

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2022 – Iceland

Peter Dalmay (Jonsson & Hall Law Firm) · Tuesday, January 3rd, 2023

The year 2022 was an eventful year both for the Icelandic Competition Authority (“ICA”) and Icelandic Courts regarding competition enforcement and merger control. Iceland is a member of the EEA Agreement and Icelandic competition law therefore mainly mirrors EU competition law. Over the year several high-profile merger cases were amicably resolved following rigorous substantive assessments by the ICA. The authority also incurred some notable defeats in court. Following is a brief overview of the most important developments in Iceland in 2022.

Cartels (Sections 10 and 12 of the Icelandic Competition Act / Article 53 EEA)

The Association of Financial Companies fined

In March 2022, the Association of Financial Companies (“SFF”) made a *settlement* with the ICA admitting a violation of Article 12 of the Icelandic Competition Act. SFF also agreed to pay a fine of 20 million ISK and to take measures to prevent future violations. ICA found that SFF had, acting as an official representative, publicly discussed the pricing policies of its members that were active in the insurance market. This was found to reduce the likelihood of each individual member responding with independent decisions about their pricing or services.

Ruling by the Competition Appeals Committee annulled in Court (Samskip)

In November 2022, the District Court of Reykjavik *annulled* a ruling by the Competition Appeals Committee and found that Samskip, an undertaking active on the transportation market, had a legitimate interest to bring an appeal before the Appeals Committee regarding the annulment of a certain provision in a settlement made between its main competitor, Eimskip, and ICA. Eimskip had admitted unlawful collusion with Samskip and the payment of a record-breaking administrative fine of 1.5 billion ISK. Eimskip had also accepted specific measures to promote competition. This included, among other things, ceasing all business cooperation with Samskip as well as any other undertaking in any kind of transport service if Samskip also cooperated with the relevant undertaking.

According to the District Court, Samskip had a legitimate interest in receiving a substantive ruling

by the Appeals Committee about the legitimacy of this specific measure in the settlement. The judgment has been appealed and will likely be heard by the Court of Appeal in the second half of 2023.

Abuse of dominance (Section 11 of the Icelandic Competition Act / Article 54 EEA)

Ruling by the Competition Appeals Committee annulled in Court (Síminn)

The District Court of Reykjavik also **annulled** another ruling by the Competition Appeals Committee in October 2022. The Appeals Committee had confirmed a decision by the ICA where the authority had found that Síminn, the largest retailer of telecom services in Iceland, had violated a settlement between the undertaking and the ICA from 2015, and was ordered to pay a fine in the amount of 200 million ISK. The theory of harm was that Síminn had bundled together electronic communications services and linear television services, namely the broadcasting of English Premier League football, in a so-called “*Home package*”. Both the ICA and the Appeals Committee had found that Síminn’s pricing of the television service in question, as part of the package, had been anti-competitive and not in accordance with the settlement as it, *inter alia*, limited its competitors’ abilities to attract consumers.

The District Court disagreed and found that the ICA had not proved to the requisite legal standard that Síminn had breached the settlement in question and put an emphasis on the fact that no anti-competitive effect had been shown to have resulted from Síminn’s pricing conduct, neither for competitors nor consumers. This led to the annulment of the Appeals Committee’s ruling in its entirety. The judgment has been appealed by the ICA and will, likely, also be heard in the second half of 2023 by the Court of Appeal.

Merger control

Several high-profile merger cases were resolved in 2022.

FI Travel/Heimsferdir

In April, ICA **approved** the acquisition of FI Travel, one of the leading travelling agencies in Iceland, of all shares in one of its main competitors, Heimsferdir. ICA’s investigation was characterized by uncertainty in the market for tourism following the pandemic caused by COVID-19. The initial investigation indicated that the merger would result in significant harm to the competition. Despite this, the merger was approved with the merged entity committing to various measures to mitigate the harmful effects on competition in the relevant market. These measures included ensuring its independence vis-à-vis the Icelandair group and offering other travelling agencies the opportunity to exploit seat availability on flights operated by the merged entity.

Rapyd/Valitor

In May, the proposed merger of Rapyd and Valitor was **authorized** by the ICA with conditions. The authority had found that the merger would create a decisive market dominance for the merged entity as both Rapyd and Valitor were engaged in payment service activities in Iceland and were therefore close competitors in a market with considerable barriers to entry. Following the initial findings of ICA, the undertakings in question proposed various measures to eliminate possible harmful effects on competition. The negotiations led to a positive outcome whereby Rapyd undertook, among other things, to sell a diverse collection of transaction clearing contracts to a qualified buyer (Kvika bank).

Ardian France/Míla

The ICA also **approved** the acquisition of Ardian France, a private equity investment company, of all shares in Míla, a subsidiary of Síminn, following a rigorous substantive assessment. Míla is Iceland's largest telecommunications infrastructure company and owns a comprehensive network of fixed broadband, mobile access and backhaul covering the entire country. Síminn is the largest retailer of telecom services in Iceland and, thus, the largest buyer in wholesale. The ICA considered the changed ownership of Míla and its detachment from Síminn a positive step for competition in the telecommunication market. However, the authority had several concerns which called for intervention.

Among the ICA's concerns was a long-term wholesale agreement between the parties which included exclusive purchase rights for Míla vis-à-vis Síminn creating, in its opinion, unprecedented barriers to competition. In addition, telecoms systems and wholesale operations were transferred to Míla in relation to the merger, thereby reinforcing and potentially strengthening its position according to the ICA. With a settlement, the merger was authorized with various conditions, including substantial changes to the wholesale agreement between the parties.

Blocked merger upheld in court

In December, the District Court of Reykjavík **upheld** a ruling by the Competition Appeals Committee which confirmed a decision by the ICA to block a three-to-two merger in the market for medical imaging services, which include CT scans, x-rays, MRIs, and ultrasounds. The Court dismissed the undertakings' claim that the healthcare sector is exempt from the country's merger control regime. The Court also found that the geographical market in question was properly defined as the Reykjavik capital area. Moreover, it also agreed with the ICA's definition of the relevant product market, confirming limited substitution between medical imaging services inside and outside hospitals.

Market inquiries and opinions

In January, the ICA published an **opinion** regarding Isavia and the competitive conditions at Keflavik International Airport. Isavia handles all operations and development of the airport and plays a major role in aviation services in Iceland. In the opinion, the ICA puts forward several recommendations to promote competition at Keflavik International Airport. The recommendations

include the setting of clear rules on tenders and concession agreements regarding the allocation of facilities at or near the airport as well as rules regarding Isavia's participation in competitive activities.

In April, the ICA launched *studies* into the markets for fuel, groceries and building supplies to establish whether there was fair competition in each sector following complaints of high price increases across all three industries.

The ICA also opened an *information page* that keeps track of all information, actions and viewpoints related to price increases in Icelandic markets and competitive failures that may become apparent in the prevailing economic conditions. At the same time, the ICA calls for views and suggestions in relation to price increases and possible hindrances to competition.

The ICA also *published* so-called “*competition indicators*” across all Icelandic markets comparing the level of competition in Iceland to nine other EEA countries. Particular attention was paid to the experience of Icelandic consumers and business managers regarding competitive activity in various markets, as well as consolidation in selected ones. The indicators reveal a great extent of market dominance as well as severe barriers to entry and high regulatory burdens in comparison with the other nine countries.

Outlook for 2023

The year 2023 promises to be an exciting year in the field of competition law in Iceland. Litigation is expected before the Court of Appeal in two separate cases which will no doubt have important implications for future investigations and competition law developments. The ICA is also expected to continue with its studies into the markets for fuel, groceries and building supplies and to carry out further studies into market power and consolidation in other selected markets.

** Note that both Jonsson & Hall Law Firm and the contributor have acted as legal advisors and litigated in the cases herein detailed. Any opinions or conclusions provided in this blog entry shall not be ascribed to Jonsson & Hall Law Firm or any clients of the firm.*

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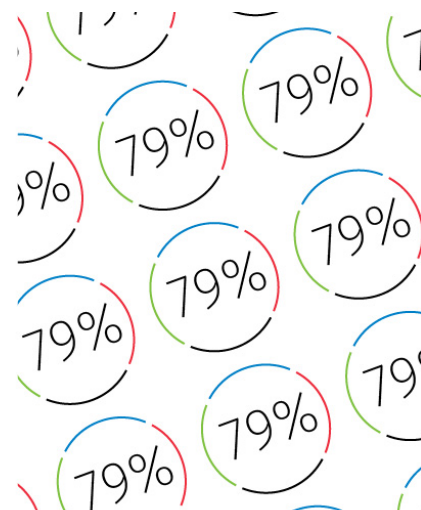
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