



# Legal action against Swedish Match

*Facts: The Swedish Competition Authority is taking legal action against Swedish Match for abusing its dominant position (ref 815/2014)*

Consumers of snus and Swedish Match's competitors have been negatively affected by the mandatory rules imposed by Swedish Match for its snus coolers in retail stores. The Swedish Competition Authority establishes that Swedish Match has abused its position on the market and has now brought a legal action before the court claiming that Swedish Match pay SEK 38 million in administrative fines.

## Introduction

On December 9, 2014, the Swedish Competition Authority submitted a summons application to Stockholm City Court with a claim for Swedish Match North Europe AB (Swedish Match) to pay almost SEK 38 million in administrative fines on the grounds of the company's infringement of the prohibitions of Chapter 2, Article 7 of the Swedish Competition Act and Article 102 of the Treaty on the Functioning of the European Union by abusing its dominant position on the market for the sale of snus to retailers in Sweden.

The Swedish Competition Authority's investigation was launched in July 2012 following complaints from Swedish Match's three largest competitors. The investigation concerned whether Swedish Match had abused its dominant position by introducing a system for shelf labels in its snus coolers under which competitors no longer

had freedom in the design of their labels; instead being forced to follow a detailed template.

## Abuse of a dominant position

According to Chapter 2, Article 7 of the Swedish Competition Act and Article 102 of the Treaty on the Functioning of the European Union, any abuse by one or more undertakings of a dominant position on the market is prohibited. For the prohibition to be applicable an undertaking shall not only have a dominant position on the market, it shall also be abusing its position. Being dominant is not in itself prohibited. Accordingly, the dominant undertaking has a special responsibility not to allow its conduct to impair effective competition on the market.

The undertaking concerned may for example not exclude their competitors by other means than competing on the merits of the products or services it provides.

In some cases, a conduct which would normally constitute an abuse may be allowed if it is considered objectively necessary or justified by efficiency gains.

## Swedish Match's labelling system

In June 2012, Swedish Match informed its three largest competitors of its decision to introduce a system for shelf labels in its



snus coolers, according to which Swedish Match's competitors were forced either to follow a detailed label template produced by Swedish Match or accept Swedish Match exchanging existing labels for generic grey/white ones. According to the information, the intention was to introduce the labelling system in all Swedish Match coolers, which constituted around three quarters of the market.

The labelling system was implemented in retail stores in October 2012 and was intended to be in place until further notice. In the beginning of April 2013, however, Swedish Match stopped the implementation, by which point the labelling system had been implemented in about a third of the market. Swedish Match had been strict in its application of the labelling system and not accepted labels with minor deviations from the template, even if they fitted in the existing label holders. In addition, Swedish Match had in many cases not provided any indication of the price of competitors' products, and in certain cases had used non-standard labels for their own low-price snus Kaliber, or removed competitors' existing labels without replacing them. Finally, internal Swedish Match documents show that the labelling system was introduced as part of a strategy to reduce price and brand competition.

### The Swedish Competition Authority's assessment of Swedish Match's labelling system

The investigation has shown that due to its constantly very high market shares, its

strong brands and its large customer base, Swedish Match has a strong dominant position on the Swedish snus market. As previously mentioned, Swedish Match owns the majority of snus coolers on the market and competitors are generally dependent on the placement of their products in Swedish Match's coolers. The common practice on the market has been for Swedish Match's competitors to design and place their own shelf labels in the coolers of Swedish Match.

Since the early 2000s, however, Swedish Match – that primarily markets profitable premium products – has started to face competition and has lost market shares, primarily to competitors marketing low-price products. The low-price segment is relatively new on the Swedish snus market and has grown quickly. Swedish Match has therefore had great interest in reducing price competition in order to slow this development. Moreover, the Swedish snus market is characterised by a number of specific market conditions which make price and brand communication via shelf labels in Swedish Match's snus coolers important. As a general rule, traditional marketing of snus is banned according to the Tobacco Act. Via the introduction of the mandatory labelling system, however, Swedish Match's competitors had worse conditions for price and brand communication compared to practice thus far. Swedish Match's actions in connection with the introduction and application of the mandatory labelling system (which was strict and selective), and the fact that the labelling system has been part of an anti-competitive

strategy, have served to reinforce the labelling system's character as not constituting competition on the merits of the products or services Swedish Match provides.

In summary, the Swedish Competition Authority finds that Swedish Match's labelling system does not constitute competition on the merits. On the contrary, the labelling system was tended to restrict competition and harm consumers through e.g., reduced price competition and worse conditions for expansion and entering to the market, which in turn consolidates Swedish Match's dominant position on the Swedish snus market. The Swedish Competition Authority's assessment is that the labelling system was not objectively justified and therefore constitutes abuse of a dominant position in violation of Chapter 2, Article 7 of the Competition Act and Article 102 of the Treaty on the Functioning of the European Union.

### What happens next...

The Swedish Competition Authority has submitted a summons application to Stockholm City Court, which has to assess the Swedish Competition Authority's claim for administrative fines. The City Court's ruling in the case will then be open to appeal to the Swedish Market Court, which is the highest court of appeal in matters of administrative fines in competition cases.



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