

4 March 2011

# Screening report

# Iceland

## Chapter 8 – Competition Policy

**Date of screening meetings:**

Bilateral meeting only: 6 December 2010

## I. CHAPTER CONTENT

The competition *acquis* covers both rules applying to anti-trust and State aid control policies. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant position), to scrutinise mergers between undertakings, and to prevent governments from granting State aid which distorts competition in the internal market. Articles 101 and 102 TFEU are directly applicable in the whole of the Union and can be enforced by the Commission and by Member States. The competition *acquis* is based on articles 101-105 (Rules applying to undertakings), article 106 (Public undertakings and undertakings with special or exclusive rights) and articles 107-109 (Rules applicable to State aid) TFEU. The legal basis for merger control is the Council Regulation (EC) N° 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>1</sup>. The Commission has adopted secondary legislation and notices, guidelines or communications which explain how these provisions are applied.

The *acquis* under this chapter is covered in the EEA Agreement<sup>2</sup> presently in force, under the provisions of Part IV of the agreement. Since 1 May 2004, all National competition authorities and national courts are obliged to apply articles 101 and 102 TFEU (formerly articles 81 and 82) if the criteria for applicability are met in order to ensure that competition is not distorted or restricted.

In the field of State aid, the decision as to whether or not aid granted by Member States is compatible with the Common Market can be taken only by a supranational and independent authority. Exclusive authority for scrutinising the State aid measures was conferred on the European Commission by the Member States.

The term liberalisation refers to Title VII, Chapter 1 of the TFEU which states that the activities of the European Union shall include a system ensuring that competition in the internal market is not distorted. For this purpose, there is a specific surveillance system in the case of public undertakings and undertakings to which Member States grant special or exclusive rights. With respect to the liberalisation of specific sectors, reference is made to the relevant sector specific negotiating chapters.

## II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Iceland and the discussion at the screening meeting.

Iceland indicated that it can accept the *acquis* regarding competition policy. Iceland indicated that it already implements the *acquis* and does not expect any difficulties in continuing to implement the *acquis* up to the date of accession. However, Iceland further indicated that the state

---

<sup>1</sup> Official Journal L 24, 29.01.2004, pp. 1-22

<sup>2</sup> Official Journal L 1, 3.01.1994, p.3

monopolies for alcohol and tobacco as well as the status of the Housing Financing Fund<sup>3</sup> will be addressed in its Negotiating Position.

## **II.a. Anti-trust including mergers<sup>4</sup>**

The Competition Act of 2005 (Competition Law N° 44/2005) contains the basic rules on restrictive agreements, dominant position and merger control. Iceland stated that its anti-trust legislation is in line with the *acquis*.

Article 10 of the Act contains a general prohibition of restrictive agreements in accordance with article 101 TFEU and article 53 EEA. Article 15(1) of the Competition Act lays down rules on exemptions from the prohibition of restrictive agreements in accordance with article 101(3) TFEU. Article 11 of the Competition Act contains a general prohibition of abuse of dominance in accordance with article 102 TFEU and article 54 EEA. Chapter V of the Competition Act regulates merger control in Iceland.

In addition, the Competition Authority, which is the authority responsible for anti-trust in Iceland, is also empowered under the Competition Act to apply articles 53 and 54 of the EEA Agreement. Iceland stated that its Competition Authority follows the secondary legislation adopted by the EFTA Surveillance Authority and is in line with the position of the Commission on the application of the equivalent provisions of articles 101 and 102 TFEU.

In addition, Iceland explained that it implements EU secondary legislation relating to anti-trust, including mergers. This has been done by the adoption of an Icelandic regulation stating that the EU act in question, the translation of which is annexed to the implementing act, shall apply in Iceland.

The procedural rules on the application of the competition rules are laid down in the Competition Act of 2005, as well as in the Rules of procedure of the Competition Authority N° 880/2005 and the Rules on the notification of mergers N° 854/2008. Iceland indicated that these rules are in line with the EU procedural rules.

The Competition Authority is closely modelled on the competition *acquis*. It is an independent agency with a separate Board of Directors. The Authority reports to the Minister of Economic Affairs. The Board of Directors oversees the work of the agency, establishes priorities and approves substantive decisions. The Board of Directors appoints the Director General who is responsible for the day to day operations. The Authority employs 24 officials.

---

<sup>3</sup> The Housing Financing Fund is an independent government institution granting mortgage loans to individuals, municipalities, companies and organizations to finance housing purchase and construction work. The fund is financially independent and funds its lending and operations by its own income. The purpose of the fund is to ensure housing security and equality for all Icelanders through lending and organisation of housing affairs and special investments in order to increase people's opportunities of obtaining and leasing housing on controllable terms.

<sup>4</sup> During the screening session, Iceland presented the rules applicable in Iceland in the anti-trust and mergers' field. The following sections were covered: anti-trust rules, procedural rules, substantive rules (notices of a general nature, horizontal co-operation agreements, vertical agreements, transfer of technology agreements, sector specific rules, merger control). Iceland indicated all the equivalent rules in the anti-trust and merger *acquis*.

Since its establishment on 1 July 2005 until the date of the screening, it has published 286 decisions, on average 55 decisions per year. Iceland stated that in the context of the current financial and economic crisis there has been a vigorous enforcement of competition law. A number of cases have been recorded with 10 inspections, 16 companies fined for a total of EUR 9.8 million, 4 mergers not being authorized or prohibited and conditions imposed on 15 mergers.

## **II.b. State aid<sup>5</sup>**

### *Substantial provisions*

Iceland indicated that the primary EEA State aid provisions are in line with those of the TFEU. Thus article 61 of the EEA Agreement and article 1 in Part I of Protocol 3 to the Surveillance and Court Agreement (SCA) are almost entirely identical in substance to articles 107 and 108 of the TFEU. The only difference is article 107 (3) d) TFEU concerning the compatibility of State aid to promote culture and heritage conservation, which is not included in the EEA. Iceland stated that article 7 of the EEA Agreement states that Acts referred to or contained in the Annexes to the Agreement shall be binding upon the EFTA Contracting Parties to the Agreement and shall be part of their internal legal order. Annex XV to the Agreement contains the relevant EU legislation applicable in the field of State aid.

The EFTA Surveillance Authority enforces the general prohibition on State aid which distorts or threatens to distort competition that applies in Iceland. It is also the Authority's role to decide how the exceptions to the prohibition are to be applied. A proposal to grant State aid must be notified to the Authority prior to implementation. The Authority must then assess whether such a plan constitutes State aid that could be prohibited and, if it does, examine whether it is eligible for exemption.

The Authority is competent to enforce the rules, including powers to require EFTA States to provide the relevant information, to carry out on-site inspections and to order repayment of any aid paid in breach of the EEA Agreement, together with interest. The Authority may also take action before the EFTA Court against EFTA States for breaches of the State aid rules. These procedural rules are laid down in Part II of Protocol 3 to the Surveillance and Court Agreement, which incorporates the Council Regulation (EC) N° 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108 TFEU).

With regard to substantive rules, the EFTA Surveillance Authority has adopted various guidelines which explain how the Authority will interpret the State aid rules. These guidelines reflect the secondary legislation adopted by the European Union for the application of article 107 TFEU.

---

<sup>5</sup> During the screening session, Iceland presented the rules applicable in Iceland in the State aid field and indicated that there are the same as in the EU. The following sections were covered: substantial provisions, general procedural rules, financial transfers and transactions, rules on the assessment of State aid with horizontal objectives, rules on the assessment for approval on regional aid, rescue and restructuring aid, rules on the assessment of services of general economic interest, rules on the assessment for approval of aid to particular sectors. State aids in the fields of agriculture and fisheries will be addressed in their respective chapters (i.e. chapter 11 Agriculture and chapter 13 Fisheries).

Iceland informed that it has notified, or is in the process of notifying, the EFTA Surveillance Authority (ESA) of several aid measures taken in response of the financial crisis. These relate to the three main commercial banks in Iceland (Arion, Islandsbanki and NBI), as well as other measures concerning the financial market and the real economy, most notably Byr ltd., SpKef Savings Bank, Smaller savings banks scheme, Verne data center, Helguvík aluminium company, Housing Financial Fund and the establishment of an Asset management company. Other measures that have been subject to State aid assessment by ESA in relation to the crisis include Sjóvá insurance company and Investment funds.

## **II.c. Liberalisation**

### *Public undertakings and undertakings with special or exclusive rights*

The legal framework is provided by the Competition Act and competition rules of the EEA Agreement. In particular, Article 59 of the EEA Agreement corresponds to Article 106 TFEU, and enables the EFTA Surveillance Authority to apply competition rules to undertakings with special or exclusive rights under the same conditions. Iceland stated that its legislation in this area is in line with the *acquis*.

### *State monopolies of a commercial character*

Iceland indicated that there are two monopolies of a commercial character on alcohol and tobacco. Iceland reserves its position.

## **III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY**

Overall, Iceland has reached a very high level of alignment with the EU *acquis* in the area of competition due to its EEA membership. New EU rules, that are relevant in this area, are regularly incorporated into the EEA Agreement and thus applied throughout the EEA. Iceland has also demonstrated that it has the necessary administrative capacity to enforce competition rules effectively. Given the recent difficulties in the financial sector, the Commission continues to monitor Iceland's enforcement record in relation to the State aid measures taken in response to the financial crisis.

### **III.a. Anti-trust, including mergers**

Iceland is largely in line with the *acquis*. Iceland has the necessary administrative capacity both in terms of staff and resources as well as advocacy and independence. The enforcement record is overall satisfactory in this area. The Commission will continue to monitor it closely.

### **III.b. State aid**

The Commission considers that, due to its EEA membership and the control of State aid exercised by the EFTA Surveillance Authority, Iceland is largely aligned with the *acquis* in this area; it has the necessary administrative capacity and its enforcement record is

satisfactory. The Commission will closely monitor developments in this area, particularly regarding aid measures taken in response to the financial crisis.

### **III.c. Liberalisation**

#### *Public undertakings and undertakings with special or exclusive rights*

The Icelandic system currently is largely in line with the EU *acquis*.

#### *State monopolies of a commercial character*

The Commission takes note that Iceland reserves its position on monopolies for alcohol and tobacco and expects Iceland to keep the Commission informed of any new developments in this area.

The Commission will come back to this on the basis of the information received from Iceland.