



# The benefit from supervision

A follow-up of the Swedish Competition Authority's supervision of public procurement

**REPORT** 2016:1



# Supervision gives results

– A follow-up of the Swedish Competition Authority's  
supervision of public procurement

The Swedish Competition Authority's report series 2016:1

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## Preface

The Swedish Competition Authority (SCA) is the state authority responsible for the supervision of public procurement regulations in Sweden. It is the SCA's task to both address infringements where legal action can be taken and procurement fines imposed, and to deal with infringements where it is not possible to impose fines. For infringements where a procurement fine cannot be imposed, the SCA can instead adopt a "supervisory decision". The SCA's supervisory mandate also involves monitoring, analysing and providing information about the procurement market and procurement regulations.

During 2015, the SCA conducted a follow-up regarding the actions taken by authorities previously instructed to pay procurement fines. We have now also followed up the actions of the contracting authorities and entities that were subject to supervisory decisions made between January 2014 and September 2015.

We are pleased to report that 13 of the 19 contracting authorities or entities subject to supervisory decisions have implemented, or are in the process of implementing internal changes to their procurement procedures - and 12 out of the 13 stated that their actions were taken wholly or partially as a result of the SCA's supervisory decisions. Some of the open responses received have stated that the supervisory decisions have led to an increased level of respect for and compliance with the Public Procurement Act (LOU), and that the procurement function is also now being more clearly politically prioritised. In my view, these are positive examples of how the Authority's supervisory work is helping to improve procurement activities.

The survey has also provided valuable information that we can use in our ongoing internal work to improve our procurement supervision. I am pleased to see that our work with plain language

in supervisory decisions is having a positive effect - what's more, the results in the survey seem to suggest that we are on the right track and that we should continue with this work.

We would like to take this opportunity to thank all of the contracting authorities and entities that took the time and trouble to respond to the questionnaire on which this report is based.

The report is a direct translation of the Swedish version.

Stockholm, February 2016

Dan Sjöblom  
Director General

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## Summary

The Swedish Competition Authority (SCA) has conducted a follow-up regarding the results of the Authority's decisions within procurement supervision and how the Authority's case handling and decisions have been perceived.

The follow-up encompasses 25 decisions of which 7 were reasoned decisions to close cases, i.e. decisions where the Authority has taken a position on a legal issue without establishing that an infringement has taken place. The remaining 18 supervisory decisions are cases where the Authority has concluded that an infringement has occurred within a procurement procedure.

By far the most common infringement is the failure to publish the procurement in accordance with the public procurement regulations; this means that the contract has therefore been illegally directly awarded (12 of 18 supervisory decisions). An illegal direct award of contract is an infringement of the public procurement regulations where the contracting authority can be required to pay a procurement fine(s). The SCA may refrain from applying for a procurement fine because the remaining limitation period is insufficient for the case to be investigated and for legal action to be taken; alternatively, the limitation period may have expired by the time the SCA found out about the procurement.

As part of the follow-up, a questionnaire was sent to 25 contracting authorities<sup>[1]</sup> that have previously been subject to a decision. 19 of these 25 authorities responded to the questionnaire. Out of the 18

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<sup>[1]</sup> In this report, the term "contracting authorities" is used for all organisations subject to the public procurement regulations.

contracting authorities previously subject to a supervisory decision, 14 responded to the questionnaire.

The questionnaire results show that 13 of 19 contracting authorities have made some type of change to the way they handle procurement and purchasing as a result of the SCA's decision, or that they are planning to do so. 12 contracting authorities were subject to supervisory decisions and one of them was subject to a reasoned decision to close the case. With one exception, the changes were made wholly or partially as a result of the decision and the changes were generally perceived as positive.

The changes primarily concern procurement procedures, working methods and the distribution of roles or duties. The free text answers suggest there is growing respect for the Swedish Public Procurement Act, a greater prioritisation of procurement and purchasing issues, better knowledge of the public procurement rules and that procurement/purchasing processes have been improved both in terms of responsibility and expertise.

The questionnaire also included questions about the Swedish Competition Authority's processing and decision procedure. In general, the respondents stated that the case handling was good although there are some areas that can be improved. Better dialogue, shorter processing times and a time limit on the supervision of old procurements are the main areas where improvements were called for. The Authority's communications and decisions were assessed favourably and they are perceived as being easy to understand with clear conclusions.

There are relatively few reasoned decisions to close cases in this follow-up. There are seven, five of which concerned purchases from a jointly-owned company. In the follow-up, however, there are

signs that there may be grounds for reviewing the reasoned decisions to close cases in order to clarify that they contain a general standpoint in respect of the legal issue in question.

The contracting authorities outlined suggestions for possible improvements to the Authority's processing and decision procedure in three areas: better dialogue, shorter processing times and that the Authority should take into account when the procurement was conducted.

In addition to the web questionnaire, the Authority also followed up the fall-off that, along with the extended response period, resulted in an increase in the number of respondents. Furthermore, the same indications were found as in the web questionnaire - that there may be grounds for reviewing the reasoned decisions to close cases.

# 1 Introduction

Public procurement is extensive in Sweden. According to the Swedish Competition Authority's (SCA) calculations, the purchasing conducted by the public sector in accordance with public procurement regulations in 2012 is estimated as amounting to over SEK 625 billion. In 2014 the number of published procurements was just over 18,000; in addition to this there were over 400 ongoing systems of choice in accordance with the Act on System of Choice in the Public Sector (2008:962) (LOV).<sup>1</sup>

It is the SCA's task to work for effective public procurement that benefits both the general public and market participants<sup>2</sup>. The SCA is also the supervisory authority for public procurement<sup>3</sup>, which means that it is our job to examine and ensure compliance with the regulations concerning procurement<sup>4</sup> and systems of choice<sup>5</sup>.

The objective of the SCA's supervision of public procurement is to provide qualitative and legally secure analyses and decisions so that guidance can be given in those areas where such is necessary,

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<sup>1</sup> Swedish Competition Authority, *Facts and figures on public procurement in Sweden – Statistics concerning procurements conducted during 2014*, Report 2015:9, [www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport\\_2015-9\\_english.pdf](http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2015-9_english.pdf)

<sup>2</sup> Section 2 of the Ordinance (2007:1117) with instructions for the Swedish Competition Authority.

<sup>3</sup> Section 1 of the Ordinance (2007:1117) with instructions for the Swedish Competition Authority.

<sup>4</sup> The Public Procurement Act (2007:1091)(LOU), the Act (2007:1092) (LUF) on Procurement of Water, Energy, Transport and Postal Services, and the Defence and Security Procurement Act (2011:1029) (LUFS).

<sup>5</sup> The Act (2008:962) on System of Choice (LOV), the Act (2010:536) on Free Choice within the Swedish Public Employment Service and the Act (2013:311) on System of Choice regarding Services for Electronic Identification.

and to counteract behaviour that could harm the market(s) in question. In this manner, the Authority helps clarify the boundaries in respect of what is and what is not permitted. It is our ambition to be able to provide guidance through solid, quality-assured arguments, even when it is unclear which boundaries apply to a given market.

## Aim of the follow-up and how it was conducted

This follow-up of supervisory decisions has been conducted as a part of the SCA's mandate to follow developments in public procurement<sup>6</sup> and in line with the Authority's continuous improvement efforts.

The aim of the follow-up is to find out whether our supervision is effective and appropriate, and whether contracting authorities have been affected by an SCA decision in a case involving our supervision of the public procurement legislation. The investigation also aims to help the Authority in its ongoing efforts to improve its case handling and the decisions it makes. The follow-up was conducted in respect of contracting authorities that have been subject to supervisory decisions made by the SCA by virtue of Chapter 18 of LOU, LUF and LUFs, Chapter 10, Sections 7–9 of LOV, and Section 22 of the Act (2013:311) on System of Choice regarding Services for Electronic Identification, but where there were no grounds to take legal action to impose a procurement fine(s).

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<sup>6</sup> Section 4, Paragraph 1 of the Ordinance (2007:1117) with Instructions for the Swedish Competition Authority.

The follow-up is an exhaustive survey which covers all decisions made from January 2014 up to and including September 2015. However, ten or so cases that were the subject of reviews when the follow-up was being conducted are excluded.

Earlier in 2015 a follow-up was conducted regarding the impact of procurement fines on the authorities concerned. For this reason, supervisory decisions where the SCA also took legal action to impose procurement fines are not included in this follow-up. Those wishing to read more about procurement fines can do so in the SCA report *Five years with procurement fines*<sup>7</sup>.

The follow-up was conducted in the form of a general web questionnaire sent out to those contracting authorities that have been subject to supervisory decisions. The questionnaire consisted of five sections:

1. Background questions.
2. Questions regarding what has happened at the contracting authority/entity following the decision.
3. Questions concerning the contracting authority's perception of how the SCA processed their case.
4. Questions about how the contracting authority perceived the SCA's decision.
5. An opportunity to submit other views and opinions.

For a description of the methodology and a response analysis, please see Appendix 1.

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<sup>7</sup> The SCA's report 2015:7 *Fem år med upphandlingsskadeavgift – Vad har skett hos de myndigheter som ålagts upphandlingsskadeavgift?* [*Five years with procurement fines – what has happened at the authorities that were ordered to pay procurement fines?*]

## 2 Supervision – a means of control within the Swedish national administration

The meaning of the term "supervision" varies somewhat and use of the terms "legislation", "legal practice" and "approach" has increased within various operational areas. This has created a control instrument that is both flexible and adaptable to the operational area in question. The down side to this is that the term is somewhat diffuse, and that there is no description of the specific nature of the supervision, but rather that there are several sides to it. The state inquiry regarding the Authority's supervisory activities proceeded from the general public's point of view and described that which they, in the interim report, called an "ideal supervision model".

*"The state supervision aims to monitor compliance with the public regulations governing conditions within various social sectors. The norms that govern the supervision are intended to safeguard the rule of law and efficiency in activities that are of great importance to the citizens or to groups of citizens."*<sup>8</sup>

And the 2006 Committee on Public Administration commented in its final report that:

*"Effective supervision is often highlighted as a precondition for ensuring that the rules decided upon by the Riksdag and the Government have an impact out in society."*<sup>9</sup>

Supervision can, in the majority of areas, either be planned/own-initiated supervision or it can be initiated following a report or tip-off from an external party. In many cases the authority itself decides

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<sup>8</sup> SOU 2002:14, p. 138.

<sup>9</sup> SOU 2008:118, p. 152

on the direction of the supervision and the method(s) to be employed, based on guidelines found in the authority's instructions or appropriation directions.

Supervision is, ultimately, an administrative process and this process concludes with the SCA taking a stance, in the form of a decision. Since the supervision process varies depending on the operational area, the decisions too can vary in appearance. The Supervision Inquiry noted that, in an ideal world, supervision should result in:

*"A decision that unambiguously makes it clear whether or not the subject of supervision fulfils the established requirements. The supervisory decision is therefore, in principle, 'binary' – the answer to the question about whether the activity satisfies the requirements is Yes or No, or whether the subject of the supervision is 'right or wrong'."*<sup>10</sup>

As the Supervision Inquiry's definition implies, the rules and regulations themselves are not always that clear. In these cases, supervisory activities will become normative as they create criteria/rules within areas where the legislation is relatively open.<sup>11</sup>

The sanctions available within the supervisory activity also vary, depending on the operational area in question. At the most lenient end of the scale can be found statements of criticism which, by their very nature, are not binding – even if these official reprimands could be viewed as a mild form of sanction. At the other end of the scale there are sanctions such as conditional fines, penalty fees, suspensions and notifications of legal action. The Supervision Inquiry's main perception was that supervision leads to the subject of the supervision taking action, even when the supervision results

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<sup>10</sup> SOU 2004:100, p. 62

<sup>11</sup> SOU 2004:100, p. 62.

in a warning comment or other non-binding decision, rather than one of the more stringent sanctions.

Both the Supervision Inquiry<sup>12</sup> and the Parliamentary Control Inquiry<sup>13</sup> noted that the authorities' reports are generally dominated by descriptions of their internal production. Variables that describe the effects of their operations are less common. This is not so surprising since it is very difficult to either identify or measure the effects of supervision per se. There are far too many other parameters involved. But it is possible to gather indicators and to conduct an assessment of reasonableness – do these suggest that the supervision has had an effect, or not?

## 2.1 The Swedish Competition Authority's supervision of public procurement

The Swedish Competition Authority's supervision work in respect of public procurement is directed at cases that lead to the imposition of procurement fines or, from a broader perspective, those that result in supervisory decisions. Our supervisory work also includes monitoring, analysing and providing information in respect of the procurement market and procurement regulations.

The SCA's resources are limited. For this reason, we have to carefully weigh up the areas that we should be examining closer and prioritise the cases that are to be investigated. It is easy to find infringements that require resources in order to investigate them, but we have to investigate where it is needed most and where it can make a real difference. The choice of areas and cases is made in

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<sup>12</sup> SOU 2002:14, pp. 127-128.

<sup>13</sup> SOU 2007:75, p. 144

accordance with the SCA's prioritisation policy<sup>14</sup>. In this way, the Authority comes further in its task to work for effective procurement that benefits both the general public and market participants.

## Procurement fines, supervisory decisions and decisions to close cases

*Procurement fines* are sanction fees imposed by virtue of LOU, LUF and LUFSS. Procurement fines can be imposed when:

1. a contracting authority has made an illegal direct award of contract,
2. a general administrative court has established, in a review case, that an agreement shall not be declared ineffective, either
  - i. despite the fact that the agreement contravenes the regulations regarding standstill periods or extended standstill periods, or
  - ii. due to overriding reasons relating to the public interest.

The fee is paid to the State but this has no effect on the agreement that has been entered into. However, this report deals with other types of procurement supervision, which is why procurement fines will not be explored in more detail here.

*Supervisory decisions* are decisions where the SCA states, in a written decision, that the procurement in question has not been conducted in accordance with the regulations; the statement details the grounds for the decision. This is a form of public criticism or reprimand which is both sent to the authority concerned and

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<sup>14</sup> The prioritisation policy can be found on the SCA web site, please see: [www.konkurrensverket.se/upphandling/tillsyn/](http://www.konkurrensverket.se/upphandling/tillsyn/)

published on the SCA's web site. Supervisory decisions have no sanctions attached to them, i.e. they cannot be combined with penalties, fines or any other sanction. They are instead intended to draw the contracting authorities' attention to their failure to fulfil their obligation to apply LOU or the relevant procurement legislation. Authorities receiving such a decision are expected to voluntarily rectify the situation or (if this is not possible) to not repeat their actions the next time they conduct a procurement.

Supervisory decisions can be used for infringements of those parts of the procurement regulations that are not covered by the rules concerning procurement fines. But supervisory decisions can also be used when procurement fines, for some reason, are not an option. An example of this would be in the case of an illegal direct award when the limitation period has expired.

*Decisions to close a case* are decisions where the SCA states in writing either that no infringement has been committed or, that for reasons of prioritisation, it will not be investigating the case further, and therefore will not be taking a stance in the issue of whether or not the procurement was conducted in accordance with the regulations. Such decisions are not included in this follow-up. However, "reasoned decisions to close a case" are.

*Reasoned decisions to close a case* are used when the SCA considers that a case should indeed be closed, but where the case contains a legal issue which, from a wider perspective, needs to be highlighted. Reasoned decisions to close a case can also be used both in cases that would otherwise have received a supervisory decision, and for cases where it would have been possible to apply for the imposition of a procurement fine.

With reasoned decisions to close a case, the SCA adopts a stance on a particular legal issue. The following disclaimer is often included in these decisions:

*"The decision does not mean that the Swedish Competition Authority has taken a stance regarding whether [the authority's] actions were permissible in accordance with the procurement legislation."*

The formulation of this sentence means that the decision to not continue the investigation has been made for some other reason, rather than the legal situation being clear. For example, it might be the case that the conditions for establishing the exact circumstances are insufficient in relation to the resources that would be required to do so. But the investigation already conducted has shown that there is some legal issue concerning the procurement regulations which the SCA chooses to highlight, so that it can provide guidance and support, both to the contracting authority in question and to others facing similar situations.

The target group for supervisory decisions and reasoned decisions to close a case

Aside from being directed at the contracting authority concerned, supervisory decisions and reasoned decisions to close a case also serve another purpose – to spread information and to clarify the legal situation for other contracting authorities, so that they can learn from each other and not make the same mistakes already made by others. In this respect, supervisory decisions and reasoned decisions to close a case can provide guidance and help to clarify the boundaries for what is and what is not permissible.

The supervisory decisions' intended readers have a varied background and differing knowledge. The SCA wants its message to reach as many people as possible. For this reason it is extra

important that we write clearly. Since the autumn of 2014, the Public Procurement Enforcement Unit has been actively working on the use of plain language, i.e. to express itself neatly, simply and in an easy to understand manner using modern language.

## The Swedish Competition Authority's case handling process

The SCA's handling process for cases that result in supervisory decisions can, put simply, be described as follows.

When the SCA becomes aware of a possible infringement of the procurement regulations, we first make an assessment, based on our prioritisation policy, into whether we should take the matter further and investigate the infringement in question. We also assess whether it is a case where an application for a procurement fine may be possible, or if a supervisory decision may be applicable.

If an investigation into a possible supervisory decision is commenced, then this starts with us corresponding with the contracting authority that is the object of the case. We inform the contracting authority about the information that the SCA has received and ask them to explain what has happened.

After the SCA has received the authority's response, any further contact can be made via letter, e-mail or telephone, depending on which is the most suitable format for asking supplementary questions or requesting documentation.

Based on the material submitted we make a new assessment to see whether the case warrants a supervisory decision or if it is to be

closed due to our prioritisation policy, and if the latter is the case, whether it is to be a reasoned decision to close the case.

If the investigation is going to result in a supervisory decision, the next step is to produce a draft decision. This is then communicated to the contracting authority in question so that they have the opportunity to submit their opinions regarding the draft decision.

After the contracting authority has had the chance to express their opinions about the draft, any comments they have made are taken into account. Based on the material submitted and the information available, a supervisory decision is formulated and decided upon by the Director General. When the decision has been adopted, the case handler calls the contracting authority and informs them of this and that the SCA is sending it by mail, so that they know that the supervisory decision is on its way and that the SCA will publish it.

### 3 Follow-up of supervisory decisions and decisions to close cases

This follow-up covers 25 decisions. Three of these concerned county councils or regions, four of them state authorities and four of them publicly owned companies. The rest of the decisions concerned municipalities.

Of the 25 decisions, seven were reasoned decisions to close cases and the remaining 18 were supervisory decisions where the SCA noted that some infringement had occurred.

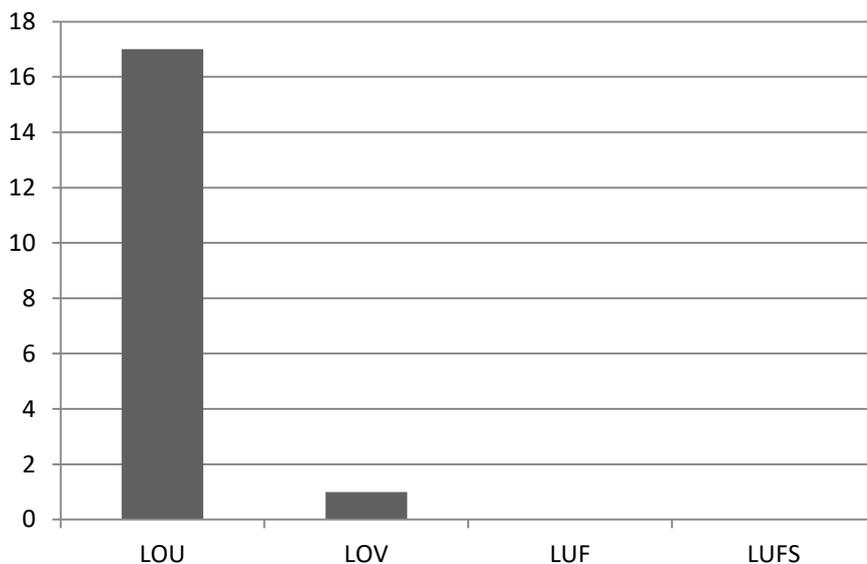
Five of the seven decisions to close cases concerned the same issue, where five different municipalities purchased services from a jointly owned company. In the description of the decisions below they are recorded as one case, but in the presentation of the responses to the questionnaire all of the responses from the five municipalities are presented separately.

17 of 18 decisions where the SCA notes that an infringement has occurred apply to cases where the contracting authority has not complied with LOU<sup>15</sup>. In one case, the contracting authority had not complied with the LOV<sup>16</sup> regulations.

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<sup>15</sup> Public Procurement Act (2007:1091).

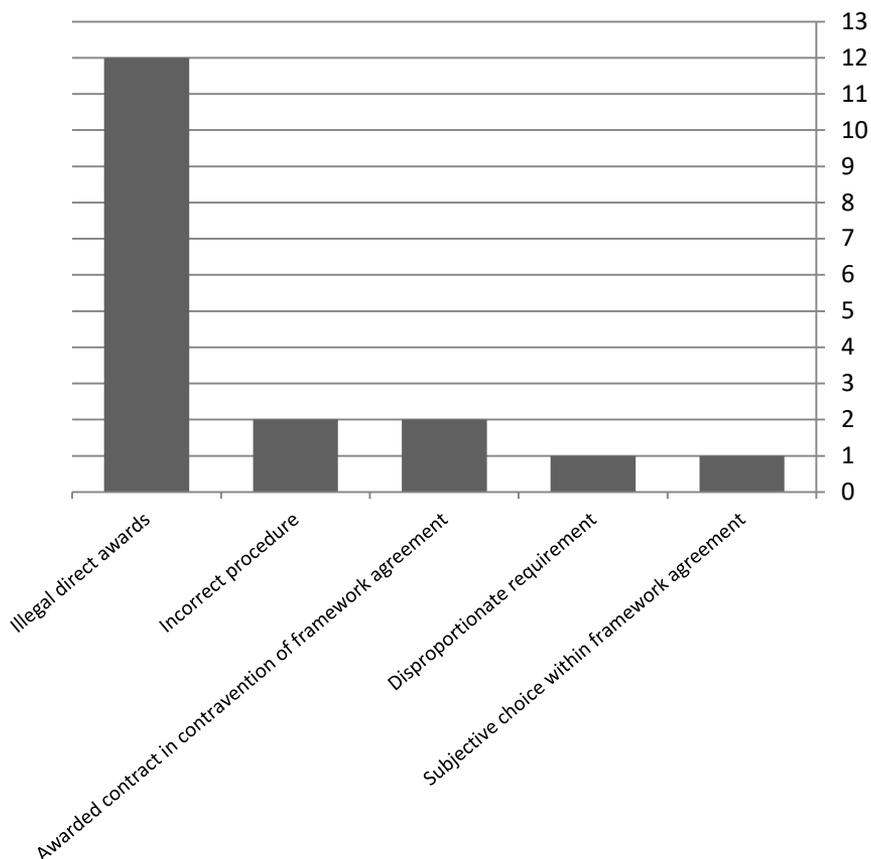
<sup>16</sup> Act (2008:962) on System of Choice.

**Figure 1** Supervisory decisions by procurement legislation applied

Source: The Swedish Competition Authority's supervisory decisions 2014–2015.

The most common infringement in these decisions is illegal direct awards of contract. 12 of 18 decisions concerned this type of infringement. Illegal direct awards are an offence against the public procurement regulations and are subject to procurement fines. The limitation period for procurement fines is 12 months from the day of contract signature. After the limitation period for procurement fines has expired, supervisory decisions remain an option in those cases where the SCA, as supervisory authority, wishes to stress that the procurement regulations were not followed.

**Figure 2** Supervisory decisions by type of case



Source: The Swedish Competition Authority's supervisory decisions 2014–2015.

All of the decisions to close cases were reasoned, i.e. the SCA has considered that there were issues that needed to be highlighted, which is why the decision to close the case contains an account of the Authority's assessment of the legal matter in question. On the other hand, it is not certain that the Authority adopted a stance regarding whether or not the actions taken by the contracting authority within the case were within the terms of the legislation.

One of the decisions to close a case concerned LOU and one LOV. The other decisions concerned a service concession. Since the SCA's supervisory mandate does not cover service concessions, the Authority could not investigate these cases.

## 4 Results of the follow-up survey

The Swedish Competition Authority has conducted a web survey with the 25 contracting authorities included in the follow-up. When the deadline for return of the survey arrived, on 1 December, 19 of the 25 authorities had responded to the survey. 14 of the 18 that were subject to a supervisory decision responded, and four of the seven that had received a reasoned decision to close a case completed the survey in its entirety; one only partially completed the survey. In addition to this, another authority sent in a separate written statement.

### 4.1 The supervisory decisions have had a positive effect

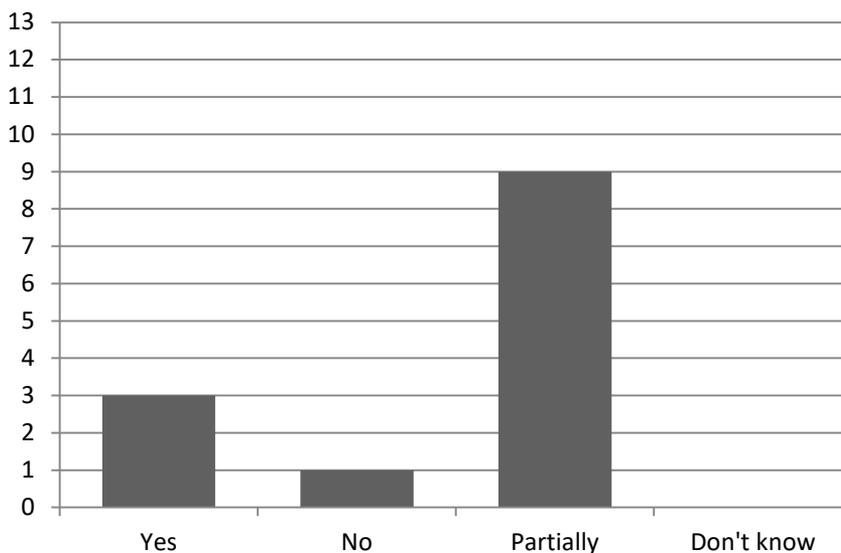
13 of 19 respondents have implemented, or have plans to implement changes in respect of their handling of purchasing/procurements, following the SCA's decision.

Of these 13 respondents, 12 stated that the changes were entirely or partially prompted by the SCA's decision. Furthermore, 10 of the 13 stated that they saw the changes as positive. No-one stated that they viewed the changes as negative.

If the results are divided up into authorities that were subject to supervisory decisions and those subject to reasoned decisions to close cases, then a clear difference is evident. Of the 14 authorities subject to supervisory decisions, 12 have implemented or plan to implement changes. All of them state that this is entirely or partially as a result of the SCA's decision. On the other hand, of the five authorities subject to decisions to close cases, only one has

implemented changes, and this was not as a result of the SCA's decision.

**Figure 3** Have the changes been implemented/planned as a result of the decision?



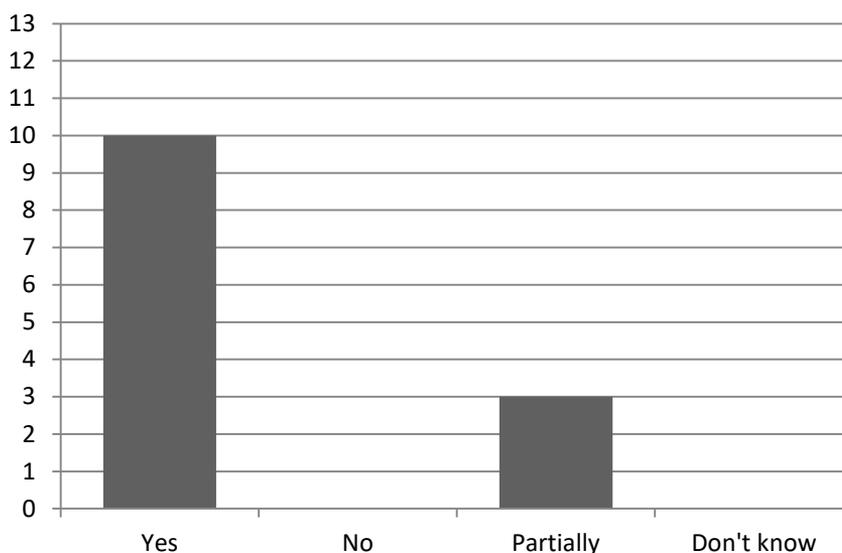
Source: Swedish Competition Authority, web survey Oct/Nov 2015.

The respondents are also, to a large degree, positive to the changes that have been implemented or planned. 10 of 13 responded that they see the changes as positive, and the remaining three considered the changes to be partially positive. No-one responded "no" when asked if they perceived the changes to be positive.

One comment left in conjunction with this question was:

*"The measures have led to greater awareness of purchasing issues within our organisation."*

**Figure 4** Do you see the changes as positive?



Source: Swedish Competition Authority, web survey Oct/Nov 2015.

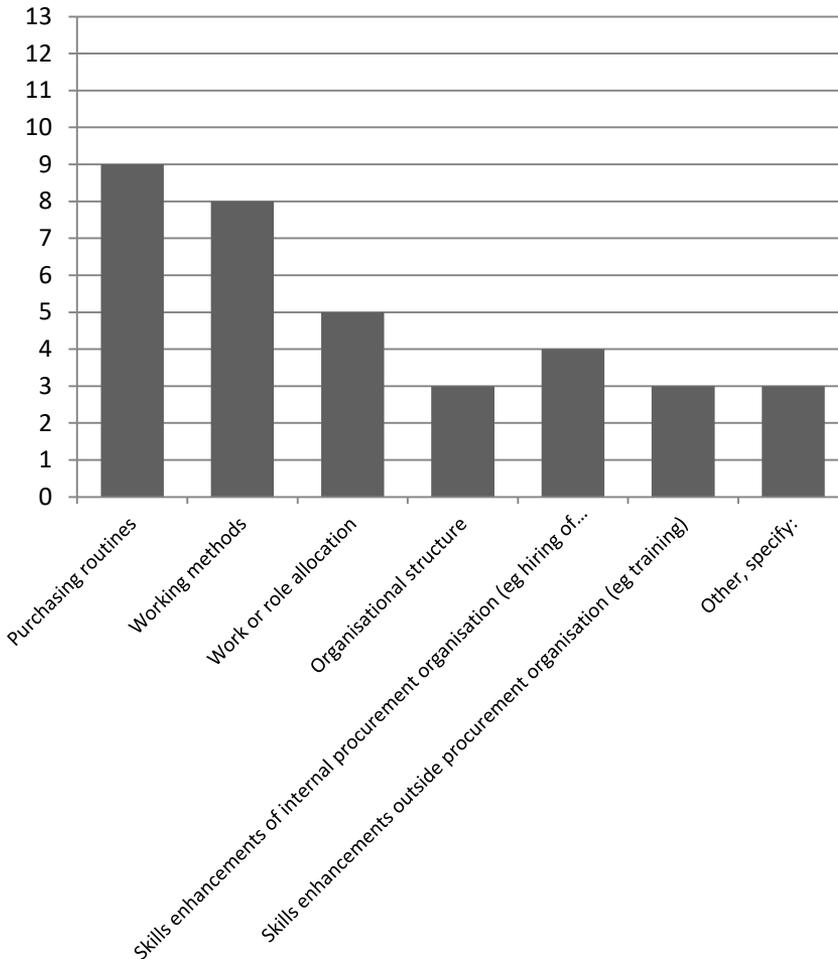
#### 4.2 The areas where changes have been implemented are purchasing procedures, working methods and the division of work

The survey included a question concerning the areas where the changes have been made<sup>17</sup>. By far the most common response was that the changes affect purchasing procedures or working methods.

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<sup>17</sup> The respondents had the opportunity to choose one or more areas, which is the reason why the total is > 100 per cent.

**Figure 5** In which area(s) have changes been/will be implemented?



Source: Swedish Competition Authority, web survey Oct/Nov 2015.

The respondents were also given the chance to describe the changes that had been or will be implemented. Here are some examples of what they wrote:

*"We have been making call-offs from state framework agreements."*

*"Increased awareness of direct purchasing/direct awards means that direct awards worth over SEK 100,000 will now be documented and reported."*

*"New procurement policy and procurement guidelines."*

*"The procurement function has been enhanced; it has been given clearer responsibilities and a more central role."*

*"Education/skills enhancement has been implemented and more is being planned"*

One of the respondents had started an extremely extensive change process which is yet to be concluded:

*"A new purchasing process that is documented on the intranet with information about legislation and procedures. There is also training material on the intranet. A category control model has been implemented. Education initiatives are being conducted continuously with managers, requirements specifiers, reference groups and the like. Guidelines for direct awards have been drawn up and established. A coordinator has been introduced for direct awards worth over SEK 100,000. A procurement plan has been produced. Best practice meetings and a standardisation team have been set up in order to ensure consistency of application. We have recruited the equivalent of 3 full-time members of staff to help with ordering and call-offs. Prior to 2016 we will be conducting follow-up initiatives, including random tests, to ensure that direct awards are conducted in accordance with the established procurement plan."*

In addition to changes made in respect of purchasing/procurements, seven of the 19 respondents stated that the SCA's decision also affected them in other ways. Here are some examples of the responses to the open question that followed:

*"Increased respect for compliance with LOU."*

*"The procurement function is more clearly prioritised, even politically."*

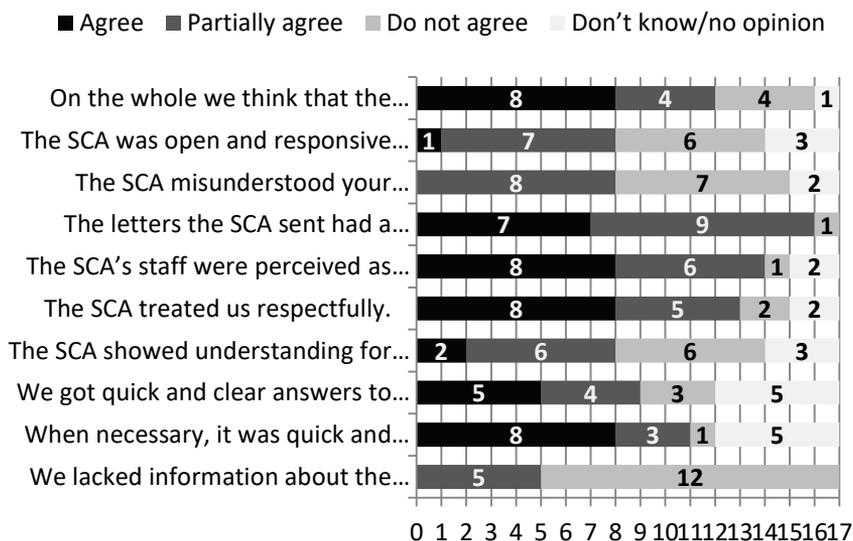
*"There is greater focus on purchasing issues now."*

*"Clearer responsibilities and division of roles, from needs analysis to signed contract. Project/reference groups prior to every procurement."*

### 4.3 The Swedish Competition Authority's case handling is good but there are areas where improvements can be made

17 respondents answered the questions regarding their perceptions of the SCA's case handling. 16 of them had themselves been involved in cases, whilst one of the respondents got help from colleagues who were themselves involved.

**Figure 6 To what degree do you agree with the following statements with regards to the SCA's case handling**



Source: Swedish Competition Authority, web survey Oct/Nov 2015.

The respondents also had the opportunity to make suggestions as to how the SCA's case handling could be improved. Here are some examples of their suggestions:

*"Introduce a policy regarding the examination of old cases."*

*"Shorten the processing time."*

*"A general reflection concerning the 'tone' of written communications."*

*"Telephone contact and a bit more dialogue. If you want changes, then this is a better way of doing it, rather than risking a procurer adopting a defensive position."*

*"The SCA should conduct dialogue with us, and they should have shown greater understanding of the fact that the case being dealt with was over 5 years old, and that the administrative staff that had been dealing with it had since left the company."*

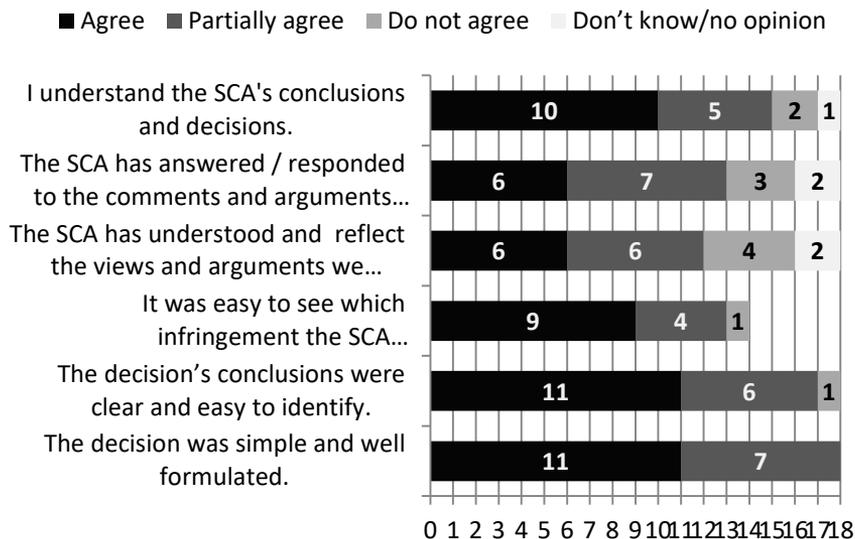
*"Its was good that the SCA took the time to visit us on site. It was very useful to be able to have a conversation 'face to face'."*

#### **4.4 The Swedish Competition Authority's decisions are easy to understand**

17 respondents answered the questions regarding their perceptions of the SCA's decisions in cases. All of the respondents had themselves read the decision and they answered based on their own perceptions.

With the statement *"It was easy to see which infringement the SCA considered had occurred in the procurement"* the responses from the contracting authorities receiving decisions to close cases have been removed, since in these cases the SCA has not indicated any particular error.

**Figure 7 To what degree do you agree with the following statements with regards to the SCA's decisions**



Source: Swedish Competition Authority, web survey Oct/Nov 2015.

As with the communications issued whilst the case was being processed, the decisions received a good 'grade' in the three statements concerning how easy to read they were. All respondents agreed entirely or partially that the decisions were well formulated and easy to understand. At the same time, 13 of 14 agreed entirely or partially that it was easy to see which infringement the SCA thought had been committed. There was also relatively high understanding for why the SCA arrived at the decision in question; 15 of 18 agreed entirely or partially.

On the other hand, the decisions receive a lower grade in respect of how the SCA handled the viewpoints and arguments put forward by the authorities concerned during the processing of the case.

## 4.5 Other viewpoints and comments

Finally, the respondents also had the chance to provide their views, comments and/or additions to the survey via an open response alternative. Here are some of their views:

*"Investigations like this are good because they promote awareness within our organisation."*

*"It's good to have an authority that also provides guidance and that understands how things are done out in Sweden's smaller municipalities."*

*"The SCA should take into account whether the procurement has been conducted in accordance with older legislation and legal practice, rather than making decisions retroactively."*

## 5 Analysis and conclusions

Even if the percentage that responded to the survey is high in relation to the number of authorities involved, the number of respondents is relatively low. The conclusions that we draw here should therefore be viewed as indications.

### 5.1 The impact of our supervisory activities

The results presented in this follow-up are well in line with the assessment made by the Supervision Inquiry in respect of the impact of supervision. Over two thirds of the authorities involved have implemented some form of change(s) to their procurement and purchasing procedures. Of the 13 authorities that have implemented changes, 12 say that the changes are wholly or partly as a result of the SCA's supervisory decision. Amongst the comments submitted, several state that there is now a greater focus on purchasing issues, and that there is increased respect for compliance with LOU. On the whole, it appears that our supervisory work has brought about some very good results.

### 5.2 Reasoned decisions to close a case

As far as the follow-up of decisions to close a case is concerned, there are very few observations to be made. The survey was sent out to just seven contracting authorities, five of whom received decisions relating to the same case. So extreme caution should be exercised when interpreting the results.

However, there are signs that those who received reasoned decisions to close a case do not perceive these in the way that the SCA intends them to be perceived. Instead, a decision to close a case seems to be seen either as an acquittal, or as an indication that the SCA has not adopted a stance at all with regard to the legal issue in question. This recurs again and again, both in the written communications received by the Authority and from several of the contacts in the response analysis.

*"We had done nothing wrong in this procurement (the SCA closed the case)."*

*"This confirmed that our actions were correct."*

*"Nothing came of it so we don't need to take any action."*

*"Regarding the decision taken, it is obvious that the Swedish Competition Authority has not taken a stance at all in our case. Consequently the Authority provides us with no guidance in this matter. Through this decision, the SCA closed a supervisory case [...] in the light of the law applicable, a recipient of such a decision would have good reason to believe that the supervisory authority has actively chosen not to make a decision of a directive nature."*

The results suggest that there could be good reason to review the wording of the reasoned decisions to close cases in order to make it clearer that, indeed, they do not adopt a stance in the case in question, but that there is a general position in the legal issue addressed by the case.

### 5.3 Case handling and the decisions

Our internal work with plain language, which the Public Procurement Enforcement Unit initiated during the autumn of 2014, seems to give results. In the follow-up, both the SCA's general,

written communication and its decisions receive a high score for being easy to understand; the conclusions reached by the decisions are also clear and easy to identify.

The aspects where the SCA's case handling and decisions receive lower scores involve other types of communication. At the same time, there are also some comments stating that the dialogue is not so good, whilst others say that it is, and other comments state that the SCA understands how work is conducted out in Sweden's smaller municipalities. In other words, the responses are not exactly unambiguous.

Despite the fact that there were only eight authorities that agreed entirely or partially (two agreed entirely) that the SCA understood their case, 13 agreed entirely or partially (eight agreed entirely) that the SCA treated them with respect.

The three areas where the contracting authorities provided suggestions for how the SCA could improve its case handling and decisions were:

- **Better dialogue** with the contracting authority. A telephone conversation or a meeting face to face can often improve both parties' understanding and reduce the risk of misunderstandings.
- **Shorter processing times.**
- **Pay attention to when the procurement was conducted** by introducing a time limit to apply to the supervision of older cases. When conducting supervision of older cases, consideration must be made to the fact that legal practice may have been different at the time the procurement was

conducted, and that the administrative staff involved in the case may well have since left the authority in question.

## 5.4 In conclusion

Experiences from this follow-up suggest that it would be useful if we were to repeat this type of structured follow-up again in the future. This would help us both to see whether there are indications that the supervisory decisions have had an impact on the authorities receiving them (as can be seen in this follow-up), and so that we can, over time, assemble material to help us follow up both on the impact that the supervisory decisions have had, and the authorities' perceptions of whether our case handling and supervisory decisions have changed.

However, we must remember that this type of follow-up in no way addresses the secondary purpose of the supervisory decisions, i.e. it says nothing about how effective or appropriate the decisions are in terms of providing guidance to other contracting authorities. Here there is scope for in-depth studies regarding how others perceive the normative effect of both the SCA's supervisory decisions and cases involving procurement fines.

Finally, it should be noted that continued work to spread information regarding the content of the procurement regulations, and the SCA's supervisory work will help bring about better application of the national procurement regulations.

## References

### *Statutes*

Ordinance (2007:1117) with instructions for the Swedish Competition Authority

The Public Procurement Act (2007:1091) (LOU)

The Act (2007:1092) on Procurement within the areas of Water, Energy, Transport and Postal services (LUF)

The Defence and Security Procurement Act (2011:1029) (LUF5)

The Act (2008:962) on Systems of Choice in the Public Sector (LOV)

The Act (2010:536) on Free Choice within the Swedish Public Employment Service

The Act (2013:311) on System of Choice regarding Services for Electronic Identification

### *Publications*

Swedish Competition Authority, *Siffror och fakta om offentlig upphandling – Statistik om upphandlingar som genomförts under 2014*, [Facts and figures on public procurement in Sweden - Statistics concerning procurements conducted during 2014] Report 2015:9.

Swedish Competition Authority, *Fem år med upphandlingsskadeavgift – Vad har skett hos de myndigheter som ålagt upphandlingsskadeavgift?*

*[Five years with procurement fines – what has happened at the authorities that were ordered to pay procurement fines?]* Report 2015:7.

SOU 2002:14, *Statlig tillsyn – Granskning på medborgarnas uppdrag*, The Supervision Inquiry's interim report, February 2012.

SOU 2004:100, *Tillsyn – Förslag om en tydligare och effektivare offentlig tillsyn*, The Supervision Inquiry's final report, October 2014.

SOU 2007:75, *Att styra staten – regeringens styrning av sin förvaltning*, The Parliamentary Control Inquiry's final report, October 2007.

SOU 2008:118, *Styra och ställa – förslag till en effektivare statsförvaltning*, Final report from the 2006 Committee on Public Administration, December 2008.

#### *Electronic sources*

Swedish Competition Authority, *Vi granskar aktörer som inte följer regelverket*, *[We investigate operators that do not follow the rules]* [www.konkurrensverket.se/upphandling/tillsyn/](http://www.konkurrensverket.se/upphandling/tillsyn/), 11/01/2016.

## Appendix 1 Methodology

The follow-up took the form of a web survey which was sent out to all contracting authorities and entities that had been subject to supervisory decisions. From here on these authorities and entities are often referred to as "respondents".

The survey was preceded by an e-mail in which the SCA informed the respondents of their intention to send out the survey - so that the Authority could evaluate the decision they had issued to the respondent.

The survey and the preceding e-mail were sent to the standard e-mail address found on the respondents' web site, along with a request to kindly forward them on to the appropriate person(s) within their authority for completion.

The survey, the preceding letter and the authorities receiving these items are detailed in appendices 2 and 3.

The survey was sent out on 22 October 2015, with instructions that it should be completed no later than three weeks later, i.e. 12 November 2015. During this three-week period, two reminders were sent out (on 02/11/2015 and 09/11/2015) to those respondents who had yet to open the survey; a further reminder was also sent out to those respondents who had opened but not yet completed the survey (09/11/2015).

The survey was then available online up to and including 30 November 2015.

## Target group

The survey was constructed in order to be sent out to those contracting authorities that had been the subject of a supervisory decision. However, the survey was later sent out to seven contracting authorities that had been subject to a decision to close a case. The vast majority of the survey also applied to decisions to close a case, but one of the statements that the respondents were asked to address (concerning the SCA's decisions) was not appropriate for decisions to close cases.

## Response analysis

When 12 November had passed, there were 10 respondents who had not started the survey and one who had started but not completed it. During a four-day period in weeks 47 and 48, attempts were made via telephone to contact the survey recipient(s) at the authorities in question.

The result was that seven respondents requested that we resend the survey to another e-mail address. The most common reasons given for why the survey had not been completed, and that it should be resent, were that they could not find it or that they had misplaced the completed survey.

One respondent, who had been uncertain about which decision the survey referred to, decided to ignore the survey instead of asking for clarification; but now that it had been made clear to them the survey was to be completed.

For two of the respondents, we could not get hold of the person who had received the survey during the four-day period.

Those who received a new survey, and the person who now knew which case was being referred to, were granted an extension to complete the survey by 27 November 2015. This resulted in four more responses being received.

The respondent who had started but not completed the survey gave two reasons for this. Firstly, it was a decision to close a case, so they did not need to do anything. Secondly, the case concerned a company that was jointly owned by several municipalities which acted together in relation to the SCA's case. As the respondent was a small municipality they did not have so much contact with the SCA, and therefore they did not wish to answer questions regarding how they perceived their contact with the Authority. Furthermore, the person who had received the survey had not actually been involved with the case when it was in progress.

The final result was that, of the authorities that had been subject to supervisory decisions, 14 out of 18 responded to the survey. Of those that had received a reasoned decision to close a case, four of seven responded to the survey in its entirety, one responded in part and one submitted a separate written communication. There were few respondents and no great difference between the groups, but there was a slightly higher response rate from those authorities that had received a supervisory decision, rather than a decision to close a case. It is very difficult to draw any far-reaching conclusions, but one hypothesis might be that, since the recipients do not see the decision to close a case as having any normative effect, nor do they see any particular reason why they should respond to a survey regarding the subsequent impact of such a decision. Another hypothesis/theory is that there may be an element of concern that responding to a survey in some way constitutes an acknowledgement of having done something wrong, and

respondents who have received a decision to close a case certainly do not seem to feel that they have done anything wrong.

## Appendix 2 The web survey

### Questions about you

#### Page 1

*Which authority or entity do you work for?*

---

*What is your position within the organisation?*

---

*Have you implemented any changes in respect of your organisation's purchasing/procurement procedures following the SCA's decision?*

- Yes                    *go to page 3.*
  - No
  - Don't know
- 

#### Page 2

*Do you plan to implement any changes in respect of your organisation's purchasing/procurement procedures following the SCA's decision?*

- Yes
  - No                    *go to page 5.*
  - Don't know        *go to page 5.*
-

**Page 3***In which area(s) have changes been implemented?**Shown only for those who answered "Yes" to having implemented changes on page 1.*

- Purchasing procedures
- Working methods
- Work or role distribution (e.g. administration or decision making)
- Organisational structure
- Skills enhancements within the purchasing organisation (e.g. new recruitment of procurers or internal education)
- Skills enhancements outside of the procurement organisation (e.g. external education)
- Other, specify: \_\_\_\_\_

*In which area(s) are changes planned?**Shown only for those who answered "Yes" to planning to implement changes on page 2.*

- Purchasing procedures
- Working methods
- Work or role distribution (e.g. administration or decision making)
- Organisational structure
- Skills enhancements within the purchasing organisation (e.g. new recruitment of procurers or internal training)
- Skills enhancements outside of the procurement organisation (e.g. external education)
- Other, specify: \_\_\_\_\_

*Describe the changes:*

\_\_\_\_\_

-----

**Page 4**

*Have the changes been implemented as a result of the SCA's decision?*

*Shown only for those who answered "Yes" to having implemented changes on page 1..*

- Yes
- No
- Partly
- Don't know

*Are the planned changes a result of the SCA's decision?*

*Shown only for those who answered "Yes" to planning to implement changes on page 2.*

- Yes
- No
- Partly
- Don't know

*Do you see the changes as something positive?*

- Yes
- No
- Partly
- Don't know

*Additional comments:*

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**Page 5**

*Has the SCA's decision affected the authority/entity in any other way?*

- Yes
- No
- Partly
- Don't know

*If so, please describe how:*

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## Questions about the SCA's case handling

### Page 6

*Were you involved in the authority's/entity's contacts with the SCA while we were investigating the case that resulted in the decision?*

- Yes *go to page 8.*
  - No
  - Don't know
  - I was not working at the authority/entity at this time
- 

### Page 7

It would be very useful for us should you have the opportunity to contact a colleague who was involved in the contact with the SCA, so that they can answer some questions regarding how they perceived the contact during the processing period.

- Yes, I have had help from a colleague and answer the questions based on how they perceived the contact with the SCA during the processing of the case.
  - No, I have not had help from a colleague so I will go on to the next section of the survey. *go to page 9.*
-

## Page 8

N.B.! This sections deals with your perception of the SCA's case handling and the letters we sent you before the decision was issued. Questions about how you perceived the decision come in the next section.

*To what extent do you agree with the following statements regarding the SCA's case handling?*

	Agree	Partially agree	Do not agree	Don't know/ No opinion
We lacked information regarding the SCA's handling of the case	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
When necessary, getting in touch with the case handler was quick and easy.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
We got quick, clear answers to the questions we had concerning the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The SCA treated us with respect.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The SCA's staff were competent and knowledgeable.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The letters the SCA sent us during the processing of the case were easy to understand.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The SCA misunderstood our response to their letters during the processing of the case.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The SCA was open and sensitive to the viewpoints and arguments we put forward.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
On the whole we think that the SCA's handling of the case was good.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Have you any thoughts about how the SCA's case handling could be improved?*

---

*Any other comments:*

---

Questions about the SCA's decision

**Page 9**

*Have you read the decision from the SCA that applies to your case?*

- Yes *go to 10.*
  - No
- 

**Page 10**

It would be very useful for us should you yourself have the opportunity to read the SCA's decision, or the chance to contact a colleague who has done this so that they can answer some questions regarding their perception of the decision.

*Have you read the decision from the SCA that applies to your case?*

- Yes, I have read the SCA decision and I am answering the questions based on my perceptions of it.
  - Yes, I have contacted a colleague who has read the SCA decision and my answers are based on their perceptions of it.
  - I will go on to the next section of the survey. *go to page 12.*
-

**Page 11**

*To what degree do you agree with the following statements about the SCA's decision?*

	Agree	Partially agree	Do not agree	Don't know/ No opinion
The decision was well formulated and easy to understand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The decision's conclusions were clear and easy to identify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
It was easy to see which infringement the SCA considered had occurred in the procurement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The SCA has understood and reproduced the viewpoints and arguments we put forward correctly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The SCA has responded to/addressed the viewpoints and arguments we put forward during the processing of the case	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I understand the SCA's conclusions and the decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Do you have any thoughts about how the SCA could improve its supervisory work and its decisions?*

---

*Any other comments?*

---

## Other viewpoints and comments

### **Page 12**

*Do you have any other views or comments that you would like to add?*

---

N.B.!

When you click with the arrow in the bottom right corner of the window the survey is concluded and you will no longer have the chance to go back to previous sections of the survey, or to return to the survey at a later date.

## Appendix 3 Supervisory decisions and decisions to close a case

The following supervisory cases have been included in this follow-up of the SCA's supervisory work. Prior to the survey, e-mails with information and a link to the survey were sent out to the e-mail address found on the contracting authorities'/entities' web site.

<b>Ref. No.</b>	<b>Contracting authority/entity</b>	<b>Date of the SCA's decision</b>	<b>Date of judgment (if appealed)</b>
456/2012	Swedish Foundation for Research	03/06/2014	
179/2014	Jönköping University Foundation	19/11/2014	
280/2013	Municipality of Mönsterås	12/12/2014	
690/2013	Swedish Prison and Probation Service	12/12/2014	
117/2014	Swedish Defence Materiel Administration	12/12/2014	
261/2014	Bostads AB Poseidon	12/12/2014	
333/2014	Västra Götaland region	12/12/2014	26/03/2015
304/2014	Municipality of Norrköping	15/12/2014	
546/2014	AB Timråbo	15/12/2014	
446/2014	MKB Fastighets AB	19/12/2014	
379/2014	Municipality of Vellinge	09/04/2015	
470/2014	Municipality of Trosa	15/04/2015	
606/2014	Södertörn University	15/04/2015	
77/2014	Municipality of Vårgårda	12/05/2015	
639/2014	Municipality of Flen	21/05/2015	
743/2014	Municipality of Norrköping	21/05/2015	
692/2014	Municipality of Älmhult	08/07/2015	
738/2014	Municipality of Eda	02/09/2015	

## Reasoned decision sto close cases

<b>Ref. No.</b>	<b>Contracting authority/entity</b>	<b>Date of the SCA's decision</b>
416/2014	Region Halland	15/10/2014
099/2014	Region Skåne	12/12/2014
728/2014	Municipality of Bjuv	24/06/2015
728/2014	Municipality of Båstad	24/06/2015
728/2014	Municipality of Helsingborg	24/06/2015
728/2014	Municipality of Åstorp	24/06/2015
728/2014	Municipality of Ängelholm	24/06/2015



The majority of the contracting authorities that have been the subject of the Swedish Competition Authority's supervisory decisions end up making changes to their routines. That is the conclusion of a survey which we present in this report.

During 2015, the Swedish Competition Authority conducted a follow-up of the actions taken by authorities which had previously instructed to pay procurement fines. We have now also conducted a follow-up of the actions of the contracting authorities and entities that were subject to supervisory decisions made between January 2014 and September 2015.

The report aims to provide a better understanding of how the Swedish Competition Authority's supervision of the procurement rules affects the contracting authorities' activities.



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