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*(2000)***I. Changes to competition laws and policies, proposed or adopted****1. Summary of new legal provisions of competition law and related legislation***National application of EC Competition Rules*

1. In order to make the monitoring of competition more effective in increasingly international markets, the Competition Authority has since 1st January 2001 the powers to directly apply provisions of the EC Treaty contained in Articles 81 and 82, i.e. the prohibitions against anti-competitive co-operation and abuse of a dominant position. The power to grant negative clearance has, however, been limited to cases which are of special relevance to Sweden and the power to grant an exemption according to Article 81 is limited through the provisions of an EC regulation.

Concentrations of undertakings

2. New rules governing concentrations between undertakings entered into force on 1st April 2000. This means that the EC legislative concept concerning concentration provides the basis for examining acquisitions and other concentrations between undertakings in accordance with the Competition Act. Also conditions for intervening against harmful concentrations between undertakings have been harmonised with EC rules in the area.

Setting fines

3. Additional provisions have been incorporated into the Competition Act to increase the scope for identifying and eliminating restrictions on competition. This means that an undertaking which has assisted in investigating its own infringement may have lower fines imposed.

Legal exemptions for agriculture

4. The legal exemption under the Competition Act for co-operation in agricultural co-operatives has been expanded as of year 2001. This extension means that pricing by a primary association where it is responsible for the sale of goods, which are supplied to the association, falls outside the scope of the prohibition against anti-competitive co-operation.

New legal exemptions for the taxi business

5. In order to facilitate the attainment of the goal of access to taxi services in sparsely populated areas, a new exemption for co-operation in the taxi sector was incorporated into the Competition Act as of

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year 2001. The exemption means that some forms of co-operation between taxi undertakings in a central switchboard facility fall outside the scope of the general prohibition against anti-competitive co-operation. For co-operation to be permitted, it shall not cover more than a maximum of 40 vehicles.

New block exemptions

6. The Government has decided on two new block exemptions. These entered into force on 1st January 2001.

7. The first applies to agreements between suppliers and resellers, i.e. vertical agreements, concerning conditions for purchasing, sales and retailing. The block exemption, which in principle corresponds to that applied in EC law, replaces the former exemption on franchising agreements, exclusive distribution agreements and exclusive purchasing agreements. It also replaces the special Swedish block exemption for voluntary chains in the retail trade. The new block exemption applies until the end of year 2005.

8. The second block exemption concerns the taxi sector where exemption from the prohibition against anti-competitive co-operation applies to co-operation through a central switchboard facility which falls outside the scope of the legal exemption, but where the co-operating companies account for a maximum of 35 percent of the market. As regards joint purchasing activities and safeguarding confidential business information, there is, however, no limit to market share. The block exemption continues to apply until further notice.

2. *Other relevant measures, including new guidelines*

New regulations

9. The Swedish Competition Authority has as a result of the new rules governing concentrations between undertakings issued regulations on notification of such concentrations to the Swedish Competition Authority (KKVFS 2000:1). At the same time the Authority has issued new regulations on notifying exemptions or applying for negative clearance in accordance with the Competition Act (KKVFS 2000:6) and concerning the application for negative clearance when applying the provisions of Articles 81 and 82 in the EC Treaty (KKVFS 2000:7).

New general guidelines

10. As a result of the new rules governing concentrations between undertakings, the Swedish Competition Authority has presented its assessment of the terms "concentration between undertakings", "joint ventures" and "undertakings concerned" (KKVFS 2000:2-4). The Authority has also issued general guidelines on calculating turnover when applying the provisions for notifying concentrations between undertakings (KKVFS 2000:5).

II. Enforcement of competition laws and policies

1. *Action against anti-competitive practices, including agreements and abuses of dominant positions*

a) *Summary of activities of:*

The Swedish Competition Authority

11. The following table shows the number of new cases registered during 2000 under the Competition Act - mergers, agreements and complaints - and the number of decisions taken during the same period. The total number of cases pending at the end of 2000 amounted to 75.

<u>2000</u>	<u>Registered new cases</u>	<u>Decisions</u>
Mergers	124	122
Notifications for negative clearance or exemptions	31	62
Complaints	219	240
Other cases (inquiries etc.)	183	186
Total	557	610

12. An important task assigned to the Competition Authority is its consultative role on existing and proposed public regulations. A total of 161 formal opinions were submitted to governmental and public authorities.

Complaints

13. The majority of complaints during year 2000 concern anti-competitive measures taken by one undertaking with respect to others, as well as competition problems related to the public sector. The first group of cases concerns undertakings who are subject to refusal to supply, or a dominant undertaking - often a former monopoly player - who is alleged to have restricted competition for other often newly established undertakings in deregulated markets such as electricity, civil aviation, railway transport, and the telecommunications area. The second group of complaints concerns state authorities, municipalities, and county councils which have started to operate commercial activities in competition with private undertakings. One reason for the complaints are the opportunities these players have of subsidising prices out of tax revenues or by securing competitive advantages through their position as a public body. Other complaints concern public procurement and support to undertakings.

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Decisions

14. During the last year the Competition Authority has made 610 decisions under the Competition Act. Of these, 62 concerned applications for negative clearance or exemption. It is not unusual that undertakings make changes to their agreements during a case in order to fulfil the requirements for negative clearance or exemption. Such changes have been made in 5 cases examined during the year. In 9 cases, the Authority found that there had been no infringement of the Competition Act and thus granted negative clearance. The provisions of the Act for granting time-limited exemptions were fulfilled in 48 cases. The Authority dismissed 2 applications. The remaining applications were withdrawn or the cases were closed for other reasons.

15. According to Article 13 of the Competition Act, an undertaking which has notified an agreement for exemption, automatically receives a time-limited exemption if the Competition Authority has not made a decision with respect to the notification within a period of four months of its receipt. The Authority has, however, the opportunity to prevent an automatic exemption by making an objection to the agreement within the four month period. Objections may be made if it is established that there are circumstances requiring a more detailed investigation or if there are other compelling reasons for extending the period needed for examination. During the year the Authority decided to make objections in three cases. Of these, two cases were registered in 1999.

16. The Swedish Competition Authority has ordered an undertaking to terminate an infringement of the Competition Act in 1 case. This decision was issued under penalty of a fine.

17. The Authority has made 122 decisions concerning concentrations between undertakings. In three cases, voluntary undertakings were given and no further action was taken concerning the acquisition.

Courts

Summons Applications

18. During year 2000 the Competition Authority initiated legal proceedings in 1 case in the Stockholm City Court concerning the obligation for an undertaking to pay a fine. The case concerns the petrol cartel where the Swedish Competition Authority maintained that the oil companies Norsk Hydro, OK-Q8, Preem, Shell and Statoil had concluded agreements or co-ordinated their prices, discounts or other trading conditions concerning the sales of petrol.

Appeals to the Market Court

19. During year 2000 none of the Authority's decisions concerning applications for negative clearance, exemptions or decisions concerning obligations were appealed. However, the Market Court heard an appeal from SAS against the obligation to limit the application of its bonus programme - EuroBonus - in the domestic market for air transport in Sweden. In November 1999, the Competition Authority made a decision that the practice pursued by SAS constituted abuse of a dominant position on the market. Negotiations took place at the Market Court during the autumn of year 2000. In its decision in February 2001, the Market Court ordered SAS under penalty of a fine of SEK 50 million to cease as of 27th October 2001 applying its current EuroBonus programme, or take part in similar programmes concerning domestic flights between places where SAS or its partners encounter competition.

b) *Description of significant cases, including those with international implications*

The Market Court

20. During year 2000 the Market Court made decisions in six cases of these, five concerned appeals against decisions made by the Competition Authority. In three of these, the Court upheld the Authority's decision in substance. In the 6th case, the Market Court upheld the fine imposed by the Stockholm City Court on the petition of the Competition Authority.

21. In January 1996, the Swedish Competition Authority initiated legal proceedings at the Stockholm City Court and petitioned that SJ should pay a fine of SEK 30 million. The Competition Authority considered that through predatory pricing SJ had deliberately infringed the prohibition in the Competition Act against abuse of a dominant position. The Authority's view was that when railway transport was being procured for the regional lines in the counties of Jönköping, Kalmar and Halland in 1993, SJ had used predatory pricing in its tender in an attempt to eliminate a competitor, BK Tåg, from the market or to prevent new companies from entering the market. SJ was ordered in December 1998 by the Stockholm City Court to pay a fine of SEK 8 million. SJ appealed to the Market Court which in February 2000 upheld the decision of the City Court.

The Stockholm City Court

22. The Stockholm City Court made decisions in 4 cases where the Competition Authority initiated legal proceedings concerning fines, one of which is presented below.

23. On a petition from the Competition Authority, the company AGA Gas was found by the Stockholm City Court to have abused a dominant position. The company had entered into exclusive agreements, or agreements with a similar effect with six customers. Even though the agreements could cover a very small part of the total gas market, the City Court stated with reference to praxis in the Market Court that AGA's practice constituted abuse of a dominant position. In assessing AGA's intentions and the magnitude of the fine, the City Court attached particular importance to the fact that the company had on two occasions been advised by the authorities that the agreement was questionable. The fine was set at SEK 600 000 as opposed to the petitioned fine of SEK 3 million, since the number of agreements was limited. AGA has appealed the decision to the Market Court.

The Competition Authority

24. The cases presented below illustrate measures taken by the Authority under the Competition Act, and have been chosen on the basis of the following criteria: the measures should actively counteract harmful restrictions on competition, provide guidance and concern large groups of consumers and/or be of major importance for the national economy.

25. Decisions made by the Authority on the application of the Competition Act, usually apply with immediate effect, and thus have direct effect on the market. This applies even though the decision may be appealed against.

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Anti-competitive co-operation

Co-operation between forestry companies granted exemption

26. Stora Skog, Holmen/Holmen Skog and Korsnäs applied for negative clearance and exemption respectively for a shareholder agreement concerning timber planning and optimising transport of timber in a jointly owned company, Industriskog, as well as for Industriskog's articles of association. The co-operation meant that there was a risk that the companies would cease competing with each other for that part of the timber business where they had business transactions. Since the co-operation was an appreciable restriction on competition, the request for negative clearance was not granted. The restriction on competition which could nevertheless occur was, however, regarded as necessary in order to achieve the goal of the co-operation. The companies were thus not considered to put competition at risk through their co-operation. An exemption was thus granted until 7th May 2004.

Illegal petrol cartel

27. The Swedish Competition Authority initiated in June 2000 legal proceedings against Statoil, OK-Q8, Shell, Preem and Hydro for a total of SEK 740 million.

28. Since there were grounds for suspecting that an agreement over price and discounts had been concluded, the Authority in December 1999 carried out a "dawn raid" on the companies mentioned above. Following this the Competition Authority has interrogated leading persons in the companies and contacted a large number of customers.

29. The investigation confirmed that representatives of the companies had met in secret, planned and fixed prices and discounts for customers purchasing petrol. The investigation also comprised an economic analysis which showed that customers had lost large sums of money.

30. According to the Competition Authority, this constitutes a very serious infringement of the Competition Act by large companies, which in practice completely control a market which is of great economic importance for consumers and society as a whole. The Swedish Competition Authority has thus petitioned the Stockholm City Court that the companies pay a fine of SEK 230 million for Statoil, SEK 225 million for OK-Q8, SEK 125 million for Shell, SEK 85 million for Preem and SEK 75 million for Hydro.

31. Main proceedings in the Stockholm City Court are expected to take place during the autumn of 2001.

Abuse of a dominant position

Telia amended agreements

32. Global TeleSystems submitted a complaint that Telia had introduced an opening charge for free telephone services (020 calls) from Telia's public call boxes. Other telecommunications operators stated that their calling card services were not accessible to users unless they had access to Telia's telephone card. After the Swedish Competition Authority initiated an investigation, Telia implemented conditions whereby competitors in their agreements with Telia could agree on the issue of compensation for the use of Telia's public call boxes. With such a solution, customers with telephone cards issued by other

telecommunications operators can also use Telia's public call boxes without at the same time needing to have access to Telia's telephone cards.

Sweden Post's pricing of eBrev (eLetter) restricts competition

33. Sweden Post applied for negative clearance to set prices for its eBrev services. Sweden Post intended to introduce a standard price for its customers i.e. no special price would be given for any of the different phases involved in production. The Swedish Competition Authority considered it essential that Sweden Post distinguished in its pricing between services supplied on competitive markets and services supplied in quasi-monopoly markets. The Swedish Competition Authority thus did not grant negative clearance for the eBrev service.

Discount system for district heating connected to sales of electricity prohibited

34. Linde Energi offered its customers during year 2000 discounts on district heating on the condition that they also bought electricity from the company. The Authority examined the discount conditions and found that Linde Energi had exploited its dominant position on the market for district heating. By means of the discount system, Linde Energi discriminated against district heating customers who chose to purchase their electricity from a competing supplier, at the same time as the discount system meant that competition on the electricity market would be limited. The Competition Authority thus ordered Linde Energi under penalty of a fine of SEK 1 million to cease applying the discount system. The decision has been appealed to the Market Court.

2. Mergers and acquisitions

Carlsberg

35. Carlsberg's acquisition of Pripps Ringnes had an impact on different beer markets and also the market for soft drinks and mineral water. The concentration meant that Carlsberg would achieve a dominant position that would have appreciably restricted competition in a number of the markets affected. During the handling of the case, Carlsberg gave a number of undertakings. Carlsberg undertook to divest itself of i.a. its registered brands TT, Arboga, Eagle, Fat and Bayerbräu. Carlsberg also undertook to stop selling i.a. the brands Lapin Kulta, Warsteiner and Bass which are produced by other breweries. All these brands will be transferred to other companies which are independent of Carlsberg, and which should be able to compete and develop their sales of these brands on the Swedish market. As a result of the undertakings, buyers of these brands will have to be approved by the Competition Authority.

36. On the market for soft drinks, Carlsberg will divest itself of its stake in Coca Cola Drycker Sverige and discontinue its co-operation with this company within the framework of Dryckes Distributören AB. Carlsberg will also stop selling and distributing Coca-Cola and other drinks from Coca-Cola Company.

37. The Competition Authority has applied to the Stockholm City Court that the undertakings should be under penalty of a fine.

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Svenska Girot

38. The Competition Authority initiated during year 2000 a special examination in a case concerning payment systems. Svenska Girot had submitted a notification to acquire all the shares in Postgirot Bank AB from Sweden Post. Svenska Girot is a company owned jointly by the four major banks FöreningsSparbanken, Nordbanken, Skandinaviska Enskilda Banken and Svenska Handelsbanken. The merger would create a monopoly for Svenska Girot in the Swedish market for i.a. systems for distance payments which include electronic payments, standardized and non-standardized paper payments. The Authority found that the possibilities for import of payment services as well as new entry to the distance payments market were very limited. The concentration therefore created risks for reduced supply of payment services and for price increases. The Authority applied in February 2001 to the Stockholm City Court to have the transaction prohibited. Following the application of the Authority, the parties decided to cancel the merger agreement and hence did not carry out the acquisition.

III. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

Tasks

39. One of the tasks of the Competition Authority is to propose changes to rules and other measures to eliminate obstacles to effective competition in the private and public sectors.

Initiatives

40. Initiatives taken by the Authority are of two kinds. The first type of initiative concerns examination under the Competition Act and this can lead to the removal of anti-competitive restrictions. The sectors and industries affected by the Authority's initiatives in this respect are the food industry, building industry, civil aviation, petroleum, energy, telecommunications and the pharmaceutical industry. The other type of initiative is when the Authority submits proposals for solutions by proposing changes in the rules and other measures to secure better functioning competition for the benefit of consumers. Before the Competition Authority has finished its examination of a complaint, it happens that an undertaking may have decided to change its practices.

Reports

41. The Authority's reports on competition conditions are commissioned in most cases by the Government or as a result of the Authority itself taking the initiative. During year 2000 the Competition Authority has given priority to studies and investigations comparing consumer goods prices in different countries. A central feature of the two reports concerning such comparisons is to analyse the causes of the generally high prices in Sweden compared with other countries.

42. The report "Why are Swedish prices so high?", which the Government commissioned the Authority to carry out, analysed price differences between Sweden and other EU countries during the 1990s. The report shows that prices in Sweden are approximately 20 percent higher than the EU average. Approximately half the difference can be explained by different levels of income or taxes, exchange rates etc. in member countries. The report finds that rest of the difference is largely due to the lack of competition on the Swedish market.

43. The report "Sweden – A Part of the Single European Market – Why do Price Differences Continue?" is the result of a project between the Swedish National Board of Trade, the Competition Authority and the Swedish National Board for Industrial and Technical Development (NUTEK). From the report, it is apparent that consumer prices in Sweden in recent years have moved closer to average price levels in the EU. In overall terms, however, consumer prices in Sweden still remain significantly higher. Four product areas, which had very high prices in Sweden compared to the EU, were given particular attention: pasta and rice, non-alcoholic drinks, chemico-technical household products, hygiene articles and building materials. Here prices on the average were 30-40 percent above the EU average and for some goods they were 90 percent higher. In order to bring down prices in Sweden, the report proposes that unnecessary obstacles to the free movement of goods between EU countries be removed, thereby increasing competition and bringing prices down.

44. At the beginning of year 2000, the Competition Authority published its report "Competition in Sweden during the 1990s- Problems and Proposals". The report commissioned by the Government analysed how competition has developed on the Swedish market during the 1990s. In addition, a large number of proposals were made in order to improve competition in different industries and sectors. A number of proposals focused on strengthening competition policy in general and creating better opportunities to intervene against restrictions on competition which threaten the interests of consumers. The report has been the basis for the Government's Bill on Competition Policy (Bill. 1999/2000:140). The Parliament Committee on Industry examined the Bill during the autumn (2000/01:NU04) and in November the Swedish Riksdag decided to approve the Government's proposals for the future direction of competition policy (Rskr 2000/01:16). The strengthening of competition policy means that the Competition Authority will take more initiatives to eliminate harmful restrictions on competition and that new sectors of the economy will be opened up to competition.

45. The report has also contributed to the Government setting up a Commission (dir 2000:40) to submit proposals on how cartels can more effectively be combated. The starting point for the work is the Authority's proposals on reducing fines for companies which reveal cartels, strengthening the safeguarding of confidentiality and providing greater scope for exchange of information with competition authorities in other countries, making infringements of the prohibition rules in the Competition Act a criminal offence, as well as the rules on breaking up concentrations between undertakings. The work of the Commission should be concluded in the autumn 2001.

Statements of opinion

46. The Government and the state authorities often ask the Competition Authority to give its views on proposals in reports and investigations, which may have effects on competition. By giving its views, the Authority is able at an early stage to influence the drafting of proposals and future decisions. The Competition Authority also submits its own proposals in statements on issues connected to competition and consumer interests.

Public hearings

47. During year 2000 the Competition Authority took part in four public hearings in the Riksdag. The issues discussed were i.a. competition on the mobile telephone market, the regulatory reform on the electricity market and the impact of the "new economy".

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IV. Resources of competition authorities

1. Resources overall:

- a) Annual budget: SEK 64.4 million (equivalent to USD 6.4 million in February 2001)
b) Number of employees (person-years):

Economists	47
Lawyers	38
Other professionals	7
Support staff	20
All staff combined	112

2. Human resources (person-years) applied to:

Enforcement against anti-competitive practices	72
Merger review and enforcement	7
Advocacy efforts	6
Period covered by the above information	2000

V. Summaries of or references to new reports and studies on competition policy issues

Available in English from the Swedish Competition Authority

Competition Rules in Sweden. Swedish Competition Authority (1998)

The Swedish Competition Authority. Functions and Organisation (August 2000)

Annual Report 2000 of the Swedish Competition Authority. Abridged version in English

The Environment, Trade and Competition - playing rules for efficient markets (1998:1)

Deregulated markets in Sweden - a follow-up study. A report from the Swedish Competition Authority (1998:3)

Parallel Imports - Effects of the Silhouette Ruling. A report from the Swedish Competition Authority (1999:1)

The development of competition in Sweden in the 1990s - An executive summary of the report 2000:1

Sweden - a Part of the Single European Market - An executive summary of the report 2000:3

Further information in English i.a. on important cases is available on our website: www.kkv.se