

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Icelandic Competition Authority, Iceland

The following template is submitted by **the Icelandic Competition Authority, Iceland** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Icelandic Competition Authority (*Samkeppniseftirlitið*) (here after “ICA”) is an independent agency with an independent Board of Directors. ICA reports to the Minister of Tourism, Industry and Innovation.

The Board of Directors of ICA is composed of three members appointed by the Minister for a term of four years at a time. Three alternates are appointed in the same manner.

The Director of ICA is appointed by the Board of Directors. The Director is in charge of the day-to-day activities and running of the Authority. The Director hires the employees of the Authority.

ICA was founded on 1 July 2005 when the [Competition Act No. 44/2005](#) entered into force. By the same Act, the former ICA (*Samkeppnisstofnun*) and Competition Council (*Samkeppnisráð*) were discontinued. Prior to entry into force of the Competition Act, the competition authorities in Iceland were also responsible for the supervision of unfair business practices and market transparency. These tasks were assigned to the [Consumer Agency](#) pursuant to [Act No. 62/2005](#).

The role of ICA is, *i.a.*, to enforce the requirements and prohibitions of the Competition Act. The objective of the Competition Act is to promote effective competition in economic activities and thereby increase the efficiency of the productive factors of society. ICA is responsible for achieving the objectives of the Competition Act by opposing unreasonable barriers and restrictions on freedom in economic activities, by opposing harmful oligopolies and restriction of competition and by facilitating the entry of new competitors to the market.

ICA also is obliged to enforce the competition rules of the EEA-Agreement (European Economic Area Agreement), mainly Articles 53 and 54, as applicable.

The supervisory work of ICA extends to all forms of business activities, regardless of whether such activities are conducted by individuals, companies, public entities or other parties.

More information about ICA can be found on ICA [website](#).

For the purposes of this Template, ICA adopts the definitions in section A of the Annex of the ICN CAP.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

Please note that currently the Competition Act is under review in Iceland. This template will be updated shortly after any amendments are made to either the Act or other rules that are relevant for the principles below.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

Under the Competition Act, the nationality residence or origin of a Person being investigated is irrelevant to the application of the laws, procedural rules and policies. ICA conducts its investigations and enforcement activities accordingly.

Iceland is also party to the Hague Service Convention.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

Iceland has a civil law legal system and thus Icelandic law is characterized by written law.

Legal Acts are published in section A of the [Legal Gazette](#) (*Stjórnartíðindi*). The same applies to regulatory law such as regulations and directives. They are published in section B of the Legal Gazette, and also available online on www.reglugerd.is, only in Icelandic. Official and unofficial translations of certain Acts can be found on the web-page of the relevant ministries, accessible through the portal www.government.is.

The above applies to the publication of the [Competition Act](#), [Rules of Procedure of the Competition Authority](#), [Rules on notification and procedure pertaining to mergers](#), and other legal acts that apply to Investigations and Enforcement Proceedings, such as the

[Administrative Procedures Act No. 37/1993](#) and the [Government Employees Act No. 70/1996](#).

Rules on [leniency](#) (only available in Icelandic), are currently under review, and new rules will be adopted in the near future. English summary of the current rules is available [here](#).

The abovementioned legal acts, and other general guidance concerning proceedings and other matters, can be found on [ICA's website in English](#).

All decisions and opinions are published in Icelandic on the [Icelandic part](#) of ICA's website. The same applies to rulings of the Appeals Committee. Normally a short summary of the case in English is also attached.

Each year, ICA submits an Annual Report on Competition Policy Developments in Iceland to the Competition Committee of the OECD. The Annual Reports are available in English [here](#), along with other Reports.

ICA's statements to the media, or clarifications are normally translated to English and available on [ICA's website](#).

ICA will update the English part of ICA's website, and publish any new piece of legislation, regulations or rules that apply to Investigations and Enforcement Proceedings on the [designated "Legislation" webpage](#).

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

- (i) According to Article 11 of the [Rules of Procedure](#), and Article 14 of the [Administrative Procedures Act](#), Persons affected by the proceedings shall be notified of the substance of the case as soon as possible, unless it is clear that this is already known to him, or unless there is a risk that the investigation may be compromised, e.g. when the exercise of authority pursuant to Article 20 (power to conduct inspections / dawn raids) of the [Competition Act](#) is an option. In such a case, ICA applies to the district court for a search warrant, and [the Code of Criminal Procedures](#) shall apply to the procedure of such actions.
- (ii) Persons shall be given an opportunity to submit comments and explanations in an Enforcement Proceedings and Investigation according to Articles 11 and 13 of the

Rules on Procedure. The Persons shall in such cases be granted a brief period of time to submit comments and provide information. This is also provided for in Article 9 of Administrative Procedure Act, which concerns the prompt handling of cases, and Article 10, containing the obligation for an authority to ensure that a case is sufficiently investigated before a decision thereon is reached.

- (iii) Article 19 of the Competition Act provides ICA with the power to request information, in relation to Investigation or Enforcement Proceedings. In that regard, ICA shall provide Persons with a reasonable time limit to respond to the request for information or certain documents. See also Article 9 and 10 of the Administrative Procedure Act and Article 13 of the Rules on Procedures above in (ii).

In merger control proceedings, the parties are sometimes in contact with ICA before a certain merger has been notified. Proceedings concerning merger cases, and the time limits are found in Article 17 of the Competition Act and separate set of [Rules on notification and procedure pertaining to mergers](#).

As mentioned before, the Competition Act is currently under review, as well as proceedings and the time limits in merger control. This section will be updated when that review is completed.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

The [Rules of Procedure](#) and the [Administrative Procedures Act](#) contains provisions that relate to the resolution of enforcement matters and that such proceedings are to be conducted as efficiently as possible. At the same time, ICA shall ensure that each case is sufficiently investigated before a decision is adopted, (see the interplay between Articles 9 and 10 of the Administrative Procedures Act, also mentioned in section d above). In order for ICA to do so, it has the power (in Article 8(3) of the Competition Act) to priorities cases. This is also specifically mentioned in Article 18 of the Rules of Procedure. Persons to a case which is delayed as a result shall be notified of the foreseeable delay and informed of the time at which a decision may be expected, according to Article 18 of the Rules of Procedure.

Regarding merger control and merger proceedings, [the Competition Act](#) contains strict time limits. Article 17d of the Competition Act is as follows: *“The Competition Authority shall, within 25 working days, notify a party that has submitted a notification of a merger if it sees reason for further investigation of the competitive impact of the merger. This time limit shall begin on the first working day following the receipt by the Competition Authority of a notification meeting the conditions of paragraph 6 of Article 17(a) and rules established pursuant to the provision. If no notification pursuant to the first sentence is received from the Competition Authority within the established period, the Competition Authority cannot annul the merger. A decision on the annulment of a merger shall be made no later than 70 working days from the time that a notification pursuant to the first sentence has been sent to the party notifying the merger. If it is necessary to obtain further information, the Competition Authority may extend this time limit by up to 20 working days.”*

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

Civil servants are bound by an obligation of confidentiality, according to Article 18 of [the Government Employees Act](#), which cites Section X of the Administrative Procedures Act. According to Section X, Article 42 of the Administrative Procedures Act, a civil servant is bound by an obligation of confidentiality regarding information that are marked as confidential according to law or other rules, or where it is otherwise necessary to keep the information confidential in order to protect significant public or private interests.

An obligation of confidentiality is also specifically stipulated in Article 34 of the Competition Act.

According to Article 15 of the Administrative Procedures Act, a party to a case shall have the right to acquaint himself with the documentation and other material bearing on the case. This right of access to material does not apply to, *i.a.*, working documents prepared for its own use by an authority and correspondence with experts for use in legal proceedings, according to Article 16 of the Administrative Procedures Act. Furthermore, according to Article 17, a public authority can, under certain circumstances, restrict the access of a party to a case to material if the use of the material is deemed to be outweighed by greater interests, public or private.

These rights of Persons' access to documents are also stipulated in Article 15 of the Rules of Procedure. According to Article 15, parties to proceedings before ICA are entitled to acquaint themselves with documents relating to the proceedings, subject to the provisions of Article 16. According to Article 16 of the Rules of Procedure, ICA may restrict access by the parties to the documents of a case if their interests in utilizing knowledge from the documents are perceived as secondary to greater private or public interests, particularly in the case of sensitive business information which should reasonably be kept confidential.

If a Person submits documents to ICA, which they deem confidential, they shall submit a request for the documents or information to be kept in confidence. ICA shall also be supplied with a copy of the documents in question where the confidential information has been deleted.

According to Article 36 of the Competition Act, ICA may publish information on agreements, terms and actions which restrict or are intended to restrict competition. However, account shall be taken of the legitimate interests of undertakings in keeping their commercial and technological information secret.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Section II of the Administrative Procedures Act covers grounds for disqualification. According to Article 3, a civil servant or board member shall be disqualified from sitting in a case if he is either a party to a case or a representative of such a party; if he is, or has been, a party's spouse, a relative in the descending or ascending line or if he is related to a spokesman of a party in the same way; if the case concerns himself or if he has previously taken part in dealing with the case at a lower administrative level, or if other reasons are likely to cast a reasonable doubt upon his impartiality.

According to Article 4 of the Administrative Procedures Act, a person who has been disqualified from sitting in a case may not take part in its preparation or the subsequent conduct and conclusion thereof. A civil servant who is aware of facts which might reflect upon his own eligibility to sit shall bring this knowledge without delay to the attention of the head of the administrative body in question, according to Article 5 of the same act.

Furthermore, according to Article 20 of the Government Employees Act, an employee must inform of his intentions to the authority that provided him with his job if he intends, alongside his job, to take up a paid job in the service of another party, join the management of an enterprise or establish an enterprise.

In addition, ICA has internal codes of conduct which, *i.a.*, concern conflicts of interests. According to the codes of conduct, all employees and board members of ICA must fill out a form stipulating their ownership over financial instruments, if they are affiliated with any Persons who might be a party to a case at ICA, and other conflicts of interests. The form is filled out when the employee begins a career at ICA and is updated every year.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the*

requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.

- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

Section IV of the Administrative Procedures Act concerns a right to be heard. According to Article 13, a Person shall be given the opportunity to express his views on the subject-matter of the case before a public authority reaches a decision thereon, unless his reasoned position on the matter already appears in the documentation on the case, or it is clearly unnecessary for him to do so.

As was mentioned in section d above, Persons shall be given an opportunity to submit comments and explanations in an Enforcement Proceedings and Investigation according to Articles 11 and 13 of the Rules on Procedure. See also in section d regarding the interplay between Articles 9 and 10 of the Administrative Procedures Act, which stipulate that a case must be sufficiently researched while also being decided as quickly as possible.

Furthermore, according to Article 17 of the Rules of Procedure, if ICA is of the opinion that an onerous decision, including any decision on administrative fines, may be taken in cases falling within the scope of Articles 10, 11 and 12 or Paragraph 1 of Article 17 of the Competition Act and, as applicable, Articles 53 or 54 of the EEA Agreement, and conducted wholly on the initiative of ICA, a report shall be compiled known as a statement of objection.

The statement of objection shall describe the principal facts of the case and give an account of the principal reasoning that certain circumstances or conduct may be in violation of the Competition Act, or decisions taken on the basis of the Competition Act, or may have a detrimental impact on competition.

The statement of objection is prepared in order to promote the full disclosure of the facts of a case before a decision is made and in order to facilitate the exercise by a Person of its right of protest. Persons shall be granted a reasonable time to comment in writing and submit further explanations and documents. The deadline for the submission of comments should not be less than two weeks and no longer than two months, except as justified by special circumstances.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or*

rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

ICA does not deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.

In Article 12 of the Rules of Procedures, amended by rules no. 924/2007, it is stipulated that if a Person obtains a lawyer, a power of attorney shall be presented to ICA. While ICA has authority to communicate directly with the Person despite the Power of Attorney, the attorney shall receive a copy of the letter. However, communications are in principle with the attorney of the Person.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

All of ICA's decisions and settlements are in writing and set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions.

According to Article 20 of the Administrative Procedures Act, a party to a case shall be notified once an authority has reached a decision. A written notification of a decision, unaccompanied by a statement of reasons, shall give guidance as to the Person's right to be given reasons for the decision, a right of complaint, and a deadline for taking the decision to court if such deadline is provided for by law.

According to Article 11 of the Rules of Procedure, as amended by rules no. 924/2007, proceedings before ICA shall be conducted in writing. According to Article 20 of the Rules of Procedure, ICA shall return a decision in the case following the gathering of evidence and due process. Decisions of the Competition Authority shall be signed by the Director General. Decisions pursuant to Article 20 of the Rules of Procedures shall be published on ICA's website after they have been sent to the parties, according to Article 21 of the Rules of Procedure.

According to Article 22 of the Rules of Procedure, ICA is permitted at all stages of a case to conclude it by means of a settlement. A settlement may involve the admission by a party of a violation of the Competition Act and consent, as applicable, to pay an administrative fine. The settlement may also involve a Person consenting to change a specified conduct in the market or to observe instructions or conditions intended to protect or promote competition. A settlement is binding for the Person once it has been accepted and its substance confirmed by the Person's signature.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

Article 26 of the Administrative Procedures Act stipulates that a Person shall have the right to complain to a higher authority about an administrative decision in order to have it revoked or varied, unless otherwise provided for by law or former practice.

According to Article 9 of the Competition Act, the decisions of ICA may be appealed to a separate committee, the Competition Appeals Committee. This also applies to a decision by ICA to impose fines, in accordance with Article 37 of the Competition Act, and a decision to impose periodic penalty payments, in accordance with Article 39.

The decision of ICA cannot be referred to the courts until the conclusion of the Competition Appeals Committee has been rendered, in accordance with Article 40 of the Competition Act.

Iceland has had a three tier judicial system since 1 January 2018, where a court of second instance was introduced. After the conclusion of the Competition Appeals Committee, the decision can be referred to the District Court, and the conclusions of the District Court can be appealed to the Court of Appeal, provided specific conditions for appeal are satisfied. In special cases, and after receiving the permission of the Supreme Court, it will be possible to refer the conclusion of the Court of Appeal to the Supreme Court.