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COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Iceland

-- 2023 --

This report is submitted by Iceland to the Competition Committee FOR INFORMATION.

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Iceland

1. Executive Summary

1. As in previous years, the Icelandic Competition Authority's (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. The ICA worked on a little over 124 cases and concluded almost 70 of those. Administrative fines were imposed for three separate breaches and 10 cases were concluded with recommendations/ instructions to the parties involved. The ICA concluded 42 merger investigations, one was annulled and five investigations settled, where conditions were imposed with the aim to prevent barriers to competition which could derive from the individual mergers. (Chapter 3.1 and 3.3)
3. The ICA completed an extensive cartel investigation into Samskip's suspected violations, in colluding with its main competitor, Eimskip. An administrative fine for these violations was imposed in the sum of **ISK 4.2 bn. (ISK 4,200,000,000)**. Furthermore, Samskip was instructed to take certain measures to prevent further violations. In 2021, Eimskip had settled the case with the ICA, paid an administrative fine of **ISK 1.5 bn.** and committed to take measures to prevent further violations. (Chapter 3.2)
4. The ICA continued to serve its advocacy role through various sources. As an example of that, the ICA conducted a market study on margin developments in important markets, identified ways to increase competition and addressed recommendations to the National Economic Board. On another occasion the ICA issued a formal opinion addressed to authorities, on ways to increase competition in the transport market. (Chapter 4)
5. In terms of competition law, Iceland lags behind in two major areas, as the EU Damages Directive (2014/104/EU) and the ECN+ Directive (2019/1/EU, to empower the competition authorities to be more effective enforcers) has not been implemented in Iceland (chapter 5),
6. As a result of a significant workload in important areas such as merger reviews and cartel investigation and due to limited resources, the authority was not able to enforce competition law in other important areas to the necessary extent. In the period from 2014 to 2023, the budget of the ICA decreased by around 20% in real value. In the same period the size and scope of the economy (GDP and number of companies operated) expanded by around 35-40% (chapter 6).

2. Competition policy and priorities in enforcement and advocacy

7. Each year, the ICA's develops its main policy objectives for next three year period. The policy objectives for the year 2023 were are to improve the function of markets for the benefit of the general public and the economy. More precisely, the ICA put the following issues high on the agenda:
 - Monitor and detect possible barriers to competition that can appear in inflationary circumstances and advocate for a better competition environment for the benefit of a more robust economy in the long term.

- Enforce competition to the benefit for the fight against climate change and increased sustainability.
- Make sure that technological developments and the growth of digital markets will benefit undertakings and consumers, and detect and solve barriers to competition that can derive from the rapid changes.
- Use competition to strengthen and develop infrastructure in key areas, as well as making public procurement more efficient.
- Continue to advocate for competition assessment of existing and future laws and regulations and follow up on the existing recommendations of the OECD put forward in the competition assessment of laws and regulations in the Icelandic construction and tourism sectors (OECD Competition Reviews, report from 10 November 2020).
- Increase knowledge of competition rules and competition enforcement through information delivery and enforcement.

3. Key examples of competition enforcement

3.1. Overview

8. In the year 2022 the ICA worked on 124 cases and concluded almost 70 of those. In addition to the aforementioned administrative cases, the ICA addressed around 50 cases that were not subject to normal procedural requirements, such as continual follow-up on earlier interventions and conditions.

9. Of the close to 70 cases concluded, administrative fines were imposed for three separate breaches. In addition, 10 cases were concluded with recommendations/instructions to the parties involved.

10. As a part of its interactions with the market, the ICA calls for and receives informal complaints and tips from mostly market participants. The ICA received 140 such informal complaints and tips in 2023, compared to 130 in 2022.

11. The ICA applies its policy objectives, described in chapter 2, when deciding the opening of new cases and when prioritising existing cases. The authority's prioritisation is highly dependent on the number and complexity of notified mergers, as the investigation of merger cases is subject to statutory time limits.

12. The ICA concluded an extensive investigation into the transport markets in Iceland. The investigation is by far the most extensive and complex investigation in the ICA's history. Administrative fines were imposed, both as regards the collusion and as regards a violation with regard to incorrect, misleading, and insufficient information and data delivery (see chapter 3.2).

13. Arion banki, one of the three biggest banks in Iceland was fined for a breach of a settlement from 2017. According to the settlement, the bank was prohibited from imposing a fee in the event of a conclusion of a loan agreement with final payment. The objectives of the settlement were to remove barriers that customers are faced with when changing service providers in banking. The fine imposed amounted to **80 million ISK**.

14. As a result of a significant workload in these areas and due to limited resources, the authority was not able to enforce competition law in other areas to the necessary extent. This means that many complaints by smaller market participants, entering the market,

didn't get the attention they deserved. Furthermore the ICA was only able to allocate less than around 11% of its time to issues related to the ban of an abuse of dominance and 4% to issues related to public restrictive practices.

15. The ICA had limited or no resources to carry out some other important tasks, such as the application of the market investigation regime. The ICA therefore had to continue applying stringent prioritisation.

16. Following are key examples of the ICA's enforcement activities, which were addressed in 2022.

3.2. An extensive investigation into the transport markets concluded

17. By decision no. 33/2023 the ICA completed an extensive cartel investigation into Samskip's suspected violations, in colluding with its main competitor, Eimskip. Together, the companies hold an extensive market share in the markets for maritime and land transport.

18. The ICA concluded that Samskip gravely violated the prohibition of Article 10 of the Icelandic Competition Act and Article 53 of the EEA Agreement with unlawful collusion with Eimskip.

19. It was also the ICA's conclusion that Samskip, during the case investigation, gravely violated Article 19 of the Icelandic Competition Act with incorrect, misleading, and insufficient information and data delivery.

20. An administrative fine for these violations was imposed in the sum of **ISK 4.2 bn. (ISK 4,200,000,000)**.

21. The investigation into Eimskip's violations ended in June 2021, with the company's settlement with the ICA. With the settlement, Eimskip admitted violation, paid an administrative fine of **ISK 1.5 bn.** and committed to take certain measures to prevent further violations and promote competition.

22. Furthermore, certain instructions were addressed to Samskip to prevent further violations and promote competition. These instructions were in line with similar instructions in the earlier settlement with Eimskip.

23. Regarding Samskip's violation, the decision states as follows: "*The collusion between Samskip and Eimskip as a whole was intended to enable the companies to significantly reduce competition and raise or maintain prices, e.g., by raising prices when contracts were being renewed, by raising prices and fees in price lists, by introducing new fees, by reducing discounts, etc. The joint dominant position of Eimskip and Samskip in the market, the communication between the companies' managers, and other factors in the companies' collusion created ideal conditions for the companies to succeed in the collusion and profit at the expense of customers and society as a whole.*"

24. The breaches of Samskip (and Eimskip, according to the settlement) include the following:

- Collusion regarding changes in shipping systems and to limit transport capacity.
- Collusion to implement market sharing of larger customers in maritime and land transport (avoid competing for each other's larger customers).
- Collusion on fees and discount terms in transport services and collusion to share of important price and business information.

- Collusion in land transport services involving market sharing on certain transport routes in Iceland.
 - Collusion on maritime transport between Iceland and other countries.
 - Collusion on stevedoring, mutual leasing or loan of containers.
25. The decision itself is 3,600 pages long, which indicates the scope of the case. The decision has been appealed to the Competition Appeals Committee.

3.3. Merger enforcement

26. In 2023, the ICA concluded 42 merger investigations. The scope and complexity of merger cases continued to demand considerable resources.
27. Five investigations were concluded by settlements with the merging parties, where conditions were imposed with the aim to prevent barriers to competition which could derive from the individual mergers.
28. One merger was annulled. It concerned a merger between two domestic producers of mayonnaise and cold sauces. Together, the parties of the merger would have held a large market share and would have reached a market dominant position with a likely foreclosure effect.
29. Of the 42 merger investigations, 31 (72%) were concluded in phase I of the investigation, the remaining 11 investigations being referred to a further phase II scrutiny. Due to the characteristics of the Icelandic economy, being small and close-knit with a high probability of extensive consolidation, a large percentage of notified mergers is normally referred to a phase II investigation.
30. According to the Icelandic Competition Act, the ICA has a call-in option as regards mergers falling under the statutory turnover thresholds for merger notifications. That option is used from time to time, in order to monitor and intervene in mergers in markets with low turnover and take-overs where the acquired company is small but still an important competitor.

4. Key examples of advocacy initiatives – competition neutrality

31. The ICA continued to serve its advocacy role through various sources, promoting the benefits of competition and awareness as regards anti-competitive behaviour. The ICA applies a range of channels for its advocacy work, ranging from information sharing on the website, publishing articles and reports, organising meetings and conferences and meeting with policymakers.
32. According to the Competition Act the ICA has the role to give guidance to authorities on ways to strengthen competition and to recommend and request changes to laws and regulations or other public operations which the ICA considers to be detrimental to competition. In certain circumstances the ICA can intervene with a binding intervention, but more frequently it issues formal and public opinions, where recommendations and requests are directed at the minister or public authority responsible in the field concerned.
33. In terms of advocacy work in 2023, the two following examples can be mentioned:
34. In 2022 the ICA embarked upon a **market study on margin developments** and competition in key markets, that is groceries, fuel and building material. The goal of the

study was to detect barriers to competition that would be relevant to the rapid price increases.

35. The study showed that margins had increased in certain areas, but margin ratios to a lesser extent. Furthermore the study indicated that price developments were positively affected by increased competition and market openness in certain areas.

36. After issuing a discussion paper on the study, the ICA held meetings with several market participants in order to gain a more comprehensive understanding of possible competition restrictions affecting price developments. In February of 2023 the ICA presented its conclusions at a meeting with the National Economic Board (Prime Minister, Minister of Finance and Economic Affairs, Minister of Infrastructure, The Central Bank, labour associations and business associations), where the main conclusions were presented and certain measures recommended.

37. In September 2023, the ICA issued a **formal opinion, on ways to increase competition in the transport market**, where it is recommended to take measures to reduce competition barriers and thereby strengthen competition. The opinion was directed at the Minister of Infrastructure, the port authority in Reykjavík City and other municipalities.

38. The opinion draws conclusions from the ICA's decision which concluded the cartel investigation into the transport markets, described in chapter 3.2.

39. The decision sheds light on the importance of the government and relevant authorities taking measures to promote competition in the transport market. Is it important, among other things, due to the increases in product prices in recent months and the prevailing conditions in the Icelandic economy.

40. Taking into account the above, the ICA recommended, among other things, the following:

- That the government and relevant public bodies ensure the access of new and smaller competitors in maritime transport to adequate port facilities and ship handling.
- That the government creates conditions for increased competition in land transportation.
- That consideration be given to ways to create greater restraint in relation to new or selective charging in transport markets.

41. Customers of Samskip and Eimskip were also urged to detailed clarifications and reasoning as regards individual fees charged.

5. Changes to competition laws and policies

42. Iceland is a member of the European Economic Area, and the EEA-rules of competition are applied in Iceland. Competition enforcement in Iceland therefore benefits from the European Competition Network (ECN).

43. Businesses and consumers in Iceland therefore enjoy a protection from competition rules and enforcement, as in other areas of the European Economic Area. However, as in recent years, Iceland still lags behind in two major areas, as the EU Damages Directive (2014/104/EU) and the ECN+ Directive (2019/1/EU, to empower the competition authorities to be more effective enforcers) have not been implemented in Iceland. Some examples of the effects of this are the following:

- Parties who have endured violations of competition rules do not enjoy comparable rights when seeking damages.
- The ICA does not have powers to engage in dawn-raids in line with European/international standards, as it is only allowed to seize document at the offices of undertakings and not elsewhere.
- The ICA lacks in practice the necessary budgetary independence, as experience shows that individual investigations and the ICA’s priorities tend to negatively affect the political willingness to provide for sufficient funding of the authority.

44. The ICA has the power to engage in market investigations and demand structural and behavioural remedies in malfunctioning markets, even though infringements of competition law have not been proven. This tool is modelled after the UK market investigation regime. However, the ICA has not been able to conduct market investigations for the past few years, as they are time consuming and the authority has had to prioritise other enforcement activities.

45. The ICA is currently revising its procedural rules, with the aim to draw from past experience and to implement recommendations made by The Icelandic National Audit Office (INAO) in an administrative assessment conducted in 2022.

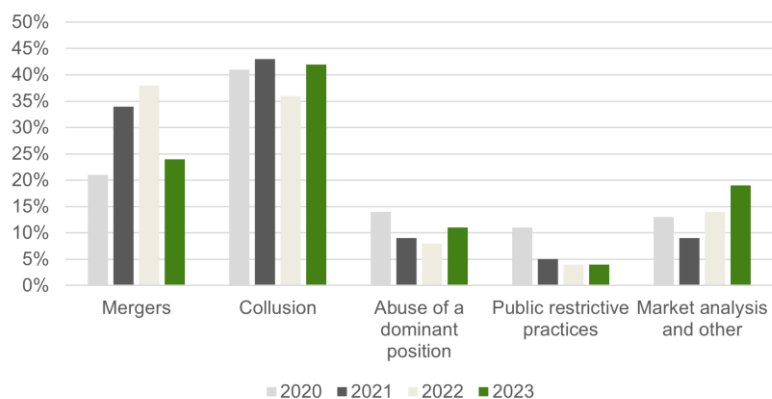
6. Resources of the Competition Authority

6.1. Allocation of resources

46. 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, see figure 1.

47. As a result of a significant workload in important areas such as merger reviews and cartel investigations, and due to limited resources, the authority was not able to enforce competition law in some other important areas to the necessary extent. This means that many complaints by smaller market participants, entering the market, have not got the attention they deserved. For example, the ICA was only able to allocate 11% of its time to issues related to the ban of an abuse of dominance and 4% to issues related to public restrictive practices. The ICA therefore had to continue applying stringent prioritisation.

Figure 1. Allocation of ICA’s time



6.2. Budget

48. The budget for 2023 amounted to approx. 3.78 m. EUR (exchange rate as of 2 January 2023). The ICA is funded through the state budget. In the past years, the budget has not been increased, in relative terms, to compensate for increased workload, more complexity and a rapid development of the significant markets and the economy as a whole. At the end of the year 2023, 29 employees were working at the ICA, 23 full-time, 4 temporarily hired and 2 on leave. In 2024 the ICA faced budget cuts that would reduce the number of staff. In comparison, when the current authority was established in 2005, the authority was expected to need around 23 employees. Since then the ICA has got more responsibilities, many of its tasks have become more complex and the economy has developed in size and complexity.

49. In the past years the ICA has informed the government and parliament that its limited resources do not allow it to perform its duties in a sufficient manner. In the autumn of 2023 the ICA issued a discussion paper on the development of its budget the past ten years. There it is demonstrated that in the period from 2014 to 2023, the budget of the ICA decreased by around 20% in real value. At the same time the size and scope of the economy (GDP and number of companies operated) expanded by around 35-40%.

50. Furthermore, at the end of year 2023 the ICA made an internal assessment of the number of employees needed for the ICA to fulfill its statutory duties. According to the assessment the ICA would need to have around 42 employees on a permanent bases, in order to ensure the fulfillment of its tasks.

51. The ICA has requested a budget increase, but currently without success.