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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWEDEN**

-- 2012 --

*This report is submitted by Sweden to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 19-20 June 2013.*

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## Executive Summary

1. During 2012, the SCA noticed a growing interest in issues concerning public procurement and competition. Many people have contacted us with tips and complaints, but also with valuable views regarding the regulatory framework.

2. The SCA brought a number of cases to court in our efforts to establish judicial practice and to encourage greater compliance with the rules and regulations.

3. One area where the SCA recently noticed a competition problem is sports. Ice hockey and motor sports are areas that have required our intervention. In December, the Swedish Market Court prohibited the Swedish Automobile Sports Federation from applying their excessively stringent loyalty rules. The largest case so far involving abuse of a dominant position went to its final legal stages at the end of the year. It involves Telia Sonera which, according to the SCA, has abused its dominant position. Since the additions to the Competition Act were introduced that allow prohibition against anti-competitive sales activities by public entities, the SCA has approached the Court with summons applications in a handful of cases.

4. During the year we have publicised several reports within the scope of our supervisory activities and at the request of the Government. We have shown that county councils and, ultimately, tax-payers can benefit from the procurement of laboratory services. We have also spent a great deal of energy studying how systems of choice are being introduced within municipal home help services. We have initiated a major investigation of competition in the banking market and conducted extensive work to counteract unfair competition in procurement markets.

### 1. Changes to competition laws and policies proposed and adopted

5. No amendments to competition laws and policies have been proposed or adopted in 2012.

### 2. Enforcement of competition laws and policies

#### 2.1 *Action against anti-competitive practices, including agreements and abuses of dominant position*

##### 2.1.1 *Summary of activities of the SCA*

- Anti-competitive cooperation and abuse of dominant position

During 2012, the SCA made 115 decisions pursuant to Chapter 2, Articles 1 and 7 of the Swedish Competition Act and Articles 101 and 102 of Treaty on the Functioning of the European Union (TFEU). Several investigations were closed due to the parties eliminating the competition concerns in the course of the case being processed.

During the year, the Authority decided to impose one obligation subject to a fine for default, one voluntary commitment subject to a fine for default and three further voluntary commitments.

- Mergers

The SCA adopted 42 decisions relating to concentrations between undertakings. Three cases were subject to special investigation. In one of these, the SCA had ordered the purchaser to report its acquisition.

- Anti-competitive sales activities by public entities

The SCA made 8 decisions on cases relating to anti-competitive activities by public entities. We also decided to institute proceeding before the Stockholm City Court to prohibit anti-competitive sales activities by public entities in two cases.

- Tip-offs and complaints

The SCA received around 1,100 tip-offs and complaints from companies, customers and consumers in 2011. Approximately 70 of these related to anti-competitive sales activities by public entities, 25 concerned systems of choice and 400 related to public procurement, including illegal direct award of contracts, unclear contract documents or decisions that were called into question by suppliers.

### 2.1.2 *Decisions and rulings of the courts in 2012*

- Swedish Automobile Sports Federation – obligation subject to a fine for default

The Market Court upheld the SCA's decision and ordered the Swedish Automobile Sports Federation not to apply points G. 7.1 and 7.2 of its rules, subject to a fine for default of SEK 1 million (EUR 110,700). (MD 2012:16) The Federation is obliged to amend its common rules so that they no longer prevented license holders from applying for, participating in or being functionaries at motor races that have not been sanctioned by the Automobile Sports Federation.

- Däckia Euromaster –intermediate judgment

The Market Court upheld the City Court's intermediate judgment where the court established that the SCA's claim for competition damage fees from Däckia was not statute-barred. The case may continue to be processed in the City Court (MD 2012:9).

- Swedish Ice Hockey League

The Market Court repealed the SCA's interim decision to prohibit the Swedish Ice Hockey League from preventing its member clubs from signing contracts with 'locked out' ice hockey players from the NHL. (Ref. no A 2/12).

### 2.1.3 *Description of significant cases, including those with international implications*

- Anti-competitive cooperation

*Voluntary commitment – catalogue prices*

The SCA made an inspection of the office supplies chain Rationella Kontors Varuinköp (RKV), who had set collective catalogue prices for office goods. Whilst the investigation was in progress, RKV decided to stop quoting prices in their catalogues; as a result, the SCA concluded its investigation. RKV is bound by its commitment; the company will otherwise be subject to a fine for default of SEK 1 million. (Ref. no. 607/2011)

*Suspected cartel – cleaning industry*

The SCA made unannounced visits to a number of cleaning companies that are suspected to have contravened the competition rules in connection with public procurements. Investigations are on-going. (Ref. no. 295/2012)

*Suspected cartel – care providers*

The SCA made unannounced visits to several companies in the care industry. Investigations are on-going. (Ref. no. 232/2012)

- Abuse of a dominant position

*Voluntary commitment – agency information*

The SCA has inspected the Swedish Patent and Registration Office's (PRV) own search engine for trademarks and investigated whether the agency acted in a manner that constitutes abuse of its dominant position. Since PRV will be reducing its fee for trademark information from 2013, the SCA has concluded its investigation. (Ref. no. 470/2011)

*Suspected abuse of a dominant position – waste management*

The SCA has investigated whether N rab, through various discount systems, has abused its dominant position in order to force out a competitor. Since N rab implemented a series of changes that benefit customers whilst the investigation was in progress, the SCA has closed the case. (Ref. no. 536/2011)

*Suspected abuse of a dominant position – postal market*

The SCA has investigated whether Posten (the Swedish postal service) has applied a pricing procedure that contravenes the prohibition against abuse of a dominant position. The investigation did not indicate that the company had contravened the prohibition stipulated in the Competition Act and the SCA has therefore concluded its investigation. (Ref. no. 262/2011)

- Anti-competitive sales activities by public entities

*Summons application – municipal gym*

The SCA has submitted a summons application to Stockholm City Court in which it requests that the Court prohibits the municipality of Str mstad from operating a gym and spa facility in direct competition with private operators in the near vicinity. The summons application also includes a request that the prohibition be subject to a fine for default of SEK 2 million. (Ref. no. 628/2012)

*Summons application – ground and works contracts*

The SCA has submitted a summons application to the Stockholm City Court in which it requests that the municipal Services Office in Bor s should be prohibited from selling ground and works contracts to actors outside of its own municipality. The summons application also includes a request that the prohibition be subject to a fine for default of SEK 3 million. (Ref. no. 45/2012)

*Voluntary commitment – emergency services*

The SCA has investigated the municipality of Kristianstad's emergency services with regards to alleged anti-competitive sales activities by public entities. Since the emergency services have decided to stop their sale of emergency centre services, which the SCA claimed was in contravention of the Competition Act, we have closed the case. (Ref. no. 270/2011)

*Voluntary commitment – agency information*

During 2012, the SCA has investigated several cases that concern how agencies can make information available, such as that which it holds in databases, in a competitively neutral manner. The SCA has investigated whether the information supplied by the Swedish Meteorological and Hydrological Institute (SMHI) benefits its own business enterprises rather than other companies, and whether this limits competition. During the progress of the investigation SMHI has decided that from 1 January 2014 it will make basic information (data and products from SMHI's subsidy-funded operations) freely available and that it will not set delivery charges higher than the marginal cost. (Ref. no. 800/2011)

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

6. The following table shows the number of new cases registered during 2012 under the Competition Act and the number of decisions during the same period. The total number of cases pending at the end of 2012 amounted to ten.

Year	Registered new cases		Decisions	
	2011	2012	2011	2012
Mergers	63	36	57	42

*2.2.2 Summary of significant cases*

- Eniro's purchase of 118 800

The SCA has investigated the concentration between the competing companies Eniro 118 118 and Teleinfo 118 800. During the investigation, the companies were made aware of the SCA's intention to go to court in order to prohibit the concentration. If the companies had been allowed to merge, this could have led to restrictions on competition that would have contravened the law. The SCA closed the case when the companies decided not to proceed with the deal. (Ref. no. 690/2011)

- Bonnier's purchase of Pocket Shop

Over the course of the year, the SCA has conducted an in-depth investigation of Bonnier's acquisition of Pocket Shop. Since the investigation did not indicate that the acquisition would have a noticeable effect on the development of effective competition, the SCA took no measures in respect of the acquisition. The acquisition of Pocket Shop by the Bonnier publishing group could therefore be completed. (Ref. no. 370/2012)

- Akademibokhandeln's purchase of Bokia

The SCA has investigated the concentration between Akademibokhandeln and Bokia. Through an in-depth investigation, we analysed the effects that the acquisition would have on competition. The investigation indicated that the merger would not noticeably inhibit the development of effective competition. The acquisition of Bokia by Akademibokhandeln could therefore be completed. (Ref. no. 452/2012)

### 2.2.3 *Follow-up of decisions*

7. Following Arla's purchase of Milko in 2011, the SCA decided to approve the merger between the dairy companies Arla and Milko, under certain conditions. During 2012, the SCA has followed up the commitments that were made, and approved Arla's sale of five brands; it has also approved KF's – The Swedish Cooperative Union's - purchase of the Grådö dairy. All of the commitments made by Arla with regards to their implementation of the merger have therefore been completed. (Ref. no. 19/2012)

## 2.3 *Stakeholders' views*

8. As in previous years, the Annual Governmental Appropriation Directions for 2012 state that the SCA should report and comment on the views of its stakeholder regarding its law enforcement work. The SCA's most important stakeholders are: large companies (200 employees or more), SMEs, trade associations, municipal authorities and county councils, business lawyers, journalists and the group 'public authorities and agencies'. This was the twentieth year in a row that the SCA has conducted a stakeholder survey. The findings of the survey conducted by Institutet för kvalitetsindikatorer are briefly summarized below.

### 2.3.1 *Effects*

9. All stakeholders have a very positive attitude towards competition and hold the view that competition benefits consumers. With regard to the question about whether the Competition Act has helped to generate properly functioning markets, a significant and growing number of stakeholder groups consider this to be the case, with the exception of journalists. However, when asked whether operators consciously contravene the Competition Act, this year's survey presents a fragmented picture. Among business lawyers, a considerably lower number than last year believe that this does occur, whilst within trade associations and larger companies, the number is higher, which is concerning. All subgroups, with the exception of the group comprising smaller companies and journalists, feel that the SCA is actively counteracting adverse restrictions on competition.

### 2.3.2 *Attitude*

10. The general attitude towards the competition legislation is quite similar among the various stakeholder groups. The proportion of positive respondents ranges from 45 per cent (public authorities and agencies) to 70 per cent (trade associations). Last year, the proportion of positive respondents ranged from 49 per cent (small enterprises) to 72 per cent (trade associations). A new question this year addresses the stakeholders' views of the way in which the SCA communicates how it prioritises its cases. The overwhelming majority are positive to the fact that the SCA has publicised its prioritisation policy on its website.

### 2.3.3 *Confidence*

11. When taking into account all of the different stakeholder groups, 53 per cent said that their level of confidence in the SCA was 'high' or 'very high'. The corresponding figure was 57 per cent in 2011.

The proportion with a high level of confidence is lowest among small enterprises (39 per cent) and highest among larger companies (73 per cent).

#### 2.3.4 *Assessment of the SC's handling of cases*

12. The overall opinion of those who assessed our handling of concentration cases was positive this year as well. Most of those questioned awarded high marks in respect of all of the detailed questions about the handling of their cases. The percentage of negative views was at the same low level as in 2011.

13. Amongst those who had been in contact with us regarding other competition issues, 71 per cent (65 per cent in 2011) thought that it had been easy to get in contact with us and they were satisfied with the response they received. However, fewer are positive to the information they received regarding how the case would be handled – 32 per cent positive, compared with 41 per cent last year. 57 per cent would contact the SCA again if they encountered a competition problem; the corresponding figure for 2011 was 71 per cent.

### **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 *Advocacy***

14. One of the tasks of the SCA is to be aware of obstacles to effective competition in public and private operations. The SCA must follow up developments within the area of competition and, where necessary, formulate proposals for opening up competition and for regulatory reform through reports, responses to official consultations and official communications to the Government. The SCA also provides comments and opinions to other public authorities that would like to obtain its views on a particular issue, for example proposals for legislative amendments.

##### *3.1.1 Reports*

15. In our reports we analyse how different markets function and present proposals for improvement measures.

- Competition within laboratory services

As part of its task to supervise compliance with the Act on System of Choice in the Public Sector (LOV), the SCA has mapped out competition within laboratory services. In the report 'Competition within laboratory services' we have compared the prices for several common laboratory analyses ordered by primary health care institutions in six counties and analysed the factors that affect the setting of prices. The SCA notes that the prices are considerably lower in those cases where laboratory services have been procured. We consider that, where it is possible, more counties should follow suit and introduce systems of choice for such services since more money can then be released for better care. (SCA report series 2012:5)

- Choice of health centre – preconditions for competition on quality within the health care sector

The SCA has been commissioned by the Government to follow up the work of the county councils in relation to healthcare choice systems from a competition perspective. The follow-up deals primarily with an assessment of whether conditions exist for health centres to compete on quality. (SCA report series 2012:2)

- The municipal system of choice – the state of competition

The Government has commissioned the SCA to evaluate the conditions for competition within municipal systems of choice that are operated within the framework of the Act on System of Choice in the Public Sector (LOV). *Kommunernas valfrihetssystem – så fungerar konkurrensen* (The municipal system of choice – the state of competition) is an interim report and the commission will be reported to the Government in its entirety in January 2013. The aim of the report is to describe the current state of competition within municipal systems of choice and to identify areas that are of particular interest to study from the point of view of competition. (SCA report series 2012:1)

### 3.1.2 Responses to official consultations

16. By commenting on proposals contained in reports and other inquiries, the SCA can become involved in and influence the preparation and drafting of legislative proposals and decisions at an early stage. The following is an example of the responses to official consultations in the area of competition that we submitted in 2012. We have also taken part in several hearings arranged by the Government Offices of Sweden throughout the year.

- Better competition in the electricity market

The SCA has commented on two reports published by the Swedish Energy Markets Inspectorate: *Elområden i Sverige – analys av utvecklingen och konsekvenserna på marknaden* and *Systemet med anvisad elhandlare – översyn och förslag till åtgärder* (Electricity in Sweden – analysis of its development and the consequences for the market, and The system of assigned electricity suppliers – review and proposed measures). The SCA stresses that division of the electricity sector sends the right signals to the market regarding where investments in the grid, production and consumption should be made. It also creates better transparency regarding the formation of prices. The SCA also notes that competitive markets require well-informed and active customers in order for them to function efficiently. (Ref. no. 334/2012 and ref. no. 377/2012)

- Retain the administration of state ownership within the Government Offices

In a statement regarding the report *Ekonomiskt värde och samhällsnytta – förslag till en ny statlig ägarförvaltning* (Economic value and benefit to society – proposals for a new State ownership administration), the SCA recommends rejection of the report's proposal that the operative administration of certain State-owned companies should be transferred over to a separated administration company. The SCA considers that the report's consequence description lacks an analysis of both the state-sponsored regulations and the Public Procurement Act. The SCA recommends that the administration of companies whose principal tasks are to enhance public welfare shall continue to be managed within the Government Offices. (Ref. no. 241/2012)

### 3.2 Research

17. The SCA has a special Government appropriation to be used to contribute to research in both the areas of competition and public procurement. The appropriation for 2012 was just over SEK 14 million (EUR 1.6 million). The research should result in an increased level of knowledge among the SCA's staff and stakeholders. The SCA primarily finances research in the fields of law and economics.

### 3.2.1 *The Pros and Cons series*

18. The SCA has for several years published a series of books and arranged research conferences to describe different aspects of key issues relating to competition and procurement in order to disseminate and deepen understanding of these issues. The theme for this year was “More Pros and Cons of Merger Control” and on 9 November the various authors presented their contributions to the book at the 11th international conference in the Pros and Cons series. Those attending the conference included around a hundred researchers, people from the academic community, lawyers and representatives of competition authorities from some 15 countries. The SCA published a research anthology entitled “More Pros and Cons of Merger Control” in conjunction with the conference. Earlier this year we also published the research anthology “The Pros and Cons of Consumer Protection”.

### 3.2.2 *Projects granted support in 2012*

19. Our most important task within the area of research is to support research projects. Over the year we received 29 applications for research grants within the areas of competition and procurement. The SCA granted nearly SEK 6 million (EUR 689,235) for six new research projects in the field of competition and three in the field of procurement. The SCA also allocated about SEK 4 million (EUR 459,490) for nine on-going projects, five of which involve competition research.

20. The following shows the new research projects that refer in particular to competition issues:

- The deregulation of the pharmaceutical market – pricing of homogenous goods at repeated auctions
- Spatial econometrics for tracking cartels in tender data
- Privatisations and challenges in competition law
- Regulatory frameworks and established practice in deregulated markets
- Is the Commission's assessment of restructuring support compatible with EU law and the purpose of competition law?
- Mini courses within empiric competition and procurement research
- A New Approach to Compliance and Deterrence in EU Competition Law

### 3.2.3 *Commissioned research*

21. The SCA contracts out ‘commissioned research’ where the Authority sees a direct need to investigate a certain area or where there is a particular issue that requires clarification. Findings are generally published in a special report series for commissioned research.

22. In 2012, the SCA published the following commissioned research reports:

- Quality enhancing competition within systems of choice – what is required? (Research report 2012:3)
- Board networks in Swedish companies (Research report 2012:2)

- A survey of the approaches and methods used to assess the economic effects of a SCA's work (Research report 2012:1)
- Competition and efficiency effects of privatisation – theory and empiricism (Research report 2012:4)
- Rule changes in the transport sector – effects of the deregulation of domestic flights, taxis, commercial train traffic and vehicle inspection (Research report 2012:6)
- The development of the telephony markets following the rule reforms. (Research report 2012:5)

#### 3.2.4 *Essay competition*

23. The SCA organises an annual essay competition to promote interest in competition and procurement issues among students. The competition is open for all subjects relevant to the activities of the SCA. Thirty-two essays were submitted in 2011 and six winners shared the reward of SEK 70,000 (EUR 8040).

#### 3.2.5 *Council for Research Issues*

24. The Council for Research Issues has been assigned to foster research in the areas of competition and procurement and to present the SCA with the results of developments, primarily within those fields of law and economics that are relevant to its activities. Members of the Council are appointed by the SCA for a term of two years. The Council met three times in 2011 to discuss general research issues, process applications for research grants and entries for the essay competition.

### 3.3 *Knowledge*

25. The SCA is to promote a competition-oriented approach and provide appropriate information for companies and other affected parties regarding important decisions, our implementation of the rules and the content of these rules. The following are some of the initiatives implemented by the SCA in 2012.

#### 3.3.1 *Raising awareness about bid-rigging cartels*

26. During 2012 we have continued to provide information regarding how cartels can come about, how they can be discovered and how tip-offs can be submitted to the SCA. We have given several speeches on the subject over the course of the year. We have also increased our collaboration with the Swedish Tax Agency and the National Anti-Corruption Unit, in order to obtain tip-offs regarding bidding cartels in this manner.

#### 3.3.2 *Focus on bribery, corruption and other offences*

27. Over the course of the year, the SCA has, in various contexts and together with other public authorities and organisations, participated in debates regarding bribery, corruption and other offences. Several speeches have been published throughout the year, employees have taken part in conferences and seminars and, in November, the 'Black on white – competition on decent conditions' appeal was organised. The appeal was organised jointly by the Swedish Tax Agency, the Swedish Economic Crime Authority, the Swedish Trade Union Confederation (LO) and the Swedish Construction Federation and aimed to make employees and companies aware of the problems associated with "black labour" and how this affects competition.

### *3.3.3 Information on leniency and trading prohibitions*

28. The SCA has previously produced a film, primarily aimed at companies and business leaders, about the possibilities of avoiding fines for those who are first to inform us about an illegal cartel. The film, which is available in both Swedish and English, is available on our website and on YouTube. Last year we showed the film through various channels directed at the primary target group for the message, including Arlanda Express.

### *3.3.4 www.konkurrensverket.se*

29. Our website is our primary channel for providing information for our stakeholders. We have around half a million visitors every year. During 2012 we launched a quiz on the subject of competition and procurement, with the aim of improving knowledge of the areas in which we operate.

### *3.3.5 Social media*

30. Over the course of the year the SCA has started to use Twitter. We have primarily used Twitter to report news, make statements and advertise positions available within the Authority. The SCA has been present on Facebook and YouTube for some while.

### *3.3.6 Electronic newsletter Konkurrens (Competition)*

31. Our electronic newsletter is issued once a month and provides our 2,000 subscribers with current information about what is happening in the area of competition.

### *3.3.7 Ungkonsument.se*

32. The SCA has cooperated with the Swedish Consumer Agency on a joint website called ungonsument.se. During the year, the website has been evaluated and developed – a mobile application and new services are now available on Facebook. Through the campaign "Bli inte blåst!" ("Don't get ripped off!"), the SCA, together with the Swedish Consumer Agency, has attended a couple of major festivals in the summer, in order to meet young people and to spread information regarding how they can become more active and aware consumers.

### *3.3.8 Debate articles and speeches*

33. Competition issues have been relevant in many different contexts throughout 2012. The SCA has participated in debates concerning bribery and corruption, but also in relation to sport. Trade associations, municipalities, universities and other institutions are welcome to engage our staff as speakers. We often publish our debate articles and speeches on our website.

## **3.4 Public procurement**

34. Supervisory activities have been prioritised and the focus of the SCA's compliance work was on the illegal direct award of contracts and actions for procurement fines. In 2012, the SCA submitted 12 applications to the administrative court for procurement fines on our own initiative and made 12 applications for mandatory procurement fines. In addition, the SCA adopted 31 other supervisory decisions in accordance with the public procurement laws. The Authority has also carried out supervision in accordance with the Act on System of Choice in the Public Sector.

### 3.4.1 Law enforcement and supervision

35. The following is a list of the most important applications for procurement fines submitted to the administrative court by the SCA on its own initiative in 2012.

	Authority	Procurement fine requested	Reason
Government authority/company	Akademiska hus Norr Ref. no. 476/2012	SEK 3 million	Directly awarded a building contract worth approximately SEK 39 million.
Municipalities/county councils/municipal companies	Länstrafiken in the County of Västerbotten Ref. no. 251/2012	SEK 1.9 million	Direct award of ticket handling systems worth approximately SEK 27 million.
	Västernorrlands läns trafik (the traffic authority in the county of Västernorrland) Ref. no. 252/2012	SEK 1.7 million	Direct award of ticket handling systems worth approximately SEK 25 million.
	The City of Malmö Ref. no. 226/2012	SEK 170,000	Direct award of a winter maintenance contract worth SEK 2.2 million.

- Decisions and judgments at court in 2012

The following is a list of significant judgments made during 2012 where the SCA has applied on its own initiative for procurements fines to be imposed.

Party	SCA (KKV)	Administrative Court	Administrative Court of Appeal	Supreme Administrative Court
Swedish Migration Board	17/06/2011 Ref. no. 435/2011 Requested amount: SEK 5.5 million	14/02/2012 (Linköping 3834-11) The SCA's request was granted. The judgment was appealed by the Swedish Migration Board.	26/09/2012 (Jönköping 748-12) The SCA's application was rejected, reference being made to the fact that the procurement commenced before the regulations come into force. The judgment has been appealed by the SCA.	12/12/2012 Leave to apply was granted.
The Swedish Armed Forces	18/11/2011 Ref. no. 702/2011 Requested amount: SEK 270,000	03/02/2012 (Stockholm 23243-11) The SCA's request was granted. The judgment was appealed by the Swedish Armed Forces.	07/06/2012 (Stockholm 1305-12) Procurement fine imposed: SEK 270,000	

- The Public Procurement Issues Council

The Public Procurement Issues Council provides important support to the SCA. The Council is a forum for the exchange of experience about both general procurement issues and measures to support the development of effective public procurement. Council Members are appointed by the SCA.

- Stakeholders' views on enforcement

This was the sixth year in a row that we have conducted a stakeholder survey focusing solely on issues relating to public procurement. The survey has been conducted by Institutet för kvalitetsindikatorer.

*Attitude*

The percentage of respondents that have a positive attitude to the procurement regulations varies, from 20 per cent (business lawyers) to 47 per cent (journalists). The percentage of respondents that are positive to public procurement has increased amongst both smaller and larger companies but fallen amongst municipalities and county councils, authorities and agencies, and business lawyers. The fact that the percentage of positive attitudes has fallen amongst these public sector operators may be a result of the fact that the first judgments for illegal direct award of contracts have clearly indicated that the rules place higher demands on the contracting authorities, both in terms of their competence and their procedures.

*Assessment of our handling of cases*

This was the fifth consecutive year in which we have conducted a survey of the people who have contacted us about procurement issues. It is pleasing to see that the proportion of respondents that feel that contact with the SCA is quick and easy has increased from 66 per cent in 2011 to 71 per cent in 2012. However, responses to certain sub-questions show that the percentage of positive respondents has fallen in relation to 2011. This applies particularly to assessments regarding whether decisions are comprehensible and well-motivated, and to the competence and knowledge of staff. However, the majority, 51 per cent, grade the overall handling of their case as "good" or "very good". 77 per cent stated that they would contact the SCA again if they encountered any problems relating to procurement; the corresponding figure for 2011 was 76 per cent. Our ambition is to continue our work to increase the proportion of positive respondents for all questions.

### 3.4.2 *Advocacy*

36. Turnover from public procurement in Sweden is approximately 16-19 per cent of GDP, corresponding to around SEK 500-600 billion (EUR 57-69 billion). Public procurement thus represents a large and important part of the national economy. Public procurement may also promote better preconditions for SMEs to enter and grow in various markets. In light of this, the SCA has on a number of occasions presented proposals for tangible improvement measures over the year directed at both the legislator and public procurers. These proposals are contained in SCA reports, responses to official consultations and official communications to the Government.

### 3.4.3 *Reports*

- Service concessions – when, where, how?

In the report *Tjänstekoncessioner – när, var, hur?* (Service concessions – when, where, how?) the SCA provides a summary of the supervision decisions that have been made in the allocation of service concessions. Service concessions are exceptions from the public procurement legislation and it is therefore important that contracting authorities and entities are aware if a contract constitutes a service concession. (SCA report series 2012:4)

- Facts and figures for public procurement

We present basic facts and statistics about public procurement in Sweden, in two reports. The reports also contain statistics regarding the number of publicised procurements and information about the number of procurements that have been reviewed. (SCA report series 2012:3)

#### 3.4.4 Responses to official consultations

37. The following is an example of the responses to official consultations in the area of procurement that we submitted in 2012.

- No need for a new information agency for procurement issues

In a statement regarding the report *Upphandlingsstödet framtid* (The future of procurement support), the SCA points out that the Government agency best equipped to provide information concerning the procurement regulations and their application is the SCA itself. To establish a new agency to provide information on public procurement would be an expensive and less efficient way of achieving the objective of providing procurers and suppliers with more efficient support. Suppliers and procurers who seek information in tricky issues such as how the legislation should be interpreted should obtain this information from an agency that has the capacity and competence to be able to take responsibility for such matters. To receive information that later proves to be incorrect can have major consequences and result in incorrectly conducted procurements, reviews and procurement fines. (Ref. no. 351/2012)

- Higher priority for procurements

The SCA has made a statement with regards to the interim report *På jakt efter den goda affären – analys och erfarenhet av den offentliga upphandlingen* (The hunt for good business – analyses and experiences from public procurement). The SCA points out that better preconditions for the conducting of good business, and for monitoring and evaluation, would be created by municipalities and authorities giving greater priority to procurement issues. The SCA also proposed that an investigation should be carried out regarding whether the threshold for direct awards should be raised. (Ref. no. 763/2011)

- Systems of choice for assistive technology seen as positive

The SCA has made a statement regarding an investigation into the free choice of assistive technology. The SCA writes that it is positive if individuals have a greater chance to affect the choice of assistive technology. Increased opportunities for the individual to choose assistive technology will lead to a greater number of suppliers will have the chance to become involved with the supply of products. In this way, competition will lead to more advantageous conditions that will be of benefit both to the individual and the public in general. (Ref. no. 71/2012)

- Warning about open markets

In a statement regarding the European Commission's proposal regarding instruments for international monitoring, the SCA writes that the EU should continue to advocate open markets and refrain from adopting protectionist measures. The SCA opposes the Commission's proposal to make public procurement an instrument of trade policy. The exclusion of tenders runs the risk of obstructing competition and may lead to more expensive procurements. (Ref. no. 260/2012)

#### 3.4.5 Research

38. Over the year we received 29 applications for research grants within the areas of competition and procurement. The SCA granted funds for eight new projects within competition research and for one within procurement research, jointly amounting to almost SEK 6 million (EUR 689,235). We also granted just over SEK 4 million (EUR 459,490) for nine on-going projects, four of which involve research relating to procurement.

39. The following describes the new research projects that are specifically concerned with public procurement:

- High tender prices – high quality?
- Mini courses within empiric competition and procurement research.

40. The SCA published the following commissioned research report in 2012:

- Quality enhancing competition within systems of choice – what is required? (Research report 2012:3)

#### 3.4.6 Knowledge

41. It is the task of the SCA to promote a uniform implementation of the national public procurement rules and provide contracting authorities, contracting entities and suppliers with appropriate information about important decisions, the SCA's implementation of the rules and the content of these rules. This year, the SCA focused specifically on information about procurement fines. The Authority also prioritized information that helps to make it easier for SMEs to be able to participate in public procurement and for them to want to do so.

- Information meetings

During 2012, the SCA has participated in a number of seminars, courses and meetings with procurers and suppliers around the country, including in Göteborg, Luleå, and in Almedalen on Gotland. The aim of these meetings was to provide information about legislation and our supervisory assignment, especially with regard to the regulations concerning procurement fines.

- The Swedish Public Procurement Act – an introduction

During the year we have updated and printed a new edition of *The Swedish Public Procurement Act – an introduction*. This can be ordered or downloaded via our website. It is also available in English.

- Electronic newsletter 'Procurement'

The newsletter is issued once a month and provides 3,000 subscribers with current information about what is happening in the area of procurement.

### 3.5 *International work*

#### 3.5.1 *Competition*

- European Competition Network (ECN)

The SCA cooperates closely with the European Commission and the competition authorities of the Member States (NCAs) within the framework of the European Competition Network in the application of Articles 101 and 102 TFEU. The Commission and competition authorities in the member states reported 86 new cases in the network in 2012.

In addition to this, the SCA receives information about tip-offs and complaints that have been sent to the Commission. There were 39 notifications of this kind in 2012. The parties are given an opportunity to present verbal views about the Commission's draft proposals at a hearing before the Commission makes a decision. The competition authorities of the member states are consulted about the proposed decisions through meetings of the advisory committees. The SCA attended 15 meetings and hearings of this kind last year. National competition authorities are also obliged to consult the Commission before making decisions pursuant to Articles 101 and 102 of TFEU, but no such consultation was conducted during 2012.

- Investigations for other public authorities

The SCA assists the European Commission and our sister authorities in the EU with site investigations of businesses in Sweden. We helped the Commission with this on one occasion in 2012.

- Information exchange

The ECN members have also produced two reports that deal with the investigation and decision processes of the member states' competition authorities. The aim of the reports is to facilitate the exchange of information and to increase harmonisation between the competition authorities.

- Nordic cooperation

The Nordic competition authorities have liaised closely for many years now. The 53rd meeting was held in Norway in September. At the meeting it was discussed how authorities could more effectively intervene against companies that abuse a dominant position and the competition problems that exist in the banking and the money transfer services markets. During the year, several different working groups met, including participants from the Nordic countries, including the Chief Lawyer Group, the Chief Economist Group and the Cartel Group. The Cartel Group has also been working on a joint Nordic contribution to the OECD, which was presented in February.

- ICN

Competition authorities from all around the world cooperate the International Competition Network (ICN). We actively participate in all of the ICN's working groups. During 2012, the SCA has continued to lead the work within the unilateral conduct group, this year together with two other competition authorities: the Office of Fair Trading (Great Britain) and Rekabet (Turkey).

- Other cooperation

The SCA has, since 2011, been running an aid project with Georgia which will run until 2014. The project is being funded by Sida and aims to improve the competence of the Georgian competition and public procurement authority and the Georgian courts. During the year, employees from the SCA have held training sessions on location in Georgia. Over the course of three days, management from the Georgian authority visited the SCA with the aim of exchanging experiences associated with operational control, information and administration.

During the course of the year we have also received visits from Chinese delegations, including visits from China's three competition authorities who wished to discuss acquisition issues and the application of abuse regulations. We have also had visits from delegation from Bosnia and Herzegovina, Botswana and the Netherlands. The SCA's employees have given a number of addresses at conferences, at the invitation of various competition authorities, in Poland, Russia, Hungary, Serbia, Ukraine, Estonia and the USA. During the year we have had visits from delegations from Georgia, China, Bosnia and Herzegovina, Botswana and the Netherlands.

### 3.5.2 *Public Procurement*

- Cooperation within the EU

International cooperation relating to procurement issues largely takes place within the framework of the European Commission's advisory committee and working groups linked to the committee in which members of our staff participate. One of the working groups is working on issues relating to economics and statistics and another is focusing on electronic procurements.

- Sweden's chairing of the Public Procurement Network

The Public Procurement Network (PPN) is a network involving representatives from European agencies that work specifically with public procurement. The network aims to improve the application of procurement rules and to promote cross-border public procurement. From 1 July 2011 to 31 December 2012, the SCA has, in consultation with the Ministry of Health and Social Affairs, been chair of the PPN. As chair of the network, the SCA has actively addressed issues such as the counteracting of illegal direct award of contracts, innovation procurement and lock-in effects related to IT procurements. The chairmanship concluded with a member's conference in December. During the two-day long conference, delegates were made aware of the reforms to the EU's Procurement Directive and ideas concerning the EU's remedy systems. Furthermore, since remedies were a specific theme of the conference, the various systems and procedures of the member countries were compared and discussed.

- Nordic cooperation

Every ten months, representatives of the Nordic competition authorities and their associated ministries meet to discuss current issues relating to procurement law. These meetings present an opportunity for the exchange of information and also result in useful contact networks. In September 2012, the SCA hosted one such meeting. Among the items discussed at the meetings were proposals for new procurement directives and the use of social and environmental requirements in public procurement.

## 4. Resources of the SCA

### 4.1 Resources overall

#### 4.1.1 Annual budget

2011: SEK 135 million, or 15 million EURO (average exchange rate for 2011);

2012: SEK 136 million, or 15.6 million EURO (average exchange rate for 2012).

#### 4.1.2 Number of employees

Economists	47
Lawyers	68
Other professionals	16
Support staff	9
All staff combined	140

#### 4.1.3 Human resources (person years) applied to:

Enforcement against anti-competitive practices and merger review:	115 (no. of employees)
Advocacy efforts; integrated into the work of the enforcement of competition departments	83% of time registered refers to law enforcement
Public procurement:	19

### 4.2 Period covered by the above information

2012

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

- Annual Report for 2012

The Annual Report for 2012 is available at the Authority's website.<sup>1</sup>

- The Pros & Cons series

"More Pros and Cons of Merger Control"<sup>2</sup> was the theme of the 2012 international conference. On 9 November, the authors presented their contributions to the book at the eleventh international conference in the Pros and Cons series.

<sup>1</sup> Available at: [http://www.kkv.se/upload/Filer/ENG/Publications/annual\\_report\\_2012.pdf](http://www.kkv.se/upload/Filer/ENG/Publications/annual_report_2012.pdf)

- Competition within laboratory services<sup>3</sup>

As part of its task to supervise compliance with the Act on System of Choice in the Public Sector (LOV), the SCA has mapped out competition within laboratory services. (SCA report series 2012:5)

- Service concessions – when, where, how?<sup>4</sup>

In the report *Tjänstekoncessioner – när, var, hur?* (Service concessions – when, where, how?) the SCA provides a summary of the supervision decisions that have been made in the allocation of service concessions. (SCA report series 2012:4)

- Choice of health centre – preconditions for competition on quality within the health care sector<sup>5</sup>

The SCA has been commissioned by the Government to follow up the work of the county councils in relation to healthcare choice systems from a competition perspective. The follow-up deals primarily with an assessment of whether conditions exist for health centres to compete on quality. (SCA report series 2012:2)

- The municipal system of choice – the state of competition<sup>6</sup>

The Government has commissioned the SCA to evaluate the conditions for competition within municipal systems of choice that are operated within the framework of the Act on System of Choice in the Public Sector (LOV). (SCA report series 2012:1)

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<sup>2</sup> Available at [http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/Pros&Cons/rapport\\_pros\\_and\\_cons\\_more\\_merger\\_control\\_2012.pdf](http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/Pros&Cons/rapport_pros_and_cons_more_merger_control_2012.pdf)

<sup>3</sup> Available at [http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport\\_2012-5.pdf](http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport_2012-5.pdf) (Summary available in English)

<sup>4</sup> Available at [http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport\\_2012-4.pdf](http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport_2012-4.pdf) (Summary available in English)

<sup>5</sup> Available at [http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport\\_2012-2.pdf](http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport_2012-2.pdf) (Summary available in English)

<sup>6</sup> Available at [http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport\\_2012-1.pdf](http://www.kkv.se/upload/Filer/Trycksaker/Rapporter/rapport_2012-1.pdf) (Summary available in English)