The attached note is submitted by the Swedish Delegation to the Committee on Competition Law and Policy FOR DISCUSSION at its forthcoming meeting on 24-25 October 2000.
Introduction

1. In many areas technological development can be expected to influence competition conditions. The transparency it brings about can lead to a sharpening of competition and thereby be of benefit to customers. However, transparency can also lead to co-operation between companies which restricts competition by using the new technology such as passwords and firewalls. One area which can be expected to have a substantial impact on competition in many markets is e-commerce. This is the background to the fact that the Swedish Competition Authority is devoting particular attention during autumn 2000 to the issues raised by e-commerce.

Computer density and computer maturity

2. The issue is to what extent Swedish consumers and businesses have access to the new technology, knowledge and infrastructure required for e-commerce to be feasible.

3. Five years ago approximately 1 percent of the Swedish population had access to the Internet at home. In September 2000 every second home in Sweden had access to the Internet. Half of the households with access to the Internet have had it since 1998. In international terms this is a very high proportion. The proportion of Swedes with access to the Internet both at home and at their place of work is, as is the case in Norway and Denmark, also amongst the highest in the world.

4. During the last six months approximately 31 percent of the Swedish population have searched for products over the Internet. Approximately half of these made a purchase. During the first quarter of 2000 sales through e-commerce increased by 30 percent. This trend continued during the second quarter, but the increase remained at 19 percent. However, the increase started from low levels. During the second quarter this year, e-commerce accounted for barely 2 percent of total retail sales. Measured in terms of annual turnover this corresponds to SEK 6.2 billion. Although this figure is low, it does put Sweden at ninth place internationally and in per capita terms Sweden ranks among the leaders in the world.

5. The Swedish mobile telecommunications market is well established. At the end of August 2000, around 65 percent of the Swedish population had a mobile telephone subscription. Within the EU one out of every two individuals has such a subscription. The widespread use of mobile telephones in Sweden may have an impact on the future of e-commerce when Wireless Application Protocol (WAP), which is a means of communication over the Internet via mobile telephone, is introduced. It is difficult to estimate so far the scope of mobile e-commerce. According to some experts, however, it is the development of digital TV which will create the best conditions for e-commerce in consumer markets. At present digital terrestrial transmissions reach approximately half of the country's inhabitants. The transmission network for digital TV will shortly be extended to provide full coverage. The proportion of households receiving programmes transmitted by satellites is also increasing.

6. In addition, rapid growth in the broadband network will lead to many more Swedes having high-speed access communication via the Internet. This should promote the use of the Internet still further and also as a result e-commerce. With increased access to broadband, it will be easier to buy traditional products through e-commerce. Communication via broadband will also make it possible to buy completely new types of digital products and services such as computer programs, music and videos and have these rapidly transferred straight into their computers.
What rules apply to e-commerce?

7. All trade and commerce is surrounded by rules in order to ensure that it functions as effectively as possible. The buyer-seller relationship is regulated by a system of laws governing rights and responsibilities of the respective partners in the event of delays in payment, faulty goods or late delivery. There is also market legislation, the aim of which is to restrict companies from side-stepping the mechanisms of the market economy by such means as misleading marketing, unreasonable sales conditions or anti-competitive co-operation.

8. An EC directive on electronic commerce was adopted in June 2000 (2000/31/EC). The directive aims to ensuring that information services, in particular electronic commerce, can benefit from the internal market principles. A working group has been formed to implement the directive into Swedish law. In 1997 an EC directive on consumer protection in distance selling was adopted (97/7/EC). The Swedish Distance selling act, which entered into force on the first of July 2000, is based on the latter directive.

9. Otherwise, in all essentials the same rules apply to e-commerce as to other forms of commerce. One exception is, however, trade in products delivered via the Internet straight into the purchaser’s computer, where there is no legislation governing the rights of the buyer and seller. There are also general problems in applying rules, which are largely connected to the technology. One example are the difficulties that may occur in e-commerce concerning who has actually ordered a product. Mail order generally requires that the customer signs an order, which is not possible in electronic commerce.

10. The above applies to purchases within Sweden. But e-commerce creates opportunities for substantial cross-border trade. In such international transactions, the question can arise as to which country’s legislation should be applied in the event of a dispute and in which jurisdiction the dispute should be heard.

Commercial obstacles to e-commerce

11. In what follows we shall identify some well-known factors which can impede the development of e-commerce.

Consumer confidence

12. Judging by investigations carried out so far, consumers are in general cautious when it comes to e-commerce despite having good access to the Internet. There may be a number of reasons for this. Payment often takes place in advance in e-commerce. As a result buyers are often deprived of their legal rights of withholding payment as security for possible counterclaims arising from e.g. defects or delays in delivery. The absence of a verbal contact or written agreements or receipts can put the consumer in a weak position in the event of a possible dispute with the seller, or at least there is a risk of this happening. Goods cannot be examined prior to purchase, which can create the risk of unwelcome surprises when they arrive. Another issue concerns the use of credit card as a means of payment where so far the possibility of signing for payment via the Internet does not exist, which would of course appear to restrict the development of e-commerce.

User friendliness

13. Shortcomings in user friendliness may well have a restrictive effect on the development of e-commerce. Apart from access to technology and infrastructure, knowledge is also required on how the
technology should be used for e-commerce to be feasible. As mentioned earlier, e-commerce can be expected to make a major breakthrough when digital and interactive TV start to be used on any scale.

**Lack of competence**

14. Lack of competence, seem to be another obstacle, at least among pure web shops. Quality, logistics, service and access to justice are examples of important consumer values. Traditional retailers have learned to apply to such values through centuries of merchandising. This knowledge does not seem to have been translated into the new medium of e-commerce. Just providing a new technology that can be used for buying goods and services, and nothing more, will not satisfy the customers.

**E-commerce from a competition perspective**

15. E-commerce helps to create greater competition. But there are indications that competition related problems can occur as a consequence of an increase in e-commerce. One example is a refusal to supply. Other factors, such as a higher risk of cartel formation are theoretically conceivable, but it is still unclear to what extent such effects may have occurred.

**Refusal to supply**

16. The Swedish Competition Authority has received a few complaints about suppliers who have refused to supply goods to e-commerce companies. Refusal to supply constitutes an important reason for a number of e-commerce companies to form their own representative organisation, the Swedish Association for E-commerce.

**Cartel formation and price discrimination**

17. For both consumers and companies, e-commerce makes it easier and faster to get access to information about price and product specifications and other purchasing conditions. In theory competition should as a result be promoted. The new e-commerce sites have sometimes been compared with older traditional market places, characterised by good opportunities to examine the range of products available and their purchasing conditions.

18. Increased transparency may, however, give rise to negative consequences. Transparency can also benefit companies and this can create incentives for price co-operation between them. Technology also makes it easier to check whether a company which is a part of a cartel is following its rules. New technology creates new opportunities for companies to rapidly communicate with each other without the public or its agencies being able to monitor this.

19. New technology also makes it simpler for companies to get information about their customers’ preferences, willingness to pay and buying behaviour. Such information may be used as a basis for differentiated pricing and thus set prices at their maximum when demand and willingness to pay are also at their highest. It thus becomes possible to use price discrimination in order to maximise company income. In the prevailing situation, it is unclear to what extent e-commerce has contributed to an increase in cartel formation or price discrimination on the Swedish market. The issue needs further investigation and needs to be followed up as the market for e-commerce develops and grows.
20. Self regulation is an efficient way of improving the behaviour of undertakings on different markets. One example, from the area of e-commerce, is the quality certification of e-commerce sites. It is, however, important that self regulation is not used in a way that leads to, or supports, infringements of the Competition act.

Network effects

21. The issue of the negative consequences of network formation may become increasingly apparent as e-commerce develops. Those who are building up networks for data communication, e.g. e-commerce portals, are in a good position to steer the commerce taking place through the portal. A dominant position can also occur, making it possible to eliminate or refuse entry to competitors.

Current investigation

22. From the consumer viewpoint, it is a matter of priority to carefully monitor the development of e-commerce and not least the effects it has on competition. It is against this background that the Swedish Competition Authority started in September 2000 a prestudy, the aim of which is to describe the effects of e-commerce on competition by studying its impact on different industries. What will be studied is company behaviour and the structural impact that e-commerce may have. In the first instance this will be an exploratory study. Apart from what has been mentioned earlier, it is still uncertain what additional competition problems will be analysed. A subsidiary aim is to try to determine what new demands e-commerce imposes on the Swedish Competition Authority and other bodies promoting competition.

23. The industries to be studied have been chosen on the basis of the areas which the Swedish Competition Authority is currently present giving priority to, namely non-durable goods and the market for building materials. Travel services are the third area selected in order to provide some coverage of the service sector.