

**For Official Use**

**DAF/COMP(2009)12/11**

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

**09-Jun-2009**

**English - Or. English**

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ICELAND**

**-- 2008 --**

*This report is submitted by the Icelandic Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 9 -11 June 2009.*

**JT03266303**

Document complet disponible sur OLIS dans son format d'origine  
Complete document available on OLIS in its original format



**DAF/COMP(2009)12/11  
For Official Use**

**English - Or. English**

**TABLE OF CONTENTS**

1. Executive Summary.....	3
2. The financial crisis in Iceland and enforcement of competition policies .....	3
2.1 The crisis, in brief.....	3
2.2 Competition in times of crisis – changes in focus – response and action plan.....	4
2.3 The ICA publishes a report on vigorous development, opening of markets and strengthening of economic activities .....	5
2.4 The ICA requests that state-owned banks make a competition assessment when decisions affecting competition are taken .....	6
3. Other enforcement of competition laws and policies .....	8
3.1 Abstract.....	8
3.2 Significant decisions.....	8
3.3 Important advocacy work .....	11
4. Private enforcement following the eradication of an oil cartel.....	11
5. Changes to Competition Laws and Policies .....	12
6. Resources of the Competition Authority .....	13
6.1 Budget and human resources .....	13
6.2 Allocation of resources.....	13

## 1. Executive Summary

1. This report addresses the activities of the Icelandic Competition Authority (ICA) and other developments in the field of competition in the year 2008. It specifically addresses the economic crisis and its impact on competition policy.

2. The economic crisis in Iceland, and the collapse of Iceland's biggest commercial banks in October 2008, have put, and will continue to put, pressure on competition policy in Iceland and the ICA's current and future work. The ICA has launched several projects in response to the radical changes connected with the crisis. The following are described in detail below:

- Contingency / response plan relating to the crisis and its effects on markets;
- Report on vigorous development, opening of markets and strengthening of economic activities published in November 2008;
- State-owned banks requested to make a competition assessment when decisions affecting competition are made.

3. The ICA has placed emphasis on reducing harmful barriers to competition in food markets and financial markets, and has given a clear signal that it will not tolerate anti-competitive behaviour by associations of undertakings. To this end, the following significant cases were concluded in 2008:

- Icelandic credit card companies were fined for collusion and abuse of dominant position;
- The largest retail chain was fined for serious predatory pricing;
- The Federation of Icelandic Industries and the Icelandic Federation of Trade and Services were fined for anti-competitive acts..

4. Private enforcement gained momentum in the year 2008, as important precedents were set by the Icelandic courts. Consumers, undertakings and municipalities were awarded damages following a decision by the ICA to condemn a major cartel in the oil sector.

## 2. The financial crisis in Iceland and enforcement of competition policies

### 2.1 *The crisis, in brief*

5. In the fall of 2008 Iceland experienced wide-spread financial difficulties. At the beginning of October Iceland's three largest private banks were taken into government administration due to a lack of available credit to finance debts, despite substantial assets.

6. The resulting contraction of the Icelandic economy, as well as other economic factors, have had a profound effect on Iceland and its population. External debt has increased substantially from one of the lowest levels in the world, and sharp increases in unemployment and inflation are having extensive and adverse effects on peoples' lives.

Economic Indicators/Year	REAL					FORECAST			
	2004	2005	2006	2007	2008	2009	2010	2011	2012
GDP Growth (%)	7.7	7.4	4.5	5.5	0.3	-10.6	0.5	5.0	3.2
Unemployment Rate(%)	3.1	2.1	1.3	1.0	1.7	9.0	9.6	7.5	5.4
CPI Growth(%)	3.2	4.0	6.8	5.0	12.4	10.2	1.6	1.9	2.5

*Source: Ministry of Finance and Central Bank of Iceland*

7. Multilateral assistance from the International Monetary Fund (IMF) is playing a key role in creating a solid platform for the restructuring of Iceland's economy. The economic policy of the Government will be based on the programme already established by the authorities and the IMF.

8. The foundations of Iceland's economy remain strong, however, despite the current economic crisis. Iceland's abundance of clean energy, its marine resources, strong infrastructure and well-educated workforce, provide a firm basis to overcome the current economic difficulties and implement necessary reforms.

## **2.2 Competition in times of crisis – changes in focus – response and action plan**

9. Immediately following the economic collapse, the Icelandic Competition Authority (ICA) formulated new strategies for the changed circumstances. These strategies address both the current difficulties in markets and the resurrection and development of competitive markets.

### *2.2.1 Response plan relating to the current difficulties in markets*

10. Goals:

- Prevent (or minimize) the reduction of competition and ensure that no actions are taken that unnecessarily restrict competition and permanently lower living standards;
- Limit damage to consumers resulting from potentially reduced competition;
- Provide advice and deal expeditiously with issues that need to be resolved quickly due to imminent difficulties for the purpose of preventing uncertainty in the business sector;
- Provide information on the changes in the competitive environment that occur, or are likely to occur, in markets.

11. Actions:

1. Cases addressed by the ICA which can be traced to the economic difficulties have priority. Flexibility has been increased in order to fast-track such cases.
2. When advising on and resolving cases caused by the economic situation, attempts will be made to limit any adverse impact that their resolution may have on competition. An example of this is Opinion No. 3/2008, *Decisions of banks and the authorities as regards the future of companies and impact on competition*.

3. An overall view of the changes to competition that will occur, or are likely to occur, is being developed. An example of this is that in connection with the Report mentioned earlier, No. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities*, information was obtained on competitive positions in important markets.
4. Information on the actions of the ICA is being provided (advocacy).

#### 2.2.2 *Action plan for the development of markets*

#### 12. Goals:

- To create conditions for diverse and effective competition in as many business sectors as possible, specifically by reducing barriers to entry and encouraging the opening up of markets, e.g. for innovation.
- Promote increased job creation;
- Reduce undesirable cross-ownership ties and cartel formation in Icelandic markets.

#### 13. Actions:

1. The ICA issued Report No. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities*, in November 2008. The report is intended as a guide for the strategies of the ICA over the next few months.
2. Removing barriers to entry is seen as a priority. An effort will be made to speed up investigations in this area.
3. When prioritising investigations, moreover, an effort will be made to speed up cases that relate to important consumer markets, such as grocery markets.
4. Management and ownership links will be addressed in detail. The ICA is preparing a report on ownership links in the Icelandic business sector and the lessons that can be learned from the past in this regard. The report will discuss these issues and recommend improvements.

#### **2.3 *The ICA publishes a report on vigorous development, opening of markets and strengthening of economic activities***

14. It is self-explanatory that the economic crisis has led to severe difficulties in many business areas and there is a real threat that important markets will see reduced numbers of participants because of financial difficulties. Competition restrictions and oligopoly may increase.

15. This situation means that there is an urgent need to begin effective reconstruction of the Icelandic economy. In this regard it is very important to maintain and, as the case may be, promote competition.

16. In view of the present situation, the ICA has initiated discussions on how to preserve and promote competition. To this end, the ICA published in November 2008 a detailed report (No 2/2009), *Vigorous development – the opening of markets and strengthening of economic activities*. The report emphasises ways to combat barriers to entry and barriers to expansion. The ICA takes the view that fighting/combating such barriers under the present circumstances will lead to many benefits for society.

17. In the report 15 markets are analysed, identifying the main obstacles that new undertakings or smaller undertakings face when they begin operations or attempt to further establish themselves. Moreover, actions are pointed out that could remove these obstacles or reduce them. The markets analysed are the following:

- Financial markets and payment systems
- Insurance markets
- Groceries markets (general)
- Dairy products
- Meat etc.
- Pharmaceutical markets
- Oil markets
- Media
- Telecommunications
- Maritime transport
- Commercial aviation – international
- Air freight
- Commercial aviation – domestic
- Surface transportation – passengers
- Surface transportation – goods.

18. The report also discusses innovation and entrepreneurship where, in the same manner, obstacles are identified and recommendations made for improvements. Furthermore, the report discusses experience in other countries of the importance of competition in economic depressions and what lessons may be learned.

19. The recommendations and ideas deal both with the activities of public entities and private undertakings, and some of these recommendations have the nature that they permit the relevant bodies to take positive action on their own initiative that serve to bolster the economy. As a follow-up to the report the ICA has taken up several cases and investigations, as well as advocacy actions.

**2.4 *The ICA requests that state-owned banks make a competition assessment when decisions affecting competition are taken***

20. As a result of the financial crisis the Icelandic government has taken over the operations of the three biggest banks, Kaupthing banki hf., Landsbanki Íslands hf., and Glitnir banki hf. Receivership committees have been appointed that have assumed the powers of the banks' boards of directors.

Subsequently, new banks have been established for the domestic operations of the three commercial banks. The new banks are owned by the Icelandic state.

21. At the same time many Icelandic undertakings are struggling with financial difficulties. Businesses are seeking to maintain their operations and to preserve their assets following the collapse of the Icelandic commercial banks and the resulting hardships. A large number of these companies had business relationships with the nationalised banks, and continued access to borrowed funds and credit facilities is vital to their operations. Many of these undertakings are being restructured as a result of the new environment.

22. Under these circumstances the new state-owned banks and relevant public authorities have extensive decision-making powers as concerns the future operations of many significant undertakings. Under the present 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.

23. To address this issue, the ICA issued a formal opinion, No. 3/2008, as early as the beginning of November 2008, where banks and public authorities making significant decisions affecting competition were asked to produce a competition impact assessment, taking into account the long-term interests of the public and the economy, in order to ensure the continued survival of active competition in the greatest possible number of markets in Iceland.

24. To this end, the ICA laid down ten principles that should be given consideration. These principles are supplementary to the statutory powers of the ICA, e.g. in the case of mergers. Under the particular circumstances now prevailing in Icelandic society, however, the ICA considers it very important that public agencies and publicly owned corporate entities should consider, from the outset, what impact their actions may have on the Icelandic economy and competition in the markets. This should be done without pushing aside the obvious interests of maximising value, safeguarding the interests of the banks in the long term, and working expeditiously.

25. The ten principles in the formal opinion are as follows:

1. If two or more possible measures are being considered (e.g. measures relating to corporate reconstruction) , then those measures should be selected that enhance competition or restrict competition the least.
2. If possible, measures should not result in increased oligopoly, and undesirable corporate cross-management and cross-ownership ties should not be established in the affected markets. This is particularly relevant in markets that are of key importance to the economy and/or where barriers to entry are significant.
3. The scope available to reduce oligopoly, barriers to entry, undesirable management ties and cross-ownership or market domination should be used to the extent possible. This will make it possible to observe in the long term whether it may be reasonable to split up companies rather than merge them.
4. Care should be taken that undertakings are not discriminated against in an unfair manner.
5. The operation or financial restructuring of two or more competitors who are customers of the same bank should not be undertaken by the same party on behalf of the banks. At the same time, the ownership role and the service role of banks must be kept separate. For example, different interests should be managed by the establishment of holding companies or operating companies.

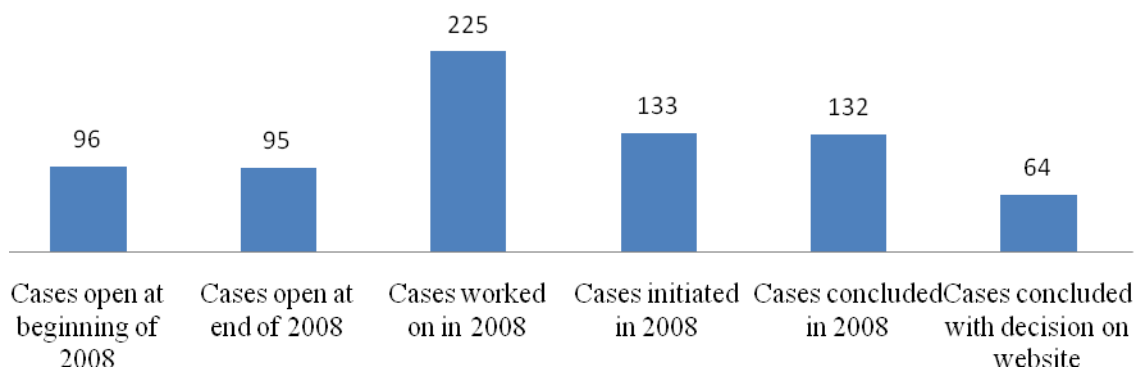
6. If companies or their assets are offered for sale, it should be ensured that all prospective buyers have an equal opportunity to bid and that buyers are selected on the basis of objective criteria. Efforts should be made to the extent possible to keep the process open and transparent.
7. Opportunities should be created for new parties and, as the case may be, foreign investors, to enter markets, e.g. by purchasing companies or assets.
8. When rescuing undertakings, a position should specifically be adopted with regard to the feasibility of creating room for the entry of new undertakings for the purpose of increasing competition. For example, when banks bring new share capital into companies, this could entail the share of the former owners being reduced or eliminated.
9. In connection with all major arrangements or measures that have an impact on the operation of a business concern in Iceland, there should be an assessment of the competitive impact of the arrangements or measures. In order to ensure the effectiveness of such an assessment, it is desirable that a person be appointed who is knowledgeable of competition issues to supervise and, as the case may be, take part in the decisions. It is preferable that this person is independent.
10. In order to ensure transparency and to preclude suspicion, the process involving corporate restructuring and other important measures should be recorded, e.g. by the party appointed pursuant to item 9.”

### 3. Other enforcement of competition laws and policies

#### 3.1 *Abstract*

26. In 2008 the ICA worked on 225 cases dealing with competition in markets. Around 133 cases were initiated and 132 concluded. Decisions published on the website were 68. Of those 68, 42 dealt with mergers, 14 with collusion or abuse of a dominant position and 8 with public barriers to competition or other issues.

#### **Illustration 1: Administrative cases under investigation in 2008 – Progress of cases.**



#### 3.2 *Significant decisions*

##### 3.2.1 *Icelandic credit card companies fined.*

27. In January 2008 the ICA issued a decision dealing with breaches of competition law by two credit card companies, Greiðslumiðlun [VISA Iceland] and Kreditkort [MasterCard Iceland] and



Fjölgreiðslumiðlun (FGM) [jointly owned netting system]. The companies paid a combined total of ISK 735 million (approx. EUR 7.9 million) in administrative fines.

28. Following an investigation by the ICA, Greiðslumiðlun hf. (now Valitor, VISA Iceland), Kreditkort hf. (now Borgun, Mastercard) and FGM concluded a settlement with the Authority. According to the terms of the settlement Greiðslumiðlun admitted to having abused its dominant position in the market by taking actions which targeted a new competitor (PBS/Kortafjónusta, PBS being a Danish company). Greiðslumiðlun hf. and Kreditkort hf. also admitted to having engaged in long-standing and extensive collusion. FGM was partly involved. The settlement with FGM included an admission that the company violated the ban in the Competition Act on anti-competitive practices by associations of undertakings.

29. The case concerns the payment card market and its submarkets. Greiðslumiðlun and Kreditkort are competitors in the market for acquiring services. Acquiring involves services to merchants (e.g. retail shops) whereby they are authorised to accept payments by means of payment cards, collecting their data and disbursing the proceeds when card holders have paid their bills. Greiðslumiðlun held a dominant position in this market. FGM is an undertaking jointly owned by the commercial banks, the savings banks, Greiðslumiðlun, Kreditkort and the Central Bank of Iceland. FGM's tasks include the operation of electronic payment systems for authorisation, collection of entries and clearance of payments relating to transactions involving payment cards. Access to this system is essential for parties operating in the payment card market.

30. The background of the case is that on 13 June 2006 the ICA launched a dawn raid on the business premises of Greiðslumiðlun. On the basis of the documents discovered, a search was conducted on the premises of Kreditkort on the same day. In connection with the examination by the ICA of the seized documents, evidence emerged of possible violations by FGM, and a search was therefore conducted of the premises of that company on 14 March 2007.

### *3.2.2 The largest retail chain fined for serious predatory pricing*

31. In a decision in December 2008 the ICA fined Hagar (operator of the Bónus retail chain, among other enterprises) for abuse of dominant position through actions directed at the company's competitors in the food retail market. The company was ordered to pay ISK 315 m.kr. (approx. EUR 2.2 m.) in administrative fines.

32. Hagar's violation of the Competition Act consisted in predatory pricing which the company practiced in 2005 and 2006. The investigation showed that Hagar abused its dominant position by selling milk and dairy products for less than cost price in Bónus stores. The principal dairy products were sold with a considerable margin loss. This meant that the Bónus stores as a whole were operating at a loss. The ICA concluded that the pricing was of a predatory nature. Moreover, the investigation showed that the violations were substantial. Hagar's individual actions and price strategy were designed to exclude main competitors, such as low-price stores, from competition, and thereby weaken the companies as competitors in the market.

33. The case was brought before the Competition Appeals Committee, which upheld the decision in its Ruling No. 2/1009.

### *3.2.3 Federation of Icelandic Industries and Icelandic Federation of Trade and Services fined for concerted practices of its members*

34. In a decision in February 2009 (No. 10/2008) the ICA fined the Federation of Icelandic Industries (FII) and the Icelandic Federation of Trade and Services (IFTS) for violation of Article 12. of the

Competition Act, which prohibits associations of undertakings from instituting restrictions on competition. The violation consisted of implementing price changes in price-labelled food products in connection with a reduction in the VAT rate from 14% to 7% and removal of excise duties that took effect on 1 March 2007. In a settlement with the ICA both federations admitted that joint decisions were made on the means of effecting price changes in connection with these tax reductions with regard to products carrying price labels attached by manufacturers at the time of packaging. Among other things, decisions were made concerning sharing certain revenue losses among the respective members of the federations. Both the FII and IFTS admitted to non-compliance with the Competition Act in this regard and paid an aggregated amount of 36 thousand euros. The federations announced that they would put in place a competition compliance program.

### 3.2.4 Other significant decisions

35. Valitor hf. (payment card company, VISA) requested an exemption from the ban on concerted practises to establish a Multilateral Interchange Fee (MIF) for credit card transactions in Iceland. The ICA denied the request for exemption. The decision (No. 62/2008) was upheld by the Competition Appeals Committee in its Ruling No. 1/2009.

36. Orkuveita Reykjavíkur (an electrical and water utility company) acquired a 15% stake in its competitor, Hitaveita Suðurnesja, with an obligation to buy an additional 15% share. The company was required by the ICA to reduce its shareholding down to 3%. The reasoning was based, *inter-alia*, on the oligopolistic structure of the electricity market. The Appeals Committee upheld the decision but permitted the company to hold up to 10% of the shares. (Decision of the ICA No. 23/2008, and Ruling of the Appeals Committee No. 7/2008.)

37. The merger of Kaupþing bank (a commercial bank) and SPRON (a savings bank) was investigated by the ICA, upon notification. Kaupþing bank offered to buy all the shares of SPRON. Kaupþing bank was a commercial bank with activities all over Northern-Europe and a heavy presence in Iceland. SPRON's business was largely confined to Reykjavík. Its primary customer base consisted of individuals and small and medium-sized enterprises. The merger was thought to strengthen the collective dominant position of the three Icelandic commercial banks. However, the merger was allowed to proceed on the grounds of the failing firm doctrine.

38. Merger of Teymi hf. (owner of Vodafone Iceland) and IP – fjarskipti ehf. (telecom company). The merger was deemed by the ICA to have an adverse effect on competition. On the basis of extensive conditions the merger was allowed. (Decision of the ICA No. 36/2008.)

39. The Icelandic Fish Auction Market (FMI Ltd.) and a computer company for the Icelandic fish auctions (RSF Ltd.) abused their dominant position in the market of auctioning fish. The ICA imposed an administrative fine of EUR 85,000 on FMI Ltd. The decision was upheld by the Appeals Committee, but fines were lowered. (Decision of the ICA No. 27/2008 and Ruling of the Appeals Committee No. 8/2008.)

40. At the end of 2007 ICA issued a decision stating that Eimskip (Hf. Eimskipafélag Íslands) had abused its dominant position in the maritime shipping market (Eimskip's market share was 70-80%). Eimskip's violations consisted, on the one hand, in actions taken deliberately for the purpose of forcing Samskip, another shipping company, out of the market and, on the other hand, in entering into a number of exclusive purchasing agreements with its customers. Exclusive purchase in this context refers to contracts where Eimskip obtained a commitment from its customers to purchase shipping services only from that company. Some of the agreements also contained anti-competitive loyalty discounts. The ICA imposed a fine of ISK 310 million (approx. EUR 3.4 m.) on Eimskip. The decision was brought before the Competition Appeals Committee which issued its ruling in March 2008. The Committee confirmed that

Eimskip had abused its dominant position but was of the opinion that the abuse was more limited in scope and lowered the fine to ISK 230 million (approx. EUR 2.5 m.).

### **3.3 *Important advocacy work***

#### *3.3.1 Advocacy in financial crisis*

41. The ICA has published reports and opinions in connection with the financial crisis and advocated for the enforcement of competition policy. This is outlined in detail in chapter 2 above.

#### *3.3.2 Report on interplay between suppliers and retailers in the food-market*

42. In its report No. 1/2008, the ICA published its findings after reviewing a substantial number of contracts between suppliers and grocery stores. The results of the report were that many of the contracts included provisions capable of disrupting competition and thereby violating the Competition Act. The ICA instructed suppliers and grocery stores to revise their contracts in order to ensure that their provisions neither obstructed competition nor violated the Competition Act. Subsequently, the ICA has been investigating some of these contracts.

#### *3.3.3 Formal opinion on the impact of the Icelandic National Broadcasting Service on competition*

43. The ICA published in December 2008 its opinion no. 4/2008, regarding the impact of the Icelandic National Broadcasting Service (RUV) on competition in the market for the sale of advertisements in the broadcasting media. It is the view of the ICA that the participation of RUV in the market for advertisements entails discrimination that harms competition.. Furthermore, the ICA is of the opinion that RUV has made the competitive position on the market even worse with its offers and rebates. It was revealed that the company's pricing rules had not been observed. With regard to the above, the ICA requested that the Minister of Education should reconsider RUV's participation in the market for the sale of advertisements in the broadcasting media.

#### *3.3.4 Formal opinions on legislation*

44. The ICA has on several occasions submitted recommendations as regards legislation, both enacted and proposed legislation. These include legislative work in the field of pharmaceuticals pricing, legislation affecting the manufacture of dairy products, and importing of feed for livestock breeding, allocation of domestic commercial aviation routes etc.

## **4. Private enforcement following the eradication of an oil cartel**

45. In 2004 the ICA, following an extensive three-year investigation, found that Iceland's three major oil companies had participated in a cartel involving all oil and gas products offered by the companies, as well as extensive market sharing arrangements and collusive tendering practices. The members of the cartel paid an aggregated amount of EUR 18.6 m. in administrative fines (Decision of the ICA No. 21/2004, and Ruling of the Competition Appeals Committee No. 3/2004).

46. Following the decision several of the companies' customers, including municipalities, undertakings and consumers, have claimed damages from the companies involved. Following is a summary of two of those cases, which were concluded in 2008, but several further cases have been concluded since then. In these two recent cases the Supreme Court awarded damages because of losses suffered due to having to purchase petroleum and oil at higher prices as a result of the cartel.

47. The first case concerns a private consumer, Sigurður Hreinsson (S), who claimed damages for losses that he had suffered. He claimed that as a result of price fixing and other anti-competitive practices by K and two other oil companies he had paid a higher price for his purchases of petroleum than if the market had been competitive. In the course of proceedings before the Supreme Court the dispute centred on S's request that damages should be determined by the Court on a discretionary basis. The Supreme Court stated that it was undisputed that by the collusion K had violated Article 10 of the Competition Act no. 8/1993 then in force. From the documents of the case, the Court concluded that it was clear that the collusion had, *inter alia*, included the pricing of petrol. The Court found that K had not submitted any evidence to establish that the purpose of the collusion had not been to increase its income by selling petrol at higher prices. Furthermore, K had not been able to demonstrate that no such profit was in fact created by the collaborative efforts. The District Court's finding concerning the amount of the damages was upheld. However, this was a modest amount, less than 10% of the plaintiff's original claim.

48. The second case concerns the city of Reykjavík, which filed a claim for damages. In the years 1993, 1996 and 2001, the city of Reykjavik (R) issued a call for tenders for the procurement of petroleum products for its undertakings, Strætisvagnar Reykjavíkur (Reykjavik Bus Transport Services) and Vélamiðstöð Reykjavíkurborgar (machinery). A bid from Skeljungur Ltd. (S) was accepted in tenders held in 1993 and 1996, and a bid from Olíuverslun Íslands Ltd. (O) was accepted in the tender of 2001. In December 2001, the ICA launched an investigation into whether S, O and Ker Ltd. (K) had colluded in their business dealings, thereby violating Article 10 of the Competition Act No. 8/1993, which was then in effect. The investigation included certain aspects of the bids made by S, K and O in R's calls for tenders. The conclusion of the Competition Appeals Committee was that S, K and O had, by their actions, colluded, *inter alia* on the tender prices to R. Furthermore, they had jointly channelled the business dealings to S and then shared the resulting profits. This conduct was in violation of Article 10 of the Competition Act.

49. In the course of legal action R sought damages for losses it claimed to have suffered as a result of the collusion between S, K and O on prices which they offered for fuel in R's call for tenders in 1996. S, K and O admitted in the course of pleadings that they had through their collusion in the tender violated Article 10 of the Competition Act then in force. However, they argued that it was not proven that R had suffered losses as a result and, alternatively, that R had in any case been unable to prove its losses. The Supreme Court concluded that it had been established that S, K and O had negotiated precisely what R should be offered by each of them and agreed that the lowest bidder would pay to the others a certain sum for each litre of fuel bought by R. The Court held that S, K and O had submitted no evidence in the case to prevent the conclusion that the purpose of all these actions was to maintain R's business with S at a price which would not have competed with the bids of K and O if the rules of the Competition Act had been observed in their dealings. Furthermore, S, K and O had presented no evidence in support of their claim that no profit had actually resulted from the actions. This profit could not derive from anyone other than R. It was therefore assumed that it was adequately demonstrated that R had suffered a loss caused by S, K and O, who were therefore liable for damages.

## **5. Changes to Competition Laws and Policies**

50. The Competition Act was initially adopted in 1993. The Act was to a certain extent based upon the Agreement on the European Economic Area. The Act has been amended since in light of experience and in light of further legislation trends within the European Economic Area.

51. The major landmarks in this development are the following:

- 1993: A competition act adopted, with a ban on the most serious forms of collusion, price fixing, market sharing etc. Merger control but with very short time limits. The ICA authorised to

intervene in anti-competitive behaviour of dominant undertakings, but the abuse of dominance was not prohibited beforehand.

- 2000: Amendments introducing a ban on abuse of a dominant position and strengthening merger reviews. The prohibition against restrictive agreements was widened. The relevant Articles in the act are modelled on Articles 53 and 54 of the EEA-Agreement (Articles 81 and 82 of the EC Treaty).
- 2005: The administration of the Competition Authority and decision-making processes altered. Amendments relating to the Agreement on the European Economic Area.
- 2007: Clarification and strengthening of provisions regarding administrative fines against undertakings in breach of competition law and regarding criminal sanctions against natural persons who take part in collusion. Any employee or director of an undertaking or association who takes part in collusion shall be subject to fines or imprisonment up to six years. Cooperation between the ICA and police authorities facilitated.
- 2008: Provisions on merger reviews strengthened, both as regards procedural rules and assessment of impact on competition.

## **6. Resources of the Competition Authority**

### **6.1 *Budget and human resources***

52. The ICA is funded through the state budget. The ICA's budget for 2009 amounts to approx. EUR 1.8 m., in real terms similar to the budget of 2008.

53. The employees of the ICA at year-end 2008 were 23. Their educational background is as follows:

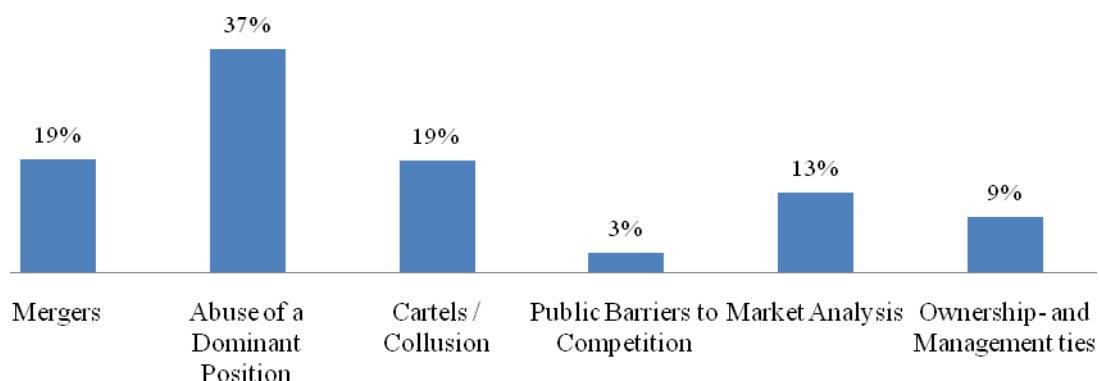
- 12 lawyers
- 7 economists, and
- 4 other education and support staff.

54. In 2008 the ICA was nominated as being exemplary among state agencies in Iceland, on account of its result-oriented management.

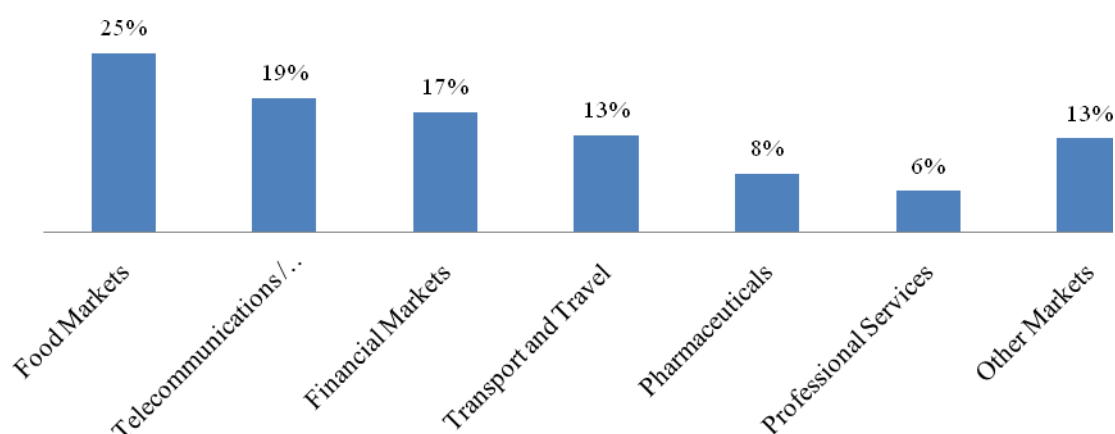
### **6.2 *Allocation of resources***

55. The ICA keeps track of and manages the allocation of employee's work to the various areas of the authority's responsibilities. The breakdown is based on time measurement.

56. As shown in illustration 2, cases dealing with possible abuse of a dominant position are a significant part of the ICA's work.

**Illustration 2: Allocation of resources in 2008 – types of work**

57. As showed in Illustration 3, cases related to food markets are at the top of the ICA's agenda.

**Illustration 3: Allocation of resources in 2008 - markets**

58. It should be stressed that the economic crisis in Iceland has had a profound impact on the ICA's work. In the first 6 months of the crisis, more than one third of the ICA's resources were allocated to additional tasks related to the crisis, which would not have surfaced under normal circumstances. Despite this fact, there were no additional budget allocations to the ICA.

**Illustration 4: Allocation of work in the first 6 months of the crisis**

