

## Ex-post evaluations initiated by the Swedish Competition Authority

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Ex-post evaluation of a Competition Authority's activities and decisions as well as evaluations of the rules of law in which the Competition Authority finds itself can serve several different purposes. The main purposes of ex-post evaluations are to:

- evaluate the correctness of a decision,
- evaluate the effects of a decision,
- evaluate the methods used in a decision,
- evaluate the decision-maker,
- evaluate the rules of law and
- evaluate the effectiveness of advocacy.

In this article, we will in the next section explore these six areas of ex-post evaluations and in the following section illustrate the role of ex-post evaluation with examples from the Swedish Competition Authority.

### What can we do?

One purpose of ex-post evaluations is to **evaluate the correctness of a decision**. The institutional setting in which the Swedish Competition Authority finds itself comes with an embedded evaluation of the correctness of the Authority's decisions since the Swedish Competition Authority is a prosecuting authority and not a decision-making one. The Authority cannot block mergers or fine companies

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for competition law infringements; it has to take those against whom such charges are brought to court<sup>1</sup>. What's more, the Swedish court procedure involves a full review on the merits of the Authority's case against the companies that are alleged to have violated the law. Thus, the Swedish institutional set-up is built around a procedure that involves a court, as an impartial body, which will evaluate the correctness of the Competition Authority's decision to file suit. In these cases, the court is thus well-placed to detect type 1 errors, i.e. when the Authority erroneously seeks to prohibit a behaviour that is not harmful to competition. When it comes to the opposite situation, i.e. where the Competition Authority chooses not to file suit, the Swedish legal situation differs between merger control and anti-trust proceedings. Regarding merger control, the Swedish system does not allow third parties to appeal a Competition Authority decision not to file a suit, meaning that there is no system in the law to prevent type 2 errors. In contrast, if there is an anti-trust complaint and the Authority decides not to act upon the complaint, the complainant can use the Authority's decision not to act, as a legal basis to pursue a case in the Market Court on its own (see Chapter 3 Article 2 of the Swedish Competition Act). Upon such a complaint, the Market Court can detect type 2 errors by the Competition Authority, i.e. when it has not taken action although harm is done to competition<sup>2</sup>. In such cases the decision of the court will replace that of the Competition Authority, without further appeal being possible. It follows that the Swedish Competition Act contains provisions to detect type 1 errors by the Competition Authority, as well as type 2 errors, although limited to the field of anti-trust and where a complainant chooses to bring the case to the court's attention.

Beyond the evaluation that will follow from court procedures, as discussed above, other means to evaluate the correctness of individual decisions would be to let independent researchers review either an individual decision, or a group of decisions. Sometimes, researchers do this on their own initiative. The Microsoft cases in both EU and the US have for example started intense debates in the competition community. A more aggregated approach is the event studies on merger decisions that look at share price reactions of rivals in order to evaluate whether the merger decisions are correct.<sup>3</sup>

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<sup>1</sup> If the company admits to having infringed the competition rules, the Authority may issue a 'fine order'. This means the Authority does not have to go to court and claim an administrative fine in cases where the parties are in agreement. Companies are free to accept a fine order, or not. An accepted fine order has the same effect as a court ruling. Further, the Competition Authority can order infringements of the prohibitions of the Competition Act to be terminated with or without the attachment of a fine.

<sup>2</sup> See e.g. Market Court case nrs. MD 2002:5, MD 2002:11 and MD 2008:18.

<sup>3</sup> See e.g. Eckbo, B. Espen (1983), "Horizontal Mergers, Collusion and Shareholder Wealth", *Journal of Financial Economics*, 11, pp. 241-273 and Tomaso Duso & Damien J. Neven & Lars-Hendrik Röller (2007), "The Political Economy of European Merger Control: Evidence using Stock Market Data," *Journal of Law & Economics*, vol. 50, pp. 455-489.

A second purpose is to **evaluate the effects of a decision**. This can be done in order to try to quantify the benefit the Competition Authority delivers to society or in order to examine the specific case and learn if the decision and the procedure leading up to it can be improved upon in the future. The focus of the Swedish Competition Authority's ex-post evaluations has mainly been the latter.

Some Competition Authorities try to quantify the effects on consumer welfare of its decisions.<sup>4</sup> The Office of Fair Trading in the UK has a performance target agreed with HM Treasury of delivering direct financial benefits to consumers of at least five times its cost to the taxpayer and reports on its fulfilment yearly.<sup>56</sup> The Swedish Competition Authority follows with interest such efforts, but has so far abstained from undertaking and publicising any in-depth quantitative measurements of the economic effects of its decisions.

The actual effects of Competition Authority decisions are hard to measure with accuracy. One problem is that it is hard to separate the effects of the decision from other factors. This means that what tends to be measured often is estimated or perceived effects rather than actual effects. Another major difficulty in evaluating the effects of decisions is the counter-factual. To ensure accuracy, the evaluation needs to know what would have happened in the absence of the decision. And, since we cannot observe two parallel worlds, many assumptions need to be made regarding the counter-factual. These assumptions can be problematic to make. Relevant questions will include what kind of competition that would have existed absent the cartel that has been detected or how competing companies could and would have developed absent a certain type of exclusionary abuse by a dominant firm. A, perhaps, slightly less complex situation is presented by mergers that the Competition Authority wanted to see blocked, but that were nonetheless implemented, e.g. following a decision by a court. In such cases, the predictions of the Competition Authority may be used as the counter-factual (although it may, in such an analysis, be relevant to also consider the possibility that the merger was in fact anti-competitive, but on other grounds than those initially identified by the Competition Authority).

A third purpose of ex-post evaluations can be to **evaluate the methods used in a decision**. This can help improving the methods used in future cases. Such an evaluation can be part of the routine at the Competition Authority. It could also be done by case studies, independent research etc.

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<sup>4</sup> See e.g. The Netherlands Competition Authority (2010), "2009 NMa Annual Bulletin" and Norwegian Competition Authority, (2009) "Konkurrencen i Norge".

<sup>5</sup> Office of Fair Trading (2009) "Positive Impact 08/09", OFT 1102.

<sup>6</sup> In 2009, OFT asked Professor Stephen Davies to evaluate OFT's impact estimation methodologies, comment on whether these are sound, and suggest possible modifications to the methodologies and its presentation. Davies' evaluation was published in January 2010. See Davies, Stephen (2010), "A Review of OFT's Impact Estimation Methods", OFT 1164.

A fourth purpose can be to **evaluate the decision-maker**. Is the Competition Authority of high quality? Does it achieve its objectives? How well does the Competition Authority perform its tasks? What can be observed are the institutions and policies adopted as well as the decisions of the Competition Authority. The quality of the decision-maker is typically not observable and any evaluation will be on perceived quality of the enforcement record of the Competition Authority. There are several attempts made to evaluate and rank Competition Authorities across jurisdictions. The yearly star rating by the Global Competition Review is one example. Such evaluations are helpful as far as they go, but even with relatively large efforts devoted to their realization, clearly cannot cover all relevant aspects of the work of relevant Competition Authorities.

A fifth purpose behind ex-post evaluations is to **evaluate the rules of law**. Competition Authorities as well as other parties affected by the rules and regulations have an interest in evaluating the rules and suggesting changes in the upcoming reviews that take place both on the International/ EU level as well as domestically. Such evaluations may sometimes be triggered by an evaluation of the decisions by Competition Authorities or courts in individual cases.

Finally, a sixth purpose for ex-post evaluations can be to **evaluate the effectiveness of advocacy**. How well do government bodies listen to the Competition Authority's advocacy efforts? What are the most efficient ways to perform advocacy?

## **What have we done?**

The Swedish Competition Authority has initiated evaluations in all of the above-mentioned six areas for possible ex-post evaluations. Examples from this activity are set out below.

### **Evaluating the correctness of decisions**

In 1998 the Swedish Competition Authority tried to block a merger between two domestic firms supplying various construction materials, Optiroc Group AB and Stråbruken AB. The Authority, however, lost in both court instances. Two years after the merger was consummated, the Authority asked Maria Bengtsson and Agneta Marell from Umeå University to look into the case<sup>7</sup>. Optiroc and Stråbruken manufactured bricks, mortar and other building materials. The combined market share amounted to 60-80% in most relevant markets at the time of the merger. In the motion to seek to have the merger blocked by the court, the Swedish Competition Authority argued that the merger was anti-competitive as it would create or reinforce dominance. In contrast to this, the parties argued that efficiency gains were present and that competition from international players were about to increase. Put shortly, the courts took the view of the parties.

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<sup>7</sup> Bengtsson, Maria and Agneta Marell (2001), "Utvärdering av Optirocs förvärv av Stråbruken", Konkurrensverkets A4-serie.

The purpose of the ex-post study was to evaluate the effects of the merger on competition in the affected markets. Bengtsson and Marell used the case material and performed interviews and surveys among market participants. Given the scope of the exercise, it was not possible to collect all relevant data on prices from all market participants. Instead, the researchers asked for the buyers' opinions of changes in prices and discounts. The results were mixed and even though the general view was that prices had increased by a small amount it was, in the absence of hard price data, not possible to conclude that the merger raised prices. On the other hand, Bengtsson and Marell found no evidence of realised efficiency gains. Nor was any expansion of imports from international players to the Swedish market noted. One may note that the merger was subsequently followed by other mergers in which several actors in the Swedish market were bought by international players. The company that resulted from the merger (Optiroc) was itself bought by the German firm Heidelberg Cement shortly after having been formed, but then sold on to Saint-Gobain in 2008.

One conclusion from this ex-post evaluation exercise was that the lack of hard data regarding price movements significantly reduced the ability of the study to draw firm conclusions regarding the correctness of the predictions from the time of the merger control procedure. This conclusion hints at the need for having both sufficient legal means to collect such data for the purposes of ex-post evaluations and for being able to devote the needed resources for their collection and analysis.

### **Evaluate the effects of the decision**

The Swedish Competition Authority has not performed a significant number of studies to evaluate the effects of its decisions. However in some cases, interesting indications can be had from a limited set of available data. In our biggest cartel case, a cartel between the major producers of asphalt<sup>8</sup>, the Swedish Transport Administration, which is the main contracting entity, reported that prices fell by approximately 25 per cent after the cartel was revealed in 2001.<sup>9,10</sup> In a case regarding airport coaches, the intervention by the Swedish Competition Authority resulted in competition on two routes that were previously operated by a monopoly<sup>11</sup>. Prices fell by as much as 80 per cent!<sup>12</sup>

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<sup>8</sup> Case nr. 341/2003.

<sup>9</sup> Vägverket (2007), "Prisutveckling för underhållsbeläggning, typ ABT" in *Upphandling i fokus 2007*.

<sup>10</sup> Two evaluations commissioned by one of the parties in the cartel came to the conclusion that the cartel had not raised prices statistically significant. See Copenhagen Economics (2006), "Effektanalys av den misstänkta asfaltkartellen" and Ganslandt, Mattias (2006), "Ekonometrisk analys av Vägverkets upphandlingar av beläggningsarbeten under perioden 1992-2003".

<sup>11</sup> Case nr. 304/2009.

<sup>12</sup> Actual prices by FlybyCoach posted at Cityterminalen on September 28, 2009.

Another example relates to the Swedish Competition Authority's review of the effects on competition of imposing restrictions on the use of frequent flyer programs (FFPs) in the Swedish domestic aviation market. In 2002, the Swedish Government asked the Competition Authority to investigate this question and to present proposals for action<sup>13</sup>.

The background was that the incumbent airline, SAS, had introduced its FFP for domestic air travel in May 1997. In 1998, the Swedish Competition Authority launched an inquiry based on the suspicion that SAS, by applying the scheme, was in breach of Section 19 of the Competition Act (equivalent to Article 102 TFEU), prohibiting abuse by any undertaking of a dominant market position. In a decision, the Competition Authority found that SAS had abused its dominant position by applying its FFP for domestic flights, as this made it harder for other carriers to start or maintain competitive services on domestic routes. The Authority's decision meant that SAS was no longer permitted to operate its FFP in such a way that points or the equivalent for the redemption of bonus awards could be earned on domestic flights.

SAS appealed the decision to the court, which in a decision 2001<sup>14</sup>, ordered SAS to cease applying its FFP in such a way that domestic travellers could earn points or the equivalent for the redemption of bonus awards on routes where SAS was in competition with other carriers.

The evaluation of the Competition Authority in 2003 came to the conclusions that the use of FFPs in the Swedish domestic aviation market has imposed restraints on competition, particularly when such programs are applied by an airline with a dominant market position. The court's decision restricted SAS application of its FFP, which was seen to have limited the anticompetitive effects of the program, which in turn was found to have made it easier for new carriers to establish services in competition with SAS.

In May 2008, SAS applied to the Competition Authority for the court ruling to be lifted<sup>15</sup>. On 9 January 2009, the Authority considered that the injunction applied to the infringement that existed at the time of the court's decision. However, as the Competition Authority does not give negative clearance decisions or any advance notification of its positions, it has not examined whether a reintroduction of the scheme on domestic routes exposed to competition would represent an abuse of a dominant position. It was therefore for SAS itself to decide whether its FFP can be applied on these routes without violating competition law.

Shortly afterwards, SAS reintroduced the domestic FFP scheme. The Swedish Competition Authority has not since opened any investigation into the matter.

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<sup>13</sup> Swedish Competition Authority (2003), "There is no such thing as a free lounge", Swedish Competition Authority Report 2003:1.

<sup>14</sup> Market Court case nr. MD 2001:4.

<sup>15</sup> Case nr. 324/2008.

**Evaluate the methods used in the decision**

How accurate are the simulation models that are used to analyse the effects of mergers? In a paper by Arvid Fredenberg and Niklas Strand (both at the Swedish Competition Authority at the time) tried to address the issue by comparing the simulation results for a merger in the Swedish fresh bread market with the actual outcome after the merger<sup>16</sup>. The simulations were performed by Fredenberg and Strand as a part of the Swedish Competition Authority's investigation of the merger in February and March 2003<sup>17</sup>. The merger was unconditionally cleared on March 18. Two years later the authors looked at what really happened after the merger was consummated.

Five different segments of the fresh bread market was analysed at the time of the merger, but in the article they only report the segments white bread and sweet rye bread. The authors started by simulating them separately, but information gathered from the merging parties and their competitors revealed that that these two segments were close to each other, so they continued by simulating them as one market. In the final market definition in the decision, the relevant market was all fresh bread. The simulations resulted in estimated price increases of 3 to 5 percent for Cerealia and 4.5 to 8 percent for Schulstad. The average price increase on the whole market was 1.5 to 2.7 percent.

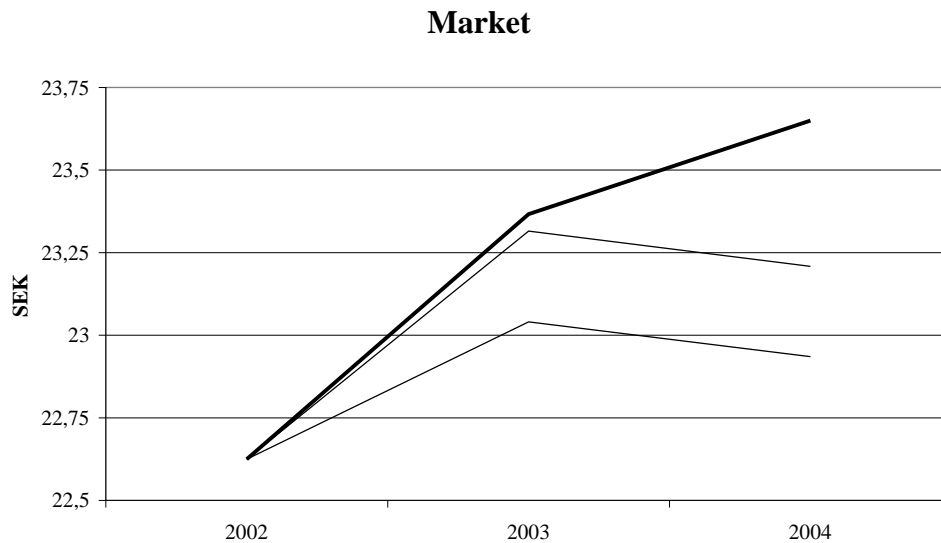
Figure 1 below shows the estimates compared to the actual outcome, where it was assumed that the entire effect of the merger was realised by 2003. For 2004 it was assumed that the prices follow the development of food in general, which in fact declined between 2003 and 2004. The thin lines show the upper and lower bound of the simulation results.

Figure 1: Predicted effects (thin) and actual outcomes (thick)

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<sup>16</sup> Fredenberg, Arvid and Niklas Strand (2005), "On Simulation and Reality: An Example" in: Peter A.G. Bergeijk end Erik Kloosterhuis (eds.), *Modelling European Mergers. Theory, Competition Policy and Case Studies*, Edward Elgar.

<sup>17</sup> Case nr. 107/2003.



The results from the simulations compared to the actual outcome on the market reveal that the simulations underestimated the price rises. The market price increased by 3.3 percent between 2002 and 2003 and an additional 1.2 percent between 2003 and 2004, when general food prices decreased. The chosen demand model, Logit demand, gives conservative effects compared to some other demand models.<sup>18</sup> Therefore, the underestimation of the price rises is not altogether surprising.

One conclusion from this ex-post evaluation exercise is that the predictions from merger simulation models are very sensitive to the chosen demand specification. This conclusion stresses the importance of robustness checks in merger simulations, both when performed by Competition Authorities and parties. In the present case, the Authority erred on the conservative side, which minimized the risk of type 1 errors.

### **Evaluate the decision-maker**

The Swedish Competition Authority has for more than 15 years commissioned an audit on the perceptions of our stakeholders concerning the Authority's work, including when applying competition law. Our most important stakeholders are: large companies (200 employees or more), small and medium-sized companies (fewer than 200 employees), trade associations, municipalities and county

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<sup>18</sup> In order for the logit demand model to predict average market price increases of the size observed in practice (>4.5 percent) the market elasticity for the affected bread market needs to be 0.45 with brand elasticities of 2.0 or less, which is clearly not reasonable for such a small part of the bread market. Instead it seems that the small convexity of the Logit demand function is to blame for the poor predictions.

councils, commercial lawyers and journalists. In the survey for the year 2009, a group has also been included named public authorities and administrations<sup>19</sup>.

The general perception among all stakeholders is that there is a broad positive attitude towards competition and feeling that competition is beneficial for the consumers. A majority of all stakeholder groups consider that the application of the law has contributed to obtaining well-functioning markets. There is however the broad perception that market participants are consciously breaking the Competition Act. A majority in all groups believe that it occurs quite or very often. In no group does the majority believe that the possibility of being released from administrative fines have substantial influence on the desire to admit to participation in a cartel. A majority of those queried think the Competition Authority is actively counteracting harmful restrictions on competition and in all subgroups a majority think that our decisions and other measures give companies and public authorities guidance in competition issues.

The general attitude towards the competition law is quite similar among the different stakeholder groups. The proportion of those who are positive varies from 48 percent (smaller companies) to 75 percent (public authorities and administrations). Among those who have been in contact with the Competition Authority, a clear majority give high marks when it comes to availability, handling and competence.

Only 49 percent answered that they have great or very great confidence in the Competition Authority. The proportion with great confidence varies a lot between the groups and is lowest among smaller companies (33 percent) and highest for authorities and administrations (75 percent). The Authority uses these stakeholder surveys in order to identify areas where additional advocacy or information activities may be particularly useful, as well as to record attitude changes over time in order to get an early warning that specific attention may be needed in a specific area.

#### ***Research on success rate in court***

Since a major task of the Swedish Competition Authority is to pursue action in court, it is of utter importance that our performance in court is of high standard. Against this background, the Swedish Competition Authority asked, in June 2004, Ingeborg Simonsson a lawyer and doctoral candidate at Stockholm University to review all the Authority's court cases<sup>20</sup>. She was asked to examine our success rate in court, analyse the reasons and suggest measures to improve the success rate. Her findings were the following:

Since the entry into force of the 1993 Competition Act and until the end of 2004, the Swedish Competition Authority has won 45 percent, lost 42 percent and won

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<sup>19</sup> Swedish Competition Authority (2010), "Annual Report 2009".

<sup>20</sup> Ingeborg Simonsson (2005), "Konkurrensverkets domstolsprocesser 1993-2004" Konkurrensverkets uppdragsforskningsserie 2005:2.

partially in 14 percent of its court cases. A significantly better result was observed in cases against public undertakings, where the Swedish Competition Authority has won in whole or in part in 79 percent of its cases. Explanations for this appear to be twofold; focused enforcement activities from the Competition Authority coupled with the fact that the Authority has been supported by private parties in a number of those cases.

Simonsson summarised the reasons for the difficulties encountered as follows:

- In more than half of the lost cases, courts have interpreted substantive competition law differently than the Competition Authority.
- In about one third of the lost cases the courts have based their judgments on the Competition Authority having conducted insufficient investigations of the facts and market conditions.
- Occasionally, the Competition Authority has lost cases partially or in whole as a result of procedural shortcomings.

The study found that the Authority's market definitions and economic analysis appeared to have functioned well in relation to the demands of courts. Simonsson further concluded that cartel enforcement does not appear to have been a major priority during the 1990's. Increased cartel enforcement can be observed from the end of 1999. The sanction policy pursued by the Authority as from the year 2000, with claims for dramatically increased fines, has been met with some reluctance by courts. The Competition Authority's claims for high fines, combined with the relatively lower amounts actually imposed by the courts, can, according to Simonsson, have counter-productive effects by reducing the incentive for undertakings to inform the Authority about infringements. The policy also entails substantive risks for the Competition Authority as regards responsibility for the litigation costs of undertakings.

Simonsson suggested a number of measures, mainly concerning better economic and legal quality control in the handling and prioritization of cases. Some measures were already implemented at the time of the publication of the report and other have since then been implemented.

### **Evaluate the rules of law**

In 2006, the Swedish Competition Authority decided on its own initiative to evaluate whether the turnover thresholds for merger notification were appropriate or could be improved upon<sup>21</sup>. In order to analyse the turnover thresholds, the Competition Authority looked at approximately 200 concentrations that were notified during the 2003-2005 period. Furthermore, the Authority analysed all 62 phase-2 investigations during the 1993-2005 period.

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<sup>21</sup> Konkurrensverket (2006), "Tröskelvärden för koncentrationsprövningar" Konkurrensverkets rapportserie 2006:3.

The analysis showed that raising the individual turnover threshold from 100 to 200 million SEK would reduce the number of notifications with approximately 40 per cent. The analysis further showed that this would not appreciably have increased the risk that harmful concentrations would remain undetected<sup>22</sup>. The analysis also indicated that changing the turnover threshold from 4 billion SEK globally to 1 billion SEK in Sweden would leave the number of notifications approximately unchanged. Of course, a different set of concentrations would be notified.

The analysis that the Competition Authority made suggested that competition concerns are *more* likely to arise in relatively small transactions (if a measurement of size is used to define size). This, together with some additional considerations, suggested that the number of harmful concentrations that would be subjected to legal scrutiny would increase if the turnover thresholds were adjusted as suggested above.

The Competition Authority submitted the report to the government, which took the suggestions of the Competition Authority to the parliament and the law was changed accordingly in November 2008. The Swedish Competition Authority was notified of 43 concentrations in 2009 (89 notifications in 2008 and 110 in 2007). The sharp reduction in the number of notifications in 2009 may partly be explained by the economic situation but the new notification rules that were introduced in the autumn of 2008 have certainly contributed to the decline.

### **Evaluate the effectiveness of advocacy**

One of the Competition Authority's tasks is to notice impediments to efficient competition in the public and private sector. Some 17 per cent of our time is devoted to advocacy. We are to present proposals for opening up competition and for reforming regulations<sup>23</sup>, as well as to follow up on developments in the area of competition. We provide accounts of our proposals for measures for better competition in reports, replies to official consultations and in letters to the Government. We also provide opinions to other public authorities that wish to know what the Competition Authority thinks of a particular report or change to a law.

The Swedish Competition Authority was in August 2008 commissioned by the Government to prepare a report describing areas of the economy where

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<sup>22</sup> The Competition Authority has the power to require that a particular concentration is notified to the Authority, as long as it meets the one billion threshold, even if it does not meet the required two times 200 million individual turnover threshold.

<sup>23</sup> In 2009, The Swedish Competition Authority published several commissioned reports on the effectiveness of the current legislation. See e.g. Spagnolo, Giancarlo (2009), "Open Issues in Public Procurement" Uppdragsforskningsrapport 2009:7, Edvardsson, Eva (2009), "Domstolsprövning av marknadsrelaterad lagstiftning" and Bernitz, Ulf (2009) "Förslag till ny lag om uppgiftsskyldighet rörande marknads- och konkurrensförhållanden".

competition problems could be identified and to propose specific action for enhancing the competitive situation in Sweden<sup>24</sup>. As a starting point of the task, we looked back at all the proposals we had submitted to the Government since the year 2000, more than 400 in total. The proposals were listed and classified according to the level of success. Roughly 30 percent were passed wholly or partially by the Government or Parliament. Almost half were still under evaluation by the Government and less than 20 percent were dismissed by the Government.

In the final report in March 2009, The Swedish Competition Authority submitted 60 proposals to the Government. In a press release by the Minister for Enterprise and Energy and Deputy Prime Minister, Maud Olofsson, declared that the Government would consider all the proposals<sup>25</sup>.

### **What will we do?**

The Swedish Competition Authority has adopted a policy setting out its priorities for dealing with competition and procurement matters. During the latter part of 2009, the agency sought and received comments from stakeholders on its policies in this regard. A final policy has now been published. When deciding priority, the policy sets out that the Competition Authority will weigh in the following factors:

- How serious the problem or offence is.
- How important it is to arrive at a leading decision.
- Whether another public authority or actor is in a better position to deal with the matter, or whether the matter would be better dealt with under some other law or regulation.

Whether or not we stick to our prioritisation policy will be something to evaluate regularly. We will of course also continue with surveys among stakeholders.

When it comes to evaluation of individual decisions, we first have the court procedure. We will examine whether our success rate in court has increased since the 2004 study and the follow-up measures that this work led to. We also intend initiate evaluation of some specific cases. A consummated merger that will be interesting to evaluate in the future is the AssaAbloy/ Copiix merger which the Swedish Competition Authority in 2008 sued to block, but lost on procedural grounds. The Authority's prediction of the effects of the merger was quite clear as were the parties' predictions. This merger may be ripe for ex-post evaluations relatively soon and it will be interesting to see which prediction was closer to what really happened, and also if there were other market developments that

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<sup>24</sup> The Competition Authority's report series 2008:5, 2009:1 and 2009:4.

<sup>25</sup> Ministry of Enterprise, Energy and Communications, "Näringsministern kommenterar KKV:s slutrapport" Press release March 31, 2009.

significantly affected the outcome, but which neither side included in the predictions.