

# Kluwer Competition Law Blog

## Main Developments in Competition Law and Policy – Iceland

Peter Dalmay (Jonsson & Hall Law Firm) · Friday, January 19th, 2024

Following an eventful year for the Icelandic Competition Authority (“ICA”) as well as Icelandic Courts regarding competition enforcement and merger control, the year of 2023 started out quietly. However, the latter part of the year provided for some major decisions by both the ICA and the Competition Appeals Committee with competition enforcement matters being kept at the forefront.

For context, Iceland is a member of the EEA Agreement and Icelandic competition law therefore mirrors EU competition law in most ways. Following is a brief overview of the most important developments in Iceland in 2023.

### **Cartels (section 10 and 12 of the Icelandic Competition Act / Article 53 EEA)**

#### Arion Bank settles and agrees to pay a fine[1]

The ICA reached a settlement with Arion Bank, one of the largest banks in Iceland, with the bank admitting to having violated a previous settlement with the ICA. In a previous settlement, Arion Bank had committed to various actions aiming to reduce the costs incurred by customers when switching between financial service providers, including a ban on prepayment fees on loans to small businesses. Following the ICA’s investigation Arion Bank admitted to having violated the settlement by prescribing such fees in several loan agreements and collecting it in one case. Arion Bank also agreed to pay a fine of 80 million ISK.

#### The provisional decision regarding probable violation of Hreyfill in the taxi sector[2]

On 1 April 2023, a new law on taxi driving entered into force in Iceland with the aim of opening the taxi sector for increased competition. In July, the ICA handed down a provisional decision where it found that Hreyfill, an undertaking active in the taxi sector, had probably violated Articles 10 and 12 of the Icelandic Competition Act. The ICA considered it likely that Hreyfill constituted an association of undertakings within the meaning of Article 12. It found that by prohibiting taxi drivers from driving under its auspices to use the services of other taxi undertakings Hreyfill had probably violated Article 10 on unlawful collusion.

The ICA ordered Hreyfill to cease its behaviour as well as to make necessary changes to the

undertakings' internal rules and resolution. Hreyfill appealed the decision to the Competition Appeals Committee. The appeal was dismissed as the provisional decision was not deemed appealable. However, the Committee revoked the ICA's order to the effect that Hreyfill had to make the necessary changes to its internal rules and resolution as the order was found to entail a final decision in the administrative sense.[3]

#### Record-breaking fine on Samskip for unlawful collusion with Eimskip[4]

In August, the ICA found that Samskip had unlawfully colluded with its main competitor, Eimskip, thereby violating both Article 10 of the Icelandic Competition Act and Article 53(1) of the EEA Agreement. It also found that during the ICA's investigation, Samskip had provided the authority with incorrect, misleading and insufficient information and data. A record-breaking fine of 4.2 billion ISK was imposed on Samskip. In 2021, Eimskip had made a settlement with the ICA and paid a fine of 1.5 billion ISK.

According to the ICA's decision, the unlawful conduct mainly took place between 2008 and 2013 and included, *inter alia*, collusion regarding changes in the shipping systems of the two undertakings and the limitation of transport capacity, the avoidance of competing for each other's larger customers, collusion regarding fees and discount terms in transport services, market sharing on certain land transport routes, collusion in maritime transport between Iceland and other countries and in stevedoring and mutual leasing/loaning of containers. The decision is based on the theory that Samskip and Eimskip decided in 2008 to exchange sensitive information and evaluate together the benefits of extending cooperation in key areas of their operations.

Samskip has appealed the decision to the Competition Appeals Committee. A ruling by the Appeals Committee is expected later this year.

#### **Abuse of dominance (section 11 of the Icelandic Competition Act / Article 54 EEA)**

##### The provisional decision regarding probable violation of Hreyfill in the taxi sector[5]

As stated above, the ICA handed down a provisional decision in July regarding the Icelandic taxi sector. In the decision, the ICA also found that Hreyfill's behaviour had probably violated Article 11 of the Icelandic Competition Act. Hreyfill was presumed to be in a dominant position in the market for taxi stations and its behaviour, i.e., prohibiting taxi drivers that made use of its services to drive for other undertakings, was deemed to have likely abused that position. Hreyfill appealed the decision to the Competition Appeals Committee. The appeal was dismissed but the ICA's order to the effect that Hreyfill had to make the necessary changes to its internal rules and resolution was revoked.[6]

##### The provisional decision on the probable abuse of Síminn of its dominant position[7]

In July, the ICA found that Síminn had probably abused its dominant position by refusing Nova the right to distribute "Síminn Sport" which contains, *inter alia*, broadcasts of the English Premier

League in soccer. Since receiving the right to broadcast the content, Síminn had offered the service both directly to its own customers and to its competitors, including Nova. However, the dominant undertaking (Síminn) refused to make a new distribution agreement with Nova. The ICA was of the opinion that Síminn's behaviour constituted a refusal to supply an important and popular product for resale which would have had a harmful effect on competition in the markets for telecommunication and television broadcasting. Moreover, it was also believed that Síminn's decision discriminated between its customers. Therefore, Síminn was ordered to make a new distribution agreement with Nova.

Síminn appealed the decision to the Competition Appeals Committee. The appeal was dismissed as the provisional decision was not deemed appealable according to the Committee.[8]

## **Merger control**

### Kaupfélag Skagfirdinga / Gunnars[9]

In January, the ICA blocked a three-to-two merger in the market for the production of mayonnaise and other mayonnaise-based cold sauces in Iceland. Kaupfélag Skagfirdinga, a conglomerate active in various markets, including meat processing, milk production, and the operation of convenience stores, intended to buy all shares in Gunnar. The ICA opened an in-depth review after the undertakings failed to propose commitments to address its concerns. Following a rigorous substantive assessment, the ICA found that the deal would lead to less competition in a market that is already highly concentrated. The proposed merger was blocked as the merger revealed serious consequences for competition, allowing the buyer, among other things, to wipe out one of its main rivals from the production of mayonnaise.

The ICA specifically noted that the sector was already subject to high entry barriers, making it difficult for potential rivals to properly compete against the merged entity. Moreover, the deal was found to significantly strengthen the buyer's vertical position as a conglomerate, potentially allowing the dominant undertaking to abuse its dominance by excluding competitors from selling mayonnaise and mayonnaise-based sauces to its convenience stores.

### Sýn / Já[10]

In October, the proposed acquisition of Já by Sýn was authorized by the ICA with conditions. The authority had found that the acquisition could strengthen Já's access to the telephone number database and the retail market based on that database. Moreover, the investigation also led to the conclusion that the ownership by Sýn of Já could have adverse competitive effects on Já's competitors as they had also been Sýn's business and service partners. Following the initial findings, the undertakings in question proposed various measures to eliminate possible harmful effects on competition.

## **Market inquiries and opinions**

In April, the ICA opened an information page<sup>[11]</sup> to keep track of all information, actions and viewpoints related to its ongoing examination of management and ownership relationships in the Icelandic fishing industry. The ICA also requested information from undertakings active in the fishing industry. Following the request, the ICA decided to order one undertaking, Brim, to pay daily fines for not providing the requested information. The ICA's decision was repealed<sup>[12]</sup> by the Competition Appeals Committee following an appeal by Brim. Consequently, the ICA decided to halt the ongoing examination with the intention of initiating a new one in the future.

In September, the ICA published an opinion<sup>[13]</sup> regarding the Icelandic transportation market. The opinion, which was directed towards the Icelandic State, municipalities, and port authorities, contains several recommendations on how to improve competition in the transportation sector. The recommendations include the importance of ensuring access to new and smaller competitors to adequate port and stevedoring facilities as well as creating conditions for increased competition in land transport.

## Outlook for 2024

The year of 2024 promises to be another exciting year for competition law developments in Iceland. Litigation is expected before the Competition Appeals Committee in a major cartel case with very important implications for future investigations and the application of section 10 of the Icelandic Competition Act and Article 53 of the EEA Agreement.

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

[1] [https://www.samkeppni.is/media/akvardanir-2023/Akvordun-4\\_2023.pdf](https://www.samkeppni.is/media/akvardanir-2023/Akvordun-4_2023.pdf)

[2] <https://www.samkeppni.is/media/akvardanir-2023/Akvordun-til-bradabirgda-nr.-28-2023-birting.pdf>

[3] <https://www.samkeppni.is/media/urskurdir-2023/Urskurdur-AFNS-6-2023.pdf>

[4] <https://en.samkeppni.is/published-content/news/serious-violation-of-the-icelandic-competition-act-by-samskip>

[5] <https://www.samkeppni.is/media/akvardanir-2023/Akvordun-til-bradabirgda-nr.-28-2023-birting.pdf>

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[6] <https://www.samkeppni.is/media/urskurdir-2023/Urskurdur-AFNS-6-2023.pdf>

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[https://www.samkeppni.is/media/akvardanir-2023/30\\_2023-Akvordun-til-bradabirgda-Siminn-an-t-runadar.pdf](https://www.samkeppni.is/media/akvardanir-2023/30_2023-Akvordun-til-bradabirgda-Siminn-an-t-runadar.pdf)

[8] <https://www.samkeppni.is/media/urskurdir-2023/Urskurdur-AFNS-5-2023.pdf>

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[https://www.samkeppni.is/media/akvardanir-2023/Akvordun-1\\_2023-KS-Gunnars\\_eintak-an-trunadar.pdf](https://www.samkeppni.is/media/akvardanir-2023/Akvordun-1_2023-KS-Gunnars_eintak-an-trunadar.pdf)

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[12] <https://www.samkeppni.is/media/urskurdir-2023/Urskurdur-AFNS-3-2023.pdf>

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[https://www.samkeppni.is/media/alit-2023/Alit-1\\_2023-Samkeppnishindranir-i-flutningum.pdf](https://www.samkeppni.is/media/alit-2023/Alit-1_2023-Samkeppnishindranir-i-flutningum.pdf)

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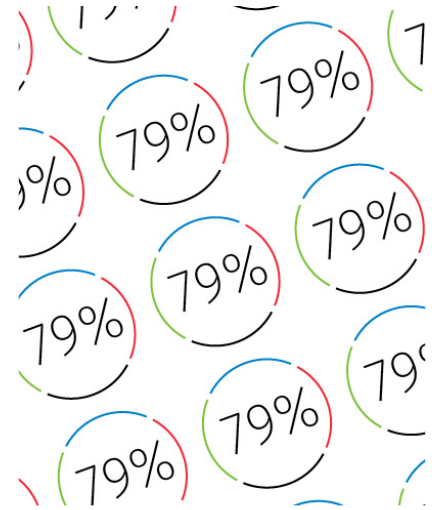
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