

I. Conclusion and recommendations

The banking crash has resulted in a very serious financial situation here in Iceland. Many undertakings are having difficulties, unemployment is rising and families are struggling with heavy debt and reduced incomes. Inflation and problematic international transactions add to the problem. There is a real threat that important markets will see a reduced number of companies because of operational problems. Competition restrictions and oligopoly may increase.

This situation means that there is an urgent need to begin effective reconstruction of the Icelandic economy. In this connection it is very important to maintain and, as the case may be, promote competition. Competition is not a goal in itself, but rather a tool for increasing public welfare. The reason for this is that effective competition between companies enhances positive things in the economy. It leads to lower prices and to increased business activity. Competition thus creates jobs, contributes to economic progress and motivates companies to do more for their customers. The obverse of this is that a lack of competition and competition restrictions by corporate entities causes considerable damage to the public and the economy, such as through higher prices, inferior services and less restraint in the operations of the relevant businesses. In order to counteract the harmful effects of a lack of competition and in order to advance the positive effects of competition, many countries enact competition legislation.

Competition does not just have a positive effect on the economy when the economy is booming. On the contrary, it is especially urgent during an economic downturn that effective competition is maintained to the greatest extent possible. From the further reasoning put forth in Chapter II, the experiences that other states have had of economic depressions can be summarised in the following manner:

- Actions that restrict competition prolong economic difficulties and work against recovery.
- Actions that maintain or promote competition contribute to a speedier recovery in the economy.

In view of the present situation, it is important to start making an effort to open up as many markets as possible here in Iceland, and by doing so preserve or promote competition. This will mainly be done by combating so-called barriers to entry and barriers to expansion. This will lead to many benefits for society. It will be easier to establish new companies and start operations, and thereby create employment and increase competition. At the same time small companies will have an opportunity to obtain a stronger foothold in the market and to expand and thrive. All of this contributes to economic growth and progress.

Actions of this kind also have a positive effect on opportunities for entrepreneurs and innovative companies because they can remove unnecessary barriers to the establishment and operation of innovative and competitive businesses. The importance of people who possess important knowledge and have recently lost

their job having the option and the real possibility of starting a business and being able to enter the market here in Iceland hardly needs to be rationalised. It is also necessary to bear in mind that it is the general view that the most effective way to increase entrepreneurial activities, innovation and research and development is to have open markets and measures that advance competition. Nevertheless, strong public support for such activities may also be necessary.

In view of the above, the Competition Authority puts forth these recommendations in its report and calls attention to ideas that are intended to open up markets and increase entrepreneurial activity and innovation here in Iceland. In this way it is hoped that activities which create competition and employment will be strengthened for the benefit of the public. These recommendations are based on a study made by the Competition Authority that began immediately after the collapse of the commercial banks. This study has among other things been based on discussions with numerous parties who have set forth helpful suggestions. These are the following parties:

Economists from the University of Iceland and from Reykjavík University, The Finnish Competition Authority, the Post and Telecom Administration, Klak-Innovation Center, the Confederation of Icelandic Employers, the Federation of Icelandic Industries, Icelandic Federation of Trade and Services, the Consumers' Association of Iceland, the Consumers' Ombudsman, Innovation Centre Iceland, the Research Centre Iceland, the municipalities of Reykjavík, Hafnarfjörður and Kópavogur. Discussions have also been held with a number of companies that work in various important markets. It is right to point out that the Competition Authority is responsible for all recommendations that are presented herein.

These recommendations and ideas are presented for discussion purposes and for dialogue, which will hopefully lead to important improvements in the Icelandic economy. It should be kept in mind that in the coming hardships confronting Icelandic society there may also lay hidden opportunities: opportunities to learn from mistakes and to improve the infrastructure of the economy and to reform market behaviour. That way the preconditions for a more sound and competitive corporate culture could be created here in Iceland. The Competition Authority wishes to remind public entities, companies and their federations and the public to read the contents of this report and to critique and comment on or point out other ways of opening up markets and strengthening competition.

These recommendations and ideas deal both with the activities of public entities and undertakings, and some of these recommendations are of such a nature that the relevant bodies may on their own initiative take positive action that bolsters the economy. At the same time, we point out actions which the Competition Authority itself can take. These ideas and recommendations include public restrictions on competition, certain key markets and items that are particularly connected to the promotion of innovation and entrepreneurial activities. The Competition Authority hopes that this will generate a response from most quarters. It would therefore be desirable that consumers, companies and public

entities point out further remedial actions or present a reasoned assessment of these recommendations by the Authority.

After receiving critique and comments, the Competition Authority will make a final assessment of which recommendations are promising and well-suited to getting results, and then decide upon actions to implement them. This might be in the form of an opinion addressed to the government pursuant to the Competition Act, an administrative investigation of corporate activities, or requests to corporate entities. It is, however, proper to reiterate the importance of proactive corporate and government initiatives. Such initiatives will then immediately have a positive effect on competition and the economy. It should also be mentioned that at the same time the Competition Authority obviously also carries out general monitoring of compliance with the Competition Act provisions for the purpose of protecting competition in the markets.

It is necessary to speed up this work as much as is possible, and the Competition Authority calls on the relevant parties to send comments to the Authority at the earliest opportunity.

The competitive problems to be dealt with and the recommendations and ideas of the Competition Authority for solving them are discussed in this report. For convenience, the main tasks and solutions are summarised in the following table. The table has references to the relevant page numbers in the report.

The report will also explain that bolstering economic activity and competition are the correct responses to economic shocks. There is also an academic discourse on the main issues that counteract new competitors being able to get a foothold in markets.

Discussion in this report regarding particular markets is based on information from and the experience of the Competition Authority, and on information from public sources. On the other hand, it is evident that because of the economic situation conditions may change quickly, and when reading this report this must be kept in mind. It is also proper to state that the discussion in this report does not express any particular view or position as to whether the provisions of the Competition Act have been breached or not or with respect to other issues that are linked to the implementation of the Competition Act. The discussion in this report should be viewed with these reservations in mind, and the discussion cannot be the foundation for any legally enforceable expectations. It should be iterated that the purpose of this report is to generate ideas and dialogue concerning issues that may bolster economic activity and competition here in Iceland.

Recommendations concerning the opening-up of markets

Market / subject	Subject - Restrictions	Solutions - Recommendations concerning the opening-up of markets	Reference to Report
Government Actions - Municipal Planning and Competition	<ul style="list-style-type: none"> • The local communities rarely formulate a clear policy concerning the impact of municipal planning on competition. • The local communities frequently take the initiative of selecting large competitors to commence the operation of retail stores to the detriment of smaller competitors. • Uncertainty in the planning of basic facilities such as airport facilities weakens competition. • There are examples of reluctance to allocate building plots to smaller competitors, e.g. in the fuel market. • There are examples of large companies having secured the allocation of a building plot for themselves and then having kept the lot without continuing with construction work. • Building plots are frequently burdened with encumbrances prohibiting certain activities. • Building plots are sometimes burdened with encumbrances that obstruct the entry of new enterprises, e.g. encumbrances in Gravarvogur and Gravarholt concerning grocery stores. • There are examples of additional encumbrances on building plots that constitute additional difficulties for smaller companies, e.g. an obligation to build office buildings on the same building lot as a grocery store. 	<ul style="list-style-type: none"> • The municipal planning legislation may require that competition factors are taken into consideration in decision making. • Growth management plans give consideration to the long-term effects on competition. • The local communities should be obligated to carry out a competition assessment when preparing the local plan, in order to assess current or possible competition in the most important goods and services markets. • Building lots should be allocated through tender when possible. • When allocating building lots, new competitors in the market are to get priority. • The terms and conditions for building plots should prohibit the selling of building plot rights without the approval of the local community. • Local communities should endeavour to prevent the placement of competition-restrictive encumbrances on building plots. • Terms and conditions for building plots should ensure that parties are not able to keep the building plot rights without beginning construction work, except for a specified period. 	<p>pp. 40 etc.</p>

Government Activities - Competition Assessment	<ul style="list-style-type: none"> The government frequently passes laws or regulations that counteract the objectives of competition laws and harm competition. This is sometimes unavoidable because of the interests that need to be protected. However, frequently there are other means available that do not harm competition. 	<ul style="list-style-type: none"> The government will be required to perform competition assessments in connection with preparations for the enactment of laws and administrative directives. Competition assessments should be a standardised process, whereby four questions will have to be answered. <ol style="list-style-type: none"> Do the measures increase the possibility of a direct reduction in the number of companies? Do the measures increase the possibility that a large number of companies in the market will be limited by indirect means? Do the measures restrict the options of companies to respond to competition? Do the measures restrict the initiative of companies to engage in competition in an active manner? 	pp. 48 etc.
Market / subject	Subject - Restrictions	Solutions - Recommendations concerning the opening-up of markets	Reference to Report
Innovation and Entrepreneurs	<ul style="list-style-type: none"> Innovation and entrepreneurial activity can help in counteracting the harmful effects of economic crises and contribute to increased employment and reconstruction in the Icelandic economy. Increased vitality in this activity is conducive to diversity in the Icelandic economy, is suited to bolstering competition, and benefits consumers. Actions for facilitating innovative enterprises to enter markets and gain a foothold are particularly important in the present circumstances. Patents and the patents system may be an impediment to innovation and does not encourage large funding for research and development. Tax concessions are generally a 	<ul style="list-style-type: none"> Public entities should make use of tenders for the purpose of promoting innovation and entrepreneurial activities. Public entities should perform competition assessments for the purpose of promoting the opening of markets and innovation. The impact of the current intellectual property rights laws on innovation and competition should be examined. An examination should be made of the possibility of issuing mini-patents and whether the existing system should be strengthened in order to protect design. An examination should be made with respect to the need for legislative amendments in the field of intellectual property rights, including amendments with the goal 	pp. 138 etc.

	<p>bad source of funding for innovative firms. Their expenses are relatively high and the companies generally do not return a profit.</p> <ul style="list-style-type: none"> • Employees of innovative firms are obliged to earn no less than what they would receive were they working for an unrelated entity. No distinction is made between an innovative company and other companies. • Individuals do not have the same impetus to invest in innovation as companies that enjoy tax concessions. • Incentives are lacking for the participation of what have been referred to business angels in innovative projects. • Government actions can harm the interests of innovation and entrepreneurial activity. 	<p>of simplifying processes and making it attractive to secure proprietary rights to intellectual property.</p> <ul style="list-style-type: none"> • Provisions should be added to the current legislation on tax concessions and refunding for innovative firms according to the Norwegian example. • An examination should be made of the issue of exemptions for tax rules with respect to wage-based accredited innovation companies in the case of employees that are also the owners of the companies. • Provisions granting individuals' tax rebates for purchasing corporate shares in accredited innovative companies should be enacted. • The possibility of basing employee taxation partly on the taxation of financial income rather than wage income should be considered. • A public fund could be created that only invests in partnerships with business angels. • We recommend that the possibilities for providing additional grants to entrepreneurial activities and innovation be examined within the framework put up by the EEA agreement on permitted state grants. 	
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II. Bolstering economic activity and competition are correct responses to economic shocks

The Icelandic society has at this point in time suffered economic shocks and it is clear that there may be considerable difficulties ahead for the economy here in Iceland. Some might argue that this situation calls for amendments to the Competition Act or for changes in the implementation of the Competition Act. Could these difficulties for instance justify relaxing the requirements under the Competition Act? Would it for example be right to permit competition restrictive collaboration of competitors for the purpose of protecting jobs? In order to be able to assess this issue it is prudent to look to experiences from earlier economic setbacks or depressions. First off, a brief discussion on why sovereign states should view competition and competition laws as desirable.

1. Competition and competition laws increase the welfare of the consumers

Economic theory supports the view that competition in business is desirable because it increases the welfare of consumers and contributes to efficiency in economic activity¹. More specifically active competition is considered to have these qualities:

- Competition is conducive to consumers getting goods and services for the lowest prices.
- Competition is conducive to an increased supply of goods and better services and goods.
- The self-control imposed by competition pushes undertakings toward rationalising their operations and works against waste.
- Competition is conducive to innovation and progress in businesses operations.²
- Competition is conducive to macro-economic advantageousness in the national economy (gains for the consumers and for the producers).

It is not necessarily a given that competition is effective in markets. Market failure can happen and undertakings can find it to their advantage to reduce competition through certain actions. In order to ensure that the positive effects of competition benefit consumers and the economy, more than one hundred states all over the world have enacted competition laws.³ It is generally found that the protection of and the bolstering of

¹ DTI Economics Paper no. 9, *The Benefits from Competition: some illustrative UK cases*, July 2004: "Almost from their (academic) cradle, economists learn the virtues of competition. Whether couched in the elegant prose of Georgian English, or in the more direct style of the 21st century, the message is the same. Competition is a good thing; it makes markets work well, and is in society's interests."

² See e.g. *Competition and Welfare, The Norwegian Experience*, edited by Lars Søgard 2006, p. 9 etc. See also Torben M. Andersen, Bengt Holmström, Seppo Honkapohja, Sixten Korkman, Hans Tson Söderström, Juhana Vartiainen, *The Nordic Model, Embracing globalization and sharing risks*, The Research Institute of the Finnish Economy 2007, e.g. p. 136 etc. On the positive effect of competition and competition rules on innovation in particular, see e.g. Jonathan B. Baker, *Beyond Schumpeter vs. Arrow: How Antitrust Fosters Innovation*, Working Paper Series, June 2007.

³ The number of these states is growing. It can be mentioned that on 1 August of last year a competition act entered into force in the People's Republic of China.

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competition is necessary to promote increased productivity, rationalisation and economic growth.⁴

Competition laws that have been enacted by states all over the world generally have the purpose of protecting competition by prohibiting competition-restrictive actions that harm the interests of both consumers and the economy. At the same time, competition acts are intended to ensure that all undertakings have the opportunity to participate in healthy competition and are not subjected to unreasonable or harmful business methods by other companies. Competition laws are, therefore, intended to be conducive to new entities being able to start business operations and smaller companies being able to expand, and are vital to the reinforcement or preservation of a strong economy.

In the same way that it is clear that competition in business has a positive impact, it has also been established that competition restrictions may cause great damage to the public and the economy. If there are no competition rules, the risk is raised of undesirable conduct among corporations and of jobs being lost and legal certainty for consumers is reduced.⁵ Without competition rules, undertakings in a dominant position can drive smaller competitors out of the market and prevent new companies from gaining a foothold in the market. If there were no competition rules regarding mergers that have a restrictive effect on competition, corporations might merge and create monopolies, thereby destroying all competition and consumer options in important markets. Competition restrictions that competitors are able to take up through cartels are particularly prone to cause great damage to the public and to the economy.⁶ Institutions and academics agree that price-fixing among competitors or agreements to keep new parties out of the market is very harmful and may transfer great benefits to the relevant companies. Until recently it was considered cautious to consider the benefits of price-fixing to be on average 10 per cent of the sales price, but that the loss to society because of this form of cartels could amount to 20 per cent of the volume of the business transactions that were covered by the price-fixing.⁷ Recent studies, however, indicate that this constitutes an underestimation of the loss to the public and the economy caused by the price-fixing.⁸ A 2005 OECD report states

⁴ See, for example, the address by Philip Collins, chairman of the BoD Office of Fair Trading, *Competition law: challenges and opportunities for business and agencies in an international context*, 30 July 2008. See also speech by Neelie Kroes, EU Commissioner responsible for competition policy, *In defence of competition policy*, 13 October 2008: “The core of our understanding of the world is that markets do NOT work best when left alone ... this is what our enforcement record and independent evidence shows, and it is the only practical approach to take. Competition policy is a tool that has worked well for 50 years – for Member States, for Europe, for consumers and for law-abiding companies everywhere. It has spread to more than 100 economies, including every major economy in both the developed and developing world – and for one reason: because it helps to increase and protect prosperity.”

⁵ See, for example, the speech made by Neelie Kroes EU Commissioner for competition policies, “In defence of competition policy”, 13 October 2008: “Without a solid competition policy such as this, the European economy would descend into chaos. With diminished incentives for companies to compete on their merits, cheating would be rewarded and go unpunished, jobs and wealth would be lost and consumers would lose protection as the law of the jungle ruled.”

⁶ See, for example, US Federal Sentencing Guidelines: 2003 Federal Sentencing Guidelines. Chapter 2 Part R-Antitrust Offences: “...there is near universal agreement that restrictive agreements among competitors, such as horizontal price-fixing (including bid-rigging) and horizontal market-allocation, can cause serious economic harm.”

⁷ A report on implementing the hard-core cartel recommendation and improving co-operation. OECD Journal of Competition Law and Policy, Volume 2/No. 2.

⁸ See e.g. Tackling Cartels, Simon Williams and Philipp Giradet, 22 February 2007 (published in <http://www.konkurransetsynet.no>): “Academic studies have in the past suggested that cartel conduct imposes on

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that research indicates that illegal price-fixing may lead to prices being up to 60–70 per cent higher than they would otherwise have been.⁹ There is reason to believe that losses caused by price-fixing may be greater here in Iceland than in larger states. The assessment report by the economists Gudrún Johnsen and Gylfi Zoëga, which was lodged in the case of the oil companies vs. the Competition Authority, states that foreign studies concerning the harm caused by cartels are relevant with respect to Iceland. The report then states:

“To this could be added that Iceland has a small population and the society is characterised by proximity and personal acquaintanceships. Under such circumstances the prospects will increase for company officers to be able to coordinate their agenda, both with respect to tacit agreements and cartels. For these reasons it is possible to draw the conclusion that cartels that are instigated here in Iceland will become more effective than cartels in larger societies.”¹⁰

These economists are of the opinion that the gains accrued by the oil companies were approximately ISK 19bn and the loss to the public and the economy because of this collusion was greater than this gain to the oil companies. This shows that the advantages of having companies competing among themselves can be considerable.

As mentioned above, you may ask whether the situation that has now emerged in the economy calls for amendments to the competition laws or changes in the implementation of competition laws. In order to be able to assess this issue it is helpful to look to experiences from earlier economic setbacks or depressions. The experience of the Americans and the Finns in this respect is thought to be of substantial importance.

2. The Great Depression in the United States

The Great Depression, which is sometimes referred to as the World Depression, is thought to have originated in the United States. What began as an economic downturn during the summer of 1929 culminated in the collapse of the stock markets in October of that year.¹¹ During a fifteen-month period from April 1931 until July 1932, industrial production decreased by around 43 per cent and during this period the industrial production index reduced to below half the value of its peak in July 1929. Unemployment in the country rose sharply, and it is generally thought to have reached its highest level at 20 per cent.

During this period there were repeated bank runs, i.e. a large number of people withdrew their deposits over a short period of time: the first one happened in the autumn of 1930,

average a surcharge around 10% on the price of goods or services supplied. Today the emerging consensus is that this figure is probably too conservative and that it is likely to be closer to 20–30% and can in certain cases be much higher still.”

⁹ Cartels: Sanctions against Individuals (2005). Report issued by the OECD.

¹⁰ Primary assessment in the case E-4965/2005, dated 3 October 2008.

¹¹ Christina D. Romer, The Nation in Depression, *Journal of Economic Perspectives*, Vol 7, No. 2, spring 1993, pp. 19–39.

Translation of selected chapters of report No. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities* that was published in November 2008. Only original text is valid.

the second one in the spring of 1931, the third one in the autumn of 1931, and finally the fourth one during the winter of 1933.¹²

Under the Hoover administration, one of the measures resorted to was the enactment of the Smoot-Hawley Tariff Act for the purpose of countering the depression, which Hoover signed in the summer of 1930. The Smoot-Hawley Tariff Act is the last tariff act that stated directly the amount of tariffs.¹³ The tariff barrier which was thus put up amounted to a 20 per cent increase in tariffs on average, and the tariffs were both specific amounts and also a percentage of the price of the imported goods. As an example of this effect one can mention that imports and exports between the United States and Europe were reduced by two thirds during the period 1929–1932. The Act was enacted despite the signatures of a group of more than 1,000 economists who advised against the enactment of this Act, and it is generally considered to have contributed to the deepening of the depression.¹⁴

Roosevelt and the NIRA Act

Between 1933 and 1936 the President of the United States, Franklin D. Roosevelt, set forth various measures that were intended to counter the harmful effects of the Great Depression and to contribute to the restoration of the economy in the United States. Part of this policy, which was called the “New deal”, was the enactment of the NIRA Act (the National Industrial Recovery Act) in 1933.¹⁵ One of the reasons for its enactment was the US government’s assessment that too much competition had been conducive to the depression. It was considered that competition had lowered prices and wages and thus unreasonably reduced employment and demand for goods and services.¹⁶ The application of the NIRA Act had the result that the US competition laws were to a large extent in effect repealed. The NIRA Act permitted specific industries to establish their own rules in order to counter what was perceived as harmful competition. These entailed that the relevant companies could, through collaboration, significantly reduce competition amongst them and, for example, resort to price-fixing. As soon as a path had been opened up for price-fixing there was another demand that wages should be increased in the industries where there was price-

¹² In a paper from 1983 on the great depression in the United States, Ben Bernanke, the present governor of the Federal Reserve pointed out that banks are an important source of capital for small companies that are not able to issue bonds or stocks. When a bank goes into bankruptcy, all information that is to be found in the bank concerning which of the bank’s customers are sound and which are not is lost. It will therefore be costly for a new bank to expect to lend money to this group of customers because the new bank does not possess the information concerning the group of borrowers which the old and now bankrupt bank possessed. This effect caused the deepening of the Depression during the period of 1931–1932. For further details see Ben S. Bernanke, *Non-monetary Effects of the Financial Crisis in the Propagation of the Great Depression*. The American Economic Review, Vol. 73, No. 3 (June 1983) pp. 257–275, see p. 259.

¹³ Smoot-Hawley Tariff Act. Encyclopaedia Britannica 2008. Encyclopaedia Britannica Online. www.search.eb.com/eb/article-9396766.

¹⁴ Smoot-Hawley Tariff Act. Encyclopaedia Britannica 2008. Encyclopaedia Britannica Online. www.search.eb.com/eb/article-9396766.

¹⁵For this in general, see, for example, Barry Cushman, *The Great Depression and the New Deal*, CAMBRIDGE HISTORY OF LAW IN AMERICA, Tomlins & Grossberg, 2005.

¹⁶ Irwin Stelzer, *Coping with Market Power in the Modern Era*, Hudson Institute, White Paper 2007: *“When the nation was in the throes of the Great Depression, many critics of antitrust policy received a sympathetic hearing from policy makers and the courts when they argued that the solution to the perceived ills—low prices and high unemployment—was a relaxation or repeal of the laws that prevented businesses from conspiring to raise prices. ...The Roosevelt administration attempted to raise prices for agricultural and many manufactured products, and key FDR advisers such as Rexford Tugwell and Adolph Berle believed that free market competition was impossible and a cause rather than a cure of the Depression.”*

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fixing. It could be said that this involved collusion with a cut to the employees. A government agency was established, the National Recovery Administration (NRA), to enforce the Act. In 1934 almost all branches of industry in the United States other than agriculture had made use of the NIRA act.¹⁷ Thus, the rules applied during that year to over 500 different industries that were employing almost 80 per cent of the employees working for private parties in sectors other than agriculture (i.e. private, non-agricultural employment).¹⁸ All in all, the NRA agency had instituted 557 industry-wide rules that affected 22 million employees.

In 1935 the United States Supreme Court found that the NIRA Act was unconstitutional.¹⁹ The effect of the Act continued, however, because for many years the US competition authorities did not assert themselves against the competition restrictions and collusion that had resulted from the Act. This can be explained by the above view concerning the harmful effects of competition.²⁰

Arguments have been set forth that the NIRA Act did not contribute to the restoration of the US economy; rather, on the contrary, it made the situation significantly worse and counteracted any progress.²¹ It has been pointed out that after the enactment of NIRA the transaction cost in the United States increased on average by 40 per cent and industrial production contracted by one quarter.²² Academic research at the University of California points in the same direction. The research states that the NIRA Act and the policy of the US government against competition did prolong the Great Depression by seven years.²³ The US economy was on the brink of a recovery but the NIRA Act and the restriction of competition resulting from this Act counteracted the recovery and the reconstruction of the industrial sector.

In 1938 the US government made a change in its policy and emphasised that competition and the application of competition rules were necessary to ensure economic progress and

¹⁷ Cole & Ohanian, *New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis*, *Journal of Political Economy*, 2004 vol. 1. 112. They show the economic effect of strategy by applying a general equilibrium model using strategy simulation. The results indicate that price-fixing by employers and the increase in wages through comprehensive wage contracts will explain circa 60% of the difference between what the outcome was and what could have happened if the economy had not become the victim of the depression.

¹⁸ Cole & Ohanian, *New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis*, *Journal of Political Economy*, 2004 vol. 112., pp. 779–816. See p. 784.

¹⁹ *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495.

²⁰ See e.g. Cole & Ohanian, *New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis*, *Journal of Political Economy*, 2004 vol. 1. 112.

²¹ See, for example, Spencer Weber Wallace, *The Antitrust Legacy of Thurman Arnold*, *St. Johns Law Review*, vol. 78 no.3 2004: *“The goal of the NIRA was to restrict production, raise price, create profits, and restart business investment. Not surprisingly, to the extent prices were increased, the increase further limited production, employment, and the purchasing power of consumer, leaving the country in even worse straits than at the beginning of the Great Depression. Over time, consumer interests, labour groups, smaller producers, antitrusters, and government purchasers became increasingly concerned with higher prices and began to vocally oppose the National Recovery Administration (NRA) and its codes.”* See also article by Clive Crook in the *Financial Times* from 8 November 2008: *“The NRA slowed the recovery”*.

²² See, for example, Lawrence W. Reed, *Great Myths of the Great Depression*, Mackinac Center

²³ Cole & Ohanian, *New Deal Policies and the Persistence of the Great Depression: A General Equilibrium Analysis*, *Journal of Political Economy*, 2004 vol. 1. 112. See also the announcement by the UCLA because the publishing of this paper, dated 8 August 2004: *“FDR’s policies prolonged Depression by 7 years, UCLA economists calculate”*.

Translation of selected chapters of report No. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities* that was published in November 2008. Only original text is valid.

the public welfare.²⁴ United States competition authorities then began a massive campaign against competition restrictions, and these measures became an important part of the economic policy of the US government.²⁵ Arguments have been set forth stating that this caused the start of the recovery of the US economy.²⁶ This new policy from 1938 has been maintained until this day.

3. The economic crisis in Finland

In the early nineties a deep economic depression began in Finland. During the period 1991–1993 national production dropped by 12 per cent and unemployment increased from 3.5 per cent in 1990 to 18.4 per cent in 1994. There was a slump in the price of stocks and real estate and a large number of companies went bankrupt. This was one of the worst economic crises that a western country has faced in recent years.²⁷

The cause of these economic difficulties is basically twofold. Firstly, Finland was experiencing a major slump in exports, and secondly, there were pre-existing weaknesses in the country's economy. The disintegration of the Soviet Union resulted in a significant reduction in Finland's exports to the Soviet Union.²⁸ Exports to other states were also reduced. A major factor was that important branches of Finnish industry were protected from competition and competition was lacking. This led to inefficiencies and great costs in the Finnish business sector. This did substantially reduce the competitiveness of export industries such as the timber industry and metallurgy. Overheating and gearing, high interest rates and the exchange rate of the Finnish Mark also had an impact and made the economy particularly sensitive to external shocks. Bankruptcies of companies and the financial difficulties of Finnish homes resulted in a banking crisis that began with the liquidity problems of the Skop bank in 1991.²⁹

²⁴ In April of 1938 President Roosevelt introduced "The Anti-Monopoly Message" and recommended that the following points be taken up for consideration. "1) Improvement of anti-trust laws by placing the burden of proof of innocence on those charged with certain violations, such as presenting identical bids, uniform price raises; 2) more careful scrutiny of mergers and interlocking relationships; 3) supervision of investment trusts and gradual separation of banks from holding companies; 4) supervision and publicizing of activities of trade associations; 5) amendment of patent laws to prevent use of patent controls for suppression of new inventions; 6) correction of tax laws to encourage competition and dividend distribution." See Time.com.

²⁵ It is considered that this campaign began after Roosevelt appointed Thurman Arnold as the head of the competition department of the US Department of Justice in 1938. See, for example, Spencer Weber Wallace, The Antitrust Legacy of Thurman Arnold, St. Johns Law Review, vol. 78 no.3 2004: "For the next five years, Thurman Arnold revitalized antitrust law and enforcement and changed the entire focus of the New Deal from corporatist planning to competition as the fundamental economic policy of the Roosevelt administration."

²⁶ See an announcement from UCLA from 8 August 2004: "Recovery came only after the Department of Justice dramatically stepped enforcement of antitrust cases nearly four-fold and organized labour suffered a string of setbacks, the economists found." The Participation of the United States in the second world war also had a great effect on industry. It has been argued that the Great Depression was over during the period of second world war, see Christina D. Romer, The Nation in Depression, Journal of Economic Perspectives, Vol 7, No. 2, spring 1993, pg. 35.

²⁷ The discussion of the Finnish economic crisis is based on the following extensive report on the crisis: The Research Programme on the Economic Crisis of the 1990s in the light of economic and social research, *Down from the heavens, Up from the ashes*, Government Institute for Economic Research, Helsinki 2001.

²⁸ In 1985 21.5% of Finland's exports went to the Soviet Union but in 1991 this was within 5%. See Morgunbladid news article from 5 November 1991.

²⁹ Sigurjón Geirsson, Um bankakreppur og aðgerðir stjórnvalda (Bank crises and government actions), Fjármálatíðindi 41:2 (1994) 172-177.

Translation of selected chapters of report No. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities* that was published in November 2008. Only original text is valid.

In order to overcome these difficulties the Finnish government undertook various measures. Measures to increase competition in the Finnish industries played a great role in this respect.³⁰ For this purpose a bill was introduced for an act to strengthen Finnish competition laws. As stated, the Finnish parliament was of the opinion that lack of competition was an important cause for this economic downturn. The Finnish law-giver found a reason to go one step further than the government bill in strengthening competition rules.³¹ The Economic Committee of the Finnish Parliament was accordingly opposed to specific exemptions for smaller companies for competition-restrictive collaboration, as had been foreseen in the government bill.³² This act was passed in the parliament, and a new and more specific competition act entered into force in 1992 in the middle of the economic crisis.

Since 1994 the Finnish industries have been on the road to recovery, primarily in the export sector. It has been argued with reason that the increased competition brought on by government action contributed to economic growth and increased productivity in Finland.³³ On the other hand, the critique has been made that the Finnish government made a serious mistake in its reaction to the crisis by limiting the welfare service and neglecting to assist debt-burdened families, and by not working hard enough against unemployment.³⁴

4. Conclusion

It is evident that competition contributes to economic progress and increases the welfare of the public. The meaning of effective competition is not reduced but rather increased when nations are confronted with economic crises. The experience from the United States and Finland shows that:

- Actions to restrict competition prolong economic difficulties and work against recovery.

³⁰ See Tapio Korhonen, Finnish monetary and foreign exchange policy and the changeover to the Euro, Bank of Finland Discussion Papers, 25, 2001: In the discussion surrounding the measures of the Finnish government to combat the depression it states: *"The Government implemented a broad scheme of structural reform, affecting, inter alia, the tax system and competition policy."* See also Hátækniíðnaður, Thróun og stada á Íslandi, Staða og stefna á Norðurlöndum og Írlandi (The Hi-tech industry, Development and status in Iceland, Status and policy in the Nordic Countries and in Ireland), November 2005: *"The economic crisis in the early nineteen nineties, the financial crisis and the collapse of exports to the Soviet Union the government formulated a policy of growth built on cluster analysis and network collaboration ... In 1994 unemployment in Finland was over 16%. A new policy was needed to strengthen the position of Finland in the international market. Free competition was its cornerstone."*

³¹ The opinion of the Economic Committee of the Finnish Parliament: 1992 rd-EKUB 14-RP 162/1991 rd, Ekonomiuudskottets betänkande nr 14 om regeringens proposition med förslag till konkurrensbegränsningslag.

³² OECD, Finland – The Role of Competition Policy in Regulatory Reform, 2003: *"Finland was enduring a severe recession, which was magnified by the disruption of its traditional markets in what had been the USSR. The government proposed to prohibit restrictive agreements and to reform the Competition Council by ending the practice of interest group representation in its membership. The Parliament appeared to agree generally that restraints on competition were an important reason for the country's poor economic performance. Indeed, the lawmakers wanted an even tougher competition law than the government proposed."*

³³ See, for example, Finland's Economy, McKinsey&Company, 2007. See also OECD, Product Market Competition and Economic Performance in Finland, 2004: *"Following the deep recession in the early 1990s growth has been strong, but the scope for economic catch-up remains considerable and cross-country empirical evidence suggests that enhancing competition is an important means of achieving this. Structural reforms to strengthen competition in the early 1990s did boost growth and were also ahead of similar developments in the EU."*

³⁴ See, for example, a news article on Visir.is on 6 November 2008 concerning a lecture by Jaakko Kiander, the head of Labour Economics Research at Helsinki University.

Translation of selected chapters of report No. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities* that was published in November 2008. Only original text is valid.

- Actions that maintain or promote competition contribute to a speedier recovery in the economy.

Academics who have assessed other economic crises have also pointed to the importance of competition for the economic recovery of the state in question.³⁵ In this respect the impetus for rationalisation that comes with the discipline of competition is considered to be of great importance.³⁶ In this respect you may also take into account the emphasis the EU Commission has placed on the importance of competition and competition rules for the economic difficulties that the European nations are now faced with. We argue that competition rules are part of the solution of the problem and that they will safeguard the interests of consumers and are conducive to job creation and economic growth.³⁷

The banking collapse in Iceland and its harmful effects on other industries may lessen competition in individual markets. As may be concluded from the foregoing discussion, diminished competition can significantly delay the restoration of the Icelandic economy. In order to counteract the harmful effects of diminished competition it is necessary to immediately start making an effort to open the markets here in Iceland, and by doing so to protect or promote competition in Iceland. This report expresses ideas and proposals for that purpose.

It is also necessary in this respect to keep in mind that many Icelandic undertakings are presently struggling with operational problems. Companies attempt to keep their operations going and to preserve their assets following the collapse of the Icelandic commercial banks and the resulting hardships. This is in addition to the worsening operating environment for businesses during recent months. A great number of these companies have had a business relationship with the above banks, and the continuous access to credit and facilities is necessary for their operations. The managers of the new state banks have at present extensive decision-making powers regarding the progression of the economy. Under the current circumstances their decisions are more apt than ever before to have an impact on the future competitive environment and thus on the functionality of the economy in important markets.

In view of this it is very important that, along with the above decisions made by the banks, a competition assessment concerning the measures in question is made, without pushing aside the obvious interests of maximising value, safeguarding the interests of the banks in

³⁵ See Kehoe & Prescott, *Great Depressions of the Twentieth Century*, *Review of Economics Dynamics*, vol. 5, issue 1 2002.

³⁶ In this respect you can take into consideration that Porter a.o. have pointed out that in the wake of the economic difficulties in Japan only those industries in Japan that were confronted with domestic competition have been able to compete in the international market. See Porter, Takeuchi & Sakakibara, *Can Japan Compete?*, MacMillan Press 2000.

³⁷ See the speech made by Neelie Kroes EU Commissioner for competition policies, In defence of competition policy, 13. October 2008: "As we face the uncertainty of this financial crisis, we are fortunate to know that competition policy not only has a proven track record, but is proving to be part of the solution. ... In the clearest possible terms I say that competition policy is here for consumers, here for jobs, here for growth and here to stay."

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the long run, and working speedily. It is important with respect to decision making concerning the future of undertakings working in key markets that consideration be given to the important long-term interests of the public and of economic life, so that active competition may continue to survive in the greatest number of markets in Iceland. In order to advance this, the Competition Authority has recently reminded the state banks that they shall take into account ten principles when such decisions are made, cf. the opinion of the Competition Authority No. 3/2008, *Decisions made by banks and governmental agencies regarding the future of companies in competitive markets*. The banks are also being reminded to take into account the viewpoints presented in this report.