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Annual Report on Competition Policy Developments in Iceland

-- 2018 --

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This report is submitted by Iceland to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Iceland

1. Executive Summary

1. As in previous years, the ICA's main policy objectives are to improve the function of markets for the benefit of the general public and the economy (chapter 2).
2. In 2018 the ICA dealt with large mergers in important consumer markets. In 2018 ICA had to allocate a large part of its resources to merger investigations, more than 40% of allocated time, equally as much as in 2017, compared with 15% in the years before that (chapter 3.1 and 4).
3. The ICA intervened in seven mergers, one being annulled and six cleared with conditions. The most noteworthy are interventions into mergers in the field of groceries, fuel and pharmaceuticals. A merger proposal between Icelandair and WOW air had an international dimension but was withdrawn. (Chapter 3.1)
4. Given the importance of Keflavik Airport as the only gateway for individuals to and from Iceland, the ICA has followed closely the operations relating to the airport (chapter 3.2).
5. In the autumn of 2018, it was announced that the Icelandic government had reached an agreement with the OECD on a competition assessment project, led by the OECD, assessing the regulatory framework of tourism and construction in Iceland. This initiative is very much welcomed by the ICA, which has advocated for such a project for a number of years and takes an active role in it. (Chapter 3.3)
6. The heavy workload related to merger investigation puts pressure on other enforcement activities. More flexibility in terms of ICA's funding is necessary (chapter 4).

2. Competition policy and priorities in enforcement and advocacy

7. As in previous years, the ICA's main policy objectives are to improve the function of markets for the benefit of the general public and the economy. More precisely, the ICA has put the following issues high on the agenda in the coming years:

- Monitor the developments in the ownership of undertakings, detecting common ownership and other ownership links that can adversely affect competition.
- Take an active role in discussions on the development of the financial market in Iceland, taking account of earlier experience in the field of competition.
- Monitor the development in the groceries market and address problems that may impede new competition.
- Follow closely developments as regards competition in the field of aviation, in light of the bankruptcy of WOW air.
- Conclude ongoing investigations into the transport and fuel markets.
- Take an active role in the current OECD-project regarding competition assessments of laws and regulation in the field of tourism and construction.

3. Key examples of enforcement and advocacy

8. Following are key examples of the ICA's enforcement and advocacy activities, which were addressed in 2018.

3.1. Merger enforcement

3.1.1. Prioritisation revised due to increased merger activity

9. As in 2017, the ICA dealt with large mergers in important consumer markets in 2018. The ICA had to allocate a large part of its resources to merger investigations, the allocated time in merger cases amounting to more than 40%, equally as much as in 2017, compared with 15% in the years before that.

10. The ICA had to continue to apply its strict prioritisation policies to make room for merger investigations.

11. The ICA received 37 merger notifications in 2018. 34 cases were concluded, three of those being withdrawn. The ICA intervened in seven mergers, one being annulled and six cleared with conditions. The most noteworthy mergers are the following:

3.1.2. A merger between the largest fuel retailer and the second largest grocery retailer cleared with extensive conditions.

12. In July 2018, the ICA cleared N1's acquisition of Festi hf. with extensive conditions addressing the negative effects of the merger on competition. N1, the largest fuel outlet retailer in Iceland, also providing a limited range of convenience goods. Festi operates, among other things, the second largest grocery chain (Krónan) and large electric appliance stores.

13. The merger was notified twice to the ICA. In the former investigation, upon a notification dating back to 2017, the ICA had identified major negative effects of the merger. As the merging parties had not proposed and indeed opposed any sufficient measures to alleviate the negative effects, the ICA had come to the conclusion that the merger should be annulled. However, on the last day of the timeframe given by law for the investigation, the merging parties withdrew the merger notification,

14. Subsequently, the parties notified the merger again, with amended proposals for measures addressing the ICA's competition concerns. After detailed discussions with the merging parties and further investigation, the case was finally settled with extensive conditions.

15. Investigations into the matter revealed that the merger would harm competition significantly. More specifically, the merger would eliminate Festi as a potential competitor in the fuel market, as it was a known fact that Festi had plans to enter the market. The merger would also have harmful effects on competition in the grocery market in one local area. Furthermore, the merger would have harmful effects on wholesale, distribution and storage of fossil fuels and lead to increased and harmful ownership ties between competitors in both the fuel and grocery goods markets.

16. The parties to the merger undertook to employ measures intended to strengthen and protect active competition in the fuel and grocery markets and to take action against the above-stated negative effects to competition that the merger would otherwise cause. More specifically, N1 proposed and agreed to the following measures:

- Sale of fuel stations – new competitor: N1 undertook to sell certain fuel stations, the trademark “Dælan” and embark on other further specified actions to ensure a new independent entity can initiate active competition in the fuel market, in response to the elimination of Festi as a possible competitor in the market.
- The sale of grocery stores: N1 undertook to sell the operation of Festi’s store in a town in the South of Iceland, in response to the ICA’s conclusion that the merger would have harmful effects on competition in the area.
- Increased access of resellers to the wholesale of fuel and increased access to the services of Olíudreifing hf. (ODR) (a storing and distribution company jointly owned by N1 and its competitor, Olís): N1 undertook to sell to new resellers, who so request, all types of fuel wholesale on a business basis, on further specified terms and condition. N1 is under the obligation to ensure equality and objectivity with respect to entities purchasing fuel on wholesale terms. In addition, N1 undertook, as one of the principal owners of ODR after the merger, to take certain measures to ensure that all the services of ODR as relate to fuel are provided to entities who request such services without discrimination and on fair and normal terms.
- Competitive independence of N1: In response to harmful effects of ownership ties in the grocery goods and fuel markets, N1 is obligated to take certain measures to ensure the competitive independence of the company, such as the independence of the Board of Directors and key employees.

3.1.3. A merger between the largest grocery retailer and a large fuel retailer cleared with extensive conditions.

17. In September 2018 the ICA cleared Hagar’s acquisition of Olíuverzlun Íslands hf. (Olís) with extensive conditions addressing the disruptive effects of the merger. Hagar is the largest retailer in Iceland, operating retail chains such as Bónus (groceries) and Hagkaup (groceries, cosmetics, clothes etc.). Olís is one of the three largest fuel retailer chains in Iceland operating fuel outlets around the country, also providing a limited range of convenience goods.

18. This merger investigation was run parallel to the merger of N1 and Festi, described in chapter 3.1.2. The mergers and the relevant investigations had many similarities.

19. As the merger of N1 and Festi, this merger was notified twice to the ICA. In the former investigation, the ICA had identified major disruptive effects of the merger. Very much as in the merger previously described, the merging parties had not proposed any sufficient measures to alleviate the negative effects. Thus the ICA had come to the conclusion that the merger should be annulled. However, on the last days of the timeframe given by law for the investigation, the merging parties withdraw the merger notification,

20. Subsequently, they notified the merger again, with amended proposals for measure addressing the ICA’s competition concerns. After detailed discussions with the merging parties and further investigations, the case was finally settled with extensive conditions, as was the case in the merger of N1 and Festi.

21. The investigation into the matter revealed that the merger would disrupt competition significantly. More specifically, it was the ICA’s conclusion that the merger would strengthen the market-dominant position of Hagar in the grocery goods market, lead to localised disruptions to competition in certain geographical areas, have harmful effects

on wholesale, distribution and storage in the fuel market and lead to increased and harmful ownership ties between competitors in both the fuel and grocery goods markets.

22. The parties to the merger undertake to employ measures intended to strengthen and protect active competition in the fuel and grocery markets and to take action against the above-stated disruption to competition that the merger would otherwise cause. More specifically, Hagar proposed and agreed to the following measures:

- Sale of grocery stores: Hagar undertook to sell off three grocery stores located in the capital area. The sale is intended to respond to the conclusion of the Competition Authority that the merger would strengthen the market-dominant position of Hagar.
- Sale of fuel stations: Hagar undertook to sell five fuel stations (two service stations and three self-service stations). The sale is in response to, among other things, the harmful effects that the merger involves due to increased ownership ties between competitors in the fuel market.
- The sale of one regional outlet of Olís and the same grocery prices at Olís throughout Iceland: In order to respond to the localised harmful effects of the merger on the grocery goods market in particular geographic areas, the merger parties undertook, on the one hand, to offer the same price for grocery goods in their fuel stations throughout Iceland and, on the other hand, to sell the operation and assets of the Olís outlet in a town in the West of Iceland.
- Increased access of resellers to the wholesale of fuel and increased access to the services of Olíudreifing hf. (ODR) (a storing and distribution company jointly owned by Olís and its competitor, N1): As in the case of N1 and Festi, Hagar undertook to sell to new resellers, who so request, all types of fuel wholesale on a business basis, on further specified terms and condition. Hagar is under the obligation to ensure equality and objectivity with respect to entities purchasing fuel on wholesale terms. In addition, Hagar undertook, as one of the principal owners of ODR after the merger, to take certain measures to ensure that all the services of ODR as relate to fuel are provided to entities who request such services without discrimination and on fair and normal terms.
- Competitive independence of Hagar: In response to harmful effects of ownership ties in the grocery goods and fuel markets, Hagar is obligated to take certain measures to ensure the competitive independence of Hagar, such as the independence of the Board of Directors and key employees,

3.1.4. An acquisition in the retail for pharmaceuticals blocked.

23. In October 2018, the ICA annulled a merger between Lyf og heilsa hf. and Opna ehf. (Apótek MOS). Lyf og heilsa is the largest retailer for pharmaceuticals in Iceland and operates 30 pharmacies throughout the country (either under the name of Lyf og heilsa or Apótekarinn). Opna operates one pharmacy in Mosfellsbær, in the outskirts of Reykjavík. This pharmacy was opened in mid-2016. Before Apótek MOS began operations, there was one pharmacy in Mosfellsbær, owned by Lyf og heilsa. The merging parties were the only operators of in Mosfellsbær.

24. The ICA's investigation showed that the establishment of Apótek MOS had positive effects on competition in the area. Apótek MOS offered a new service in the form of the organisation of the shop and assistance of pharmacists. In addition, opening hours were longer than had previously been the case in Mosfellsbær. The case data showed that

this new option was well received by consumers and that the competition from Apótek MOS had a considerable effect on the operation of Apótekarinn in Mosfellsbær.

25. The Authority had a consumer survey conducted in Mosfellsbær and contacted numerous pharmacy permit holders in the Greater Reykjavík Area. The Authority's investigations revealed that the sale of pharmaceuticals in Mosfellsbær is localised. Thus, the investigation showed that the location of a pharmacy has a significant impact on customer choice of pharmacies. Consumers generally chose to shop in pharmacies that are as close as possible to health centres / medical facilities or their homes. This applies not least to the elderly or when pharmaceuticals are urgently needed. In accordance with these findings, the investigation showed that a high proportion of the customers of the pharmacies in Mosfellsbær are residents of Mosfellsbær, not to mention that it is quite far to the next pharmacy. This means that the merger of the two pharmacies would cause their customers significant competitive loss.

26. The proposals submitted by Lyf og heilsa to counteract competitive restrictions with respect to the merger were insufficient and the merger was therefore annulled in accordance with the provisions of the Competition Act.

3.1.5. A merger between Icelandair and WOW air investigated

27. In the beginning of November 2018, Icelandair notified its proposed acquisition of its main competitor WOW air. Both companies operated from Keflavik International Airport and provided services and connections to Europe as well as North America.

28. The proposed merger was a response to WOW air's serious financial difficulties. Given the importance of tourism for the Icelandic economy, and WOW air's part in the growth of the industry, the possible collapse of the company was seen by many as a significant blow to the economy.

29. Given the urgency of the matter, the ICA undertook a swift and extensive investigation of the proposed merger. As the merger could have had effects in other European countries, as well as in North America, the ICA was in close contact with other competition agencies.

30. The investigation was well underway when the merger notification was withdrawn at the end of November. In March 2019, WOW air was declared bankrupt.

3.2. Other enforcement activities – Competition issues at Keflavik International Airport.

31. Parallel to merger investigations and other extensive ongoing investigations in cartel- and abuse cases, the ICA proceeded with several investigations into possible breaches of the prohibition rules, the most extensive being an investigation into a possible collusion in maritime and land transportation of good.

32. The ICA has also focused on passenger transportation. Given the importance of Keflavik Airport as the only gateway for individuals to and from Iceland, the ICA has followed closely the operations relating to the airport. The airport and its activities are operated by a state-owned company, Isavia ohf. In previous years and months, there have been various complaints directed towards the company, on how its decisions and operations affect competition. These complaints touch upon various issues, such as slot allocation (see chapter 3.4 of the Annual Report for 2014, DAF/COMP/AR(2015)39), ground handling, sales operations at the airport, parking at the airport etc.

33. In July 2018, the ICA made a preliminary decision whereby Isavia was banned from collecting certain fees for coach parking spaces located at the airport terminal (distant parking). The charges were new and came into effect on 1 March 2018, following an invitation to tender and agreement on the use by two coach companies of parking spaces adjacent to the air terminal. The notice given by Isavia to the companies operating from the distant parking lot was three months.

34. According to the Competition Act, the ICA can make a provisional decision if it is considered probable that the conduct or circumstances under investigations will infringe the provisions of the Act and it is likely that waiting for a final decision of the ICA will lead to distortion of competition or the matter is urgent in other respects.

35. It was the conclusion of the ICA that the conditions for a provisional decision were applicable. Thus, the Authority found that it was likely that Isavia had abused its market-dominant position with the excessive pricing of fee charges for the use of distant parking and in addition, that Isavia had discriminated between customers as regards pricing and terms.

36. The ICA, moreover, found that waiting for a final decision could be harmful to competition. If no action would be taken, the charges levied by Isavia for the use of distant parking could have significant harmful effects on the operations of companies which were relying on such parking. Furthermore, it was foreseeable that the fees for the parking spaces would increase significantly on 1 September 2018 when the so-called discount during the adaptation period would be discontinued.

37. Parallel to the preliminary decision, the ICA sent Isavia a statement of objections. The final conclusion of the case is still pending.

3.3. Advocating for a Competition Assessment – The OECD project

38. In the autumn of 2018 it was announced that the Icelandic government and the OECD had reached an agreement on a competition assessment project, led by the OECD, assessing the regulatory framework of tourism and construction in Iceland.

39. As stated in previous annual reports, the ICA has advocated for such a project for a few years, twice inviting OECD officials to Iceland to introduce the Competition Assessment Toolkit and its benefits. Leading up to the agreement the ICA played a role in its preparations. The Authority is also taking a full part in the project, as ICA staff has been seconded to the project and facilities provided for at the ICA premises.

4. Resources of the Competition Authority

4.1. Budget and pending cases

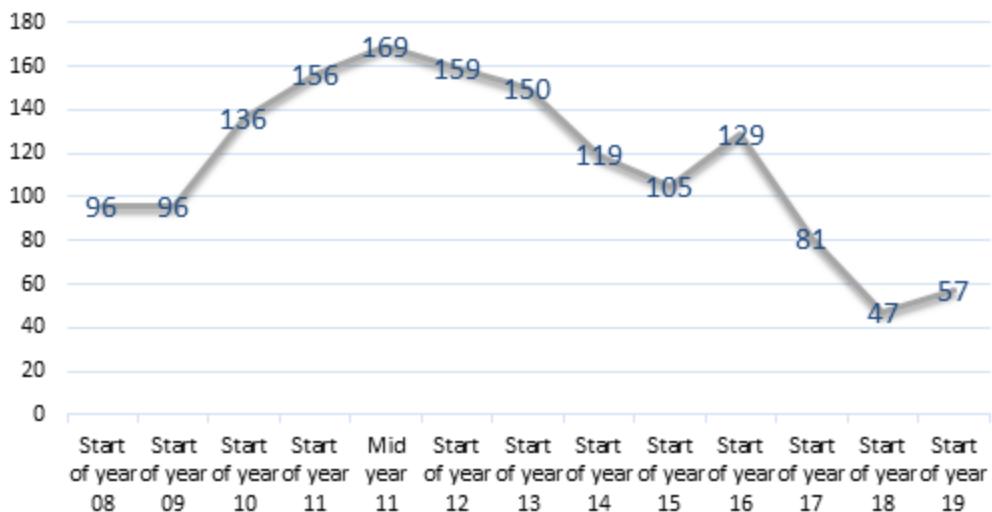
40. The budget for 2018 amounted to approx. 3.64. m. EUR (exchange rate as of 1 January 2019). The ICA is funded through the state budget.

41. In the previous years, ICA has had to apply rigorous prioritisation in response to an increased workload. For the past two years, this has been due to increased merger activity, not least in important consumer markets (see 3.1.1).

42. In the years 2011 - 2014 and again in 2016 - 2018, the ICA increased the level of prioritisation, bringing the number of cases from 129 at the beginning of 2016, down to 47

in at the start of 2018, the number of cases being 57 at the start of 2019. By this, the ICA has strived to get at better control of case processing, namely to tighten the criteria for cases that are initiated and brought to a conclusion.

Figure 1. Number of pending cases



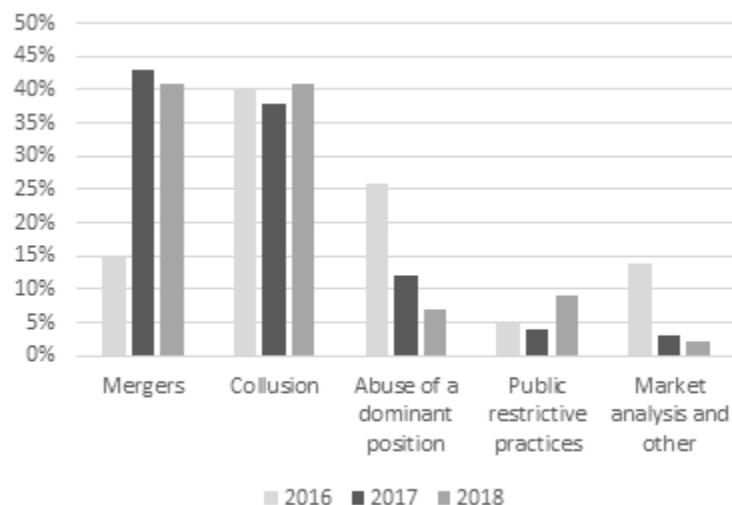
4.2. Allocation of resources

43. The ICA keeps track of and manages the allocation of employee's work as regards various areas of responsibilities. The breakdown is based on time measurement.

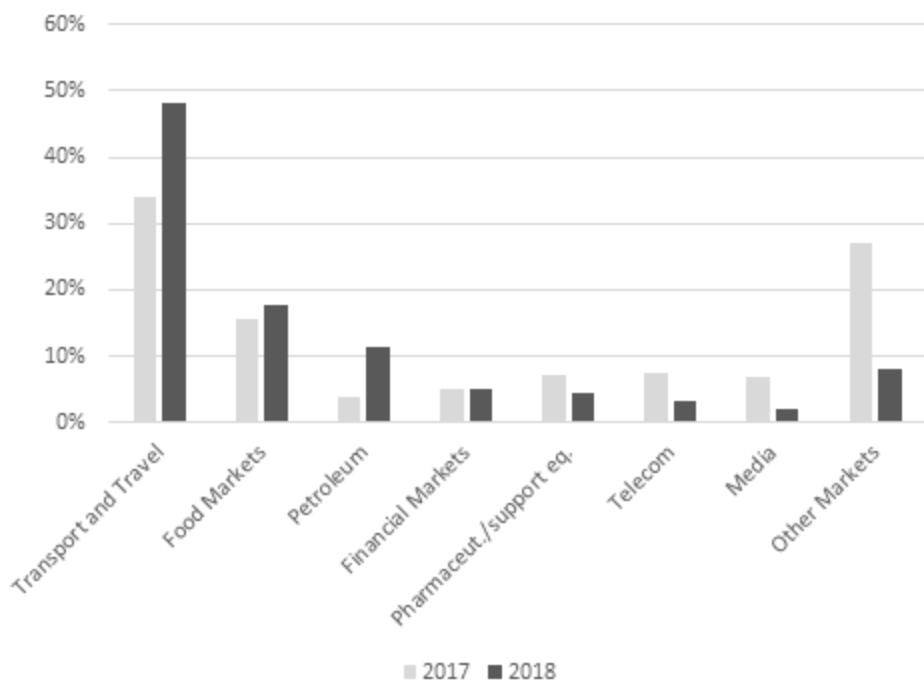
44. Figure 2 shows clearly the shift to mergers in terms of allocation of time in 2017 and 2018, as described in chapter 3.1.1. This affects the resources available for other work.

45. Most notably, the ICA has had to reduce its emphasis on abuse cases which have traditionally been high on the agenda due to the oligopolistic nature of markets in many areas. This has been the case for the years 2017 and 2018. The same seems to apply for the year 2019.

46. More flexibility in terms of funding of the Authority is needed, given this experience. The issue is being raised with relevant ministries.

Figure 2. Allocation of resources – types of work

47. As shown in Figure 3, the ICA's focus very much remains on transport and food markets and other markets that have been affected by merger investigations.

Figure 3. Allocation of resources - markets

48. At the end of the year 2018, 23 employees were working at the ICA.

