

COMPETITION ENFORCEMENT AGENCIES

HANDBOOK 2019

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ELIG Gürkaynak Attorneys-at-Law

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Competition Enforcement Agencies Handbook 2019

A Global Competition Review Special Report

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This article was first published in May 2019

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Competition Enforcement Agencies Handbook 2019

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© 2019 Law Business Research Limited
ISBN: 978-1-83862-222-0

Printed and distributed by Encompass Print Solutions
Tel: 0844 248 0112

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Global Competition Review's 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

The information listed is correct as of April 2019.

Global Competition Review

London

April 2019

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Questions and answers

How long is the head of agency's term of office?

The board of directors is appointed for a fixed term of four years by the Minister of Industry and Commerce. The director general is hired by the board, but not on a fixed term.

When is he or she due for reappointment?

The director general is not on a fixed term. The chairman's term in office will end in 2021.

Which posts within the organisation are political appointments?

The board of directors is composed of three non-executive members appointed by the Minister of Industry and Commerce for a term of four years at a time. Three alternates are appointed in the same manner. The board of directors hire the director general, who appoints all other employees of the Icelandic Competition Authority (ICA).

What is the agency's annual budget?

The agency's budget for 2019 is 499.3 million kronur.

How many staff are employed by the agency?

There are currently 23 employees (21 full-time) working at ICA.

To whom does the head of the agency report?

The director general reports to the board of directors.

Do any industry-specific regulators have competition powers? If so, how do these relate to your agency's role?

No.

May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.

No, not against ICA's decisions, but formal opinions made by the ICA do not necessarily bind the hands of the legislative or administrative branches of the government.

Does the law allow non-competition aims to be considered when your agency takes decisions?

No. The purpose of the Competition Act is to further competition and thereby contribute to the efficient use of society's resources.

Which body hears appeals against the agency's decisions? Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?

Decisions of the ICA can be appealed to the Competition Appeals Committee, selected by the Supreme Court upon formal appointment by the Minister of Industry and Commerce. The decisions of the Competition Appeals Committee can be brought before the three-tier court system in Iceland. It has happened that a decision adopted by the ICA has been overturned, or fines have been lowered, by the appropriate body.

Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.

Yes, see case No. 28/2018 for the most recent example. However, in such circumstances the merging parties normally withdraw their merger notification, and therefore ICA does not adopt a decision as such in those cases, but it has happened that ICA has blocked a proposed merger by an adopted decision.

Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.

Yes, on numerous occasions (for example, case No. 1/2019).

Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.

Yes, on numerous occasions (for example, case No. 1/2019).

Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.

No.

Do you operate an immunity and leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?

Yes, the ICA operates a leniency programme, which can result in lowered or no fines for the undertakings involved if they assist the ICA during the investigation

or report cartel activity, provided certain conditions for leniency are met. The ICA also has the power to not notify the police or prosecutor regarding the involvement of individuals if they have taken the initiative to come forward and inform ICA of an infringement. The police or prosecutor cannot pursue that person *ex officio*.

Potential applicants to the leniency programme should contact the director general.

If a corporate applicant meets the conditions for a lowered fine as set out in ICA's rules (available online), the following discounts in financial penalties are available:

- 30 to 50 per cent reduction for the first undertaking that meets the conditions;
- 20 to 30 per cent for the second undertaking that meets the conditions; and
- up to 20 per cent for other subsequent undertakings meeting the conditions.

It is worth noting that the leniency programme is currently under review, and a reformed leniency programme will hopefully be introduced later in 2019.

Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?

According to article 41a of the Competition Act, any employee or director of an undertaking or association of undertakings who carries out, incites to or gives instructions on collusion that violates articles 10 or 12 and relates to the issues specified in paragraphs 2 and 3, shall be subject to fines or imprisonment of up to six years. This applies to the following violations of articles 10 or 12 by undertakings or associations of undertakings operating at the same sales stage:

- collusion on prices, discounts, margins or other trading conditions;
- collusion on restriction or control of supply, production, markets or sales;
- collusion on sharing out sources of supply or markets (for example, by region or customer);
- collusion on the preparation of tenders;
- collusion on avoiding business with specific undertakings or consumers; and
- provision of information on the matters above.

The ICA does not conduct a criminal investigations and prosecutions. This is done by the police or prosecutor in Iceland, only following a complaint submitted by the

ICA, in accordance with article 42 of the Competition Act. The ICA is permitted to supply the police and prosecuting authority any information and documents obtained by the ICA and relating to the violations falling within the scope of the above. The ICA is also permitted to participate in police actions relating to the investigation of violations falling within the scope of the above. The police and prosecuting authorities are permitted to supply the ICA with information and documents obtained by them and relating to the violations falling within the scope of the above. The police are also permitted to participate in the actions of the ICA relating to the investigation of violations falling within the scope of the above.

Are there any plans to reform the competition law?

According to the government legislative plan, there are plans to reform the Competition Act later in 2019.

When did the last review of the law occur?

The Competition Act was amended in the spring 2011.

Do you have a separate economics team? If so, please give details.

Yes, ICA has a separate economics team, led by the chief economist. ICA does also consult with external economists from time to time.

Has the authority conducted a dawn raid?

Yes, on numerous occasions.

Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.

Not applicable.

What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?

Mergers must be notified to the ICA if they involve undertakings whose combined turnover amounts to 2 billion kronur or more, and at least two of the undertakings involved in the merger have a minimum annual turnover of 200 million kronur each. The turnover shall be determined based on the preceding fiscal year or, as applicable, the 12 months preceding the merger, and include the turnover of the parent undertakings involved in the merger, undertakings within the same group of undertakings, and the turnover of undertakings directly controlled by parties to the merger.

Are there any restrictions on investments that involve less than a majority stake in the business?

There are no specific restrictions, other than those deriving from the general merger rules and the prohibition of collusion.

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ISBN 978-1-83862-222-0