Changes to competition laws and policies, proposed or adopted

Summary of new legal provisions of competition law and related legislation

National application of EC Competition Rules

1. From 1st January 2001 the Competition Authority can directly apply Articles 81(1) and 82 of the EC Treaty. Article 81 concerns prohibition against anti-competitive co-operation, and Article 82 prohibition against abuse of a dominant position. These articles are applicable as national law in parallel with the Swedish Competition Act. The EC rules on competition can be applied if trade between Sweden and another member country is affected. This also means that agreements between companies that only have an effect on the Swedish market can be examined under the EC rules on competition if, for instance, they restrict imports. As regards anti-competitive agreements and abuse of a dominant position, a practice can be examined under both the competition rules of the EU as well as the Swedish Competition Act. The Competition Authority has not applied Articles 81(1) or 82 in any case during 2001, neither has it received any application for negative clearance under these rules.

New legal exemptions for the taxi business

2. In order to facilitate the attainment of the goal of access to taxi services in sparsely populated areas, a new exemption for co-operation in the taxi sector was incorporated into the Competition Act as of year 2001. The exemption means that some forms of co-operation between taxi undertakings in a central switchboard facility fall outside the scope of the general prohibition against anti-competitive co-operation. For co-operation to be permitted, it shall not cover more than a maximum of 40 vehicles.

New block exemptions


4. The first applies to agreements between suppliers and retailers, i.e. vertical agreements, concerning conditions for purchasing, sales and retailing. The block exemption, which in principle corresponds to that applied in EC law, replaces the former exemptions on franchising agreements, exclusive distribution agreements and exclusive purchasing agreements. It also replaces the special Swedish block exemption for voluntary chains in the retail trade. The new block exemption applies until the end of year 2005.

5. The second block exemption concerns the taxi sector where exemption from the prohibition against anti-competitive co-operation applies to co-operation through a central switchboard facility which falls outside the scope of the legal exemption, but where the co-operating companies account for a maximum of 35 percent of the market. As regards joint purchasing activities and safeguarding confidential
business information, there is, however, no limit to market shares. The block exemption continues to apply until further notice.

6. The Government has also issued two new block exemptions that entered into force on 1st July 2001.

7. The first concerns specialisation agreements. The block exemption covers agreements between two or more companies on the conditions for product specialisation.

8. The second block exemption covers agreements between two or more companies on the conditions for joint research and development.

9. The block exemptions, which in principle correspond to EC law, replace the former exemptions on specialisation agreements and agreements on research and development. The exemptions will apply until the end of December 2010.

**Government proposals for new legislation**

**Fighting cartels**

10. During the autumn the main report of the “Commission on fighting cartels” (SOU 2001:74), was circulated for official comment, together with a memorandum from the same commission with proposals for strengthening confidentiality of the Authority’s investigations and also an agreement on co-operation between the competition authorities in the Nordic area.

11. The report proposed rules for reduction and concessions over fines, protection of confidentiality for those providing information, obtaining information on behalf of foreign competition authorities and some issues concerning legal costs. These proposals have the support of the Competition Authority. Especially welcomed by the Authority was a proposal to introduce leniency based on North American and EC models, where fines can be reduced or concessions made for companies revealing cartels or which otherwise co-operate with the Competition Authority during the investigation of such infringements.

12. As regards treating infringements of the legislation on competition as criminal offences, the Commission had come to the conclusion that regulations to implement this should not be introduced. The Swedish Competition Authority supported the conclusion that at the present moment the conditions for making such infringement a criminal offence do not exist, but expressed the view that when further experience has been gained of the current sanction system, there may well be reasons to consider introducing such a system in the form of unconditional prison sentences and making it possible for the first party revealing such infringements to avoid penal liability.

13. The Swedish Competition Authority supported the proposal in the Commission’s memorandum to introduce provisions for strengthening confidentiality of the investigations undertaken by the Authority. The Authority also supported the proposal that Sweden becomes a party to the agreement on co-operation between competition authorities entered into by Norway, Denmark and Iceland which provides greater opportunities for the exchange of information between the Competition Authority and authorities in these countries.

14. In the Government Bill 2001/02:167 "Amendments of the Competition Act for more effective combat of cartels etc." a proposal is given for a leniency programme with rules on concession as well as
reduction of fines for undertakings which reveal anti-competitive co-operation between undertakings. The Government also proposes a provision on secrecy protection for information given by a person to the Competition Authority. Furthermore the Government proposes that the Competition Authority shall be given possibility to assist competition authorities in other countries in collecting information and carrying out investigations in Sweden. Finally a proposal is given on indemnity for litigation costs in specific cases. The amendments are proposed to enter into force on July 1, 2002.

Enforcement of competition laws and policies

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

Summary of activities of: the Swedish Competition Authority

15. The following table shows the number of new cases registered during 2001 under the Competition Act - mergers, agreements and complaints - and the number of decisions taken during the same period. The total number of cases pending at the end of 2001 amounted to 75.

<table>
<thead>
<tr>
<th>2001</th>
<th>Registered new cases</th>
<th>Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mergers</td>
<td>84</td>
<td>80</td>
</tr>
<tr>
<td>Notifications for negative clearance or exemptions</td>
<td>35</td>
<td>30</td>
</tr>
<tr>
<td>Complaints</td>
<td>190</td>
<td>190</td>
</tr>
<tr>
<td>Other cases (inquiries etc.)</td>
<td>229</td>
<td>229</td>
</tr>
<tr>
<td>Total</td>
<td>538</td>
<td>539</td>
</tr>
</tbody>
</table>

16. An important task assigned to the Competition Authority is its consultative role on existing and proposed public regulations. A total of 138 formal opinions were submitted to governmental and public authorities.

Complaints

17. Complaints received from companies during 2001 have covered anti-competitive measures taken by a company with respect to others, as well as competition problems related to the public sector. Many of these cases concern companies which are not able to obtain supplies of the goods they want, or that a dominant undertaking is alleged to have restricted competition for other sometimes newly established companies in deregulated markets such as civil aviation, railway transport and the telecommunications area.

18. Complaints from companies about the public sector mainly concern laws and ordinances which in different ways prevent or make competition more difficult, or that the state authorities, municipalities and county councils are competing with private companies. One reason for the complaints is the opportunities these players have of using tax revenues to set low prices or to secure competitive advantage through their position as a public body. Other complaints concern public procurement and the provision of support to companies.
Decisions

19. The Competition Authority has over the last year made 539 decisions under the Competition Act. Of these, 30 concerned applications for negative clearance or exemptions. Companies sometimes make changes to their agreements during a case in order to fulfil the requirements for negative clearance or exemption. Such changes have been made in three cases examined during the year. In five cases, the Authority found that there had been no infringement of the Competition Act and thus granted negative clearance. The provisions of the Act for granting time-limited exemptions were fulfilled in 20 cases. The Authority dismissed one application. The remaining application cases were either withdrawn or closed for other reasons.

20. Under Article 13 of the Competition Act, a company which has notified an agreement for exemption automatically receives a time-limited exemption providing the Competition Authority has not made a decision on the notification within four months of receiving the application. The Authority is, however, able to prevent an automatic exemption being granted, providing it opposes the agreement within the four month period. Objections may be made if it is clear that there are circumstances requiring a more thorough investigation or if there are other particular reasons for extending the period to allow more detailed examination of a case. During the year the Authority has opposed such agreements in one case.

21. The Authority made 90 decisions concerning concentrations between companies, of which 87 were made within 25 working days with no further action taken. In two cases, companies gave voluntary commitments which meant that no further action was taken concerning the acquisition. In one acquisition, the Authority initiated legal proceedings at the Stockholm City Court to enforce a prohibition. The parties then decided not to proceed with the concentration.

courts

Summons Applications

22. During 2001 the Competition Authority initiated in one case concerning a concentration legal proceedings at the Stockholm City Court. The Authority opposed Svenska Girot’s acquisition of the Postgirot Bank from Posten. Since the parties to the concentration stated that they would not implement the acquisition, the Authority withdrew its petition to the Stockholm City Court.

Appeals against the Authority’s decisions

23. During 2001 five of the Authority’s decisions concerning applications for negative clearance, exemptions or orders were appealed.

Description of significant cases, including those with international implications

The Market Court

24. During 2001 the Market Court made decisions in six cases under the Competition Act. In three of these, the Court upheld the Authority’s decision, in some cases, however, with modifications. Below follows a summary of the most important decisions.
25. In its standard agreement with network members, Interflora has a competition clause which means that they may not be members of competing chains and may not market floral delivery services competing with “Blommogram” and Flower Vouchers. The Competition Authority had ordered Interflora not to apply the clause. Interflora appealed against the Authority’s decision to the Market Court. The Market Court granted Interflora’s petition and revoked the Authority’s decision.

26. In a decision in November 1999, the Authority ordered Scandinavian Airlines System (SAS) under penalty of a fine of SEK 100 million not to apply its EuroBonus loyalty scheme, and not to take part in similar programmes where points or their equivalent could be gained on domestic flights in Sweden for redemption against bonus offers. The Authority found that the practice constituted abuse by SAS of its dominant position. The decision of the Competition Authority was appealed.

27. The Market Court changed the decision ordering SAS under penalty of a fine of SEK 50 million to cease as of 27th October 2001 applying its EuroBonus programme, or take part in similar programmes concerning scheduled air flights between places where SAS or airlines co-operating with SAS in the programme encounter competition.

28. The Market Court imposed a fine on Telia for the infringement of the Competition Act committed by its subsidiary Telia Handel. According to the Market Court, it is possible to order a parent company to pay a fine for infringement of the provisions of the Competition Act by a subsidiary. The judgement must, however, be based on the merits of each specific case and be in line with praxis developed in EC law.

The Stockholm City Court

29. The Stockholm City Court made a decision in one case where the Competition Authority had initiated legal proceedings for the imposition of a fine.

30. The plastic pipe companies, Uponor, Wavin and KWH, were ordered by the Stockholm City Court to pay fines totalling SEK 10.6 million for illegal co-operation in a cartel. During the period 1993–1995 the companies were found guilty of market sharing, co-operation over prices and collaborating over large municipal procurements of water pipes.

The Competition Authority

31. The cases below are presented to illustrate measures taken by the Authority under the Competition Act. They have been chosen on the basis of the following criteria: the measures should actively counteract harmful restrictions on competition, provide guidance and concern large groups of consumers and/or be of major importance for the economy. Decisions made by the Authority on the application of the Competition Act usually apply with immediate effect, and thus have direct effects on the market. This applies even though decisions may be appealed against.
Anti-competitive co-operation

SAS and Skyways made changes to their agreements

32. The airlines Skyways and SAS have co-operated since 1997. In 2000 the Competition Authority conducted a "dawn raid" inspection on the companies. The material collected showed that the aim of the co-operation was market sharing, both geographically and over the use of aeroplanes. After discussions with the Authority, the companies limited their co-operation and made changes to the agreements so that the co-operation currently covers changes in timetabling and other improvements for air passengers. The co-operation also makes it possible to operate routes which would otherwise be unprofitable. Since the parties had made changes to the agreements and in view of the difficulties faced by the airline industry, the Competition Authority considered that the agreements did not restrict competition to an appreciable extent. The Swedish Competition Authority thus granted negative clearance.

Bid-rigging cartel suspected between ventilation companies

33. In September the Authority made a "dawn raid" inspection on companies in the ventilation industry in two regions in northern Sweden. The background to this was that one of the companies in an internal investigation had received information indicating that there were grounds for suspecting co-operation over procurement and market sharing between companies in the ventilation industry. The case is being examined by the Competition Authority.

Suspisions of a cartel in the asphalt industry

34. In October a "dawn raid" inspection was made on a number of companies in the asphalt industry in mid- and southern Sweden. The Authority suspected that the Competition Act had been contravened through co-operation over procurement and market sharing in the contracting market for asphalt laying in Sweden. The Authority decided to examine the asphalt industry after receiving tips from former employees in one of the companies involved. According to those providing the information, the existence of co-operation over procurement and market sharing is widespread in the market for asphalt equipment in Sweden. The case is being examined by the Competition Authority.

Abuse of a dominant position

Apoteket AB changed plans

35. Apoteket, the Swedish retail monopoly on pharmaceutical products, planned to build up a wholesaling network to distribute pharmaceutical products. This would mean that Apoteket would have exclusive control of both retailing and wholesaling. When the plans became known, the two competing companies, Kronans Droghandel and Tamro, and two trade associations asked the Competition Authority to order Apoteket not to implement its plans. The companies considered that establishing such a network would eliminate competition at the wholesaling stage. Apoteket later withdrew its plans. The Authority considered there was a risk that Apoteket’s original plans would lead to abuse of a dominant position, but since Apoteket had changed its plans, the Authority decided that there were no grounds for further action under the Competition Act.
Mergers and acquisitions

Svenska Girot’s acquisition of Postgirot Bank

36. The Competition Authority examined a merger between the two companies, Svenska Girot and Postgirot Bank, on the Swedish market for giro payments. After carrying out a special investigation, the Authority initiated legal proceedings in the Stockholm City Court to prohibit the acquisition. According to the Authority, the merger would i.a. make it more difficult for competitors of the large banks to operate on the market. Competition within the payment area would thus be severely restricted. The measures presented by Svenska Girot to soften the disadvantages of the merger would in the view of the Authority not outweigh the substantial restrictions to competition on the bank market that would ensue if a payment monopoly were introduced. Shortly after the Authority initiated legal proceedings in the Stockholm City Court to prohibit the merger, Svenska Girot decided not to proceed with the acquisition.

Scandlines acquisition of Nordö-Link

37. In one case which was also examined by the Bundeskartellamt in Germany, Scandlines Deutschland gave notification of its intention to acquire the shipping line, Nordö-Link Holding. Nordö-Link operates ferry routes between Malmö and Travemünde mainly for freight transported by lorries and trailers. Scandlines Deutschland is part of the German/Danish Scandlines AG-Group which also owns Scandlines Denmark. The Scandlines Group has two co-operation agreements with Swedish Scandlines, which is part of the Stena Group. Given the background of extensive co-operation on geographically adjacent ferry routes, the Competition Authority decided to initiate a more detailed investigation of the concentration. Scandlines Deutschland subsequently announced that the company had decided not to proceed with the acquisition and withdrew its notification.

Cerealia

38. The Competition Authority examined Cerealia’s acquisition of i.a. production equipment and its take over of certain supplier agreements connected to the production of flour in Kvarn AB Juvel’s flour mill, Tre Lejon, in Gothenburg.

39. Both Kvarn AB Juvel and Cerealia were active in the production and sales of industrial and household flour. The Authority’s examination showed that Cerealia’s strong position on these markets would be further strengthened as a consequence of Cerealia taking over supplier agreements with large customers of Kvarn AB Juvel, and by the fact that Kvarn AB Juvel had sold its production equipment and left the market.

40. Since the companies gave voluntary undertakings that the period for the supplier agreements Cerealia had taken over from Kvarn AB Juvel would be shortened, the Authority decided to take no further action in the matter. Shortening the period over which the supplier agreements operate means that other actors on the market would have the opportunity of competing over the volumes of flour covered by the supplier agreement. The Stockholm City Court decided to grant the petition of the Authority under penalty of a fine.

Evaluation of an earlier acquisition

41. Two researchers at the Business Economics Institution at Umeå University were commissioned by the Competition Authority to evaluate and analyse the effects of Optiroc’s acquisition of Stråbruken in
1997. The Competition Authority wished to prohibit the acquisition since it considered that Optiroc would obtain an excessively dominant position on the market. The Market Court decided otherwise and approved the acquisition in 1998. The study shows that Optiroc’s overall dominance has increased. One of the main arguments used by Optiroc for the acquisition was that a number of international establishments of new building stores would increase the number of market channels and thus competition from foreign products on the Swedish market. The study shows, however, that no new establishments have taken place on the product markets where Optiroc is operating and that new market channels have only led to Optiroc securing further sales channels. Neither has it been possible to show there have been any synergy effects on the market for facing bricks resulting from the acquisition. On the other hand, the study shows that competition was negatively affected in the retailing chain through a reduction in the number of suppliers. Consumers thus have less freedom of choice.

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

Tasks

42. One of the tasks of the Competition Authority is to propose changes to rules and other measures to eliminate obstacles to effective competition in the private and public sectors.

Initiatives

43. An important part of the Competition Authority’s work are the initiatives it takes to carry out investigations in order to eliminate restrictions on competition and promote better conditions for competition. These initiatives may involve examining suspected infringements of the Competition Act or the Authority proposing changes in the rules and other measures to promote competition. During the year specific measures have been taken within the following sectors: building, retailing, energy, telecommunications, financial services and transport. A number of initiatives have also been directed during the year to creating a better understanding of the importance of competition in the new information economy, the importance of vertical price setting and an analysis of the factors explaining regional and international price differences.

44. Some of these measures take the form of actively monitoring the market and evaluating tips and complaints received by the Authority. Such measures may lead in certain cases to the Authority initiating an investigation into suspected infringements of the Competition Act, or to the Authority submitting proposals for changes in the rules. Initiatives may also be taken to follow up the effects of earlier decisions.

Reports

45. The Authority’s reports on competition conditions are produced in most cases as a result of the Authority itself taking the initiative or by commission of the Government. Some of the reports have also been produced in co-operation with other authorities.

46. At the beginning of the year a report was published on “E-trade in Sweden – an exploratory study”. The report covers building material, retailing and travel, describes how the utilization of IT-based solutions especially E-trade affects the economy. The focus is on both E-trade between companies, and between companies and consumers. The report states that E-trade increases competition and that E-trade as a sales and purchasing channel has a number of advantages in providing an overview of product availability and range. An important inhibiting factor for the development of E-trade is the consumer’s lack of confidence in security of payment via the Internet. Transport costs also limit trade in physical goods. At
the same time the report states that using Internet based solutions for transactions between different players is still at an embryonic stage though exceptions exist, for example, in the financial sector where established banks are encouraging customers to handle their transactions over the Internet.

47. The report identifies a number of factors deserving deeper analysis of, for example, how ownership of E-trade portals influences conditions of access.

48. The Authority is carefully monitoring developments in deregulated markets such as electricity and telecommunications. In September 2001, a report titled “The mobile telecommunications market in Sweden” was published jointly by the Swedish Competition Authority, the National Post and Telecom Agency and the Swedish Consumer Agency. The three authorities stated in 1999 in their joint report “The Swedish mobile telecommunications market - from a consumer and competition perspective”, that the mobile telecommunications market was not working satisfactorily. Now that the three authorities have followed this up, it is clear that shortcomings still remain. Some enhancements have taken place in recent years, but the prices for various kinds of mobile telecommunications services are still high in comparison to other countries in the Nordic area. This is particularly evident as regards SMS messaging, which suggest that there is scope for increased price competition in Sweden. The Authorities consider that the introduction of number portability from 1st September enabling people to keep their mobile telephone number when they change operator should have a positive effect on competition. Since the mobile telecommunications market cannot yet be described as functioning effectively, the three authorities will continue their co-operation to jointly monitor developments and where necessary propose measures to further enhance competition for the benefit of consumers.

49. In October a report was published “Can municipalities put downward pressure on food prices?”. This is the third report analysing price differences between Sweden and other countries, as well as between regions within Sweden.

50. The report states that one of the most important factors determining how competition operates are the opportunities for companies to establish in a specific place. This is largely determined by retail planning of the municipality through the application of the Planning and Building Act. The report states that the existence of discount stores and hypermarkets has a price dampening effect. One conclusion is that the municipalities are in a position to put downward pressure on food prices by better satisfying the demands for appropriate locations for new players wishing to enter the market and challenge existing shops. To solve the problems identified by the Authority, it is proposed that the competence of municipalities in competition issues be strengthened and that competition factors be more explicitly taken into account in the Planning and Building Act.

51. In November a report was published on “Consumer Mobility on the Financial Markets”. The report was commissioned by the Government and is a result of a joint project between the Swedish Competition Authority and the Swedish Consumer Agency. The report states that few customers, less than five percent, change banks each year. In the insurance market, the figure is twice as high. At the same time the report shows that customers can save more money by changing bank than changing insurance company. Low mobility is primarily due to the lack of price information and difficulties in comparing the service content of different banks. Many customers appear not to know how much they pay for their banking services. To make it easier for consumers to make rational choices, both authorities emphasise the importance of providing more detailed information. Responsibility for such measures should in the first instance be taken by the banks themselves, for example, by expanding service and information from the Consumers’ Bank and Finance Bureau.

52. The lack of start and landing slots is a competition problem since new airlines are prevented from entering the market. The Authority has in its report “Start and Landing slots” studied the rules for
allocating slots at Swedish airports. New airlines do not obtain sufficiently attractive slots, which makes it difficult for them to enter the market. The report provides an account of the rules used in allocating slots and how these rules are applied in Sweden. The report identifies various problems and submits proposals for changes in the slot system. The Authority proposes that the wishes of small and medium-sized airlines be given priority over the interests of dominant players. The Authority also considers that the independence of the slots coordinator must be strengthened, that the requirement for utilization of slots must be made more rigorous and that there should be effective control to ensure compliance with the rule system. The Authority in its report submitted proposals for measures which should be taken into account in the forthcoming revision of the current EU Regulation.

Statements of opinion

53. The Swedish Competition Authority gives its views on reports and investigations which may have direct or indirect effects on companies and consumers, for example through the design of economic and administrative steering instruments. By giving its views, the Authority is able to influence at an early stage recommendations and future decisions.

54. During year 2001 the Competition Authority submitted 138 statements. The Authority devotes particular interest to proposals concerning sectors or areas which it gives priority to in its monitoring activities. These cover finance, food, building and housing as well as recently deregulated markets such as electricity and telecommunications, in addition to issues concerning competition between public and private players and procurement.

Electricity market

55. The Competition Authority issued a statement on “Companies – Rules and Inspection” (SOU 2000:90). The Commission analysed the need for tightening up the rules for demarcating transmission and competitive activities. The Authority stated that the Commission had only presented a concrete proposal concerning the problem of subsidizing competitive activities. This proposal as well as other measures proposed in the Commission covering, amongst others, representation on the board, were in the view of the Competition Authority insufficient for providing an acceptable guarantee for reasonable transmission tariffs or preventing cross-subsidization. Achieving this requires in view of the Authority that transmission be completely separated from other activity.

Public hearings

56. During year 2001 the Competition Authority took part in 9 public hearings.

Resources of competition authorities

1. Resources overall:
   1. Annual budget: SEK 75.3 million (equivalent to USD 7.1 million in February 2002)
   2. Number of employees (person-years):
      1. economists; 45
      2. lawyers; 42
3. other professionals; 7
4. support staff; 16
5. all staff combined; 110

2. Human resources (person-years) applied to:
   1. Enforcement against anti-competitive practices; 68
   2. Merger review and enforcement; 11
   3. Advocacy efforts; 7

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

*Available in English from the Swedish Competition Authority*

Competition Rules in Sweden. Swedish Competition Authority (December 1998)

The Swedish Competition Authority. Functions and Organisation (November 2001)

Annual Report 2001 of the Swedish Competition Authority.

The Environment, Trade and Competition - playing rules for efficient markets (1998:1)

Deregulated markets in Sweden - a follow-up study. A report from the Swedish Competition Authority (1998:3)

Parallel Imports - Effects of the Silhouette Ruling. A report from the Swedish Competition Authority (1999:1)

The development of competition in Sweden in the 1990s - An executive summary of the report 2000:1


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

Further information in English i.a. on important cases is available on our website: [www.kkv.se](http://www.kkv.se)