

Unclassified

DAF/COMP/AR(2016)8

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

04-May-2016

English - Or. English

Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE

DAF/COMP/AR(2016)8
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWEDEN

-- 2015 --

15 - 17 June 2016

This report is submitted by Sweden to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 15 - 17 June 2016.

JT03395328

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**ANNUAL REPORT ON COMPETITION POLICY IN SWEDEN 2015
CONTRIBUTION TO THE COMPETITION COMMITTEE OECD**

EXECUTIVE SUMMARY

During 2015, the Swedish Competition Authority (SCA) attracted some attention by taking legal action against the Stockholm Stock Exchange/Nasdaq OMX, for abusing its dominant position by denying a competitor access to a data centre.

Other legal proceedings against previous monopolies have also continued. Swedish Match hindered the sale of competing snus manufacturers' products by obstructing their marketing. The SCA also took Telia Sonera and Gothnet to court since in the Authority's view, they had collaborated in an illegal manner and formed a bid-rigging cartel when the City of Göteborg was procuring data communication services.

There has also been a great deal of activity concerned with merger controls this year. Four of the mergers reported were subject to special investigation, and two are being examined in court.

The supervision of procurement regulations led to a large number of applications for administrative fines, as well as to other supervisory decisions. For example, a number of cases involved Stockholm County Council and, in one case, the court ordered the Council to pay the maximum fine.

The SCA's supervision of procurements had a positive effect. In nine out of ten municipalities where the SCA drawn attention to an unsatisfactory state of affairs, or had fines imposed, remedial measures was taken. The municipalities have improved their competence, introduced better control procedures or made their organisation more transparent.

The organisation of the SCA was characterised by the separation of the procurement support function and the creation, on 1 September 2015, of the National Agency for Public Procurement.

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

1. The latest legislative change of the Swedish Competition Act (2008:579) entered into force on 1 January 2016. According to this amendment, SCA is now permitted to copy and examine electronically stored materials at the SCA's premises after an inspection of a company. This power is subject to the consent of the company in question. The Government has furthermore instructed a legislative committee with the task of examining and proposing means of assigning the SCA greater decision-making powers in order to further enhance an efficient case handling of competition law cases. The committee will present its report in May 2016.

2. Enforcement of competition laws and policies

2.1 Action against anti-competitive practices, including provisions relating to competition neutrality

2.1.1 Summary of activities of the SCA

- **Anti-competitive cooperation and abuse of dominant position**

2. During 2015, the SCA made 137 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.

- **Mergers**

3. The SCA adopted 63 decisions relating to concentrations between undertakings. Four of the mergers reported during 2015 were subject to special investigation, and two are being examined in court.

- **Anti-competitive sales activities by public entities**

4. The SCA has placed great emphasis on investigations and processes related to anti-competitive public sector sales activities. The SCA made 12 decisions on cases relating to anti-competitive sales activities by public entities.

- **Tip-offs and complaints**

5. The SCA received around 1 700 tip-offs and complaints from companies, customers and consumers in 2015. These have continued to be dominated by procurement-related enquiries and we noted an increase in cases related to prohibitions against anti-competitive public sector sales activities, and prohibitions against abuse of a dominant position.

2.1.2 Significant decisions and rulings of the courts

- **Anti-competitive cooperation - Aleris, Capio and Hjärtkärlgruppen**

6. In March 2015, the SCA raised its demands for administrative fines in an ongoing legal process which was initiated against Aleris Diagnostik, Capio S:t Göran's Hospital and Hjärtkärlgruppen back in August 2013. The SCA petitioned for administrative fines totalling almost SEK 41 million, as a result of the companies having collaborated in an illegal manner in conjunction with Stockholm County Council's procurement of clinical physiology services. The Stockholm District Court ordered the healthcare companies between them to pay administrative fines totalling SEK 28 million. The companies have appealed the judgment. (Ref no.: 483/2013).

- **Anti-competitive sales activities by public entities - Borås Municipality's Service Office**

7. Through a judgment issued in 2014, the District Court granted the SCA's application to prohibit the Municipality of Borås from selling land- and construction contract works to anyone other than the municipal authority itself. The Municipality appealed the judgment to the Market Court which on 15 February 2016, altered the District Court's verdict and rejected the SCA's petition. (Ref no.: 45/2012).

- **Anti-competitive sales activities by public entities - Strömstads badanstalt**

8. The SCA has for several years been involved in legal action regarding a municipally which operates gym and spa facilities in competition with private operators. This case was finally decided in the Market Court on 10 July 2015. The operations of Strömstads badanstalts did not comply with the Local Government Act, but the Court did not consider their effects to be sufficiently negative to warrant a prohibition. (Ref no.: 628/2012).

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

- **Anti-competitive cooperation**

- Telia Sonera and Gothnet

9. In December 2014 the SCA approached Stockholm District Court petitioning that Telia Sonera Sverige and Göteborg Energi Gothnet should be ordered to pay almost SEK 35 million in administrative fines for their anti-competitive cooperation in conjunction with the City of Göteborg's procurement of data communication services in 2009. In the SCA's opinion, the agreement between Telia Sonera Sverige and Göteborg Energi Gothnet contravenes competition regulations. The main hearing is planned to take place in October 2016. (Ref no.: 848/2014).

- Suspected cartel – removal sector

10. In July 2014, the SCA took legal action against the removals companies Alfa Quality Moving AB, NFB Transport Systems AB and ICM Kungsholms AB for illegal cooperation in respect of international household removal assignments. The SCA petitioned that the companies together should pay SEK 42 million in administrative fines. The main hearing in Stockholm District Court is scheduled for March 2016. (Ref nos.: 93/2013, 511/2014).

- The market for online travel agency services

11. The SCA has investigated whether online travel agencies restrict competition in the market for the online provision of hotel rooms, as a result of the terms and conditions of their agreements with Swedish hotel. The SCA has been collaborating with the competition authorities in other countries, including France and Italy. The SCA has approved the measures taken by Booking.com to amend their contractual terms and conditions in order to eliminate competition-related problems. (Ref no. : 596/2013). After the online travel agency Expedia altered its application of certain terms and conditions in its agreements with hotels, the SCA also concluded its investigation of this company. (Ref no.: 595/2013).

- The environmental and waste sector

12. The SCA has continued its investigations into suspected anti-competitive cooperation between companies operating in the market for the collection and transportation of waste. (Ref no.: 184/2014). In November, the SCA concluded an investigation regarding suspicions of illegal bid-rigging in a procurement

involving the transportation and incineration of household waste. The SCA conducted a dawn-raid but closed the case and will not be investigated the matter further. (Ref no.: 598/2014).

- **Abuse of a dominant position**

- Nasdaq OMX

13. In May, the SCA filed an action with the Stockholm District Court demanding that three companies, Nasdaq OMX Stockholm, OMX AB and OMX Technology be together ordered to pay administrative fines totalling almost SEK 31 million. The Stockholm Stock Exchange/Nasdaq OMX are suspected of having abused their dominant position in the market when, by placing pressure on Verizon Sweden, they obstructed a competitor, Burgundy, from placing computers for their trading system in Verizon's data centre. The case is currently being processed by the Stockholm District Court. (Ref nos.: 629/2010, 406/2015).

- Price labels in refrigerators for certain tobacco products (snus)

14. At the end of 2014, the SCA filed an action with the Stockholm District Court demanding that Swedish Match North Europe pay almost SEK 38 million in administrative fines as a result of their abuse of a dominant position. Swedish Match had introduced a compulsory system for shelf labels in snus coolers, a system that limited the opportunities of their competitors to provide consumers with information about their brand and the price of their product(s). The case is being processed by the Stockholm District Court. (Ref nos.: 415/2012, 815/2014).

- The gaming market

15. Throughout the year the SCA has been continuing to investigate suspected competition restraints in a specific part of the Swedish gaming market. The SCA is investigating whether certain terms and conditions within contracts concerning collaborations to organise a nationwide lottery are anti-competitive. (Ref no.: 263/2013).

- **Anti-competitive sales activities by public entities**

- Municipality of Växjö

16. In a summons application to Stockholm District Court, the SCA demanded that the Municipality of Växjö should be prohibited from forcing home-owners to connect to the municipal district heating network. On 16 November, a judgment was passed rejecting the SCA's petition. The SCA has appealed the judgment to the Market Court. (Ref no.: 380/2013).

- Wi-fi in the Municipality of Helsingborg

17. The SCA has decided that the Municipality of Helsingborg may offer tax-financed surf zones in certain locations. The SCA has stated that surf zones can be offered if they are limited in such a way that they do have not a significant effect on the market. (Ref no.: 706/2014).

2.2 *Mergers and acquisitions*

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

18. The following table shows the number of new cases registered during 2015 under the Competition Act and the number of decisions during the same period. The total number of cases pending at the end of 2015 amounted to six.

Year	Registered new cases		Decisions	
	2014	2015	2014	2015
Mergers	67	61	65	63

2.2.2 *Summary of significant cases*

- **Orkla - Cederroth**

19. The SCA went to court in July 2015 to request a prohibition that would prevent Orkla from purchasing Cederroth's Allévo brand. The purchase was part of a larger deal whereby Orkla was acquiring Cederroth in its entirety. The purchase of the Allévo brand would, if the deal went through, substantially inhibit competition in the Swedish market for meal replacement products. Following the SCA's summons application to Stockholm District Court, Orkla undertook to sell the Allévo brand. The District Court granted the SCA's petition in a judgment issued on 29 July. On 29 December 2015, the SCA decided to approve Karo Bio AB as the brand purchaser. (Ref no.: 514/2015).

- **Arla – Falbygdens Ost**

20. Following a special investigation, the SCA decided in March to take no action in respect of Arla Food's acquisition of operations conducted under the Falbygdens Ost brand. The SCA has investigated the effects of the acquisition and does not believe that Arla's purchase of Falbygdens Ost will markedly inhibit the presence or development of efficient competition within the Swedish cheese market. (Ref no.: 747/2014).

- **Heidelberg Cement Sweden – Contiga Holding**

21. The SCA, following a special investigation, has examined whether Heidelberg Cement Sweden AB's purchase of Contiga Holding AS would harm competition in the markets for precast concrete and grey cement. The SCA's investigation has not shown that the merger would markedly inhibit the presence or development of efficient competition, so no action will be taken in this case. (Ref no.: 460/2015).

- **Kronfågel – Lagerberg**

22. During the course of the year the SCA decided to initiate a special investigation in order to examine in more detail Kronfågel Holding's acquisition of Lagerberg in Norjeby in the market for the production and retail sale of grilled chicken and refrigerated chicken products. On 22 January 2016, the SCA submitted a summons application to Stockholm District Court, requesting that the merger be prohibited. (Ref nos.: 472/2015, 52/2016).

- **Logstores acquisition of Powerpipe**

23. In October 2015, the SCA initiated a special investigation in order to examine in more detail a reported acquisition in the market for the production and sales of district heating pipe systems. On 12 February 2016, the SCA submitted a summons application to Stockholm District Court, requesting that the merger be prohibited. (Ref no.: 578/2015).

3. Enforcement of public procurement laws

24. Enforcement activities have been prioritised and the SCA's supervision has focused in particular on illegal direct awards. Throughout 2015, the SCA has continued to place great emphasis on procurement fines. 15 summons applications were submitted to the Administrative Court, seeking administrative fines on our own initiative (facultative) and two applications for mandatory administrative fines. In addition to this 32 enforcement cases have been concluded in which various procurement-related issues have been addressed. The SCA has also enforced the Act on System of Choice.

3.1 Law enforcement and supervision

3.1.1 Significant decisions and rulings of the courts

- **City of Stockholm – monitoring of an ineffective contract**

25. In May 2014, the City of Stockholm ordered the construction of a bathing site and purchased jetties from a supplier under a framework agreement for the maintenance and repair of jetties. The Administrative Court in Stockholm declared the contract to be ineffective as the framework agreement used did not cover the supply of new jetties and, as a result, the purchase constituted an illegal direct award of contract. As the jetties were not returned to the supplier, meaning that the Administrative Court's judgment has had no effect, the SCA petitioned that the City pay procurement fines of SEK 180,000. The Administrative Court in Stockholm granted the SCA's claim in its entirety. (Ref no.: 447/2015).

- **Stockholm County Council – purchase of care services**

26. During 2015, the SCA has submitted several applications that Stockholm County Council should pay procurement fines as a result of care services obtained through illegal direct awards. In one of the later cases the Administrative Court sided with the SCA and ordered Stockholm County Council to pay the maximum fines possible of SEK 10 million for an illegal direct award. The fines imposed previously totalled SEK 1,120,000. The size of the fines has increased in line with the repeated incidences of illegal direct awards. (Ref no: 148/2015, etc.)

3.1.2 Description of significant cases

- **Vafab Miljö – purchase of waste management services**

27. The purchase of services by the municipality of Västerås from its own waste management company, Vafab Miljö AB, has previously been subject to the SCA's investigation. In 2014 a number of municipalities formed an association and transferred Vafab Miljö AB's activities over to the association. In 2015 a special service contract was concluded with the result that the company conducts waste management for the municipal association. In the SCA's opinion, the contract is worth over SEK 930 million. The contract has not been publicised in accordance with the Public Procurement Act and the SCA has applied to the Administrative Court for the municipal association to pay procurement fines of SEK 10 million. (Ref no.: 797/2015).

- **Swedish State Railway's (SJ) procurement status**

28. In the SCA's opinion, SJ (Swedish State Railways) is a procuring body and must therefore adhere to the applicable procurement regulations. The Administrative Court in Stockholm has declared that SJ could be a contracting entity subject to LUF (National Act on Procurement within the Water, Energy, Transport and Postal Services Sectors, which implements the Utilities Directive 2004/17/EC in Sweden). However, when determining whether the transportation services provided by SJ fall within the scope of LUF, the court concluded that technical rules regarding provisions to use Swedish railways meant that LUF is not applicable under current conditions. The ruling was appealed to the Administrative Court of Appeal and subsequently to the Supreme Administrative Court to establish conclusively whether SJ is required to follow the procurement rules. (Ref.no.: 58/2013).

3.1.2 *The Council for Public Procurement Issues*

29. The Council for Public Procurement Issues has provided important support in the SCA's work to supervise public procurement. The Council has been a forum for the exchange of experiences concerning both general procurement issues and the need for measures to support the development of effective public procurement. However, in connection with the establishment of the new National Agency for Public Procurement, the Council was dissolved.

4. The role of the SCA in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

4.1 Advocacy

30. One of the tasks of the SCA is to identify obstacles to effective competition in public and private operations. The SCA is to present proposals for the opening up of competition and for regulatory reform as well as to follow up developments within the area of competition. Public procurement represents a large and important part of the national economy and the SCA has, throughout the year, in different ways and on a number of occasions, presented concrete improvement measures directed at both the legislator and public procurers. The SCA describes proposals for improvement measures in reports, responses to official consultations and official communications to the government. The SCA also provide comments and opinions for other public authorities that would like to know the Authority's views on a particular investigation or changes to the regulatory framework.

4.1.1 *Reports*

- **Competition**

The Swedish fund market – an in-depth analysis

31. The SCA has conducted an overview of the Swedish fund market. The above report expands on the analysis from the previous overview in report 2013:4. The 2015 report attempts to provide more in-depth analyses of the fund market in order to further highlight market and competition conditions – with a focus on customer mobility and fund charges. (Report series 2015:8).

Developable land? A key resource in construction

32. Too few homes are being built in Sweden in relation to the number required, and one of the reasons for this is a lack of access to developable land. The overriding aim of this report was to find out why there is such a lack of developable land in Sweden, and the significance of land ownership in this context. (Report series 2015:5).

Better competition in the house-building sector. A follow-up for 2009-2012

33. The report, which is a follow up on the SCA's report from 2006, shows that market concentration has reduced, that competition has improved in respect of both project development and construction contracts, that municipalities have improved their planning preparation processes and are an important source in terms of access to developable land. However, it is also noted that not enough is being built, and that construction prices are still high. (Report series 2015:4).

• **Public Procurement**

Facts and figures on public procurement. Statistics concerning procurements conducted during 2014

34. The report presents fundamental facts and the latest statistics concerning public procurement in Sweden. (Report series 2015:9).

Doctors for hire in primary care – a mapping of the county councils' procurements and the costs involved

35. The report contains a mapping of the county councils' procurements and cost for doctors for hire in Sweden. (Report series 2015:10).

Five years of procurement fines. What has happened at those authorities ordered to pay the fines?

36. The rules concerning procurement fines have now been in existence for five years. The SCA has followed up on the actions taken by those organisations ordered to pay procurement fines. The report aims to improve knowledge of how the SCA's enforcement of the procurement rules affects the activities of contracting authorities. (Report series 2015:7).

Work and employment conditions on a par with Swedish collective agreements in public procurement

37. This report describes the judicial scope for including work and employment conditions on a par with those found in Swedish collective agreements when procuring public services, building contracts and building concessions to be conducted in Sweden. (Report series 2015:6).

Care homes or homes for young persons – a mapping of municipal framework procurements

38. In the report the municipalities' procurements of care homes for young persons under framework agreement are investigated as well as how agreement monitoring is conducted. (Report series 2015:3).

Procuring house construction for public welfare. Tendering competition and development

39. The report presents an overall view of the procurement of house construction for public welfare and contains suggestions for how tendering competition could be improved. (Report series 2015:2).

The public procurement of food. A mapping of Sweden's public procurement of food and meal services

40. In this report competition-related problems that occur in the public procurement of food and meal services are identified. (Report series 2015:1).

4.1.2 *Responses to official consultations*

41. By commenting on proposals made in reports and other enquiries the SCA can assist the government and other agencies in the preparation of proposals and decisions. Among the official consultations made by the SCA in 2015 were several responses in the field of banking and financial markets. The SCA has also been involved in hearings and consultations arranged by the Swedish Energy Markets Inspectorate, the Ministry of the Environment & Energy, the Ministry of Enterprise and Innovation, and the Ministry of Finance. The following is a selection of the SCA's responses to official consultations in 2015 within its field of competence.

Amortisation requirements

42. The SCA stated in a consultation to the Ministry of Finance in October that if amortisation requirements were to be introduced for mortgages it would be more appropriate to require that the total loan portfolio of each credit institution be amortised to the extent necessary to satisfy the purpose of the regulation instead of individual amortisation requirements. (Ref no.: 577/2015). An earlier response, in April, to Finansinspektionen also stated that the introduction of amortisation requirements for mortgages would be negative with regards to competition; the SCA highlighted the fact that lenders would be deprived of an important means of competition, and that the customers' freedom to choose their form of saving would be limited. (Ref no.: 187/2015).

The securities market

43. In a consultation to the Ministry of Finance, the SCA has adopted a negative view in respect of a proposal to introduce a "commissions ban" in the Securities Market Act. In the SCA's opinion, a commission ban could have a negative effect on competition in this market. (Ref no.: 111/2015).

Municipal laws for the future

44. In a response to proposals for new municipal laws, the SCA endorses the objective that municipalities and county councils should be aiming to conduct their work from a competition neutral standpoint, and in a competitive market. But the SCA also states that the rules must be supplemented with provisions so that municipal operations that are subject to competition can be separately accounted for. (Ref no.: 336/2015).

Broadband

45. In two responses to the Swedish Board of Agriculture, in September and December, the SCA stresses that community support for the expansion of broadband should be designed in such a manner that it does not affect competition within the market. (Ref nos.: 710/2015, 593/2015).

Welfare consultations

46. The SCA has also responded to several consultations concerning welfare: for example endorsed a proposal to introduce a requirement for authorisation within home care services (Ref no. 165/2015), a proposal regarding extending the options for pharmacists to offer the consumer a product not covered by a high cost protection scheme (Ref no.: 376/2015) and a proposal on reformed car allowances in conjunction with vehicle adaptation measures. (Ref no.: 162/2015).

Consumer policies

47. The SCA has endorsed proposals regarding better conditions for the Swedish Consumer Agency to be able to intervene and apply further regulations in respect of telesales operations. (Ref nos.: 620/2015, 520/2015).

Parliamentary Review Committee/Remedies inquiry

48. In May 2015 the SCA concurred with the Remedy inquiry's assessments regarding temporary direct award of contracts during ongoing review procedures. However, the SCA stressed the need for a problem inventory and in-depth analysis of the consequences that several of these proposals might have and advocated for an extended deadline for applications for procurement fines from one year to two. (Ref no.: 221/2015).

Statement regarding EU proposal on electronic communication

49. The SCA has made a statement regarding the proposal by the European Commission for a new regulation on an internal European market for electronic communications. Objections to this proposal related to the need for regulatory measures to promote the development of pan-European telecom actors, and the proposal for consideration of the global competitiveness of the EU when deciding whether to pre-regulate a market. [Ref. no. 593/2013]

Procurement and terms and conditions in accordance with collective agreements

50. In this report the SCA states that all contracting authorities can stipulate the work conditions that are to apply in public procurement contracts and if correctly formulated, these can set terms and conditions that are on a par with those found in Swedish collective agreements. (Ref no.: 579/2015).

Housing and procurement rules

51. Due to the refugee situation in Sweden, the SCA considered it to be a matter of great urgency that the Swedish Migration Agency and other contracting authorities be able to effectively conduct the procurements necessary in order to be able to handle the reception of asylum seekers, and that the procurement legislation and its application should not hinder them in this task. (Ref no.: 681/2015).

4.2 Research

52. The SCA has a mandate to conduct research within its areas of operation. In 2015, the appropriation allocated to research in competition and procurement was SEK 13.6 million. The research is to results in greater awareness amongst the SCA's employees and stakeholders. First and foremost, funding goes to research within law and economics. Furthermore, conferences, seminars and workshops are organised in order to provide information about our research and our findings. In addition to this, each year the SCA organises an essay competition for students.

4.2.1 Projects that received funding in 2015

53. During the year, the SCA received 55 applications requesting funding for research within the fields of competition and procurement. The SCA granted funding to six new projects in the field of competition research and two in procurement research; the 2015 funding amounted to a total of nearly SEK 5.1 million. The SCA also paid out over SEK 6.8 million to eight ongoing projects.

54. The following is an account of new research projects.

- **Frank Verboven** – “Evaluating the Reform of Swedish Pharmacy Retailing: Effects on Prices and Product Availability of Non-Prescription Drugs”
- **Friðrik Már Baldursson** – “Nordic Conference on Industrial Organization (NORIO 2016)”
- **Jerker Holm** – ”Competition effects in the vehicle inspection market”
- **Thomas Tangerås** – ”The electricity sector, price formation and competition”
- **Chloé Le Coq** – “Collusion vs. Mergers: Evidence from the Swedish Market”
- **Lars Henriksson** – ”The Nordic Competition Network’s research conference in Stockholm in the autumn on 2016”
- **David Granlund** – ”The short and long-term price effects of more companies participating in repeated auctions”
- **Sofia Lundberg** – ”Ecological food consumption in the public and private sectors: Do the policies match the desire to ‘go ecological’?”
- **Xavier Groussot** – “Social and Green Clauses in EU Public Procurement Law”
- **Grith Skovgaard Ølykke** – ”Abnormally low tenders: pricing strategies and efficient assessment by contracting authorities and courts/the complaints board”.

4.2.2 *Commissioned research*

55. The SCA commissions research when a direct need to investigate or highlight specific issues within competition and/or procurement is identified. The results are then reported in a special report series for commissioned research. A reference group is assigned to each project to quality assure the study. The reference groups consist of individuals with special expertise in the field in question. The ambition is for the reports to be founded on solid academic grounds and to be written in such a way that the content can also be understood by non-specialists. In 2015 a total of SEK 2.3 million was awarded for commissioned research within the fields of competition and procurement.

56. The SCA published the following commissioned research reports in 2015:

- **Karl Lundvall** – ”Customer mobility in the fund market. The customers’ movement patterns and driving forces for fund dealing”
- **Johan Lindholm** – ”Commercial exploitation of sporting activities from a competition law perspective”. Essay competition
- **Lars-Johan Åge** – ”Business Manoeuvring – a framework for good business”
- **Karl-Markus Modén** – ”The public market in Sweden. An empirical analysis of the public sector’s combined purchasing”

- **Giancarlo Spagnolo** – “Public Procurement Thresholds and Data in Sweden”
- **Andrea Sundstrand** – ”Collective agreements and terms and conditions in public procurement”
- **Staffan Hultén** – ”Contracts and competition in regional public bus transport”
- **Anne Engström, Åsa Wallström & Esmail Salehi-Sangari** – ”Electronic procurement – An analysis of the advantages, benefits, challenges and obstacles”.

4.2.3 *Conferences, Pros and Cons and workshops*

57. To share and advance knowledge about current competition-related matters, the SCA holds an annual international research seminar entitled “Pros and Cons”. Since the first seminar in 2002, researchers and experts have discussed the pros and cons of compelling questions in the field of competition law. The theme of this year’s seminar, which was held on 13 November, was “The Pros and Cons of Leniency and Criminalization”. Around 80 researchers, academics, lawyers and representatives of competition authorities participated in the conference. On 12 November the SCA’s Research Council held its annual Swedish Workshop in Competition Research (SWCR).

4.2.4 *Working Paper*

58. In the Working Paper series the SCA presents ongoing research related to the field of competition policy. The papers are published in English and aim to disseminate research and methodology that may be of interest to authorities, researchers and other stakeholders, in Sweden and internationally. During 2015 the SCA published the following papers:

- **Apostolos Baltzopoulos et al.** – “UPP Analysis in Five Recent Merger Cases”
- **Christian Bergqvist and John Townsend** – “Enforcing Margin Squeeze Ex Post Across Converging Telecommunications Markets”
- **Ozlem Bedre-Defolie and Linda Gratz** – “Economics of Payment Cards”.

4.2.5 *Essay contest*

59. In an effort to promote interest in competition and procurement matters among students, the SCA holds an annual essay contest. The contest is open for all topics that are relevant to the SCA’s activities. In 2015 there were 37 entries submitted and five of these were awarded with prizes and shared a total of SEK 100,000. Four of the essays addressed public procurement issues and two of them competition-related issues.

4.2.6 *Council for Research Issues*

60. The SCA has a designated research council. The Council consists primarily of external academic researchers within the fields of economics, law and business administration. The Council is tasked with stimulating research in the fields of competition and procurement, and providing the SCA and the National Agency for Public Procurement with findings from developments, primarily in the economic and legal sciences, which may be of significance to our activities. The Council’s members are appointed by the SCA and have a term of two years. This year, the Council convened on three occasions. Its agendas addressed current research issues, research appropriations, applications for funding, proposals for commissioned research projects and the essay competition.

4.3 *Communication and knowledge*

61. The SCA is to promote a competition-oriented approach and provide appropriate information for companies and other concerned parties regarding important decisions, implementation of the rules and the content of these rules. Throughout the year, the SCA's ongoing investment in communication through various channels has contributed to the work to prevent infringements of the regulations, to spread knowledge of legislation, and to communicate the SCA's standpoints.

4.3.1 *Investment in digital communication*

62. The hub of all SCA's communication is the digital channels and, above all, the web site: konkurrensverket.se. The new, fully responsive web site, which was launched around the beginning of 2015, has been widely appreciated by various target audiences. The web site is adapted for the rapid development of mobile technology and contains information about the SCA's supervisory and advocacy activities in competition and procurement-related issues.

4.3.2 *Electronic newsletter: Procurement and competition*

63. During the year the SCA has published a newsletter that addresses both procurement and competition issues. The newsletter is published bi-weekly and continually provides almost 3,000 subscribers with up-to-date information.

4.3.3 *Interactive guide*

64. Interactive digital guidance is a fast way of helping a target audience with different issues and to provide a greater understanding of various regulations. Within the scope of the enforcement activities the SCA has, over the course of 2015, launched a digital guidance package addressing anti-competitive public sales activities. The popular guidance package about collaborations in trade organisations, "Kör på Grönt" (Green for Go), has also been updated. Furthermore, digital guidance packages on the subjects of direct awards and vertical agreements will be launched during 2016.

4.3.4 *Web-based customer service*

65. The SCA handles many different issues concerned with competition and procurement legislation and this is primarily conducted via the "tip-off" function. To make it easier for the target audience to find the right answers to their questions, the SCA has, during the year, initiated work to develop a web-based customer service function, in the form of a digital forum. An evaluation of the function is to be conducted.

4.3.5 *Podcasts*

66. The rapid development in digital technology has led to podcasts becoming an increasingly popular way of spreading information, and this form of communication is growing in popularity in many target groups. As a part of its efforts to develop and refine its digital communication, the SCA launched the "Konkurrenten" (Competitor) podcast at the end of 2015, to address competition and procurement-related issues.

4.3.6 *Almedal week*

67. The SCA held six seminars involving both experts from the SCA and external speakers in Almedalen in June 2015. The overriding theme of the seminars was "For good business". The seminars focused both on procurement and competition matters and subjects covered were for example how to stimulate more constructions, strategic procurement, how to discover corruption in public procurement, fair

business and proper procurement. A total of 1,200 people took part (either by being present on site or via our webcasts).

68. In addition to the SCA seminars, staff also participated as speakers and in panel debates in a further 14 events. In Almedalen the SCA also launched three new information films:

- What is public procurement?
- Public procurement – for you, the supplier.
- Corruption in public procurement.

4.3.7 *Information pamphlets*

69. During 2015, the SCA produced several information pamphlets; "The right way to compete! - How the Competition Act works", "Honesty pays - How to detect and prevent bid-rigging cartels" and "Everyone gains from better competition". Within the scope of a project on early dialogue in procurement, the SCA also, together with Teknikföretagen and the Swedish Association of Local Authorities and Regions, published the folder "What are the advantages of early dialogue?".

4.3.8 *Op-ed articles and statements*

70. The SCA has actively taken part in the public debate of competition and procurement-related issues. Staff has issued statements to decision-makers and purchasers in the government, municipalities and county councils. The debate articles and statements issued can be found on our web site.

4.3.9 *Information meetings*

71. During the year the SCA's staff has participated in a number of seminar, courses and meetings with procurers and suppliers, at various locations around the country, in order to provide information about legislations as well as supervisory and support assignments.

4.3.10 *Stakeholder's views*

72. The SCA recently conducted its 23rd consecutive survey on its stakeholders' perception of the SCA's application of relevant legislation, the stakeholder's knowledge of applicable regulations and their confidence in the SCA. This is the ninth time that public procurement issues have been included in the survey. The stakeholders asked to participate are: large companies (200 employees or more), SMEs (less than 200 employees), trade associations, municipal authorities and county councils, corporate lawyers, financial journalists and a group comprising public authorities and agencies.

73. In a weighted average of the various stakeholder groups, the majority, 67 per cent, responded that they have a high or very high level of confidence in the SCA, which is an increase of 1 per cent. The confidence percentage is highest amongst authorities and lowest amongst small businesses.

74. The majority of those surveyed, 58 per cent, have a positive attitude to competition legislation. The trade organisations are the most positive, whilst smaller businesses are the most negative. The target groups are considerably more critical of procurement legislation. However, 36 per cent are positive toward the legislation and this is an increase compared with 2014 (27 per cent) which also means that, this year, the positive attitudes outweigh the negative ones. With regard to the stakeholders' view of the SCA's communication, and the manner in which the SCA prioritises its cases, 70 per cent feel that this is good.

75. All stakeholder groups still have a very positive attitude toward competition. 97 per cent believe that competition is a good thing. Nearly all, 95 per cent, believe that there are operators that consciously violate competition laws. Two out of five believe that such violations occur regularly. The majority, 55 per cent, believe that the SCA actively works to counteract serious infringements of competition laws. This is a reduction compared with previous years. Nearly all, 97 per cent believe that there are operators that consciously violate procurement laws, and half of those surveyed believe that these violations occur very often.

76. The stakeholders' knowledge of the SCA's supervisory activities is increasing and the general level of awareness of competition and procurement legislation remains high.

77. Three out of four (73 per cent) answered that they know that the SCA is responsible for the enforcement of the competition laws. This is a substantial increase from the 61 per cent of last year. Nearly all, 90 per cent, responded that they are aware of the competition laws.

78. Awareness of procurement legislation also remains high. 90 per cent claimed to be aware of this. With regard to procurement, 53 per cent now also know that the SCA is responsible for the enforcement of the relevant legislation – a clear increase compared with 2014 (33 per cent). Only one in three (37 per cent) are aware of the Act on System of Choice and, compared with last year, fewer (44 per cent) are positive to the Act. Municipal authorities and county councils have the highest level of awareness, and businesses the lowest.

79. Amongst those who have contacted the SCA in connection with competition and procurement cases, there is an overall positive view of how the SCA handled the case in question – the figure this year was 66 per cent. The percentage of those who were dissatisfied has fallen somewhat.

4.4 International work

4.4.1 Competition

ECN

80. Within the framework of the European Competition Network (ECN), the SCA maintains a close working relationship with the European Commission and the competition authorities of the member states in the application of Articles 101 and 102 (anti-competitive cooperation and abuse of dominant position), under the Treaty on the Functioning of the European Union (TFEU).

81. During 2015 the European Commission and the competition authorities of the member states reported 125 new cases to the network. Furthermore the SCA regularly receives information on complaints and new cases before the Commission, as well as the most important documentation in these cases. In 2015, the SCA received information on 28 new cases.

82. Before the European Commission announces its decision in a case, the parties are given the opportunity to verbally present their opinions on the drafts of the decision under what is known as an "oral hearing". The competition authorities of the member states are consulted regarding the Commission's decisions at meetings of the advisory committee. The SCA participated on 7 such occasions during the year. Since September the national competition authorities have been able to participate "virtually" in these meetings. In addition to this, the SCA participates in the advisory committee's meetings to consult on certain legislative matters before the Commission. In 2015, the SCA participated on two such occasions. The national competition authorities are also obligated to consult the Commission before reaching decisions under Articles 101 and 102 of the TFEU. In 2014, the SCA consulted with the Commission on two such matters.

83. Cooperation within the ECN is also conducted through the exchange of information between the authorities and within the framework of working groups focusing on different matters. During the year, the SCA participated in 28 working group meetings. Over the past few years, work has been in progress to map and analyse whether the EU's national competition authorities have the tools necessary to be able to guarantee the conducting of efficient enforcement work. The SCA has been actively participating in this work throughout the year.

Investigations for other public authorities

84. The SCA helps the Commission and its sister authorities within the EU with on-site investigations and information gathering among companies in Sweden. During 2015 the SCA conducted one such on-site investigation and ordered one company to submit written information.

Cooperation on merger control

During 2015 the SCA has participated in six of the Advisory Committee's meetings regarding the Commission's merger controls. Furthermore, the national competition authorities have a special working group that is charged with promoting greater cooperation on merger controls. In 2015 the SCA took part in three meetings organised by the working group.

Nordic cooperation

85. The Nordic competition authorities have enjoyed closed cooperation for many years. The latest annual meeting was held at the end of August in Reykjavik where competition issues related to the waste management, healthcare sectors and the taxi market were discussed. In between these meetings teleconferences are held regularly to update members on the activities of each authority. Within the framework of the Nordic cooperation there are also special working groups, such as the cartel network. The chairmanship rotates and the members meet once a year to discuss current cases and developments in methodology. Greenland hosted this year's meeting. The Nordic competition authorities' Chief Economist Group has met twice during the year, once in January in Copenhagen and once in November in Bergen. Items on the agenda included the Nordic cooperation agreement and a discussion of how this could be revised in order to make the collaboration between the Nordic countries more effective.

OECD

86. During 2015, the Competition Committee within the Organisation for Economic Cooperation and Development (OECD) has held two meetings, in which the SCA has participated. The subjects discussed included structural separation, cartels and intermediate goods, provisions regarding price parity and parity conditions, sector investigations, competitive neutrality, and the interplay between public and private sector application of the competition regulations. Since 2010, the SCA's Director General has been a member of the steering committee that prepares the Competition Committee's agenda.

87. Furthermore, the SCA's staff has participated as speakers in competition-related seminars in Europe and Asia organised by the OECD's two regional offices (OECD-GVH Regional Centre for Competition and OECD/Korea Policy Centre).

ICN

88. Competition authorities around the world cooperate within the International Competition Network (ICN). The SCA actively participates in all of the network's five working groups and was represented at the annual ICN Conference in April in various panel debates. During the year, eight external

advisors were linked to four of the working groups: cartels, mergers, abuse of a dominant position and advocacy.

89. Since May 2015, the SCA is co-chairing the Advocacy Working Group together with Mexico and Italy. During 2015 the focus has been on updating the ICN's catalogue of sector investigations, and a manual that provides competition authorities with practical guidance about how to carrying out such investigations. The SCA has also been involved with a project that aims to develop web-based guidance for how competition authorities can explain the value of effective competition to businesses.

90. Within the Abuse of a Dominant Position Working Group the SCA has initiated work to produce a chapter on tying practices to be included in a manual addressing abuse of market power.

UNCTAD

91. The SCA was represented at UNCTAD's annual conference in Geneva. The agenda addressed ways to improve processes so that developing countries receive even better support when implementing effective competition legislation and policies.

Other cooperation

92. During 2015 the SCA has hosted a delegation from Belarus. Several of the SCA's employees have, at the request of various authorities and organisations, addressed international conferences, including those held in Belgium, Denmark, Italy, Switzerland, the Czech Republic and USA. Different perspectives on economic and competition-related issues were highlighted in Milan in November when staff from the Authority took part in a conference organised by the Association of Competition Economics.

4.4.2 *Public Procurement*

Advisory Committee on Public Procurement

93. The EU law cooperation on procurement matters is largely conducted within the framework of the European Commission's Advisory Committee under the Directorate General for the Internal Market and Services. The SCA has assisted the Government Offices in this work and staff has participated in the working groups linked to the Committee. During 2015 the European Single Procurement Document has been discussed and reworked.

Statistics on public procurement

94. The introduction of new EU procurement directives has meant that member states no longer need to submit annual public procurement statistics to the Commission. In the future the Commission will rely on information taken from Tenders Electronic Daily (TED) for its own analyses and reporting. However, the SCA will continue its work with statistics in order to improve its retrospective notification of procurements, and to make more data and statistics available.

Public Procurement Network

95. The Public Procurement Network (PPN) is an informal network comprising representatives from European ministries and authorities that focuses specifically on public procurement. Collaborative efforts within the network are aimed at strengthening and improving the application of procurement regulations and promoting cross-border public procurement. The SCA has actively participated in the PPN's efforts by responding to the surveys and questions sent out by the PPN's members.

Nordic cooperation

96. Representatives of the Nordic ministries and other authorities involved with public procurement meet annually to share their experiences and to discuss current issues. In November 2015 the representatives met in Reykjavik to discuss the implementation of the new procurement directives, the use of procurement as a strategic tool for achieving societal goals, along with social services and their regulation within procurement legislation.

OECD

97. The SCA has participated in two meetings held under the auspices of the OECD during 2015 and contributed to the work to produce a new recommendation on public procurement. The SCA has also submitted written contributions to OECD papers and compendiums related to environmentally-friendly procurement, indicators for measuring the effectiveness of procurement system, integrity within public procurement, and in respect of the regulations that apply to abnormally low tenders and contract splitting.

World Bank

98. The SCA contributed to the World Bank's report, "Benchmarking Public Procurement 2016" by responding to several surveys. The report analyses the procurement systems in 77 different countries, based on the various regulations that affect the different phases of the procurement process. The report also focuses on an aspect that is particularly important to suppliers – an effective legal review system for the handling of complaints.

5. Resources of the SCA

5.1 Resources overall

5.1.1 Annual budget

2014: SEK 137,9 million, or 14 million EURO (average exchange rate for 2014);

2015: SEK 138,7 million, or 14,8 million EURO (average exchange rate for 2015).¹

5.1.2 Number of employees

99. In total, there was 177 staff working at the SCA during 2015². Out of these, 130 work on competition enforcement and more specifically 118 as non-administrative staff. Among the non-administrative competition staff, there are 68 lawyers, 40 economists and 10 with other type of functions.

1 The figures represent the budget allocation to the Swedish Competition Authority as stipulated in the Government Appropriation Directive for 2015 as well as 2014.

2 The number 177 constitutes full-time equivalents (FTE) for 2015. By 31 December 2015 there were in total 168 people employed at KKV. These numbers include staff working within the procurement support function which during 2015 was moved to a new agency.

5.2 Human resources (person years) applied to:

Enforcement against anti-competitive practices and merger review	118 (no. of employees)
Advocacy efforts; integrated into the work of the enforcement of competition departments	70% of time refers to law enforcement
Public procurement	22

Period covered by the above information: 2015

SUMMARIES OF OR REFERENCES TO NEW REPORTS AND STUDIES ON COMPETITION POLICY ISSUES

The following is an account of the reports issued during 2015 with references where they can be downloaded. The content of the reports are described in section 4.1.1 Reports.

Annual Report for 2015³

The public procurement of food. A mapping of Sweden's public procurement of food and meal services (SCA report series 2015:1)⁴

Procuring house construction for public welfare. Tendering competition and development (SCA report series 2015:2)⁵

Care homes or homes for young persons – a mapping of municipal framework procurements (SCA report series 2015:3)⁶

Better competition in the house-building sector. A follow-up for 2009-2012 (SCA report series 2015:4)⁷

Developable land? A key resource in construction (SCA report series 2015:5)⁸

Work and employment conditions on a par with Swedish collective agreements in public procurement (SCA report series 2015:6)⁹

Five years of procurement fines. What has happened at those authorities ordered to pay the fines? (SCA report series 2015:7)¹⁰

The Swedish fund market – an in-depth analysis (SCA report series 2015:8)¹¹

Facts and figures on public procurement (SCA report series 2015:9)¹²

Doctors for hire in primary care – a mapping of the county councils' procurements and the costs involved (SCA report series 2015:10)¹³

3 Available at: <http://www.konkurrensverket.se/globalassets/publikationer/arsredovisning/konkurrensverket-arsredovisning-2015.pdf>

4 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-1.pdf

5 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-2.pdf

6 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-3.pdf

7 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-4.pdf

8 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-5.pdf

9 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-6.pdf

10 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-7.pdf

11 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-8.pdf

12 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-9.pdf

13 Available at: http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-10.pdf