

European Competition Day
7 October 2009

EU and Swedish Competition policy in practice

Minister(s), Commissioner(s),
Ladies and gentlemen,
Dear colleagues,

It is a great pleasure to speak to this audience about competition policy in the European Union and in Sweden. This topic is of special interest for me – as many of you know I returned to Sweden and the Swedish Competition Authority only six months ago after almost 15 years in the Directorate General for Competition in Brussels.

I am delighted that there are so many here today who have a deep insight into the development of Swedish and European competition policy. I am also particularly pleased to be able to welcome so many international guests from no less than 28 countries to this conference.

Our mission is to work for well-functioning markets, to the benefit of consumers. Swedish competition policy is also to a very large extent an integrated part of the EU competition policy.

Sweden is an open economy and the home base for many well-known multinational companies that operate worldwide. Imports and competitive pressure from outside is crucial for effective competition in Sweden as many markets are highly concentrated and barriers to entry are perceived to be high, mainly due to the size of the economy. Harmonisation of rules and standards within the EU has been an important element in strengthening competition in Sweden since the membership in the European Union. More could however be done to further promote competition.

The construction sector is one example where we observe limited foreign presence in this country. At the same time, the largest Swedish construction companies are active across the EU and worldwide. Other examples of markets with limited

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presence of foreign players are the finance markets and the health sector. Further measures to take advantage of the internal market and to improve import competition can hopefully result in a development where many markets are no longer national but rather EU-wide or global. Such a development is very desirable from a competition perspective as an increased scope of markets will provide Swedish consumers with greater choice of supplies.

The financial crisis has put competition policy in focus. Historically we observe that in economic crises it is particularly important to ensure that the rules and principles of competition are respected. These are conclusions drawn in a report by the Nordic competition authorities that we published last month. Experience demonstrates the importance that any short term support measures which are introduced to mitigate the effects of a financial crisis do not hinder or weaken competition in the longer term. And such measures must apply only for a limited period of time and be clearly circumscribed in other ways as well.

Needless to say, competition policy encompasses many areas, in addition to enforcement of the competition law as such. I am thinking here both of our efforts to advocate a more competition based approach across society and of our tasks as the watch dog for public procurement and competition in the public sector in general.

Sweden has the biggest public sector in the European Union in relation to its GDP. Opening up markets to competition through regulatory reform and increasing competition in the public sector to boost its performance are important for increased efficiency.

Six months ago the Swedish Competition Authority submitted 60 proposals to the Government suggesting areas where competition could be strengthened. Many proposals concerned the public sector. Our proposals also concerned better regulation which aims at achieving more competitive pressure as well as reducing the administrative burden for companies, in particular the small and medium-sized. It is rewarding to observe that many of our proposals are being actively followed up by the Government.

Our annual conference for competition authorities and academia takes up this theme. We have decided to call this years event "the Pros & Cons of competition in/by the public sector". It will be held here in Stockholm on 13 November and we have received several interesting contributions from academics.

We heard earlier about initiatives that the Government has taken to abolish former monopolies e.g. on the pharmacy market. The regulatory reform process raises many complex competition issues, particularly relating to decreasing barriers to entry. We know from experience in earlier deregulations that it is of great importance to get it as right as possible from the start. We therefore follow

such processes very carefully and will not hesitate to advocate for competition based solutions along the process.

Advocacy in decision making processes and to market players, both with an aim to initiate regulatory reform and during the process of introducing such reform may not give the same headlines as bringing competition cases to court. However, our advocacy efforts are clearly important when measured in their potential for impact on the society.

As another example, the healthcare market is now in the process of being opened up for consumer choice and competition. The Government has asked us to supervise the implementation of the reform to ensure that market based solutions are implemented.

Parallel to this advocacy task the Swedish Competition Authority also applies the recent legislation on freedom of choice for consumers. The law will be of great value in inspiring more municipalities and county councils to introduce freedom of choice for citizens in their healthcare systems. The importance of giving patients and clients the chance to choose freely has long been discussed, and we are pleased that we now have a set of regulations that will facilitate such a course and, thereby, ensure that this important sector of the economy will be subject to the efficiency gains inherent in competitive markets.

If patients or clients are not happy with how a specific care provider looks after them, they will be free to switch to another service provider. This means that the question of who provides the care will be determined by perceived quality, thus providing the right incentives to care units to consider their clients as customers, not merely as patients. At the same time, the regulation ensures that quality of service is decisive, not the lowest price, which arguably is a less suitable instrument for competition in this sector than in other areas.

Ensuring more competition in public procurement is another essential task for my Authority. We supervise compliance with the EC directives and the Swedish procurement laws but we also try to stimulate competition and facilitate the participation of more suppliers in public tendering, in particular small and medium-sized companies.

Small companies have a growth potential that they must be able to exploit e.g. by supplying the public sector. The dialogue with public purchasers and suppliers that we have established through frequent meetings around Sweden have proven to be very helpful in this regard.

Given our current lack of effective sanctions, we are pleased that the Swedish Government has proposed to improve this situation as from June 2010. Considering the importance of public procurement in Sweden the current situation is highly unsatisfactory. I am afraid that the presumption that public authorities always respect the laws has proven to be far from correct.

A much debated issue at the moment in Sweden is the demand from consumers and politicians to buy locally produced foodstuff for schools and other public institutions and whether such a requirement is compatible with procurement laws. This is a rather tricky question. The governing EU principles on non-discrimination and proportionality must not be set aside. "Buy local" is a motto that must be handled with great care. The risk of conflict with the requirement for non-discrimination in the procurement laws is obvious. We have therefore last week made a contribution to assist those faced with making this assessment in concrete cases by publishing guidance in this respect on our web page.

Another competition enhancing Government proposal is that to add a new rule to the Competition Act that will prohibit conduct or activities by public entities that restrict competition. This is of course very welcome. The Authority has for many years received a large number of complaints from companies that face distortive competition e.g. from municipalities which provide various goods or services on local markets in competition with private firms. The new rules will enter into force on 1 January 2010 and our aim is to publish, well in advance of this date, guidance as to the authority's policy in prioritizing which cases to pursue with these new rules.

The background to the new rule is, among other things, that the prohibition against abuse of dominance under Swedish law or Article 82 may not be a viable way to eliminate competition problems of this kind. I am pleased that the Government has acted to better address this competition problem. It would be correct to stress that the Government, by doing so, is taking an intellectual lead in this area, as such legislation tends to be missing in many jurisdictions even though we know that the underlying problem is far from unique for this country. In two weeks time, these very issues will be discussed at a roundtable in the OECD Competition Committee and submissions describing the problem is foreseen from a large number of countries.

I expect that the forthcoming rule in the Competition Act will have an important preventive effect. We hope for its mere existence to inspire public bodies to review their activities and certainly to make them think twice before engaging in new commercial activities.

Competition law enforcement has recently been strengthened.

The Competition Act in force since November last year has given the Authority new tools. One example is the power to decide on fines in cartel cases where the offenders consent to the infringement and the proposed amount of fines. This settlement instrument was used in one case earlier this year and it saved all involved the time and added costs of litigating such cases. We expect that it will be applied in future cases where the infringement is clear-cut and where there are no legal matters that should be decided by the courts. If the parties do not accept the amount of fines we propose on the basis of our fining policy, we will of course continue to bring such cases to the court under the normal, but more time consuming, procedure.

Another novelty is a new penalty, namely a disqualification order that a court can impose on natural persons holding leading positions in companies involved in cartel infringements. The imposition of such an order will mean that the person found guilty will not be able to hold leading positions in companies for a specified period of time. The risk of being held personally responsible should act as a deterrent and make managers more keen to ensure that all employees in their firms abstain from cartel behaviour.

The rules about setting fines have been clarified in the Competition Act and I believe this will contribute to a more effective and discouraging environment, with e.g. higher level of fines where needed. Leniency and exemptions from fines will in that perspective no doubt become more attractive. Our contribution to influencing companies in revealing cartels by an application for leniency is to ensure that we will take care of all such applications in a legally predictable way.

The predominant cartel case in the Swedish competition law history is the asphalt cartel case and I cannot refrain from briefly commenting it. It is in my view an example of one of the most serious violations possible of the competition rules – a bid-rigging cartel. Bid-rigging means not only cheating on customers in general, it means cheating on all citizens and taxpayers. This specific case contains all the classical elements, big and small market players, systematic organisation of the bidding process and implementation and payments as compensation. The case started as a tip-off from a former employee and concerned several tendering processes at regional level in central Sweden. The Court established that the entire infringement had lasted between 1998-2001. The court decision in May this year, after nearly six years of litigation, is a victory for both central and local government, and ultimately for the taxpayers, who have had to pay excessively high prices for asphalt work. The construction companies in the cartel agreed on prices and divided the market between them.

The Market Court, which is the final appeals court in Sweden, has made clear that the companies have been guilty of a very severe infringement of the law.

The heavy fines, about 50 million euro, that the companies had to pay should act as a wake-up call and a deterrent to any others who might be involved in similar kinds of collusion.

Even if cartel enforcement is a priority for the authority, abuse of dominant cases are indeed equally important, in particular with regard to the high degree of concentration on many Swedish markets. The leading companies in many Swedish markets are often not only dominant but superdominant. Their influence on the markets in question is therefore tremendous. In this regard I can briefly mention some of our ongoing investigations into important areas of the economy. One such case concerns the dairy sector. The leading company holds a very large market share and has been accused of various behaviours that foreclose access to retail outlets for its competitors, thereby lessening consumer choice and inter-brand competition. Several cases regarding abuse of dominance have also been launched in the communication sector. One interesting example relates to margin squeeze, which a firm that is dominant on one level of the value chain can engage in to lessen competition at a downstream level. We brought such a case to the Stockholm District Court already in 2004. The court has now decided to turn to the European Court of Justice for a preliminary ruling. We very much look forward to the solution of this case as it will clarify the legal situation about margin squeeze in the telecommunication sector. I know that many of my EU colleagues, some present here today, have or have had abuse cases raising similar issues.

The importance of pursuing abuse cases is particularly high in a small economy, where the threat from import competition tends to be lower than in larger economies. For similar reasons, effective merger control can be important also in a smaller economy. As an example of this, the Swedish Competition Authority last week asked the Stockholm District Court to prohibit a merger that would otherwise have led to the creation of a near monopoly for the sale of premium product cosmetics to consumers in the Stockholm and Gothenburg regions. During the investigation of the case, we could notice that past entry attempts had been largely ineffective and that entry barriers would further increase should the merger be allowed to proceed.

The Government's positive and active view on competition and procurement issues has over time provided my Authority with an increasingly wider, larger and more complex regulatory toolbox. It has rendered us wider powers – but also an increased responsibility in this field – and possibilities to fulfil our mission which ultimately is to strive for more effective competition in both the private and public sector to the benefit of the consumers.

With these tools and the talent and dedication of my staff, we stand ready to take on these challenges. Over the coming years I see a continued focus on enforcing the provisions against cartels, abuse of dominance and anti-competitive mergers. At the same time other areas like public procurement and public measures that distort competition are bound to increase in prominence. We will also keep up the advocacy work and constantly remind decision makers of the benefit of selecting competition based solutions.

Fortunately, we are not doing this alone but in a network of competition authorities within the European Union and other colleagues around the globe. We learn a lot from participating in such international networks. Participation is absolutely necessary because competition policy of today is no longer only a national business.

We very much welcome the involvement of all stakeholders in the application of competition law as well as in the wider debate about making markets more efficient. All of you present here today have an important role to play in shaping the future of competition – in the interest of the Swedish and European consumers.