Brief account of the Central Bank Affair

by Arna McClure, attorney at law

(At the bottom of the text there are links to all the news on samherji.is about the case.)

- **Accumulated facts show that the employees of the Central Bank of Iceland (CB) never had any reasonable grounds for suspicion of any violations committed by Samherji and that they were fully cognisant that calculations and reports in their possession were false.**
- **The bank's dawn raid and investigation amounted to a fishing expedition, and when no violations were found the raid was justified after the fact by citing its value as a deterrent.**
- **Previously undisclosed e-mail messages show direct participation on the part of the Icelandic National Broadcasting Service (RUV) and that accusations of non-arm's length pricing were made in bad faith. Information on this collusion was concealed from Samherji and the courts of law.**
- **Objections from the Director of Public Prosecutions were repeatedly ignored and shelved, both in 2014 and in 2019.**
- **Minutes of meetings of the CB's Supervisory Board show that the excuses made by management of the Central Bank in the media were false.**

For almost nine years, a major part of my work has consisted in defending Samherji's interests against accusations made by representatives of the Central Bank concerning violations of the Foreign Exchange Act. Now that the dust has more or less settled and the overall picture has become clear, it defies belief that there are still leading figures who maintain that Samherji "got away with" the purported "violations" because of a legal blunder. Even

more incredible is the fact that to this day we are still receiving new information that sheds an ever-brighter light on the Central Bank's actions. This new information does not show the Central Bank in a better light; on the contrary, it shows that Samherji did not "get away" with anything. Since there are still some politicians and other personages that have – in their ignorance of the facts, or out of perverseness – continued to repeat misstatements on this whole affair I sometimes get the impression that open season has been declared on Samherji in some quarters. I feel, therefore, that it would be worth my time to lay bare the facts of the case, the accusations and the information we have accumulated, information that confirms there is more to the excuses and explanations given the Central Bank's management than meets the eye.

1. The reasons behind the Central Bank's investigation

It should be recalled that spokesmen of the Central Bank offered three reasons for conducting a search of Samherji's premises and investigating its business activities:

1. Sales of redfish (red ocean perch) at prices below the market price (non-arm's length prices)
2. Violation of the requirement to repatriate foreign currency
3. Effective management in Iceland of foreign subsidiaries

The Central Bank has been criticised for undertaking a dawn raid instead of taking less disruptive measures. No rational explanations have been obtained as to why such drastic action was taken, and it is quite obvious that the explanations given by the bank's management to its Supervisory Board do not hold water.

At meeting 1071 of the Central Bank's Supervisory Board on 24 April 2012, certain unnamed employees of the Central Bank asserted to the Supervisory Board that "*There had been regular discussions with Samherji's employees and information was frequently misleading.*" An unnamed employee of the Central Bank responded at meeting 1117 of the bank´s Supervisory Board on 2 October 2015 that prior to the raid there had been communications with Samherji concerning repatriation requirements and transfer pricing. "*The nature of the suspected violations led to the conclusion that a house search was necessary .*" This is false. The e-mail communications between the employees of the Central Bank and an employee of Samherji prior to the raid reveal an entirely different picture. In an e-mail message dated 3 December

2010 an employee of the bank says: "*What you sent me was very well prepared, invoices that were consistent with a certain payment into a foreign currency account.*" Furthermore, no employees of the Central Bank ever contacted Samherji regarding transfer pricing.

2. The search warrant

Looking at the evidence on which the Central Bank based its request for a search and seizure warrant in the spring of 2012 lays bare the weak foundation on which the argument in support of the request rests. The bank's request for the search warrant listed twenty-six documents. Twenty-three of those documents were printouts from Creditinfo, one was a statement from the Central Bank showing the average exchange rates of several currencies over a three-month period in 2011, one was a letter from Samherji hf. to the Freshfish Price Directorate, and the most substantial document consisted of information from export declarations for whole fresh redfish over a three-month period in 2011.

Printouts from Creditinfo do not say anything about repatriation of foreign currency, fish prices or the management of foreign companies. Neither do average currency exchange rates. The information in the export declarations enabled Samherji to demonstrate that the calculations of the Central Bank were wrong. These documents have no bearing on one third of the companies concerned in the request for a search and seizure warrant. The letter from Samherji to the Freshfish Price Directorate had the effect that the investigation by that authority was discontinued; it does not constitute proof of non-arm's length pricing, but instead shows that the pricing was in fact in proper order. In any case, it is clear that none of these documents is proof of anything regarding the foreign companies that the bank's request for a warrant related to; those companies constituted one third of the companies specified in the search and seizure warrant. This will be discussed in further detail in the Section on the foreign companies.

It is not only the lack of evidence that is striking, but also the misleading presentation of the requests and reasoning of the Central Bank in the district court.

2.1. Falsely implied that billions were at stake

It was noted in the bank's request to the district court judge for a search and seizure warrant that from October 2008 to the end of March 2012 Samherji and its, subsidiary Ice Fresh Seafood, had exported goods for 72 billion ISK. According to the bank, this represented 3.8% of all Icelandic exports over the period, or 10.6% of all the domestic exports of fish. It was then noted that over a quarter of all the sales of these two companies were to related parties overseas.

Thereby the Central Bank created the illusion of an association between the total exports of Samherji and Ice Fresh Seafood and the allegation of a violation without specifying the volume of sales to which the alleged violation applied or the actual magnitude of the violation.

The reality was that the violation alleged by the Central Bank only concerned fresh whole redfish. It was noted in the request for the search and seizure warrant that the Central Bank had inquired about the price of exported whole redfish in the months of October, November and December of 2011 and concluded that the general price in October 2011 had been 68% higher than Samherji's price, 28% higher in November and 73% higher in December. However, no information was given regarding the quantities involved, thereby creating the illusion referred to above of a correspondence between the amounts mentioned in the request for the warrant: those that referred to the total exports and the proportion that was sold to related parties. It could therefore be surmised that enormous amounts of money were involved, and huge quantities of fish.

What matters is therefore the quantity that was involved. Was Samherji selling fish products for 72 billion ISK at a price 73% below others' prices? Or were all the sales to related parties at this low price? It is impossible to tell from reading the request placed by the legal expert of the Central Bank, Rannveig Júníusdottir, before the district court judge when she was petitioning for a search and seizure warrant, as the volume of sale of fresh whole redfish is not stated anywhere.

2.2. Undisputed that the calculation was wrong according to the former head of the Capital Controls Surveillance Unit

So what was the whole affair about? The volume of sales of redfish from Samherji's own vessels to related parties over the three-month period covered by the request for the warrant amounted to 120 tons out of a total of 1,500

tons of redfish landed by the vessels. Samherji exported 25,000 tons of fish products over the period, corresponding to 11 billion ISK in sales, **while the value of the exported redfish to related parties amounted to 25 million ISK, or 0.2% of the total export value of the period.** The difference of up to 73% that is mentioned in the bank's request could therefore amount to a maximum of seven and a half tons of fresh redfish in December 2011, to pick one month. As confirmed to me by the former head of the Capital Controls Surveillance Unit in an e-mail message in 2017, and as discussed in further detail in the section on the alleged non-arm's length pricing, it is **not in dispute** that this purported difference was incorrectly calculated.

But what could the violation, if any, have amounted to? To be fair, the analysis report of the Central Bank itself on sales of redfish can be used in scrutinising the alleged sales of redfish below market price in October, November and December 2011. The Central Bank sent its report to the police in support of its charges against Thorsteinn Már Baldvinsson and Samherji. If we look past the fact that according to the analysis report another party sold at lower prices than Samherji in both October and November 2011, but Samherji was nevertheless seen to have been in violation, and if we ignore that in its assessment of the alleged sales below market price the employees of the Central Bank were comparing different conditions of sales etc., then **the amount of the alleged violation according to the report was less than 60 thousand euros, or just over nine million Icelandic kronur.**

2.3. 0.19% of sales of goods to justify a dawn raid

So, what was the value of the interests concerned in this alleged violation? Was their value sufficient to justify a dawn raid and seizure of property, broadcast live by RUV?

To place the figures into context it should be recalled that in the Central Bank's request to the district court for a search and seizure warrant it was noted that Samherji and Ice Fresh Seafood had exported goods amounting to 72 billion Icelandic kronur over a period of about 42 months. This corresponds to just over 1.7 billion Icelandic kronur per month on average in export revenue. **Over a three-month period, therefore, the alleged violation – as calculated by the employees of the Central Bank – amounted to about 0.19% of Samherji's total sales of goods!**

The request for the search warrant was therefore based on false calculations which in any case applied only to 0.19% of total sales.

I am reminded of what Már Gudmundsson, former governor of the Central Bank, said in a news report broadcast by RUV on 14 June 2012: *"We have not been using any misleading data and all of this simply remains to be brought to light".*

But let us look in greater detail at each one of the accusations on which the request for a search warrant, and the subsequent reports to the police, were based.

3. Alleged sale of redfish (red ocean perch) below market price

3.1. The "source document" and "source" of the National Broadcasting Service did not support the accusations of non-arm's length sales

In August 2020, we at Samherji received information that Helgi Seljan, a reporter at RUV, had sent to the Central Bank a document which he has repeatedly asserted to be proof that Samherji sold redfish at discount prices. The first information we received from the Freshfish Price Directorate indicated that no such document existed. It was later revealed that the document did in fact exist, but the at the same time it became clear why neither RUV nor anyone else had taken any steps to make it public. **The document did not prove non-arm's length sales at all.** On the contrary, the document confirmed that the prices paid by Samherji were far above the prices paid for redfish in direct sales domestically and that prices had gone up significantly in comparison with prices in the auction market in Germany. Even though the prices were not the highest in the market, the document confirms that there was no question of any non-arm's length sale, which is punishable by law. Apart from that, the "report" was completely different from what the reporters of the news programme *Kastljos* had indicated. Among other things, the document was not signed.

A more serious matter is that RUV's source retracted the accusations of pricing below the market on 4 March 2012. This was revealed when the Central Bank surrendered to Samherji's legal counsel the e-mail exchanges between the reporter of the Icelandic National Broadcasting Service, Helgi Seljan, and the former head of the Capital Controls Surveillance Unit, Ingibjörg Gudbjartsdottir. According to an e-mail message from Helgi Seljan to Ms

Gudbjartsdottir the source wished to be interviewed again; he had previously "acceded" when he had been asked repeatedly whether Samherji engaged in non-arm's length pricing. The source informed Helgi Seljan that explanations had been received of the pricing. **The reporter and the head of the Capital Controls Surveillance Unit were therefore aware that there was nothing to support the accusations of non-arm's length sales, but did not let that stop them.**

This was not disclosed, of course, in the *Kastljos* programme on 27 March 2012. Also, the Central Bank never cited the document, of course, even though it has been confirmed that it was received by the bank, as evidenced by a notice from Stefán Johann Stefánsson, the bank's press officer, to Helgi Seljan on 12 August 2020.

3.2. The managers of the Central Bank knowingly misled the district court in 2015

Let us now turn to the role of the Central Bank in the matter. On 22 April 2014 Samherji initiated legal proceedings against the Central Bank and requested, among other things, access to all documents relating to the communications of the bank's employees with the media. The Central Bank steadfastly denied having had any communications with the media other than communications relating to two press releases from the bank concerning the case. To quote the reasoning in the District Court's judgment: *"Also, the plaintiff had received two notices to the media. No other documents were said to exist regarding communications of employees with the authorities and the media."* The request was therefore dismissed from court. **Here the employees of the Central Bank deliberately lied, as the recent delivery by the Central Bank of documents shows that dozens of e-mail messages passed between a reporter of the National Broadcasting Service, Helgi Seljan, and the former head of the Capital Controls Surveillance Unit, Ingibjörg Gudbjartsdottir over a period of the five weeks leading up to the dawn raid.**

As noted above, the Central Bank never relied on the document from Helgi Seljan in its investigation; instead, it produced its own calculations which have been confirmed by the courts of law to have been false. The Central Bank does not even try to deny it anymore. It is worth mentioning that the matter was discussed at meeting 1143 of the bank's Supervisory Board on 17 August 2017. To quote the minutes of the meeting: "*It was revealed that the calculations of the CB had not been good enough to form a basis for*

indictment, but the house search at the time was based on further matters, such as the repatriation requirement." The calculations were once again discussed at meeting 1162 on 5 December 2018, referring to "*improved calculations from the time that the house search was conducted*."

3.3. It is undisputed that the calculations were false; yet, the matter was continued with new misstatements

The Central Bank's lawyers have also been unequivocal regarding this matter in their communications with Samherji. An e-mail message from the bank's three top lawyers, including Sigrídur Logadottir and Rannveig Júníusdottir, to me on 18 August 2017 says, and I quote: *"Your e-mail refers, among other things, to calculation errors. As regards that matter* ***it is undisputed that the methodology used initially*** *for the analysis of comparative prices of whole fresh redfish over a three-month period* ***did not show sufficiently comparable calculations*** *to form a basis for pressing charges. However, it is clear that the house search was also based on other data."*

It therefore comes as no surprise that the Central Bank abandoned these calculations and prepared yet another calculation, the so-called "enhanced calculations". Although the employees of the bank did succeed this time in getting their sums right, their methodology was deliberately wrong. The analysis report of the bank described the correct methodology that should be used. That was not used, however. Here are a few examples of how the bank deliberately ignored its own explanations of the proper methodology.

- The Central Bank noted that it made a difference what country was involved and then proceeded to compare consignments to different countries. The same applies to conditions of transport.
- The Central Bank said that the dates of the sales of fresh products made a difference and then proceeded to compare consignments that were up to 167 days apart.
- The Central Bank said that if goods were purchased in the market or from other fisheries operations the price would be arm's length prices and then proceed to make accusations against Samherji relating to goods that were purchased from others.
- The Central Bank made accusations against Samherji in some cases even when the analysis reports revealed that other sellers, the ones used for comparison, were selling at lower prices.

3.4. The case was not dropped because of an error of law, but because of the interpretation by the Director of Tax Investigations of rules in accordance with explanations given by the governor of the Central Bank.

Sleppur vegna lagaklúðurs

- Seðlabankastjóri segir að bankanum hafi borið lagaleg skylda til þess að kæra
- Sérstakur saksóknari tók ekki afstöðu til sakarefna í Samherjamálinu

Ísak Rúnarsson
isak@mbl.is

„Mér finnst hann nú vera að gera allt of mikið úr þessu, sérstaklega vegna þess að hann er að sleppa undan stórum hluta málsins, vegna þessa lagaklúðurs annars vegar og hins vegar vegna einhverra mistaka við setningu reglna í desember 2008,“ segir Már Guðmundsson seðlabankastjóri um gagnrýni Þorsteins Más Baldvinssonar, forstjóra Samherja, á Seðlabankann og Má persónulega í kjölfar þess að sérstakur saksóknari ákvað að fella niður stærstan hluta Samherjamálsins.

Már Guðmundsson

Már segir einnig að sérstakur saksóknari hafi ekki tekið afstöðu til sakarefnanna beint heldur hafi hann í áliti sínu sagt að erfitt væri að heimfæra meint brot á einstaklinga. „Aftur núna í hans áliti vefengir hann þau ekki, heldur segir að það sé svo erfitt að heimfæra þau upp á einstaka einstaklinga. Það er auðvitað kjarni málsins að þessi meintu brot eru af því tagi að það er ekkert sniðugt að heimfæra þau upp á einstaklinga heldur gerist þetta af hálfu fyrirtækisins,“ segir Már.

Mátti ekki kæra lögaðila

Sérstakur saksóknari hefur túlkað gjaldeyrislögin með þeim hætti að ekki megi sækja fyrirtæki til saka fyrir brot á þeim heldur einungis einstaklinga. Már segir að fjölmiðlarnir hafi ekki áttað sig fyllilega á afleiðingum þess en samskonar lagabálkur er í lögum um fjármálafyrirtæki og sé skilningur sérstaks saksóknara réttur hafi ekki verið hægt að ákæra fyrirtæki í þeim geira frá því árið 2006 og þar til nú fyrir stuttu.

Jafnframt tekur Már það fram að vilji hafi staðið til þess af hálfu Seðlabankans að ná fram sáttum í málinu en að bankanum hafi borið lagaleg skylda til þess að kæra meint brot til sérstaks saksóknara vegna þess að þau flokkuðust sem meiriháttar brot. „Ástæðan fyrir því að við sendum þessa kæru er sú að ef við hefðum ekki gert það þá hefðum við verið að brjóta lög,“ segir Már.

Már Gudmundsson on Central Bank affairs

[Translation:

Gets off because of legal blunder

• The governor of the Central Bank says that the bank was required by law to report
• Special Prosecutor did not take a position regarding the charges in the Samherji case

Ísak Rúnarsson isak@mbl.

“I think he is really making too much of it, particularly since he is getting away with a large part of the case because of a legal blunder, on the one hand, and because of some error when rules were established in December 2008,” says Már Gudmundsson, governor of the Central Bank, in response to criticism from Thorsteinn Már Baldvinsson, CEO of Samherji, of the Central Bank and of Mr. Gudmundsson personally after the Special Prosecutor decided to abandon most of the Samherji case.

Mr. Gudmundsson also says that the Special Prosecutor had not taken a position regarding the criminal charges; instead he had expressed the opinion that it would be difficult to assign the alleged violations to individuals. “Once again in his opinion he does not doubt them [the allegations], but says that it is so difficult to assign them to specific individuals. The crux of the matter is, of course, that the nature of the alleged violations makes it no simple matter to assign them to individuals; instead, it is the company that is responsible,” says Mr. Gudmundsson.

Legal persons can’t be charged

The Special Prosecutor has interpreted the Foreign Exchange Act as meaning that companies cannot be prosecuted for violations of the Act, only individuals. Mr. Gudmundsson says that the media have not fully understood the implications of this situation; there is similar set of provisions in the Act on financial undertakings, and if the Special Prosecutor’s understanding is correct, then it has not been possible to bring charges against companies in that sector since 2006 and until just recently.

In addition, Mr. Gudmundsson notes that there was willingness on the part of the Central Bank to achieve a settlement in the case, but that the Bank was required by law to report the alleged violation[s] to the Special Prosecutor as they were classified as major violations. "The reason that we sent in the report is that if we had not done so we would have been breaking the law," says Mr. Gudmundsson. – End of translation]

Since the office of the Special Prosecutor dropped the case in September 2015, the former governor of the Central Bank and various politicians have maintained, or insinuated, that Samherji violated laws and rules on foreign exchange, but that the company escaped punishment for reasons of legal technicalities. However, the fact cannot be ignored that the Director of Tax Investigations was sent the case for investigation and the case was dropped. There is no doubt about the validity of the tax code, the law in which rules on transfer pricing are grounded. The abandonment of the case on the part of the Director of Tax Investigations was therefore not based on any error of law, but on substantive examination of the facts.

The employees of the Central Bank subjected the matter to examination again and abandoned their accusations themselves. This was disclosed, among other things, at meeting 1123 of the Supervisory Board on 18 February 2016 and meeting 1127 on 19 May 2016. As regards the case of the former governor of the Central Bank at the meeting on 19 May 2016, the following note was entered in the minutes: ***"MG reported that the Capital Controls Surveillance Unit had completed its examination and that most of the case would be dropped on the basis of the interpretation by the Director of Tax Investigations of transfer pricing etc."*** According to the explanations given by the governor of the Central Bank at the meeting, the abandonment was therefore based on a substantive interpretation by the Director of Tax Investigations, and not on a legal technicality. The public assertions made by leading figures of the Central Bank and others regarding legal blunders and technicalities are therefore unfounded and made against their better judgment.

1127. fundur haldinn fimmtudaginn 19. maí 2016

10. Önnur mál

Jón Helgi Egilsson tók við fundarstjórn og taldi eðlilegt að þetta mál yrði tekið upp sem sérmál á næsta fundi bankaráðsins.

MG upplýsti að gjaldeyriseftirlitið hefði lokið yfirferð sinni og að stærstur hluti málsins yrði felldur niður á grundvelli túlkunar skattrannsóknarstjóra á milliverðlagningu o.fl. Hins vegar stæðu eftir 4 mál og ekki yrði hægt að fella þau niður án þess að fella niður sambærileg mál gagnvart öðrum

From the minutes of the CB' Supervisory Board

[Translation:
Meeting 1127, held on Thursday, 19 May 2016
10. Other business
Jon Helgi Egilsson took the chair and expressed the opinion that the reasonable course was to address the matter as a separate item on the agenda at the next meeting of the Supervisory Board.

MG reported that the Capital Controls Surveillance Unit had completed its examination and that most of the case would be abandoned on the basis of the interpretation by the Director of Tax Investigations of transfer pricing etc. However, 4 cases remained and they could not be dropped without dropping similar cases against others.

– End of translation]

It is important to bear in mind the scope of the alleged infringements involved in the bank's accusations of non-arm's length pricing. It was insinuated that serious violations were involved that had been going on over a long period of time and that the entire nation had suffered as a result.

About half of all Samherji's sales involve cod. The Central Bank had discovered already in 2012 that there was nothing improper in the pricing of cod in the period covered by the investigation. However, the bank never saw any reason to mention this.

The employees of the Central Bank believed that the concealment of funds on the part of Samherji relating to the alleged violations amounted to a total of 1.6 billion euros stemming from just short of 1200 tons of redfish, saithe and Arctic char in the period from April 2009 through March 2012. This amount corresponds to about 0.2% of the total turnover from sales over the period

and 0.7% in terms of volume of sales. If we look at each species separately the proportion is even smaller. For example, the accusation relating to Arctic char amounts to 0.003% of total volume and 0.004% of total value. This is before adjustment for the wrong methodology used by the bank, which means that the proportions are even smaller if they are measurable at all! It was not only the employees at Samherji who realised this, because the Director of Tax Investigations dropped the case, followed by the Central Bank itself based on the interpretation of the Director of Tax Investigations.

It should also be borne in mind, as further explained in the section on the obligation to repatriate foreign currency, that the Central Bank was aware that no legal basis existed for any imposition of sanctions for violation of the rules. As a result, the scope of the alleged violations fell from 1.6 million euros to just over 175,000 euros.

3.5. The management of the Central Bank had no evidence to support any suspicion of non-arm's length pricing

To summarise the "*justification*" of the accusations of non-arm's length pricing:

- The document on which Helgi Seljan based his *Kastljos* news commentary programme on 27 March 2012 and delivered to the Central Bank confirmed that there was no non-arm's length pricing. Furthermore, Mr. Seljan also informed the head of the Capital Controls Surveillance Unit that his source had backpedalled in his accusations of non-arm's length pricing. Nevertheless, the accusation was still made.
- The first calculations of the Central Bank relating to non-arm's length pricing were wrong; this has been confirmed both by the courts of law and the management of the Central Bank itself.
- The Central Bank went against its own description of proper methodology in its "enhanced calculations" in order to manufacture a violation on the part of Samherji.
- The reason for the subsequent abandonment by the Director of Tax Investigations and the Central Bank itself was not legal technicalities, but substance. There were no violations.

1143. fundur bankaráðs Seðlabanka Íslands mánudaginn 17. ágúst 2017

Þórunn Guðmundsdóttir og Sunna Jóhannsdóttir viku af fundi vegna vanhæfis til að fjalla um næsta dagskrárlið.

Sveinn Agnarsson tók við fundarstjórn.

9. Samherji. Staða dómsmáls – áfrýjun.
Seðlabankastjóri gerði grein fyrir stöðu málsins og enn fremur frá samskiptum sínum við forstjóra Samherja. Hann sagði að Samherji hefði þegar fengið flest eða öll umbeðin gögn áður, en ekki væri hægt að afhenda gögn eða útreikninga um þriðja aðila. Verið væri að skoða hvort hægt væri að afhenda frekari útreikninga.

46

Í umræðum var minnt á að Samherji segðist hafa óskað eftir útreikningum fyrir 63 mánuðum en ekki fengið. Fram kom að Samherji hefði fengið skýrslu í maí 2012. Fram kom að útreikningar SÍ hefðu ekki verið nógu góðir til að byggja á ákæru en húsleitin hefði á sínum tíma byggt á fleiru, eins og skilaskyldu.

From the minutes of the CB's Supervisory Board. Alleged Violation of the foreign currency repatriation requirement

[Translation:

Meeting 1143 of the Supervisory Board of the Central Bank of Iceland, Monday, 17 August 2017

Thorunn Gudmundsdottir and Sunna Johannsdottir left the meeting, being disqualified from participation in the discussion of the next item on the agenda.

Sveinn Agnarsson took over as chairman.

9. Samherji. Situation in legal proceedings – appeal

The governor of the Central Bank provided an account of the situation in the matter and of his communications with the CEO of Samherji. He said that Samherji had already received most or all requested documents earlier, but documents or calculations concerning third parties could not be handed over. It was being studied whether further calculations could be handed over.

In the course of discussion it was recalled that Samherji said it had requested calculations 63 months ago, but had not received them. It was noted that Samherji had received a report in May 2012. It was disclosed that the calculations of the CB had not been good enough to form a basis for indictment, but the house search at the time was based on further matters, such as the requirement to repatriate foreign currency.

– End of translation]

As revealed at meeting 1143 of the Supervisory Board, which is referred to earlier, the managers of the Central Bank were aware that the calculations of the pricing of redfish would not stand up to scrutiny, but said that the dawn raid had rested on other grounds, i.e. the foreign currency repatriation requirement.

4.1. Reference made to a report on repatriation that was criticised by the Central Bank management and a Deloitte auditor

Reference was made to a repatriation requirement report that had been prepared by a former employee of the Central Bank. It should be noted that it is not certain whether the Central Bank did in fact from the outset rely on this report, as there is no reference to it in the bank's request for a search warrant, and the District Court of Reykjavik did not retain the submitted documents as stipulated in Section 15.2 on criminal procedure. It is therefore impossible to know whether the report was in fact cited as grounds for the search.

However, assuming that the report was in fact used, then its history is that the Central Bank had prepared five similar reports on the repatriation requirement of fisheries companies in Iceland. Four fisheries companies were reported to the police on the basis of these reports, but no action was taken against Samherji. The Central Bank withdraw the charges from the Office of the Special Prosecutor on 23 January 2012, just over two months before the search was made of the premises of Samherji. The cases were not reopened, nor did they give rise to administrative fines. They were dropped. The former

head of the Central Bank’s Capital Controls Surveillance Unit confirmed before the district court in a damage suit initiated by Samherji in September 2020 that the reason for the case being dropped was that the employees of the Central Bank had realised that the report was unusable.

In addition it should be borne in mind that the Central Bank commissioned the accounting firm Deloitte to assess the work of the Central Bank employee who prepared the reports referred to above and Deloitte’s conclusion was reported to the Central Bank in early March 2012. The conclusion confirmed that the work and the report were unusable. It is in fact extraordinary after reading the Deloitte summary that the Central Bank chose nevertheless to use the report as grounds both for a house search and subsequently charges against Samherji. The analysis report of the Central Bank, which was sent to the police, states that an employee of Deloitte “confirmed the above suspicion”. There is nothing in Deloitte’s summary that supports this assumption of the Central Bank employees.

4.2. Foreign currency conscientiously repatriated and the management of the Central Bank in agreement; still maintained that Samherji "got off"

Special Prosecutor returns documents to Samherji

When the Office of the Special Prosecutor dropped the charges relating to Samherji's foreign currency repatriation in September 2015, the letter from the Office noted that due care had been taken by the employees of Samherji to repatriate foreign currency to Iceland. The letter went on to note that the assumption used by the bank regarding repatriation of funds in the context of currency swaps had been debatable and questionable.

At meeting 1159 of the Central Bank's Supervisory Board on 21 November 2018 the above comments of the Office of the Special Prosecutor, to the effect that Samherji had taken due care to repatriate foreign currency, were discussed. A comment from an unnamed employee of the bank disclosed the following: *"The response was that in that context the reference was to sales of goods.* ***The Central Bank did not arrive at any other conclusion regarding this matter,*** *but the repatriation violations did not relate to sales of goods."*

The 15 million ISK administrative fine imposed by the Central Bank on Samherji was not, therefore, for sales of goods and services, but for currency swaps, and it was based on reasoning that the Office of the Special Prosecutor had called debatable and questionable.

Only one case of the 34 that were the subject of the fine, amounting to just over ISK 14 million, i.e. 3% of the alleged violation, occurred after the provisions of the bank's rules passed into law on 27 September 2011.

4.3. The Althingi Ombudsman notified the management of the Central Bank in 2010 of the lack of legal authority for the imposition of sanctions

It is important to bear in mind that from as early as 2010 the Central Bank received a number of comments that legal authority was lacking for the imposition of sanctions on the basis of the rules. Nevertheless, the bank elected to conduct a search of Samherji's premises and subsequently to impose a fine on the company, in full knowledge of this serious deficiency.

The Althingi Ombudsman twice, and perhaps more times, pointed out the lack of legal authority for sanctions prior to the imposition of the fine. He addressed this specifically at an open meeting of the Constitutional and Supervisory Committee of the Althingi on 22 September 2015. This is what the Ombudsman had to say at the meeting: *"But this matter, as I was explaining, but apparently has not come across, has not been grasped, is just extraordinary in that many very serious comments were made regarding flaws in legislation, and also in enforcement. And what I did, also to keep everyone informed about the matter, when I realised* ***that the situation might be that the legal basis for these matters was completely useless,*** *what did I do? I called the representatives of the ministry and the Central Bank to a meeting and explained the matter to them. The result was that a legislative bill was prepared to amend this law. The bill was introduced in the spring of 2011; it was not passed until September 2011. The reason was, among other things, that the people in this house preferred not to get involved in these matters. But I emphasised that when the state authorities intend to intervene in the affairs of citizens in this manner the legal basis must be in order. This was my immediate involvement in this matter."*

Már Gudmundsson, former governor of the Central Bank, had the following comments in the news commentary programme *Sprengisandur* on 22 November 2015 regarding the involvement of the Althingi Ombudsman: *"And*

he made these comments in 2010 and 2011 as I recall, and in response the entire section was incorporated into the legislation." **In this interview, which was taken just short of a year before the governor of the Central Bank imposed an administrative fine on Samherji, he thus confirmed himself that he was aware that there was no legal authority for sanctions until the act of law was passed in late September 2011.**

4.4. The Director of Public Prosecutions confirmed in 2014 that there was no tenable legal authority for the imposition of sanctions. This information was shelved and a fine was imposed on Samherji anyway.

On 20 May 2014 the Director of Public Prosecutions confirmed the abandonment of six cases that the bank had reported to the Office of the Special Prosecutor. The conclusion of the Director of Public Prosecutions included the following comment: *"It was not until with the passing of Act No. 127/2011, when the Central Bank's rules were incorporated into the Act on foreign exchange in the form of Articles 13(a) to 13(p), that Article 16 was amended so as to provide clearly for sanctions for violations of the Foreign Exchange Act.* ***For this reason it is the conclusion of the Director of Public Prosecutions that there was no tenable legal authority in place for sanctions*** *with regard to the rules of the Central Bank on foreign exchange [...]."*

Following this conclusion of the Director of Public Prosecutions the managers of the Central Bank were in no doubt as to the position taken by that office, and in fact an e-mail message from the head of the Capital Control Investigation Unit, Rannveig Júníusdottir, to the top management of the bank on 20 May 2014 had the following to say: *"As far as we can see* ***the conclusion is unequivocal, and in the opinion of the Director of Public Prosecutions legal authority is lacking for the imposition of sanctions on the basis of the Rules on foreign exchange. The period in question is therefore 28 November 2008 to 30 September 2011."***

Just over two years later, the same employee, Rannveig Júníusdottir, signed the imposition of an administrative fine on Samherji together with the governor of the Central bank at the time, whereas 97% of the alleged violation took place in the period referred to above.

The Central Bank imposed on Samherji an administrative fine on 1 September 2016 for alleged violation of the repatriation requirement amounting to 490 million ISK, of which 476 million ISK related to repatriation of currency from

currency swaps dating from a time prior to 27 September 2011, when the legislation entered into force. Samherji's total repatriation of currency, through DNB and Arion Bank, amounted to 18 billion ISK over the period under investigation. The alleged violations thus amounted to 2.7% of the total repatriation of foreign currency, but only approximately 0.078% after the legislation, and thereby the legal authority for sanctions, took effect. It is reiterated in this context that the alleged violation related to a currency swap, and the Office of the Special Prosecutor had stated that the reasoning of the bank with regard to the swap was both debatable and questionable. The amount of that instance was lower than the fine imposed on Samherji.

4.5. The letter of the Director of Public Prosecutions from February 2019 was withheld from the district court in Samherji's damage suit

It shows particular impudence on the part of the Central Bank that in its defence against Samherji's suit for damages in the fall of this year it was repeatedly maintained that the employees of the bank had acted in good faith when they imposed an administrative fine on Samherji, as the Director of Public Prosecutions had dropped a single case in August 2014 for reasons other than that that there was no usable legal authority in existence for the imposition of sanctions. At the same time that the bank placed before the judge the decision of the Director of Public Prosecutions of August 2014, the bank withheld from the judge, and everyone else, the letter from the Director of Public Prosecutions dated 19 February 2019. That letter said: *"In seven position papers of the Director of Public Prosecutions dated 20 May 2014 the assessment of the Director of Public Prosecutions was unequivocally revealed that the Rules of the Central Bank of Iceland could not be regarded as a valid legal authority for sanctions until after the entry into force of Act No. 127/2011."* As regards the decision of August of the same year, the Director of Public Prosecutions said that in that case "*it was obvious that the discussion and opinion related to other issues and circumstances."* The Director of Public Prosecutions did not see any need to recount the matter in further detail. **So, not only did the managers of the Central Bank persevere in pressing charges with the police instead of withdrawing them, but they also concealed from the district court judge a letter which stated that there was no doubt regarding the position taken by the Director of Public Prosecutions in 2014 and attempted instead to convince the judge that they had acted in good faith. Subterfuge of this kind defies belief and is not worthy of an institution like the Central Bank of Iceland.**

4.6. The management of the Central Bank had no evidence to support any suspicion of violation of the repatriation requirement

In summary, the following is established regarding the Central Bank's transgressions with regard to Samherji's violation of the repatriation requirement:

- The employees of the Central Bank knew before the raid that legal authority for sanctions was lacking. At the latest, this must have been known to them when the Director of Public Prosecutions provided his reasoning in the summer of 2014, which was echoed by the Althingi Ombudsman in the autumn of 2015. Despite all of this, the Central Bank undertook a house search, submitted charges to the police and, finally, imposed an administrative fine on Samherji.
- The Central Bank knew prior to the raid that the bank's report on Samherji's repatriation requirement had no merit; indeed, the bank had itself withdrawn charges two months earlier that were based on similar reports.
- The Central Bank knew that its reasoning regarding repatriation in respect of currency swaps was debatable and questionable.
- The Central Bank withheld from the District Court of Reykjavik a letter from the Director of Public Prosecutions which confirmed that it was beyond any doubt already in 2014 that there was no valid legal authority for the imposition of sanctions until after the entry into force of Act No. 127/2011.

5. Foreign companies operated from Iceland

The third, and last, accusation made by the representatives of the Central Bank to justify the dawn raid and the charges, and the one that the Central Bank mostly cited in its defence in Samherji's recent damage suit, is that foreign companies in the Samherji group of companies were in fact operated out of Iceland.

In the request for a search and seizure warrant there was one sentence regarding this accusation: *"Also, there is suspicion, on the one hand, that the effective management of the foreign companies Icefresh GmbH and Seagold Ltd. was based in Iceland and, on the other hand, that the companies concerned in this request are operated as a single entity."* No documentation was submitted nor any reasoning to substantiate these allegations. The

request was directed, *inter alia*, at the companies Katla Consulting Ltd., Katla Trading (UK) Limited and Stoeznia Gdynia S.A. These companies are not connected with Samherji in any way, and the last company was a bankrupt shipbuilding company that had ended up in the embrace of the Polish government. It is therefore evident that there was nothing behind this "suspicion" except wishful thinking about a violation on the part of Samherji.

5.1. The smear in the damage suit – Cyprus

In the submission and speech given by the Central Bank's counsel in the defence against Samherji's damage suit in the autumn of 2020 much was made of these allegations with regard to companies in Cyprus. It is therefore proper to review how this allegation has been dealt with by the authorities to date.

A part of the case that the Central Bank reported to the Office of the Special Prosecutor involved the contention that the effective management of the companies Atlantex in Poland, Fidelity Bond Investment Ltd. and Katla Seafood Ltd. in Cyprus, and Katla Seafood Canarias SLU in the Canary Islands was in actuality conducted from Iceland. The Office of the Special Prosecutor dropped the case in September 2015, but since the rule on effective management, on which the charge was based, is grounded in the tax code, the accusation was forwarded to the Director of Tax Investigations. The Director of Tax Investigations also dropped the case.

As noted earlier, there is no question regarding the substantive applicability of tax legislation, and therefore the dismissal by the Director of Tax Investigations can only have been based on a substantive examination of the allegations.

The Central Bank investigated the matter again, and, as revealed in the comment made by the governor of the Central Bank at meeting 1127 of the bank's Supervisory Board on 19 May 2016, the abandonment of the case by the bank was based on the interpretation of the Director of Tax Investigations of these rules. **The Central Bank therefore reached the same substantive conclusion as the Director of Tax Investigations, i.e. that these allegations were groundless.**

All of this shows that the representations by the Central Bank in these autumn months were mostly addressed to the journalists who have exhibited the

greatest interest in Cyprus, as in fact the bank's legal counsel regarded it as evident in the course of testimony in the case that the Polish company Atlantex was in fact Polish, and he did not waste a single word on Samherji's company in the Canary Islands. Also, the Central Bank's ruminations in its request for a search and seizure warrant regarding the German company Icefresh GmbH and the British company Seagold Ltd. appear to have vanished, as the bank has made no mention of its suspicions regarding those companies since the dawn raid.

There is no new evidence in the case that justifies this argument of the Central Bank at this time, which appears to have the sole purpose of diverting attention from what really matters – the conduct of the bank's managers. This can only be seen as seriously reprehensible.

6. Conduct of the former governor of the Central Bank and the bank's management

This case has not done anything to enhance the former Central Bank governor's reputation. His approach to the matter has been characterised by his unwillingness and inability to admit his mistakes.

6.1. The Althingi Ombudsman variously used as a pretext or kept in the dark

The Althingi Ombudsman frames the perspectives of the former governor of the Central Bank quite well in Case No. 9730/2018, which was made public in early 2019. Among the Ombudsman's comments was the following: *"In both these cases words are put in my mouth in justification of the actions taken by the Central Bank without stating the truth of the matter."* He also says: *"It is also lamentable when a governmental authority justifies its actions and interpretation of law with the contention that the text of a disputed legislative provision which is put to the test is identical to another provision of law, when that is not the case."* Finally, the Althingi Ombudsman criticises the Central Bank for withholding information regarding the position taken by the Director of Public Prosecutions. This is serious criticism.

We have obtained a transcript of a working paper from a meeting of the Ministry of Economic Affairs and the Central Bank on 7 February 2011, where the discussion involved the comments made by the Althingi Ombudsman. The position taken by the head of the Capital Controls Surveillance Unit of the Central Bank, Ingibjörg Gudbjartsdottir, emerges clearly in the course of

discussion of amendments to the Act on foreign exchange and the provisions that needed to be revised, including legal basis. Her comment was as follows: *"IG points out that it could be risky to inform him [i.e. the Ombudsman of the Althingi] of this [which] could be construed as an admission on the part of the government authorities."* So, a governmental authority cannot admit to having been wrong. The thing to do is to forge on, no matter what. This has been the theme in the Central Bank's approach.

6.2. The deterrent effect of the raid on Samherji, which was not based on any reasonable suspicion

As regards the governor of the Central Bank he has repeatedly said, and insinuated, that Samherji got off on a technicality. *"I think he is really making too much of it, particularly since he is getting away with a large part of the case because of a legal blunder, on the one hand, and because of some error in setting rules in December 2008."* This is what Már Gudmundsson said to the daily newspaper *Morgunbladid on 14 September 2015.* A few months later he said on *Eyjan* [a news programme] that he "*would of course have preferred it if the investigation of Samherji had revealed that everything was simply in order and that there was nothing to investigate*." At the end of the interview he went still further and said: *"Now, if they are still guilty but there is no legal authority for sanctions, well, then that is just the way it is."*

But Már Gudmundsson has also made comments that strongly indicate that he knew there was never any reason to suspect any violation on the part of Samherji and that the purpose of the actions was to use Samherji as an example to others. Mr. Gudmundsson has on three occasions said that there were no reasonable grounds for suspecting any violation, which is an unconditional requirement for search and seizure. He also wrote in a letter to the Prime Minister on 29 January 2019 that "*the actions of the Central Bank had a considerable deterrent effect. This could clearly be seen after the dawn raid on Samherji...".* This is consistent with his words in the media through the years; in an interview in *Eyjan* on 6 March 2016, he basically admitted that the end justified the means. "*It is our job to ensure that the barricade holds, and it held.*" This shows that he justifies the lawless actions taken against Samherji by pointing out that it had such a strong deterrent effect and thereby benefited society.

6.3. Már Gudmundsson's last act in office

Már Gudmundsson's last act in office was to swipe off the table any discussions with Samherji's representatives on compensation. It is a sad thing to observe the events leading up to this decision in the minutes of the Supervisory Board of the bank. The Supervisory Board strongly urged the governor to tie up the matter with a settlement, but he professed to be unsure of his legal authority to do so., He therefore decided to buy time by requesting an opinion from the Solicitor General on 11 June 2019, and then refused any discussions before receiving a response from the Solicitor General, as evidenced by the minutes of meeting 1177 of the Supervisory Board on 21 August 2019. At the next meeting of the Supervisory Board, on 18 September 2019, it was revealed that the Solicitor General was of the opinion that the bank did have the authorisation needed to negotiate with Samherji.

7. The role of the Icelandic National Broadcasting Service

The conduct exhibited by the National Broadcasting Service (RUV) is worth special note. Not only was an entire programme on the accusations made against the management of Samherji based on a document that expressly stated that there was no question of non-arm's length pricing, and a source who had backpedalled with his accusations of non-arm's length pricing three weeks before the programme aired, but RUV played an active role in doing as much damage to Samherji's reputation as possible. This was conclusively confirmed when we received minutes from meetings of the Central Bank and the e-mail communications between RUV and the Central Bank.

7.1. The Oracle of the RUV headquarters

At meeting 1179 of the Supervisory Board of the Central Bank on 23 October 2019 it was disclosed that a reporter at RUV ***"had sent a draft of a news report on a dawn raid that was scheduled for the following day [...]***. When a reporter of the National Broadcasting Service is writing about a dawn raid that has yet to take place something is rotten in the State of Denmark.

We requested a copy of this e-mail message from the Director of the Broadcasting Service and the Central Bank. The Director of the Broadcasting Service refused, citing a provision in media legislation on the protection of sources. It is clear that the leak concerning the prospective dawn raid came from the Central Bank, as the Director of the Broadcasting Service could not

otherwise have based his refusal on the cited legal provision. However, the Central Bank surrendered the requested e-mail message on 27 November 2020. The wording of the message indicated more extensive communications in the course of preparation of the dawn raid, as this was not a first draft of the news report that the reporter, Helgi Seljan, was submitting to the former head of the Capital Controls Surveillance Unit, Ingibjörg Gudbjartsdottir. This suspicion was confirmed when the Central Bank surrendered dozens of further e-mail communications between them on 4 December 2020. **As noted earlier, other e-mail communications between them show that both the reporter and the manager at the Central Bank were aware that the source of the allegations of non-arm's length pricing against Samherji had withdrawn his or her comments when an explanation had been given of the pricing.** This collaboration between the newsroom of the Icelandic National Broadcasting Service and the Central Bank on a prospective dawn raid is disturbing.

The collaboration also strongly reinforces my firm belief that Samherji and its managers will not receive fair treatment from RUV.

7.2. Cheap political posturing and an entry from Bolli Hedinsson in the CB's minutes.

A number of participants in the general public discussion have jumped on the bandwagon in recent years to draw attention to themselves. Oddny G. Hardardottir, former Minister of Finance and Chairman of the Social Democratic Alliance, spoke blithely about the damage that Samherji had purportedly caused to the nation:

"If laws are broken in this way and business is conducted through related parties and the laws evaded, then that will affect the income of seamen in this country if [the business] is domestic, and possibly the tax revenue of the State. If this happens abroad, then it has still more serious consequences, because if the foreign currency is not repatriated that will impact the value of the krona, which in turn influences inflation rates, which affects household and corporate debt, and in fact the conditions of all the people in the country."

Bolli Hedinsson, member of the CB's Supervisory Board, submitted an entry for inclusion in the minutes of meeting 1159 of the Supervisory Board, where he criticised Thorsteinn Már Baldvinsson's serious allegations. Mr. Hedinsson had some serious allegations to make himself.

"The Central Bank is entrusted with the enforcement of rules, which, as it subsequently emerges, were never confirmed by the Minister. In winding down the cases initiated on the basis of the unsigned rules an attempt is made to do so in a non-discriminatory manner. The courts of law find that the method used was not in compliance with the law, and pass judgment accordingly.

It is extraordinary for one of the largest fisheries companies in the country to demand the resignation of the Central Bank's governor. The company is hardly in a position to preach when it comes to scruples, and in fact the company has become dangerous to the freedom of expression in this country. We need only recall how the company holds the economies of entire communities in an iron grip by means of threats to discontinue their local business operations if the government does not accede to their demands, or how individuals are threatened with loss of employment if they dare to criticise the fisheries management system.

The political parties forming the current government have at all times shown the company extreme acquiescence, so it is no surprise that this demand should be submitted to the political parties currently in power. Experience has shown that they are at the company's beck and call."

These are just two examples of people in high places who have criticised Samherji instead of allowing the company the benefit of the doubt, let alone listened to the company's advocates. It is extraordinary that the same people have then jumped on the bandwagon with – yes, the same employees of the same national broadcasting company – and continued to criticise the company. They would have been better off waiting to see how the matter would end.

*

The facts recounted above: that the employees of the Central Bank did not have any reasonable grounds for suspicion; that the bank knew that calculations and reports were false; that the bank knew, and was regularly reminded, that there was no question of any violations; that there was no legal authority for sanctions; that the employees of the Central Bank were acting in concert with the newsroom of the National Broadcasting Service; and that the employees of the Central Bank repeatedly withheld important documents from the courts of law and from Samherji, most recently in Samherji's suit for

damages in 2020, confirm that the Central Bank matter was nothing but an organised assault. The end justified the means. And now, when the dust has settled, it is apparent that the whole affair was in fact a fishing expedition, an attempt to gain access to the company's books with the purpose of searching for a crime. And when no crime was found, the assault was justified after the fact by saying that it had a deterrent effect and prevented violation by others of the Foreign Exchange Act to the benefit of the nation. Samherji's head was thus impaled on a spike as a warning to others.

Here below are links to news articles in English on samherji.is/en concerning the case:

26.03.2021 https://www.samherji.is/en/the-company/news/helgi-seljan-found-guilty-of-a-serious-ethical-violation-for-writing-about-samherji

11.12.2020 https://www.samherji.is/en/the-company/news/previously-unpublished-emails-reveal-close-consultation-between-the-central-bank-and-ruv-in-the-run-up-to-a-search-of-premises

10.08.2020 https://www.samherji.is/en/the-company/news/a-documentary-about-the-beginning-of-the-central-bank-case

21.12.2016 https://www.samherji.is/en/the-company/news/a-part-of-a-letter-from-the-governor-of-the-central-bank

21.12.2016 https://www.samherji.is/en/the-company/news/letter-to-employees-of-samherji

23.09.2015 https://www.samherji.is/en/the-company/news/a-letter-to-the-supervisory-board-of-the-central

10.09.2015 https://www.samherji.is/en/the-company/news/letter-to-the-staff-of-samherji

25.01.2013 https://www.samherji.is/en/the-company/news/no-cause-for-concern-with-regard-to-pricing-in-samherji-s-business-transactions-with-seagold-ltd

30.03.2012 https://www.samherji.is/en/the-company/news/allegations-of-samherji-undercutting-fish-prices-unfounded

28.03.2012 https://www.samherji.is/en/the-company/news/press-release-from-samherji

Here are links to news articles in Icelandic on samherji.is concerning the CB case: