competition Authority or Competition Appeals Committee, the respondent shall be summoned before the District Court and proceedings shall be conducted in accordance with Chapter 13 of the Enforcement Act.

## **CHAPTER X Entry into force**

### **Article 44**

This Act shall enter into force on 1 July 2005. As of the same time, the Competition Act No 8/1993, as amended, stands repealed. On the entry into force of the Act the Competition and Fair Trade Authority and Competition Council are dissolved. The transitional provisions shall take effect immediately.

*Passed by the Althing on 11 May 2005, ammended by Ammendments No 52/2007 and 94/2008.*