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Annual Report on Competition Policy Developments in Iceland

-- 2021 --

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 124 cases and concluded 73 of those. The authority dealt with a sharp increase in merger cases, which more than doubled from the previous year. As a result, the ICA had to allocate a large portion of its resources to merger investigations and apply stringent prioritisation.
3. In the summer of 2021, ICA reached a settlement with one of two undertakings in an extensive cartel investigation. The alleged infringements concern a collusion between the two major undertakings in the markets for maritime shipping, land transport, freight forwarding and related services, mainly in the period 2008 – 2013.
4. As in other countries, competition enforcement and advocacy faced challenges related to COVID-19 and international economic difficulties. In this respect the ICA addressed concerns about rapid price increases, i.a. by giving out public warnings to business associations, not to engage in anti-competitive behaviour in connection with public information sharing about expected price rises. The ICA also renewed an extensive guidance on the matter and opened an information page on its website.
5. The ICA continues to serve its advocacy role through various sources, promoting the benefits of competition and awareness. The ICA held several meetings and issued a range of reports addressing issues such as ownership and management ties in the Icelandic economy, competition indicators, benefits to competition and a market study into the publishing of books.
6. In the autumn of 2021, the ICA published the first of three in a series of new educational videos.
7. The ICA has also continued to push for the implementation of the OECD's recommendations with regard to its assessment of rules and regulations in the tourism and building sector, published in November 2020. Some business organisations have resisted the implementation of those recommendations that aim at reducing the existing regulatory burden and barriers to entry.
8. 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. On the other hand, the ICA has the power to engage in market investigations and demand structural and behavioural remedies in malfunctioning markets. A few countries enjoy similar powers, and several are adding them to their toolbox.

2. Competition policy and priorities in enforcement and advocacy

9. 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:

- Monitor higher prices, product scarcity and faults in the supply chain.
- Make sure technological developments and the growth of digital markets will benefit undertakings and consumers.
- Find ways to use the power of competition in the fight against climate change and increase sustainability.
- Use competition to strengthen and develop infrastructure in key areas such as telecommunication, as well as making public procurement more efficient where infrastructure is primarily publicly owned and free competition is limited.
- Monitor the developments in the ownership of undertakings, detecting common ownership and other ownership links that can adversely affect competition.
- 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.

10. The ICA's policy objectives are developed by the board of the ICA for the next three years and revised annually.

3. Key examples of competition enforcement

3.1. Overview

11. In the year 2021 the ICA worked on 124 cases and concluded 73 of those. In addition to the aforementioned administrative cases, the ICA addressed 27 cases that were not subject to normal procedural requirements, such as continual follow-up on earlier interventions and conditions.

12. 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 175 such informal complaints and tips in 2021, compared to 142 in the 2020.

13. 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.

14. In 2021 the ICA had to apply stringent prioritisation due to a sharp increase in merger notifications. The ICA also had to prioritise cases and issues connected to the COVID-19 pandemic. Therefore, 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.

Following are key examples of the ICA's enforcement activities, which were addressed in 2021.

3.2. Eimskip, one of the two biggest transport companies in Iceland, admits to serious infringements of competition law

15. ICA has been investigating possible infringements of Article 10 of the Icelandic Competition Law and Article 53 of the EEA agreement by Eimskip and Samskip. The alleged infringements in question concern a collusion between the two undertakings in the markets for maritime shipping, land transport, freight forwarding and related services, mainly in the period 2008 – 2013.

16. According to a joint statement from June 9th in 2021, Eimskip approached the ICA with a request to enter formal talks with the ICA on a possible settlement that would conclude the investigation as regards Eimskip. The Icelandic Competition Law Act permits ICA to finish all investigations with a settlement, regardless of the stage of the investigation.

17. ICA agreed to enter settlement talks. On June 16th, 2021, ICA and Eimskip signed a settlement which includes Eimskip admitting to serious violations of competition law, a payment of ISK 1.500.000.000 (approx. 10 m. EUR, exchange rate as of 1 January 2022) fine in addition to committing to taking actions to prevent possible future violations.

18. According to the settlement Eimskip admits to having committed serious violations of Article 10 of the Icelandic Competition Law and Article 53 of the EEA agreement. Eimskip acknowledges the following violations in the investigation period which began after a meeting between Eimskip and Samskip on June 6th, 2008:

- Collusion with Samskip in the latter part of 2008 regarding changes in sailing systems and limiting transportation capacity in maritime shipping to and from Iceland.
- Collusion with Samskip in allocating larger customers in maritime shipping and land transport markets. This collusion was less in scope in the year 2013.
- Collusion with Samskip regarding fees and discounts for transportation services and exchanging important information regarding prices and business matters. This collusion was less in scope in the year 2013.
- Collusion with Samskip in land transport regarding transportation routes in Iceland and dividing the market in connection with certain transportation routes.
- Collusion with Samskip in maritime shipping between Iceland and other European countries as well as other actions aimed at restricting competition in transportation services.
- Collusion with Samskip in maritime shipping between Iceland and North America when an exemption from Article 10 of the Icelandic Competition Law was not in force.

19. Eimskip also admitted to collusion with Samskip before the meeting between the two undertakings on June 6th, 2008. However, that collusion was of a smaller scope than the one that started after the June meeting.

20. In addition, Eimskip acknowledged violation of Article 19 of the Icelandic Competition Law by not giving necessary or accurate information or neglecting to hand over data that was necessary for ICA's investigation.

21. A part of the settlement is Eimskip's binding commitment to taking actions to prevent future violations and strengthen competition. That includes active internal control and education as well as making sure that key employees and directors are aware of the importance that competitors in oligopolistic markets are independent of each other and the strict ban under competition law of any communication with competitors or possible competitors that are capable of restricting competition.

22. Eimskip also committed to reviewing all contracts the company has with other companies in the transportation sector. Furthermore, Eimskip is obliged to end all business relations with Samskip and other transportation companies that Samskip has business relations with. This is not applicable if Eimskip can prove to ICA that the nature of the relationship will not have disruptive effects on competition between Eimskip and Samskip.

23. By signing the settlement agreement ICA has ended its investigation on Eimskip. However, the alleged violations of Samskip remain under investigation. ICA and Samskip entered settlement negotiations in the late summer of 2021, without result.

3.3. Challenges related to COVID-19 and international economic difficulties

24. During the COVID-19 pandemic the ICA was active in addressing challenges of domestic business operations. Until the end of 2020, the ICA was, as Competition law permits responsible for granting exemptions to undertakings wishing to engage in cooperation. This responsibility was replaced by self-assessment responsibilities by undertakings in the beginning of 2021. Until then the ICA had been highly involved in facilitating necessary measures to tackle COVID-19. With changes in the legal framework, the ICA took on the responsibility to publish guidelines and assist companies within the boundaries of the law.

25. In the latter part of 2021, the ICA became increasingly concerned about rising prices in significant areas of the economy. This trend derived in many instances from product scarcity and faults in the supply chain, but the ICA was i.a. concerned about the way in which leaders of business organisations addressed the issue publicly, predicting rises and offering a reasoning for anticipated rises.

26. In the autumn of 2021, the ICA addressed those concerns, giving out public warnings to business associations and managing directors of undertakings, not to engage in anti-competitive behaviour. The ICA also renewed extensive guidance on the matter and opened an information page on its website.

27. Subsequently ICA fined SFF (association of financial undertakings in Iceland) for preparing and defending collectively the premiums of insurance companies that are members to the association. The investigation was opened in the autumn of 2021 and concluded in the first months of 2022.

3.4. Merger enforcement

28. The ICA received 47 merger notifications in 2021, more than double the number of cases in the preceding year. The investigations of 45 cases were concluded, two of those being withdrawn after a statement of objections was delivered.

29. The ICA intervened in three mergers, all of which were cleared with conditions.

3.4.1. A merger of three meat processing companies cleared with extensive conditions.

30. In April 2021, the ICA cleared the merger between three meat processing firms, Norðlenska, Kjarnafæði, and SAH with extensive conditions. The merger resulted in a considerable consolidation in the market in the northern part of Iceland, with potential negative effects for farmers and consumers.

31. The investigation entailed gathering extensive data and information from the merging undertakings, competitors, customers / farmers, interest groups and other concerning parties. In addition, in order to gather views from local farmers, the ICA conducted two surveys among Icelandic farmers. The survey revealed i.a. considerable concerns regarding the bargaining power of farmers.

32. The parties to the merger undertook to employ measures intended to protect competition and safeguard the interests of farmers and consumers, such as measures to strengthen and secure the contractual position of farmers, ensure that the proposed efficiency gains deriving from the merger would benefit farmers and consumers, and other measures to safeguard remaining competition in the market.

3.4.2. A merger between three wholesalers in groceries cleared with conditions.

33. In September 2021, the ICA cleared the merger of ÍSAM ehf, Ó. Johnson & Kaaber ehf. and Sælkeradreifing ehf. with conditions. ÍSAM is wholesaler, specialising in importing and marketing well-known brands, as well as having established a foothold in i.a. bread production and export. Ó. Johnson & Kaaber and Sælkeradreifing are wholesalers, specialising in convenience goods.

34. The investigation into the matter revealed that the merger would disrupt competition significantly. The parties to the merger undertook to employ measures intended to strengthen and protect active competition and proposed and agreed to measures ensuring an independent and separate operation of a large production unit of production of bread and related products.

3.4.3. Other significant mergers

35. Furthermore, the ICA investigated several significant mergers, including a merger of two of the three biggest travel agencies offering package tours to Icelandic consumers, and an acquisition of the biggest telecommunications network operator in Iceland, involving an extensive wholesale agreement with the seller, the incumbent telecommunications company in Iceland. Both mergers were concluded in 2022, with extensive conditions.

4. Key examples of advocacy initiatives – competition neutrality

36. The ICA continues 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, meeting with policymakers and making educational videos.

37. For example, the ICA held meetings and conferences on the merger procedures, one of which was held in June 2021. In the meeting recent changes in merger control were

highlighted and a senior expert from the European Commission held a presentation on procedure in merger cases.

38. The ICA also issued several reports, addressing a range of issues such as ownership and management ties in the Icelandic economy, competition indicators, benefits to competition and a market study into the publishing of books.

39. In the autumn of 2021, the ICA published the first in a series of new educational videos. The videos are intended to shed light on competition matters simply and visually. The videos are suited for all age groups and especially directed towards those who want to learn more about the purpose of active competition, competition law, and ICA's role. The first video addresses competition in a general way. The ICA will roll out more videos with more specific aspects in the weeks to come. The audio is in Icelandic, but non-Icelandic speakers can watch a version with English subtitles in the video below.

40. In 2021, the ICA reacted to 60 requests from ministries and the parliament for comments on proposed legislation and its competitive effects. In its responses, the ICA raises its concerns, if needed, and promotes more formal competition assessments of existing and proposed laws and regulations, in line with the OECD Competition Toolkit.

41. The ICA has also continued to push for the implementation of the OECD's recommendations about its assessment of rules and regulations in the tourism and building sectors, published in November 2020. The recommendations have been met with some resistance by some business organisations, as some of the existing regulatory burden and barriers to entry protect existing undertakings.

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 enjoy therefore a protection from competition rules and enforcement, as in other areas of the European Economic Area. However, 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. This means that injured parties enjoy not the same rights when seeking damages. The ICA has also limited powers to engage in dawn-raids, as it is only allowed to seize document at the offices of undertakings and not elsewhere.

44. On the other hand, 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. An increasing number of jurisdictions in the world are contemplating such powers and some of them have sought advice from the ICA.

45. In 2021 the ICA continued to develop its procedures as regards merger investigations. In its recent merger rules the ICA promotes pre-notification talks and state-of-play meetings, as means to increase effectiveness.

6. Resources of the Competition Authority

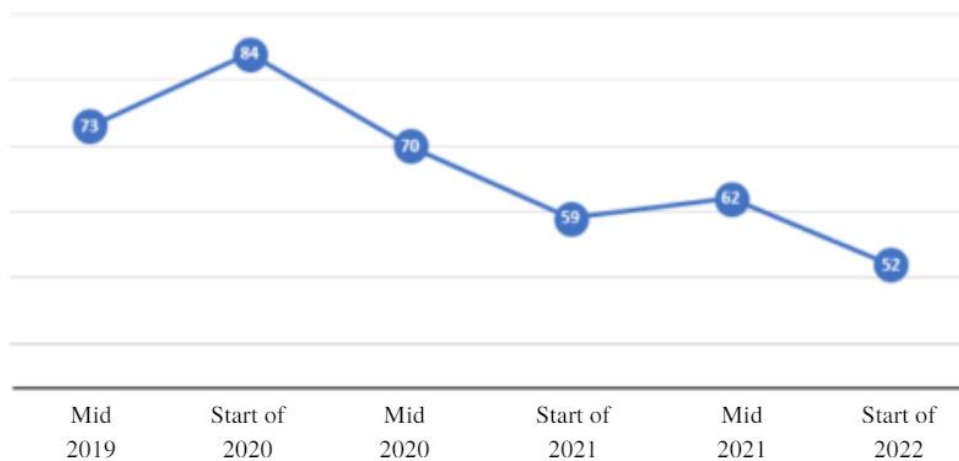
6.1. Budget and pending cases

46. The budget for 2021 amounted to approx. 3.44 m. EUR (exchange rate as of 1 January 2022). The ICA is funded through the state budget.

47. 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, and the COVID-19 pandemic.

48. The increased level of prioritisation has brought the number of cases from 84 at the beginning of 2020, down to 52 at the start of 2022. 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. The downside to this is that many complains are being rejected.

Figure 1. Number of cases



6.1. Allocation of resources

49. 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.

50. Figure 2 clearly shows the shift to mergers in terms of allocation of time in 2020 and 2021, as described in chapter 3.1.1. This affects the resources available for other work.

51. 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 also affected emphasis on public restrictive practises and market analysis.

52. At the end of the year 2021, 27 employees were working at the ICA.

Figure 2. Allocation of time

