

ICELAND*(1999)***Competition policy**

1. In Iceland, competition policies are enforced at three levels: a national level, when the effects of a practice are limited to Iceland; an EFTA level, when effects extend to other EFTA countries; and an EEA level, when practices affect other EEA members.

2. At the domestic level, the Competition and Fair Trade Authority (Samkeppnisstofnun) and the Competition Council (samkeppnisráð) are in charge of surveying the enforcement of competition policy in Iceland. The Authority prepares cases submitted to the Competition Council. The Authority can decide provisionally on individual matter and may take decisions of limited scope. More complex cases are submitted to the Competition Council, formed by five members appointed by the Minister of Commerce. Decisions can be appealed to the Competition Appeals Committee, composed of three members appointed by the Minister and nominated by the Supreme Court of Iceland. Decisions of the Appeals Committee may be referred to the courts. The Icelandic authorities indicated that some 300 cases are reviewed each year by the Competition and Fair Trade Authority, of these, between 50 and 60 are taken to the Competition Council.

3. Following the acceptance of the EEA Agreement, Parliament passed Law 8/1993, or Competition Act, which outlaws practices whose effect or aim is to fix prices, divide markets, or lead to a dominant market position; in this sense, cartels are not outlawed per se, but insofar as they lead to one of these undesirable effects. The Act also prohibits horizontal agreements relating to margins and tendering, as well as the binding of resale prices. The authorities have wide scope to grant exemptions from prohibitions. The Competition Act covers both goods and services, and applies to individuals, private companies and public enterprises. The Act does not apply to export cartels or any other (anti-competitive) practice dealing with exports or which has an effect only outside Iceland. Employment terms of wage earners (including wages), and subsidised services provided by public enterprises are also outside the scope of the Act.

4. The Competition Act also regulates mergers and take-overs and gives the competition authorities the power to prevent firms acquiring or maintaining a dominant position in a market. Prevention can take the form of a ban, an order or a conditional permission. Although there is no explicit notification requirement, planned mergers may be submitted to the Competition and Fair Trade Authority for consideration, or may be examined directly by the Authority, without prior request. A new merger or take-over leading to market dominance within Iceland may be declared void and null even if it has already taken place. A decision in respect of invalidation shall be taken not later than two months after the competition Authorities become aware of the merger or take-over. The Competition Act entitles the Competition and Fair Trade Authority to order financial segregation between operations without having to prove harm to competition. The Act also allows action against foreign firms with regard to measures affecting the Icelandic market. Practices banned by the Competition Act are null and void under civil law. The Competition Council may impose imprisonment penalties (up to four years), administrative fines proportionate to the damage caused and the gains obtained, and daily penalties until a decision is complied with.

5. Enforcement of competition law has intensified in Iceland in recent years. There were 1,371 restrictive business practice investigations by the Competition Authority in 1998, of which 745 were closed without further investigation. A report was written in 84 cases and for 542 cases an investigation was still

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in process at the end of the year. The number of judgements given by the Courts in 1998 regarding competition policy issues was 25, of which three were given by the Supreme Court. Investigations involved both public and private enterprises, a departure from the past when mostly public enterprise practices were analysed. Several investigations dealt with access to essential facilities for the provision of services, exercise of monopoly power, and the possibility by wholesalers of exercising monopsony power. Investigations involved, among other areas, the provision of telecommunication services (20 cases were filed in 1998 against Iceland Telecom), access to credit card services, access to mail delivery services, and several cases involving mergers not exceeding the EFTA/EEA threshold.

6. A bill revising certain articles of the Competition Act is now before the Parliament (Althingi). The goal is to adopt it before end of may. After the revision the Icelandic competition Act will be based on the same principles as the European competition rules.