

## **The Swedish Competition Authority's policy for prioritising competition and procurement issues**

The aim of this policy is to clarify how the Swedish Competition Authority should generally prioritise the problems that ought to be investigated.

The Swedish Competition Authority must be selective when choosing which matters to pursue. The Authority must focus on investigating matters that are of general interest and that will produce clear results. The aim must always be to promote effective competition. Even though priority has been given to a matter, the Authority may limit the issues in the matter to be investigated. The Authority must consider the following factors when prioritising matters:

- The gravity of the problem or occurrence.
- The importance of getting a ruling to provide guidance.
- Whether it would be more appropriate for another authority or stakeholder to take action regarding the matter or whether it would be more suitable for it to be dealt with by applying a different system of rules.

### **The gravity of the problem**

Priority will be given to matters involving serious problems or occurrences. The gravity of a matter depends on the negative effects that may arise for competition, and thereby for consumers and public bodies. The Swedish Competition Authority considers that certain behaviour is particularly serious, such as agreements on prices, limiting markets, market sharing, exclusionary abuse of a dominant position, illegal direct procurement and, as regards public sales operations that restrict competition, operations that may be prohibited when they conflict with both the Competition Act and other statutes and involve the combined conduct of official operations and sales operations. Of course, this does not prevent the need for other kinds of violation to be given priority.

A repetition of behaviour that has previously been considered to constitute a violation or has been prohibited is regarded as a serious problem, and is normally given priority. One example in the area of procurement is that there are organisations and authorities subject to the procurement rules, and which should consequently apply them yet never do so.

Another important factor to take into account is whether the problem or occurrence bears on the entire Swedish market or a significant part of this market, or whether it is wide-ranging in some other way. A further factor is whether the problem applies to sectors of importance to the national economy that may be deemed to be of public interest; for example, that affect a large consumer collective. There is a risk that behaviour restricting competition in a market characterised by few stakeholders and weak competition will have a significant negative impact on competition in such a market. This may, for example, occur in markets that have recently been re-regulated.

**How important is it to establish legal rulings to provide guidance within this area?**

It is important to establish clarifying judicial rulings on certain legal issues; that is, legal precedents. This is particularly important as regards issues relating to new legislation.

An associated factor, of a rather universal nature, concerns the preconditions and prospects of the Swedish Competition Authority being able to investigate and prove the suspected problem in a way that is resource-efficient.

There may not be especially strong reasons for processing several similar matters. This particularly applies when a 'test case' combined with other measures to promote competition may serve to eliminate problems or where the preconditions are good for another stakeholder to take action regarding the matter, considering pre-existing practice.

**Would it be more appropriate for another authority or stakeholder to take action regarding a matter or could it be more suitable to deal with the matter by applying a different system of rules?**

The Swedish Competition Authority may refrain from investigating a matter if the Authority considers that it would be more appropriate for another authority to take action in a matter. The same applies if the fundamental problem could best be dealt with by the Authority proposing that the Government should take action by amending legislation. The Authority applies several systems of rules. The Authority always tries to apply the system of rules that it considers to be best suited to the problem. For example, the Authority may consequently choose to deal with the problem by applying the Act on Freedom-of-Choice Systems rather than the rules on public sales operations.

If an administrative court is considering a decision by a municipality or county council relating to public sales operations, the Swedish Competition Authority will normally wait for the final judgment or decision. The main rule within the area of procurement and for freedom-of-choice systems is that the Authority cannot deal with issues that are being considered by an administrative court.

If the position adopted by the Swedish Competition Authority on an issue that it is not to be investigated any further, this does not necessarily mean that there are no grounds for an investigation. If the Authority concludes that a competition matter should not be investigated any further after having made an overall assessment of the matter, an adversely affected business can instead exercise its autonomous right to bring proceedings; that is, pursue the matter itself at court. Such actions are brought by submitting a summons application to the Market Court. However, the summons application should be submitted to Stockholm City Court if the matter relates to public sales operations that restrict competition.