

ANNUAL REPORT ON COMPETITION POLICY IN SWEDEN

-- 2002 --

I. Changes to competition laws and policies, proposed or adopted**1. Summary of new legal provisions of competition law and related legislation***Amendments to the Competition Act*

1. The Competition Act was amended on 1st August 2002. The amendments essentially mean that:
 - undertakings which notify an infringement of the Competition Act to the Competition Authority or co-operate with the Authority in the investigation of a suspected infringement may either completely or partially be exempted from a fine (leniency).
 - the Competition Authority may provide support to foreign authorities by obtaining information and carrying out inspections in Sweden provided there are bilateral agreements about this.
 - private parties have greater opportunities to receive compensation for legal costs in legal proceedings where the Competition Authority is the other party.

Amendments to the Secrecy Act

2. During the year additional provisions concerning the Authority's investigation of infringements of the Competition Act have been incorporated in the Secrecy Act, in order to provide, amongst other things, protection for information submitted by a private person.

New block exemption for motor vehicles

3. The EU Commission adopted in July 2002 a new block exemption on agreements concerning the retailing of motor vehicles. The new block exemption provides greater scope for dealers to develop their own sales system, e.g. by selling different makes of cars and to make agreements with service workshops. This should provide better conditions for greater competition and thus lower prices for both cars and repairs. A corresponding Swedish block exemption entered into force on 1st January 2003.

2. Other relevant measures, including new guidelines*New general guidelines on leniency*

4. As a result of the amendments to the Competition Act on fines, the Authority has issued general guidelines on the reduction of fines and granting immunity from fines (KKVFS 2002:1). The General Guidelines are available on our website: www.kkv.se

SWEDEN

II. Enforcement of competition laws and policies

1. *Action against anticompetitive practices, including agreements and abuses of dominant positions*

a) *Summary of activities of:*

- *the Swedish Competition Authority*

5. The following table shows the number of new cases registered during 2002 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 2002 amounted to .

	Registered new cases	Decisions
Mergers	71	69
Notifications for negative clearance or exemptions	45	37
Complaints	108	110
Other cases (inquiries etc.)	235	245
Total	459	461

6. An important task assigned to the Competition Authority is its consultative role on existing and proposed public regulations. A total of 133 formal opinions were submitted to governmental and public authorities.

Complaints

7. Complaints received from companies during 2002 have covered anti-competitive measures taken by one company with respect to another, 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.

8. Complaints from companies about the public sector mainly concern laws and ordinances which in different ways prevent or make competition more difficult. One example is the different rates for VAT or that the state authorities, municipalities and county councils are competing with private companies. Often complaints concern the possibility for players to use tax revenues to set low prices or to secure competitive advantage by virtue of their position as a public body. Other complaints concern public procurement and the provision of support to companies.

Decisions

9. The Competition Authority has over the last year made 461 decisions under the Competition Act. Of these, 37 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 four cases examined during the year. In eight 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 26 cases. The Authority dismissed two applications. The remaining application cases were either withdrawn or closed for other reasons.

10. 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 four cases.

11. The Authority made 69 decisions concerning concentrations between companies. Of these cases, no further action was taken in 67 cases within the first phase (25 working days), and in one case no further action was taken after an in-depth investigation, and one case was closed after being withdrawn.

Application by the Authority of Articles 81 (1) and 82 of the EC Treaty

12. The Competition Authority did not apply Articles 81 (1) or 82 in any decision during 2002.

- *courts*

Summons applications

13. The Competition Authority did not initiate any legal proceedings at the Stockholm City Court during 2002. In December, however, main proceedings were concluded in the case between the Competition Authority and the oil companies Norsk Hydro, OKQ8, Preem, Shell and Statoil on fines due to suspected co-operation on prices and discounts for petrol during autumn 1999. The Competition Authority petitioned for a fine of SEK 651 million. The court will probably issue its judgement on 29 April 2003.

Appeals against decisions made by the Authority

14. During 2002, three of the Authority's decisions concerning applications for negative clearance or exemptions were appealed.

b) *Description of significant cases, including those with international implications*

The Market Court

15. During 2002 and at the beginning of 2003, the Market Court made decisions on four cases under the Competition Act where the Competition Authority has been a party. Below follows a summary of the most important decisions.

Abuse of a dominant position

16. On a petition from the Competition Authority, the company AGA Gas was ordered by the Stockholm City Court to pay a fine of SEK 600 000 since it had been found to have abused a dominant position. The undertaking had abused its dominant position by entering into an agreement with six customers, these agreements were either exclusive agreements or agreements with equivalent effects. Even though the agreements could cover a very small part of the total gas market, the City Court found that AGA's practice constituted abuse of a dominant position. In assessing AGA's intentions and the magnitude

SWEDEN

of the fine, the City Court attached particular importance to the fact that the undertaking had on two occasions been advised by the authorities that the agreement was questionable. AGA Gas appealed the City Court's judgement to Market Court. The Market Court found that the investigation carried out by the Competition Authority was inadequate in delimiting the market and in its assessment of the undertaking's position on the market. The same applied to the material which had been presented for assessing the actual agreements. The Market Court thus found that AGA Gas had not abused its dominant position. The Competition Authority's petition was dismissed and the findings of the City Court were revoked.

Plastic pipe cartel

17. The Stockholm City Court ordered the plastic pipe manufacturers, Uponor Sverige, Svenska Wavin and KWH Pipe Sverige to pay fines of SEK 8 million, SEK 1.8 million and SEK 800 000 for anti-competitive co-operation during the period 1 July 1993 (when the Competition Act entered into force) up to and including at least the summer of 1995. The City Court found that the co-operation consisted of an agreement on the distribution of shares of the undertakings' total sales of pipes. The co-operation also consisted of routines for the exchange of information, agreements over prices and the adjustments of actual market shares. The undertakings' agreements on market sharing and other factors in the view of the City Court had the purpose of bringing about an appreciable restriction on competition. Uponor appealed the City Court's judgement to the Market Court. The Market Court upheld the City Court's judgement and dismissed Uponor's appeal.

The Stockholm City Court

18. The Stockholm City Court did not make any decisions on cases initiated by the Competition Authority during 2002. The main proceedings in the petrol cartel case took place during the autumn. A judgment is expected on 29 April 2003.

The Competition Authority

19. To show what the Authority has done during the year to actively counteract harmful restrictions on competition, we present a selection of cases. 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

Asphalt

20. A substantial investigation into the asphalt market has been going on throughout the year. On 24th and 25th October 2001, the Competition Authority carried out an inspection of the undertakings involved NCC, Skanska, Peab and a further five undertakings. The background was that the Authority received information indicating that a large number of state and municipal procurements for asphalt contracts in Sweden had over a long period involved cartel coordination in procurements. The investigation continues during 2003.

Ventilation

21. In August 2001 the Competition Authority received a visit from ABB which provided information about the results of an internal audit of its wholly-owned subsidiary ABB Contracting. The material indicated that illegal restrictions on competition had taken place between ABB Contracting and representatives of competitors and contractors on the market for ventilation sub-contractors. The Authority

carried out an inspection of the undertakings involved on the 12th and 13th September 2001. The investigation continues.

Vehicles

22. The Competition Authority became aware that a dealer of Volvo cars had sent an e-mail to seven other dealers in southern Sweden with information which could indicate an agreement on prices. In December 2002 the Authority carried out an inspection of a number of undertakings in southern Sweden in order to try to gather evidence of a possible infringement. The investigation continues.

Exemptions

UMTS (3G) network sharing

23. The Competition Authority has examined UMTS (3G) network sharing agreements between telecom operators in accordance with the provisions in the Competition Act. Since Telia and Tele2, in a supplementary agreement changed their network sharing agreement, the Authority considered that the circumstances warranted the granting of an exemption for the co-operation. The Competition Authority's decision means that Telia and Tele2 receive exemption for the changed network sharing agreement for a period of five years up to and including 26 February 2007. Co-operation between the network operators HI3G, Orange and Vodafone has also been examined by the Competition Authority. The Authority has made a decision which also means granting an exemption for the co-operation for five years up to 20 December 2006.

System of coordination in the non-durable goods area

24. The players in the non-durable goods area, i.e. the suppliers and retail outlets, had planned to coordinate, amongst other things, the times at which new products were to be introduced. The number of periods and the times during the year when this occurred varied across different product areas. The planned system was a recommendation from Efficient Consumer Response Sverige which is a joint organisation representing suppliers and retailers. The system would involve coordination between players, both at supplier and retailing stages. The Competition Authority considered that the coordination was an appreciable restriction on competition, since it would prevent the players from acting independently of each other. On the other hand, the Authority considered that the advantages arising from such coordination would to a reasonable extent be passed on to consumers. For this reason, the Authority granted an exemption for players to apply the system during 2002 and 2003.

Co-operation between Sweden Post and ICA

25. The Competition Authority has examined co-operation between Posten Sverige and ICA Handlarnas AB on a service network for postal services. The co-operation means that ICA, the largest player on the Swedish market for retailing non-durable goods, will run a part of the business which Posten had earlier operated within its own office network. The activity covered by the agreements concerns sales of stamps, pre-franked envelopes, pre-franked postcards and cardboard boxes, and also receiving and distribution of letters and packages. Since Posten and ICA in a supplementary agreement made changes to the agreements, the Authority considered there were grounds for granting an exemption for the co-operation, as the agreements do not prevent competing activities. The Competition Authority's decision means that Posten and ICA receive an exemption for the change in their agreements for five years, up to and including the 11th December 2007.

SWEDEN

Abuse of a dominant position

Possibility of offering competing harbour services

26. During the year the Competition Authority concluded two cases where a shipbroking undertaking, Unér Shipping, complained about the difficulties of being able to offer competing harbour services. In one case, the company could not begin shipping timber from the harbour of Falkenberg although it had received an offer for such shipments. In the second case, the undertaking did not receive access to appropriate premises in Karlshamn harbour enabling it to clear goods from customs. In both cases, Unér Shipping suspected that there were protests from already established undertakings in the harbours which were making its entry into the market more difficult. In an exchange of letters with the responsible harbour undertakings, the Competition Authority pointed out that their actions could be in conflict with the prohibitions in the Competition Act on anti-competitive co-operation or could constitute abuse of a dominant position. The case was solved by means of an exchange of letters.

2. Mergers and acquisitions

Feeding stuff industry

27. The Competition Authority decided not to intervene against Dansk Landbrugs Grovvarereselskabs, DLG, and the Swedish farmers' Supply and Crop Marketing Association's acquisition of Svenska Foder. As the business was organised, with DLG as the independent main owner, the Competition Authority made the assessment that there were insufficient grounds to stop the acquisition under the Competition Act. Amongst other things, this meant that the Danish undertaking, DLG acquired 51 percent of the shares in Svenska Foder while the remaining 49 percent were acquired by the Swedish farmers' Supply and Crop Marketing Association. Today the feedstuff industry is strongly concentrated in two undertakings, Swedish farmers' Supply and Crop Marketing Association, which has around 70 percent of the market, and Svenska Foder which has around 20 percent. A concentration can be stopped if in the first instance it creates or strengthens a dominant position. The current transaction means that DLG obtained sole control over Svenska Foder. As a result the position of the Swedish farmers' Supply and Crop Marketing Association on the market is not strengthened. The Authority will, however, carry out a more detailed investigation into whether the links between DLG and the Swedish farmers' Supply and Crop Marketing Association constitute anti-competitive co-operation.

Ferry services

28. Steneo AB acquired sole control of Helsingør–Helsingborg Shipholding A/S which runs ferry services on the route Helsingborg–Helsingør under the name HH Ferries. The Competition Authority carried out a special investigation into the concentration and thereafter decided to take no further action in the matter. Based on an overall assessment of the market situation after the concentration had been completed, the Authority determined that the remaining competitive pressure, especially from Öresundsbron, was sufficient to maintain effective competition.

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

29. The Competition Authority proposes changes to rules and other measures to eliminate obstacles to effective competition. The proposals are often presented in reports and statements.

Reports

- Why are building materials expensive in Skåne and food cheap in Western Sweden?
- Safeguarding and creating competition – What is required for increased consumer benefits?
- Always connected – the broadband market from a consumer perspective
- Competition in Sweden 2002
- Swedish prices can be reduced!
- The Grocery Retail Trade – Structure, form of ownership and relations with suppliers

Price differences in Sweden

30. The report "Why are building materials expensive in Skåne and food cheap in Western Sweden?", analysed regional prices in Sweden in the markets for non-durable consumer goods, building materials and transport fuel. The Swedish Competition Authority states that there are major price differences in the country. For example, the Authority's investigation shows that prices for non-durable consumer goods are highest in the Stockholm region (around 4 percent higher than the average throughout the country) and lowest in West Sweden (about 4 percent lower than the average throughout the country). To some extent price differences are based on demand conditions and retail sales costs, but competition is also a factor of importance. Cut-price stores clearly put pressure on prices at all shops, the distance to the nearest competitor is also an important factor in determining prices. The municipalities can influence prices by better satisfying the demands for appropriate shop locations for new players wishing to enter the market. Consumers have also played an important role in actively comparing prices, which increases the probability that the establishment of new shops will succeed.

Competition solutions in the public sector

31. In the Bill on competition policy from 2000, the government sets out its ambition of increasing the exposure of the Swedish economy to competition. This is a starting point for the report "Safeguarding and creating competition – What is required for increased consumer benefits?" where the Authority has analysed the application of competition solutions in the public sector, as well as the opportunities and difficulties of increasing competition. Care of the elderly has been studied in-depth.

32. In its report, the Authority submitted proposals for phasing out certain monopolies. In addition, the Authority points out the need for long-term competition programmes for activities run by state authorities as well as by municipalities and county councils. It is not meaningful to introduce competition if there is no regulatory framework, for example rules on competition and procurement in order to safeguard competition. The report also proposes changes to rules to safeguard competition in order to increase consumer benefits, and also that external commissioning, support functions etc which do not belong to the core activities of state authorities should be exposed to competition.

Limited choices on the broadband market

33. In the report "Always connected – the broadband market from a consumer perspective", the Competition Authority, the National Post and Telecom Agency, and the Swedish Consumer Agency all stated that consumer choice on the broadband market is limited and that competition is weak. The market for broadband for households is new and complex. The difficulties for consumers to get an overview of the market can weaken competition. New services and changing players impose higher demands on correct information necessary to enable consumers to make rational choices. There are also infrastructural obstacles to establishment on the broadband market.

SWEDEN

34. In order to bring about well-functioning competition, it is important to create conditions whereby operators gain entry to the access network, as well as eliminate lock-ins and other obstacles resulting from technical and other conditions.

Competition problems in Sweden – concentrations between undertakings and oligopolistic competition

35. Although competition has increased on the Swedish market in the last decade, competition problems of different kinds remain. One sign of this, amongst others, are the high prices in Sweden which the Competition Authority has drawn attention to in a number of reports. "Competition in Sweden 2002" provides an account of competition problems, market structures and institutional conditions in different areas. The industries examined in detail are forestry, energy, petroleum, building and housing, retailing of non-durable goods, health and medical care, aviation, railways, tele and television, as well as banking and insurance.

36. In the report the Authority also states that in many industries in the Swedish business sector there is a strong degree of concentration between undertakings and oligopolistic competition. In combination with substantial barriers to entry and limited competition from imports, high levels of concentration in a number of markets constitute a major competition problem.

37. The Authority produces area-specific proposals for improving competition. These deal with, among other things, safeguarding and creating markets, combating cartels more effectively, eliminating barriers in terms of domestic rules, tearing down barriers to entry for undertakings wishing to enter markets, challenging established companies and solving bottleneck problems concerning access to infrastructure.

Swedish prices can be reduced through more effective competition

38. The Competition Authority has been commissioned by the government to analyse the causes of differences in price levels between Sweden and other countries. The report "Swedish prices can be reduced!" was published in December. Prices in Sweden for goods and services in private consumption were 19 percent above the average price level in the EU for 2001 (17 percent exclusive VAT). Analysis of causal relationships indicates that Swedish prices can be reduced through better functioning competition. In the view of the Authority, this can be realised through a more effective competition policy, a better functioning internal market, and also a consumer policy which more clearly emphasises the benefits accruing to consumers from competition. Further research is needed.

Mapping retailing of non-durable consumer goods

39. The Authority has carried out a commission from the Government to investigate competition conditions in non-durable retailing. In its study the Authority reports how different players in the retailing chain are organised as regards ownership structure, type of company and co-operation. The study has also mapped how ongoing centralisation within retailing chains influences their business methods and particularly regarding product range control.

40. In the report "The Grocery Retail Trade – Structure, form of ownership and relations with suppliers", the Authority states that non-durable goods retailing in Sweden is typified by significant concentration. From having been a purely national industry earlier, internationalisation in retailing can be observed as a result of co-operation and ownership. At the same time organisational changes have led to centralisation of decision-making in retailing chains. This deals with decisions on purchasing and product range in shops, as well as the use of the chains' own label products (private labels). Decisions about how individual shops shall be marketed have been transferred to a central function in the chain. As a result of private labels, retailers become not just buyers, but also competitors to suppliers with control over retail

display, i.e. shelf space in shops. The report is partially based on surveys responded to by suppliers and shop owners.

Competition in the sugar area

41. As a result of a commission from the Ministry of Agriculture, the Competition Authority has mapped and analysed structural problems in European sugar trade. In addition to describing the relationship between the competition rules of the EU, the common agricultural policy, and the market organisation for sugar, the report contains a section on sugar and other types of sweeteners from a competition perspective. In addition, the report also describes the position of industrial users of sugar and sugar retailing to household customers. The report "Sweet Fifteen: The Competition on the EU Sugar Markets" also contains a discussion of the effects of a number of current proposals for reform.

Others

42. The Competition Authority has issued a number of reports during the year presenting the findings of research commissioned by the Authority. In connection with our ten-year anniversary, we also published the book "The Pros and Cons of Merger Control".

43. The Authority has had the task of reviewing the retail monopoly on the sale of alcohol beverages in Sweden since our accession to the EU in 1995. This involves reporting twice a year to the European Commission on how Systembolaget's retail monopoly is functioning. The spring report commented particularly on Systembolaget's new system for product range control based on a survey of suppliers carried out by the Authority. The second report presented, amongst other things, proposals from Systembolaget on improving the system for new products.

44. The Competition Authorities in Sweden, Norway, Denmark, and Finland presented during the spring the report "Competitive Airlines. Towards a more vigorous competition policy in relation to the air travel market". The report contains proposals for tackling competition problems in the European and Nordic air travel markets.

45. At a meeting in Athens during the spring, the Director-Generals of the European competition authorities decided to appoint a European working group charged with the task of examining the competition situation in the airline industry in Europe. The Nordic working group's report on air transport "Competitive Airlines" was a basis for this decision. In September the European competition authorities agreed on the most pressing questions at a meeting in Stockholm. A major problem is the current system for allocating start and landing slots. It is difficult for new players to secure the best slots, since established companies have an advantage through what are referred to as "grandfather rights".

46. The working group can foresee a situation where there are more mergers between companies, co-operation agreements and alliances. Other problems are, for example, the discount and bonus system as well as predatory pricing for keeping new players out of the market. Increased co-operation between the European competition authorities concerning exchange of information on decisions made, as well as on co-operation and alliances in industry are of great importance.

Statements of opinion

47. By giving its views on proposals in reports and investigations, the Competition Authority can at an early stage influence the drafting of proposals and future decisions. The Authority devotes particular interest to proposals concerning finance, food, building and housing, as well as recently deregulated markets such as the electricity and telecom markets.

SWEDEN

The electricity market

48. The Competition Authority has handled over the past year a number of issues concerning the electricity market, amongst others the final report of the Commission on competition in electricity "Competition on the market for electricity" (SOU 2002:7). In its comments the Competition Authority agreed with the majority of proposals put forward by the Commission which concerned principally the role of the Swedish Energy Agency. The Authority emphasised, however, more strongly than the Commission the risks of greater concentration in electrical retailing. In addition, the Authority considered that a complete separation between the monopoly activities of the energy market and activities exposed to competition is necessary in order to avoid the risks of cross-subsidisation. The Authority underlined the importance of introducing without unnecessary delay sanctions against network owners who delay change of suppliers and thus seriously undermine the performance of the electricity market.

Competition between public and private sectors

49. State authorities have increasingly started business activities competing with other players. This development has created competition problems, preventing companies from entering the market and making it more difficult for small companies to grow. The Competition Authority in its statement pointed out the consequences of the Authorities having the dual role of both applying the rules and being a producer. The Competition Authority has proposed that authorities shall separate in their reporting the costs and revenues of activities exposed to competition, and provide information about the results in their annual reports. Another proposal is that the government develops a long-term plan with concrete measures for developing state activities and that a prohibition should be introduced against authorities starting businesses in competing markets.

50. In its statement to the state Commission "Ownership forms in health care" the Competition Authority expressed the view that the proposals of the commission on prohibiting commercial companies from providing medical care is a far-reaching measure and should be based on a thorough analysis which also takes account of the fact that the prohibition is an obstacle to competitive tendering.

51. The Swedish Competition Authority in its statements has also pointed out the risks of coordinating state purchasing.

Public hearings

52. During year 2002 the Competition Authority took part in three public hearings.

IV. Resources of competition authorities

1. Resources overall:

a) *Annual budget: SEK 77.5 million (equivalent to USD 9.0 million in March 2003)*

b) *Number of employees (person-years):*

Economists	45
Lawyers	43
Other professionals	9
Support staff	18

All staff combined 115

2. *Human resources (person-years) applied to:*

- a) Enforcement against anticompetitive practices; 65
- b) Merger review and enforcement; 6
- c) Advocacy efforts; 44

3. *Period covered by the above information: 2002*

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

Available in English from the Swedish Competition Authority

The Swedish Competition Authority. Functions and Organisation (January 2003)

Annual Report 2002 of the Swedish Competition Authority

Deregulation of the Swedish Electricity Market (1996:3)

Competition on Deregulated Markets (1996:4)

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

Sweden - a Part of the Single European Market. Why are there still price differentials? - An executive summary of the report 2000:3

Fighting Cartels – why and how? From The 3rd Nordic Competition Policy Conference in Stockholm September 2000

Evaluation of Optiroc's acquisition of Stråbruken – A summary, 2001

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

The Pros and Cons of Merger Control. 10th Anniversary of the Swedish Competition Authority 2002

Competitive Airlines. Towards a more vigorous competition policy in relation to the air travel market. Report from the Nordic competition authorities, 2002

SWEDEN

Safeguarding and promoting competition. What are the requirements for increasing consumer benefits? – Summary of the report 2002:2

Competition in Sweden 2002 - Executive summary of the report 2002:4

The price level in Sweden – a summary of the report 2002:5

Sweet Fifteen: The Competition on the EU Sugar Markets. Swedish Competition Authority Report 2002:7

Further information in English i.a. on important cases is available on our website: www.kkv.se