

Unclassified

DAF/COMP(2005)18/18



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

10-May-2005

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP(2005)18/18
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWEDEN

-- 2004 --

This report is submitted by the Swedish Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 1 and 2 June 2005.

JT00183903

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English text only

ANNUAL REPORT ON COMPETITION POLICY IN SWEDEN 2004

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Amendments to the Competition Act

1. Adaptation of the Swedish rules on competition to the Regulation 1/2003 took place on 1 July 2004. One change is that undertakings can no longer apply for negative clearance and exemption decisions from the Competition Authority. A general so-called legal exemption from co-operation between undertakings has been introduced. This means that the exemption in Article 8 of the Competition Act now applies directly without any prior decision on the part of the Competition Authority. Negative clearance granted before 1 July 2004 continues to apply. Exemptions granted before 1 July 2004 continue to apply until the date set out in the decision. The Swedish block exemptions will be retained until further notice.

2. In cases concerning suspected infringements of the rules on competition, the undertaking can make commitments so that restrictions on competition are eliminated (Article 23 a Competition Act).

1.1.2 New regulation on block exemptions

3. In November 2004, the Swedish Government issued a new national regulation on block exemptions for the transfer of technology. The regulation entered into force on 1 January 2005 and in all essential respects corresponds to the Commission's block exemption. One aim is to achieve legal parity with the competition rules of the EU.

1.1.3 Regulation on information obligation

4. In April 2004, the Swedish Government issued a regulation stating as follows:

“When a general court or the Market Court passes a judgment or gives a final decision concerning the application of Article 81 or 82 of the EC Treaty, a copy of the judgment or decision shall the same day be sent to the Competition Authority.”

1.2 Other relevant measures, including new guidelines

1.2.1 New general guidelines on agreements of minor importance

5. During the year the Competition Authority adopted new general guidelines on agreements of minor importance. The general guidelines are mainly a reference to the European Commission's notice on agreements of minor importance.

1.2.2 *Review of the rules concerning concentrations*

6. The Swedish Government has appointed a Commissioner who will carry out a review of the rules of the Competition Act concerning concentrations between undertakings, arising as a result of the new EU Regulation on concentrations, in order to propose recommendations. The Commission will present its report during 2005.

1.2.3 *Proposals on damages, etc.*

7. In January the Commission on Modernisation of competition rules presented its interim report "The Right to Damages under the Competition Act". The Commission proposes that others apart from the undertakings and parties to the agreement should have the right to damages arising as a consequence of infringements of the Competition Act, that the limitation period for damages under the Competition Act should be extended from five to ten years, and that claims for damages could also be made for infringements of the EU rules on competition.

8. In determining the fine, the Commission proposes that if an undertaking has earlier infringed the rules on competition, this should be regarded as a factor aggravating the seriousness of the infringement.

9. The Competition Authority views positively the proposal that the Authority receives a clearly expressed right to search private dwellings and other areas, and supports this proposal in its official comments on the report. But the Competition Authority considers that the proposal is insufficient in this part. Since it is important that the Swedish rules do not deviate from those of EC legislation, investigations should also cover, for example, those who have been commissioned by the undertaking.

1.2.4 *Proposals on criminalisation*

10. In December the Commission on Modernisation of the rules on competition submitted its final report "Competition crimes – a legislative model" (SOU 2004:131). The Commission has recommended that criminalisation should take place by means of introducing a new crime – crime against competition. This could lead to a prison sentence.

11. The Commission proposes:

- that the profit or compensation which the offender or undertaking obtained by committing a competition crime shall accrue to the state. A fine could also be imposed on the undertaking;
- that the Swedish National Economic Crimes Bureau shall be the responsible prosecuting authority for investigating and initiating legal proceedings for competition crimes; and
- that the general rules in the Swedish Code of Judicial Procedure on the duty to prosecute shall apply.

12. The Competition Authority expressed in a special statement that criminalisation with a duty to prosecute inevitably leads to major disturbances in relation to co-operation with the European Commission and the competition authorities of member states, and that it could be questioned whether appropriate preconditions exist. Moreover, the question can also be raised whether Sweden can live up to the obligations concerning the Regulation on modernisation and Article 10 in the EC Treaty if criminalisation were implemented.

1.2.5 *More rapid handling of infringements of the rules on competition*

13. The Government appointed a Commissioner who, amongst other things, will investigate how the process concerning legal action for suspected infringements of the rules on competition can be made more effective. The Commission will issue its report during 2005.

1.2.6 *Nordic agreement on co-operation*

14. Sweden has signed the co-operation agreement which has existed since 2001 between Denmark, Norway and Iceland on the exchange of certain confidential information between the competition authorities. The agreement entered into force on 15 February 2004.

2. Enforcement of competition laws and policies

2.1 Action against anti-competitive practices, including agreements and abuses of dominant positions

a) *Summary of activities of:*

- The Swedish Competition Authority

Tip-off and complaints from undertakings and private persons

15. Oral and written tip-offs and complaints are in many cases the basis for the work of the Competition Authority in tracking down and intervening against serious infringements of the legislation on competition. During 2004, the Competition Authority received approximately 870 tip-offs and complaints (95 complaints from undertakings concerning public players).

16. As a part of the work of bringing in more tip-offs and complaints, during the latter half of 2004, the Competition Authority has informed procuring entities primarily within the public sector that certain patterns in public procurement may indicate the existence of a cartel. The Competition Authority has also drawn up a checklist based on a model of a similar list used by the Department of Justice in the USA. The work of making those responsible for procurement aware of possible infringements of the competition rules has led to a number of tip-offs.

17. The following table shows the number of new cases registered during 2003 and 2004 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 2004 amounted to 53.

Year	Registered new cases		Decisions	
	2004	2003	2004	2003
Mergers	75	65	75	68
Notifications for negative clearance or exemptions	10	25	26	42
Complaints	114	75	114	64
Other cases (inquiries, etc.)	306	242	302	241
Total	505	407	517	415

18. An important task assigned to the Competition Authority is its consultative role on existing and proposed public regulations. A total of 166 formal opinions were submitted to governmental and public authorities.

Decisions

19. Over the year the Competition Authority made 517 decisions under the Competition Act and Articles 81 and 82 of the EC Treaty. The industries which have been primarily affected by the decisions of the Competition Authority during 2004 are other services, trade, the engineering industry, construction and transport.

20. Of the Competition Authority's decisions during the year, 26 concerned applications for negative clearance or exemptions. In two cases undertakings made changes to their agreements during a case in order to fulfil the requirements for negative clearance or exemption. In two cases the Competition Authority decided that there was no infringement of the Competition Act and issued a negative clearance. The provisions of the Act for granting time-limited exemptions were fulfilled in 12 cases. In two cases, the Competition Authority dismissed applications for negative clearance or exemptions. The remaining application cases were either withdrawn or closed for other reasons.

21. During the year, the Competition Authority decided to object in four cases where undertakings had notified an agreement for exemption. An objection may be made if it is clear that there are circumstances requiring a more thorough investigation, or if there are other particular reasons for extending the period to allow more detailed examination of a case.

22. The Competition Authority has made a decision on one obligation during 2004. The decision was appealed.

23. The Competition Authority has made 75 decisions concerning concentrations between undertakings. Of these cases, three led to a special investigation. Three cases were closed after being withdrawn, one of these cases was withdrawn by the undertaking after the Competition Authority decided to carry out a special investigation. No further action was taken in one case after the parties had provided voluntary commitments. One case was referred to the European Commission. In 69 cases no further action was taken in the first examination phase of 25 working days. In addition, the Competition Authority decided to start a special investigation in one case which was not completed during 2004.

The Authority's application of EU Competition Rules

23. As a consequence of changes in the application of EU competition rules from 1 May 2004, the Competition Authority is currently obliged at an early stage of an investigation to inform the European competition network when the Authority is applying Article 81 or Article 82 to a case. The Competition Authority shall also inform the Commission before the Authority makes decisions under these Articles. As of 1 May 2004 until the end of the year, the Competition Authority submitted such information to the Commission in four cases.

- courts

Summons applications

24. During 2004 the Competition Authority initiated legal proceedings in the Stockholm City Court in five cases.

Appeals against decisions made by the Authority

25. During 2004 five of the decisions taken by the Competition Authority were appealed. Two of the decisions appealed concern application for negative clearance, one applies to the application for negative

clearance and individual exemption, one applies to individual exemption and an obligation, and one applies to a refusal to attend a hearing.

Application of the EC competition rules by national courts

26. The Swedish Supreme Court has commented on the interpretation and application of Article 81 and Article 82 of the EC Treaty in two cases during 2004. To our knowledge any other national courts have not applied these Articles during the year. Swedish courts have not during the year referred any questions concerning Article 81 or Article 82 to the European Court of Justice for a preliminary ruling.

b) description of significant cases, including those with international implications

The Supreme Court

Application of the EC competition rules

27. The Swedish Supreme Court in its judgment of 23 December 2004 in Case No. T 2280-02 rejected the complainant's claim for a preliminary ruling by the European Court of Justice and upheld the judgment of the court of appeal in the part where leave to appeal had been granted. The complainant i.a. argued that a clause in a nation-wide standard agreement implied a prohibited anti-competitive agreement and that it therefore should be void under Article 81 (2) and under the corresponding provision in the Swedish Competition Act. The Supreme Court found, however, that it had not been shown that trade between Member States could have been affected and therefore examined the practice only under national competition rules.

28. In a decision of 9 December 2004 in Case No. Ö 1891-03 the Swedish Supreme Court rejected a complaint of the Swedish Board of Civil Aviation about miscarriage of justice and petition for a new trial. The Supreme Court also decided not to request in the case a preliminary ruling from the European Court of Justice. In its judgment the Supreme Court i.a. commented on the interpretation and application of Article 82 of the EC Treaty.

The Market Court

29. During 2004 the Market Court issued judgements in five cases concerning the Competition Act where the Competition Authority has been a party. Three of these cases were dismissed by the court as a consequence of the fact that the possibility of applying for negative clearance or notifying an agreement for exemption ceased to exist during the year. The most important case was the intermediate judgement issued by the Stockholm City Court in the asphalt case. During autumn 2004, the Market Court examined the petrol cartel case. The judgement is expected in February 2005.

The asphalt case

30. The Competition Authority has taken legal action against eleven undertakings in the asphalt industry and petitioned that the undertakings in total pay approximately SEK 1.6 billion in fines. The Competition Authority considers that the undertakings had taken part in a cartel where the tendering procedure was rigged and which was directed principally against the Swedish National Road Administration but also towards municipalities and certain private players. One of the undertakings which the Competition Authority has initiated legal proceedings against is the National Road Administration, which is suspected of having taken part in the procurement cartel through its own production unit Vägverket Produktion.

31. All the undertakings stated that the prohibitions in the Competition Act could not be applied to those parts where participation in the rigged cartel was directed towards the National Road Administration, since the National Road Administration was itself one of the members of the cartel.

32. The Stockholm City Court issued an intermediate judgement in December 2003. According to the Stockholm City Court, the Competition Act can be applied to the Swedish National Road Administration's procurement in the current situation.

33. The undertakings appealed to the Market Court which in September 2004 upheld the judgement of the Stockholm City Court. The judgement of the Market Court means that a state procuring authority, which is both a producer and supplier, can be held responsible for taking part in a cartel.

34. The Stockholm City Court will now examine whether the undertakings shall pay the fine which the Competition Authority has petitioned for. The court intends to start hearing the case during the spring of 2006 and issue its judgement later in the same year.

The petrol case

35. In April 2003, the Stockholm City Court issued its judgement in the petrol case. The Competition Authority petitioned for fines totalling SEK 651 million for co-operation over rebate adjustments on petrol between the petrol undertakings Norsk Hydro, OK-Q8, Preem, Shell and Statoil.

36. The Stockholm City Court partially accepted the Competition Authority's petition and ordered the petrol undertakings to pay a fine totalling SEK 52 million. The Stockholm City Court found that the petrol undertakings had been guilty of a serious infringement of the Competition Act when they had jointly agreed to implement a so-called rebate adjustment of SEK 0.15 on 1 November 1999 and to apply certain maximum rebates for a group of customers.

37. However, the Stockholm City Court found that the petrol undertakings had not infringed the Competition Act as regards maximum rebates for other customer groups, co-ordination with respect to specific customers, a "cease-fire" where the undertakings would not be able to compete with each other by offering higher rebates, as well as co-ordinating the price of petrol before and after 1 November 1999. With reference to the fact that the Competition Authority was not fully successful in the case, the Stockholm City Court decided that the state would meet a part of the legal costs of the petrol undertakings in the case.

38. Both the Competition Authority, and the petrol undertakings appealed the Stockholm City Court's decision to the Market Court. In a statement to the Market Court, the Competition Authority has reduced its petition for the fine to SEK 405 million. Legal proceedings in the case have now been completed after the Market Court's examination throughout autumn 2004. The judgement is expected in February 2005.

The Stockholm City Court

39. Although several cases are pending the Stockholm City Court has not issued a judgement in any case concerning the Competition Act during 2004.

The Competition Authority

40. To show the steps taken by the Competition Authority during the year to counteract serious restrictions on competition, we present a selection of our cases below.

Anti-competitive co-operation

Car dealers

41. In March the Competition Authority submitted a summons application to the Stockholm City Court concerning eight resellers of Volvo and Renault in the south of Sweden. The Competition Authority petitioned for a fine of SEK 157.5 million for illegal co-operation. Car dealers were suspected of having infringed the prohibition in the competition rules by, among other things, agreeing on prices and discounts on new and second-hand cars. One of the undertakings only took part in agreements concerning second-hand cars. The Competition Authority carried out a dawn raid in December 2002 after receiving information in an e-mail that one of the car dealers had proposed that the eight undertakings should co-ordinate their prices.

Car breakdown services

42. In October the Competition Authority submitted a summons application to the Stockholm City Court concerning two undertakings in the car breakdown services industry. The Competition Authority petitioned for a total of SEK 1 million in fines for illegal co-operation over prices. They were suspected of applying agreements over prices for car breakdown services with respect to insurance undertakings. During 2002 the Competition Authority received information and complaints directed towards certain undertakings providing breakdown services. The Competition Authority carried out dawn raids on a number of undertakings in January 2003 to obtain evidence.

Bitumen

43. In December the Competition Authority submitted a summons application to the Stockholm City Court concerning two oil undertakings. The Competition Authority petitioned that the undertakings pay a total of SEK 394 million in fines for illegal co-operation on the market for bitumen (binding agent in asphalt).

44. During 2003, the Competition Authority received information from the Swedish Civil Aviation Administration about possible problems on the market for bitumen. The Competition Authority in its own investigation into suspected cartel activities between companies in the asphalt industry showed that there were cartel problems in the raw material stage. In June 2003, the Competition Authority carried out dawn raids on a number of oil undertakings in order to gather evidence. Apart from the illegal cartel, the Competition Authority considers that one of the undertakings had abused its dominant position on the market for bitumen by applying commercial conditions which discriminated against other undertakings and thereby limited the market.

45. The Competition Authority also decided to accept a commitment. By means of the commitment, Nynäs Refining and Vopak Logistics Nordic agreed to stop applying rental conditions which the Competition Authority in a preliminary assessment found to be in contravention of the prohibition against anti-competitive co-operation and abuse of a dominant position in the Competition Act and the EU Treaty. The Competition Authority applied to the Stockholm City Court that the undertakings' commitments should be made subject to a fine of SEK 4 million each.

Heating, water and sanitation industry

46. In March, the Competition Authority ordered the employers' and trade organisation for the heating, water and sanitation industry to pay a fine of SEK 5 million and within six months discontinue offering parts of its price list service to its members. The decision was appealed to the Market Court which heard the case in November. A decision is expected at the beginning of 2005.

Abuse of a dominant position

ADSL

47. In December the Competition Authority submitted a summons application to the Stockholm City Court concerning a telecommunications undertaking. The Competition Authority petitioned for a fine of SEK 144 million. The undertaking in the view of the Competition Authority had abused its dominant position by limiting competition on the market for broadband services through ADSL connections.

48. The Competition Authority stated in its investigation that the undertaking's competitors had been exposed to marginal "squeezing". This means that the margin (the difference between the resale and wholesale price) was inadequate in the retail stage. The margin was not sufficient to cover the undertaking's own costs in the retail stage.

49. The telecommunications undertaking in the view of the Competition Authority had used its dominant position on the wholesale market to strengthen its position on the end customer market. The practice has constituted a barrier to the entry of competitors on the market for these broadband services. The abuse continued over the period April 2000 up to and including January 2003.

2.2 Mergers and acquisitions

2.2.1 The natural gas market

50. The Competition Authority examined the acquisition by the Danish undertaking, Dong Naturgas, of the Swedish natural gas trading undertaking, Nova Supply. The examination by the Competition Authority showed that the acquisition would lead to competition problems. Since Dong committed itself to providing all of Nova Supply's customers with the opportunity of discontinuing their agreement with Nova Supply beforehand, the competition problem was thus eliminated. The commitment was imposed subject to the penalty of a fine of SEK 30 million.

51. The commitments mean that an important part of Swedish natural gas consumption is exposed to competition as a result of the deregulation of the natural gas market which will enter into force during 2005. The commitments mean that there will be access to large volumes of natural gas which are exposed to competition. This significantly increases the preconditions for potential competitors to enter the markets.

2.2.2 Summons application in the cinema industry

52. SF Bio notified the Competition Authority that they wished to acquire Sandrews Metronome Sverige. After a special investigation, the Competition Authority submitted in January 2005 a summons application to the Stockholm City Court to have the concentration stopped. The Competition Authority considered that the transaction, if carried through, would have clearly negative effects on the supply of films, ticket prices and the number of cinemas. In addition, the market for distribution of films would be negatively impacted.

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

53. The Competition Authority proposes changes to rules and other measures to eliminate obstacles to effective competition. The proposals are often presented in reports and statements.

3.1 Reports

54. During the year the Competition Authority has produced two reports on Government commissions:

- Dental care market and competition
- Business as usual? Clearer Demarcation between Authorities and Markets

55. The Competition Authority has also produced the following reports:

- Consumers, food prices and competition
- Monopoly markets in transition
- Competition in Sweden 2004
- reports in conjunction with the Nordic competition authorities,
- research reports and
- reports on the retail monopoly for alcoholic beverages.

Below follows a presentation of the contents of these reports.

3.1.1 Dental care market and competition

56. On a commission from the Government, the Competition Authority has analysed competition on the market for dental care services, especially the differences between publicly and privately provided dental care services. The report "Dental care market and competition", examined price changes for adult dental services since 1999, when state regulation of dental fees was removed.

57. 55. The reform of dental care has had a number of positive effects. In particular, it has led to a better functioning market for adult dental care services. At the same time there are conditions which restrict competition for both private dentists and dentists in the public dental care service. Prices of adult dental services have increased significantly since 1999. But after a large introductory increase, the rate of increase has slowed down and the price level may be on its way to stabilising. Free pricing has made it possible for county councils to finance adults dental care without subsidies from tax funds and providers have been able to make the necessary investments and competence development. In this respect, the reform is regarded positively. Subsidies will probably continue to exist, and there are other competition problems which should be solved for the market to function effectively. Consumers often lack the information needed to make well formed decisions when choosing dental care provider and treatment. Private adult dental care and the dental care provided by county councils, public dental care, do not face the same competition preconditions. Public regulation affects competition neutrality between public and private dental services. And the rules governing authorisation to practice as a dentist limit the supply of dental care.

58. Competition would be improved if the remaining subsidies within county councils were abolished. The Competition Authority also proposes that:

- information for consumers be improved, amongst other things, by making the prices of dental care providers accessible over the Internet
- county councils separate purchasing and operational functions in dental care.
- public dental services be organised under a separate legal body.
- county councils may delegate decisions concerning fees.
- county councils procure more.
- dental care insurance and VAT rules should be changed so that private dental care providers are not disadvantaged.
- an investigation be carried out into whether dental hygienists can be given greater opportunities to carry out dental care.

59. In the future, it is also important to monitor price changes and, if prices continue to increase at a rapid rate, take further measures to improve market performance.

Business as usual? Clearer Demarcation between Authorities and Markets

60. In the report “Business as usual? Clearer Demarcation between Authorities and Markets”, the Competition Authority has on a commission from the Government analysed the problems which exist when authorities and municipalities carry out activities competing with private undertakings. The Competition Authority considers that municipalities sometimes operate activities which are in conflict with the rules for competence laid down in the Municipal Act.

61. The Commission from the Government involved submitting proposals for improving market performance. Many of the problems could be solved by clearer differentiation of roles between the tasks of authorities and business operations:

- Clearer definition of the role of authorities. Measures should be taken to ensure that existing laws and guidelines are followed by increased compliance with the guidelines for state administration. The business activities of the authorities should be separated from their other tasks. A better guarantee should also be provided to ensure that municipalities follow the rules contained in the Municipal Act concerning business activities.
- Public subsidies. The authorities have the possibility of subsidising activities exposed to competition. As a result they can then obtain competitive advantages with respect to undertakings on the market and by using public funds for purposes other than those intended. Consideration should be given to nationally determined regulation of public subsidies. This should be connected to measures for creating greater transparency in publicly operated activities.
- Privileged access to information and competence. The information or accumulated competence which exists in an authority can provide the authority with a competitive advantage if used in commercial activities in competition with other players. Competing undertakings should have access to this on the same conditions.

3.1.2 *Consumers, food prices and competition*

62. In the report “Consumers, food prices and competition”, the Competition Authority gives its views on changes in the market for non-durable goods in Sweden and submits proposals on how competition can be improved for the benefit of consumers. There has been some strengthening of competition in the last two years, but this can be further improved by the establishment of additional players on the market. Tightening competition mainly consists of the establishment of international low-priced food chains here in Sweden. This has had a restraining effect on price changes and encourages other chains to invest in product range and service.

3.1.3 *Monopoly markets in transition*

63. As part of our work of promoting effective competition by proposing changes to the rules, we pay particular attention to changes in former monopoly markets. In the report “Monopoly markets in transition”, we describe changes in the areas of domestic civil aviation, telecoms, postal services, electricity and railway transport.

64. An overall conclusion is that prices have fallen in the former monopoly markets as new undertakings have successfully been able to challenge the established undertaking. On the other hand, in markets where the dominant undertaking was able to maintain its strong position, there has been an increase in prices.

65. In the report we state that the exclusive rights of SJ to provide passenger transport on routes which the undertaking considers to be profitable do not have any obligations attached in terms of service levels, content of the transport or prices. In other words, there are no guarantees that passengers’ needs and interests will be satisfied at reasonable prices. The prices of domestic railway transport have increased significantly during the last 25 years. Further reform of the Swedish railway market is important. There are no strong arguments as to why the state should be responsible for railway transport on certain routes. For this reason, SJ’s exclusive rights to profitable passenger traffic between regions should be phased out. Also the Commission into the Railways which submitted its final report in November 2003, has proposed that SJ’s monopoly should be removed.

3.14 *Competition in Sweden 2004*

66. The Competition Authority for the third time has issued a report describing the competition position in a number of industries. In this year’s report “Competition in Sweden 2004” we have chosen ten industries which in different ways have been relevant to our activities during 2003 and the first half of 2004.

The report identifies three positive trends:

- increasingly intensive competition in a number of industries through the establishment of new players who in many cases focus on low prices;
- ongoing reforms of the regulatory framework affecting important markets, both within the EU and Sweden. A more effective regulatory system has opened up many markets to competition, with positive effects for consumers as a result;
- increased international competition, both within the EU and at a global level.

67. At the same time competition problems in certain areas remain:

- high concentration in many industries with weak competition from imports (building, finance);
- high barriers to entry (building, electricity);
- rules remain which can make competition and new establishment more difficult (building, trains, retailing).

3.1.5 *Nordic tele report*

68. Prices of telecom services have fallen substantially in Sweden in recent years. But price differences between the Nordic countries are large for different telecom services. This means that there is scope for further price reductions, which would benefit consumers. This is evident from the report "Telecompetition – Towards a single Nordic market for telecommunication services?" which the Nordic Competition authorities published under the auspices of the Nordic Council of Ministers.

69. The Nordic competition authorities summarise their views on the rules for the telecom market in the following way:

- the tele markets must also be monitored in the future. Legislation on competition is a tool to counteract dominant undertakings from abusing their market power;
- powerful regulation can promote competition in the telecom market in the short-term, but worsen the conditions for competition in the long-term, since interest in investing in new infrastructure and developing new services decreases. For this reason the regulatory authorities should be restrictive as regards the need for sector specific regulation;
- more co-operation is needed between the authorities regulating competition and telecommunications so that telecommunications markets in the Nordic countries develop in the direction of greater competition and benefits for the consumer.

3.1.6 *Research reports*

70. The Competition Authority has issued a number of reports during the year presenting research findings it has commissioned. The Competition Authority has also produced the research anthology "The Pros and Cons of Antitrust in Deregulated Markets".

Reports on the retail monopoly for alcoholic beverages

71. In connection with Sweden's accession to the EU in 1995, the Competition Authority was required to monitor that Systembolaget, the retail monopoly for sales of alcoholic beverages in Sweden, functions in a non-discriminatory way, so that products from all EC countries have the same opportunity to reach Swedish consumers. This involves reporting twice a year to the European Commission on how the retail monopoly is functioning.

72. In the first report of the year, the Competition Authority mainly dealt with the purchasing model and product selection of Systembolaget, as well as statements about support purchases and corruption. We have also analysed the retail monopoly on the sales of alcoholic beverages from an overall perspective with respect to a number of different aspects. The second report was partly a follow-up of the first. In addition, we also examined other issues concerning marketing of alcoholic beverages.

3.2 *Official consultation statements*

73. By expressing its views on proposals in reports and from commissions, the Competition Authority can be involved at an early stage and influence preparations for proposals and future decisions. Below we present a selection of the 166 official consultation statements the Competition Authority submitted during 2004. The Competition Authority has also taken part in a number of hearings.

3.2.1 *Commission on Business Confidence*

74. 70. The Competition Authority expressed its views to the Ministry of Justice over the report "Industry and Confidence" (SOU 2004:47) from the Commission on Business Confidence. The Competition Authority supports proposals to make competition policy more effective and shares the view that effective competition policy contributes to strengthening the confidence of the general public in the business sector.

75. 71. Preconditions for high confidence will be attained, as stated by the Commission on Business Confidence, when the regulatory framework is functional, supervision effective and the sanction system fulfils its purpose. The Competition Authority wishes to specifically emphasise that effective sanctions systems require that there are not only economic sanctions with deterrent effects, but also legally predictable processes of sufficient rapidity.

76. Some of the views of the Competition Authority concerning the proposals of the Commission on Business Confidence:

- Use of self-regulation is doubtful in terms of how it has been defined by the Commission on Business Confidence. It runs the risk of becoming ineffective and can, moreover, lead to a greater risk of co-operation thereby damaging competition.
- One measure, which the Commission on Business Confidence has not proposed, but which should be considered is whether investors could apply an investment policy whereby they do not invest in undertakings which have been found to have committed serious infringements of the rules on competition.
- The main responsibility for consumer questions in the financial area should not be located at the Swedish Financial Supervisory Authority. The Competition Authority, however, shares the conclusion that additional resources and raising the level of ambition is necessary in this area. Within the framework of the ongoing review of consumer policy in the Government Office, these issues should be analysed in further detail.
- The Competition Authority supports the proposal to transfer procurement issues to the Competition Authority and also the proposal that the Competition Authority should be the supervisory authority for the proposed legislation on transparency in public-sector activities. But this presupposes that the areas in which the act is to be applied are clearly defined.
- The Competition Authority supports the proposal that the Public Procurement Act should incorporate the possibility of sanctions in the form of a market damage fee for contraventions.
- The first step in making the application of competition rules more effective is that sanctions are sufficiently powerful to deter infringements of the regulatory system. The time for

courts to hear cases should be shortened. A change in the legal procedures proposed by the Commission is a possible solution to this problem. (Reg. no. 635/2004.)

3.2.2 *The energy market*

77. The Competition Authority has expressed its views on two EU directives, the Swedish Agency for Administrative Development's report "More effective supervision of the energy market" and over "Electricity and the natural gas markets – European harmonisation" and "More secure district heating customers".

78. The Competition Authority emphasises a number of shortcomings in competition in the energy area. Strong concentration amongst a few players, as well as the fact that a number of players operate in markets exposed to competition and in monopoly areas leads to competition problems. The Competition Authority would prefer to see that ownership of the network and supplier undertakings is separated on the markets for electricity, district heating and natural gas. The networks are natural monopolies for transmission and should be separated from other activities. The intention is to avoid cross-subsidisation and improper exchange of information, as well as make the Swedish Energy Agency's supervision of the network monopoly easier.

79. In Sweden the market for natural gas is relatively small compared with that in other countries. The view of the Competition Authority is that consideration should be given to expanding the natural gas network in Sweden and building more connections to the European gas network. The Competition Authority wishes to encourage more players to enter the gas market in order to create better competition and benefit energy customers. The Competition Authority also points out the need for investments to increase transmission capacity in the electricity network between different countries. This applies not only to the Nordic countries, but also to European countries in general.

80. Supervision of the network undertaking's transmission tariffs for the distribution of electricity should take place in advance instead of as today retroactively. If supervision takes place in advance, it can be more rapid, at the same time as there is greater predictability for undertakings and consumers. (Reg. no. 14/2004, reg. no. 926/2003 and reg. no. 4/2004.)

3.2.3 *"Must carry" in the cable TV network*

81. The Competition Authority has expressed its views to the Ministry of Culture concerning the interim report from the Commission on Radio and TV legislation "Must carry" (SOU 2003:109). The Competition Authority considers that strengthening the "must carry" transmission runs the risk of harming competition in the television area. Network operators should not be compelled to transmit the commercial broadcasting of TV undertakings.

82. The "must carry" obligation for public service TV broadcasting should be limited to those channels of Sveriges Television which fulfil the demand for impartiality and objectivity, and also the provision of a diverse supply of programs where news is included. There should be competition neutrality between different technical platforms to the highest possible extent.

83. An obligation should also be introduced for those supplying households with programme services, not only via the cable network, but also by satellite receivers and other wireless based TV broadcasting, to provide at no charge the TV programmes which in accordance with the Competition Authority's proposal should be covered by the "must carry" obligation. (Reg. no. 921/2003.)

3.2.4 *Running hospitals*

84. The Competition Authority has expressed its views to the Ministry of Health and Social Affairs on the “Memorandum on transfer of responsibility for running hospitals to private entrepreneurs”. The Competition Authority is opposed to the proposal that county councils should not be permitted to transfer the operation of a hospital to a commercial undertaking. The proposal means that competition when procuring hospital contracting would be severely weakened. The consequences may be higher health care costs for the quality levels specified by county councils.

85. The provision of health care at hospitals varies in different parts of the country and changes over time as a result of new and better methods of treatment, changes in age structure in society, and a different division of tasks between open and closed health care etc. This is the reason the proposal can prevent new organisational solutions and limit the opportunities for increasing efficiency in health care. (Reg. no. 676/2004.)

Other advocacy efforts

86. The staff of the Competition Authority often give talks at different events to disseminate knowledge on competition questions. During 2004 there have been 60 such engagements. Our staff are engaged by i.a. trade associations, municipalities, universities and university colleges.

87. The Research anthology “The Pros and Cons of Antitrust in Deregulated Markets” was presented by the authors at an international seminar in Stockholm in November. Distinguished colleagues from competition authorities were opponents.

88. During spring 2004, the Competition Authority held a series of seminars addressed primarily to researchers in macro economics. The aim was to provide a forum for researchers into competition issues. Presentations were also given of research carried out by staff from the Competition Authority.

4. Resources of competition authorities

4.1 Resources overall

a) Annual budget: SEK 89 million (equivalent to USD 12.28 million in January 2004)

b) Number of employees (person-years):

Economists	40
Lawyers	42
Other professionals	8
Support staff	19
All staff combined	109

4.2 Human resources (person-years) applied to:

a) Enforcement against anti-competitive practices; 65

b) Merger review and enforcement; 9

c) Advocacy efforts; 38

4.3 *Period covered by the above information: 2004*

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

Available in English from the Swedish Competition Authority

Annual Report 2004 of the Swedish Competition Authority (April 2005)

The Swedish Competition Authority. Functions and Organisation (August 2004)

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. Why are there still price differentials? - An executive summary of the report 2000:3

Fighting Cartels – why and how? From The 3rd Nordic Competition Policy Conference in Stockholm September 2000

Evaluation of Optiroc's acquisition of Stråbruken – A summary, 2001

The mobile telecommunications market in Sweden from a consumer and competition perspective. Report 2001:3

The Pros and Cons of Merger Control. Contributions to the 10th Anniversary of the Swedish Competition Authority 2002

Competitive Airlines. Towards a more vigorous competition policy in relation to the air travel market. Report from the Nordic competition authorities, 2002

Safeguarding and promoting competition. What are the requirements for increasing consumer benefits? – Summary of the report 2002:2

Competition in Sweden 2002 - Executive summary of the report 2002:4

The price level in Sweden – a summary of the report 2002:5

Sweet Fifteen: The Competition on the EU Sugar Markets. Swedish Competition Authority Report 2002:7

The Pros and Cons of Low Prices. Swedish Competition Authority 2003

Commitments concerning concentrations between undertakings - Summary of a report from a Nordic working group 2003

DAF/COMP(2005)18/18

A Powerful Competition Policy. Towards a more coherent competition policy in the Nordic market for electric power. Report from the Nordic competition authorities No. 1/2003

Markets in the Information Age. Swedish Competition Authority Report, July 2003

High prices in Sweden - a result of poor competition? Swedish Competition Authority Report, July 2003

There is no such thing as a free lounge – a report on frequent flyer programmes. Swedish Competition Authority Report 2003:1

Deposit systems for aluminium cans and PET bottles. A summary of the report 2003:3

Dental care market in Sweden. Summary of the report 2004:1

Monopoly markets in transition. Summary of the report 2004:3

Telecompetition – Towards a single Nordic market for telecommunication services? Report from the Nordic competition authorities No. 1/2004 (September 2004)

The Pros and Cons of Antitrust in Deregulated Markets. Swedish Competition Authority (September 2004)

Business as usual? Clearer Demarcation between Authorities and Markets. Summary of the report 2004:4 (October 2004)

These publications can be downloaded or ordered on our website: www.konkurrensverket.se