

Sweden: Competition Authority

Artikel av Dan Sjöblom, generaldirektör, Konkurrensverket, publicerad i Global Competition Review, augusti 2015.

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Specialised and efficient competition enforcement

Last year I reported on organisational changes within the Swedish Competition Authority (SCA). One important change was the introduction of conduct-specific competition units, the goal being to ensure specialised and efficient competition enforcement. The range of significant cases within antitrust and merger control brought to court in the past 12 months bears testament to the SCA delivering on this goal. Our aim is to conclude further important investigations in 2015–2016.

Following a government decision to transfer procurement support functions to a new authority in September 2015, the SCA will undergo further organisational changes. In light of the success of our specialised competition units over the past year, these units will continue in their current form under a department for competition enforcement.

The fight against cartels

Cartels are internationally acknowledged to be the most egregious of all competition law infringements. For this reason, cartel detection and enforcement is one of our top priorities. Over the past 12 months we filed two summons applications against companies that we deem to have violated the cartel rules: one in the removals sector and the other in the telecom sector. We are requesting the court to impose administrative fines of 42 million kronor and 35 million kronor, respectively.

Sweden faces similar challenges to many other small economies in that while we do receive some high-quality leniency applications, we must work hard to

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increase the threat to cartel participants of being caught, thus giving them an incentive to approach us with a leniency application and to stay out of illegal conduct. The SCA is developing tools to stay at the forefront of new methods relating to proactive screening for bid-rigging cartels. Building on a successful pilot project on proactive screening that was completed in 2014, we have launched a new project which is broader in scope.

By analysing procurement data for signs of cartel behaviour – such as geographical patterns, price similarities, percentage differences between bids and deviations from competitively optimal bids – we believe that bid-rigging cartels can be uncovered. The combination of our proactive and reactive detection methods sets us in good stead in our fight against these damaging practices.

Mergers and abuse of dominance

In the first merger case to be decided by the Swedish courts in recent years, the SCA brought an action to prohibit the merger of Sweden's two largest estate agents under a single owner, Swedbank. In our view, the merger would have severely undermined conditions for estate agents, as well as the buyers and sellers of houses and apartments. On 16 December, the Stockholm District Court ruled in favour of the Swedish Competition Authority, and the merger was ultimately abandoned when the parties withdrew their appeal to the Market Court. This case demonstrates clearly that the SCA will not hesitate to use all means available to it to stop mergers that are harmful to competition.

In December 2014, we brought a significant action against the wet snuff manufacturer Swedish Match for abusing its dominant position, requesting the court to impose close to 38 million kronor in administrative fines. The company's behaviour was directly aimed at protecting its entrenched position in the premium part of the market and foreclosing market access for new low-price, maverick entrants.

We also recently brought an action against Nasdaq OMX for abusing its dominant position when it prevented the trading platform Burgundy from using a vital data centre. As a result, Burgundy's competitive position in relation to Nasdaq OMX was weakened. We are requesting that the court imposes administrative fines of 31 million kronor.

International enforcement cooperation

Together with our sister competition authorities in France and Italy, we recently concluded our investigation into Booking.com concerning the market for hotel bookings via online travel agents, after the company offered commitments that were accepted by each of our authorities.

The case is novel in many respects. It concerns so-called price parity, or most-favoured nation (MFN) clauses, and it breaks new ground in the investigation of

online vertical restraints in this area. The clauses in question meant that hotels could not set room prices on other sales channels lower than those offered on Booking.com, nor could Booking.com's competitors reduce prices on their platforms by offering, for example, a lower commission. The clauses therefore restricted competition both at the level of online travel agents and for hotel rooms themselves. We are satisfied with the commitments that we have received from Booking.com, which limit the company's use of price parity clauses and grant individual hotels greater room for manoeuvre. The commitments reinstate competition while maintaining consumers' access to free searches and price comparison services for hotel rooms.

This is the first time that such a case has been investigated through this type of international cooperation between several national competition authorities within the EU. It is likely that many more EU competition authorities will choose to accept equivalent commitments covering their respective jurisdictions, relying to a great extent on the competitive assessments carried out by Sweden, France and Italy. This bodes well for the European Competition Network as it enters its second decade, and I believe similar forms of cooperation could be utilised in the future. This may particularly be the case for retail consumer markets where the national competition authorities enjoy comparative advantages by being closer to the relevant markets than the European Commission.

Anti-competitive public sales activities

When public entities act in competitive markets, there is a risk that this may result in the distortion of competition. To address these competition concerns, the SCA has specific powers to go to court to prohibit anti-competitive public sales activities. We are currently awaiting the courts' decision in a number of cases which we have brought, and we look forward to further rulings in the coming year to clarify the application of these rules.

The SCA published a study in December 2014 that reported on the extent of the areas of conflict between private and public enterprises by charting the sales activities of selected municipal companies across Sweden. The study indicated that municipal companies are increasing in number, that their sales are not declining and that municipal companies believe that they face intense competition from private companies. The study suggests that the areas of conflict between private companies and public entities are not declining; on the contrary, they are enduring and diversifying.

Legislative amendments

Last year we reported on proposals for legislative amendments to improve our enforcement tools. These amendments have now come into force, introducing a marker system into our leniency programme and granting us the possibility to stop the clock in merger investigations.

We welcome a further proposal for a legislative amendment that will set unambiguously in law the SCA's current practice during dawn raids of copying digital material such as hard drives for analysis at the authority's premises, with the consent of the company under inspection. This proposal, which is set to come into force in January 2016, will ensure that our investigations remain efficient, to the benefit of all parties, while limiting any undue burden on the companies under investigation.

It is also encouraging that the government has appointed an inquiry into the question of granting the SCA enhanced decision-making powers in the enforcement of antitrust and merger control rules. Currently, the SCA must go to court to request fines against undertakings that have infringed the competition rules, or to prohibit a merger. We believe that having the power to take immediately binding decisions on these issues, with the possibility of appeal to two instances of the Swedish courts, would lead to a more efficient system with a greater deterrent effect. The SCA has therefore consistently advocated for such enhanced powers. The inquiry will report its findings to the government by May 2016.

The interface between competition and corruption

Competition authorities have an important role to play in the interface between competition and corruption, especially in the area of public procurement. Like bid rigging, corruption is an anti-competitive conduct that can be used to eliminate competition and frustrate the very purpose of public procurement. Among other measures, the SCA has intensified its cooperation with the Swedish National Anti-Corruption Unit. This cooperation involves the exchange of anonymised information regarding suspected markets and pre-studies conducted by the respective authorities. We will continue to cooperate with the Anti-Corruption Unit and other agencies in the fight against activities of all forms that limit competition on the merits.

The SCA is also collaborating with agencies in other European countries. We are now awaiting a decision from the EU to receive funding for a project together with the Italian and Dutch authorities aimed at developing methodologies and tools to identify corruption and collusion in procurement procedures. This project directly addresses the issue of cooperation between all enforcement agencies with jurisdiction over collusion and corruption practices in public procurement procedures.

Advocacy and outreach

We maintain the view that an effective communication of our tasks and activities can play a vital role in deterring anti-competitive behaviour. As such, we take a multi-faceted approach to our advocacy and outreach work. Our capacity in this regard has been enhanced by the creation of a new policy evaluation and advocacy unit and a communications department. Among the actions taken over

the past 12 months, we took steps to ensure that our enforcement practices and priorities are communicated clearly to external parties. An updated prioritisation policy was produced, along with a new communication policy regarding our enforcement activities. We also held productive meetings with legal counsel in the autumn of 2014 to discuss issues relating to mergers, leniency, unannounced inspections and abuse of dominance.

Looking forward, we will shortly launch new web-based interactive guidance on the rules governing anti-competitive public sales activities, which will be of particular use to municipalities and county councils. This builds on the success of existing interactive guidance on cooperation when submitting tenders in procurement procedures, and regarding trade organisations. We will also undertake a project focused on explaining the benefits of competition to stakeholders. It is also our aim to make greater use of factsheets that explain our cases in an easy to understand manner. All of this will be made available on our recently revamped and modernised website.

Effective competition to the benefit of consumers

In the past year, the SCA has demonstrated its readiness and capacity to work on a number of fronts to fulfil its task of promoting effective competition to the benefit of consumers. We will maintain our focus on specialised and effective enforcement of the competition rules in 2015–2016, and further cases will be brought to court. At the same time, we look forward to building on our proactive efforts in the field of advocacy and outreach, and to continuing to communicate our work clearly to stakeholders. Our invaluable cooperation with agencies within Sweden and internationally will remain a cornerstone of our work.