



COMPETITION COMMITTEE

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN ICELAND**

2003

The Legal Framework

1. The competition Act of 1993 was modified in the year 2000. Before the law was mainly based on the abuse principle but including provisions prohibiting the most harmful restrictions. Now the overall character of the law has been changed with the result that it fills the category of competition laws that are based on the prohibition principle.

2. Since the year 2000 no substantive changes have been made to the Competition Act. But with privatisation of the telecommunications sector and the forthcoming liberalisation of the energy sector the Icelandic competition authorities have been entrusted special monitoring and enforcement tasks in these sectors. The same applies to the media market where a recently introduced Act assigns the Competition Authority with new tasks regarding ownership structure in broadcasting and printed media.

Competition Policy

3. Since the amendment of the Competition Act in 2000, the Competition authority has dealt with many important cases covering the whole field of competition law. (See attached list). However, with the discovery of some big cartel cases the resources are increasingly becoming tied up in cartel investigations. The biggest such case concerns the oil and petrol companies in Iceland. The investigation is in its final stage and the case appears to be very extensive, covering more or less all the fields of activity of the oil companies for a long period of time. A case of such a magnitude and seriousness, perhaps inevitably, depicts the problems and obstacles that competition authorities face in their work. While emphasising that the case is still pending it is not possible to go into substantive details at this point, but a description of the case at this point is instructive in that it epitomises what competition authorities encounter when enforcing the competition rules in cases of suspected cartels.

4. The three Icelandic oil companies had for many years priced their products identically and when price changes occurred all the companies usually acted within a very short time frame. This, in itself could be an indication of collusion, but this could also be explained by the strong oligopolistic characteristics of the market concerned as described in textbooks. This is a situation every competition authority is familiar with. Hardly without exception, the consumer groups, and other interest groups and politicians claimed, every time the simultaneous or close to simultaneous prices changes occurred, that the Competition authority should do something about it, and the feeling among the general public was the same. When confronted by the Authority the oil companies played innocent and maintained that competition was fierce and they fought over every penny. Though the Authority was not convinced, indications of direct collusion was lacking. But when a credible tip was received it was decided to act. On the spot investigations were carried out at the premises of all three oil companies simultaneously and copies of documents in paper and electronic form were gathered.

5. As expected, the companies, their lawyers and their trade associations reacted strongly. The Competition Authority was accused of having gone far beyond what the judge had allowed. Even the Icelandic Chamber of Commerce requested that the Minister of Commerce should investigate the Authority's handling of the investigation. However, the request was without legal basis and was accordingly rejected. The oil companies also demanded that the Authority immediately return all electronic information that had been copied during the investigation, in particular all e-mails since they, according to the companies, contained sensitive personal information concerning their employees. Two of the companies took the issue to court, while the third company, Esso, decided to cooperate with Authority in investigating the case. Esso's incentive to cooperate was undoubtedly due to the Authority's leniency programme which then had recently been launched.

6. To cut it short, the companies that took the Authority to court lost their case both before the district and superior court which confirmed the Authority's right of access to all the material that had been confiscated, whether it was in paper or electronic form. Since the case is still pending, it is not as said before possible at this stage to go much into the detailed substance of the case but if the information gathered proves to be correct, this case is a textbook example of a hard core cartel in all respects. As mentioned above, the case will on the part of the Authority be finalised in course of next autumn.

7. So far the Authority's lesson from this case is the lengths parties with a vested interest in the outcome of such an investigation, are prepared to go in order to try to thwart the investigation. Suffice it to say that a powerful part of the Icelandic business community, certain influential political elements and even the police because of a jurisdictional dispute, tried to undermine the Authority's investigation and even called for a revision of the Competition Act. This shows, that when the interests are big enough, the competition authorities can not take it for granted that they will be allowed to work unhindered while trying to root out unlawful business activities which have the aim of avoiding competition.

The Icelandic Competition Authority

Attachment to Report

Indication of sector distribution of prominent cases by the Icelandic Competition Authority in the years
2000 -
2004

| Sector | Type of Infringement /task |
|---|--|
| Market for distribution of vegetables and fruits | Cartel |
| Insurance market | Cartel and restrictive practices within industry association |
| Financial services | Mergers of commercial banks and abuses of market dominance |
| Wholesale and retail trade in groceries | Investigation of competition and business practices |
| Telecommunications | Investigation of alleged abuse by the dominant market player, State aid, etc |
| Aviation sector | Restrictive practices of airport authorities and abuse by the dominant airline |
| Oil distribution | Cartel investigation |
| Management and ownership relations in the Icelandic economy | Studies of the Competition Authority carried out in 1994 and again in 2001 |
| Mergers in several sectors, incl.: | <ul style="list-style-type: none"> • Fruit and vegetables distribution • Printing and publishing • Import and distribution of animal feeding stuff • Poultry processing • Manufacture and distribution of building materials • Distribution of pharmaceuticals • Media and entertainment sector |