

# Swedish Merger Control

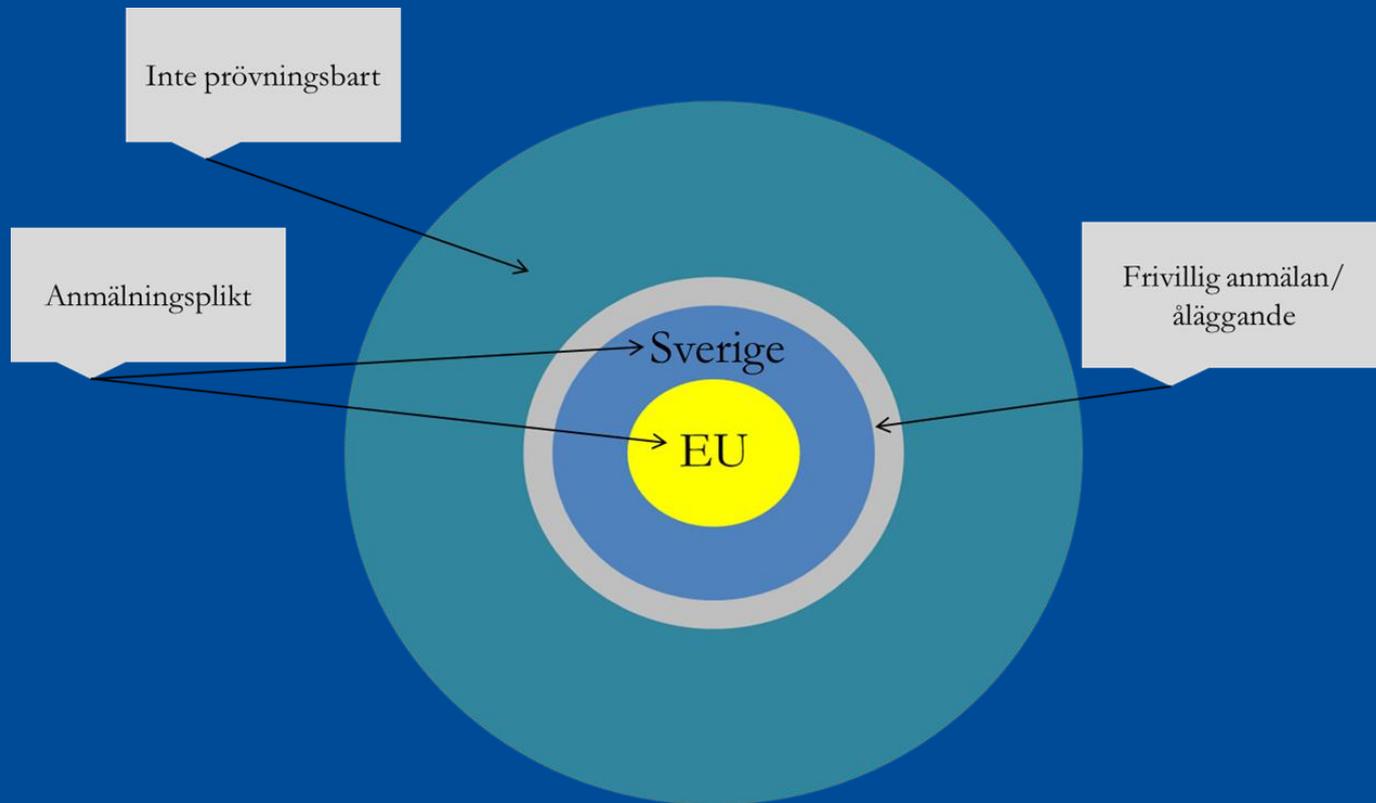
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Nordic Academic Network for Competition Law 4 October 2016

# Notification thresholds

## Thresholds:

1. Combined aggregate turnover in Sweden  
> 1000 million SEK
  2. Each of at least two undertakings' turnover in Sweden  
> 200 million SEK
- Mandatory notification if both thresholds met
  - SCA can request notification if first is met
  - Parties can voluntarily notify if first is met

# Illustration of merger jurisdiction



# Characteristics of Swedish merger control

- » Judicial (court) model
- » Concentration model since 2000
- » SIEC-test introduced in 2008
- » Stand still obligation
  - » Not sanctioned
  - » Closing issues in Swedbank case

# The courts from 1 September

- » Patent and Market Court
- » Patent and Market Court of Appeal



# Court cases 2009-2016

- » Åhléns, Department & Stores
- » Com Hem, Canal Digital
- » [Eniro, 118 800]
- » Assa Abloy, Prokey
- » Swedbank Franchise, Svensk Fastighetsförmedling
- » Orkla, Cederroth
- » Kronfågel, Lagerberg
- » [Schibsted, Hemnet]
- » Logstor, Powerpipe

# SCA./ Åhléns, Department & Stores

- » Overlap in cosmetics (fragrances, skin care and make up premium products)
- » Åhléns and NK department stores
- » Åhléns also owned Kicks, the largest cosmetic chain
- » The SCA initiated court proceedings
- » Åhléns abandoned the merger



# SCA./Com Hem, Canal Digital

- » 2011: Cable TV distributor Com Hem wanted to buy its rival Canal Digital
- » 4 to 3 merger
- » Telenor (seller) abandoned the merger after the SCA had initiated court proceedings (after the defence)

# SCA./. Assa Abloy, Prokey

- » Both parties were active in the locksmith wholesaler market
- » The SCA requested a notification of the deal
- » The SCA initiated court proceedings
- » Assa Abloy questioned the summons application
- » Assa Abloy abandoned the deal after the court had rejected Assa Abloy's plea



# SCA./ Swedbank Franchise, Svensk Fastighetsförmedling

- » Merger between Sweden's two leading national real estate agency chains
- » Shareholding in the leading property portal
- » Filed in January 2014, after closing
- » SCA's summons application in June 2014
- » Prohibited in December 2014 by Stockholm city court

# SCA./Kronfågel, Lagerberg

- » A 3 to 2-merger in the supply of *fresh* chicken (and chicken for grill) to daily retail
- » Strong consumer preferences for Swedish chicken
- » Increasing demand, capacity constraints, high barriers to entry and expansion
- » Incentives for Private Label, but no feasibility!



# SCA./Kronfågel, Lagerberg

- » No countervailing buyer power
- » Capacity constraints:
  - » Demand higher than supply
  - » Difficult to switch supplier or source Private Label
- » Prices for fresh chicken already high
  - » Higher gap between fresh and frozen chicken compared to other countries within EU
  - » "Unmotivated" price increases from Kronfågel already before the merger
  - » Kronfågel could influence how to allocate retail price increases between products
- » Not sufficient commitments
- » Summons application in January 2016
- » Seller choose to sell to another industrial buyer



# SCA./Orkla, Cederroth

- » 3 to 2-merger in the supply of weight control/nutrition products *sold in retail stores* (separated from e.g. pharmacies and internet)
- » Strong brands, Nutrilett (Orkla) and Allévo (Cederroth)
- » Technical feasibility to launch Private Label, but no incentives
- » Consumer confidence in a brand important
- » Nutrilett (Orkla) a "must have" brand
- » High investments in marketing and promotion of brands
- » A product market with decreasing sales
- » SCA's summons application in July 2015 formulated as an upfront divestment solution of trade mark Allévo before closing of the transaction
- » Judgement by the Stockholm City court on 28 July 2015 after adjustment by the SCA to a divestment commitment of Allévo within a certain period of time
- » The trade mark has now been divested to listed company Karo Bio

# SCA./ Blocket, Hemnet

- » A voluntary notification made by media house Schibsted
- » Owner of Blocket
- » The only threat to Hemnet according to testimonies before the courts in Swedbank merger court proceedings
- » Notification in February 2016



# SCA./ Blocket, Hemnet

- » Serious concerns
- » Kick-back model to the real estate agents would increase the problems
- » A number of commitments not sufficient to resolve the problems
- » Summons application to court was about to be submitted on 7 July 2016 when the parties abandoned the deal



# SCA./Logstor, Powerpipe

- » A heat power pipe merger between the two largest suppliers in the Swedish market
- » 4 to 3 merger
- » 80% market share
- » Summons application in February 2016
- » Judgement on 4 August: Relevant geographic market Northern Europe, not Sweden, no prohibition decision
- » SCA appealed to the Patent and Market Court of Appeal
- » Oral hearing will take place on 12-21 October 2016



# Practical advice

- » Evaluate carefully the risks of a merger, both from a commercial and legal perspective prior to the transaction
- » Set up a reasonable timetable for the transaction
- » Consider contractual commitments from your counterparty on competition risks
- » File a voluntarily notification if legal certainty is important
- » Avoid the risk of closing the deal before clearance
- » Refrain from gun-jumping activities
- » Give correct information to the authority and the courts
- » Offer structural commitments in good time