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Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

Annual Report on Competition Policy Developments in Iceland

-- 2022 --

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 100 cases and concluded 56 of those. The ICA had to continue allocating a large portion of its resources to merger investigations and apply stringent prioritisation.
3. The authority continued its investigation of one of two undertakings in an extensive cartel investigation in the transport markets, having reached a settlement with the other undertaking in the summer of 2021. The case was concluded in 2023 (chapter 3.2).
4. As in other countries, competition enforcement and advocacy faced challenges related to increasing inflation, higher prices and international economic difficulties. In response to this the ICA warned against possible restrictive practices of business associations, held conferences and participated in the public debate, and furthermore conducted a market study (chapter 3.3).
5. As regards merger reviews, 10 mergers were cleared upon settlements where conditions were set. The remainder, around 20 mergers, were cleared without conditions (chapter 3.4.5).
6. The ICA continues to serve its advocacy role through various other sources, promoting the benefits of competition and awareness. The ICA held several other meetings, issued a range of reports and engaged in other advocacy initiatives (chapter 4).
7. 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).
8. The authority is seriously understaffed and lacks resources in order to perform its responsibilities in sufficient manner (chapter 6).

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 put the following issues high on the agenda in 2021:
 - Monitor higher prices, product scarcity, faults in the supply chain and other challenges presented in the current economic environment. Focus on markets that are significant for the Icelandic economy.
 - Make sure that technological developments and the growth of digital markets will benefit undertakings and consumers and 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.

- 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 2022 the ICA worked on a little more than 100 cases and concluded 56 of those. In addition to the aforementioned administrative cases, the ICA addressed 56 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 130 such informal complaints and tips in 2022, compared to 175 in the 2021.

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 2022 the ICA continued to face a significant number and complex scope of merger investigations. In the field of cartel investigations the ICA continued an extensive investigation into the transport markets.

15. 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 around 8% 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 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 continued

17. ICA continued 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 concerned 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.

18. In June 2021, ICA and Eimskip signed a settlement which included 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.

19. In 2022, ICA continued investigating the other undertaking involved, Samskip. The investigation was completed in August 2023. The ICA concluded that Samskip had gravely violated the prohibition of Article 10 of the Icelandic Competition Act and Article 53.1 of the EEA Agreement with unlawful collusion with Eimskip. It was also the ICA's conclusion that Samskip, during the 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 has been imposed in the sum of ISK 4.2 bn. (ISK 4.200.000.000).

21. Furthermore, certain instructions are addressed to Samskip to prevent further violations and promote competition.

22. The breaches of Samskip 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.

23. The decision has been appealed to the Competition Appeals Committee.

3.3. Challenges related to increased inflation and international economic difficulties

24. In the latter part of 2021, the ICA became increasingly concerned about price increases 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 competition restrictions contributed to such increases.

25. Firstly the ICA warned against 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.

28. Secondly, the ICA engaged in advocacy initiatives in relation to inflation and price increases. Among those was a conference on competition and inflation, in connection with an ECN (European Competition Network) meeting of Chief Economists, hosted by the ICA. IN August, the ICA also held a conference on competition's effect on economic growth and terms of employment.

29. Thirdly, the ICA embarked upon a market study on margin developments and competition in key markets, that is groceries, fuel and building material. 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.

30. 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. Subsequently 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) in February 2023, where the main conclusions were presented and certain measures recommended.

3.4. Merger enforcement

31. The ICA received 30 merger notifications in 2022, 15 fewer cases than in the preceding year. However, the scope and complexity of the cases continued to demand considerable resources. Of the 30 cases concluded in 2022, 10 went on to phase II investigations. All 10 mergers were cleared with conditions, one of which by the European Commission.

32. Below are examples of merger investigations that reached phase II:

3.4.1. A merger of Norwegian and Icelandic fish farming companies

33. A merger of SalMar and NTS, which operate on the markets for fish farming was notified to the European Commission, the Norwegian Competition Authority and the ICA. The merging parties and their subsidiaries operate mostly in Norway but also in Iceland and sell their products to a large extent to Europe. With the merger Arnarlax and Arctic Fish, which farm Icelandic salmon in the Westfjords, would have been controlled by the same party. Together, the companies control almost half of the production capacity, granted by licenses for salmon farming in Iceland.

34. The Norwegian Competition Authority found no grounds for intervention, but the merger was further investigated by the European Commission and the ICA.

35. It was the conclusion of both the ICA's investigation and Commission's investigation that Icelandic farmed salmon belonged to a specific product market. Had the merger been accepted, it would have led to a significant distortion of competition, with the combined company becoming by far the largest producer of Icelandic salmon into the EEA area. Such a merger could have led to higher prices and fewer options for trade with Icelandic salmon.

36. In order to respond to that competition distortion, SalMar offered to the Commission to submit to conditions, i.e. about selling NTS's operations in Iceland, specifically Arctic Fish. After a market test of such a proposal, it was concluded that they would prevent distortion of competition due to the merger. A decision was taken to that effect in case no. M.10699 – SALMAR / NTS.

37. ICA concluded that the divestment and conditions would fully prevent the competitive distortion that the merger would otherwise have caused in Iceland.

3.4.2. A merger in the market of payment services – conditions stimulate competition

38. The ICA completed its investigation into the acquisition of Rapyd Financial Network (2016) Ltd. ("Rapyd") of all shares in Valitor hf. ("Valitor"). Rapyd's subsidiary is Rapyd Europe hf., which operated in Iceland. The company, as well as Valitor, operates on the market for payment services in Iceland.

39. The merger primarily affected the markets for merchant acquiring in Iceland, i.e., acquiring at point of sale (regardless of settlement currency) and E-commerce merchant acquiring with settlement in ISK. The parties to the merger had a strong position in the market.

40. Following the ICA's preliminary assessment the parties to the merger asked for settlement negotiations, proposing conditions aimed at eliminating the merger's detrimental effects on competition. Subsequently the parties reached a settlement where Rapyd committed to specific measures which included inter alia that Rapyd undertook to sell a diversified set of merchant contracts to a qualified buyer that corresponded to a greater share of the relevant market than the market share of Rapyd Europe hf before the merger. The settlement contained detailed conditions that ensure that the set of merchant contracts was diverse, among other things, in terms of merchants' size and industry classification. At the same time, the conditions were intended to prevent inconvenience to customers (merchants), but their right to choose a provider of merchant acquiring services would not be infringed.

41. The buyer of the merchant contracts was Kvika banki hf. ("Kvika") and the purchase allowed it to enter the market for merchant acquiring. Given the services provided by the merged company to Kvika for a limited period, consisting primarily of technical implementation and settlement with the international card schemes, Rapyd committed to establishing a certain separation within the merged company to prevent it could exploit business-sensitive information about Kvika's operations. Moreover, Rapyd is not allowed repurchase the sold merchant contracts for ten years, nor compete for business with the merchants in the traded merchant contracts for a certain period.

42. To ensure that the settlement had the intended impact, the ICA also required Kvika to agree to certain commitments in a separate settlement with the ICA, where Kvika undertook inter alia to transfer the aforementioned temporary service purchases before certain deadlines from the merged company to another service provider that is not a significant player in the market for merchant acquiring in Iceland.

3.4.3. State Treasury acquisition of Iceland's biggest electronic ID company

43. The ICA investigated the State Treasury's acquisition of all shares of Auðkenni ehf., which is a company that provides electronic identification and trust services in Iceland and had been owned by the main users of the service, i.a. the three big Icelandic commercial banks.

44. The investigation was concluded with a settlement, where the merging parties agreed to comply with conditions aimed at countering possible adverse effects of the merger on competition.

45. With the change of ownership of Auðkenni, the company will no longer be owned by competitors operating in the same market. In the case of a market in development where

the government has a leading role, it is important to ensure that the state's involvement does not limit further development and initiatives of others who want to establish themselves in the relevant field. For that reason it is important that the government regularly re-evaluates its position and role in the market of possible changes. It is therefore expected that the Treasury will regularly examine the reasons for its involvement as the owner and operator of Auðkenni. Equality and objectivity towards customers is also important in this light. In order to ensure the independence of the board and the operation of Auðkenni, the settlement stipulates that the company establishes a competition policy that deals with the conduct of the board and employees of the company and obligations according to the settlement and competition laws.

4. Key examples of advocacy initiatives – competition neutrality

46. The ICA strives 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.

47. 2022 was especially busy when it came to hosting international events. Among those was a conference in June, on the relation between competition, inflation and the Cost-of-Living crisis. Among speakers were Mr. Pierre Régibeau, Chief Competition Economist at EU Directorate-General for Competition (DG COMP), Ana Sofia Rodrigues, Chief Economist at Portuguese Competition Authority, Martin Gaynor, Professor of Economics at Carnegie Mellon University and Ásgeir Jónsson, Governor of the Central Bank of Iceland.

48. In the beginning of June, a meeting of the Chief Economists from ECN was held in Reykjavik.

49. In August, the ICA hosted a conference on the subject of competition's effect on economic growth and terms of employment in August. Fiona Scott Morton, Professor of economics at Yale University, was the main speaker. In conjunction with the seminar the ICA also held a closed seminar of ownership and management ties and its affect to competition.

50. In addition, the ICA hosted an annual workshop among the Nordic competition authorities in September where over 70 guests attended.

51. The ICA also issued several reports and opened information pages on its website, addressing a range of issues.

52. The ICA continued publishing videos 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 second and third videos that were introduced in 2022 address abuse of dominant position and collusion.

53. 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 resistance by a few business organisations, as some of the existing regulatory burden and barriers to entry protect existing undertakings.

5. Changes to competition laws and policies

54. 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).

55. 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 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) has not been implemented in Iceland. This means that injured parties do not enjoy 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.

56. 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.

57. In 2022 the ICA continued to develop its procedures as regards merger investigations.

6. Resources of the Competition Authority

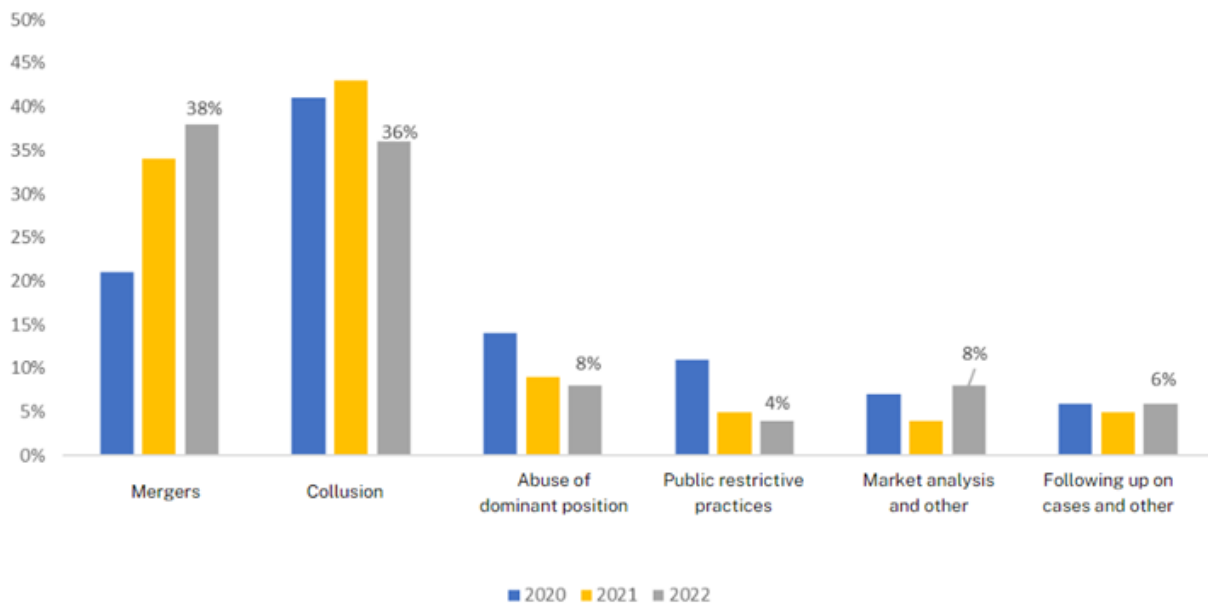
6.1. Budget

58. The budget for 2022 amounted to approx. 3.59 m. EUR (exchange rate as of 1 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 2022, 27 employees were working at the ICA, 24 full-time but 3 part-time. In comparison, when the current authority was established in 2005, the authority was expected to need around 23 employees. Since then, the ICA has gotten more responsibilities, many of its tasks have become more complex and the economy has developed in size and complexity.

59. 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. The ICA has continued to face a significant number and complex scope of merger investigations and in a small economy the ICA is constantly faced with serious cartel cases. Therefore, the ICA has had to apply rigorous prioritisation in response to an increased workload and complex merger investigations.

60. As a result of this and due to limited resources, the authority has not been able to enforce competition law to the necessary extent. This means that many complaints by smaller market participants, entering the market, don't get the attention they deserved. Furthermore, in 2022, the ICA was only able to allocate less around 8% 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 had limited or no resources to carry out some other important tasks, such as the application of the market investigation regime.

Figure 1. 7. Administrative assessment by The Icelandic National Audit Office (INAO)



7. Administrative assessment by The Icelandic National Audit Office (INAO)

61. In the fall of 2022 an extensive administrative assessment of the ICA by The Icelandic National Audit Office (INAO) was concluded. Under a parliament mandate, the INAO looked in detail specifically into the ICA's government structure, approaches and procedures with special emphasis on merger investigations.

62. INAO's assessment didn't identify any major shortcomings in terms of merger procedures. However the assessment proved very useful for the ICA and shed a light on the progress that has been made in competition enforcement in the 30 years since modern competition laws were introduced in Iceland.

63. The assessment also highlighted areas in which the ICA has an opportunity to improve.