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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWEDEN

-- 2009 --

This report is submitted by Sweden to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16-17 June 2010.

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Executive Summary

1 Changes to competition laws and policies proposed and adopted

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

1.1.1 Supplement to the Competition Act on public sector commercial activities

1. On 25 November 2009, the Riksdag (the Swedish Parliament) adopted a new rule in the Swedish Competition Act that went into force on 1 January 2010. If petitioned by the Swedish Competition Authority, individual companies or an industry organisation, the Stockholm City Court may under penalty of a fine prohibit the state, a municipality or a county council from conducting certain practices in its sales activities. A municipality or county council may also be banned from conducting activities that are incompatible with the law. This means that municipalities, county councils and state authorities – just like public sector controlled legal entities – may be banned from conducting commercial activities in a certain manner if they distort competition for private companies. The Authority's focus will be on prioritising matters of broad public interest, for example where many companies are affected in large parts of the country, or which in some other way are of a nature involving principles.¹

1.1.2 The Act on System of Choice in the Public Sector

2. The Act on System of Choice (2008:962) came into force on 1 January 2009. System of choice in healthcare centres involves the individual having the right to choose the supplier that performs the services and that a purchasing authority has approved and signed a contract with. The statute increases the possibilities for municipalities and county councils to allow individuals to choose for themselves their providers for old-age care, for support activities for persons with functional impairments and for healthcare and treatment. The Act applies to municipalities and county councils when they introduce systems of choice for services in the field of health and social care. For municipalities the introduction of systems of choice is voluntary, whereas it is obligatory for the primary care conducted by the county councils.

1.2 Other relevant measures, including new guidelines (New regulations and general guidelines)

1.2.1 General guidelines on trading bans, KKVFS 2010:1

3. In November 2008, the Competition Act was supplemented with an individual sanction, a so called trading ban or “disqualification order”. A trading ban is a new penalty that may be applied to individuals who have participated in cartels. Price fixing and market sharing are examples of serious infringements of the Competition Act that can lead to a trading ban. A District Court can issue a trading ban subsequent to an action brought by the Competition Authority under the Competition Act. (More information on this is available on the Authority's website, www.konkurrensverket.se.)

1.2.2 Calculation of administrative fines

4. Occasioned by the amendments to the Competition Act that went into force on 1 November 2008, the Competition Authority has produced a memorandum that explains how the Authority interprets and applies the rules of the Competition Act as regards administrative fines. Since the Authority's ambition is

¹ The Swedish Competition Authority has made a contribution to the OECD 105th Meeting of Working Party No. 3 on Co-operation and Enforcement (Roundtable on Corporate Governance and the Principle of Competitive Neutrality for State-owned Enterprises), see DAF/COMP/WP3/WD(2009)54.

to explain how this is done in as transparent a manner as possible, it has invited viewpoints on the memorandum. At the end of 2009, the memorandum was published on the Authority's web site.

1.2.3 Prioritisation policy

5. The Competition Authority is not obliged to investigate all tips and inquiries, but rather must perform a prioritisation by examining them under the competition rules and the procurement rules. The Authority received approximately 800 tips during 2009 – a good 200 of which involved public procurement – and according to the Authority's internal work order, the complainant will – within the maximum of four months – be informed whether the Authority will close the case or open a formal investigation. The Authority will focus on serious violations of the laws and in particular bring cases of principal interest to the courts.

1.2.4 Raising awareness of bidding cartels

6. During 2009, the Competition Authority has continued the fight against bidding cartels, including meetings in different parts of the country to inform and discuss with large public purchasers. The purpose is to raise awareness of patterns in public procurement that may be signs of cartel formation.

7. The current checklist on our website is presently being updated in accordance with the OECD checklist, The OECD Guidelines for Fighting Bid Rigging in Public Procurement.²

1.2.5 Guidelines for co-operation within trade associations

8. The Competition Authority has launched web-based guidelines for co-operation within trade associations. The purpose of these guidelines is for the trade associations themselves to be able to assess and easily identify co-operation between undertakings within the trade association that may restrict competition.

1.2.6 European Competition Day

9. In October, the Competition Authority arranged, under the auspices of the Swedish presidency of the European Union and jointly with the Ministry of Enterprise, the European Competition Day conference. The theme for the day was Welfare through well-functioning markets and its purpose was to give consumers, companies and organisations knowledge of the substance of competition policy in a broad sense. Among the speakers were the European Commission's Commissioner at the time for competition issues, Neelie Kroes, the Minister for Enterprise, Maud Olofsson, and the Minister for Consumer Affairs, Nyamko Sabuni. Well over 200 people from 30 countries participated in the conference.

1.2.7 Film on leniency

10. The Competition Authority has produced a film, primarily aimed at companies, concerning the possibilities for leniency of administrative fines for the first informant concerning an unlawful cartel. The purpose of the film, which is available at the Authority's Web site and on Youtube, is to increase the knowledge of the stakeholders of the possibilities that exist to avoid administrative fines and ultimately to increase the number of applications for leniency to the Authority.

² Available at http://www.oecd.org/document/29/0,3343,en_2649_40381615_42230813_1_1_1_37463,00.html

1.3 Government proposals for new legislation

1.3.1 Implementation of EU Directives on remedies with regard to public procurement

11. In April 2010 the Government presented a Bill regarding the implementation of EU Directives on remedies. The amendments to the procurement acts are proposed to enter into force on 15 July 2010. So far, no sanctions have been applicable to those public authorities and entities that violate the procurement laws. This implementation will give the Competition Authority the power to go to Court and request that an administrative fine is imposed on such public authorities and also to request that the procurement contracts involved are declared null and void.

1.3.2 System of Choice for Employment Agencies

12. In March 2010 the Government presented a Bill regarding system of choice for employment agencies. In brief the Bill contained provisions stating that the Act on System of Choice was to be applied also on the Employment Agencies' job coaching activities for newly arrived immigrants to Sweden.

1.3.3 Obligation to provide information concerning markets and competition conditions

13. In the spring of 2010 the Government plans to present a Bill regarding an Act on the obligation to provide information concerning markets and competition conditions. The proposed act aims at fulfilling the need for information by the Competition Authority in its promoting of effective competition and public procurement. The act shall not be applied in the Authority's investigation or enforcement of individual cases according to the Competition Act or the Act on Public Procurement. The proposed act will replace the current act from 1956 which needs to be modernised.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant position

2.1.1 Summary of activities of the Competition Authority

- **Application of the Competition Rules 2009**

During 2009, the Competition Authority has made 103 decisions in accordance with the Competition Act and articles 101 and 102 of the Treaty of the Functioning of the European Union (TFEU).

In a number of cases the parties have changed their practice or eliminated the competition problem. During the year, the Authority has decided upon one commitment entailing a fine and two interim injunctions entailing fines. The Authority has also for the first time decided on the imposition of a fine order against a company.

- **Mergers**

The Competition Authority has reached 41 decisions concerning company concentrations. Two cases went into an in-depth investigation phase. The Authority has also decided on an application for a summons to the Stockholm City Court in order to stop an acquisition. One case has been referred to the Authority from the European Commission.

- **The Competition Authority's application of EU Competition Rules**

The Competition Authority applies Articles 101 and 102 TFEU in several cases and also cooperates with the other European competition agencies in the European Competition Network (ECN). When any national competition authority applies articles 101 and 102 of the EC Treaty in a case, ECN is informed at an early stage and the Commission must also be consulted before any decision is taken based on these articles.

- **Tip-offs and complaints**

Verbal and written tips and inquiries are in many cases the basis for the Competition Authority's work of tracking down and intervening against serious violations of the code of regulations that the Authority applies or has the supervision over.

- **Decisions and rulings of the courts in 2009**

The Stockholm District Court

Proceedings stayed in case against TeliaSonera

In January 2009, the Stockholm City Court requested a preliminary ruling from the European Court of Justice in the case between the Competition Authority and TeliaSonera regarding alleged margin squeeze, therefore the proceedings have currently been stayed in the City Court. The Authority submitted an application for a summons in 2004 against TeliaSonera to the Stockholm City Court and requested that the company pay an administrative fine of SEK 144 million for abuse of its dominant position.

The Market Court

The Asphalt Cartel

In May, the Market Court mostly concurred with the Competition Authority's point of view and found all except one small company guilty in the so-called Asphalt Cartel. The companies were ordered to pay the highest fines ever in an anti-trust case in Sweden. The Market Court increased the fines to a total sum of more than SEK 277 million and the leading company in the cartel had its fines raised in relation to the judgement in the Stockholm City Court.³

Taxi queues

The Competition Authority obliged the LFV Group (operates airports and is responsible for air navigation services in Sweden) not to carry out the planned changes to the queuing and dispatching system for taxis at Terminal 2 and 5 at the Stockholm Arlanda Airport. The interim decision was connected with a fine of SEK 750,000. LFV appealed the decision to the Market Court which finally upheld the Authority's decision. As a result of this, LFV changed the queuing system. (*D. No. 542, 547, 561/2009*)

³ The cartel was detected in the autumn of 2001 when three persons who had previously been employed at one of the companies contacted the Competition Authority and reported that unlawful collusion was taking place between several companies in the asphalt surfacing industry. In 2007, the Stockholm City Court ordered nine asphalt companies to pay more than SEK 500 million in administrative fines. Three of the companies were found guilty in the City Court but chose not to appeal the judgement to the Market Court.

Access to power mains

In November 2009, the Competition Authority decided provisionally that the company Ekfors Kraft was obliged to give access to its power mains to Haparanda municipality's street lighting network. The decision was combined with a penalty of a fine to the amount of SEK 200,000 weekly. Since Ekfors Kraft is the power mains monopolist in the region, the municipality cannot turn to any other company for access to the mains. The Authority concluded that Ekfors Kraft had violated the Competition Act by abusing its dominant position by the refusal to give access to the municipality's street lighting. The decision was confirmed by the Market Court in February 2010. (*D. No. 522/2009*)

2.1.2 *Description of significant cases, including those with international implications*

14. In order to illustrate the Competition Authority's actions during the year when it comes to counteracting serious competition restrictions and to increasing the benefit to the consumer, a selection of its cases is presented below.

- **Anti-competitive collusion**

Cartel - power line poles

Two companies who sell power line poles participated in an unlawful cartel to collude on pricing, other business conditions and market-sharing in connection with procurements. The cartel was exposed by one of the companies contacting the Competition Authority and disclosing the collusion. By its active participation in the investigation, the company avoided being fined. The other company admitted its guilt and was fined SEK two million through a fine order. This was the first time the Authority decided to impose a fine order and the decision has the force of a binding court judgement. (*D. No. 237/2007*)

- **Abuse of a dominant position**

Airport buses

The airport bus traffic between Skavsta Airport and the City Terminal in Stockholm has been carried for a long number of years by Flygbussarna AB. When a competitor began airport bus traffic on the route, the company ran into competition problems. After contacts between the Competition Authority and the parties, Skavsta Airport entered into an agreement during the summer with the latter company, which involves there now being competition on the route, to the benefit of the consumers. (*D. No. 304/2009*)

Suspected abuse of dominant position - dairy products for convenience stores

The Competition Authority has after inspections on the premises of the dairy company Arla started an investigation into the suspected abuse of a dominant position in the market for delivery of dairy products, a market which is of great significance to the consumers. The suspected abuse consists primarily in Arla squeezing out competitors in convenience stores. (*D. No. 215/2009*)

2.1.3 *International co-operation*

15. In the latter case above, the Competition Authority co-operated with its Danish counterpart, Konkurrencestyrelsen, which – together with a liaison officer from the Swedish Competition Authority – carried out an inspection at the premises of the largest dairy producer in Denmark.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition law*

16. The following table shows the number of new cases registered during 2009 under the Competition Act and the number of decisions during that same period. The total number of cases pending at the end of 2009 amounted to 4.

Year	Registered new cases		Decisions	
	2008	2009	2008	2009
Mergers	89	43	96	42

2.2.2 *Summary of significant cases*

- **Cosmetics acquisition abandoned**

Åhléns planned an acquisition of NK Kosmetik. The Competition Authority examined the company concentration and drew, after an in-depth investigation, the conclusion that Åhléns would nearly have a monopoly on the market for luxury products in cosmetics, perfumes and skincare in Stockholm and Gothenburg. In order to stop the company concentration, the Authority submitted an application for a summons to the Stockholm City Court. Åhléns decided to abandon the acquisition and the Authority in turn rescinded the application for a summons. (*D. No. 524/2009*)

- **Paracetamol**

During the autumn of 2008 GlaxoSmithKline (GSK) notified its purchase of AstraZeneca Tika SNC (AZT). Since GSK would acquire a strong position on the market as regards certain product segments, the Competition Authority carried out an in-depth investigation of the concentration. It was concluded, however, that the concentration would not significantly impede the effective competition on the market. The Authority therefore closed the investigation without any further actions. (*D. No. 706/2008*)

2.3 *Public procurement*

17. The Swedish Competition Authority is the supervisory body for public procurement. The Authority's task is to work for effective public procurement to the benefit of the society and the participants in the markets. The supervision activities have been prioritised and particular emphasis has been placed on facilitating participation of small and medium-sized companies in public procurements. During the year, the Competition Authority has taken 29 supervisory decisions in accordance with the procurement laws.

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

3.1 *Proposals for improved competition*

3.1.1 Measures for better competition I

18. One of the Competition Authority's tasks is to take notice of impediments to efficient competition in the public and private sector. The Authority has therefore been given the task to present proposals for opening up competition and for reforming regulations, as well as to follow up on developments in the area of competition. The Authority provides accounts of its proposals for measures for better competition in reports, replies to official consultations and in letters to the Government. The Authority also provides opinions to other public authorities that seek the Authority's opinion on a particular report or change to a law. In its reports, the Authority analyses how different markets function and provides proposals for improvement measures. In most cases, the reports are done on the Authority's own initiative, however it also prepares reports that have been commissioned by the Government.

3.1.2 Measures for better competition II - Reports

19. The Competition Authority has been commissioned by the Government to provide a report with proposals for measures intended to improve competition in Sweden. The final report contains some sixty tangible proposals for removing barriers to market entry, reducing distortions to competition, increasing client mobility, improving the code of regulations and supervision, as well as making public procurement more efficient. The task also included performing a broad review of the competition situation in Sweden, which is presented in the second part of the final report. In the work commissioned by the Government, the Authority had a large number of underlying reports performed as background material for the final report. This report, which was presented to the Government in March 2009, was preceded by two sub reports, of which one was published at the beginning of the year. This sub report contains proposals for efficient public procurement and proposals for measures to address problems that may arise when public participants provide subsidies or themselves act in markets subject to competition. (*The Competition Authority's report series 2009:1 and 2009:4*)

3.1.3 Competition Policy and Financial Crisis

20. The Nordic competition authorities have analysed how the present and previous financial crises have affected competition policies. The conclusion is that in times of crisis, it is particularly important to place an emphasis on the rules of competition since short-term support measures can in the long run turn out to be negative for functional competition. The report was presented at a Nordic meeting in Iceland in September 2009. (*Report from the Nordic competition authorities No. 1/2009*)

3.2 *Letters to the Government*

3.2.1 Review of the reform of the pharmacy monopoly

21. The Competition Authority has been tasked by the Government with following up on and analysing the reform of the pharmacy monopoly. During 2009, the Authority conducted a meeting with some thirty different stakeholders and participants in the pharmacy and medicament areas for purposes of identifying problems that pose risks of counteracting the objective of having a well-functioning pharmacy market. The Competition Authority has also participated in a testimony in the Riksdag and in different seminars that have been oriented towards the different participants in the pharmacy area. The final report from the task will be issued on 31 December 2010.

3.2.2 *Better regulations for companies*

22. The Competition Authority has been commissioned by the Government during the year to provide feedback on its rule simplification work as a basis for the Government's action plan. In a letter that was sent to the Government in December, the Authority, among other things, provided a description of its many proposals for measures to improve competition that the Authority submitted to the Government in a report in March. The Competition Authority is also working for rule simplification through its participation in the European Commission's work that is being conducted under the "Better Regulation" slogan and which is intended to modernise the code of regulations for the Community market. (*D. No. 454/2009*)

3.3 *Responses to official consultations*

23. By commenting on proposals in reports and other investigations, the Competition Authority is able at an early stage to become involved with and influence the preparation of proposals and decisions. The Authority presents here a selection of the 202 responses that it has submitted during 2009. The Authority has also provided testimony at a number of hearings conducted by various Government Ministries.

3.3.1 *Public commercial activities shall not compete with private enterprises*

24. The Competition Authority has issued a positive opinion on the Management Committee's report *To guide and govern – a proposal for more efficient government services*. The primary rule should be that state authorities must not pursue business activities that compete with private companies. In the opinion, the Competition Authority proposes measures for solving problems caused by competition between state authorities and private companies. (*D. No. 124/2009*)

3.3.2 *No exclusive rights to certain forms of gambling*

25. In the Competition Authority's opinion to the Government the Authority states that there are no social protection considerations to justify ATG (the Swedish Horse Racing Totalisator Board) and the popular movements needing to have exclusive rights to certain forms of gambling. Reasons are lacking to deny entry to more participants in the market and hence the Authority opposes the proposal in the report *Future Gambling Regulations*. (*D. No. 700/2008*)

3.3.3 *Opening up automobile testing to competition is good – if it is carried out in the proper manner*

26. In an opinion to the Government, the Competition Authority maintains that opening up the automobile inspection monopoly so as to subsequently expose it to competition is good for the consumers. However the proposals that have been presented do not lead to the desired improvements and hence ought not to be carried out. The Competition Authority proposes that the state sell a large number of inspection stations in order to create functioning competition. The goal should be to create a market with a number of inspection companies where the incumbent monopolist, AB Svensk Bilprovning, is not dominant. (*D. No. 27/2009*)

3.4 *Research*

27. The Competition Authority has a special government grant that is to be used to contribute to research in both the competition and public procurement areas. The research must result in increased knowledge among both the Authority's own staff as well as its stakeholders.

28. In the budget for 2009, the grant for research was increased by a good SEK 6 million to a total of SEK 13 million (appr. USD 1.8 million). Primarily, the Authority is financing research in law and economics, however it is also arranging seminars and disseminating information about the research and its results. Moreover, the Authority conducts an essay competition every year for students.

3.4.1 *Council for Research Issues*

29. The Council for Research Issues is tasked with stimulating research in the competition and procurement areas and supplying the Competition Authority with results from developments primarily within the sciences of law and economics that are of significance to its activities. The Council's members are appointed by the Competition Authority and in July 2009 several new members were appointed for the next two-year period.

3.4.2 *Projects granted support for 2009*

30. The Competition Authority's most important task in the research area is to support research projects. During the year, the Authority received a total of 37 applications for research grants in the competition and procurement areas. The Authority granted money to nine new projects, of which seven concerned competition research, for a total of SEK 6.3 million in 2009. The Authority also disbursed SEK 3.7 million to seven on-going projects.

3.4.3 *Research Seminar*

31. In conjunction with members of the Council for Research Issues the Competition Authority arranged a workshop for invited researchers. The ten contributions that were presented involved both public procurement as well as competition issues and were written by lawyers, economists and business economists. The conference was the second in the series and interest was high among the participating researchers.

3.4.4 *The Pros and Cons seminars*

32. The Competition Authority has for several years been arranging annual research conferences in order to describe and analyse different aspects of central issues in the field of competition law and economics. The Pros and Con seminars gather leading researchers and high level competition practitioners from all over the world and the contributions are subsequently published in the Pros and Cons Series.

33. The theme of the 2009 conference was the pros and cons involving the public/private, state support and public procurement, and after the conference, the Authority published the contributions in the research anthology *The Pros and Cons of competition in/by the Public Sector*.

3.4.5 *Commissioned research*

34. The Competition Authority orders and places research tasks as so-called commissioned research. This research relates to questions where the Authority sees a direct need to investigate or illustrate a particular question. As a rule, the results are published in a special report series for commissioned research. The Authority's ambition is for the reports to rest on a solid academic basis and to be written such that a well-educated non-specialist can access the content. During 2009 the Authority published seven commissioned research reports.

4. Resources of the Swedish Competition Authority

4.1 Resources overall

4.1.1 Annual budget

- 2008: SEK 105 million, equivalent to USD 14.6 million;⁴
- 2009: SEK 125 million, equivalent to USD 17.3 million.⁵

4.1.2 Number of employees

- Economists 46
- Lawyers 61
- Other professionals 7
- Support staff 13
- All staff combined 127

4.2 Human resources (person years) applied to (total 109):

- Enforcement against anti-competitive practices and merger review: 67
- Public procurement: 13
- Advocacy efforts: *See below*

NB. Approximately more than 70 % of the Authority's resources are spent on competition law enforcement. The work in the different areas specified above, including advocacy efforts, is integrated in the competition enforcement departments. Moreover, on average, 6 persons are continuously involved in merger review.

4.3 Period covered by the above information:

- 2009

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

- **Action for Better Competition**

The Competition Authority's report series 2009:1 and 2009:4. A brief summary of the reports is presented above (Chapter 3.1. Proposals for improved competition). A full bodied executive summary of the reports is also presented on the Authority's website (www.konkurrensverket.se).⁶

⁴ Average exchange rate for 2008.

⁵ Average exchange rate for 2008.

- **Annual Reports**

The Competition Authority publishes Annual Reports which contain a description of the work performed by the Authority. The Annual Report for 2009 is available at the Authority's website.⁷

- **Competition in Financial Crisis**

The Nordic competition authorities have analysed how the present and previous financial crises have affected competition policies. The report was presented at a Nordic meeting in Iceland in September 2009.⁸

- **The Pros & Cons seminars and series**

The Pros & Cons of Competition in/by the Public Sector was the theme of the 2009 international conference. Eight invited speakers gave presentations on the topic.

⁶ Available at: http://www.konkurrensverket.se/upload/Filer/ENG/Publications/rap_2009-4_summary.pdf

⁷ Available at: http://www.konkurrensverket.se/upload/Filer/ENG/Publications/annual_report_2009.pdf

⁸ Available at:
http://www.konkurrensverket.se/upload/Filer/Trycksaker/Rapporter/nordiska/rap_nordisk_Comp_Policy_and_Financial_Crises.pdf