

**International Symposium on Competition Policy and Legislation  
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Ladies and Gentlemen,

I would like to thank the State Administration for Industry and Commerce for inviting the Swedish Competition Authority to participate in this important symposium. And I feel very honoured to speak about competition policy here in Beijing at a time when liberalisation of markets and competition are two topics under debate.

China is one of the most important economies of the world. Sweden is a small country with about 9 million inhabitants. However, there are several common features that characterize opening up markets and a well functioning market economy, regardless of its size. I would like to comment on mainly three of them, regulatory reform, the role of consumers and, of course, competition law and policy.

A number of international studies show that there are considerable benefits to be gained in opening up markets to competition. One example is a study published earlier this month from the Organisation for Economic Cooperation and Development, OECD, about the benefits of liberalising product markets and reducing barriers to trade and investment. The study shows that more open product markets create higher productivity and that the gains from liberalisation of markets to a significant extent flow from increased exposure to competition.

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Markets exposed to competition require generally a number of regulations in order to function well. Competition policy and legislation, consumer protection laws, trade laws and sector regulations are some elements in the necessary legal framework.

Rapid technological development, particularly in the telecommunications sector, in conjunction with an increase in demand for different services and international liberalisation has fundamentally changed the market conditions. The number of individual companies has increased. Of importance is also the recognition that public utility industries are made up of many separate parts (production and distribution) that may require different approaches with regard to exposure to competition.

In Sweden significant reforms of market liberalisation were carried out during the 1990s. Domestic aviation, electricity, postal services and the telecommunications markets were all opened up to competition during the last decade.

The liberalisation of these markets raised the question of how to regulate the new industries in order to promote competition and safeguard consumer interests. Although many problems linger, it seems clear that these reforms created new markets and consumer welfare by reducing prices and increasing quality and supply. The liberalisation, in particular of infrastructure markets such as telecommunications and transports, has implied that former state monopolies have been subject to significant changes.

As regards the Swedish experiences, one overall conclusion is that prices have risen in markets where the dominant company, often the former state monopoly, has been able to maintain its position of strength, while the reverse applies where newcomers have increased their market shares. Experience shows that in some cases it takes a considerable time for new companies to gain a foothold in the market.

Competition promotes market development and stimulates innovation to the benefit of consumers. Consumers benefit not only from lower prices and a wider range of choices but also a significantly better position of strength in the market. Another positive effect of opening up markets to competition and boosting the number of companies operating in them is

that this broadens the labour market for employees, i.e. they are no longer restricted to one or a few employers. Companies operating in a competitive market also have to economize with their resources in order to reduce costs and thereby to be in a position to offer good products at low prices.

No market can operate efficiently without active consumers. Greater freedom of choice, however, requires increased awareness among consumers if they are to reap the full benefits of the restructuring process and of greater competition. Informed consumers are better placed to influence production and improve the way the market operates.

An often neglected problem that may arise in markets exposed to regulatory reform and competition is that consumers do not possess enough information about the competitors. Besides, to collect the information consumers need for comparison of prices and terms offered by the companies is often a time-consuming and costly activity. This in turn may reduce customer mobility in the market and thereby reduce competition.

Consumer expectations that develop prior to a planned reform may also be unrealistic. In such cases, the reform may appear to have failed despite having created a more efficient market.

Switching costs, that is the cost for the consumer to switch from one supplier to another, are present in almost all areas of the economy and firms develop strategies and practices to restrict the mobility of consumers. The significance of switching costs varies of course. When switching costs are significant, regulatory intervention could be considered in order to make it easier for newcomers to attract customers from the incumbent.

However, consumers and other players on the market cannot not benefit fully from competition without a forceful competition legislation in place and effective enforcement of the rules by competition authorities.. “Welfare through well functioning markets” is the vision that we at the Swedish Competition Authority have for our work and priorities. No doubt, competition authorities have a central role to play to make markets function well for consumers. Liberalisation of markets and globalisation are two factors that have made this role even more important.

As in most other jurisdictions around the world, the Swedish competition law has two outright prohibitions: the first one is on cartels and the second on abuse of a dominant position. The rules apply equally to private and public companies as well as to domestic and foreign firms. And the law applies to all sectors of the economy.

Fighting cartels is generally the number one priority in our work – agreements between competitors to fix prices and to divide up markets are illegal actions that cause consumers great harm. These serious infringements of the competition laws must be stopped and heavily punished, for the harm done and for the deterrent effect of showing the seriousness of this type of violations of the law. Companies participating in a cartel produce less and earn higher profits and society and consumers pay the bill.

Even if cartels probably exist in every sector of the economy, they are more frequent in some sectors than others. Sectors that are characterised by a relatively high degree of concentration, significant barriers to entry, homogeneous products, similar cost structures and mature technologies are particularly exposed to collusive behaviour by firms. Steel, cement and chemical industries are often mentioned as examples of such sectors.

To this, I would like to add the construction industry. In Sweden, as well as in many other European countries, cartels seem to exist in particular in that industry. The construction of roads and other infrastructure works are often carried out by municipalities and government bodies that purchase the services and the material from construction companies in a public procurement process. Competing companies may then agree on the prices to offer, that is, engage in a bid-rigging cartel. This type of cartels is perhaps the most serious of them all, as we, the tax payers, directly have to pay for the profits gained by the companies involved. Bid-rigging cartels are also more severely condemned in many jurisdictions - companies are not only fined but their managers are also sent to prison.

But cartels are not limited to those more traditional markets. An effect of the globalisation is the emergence of international cartels and in some cases the collusion is facilitated by new technologies that allow for rapid dissemination of information and create more transparency in the market.

One single firm with sufficient market power can also seriously restrict competition by abusing its dominant position on the market. Various forms of exclusionary behaviour, for instance predatory pricing or price discrimination, are used to foreclose competitors from the market and recently liberalised markets need special attention from competition authorities in this respect. The cases involve frequently complex economic investigations and new approaches are needed to combat abuses that arise for instance in the information technology sector.

But competition authorities do not apply the competition rules on their own. Courts with capacity to handle competition cases within reasonable time frames and with competence to examine complex competition issues of an economic nature are essential for effective enforcement of competition laws. In Sweden as in many other countries the capacity of the courts is an issue under debate.

In addition to competition law enforcement, competition authorities also contribute to well functioning markets by informing governments, regulators and other public bodies about distortions of competition that may arise from existing or planned regulations in other areas. This advocacy role is an important supplement to law enforcement, especially in the liberalisation process.

Competition policy alone will not be sufficient to ensure that markets work well. As I mentioned before, legislation in other areas is necessary to support competition. Patent laws and other regulations on intellectual property rights are examples of such legislation. And I know that China has made great efforts in recent years to adopt new legislation in this field, in particular in relation to the accession to the World Trade Organisation. The implementation of the laws seems quite remarkable. For example, by the end of 2004, China had accepted more than two million patent applications, including patents for inventions, utility models and industrial designs. The patent laws and the competition laws share the same goal in that they both promote innovation and generally the two systems work well together. Most patents do not result in market power that can impair competition. In most cases the exclusive right granted to the patented product is countervailed by substitute products available to the consumers. It may be the case, however, that an owner of an intellectual property right,

that is dominant on the market, tries to exploit it in a way that violates the competition rules.

Turning back to regulatory reform, general competition law and special legislation are important instruments for promoting competition in markets which are not yet sufficiently competitive. In the great majority of cases, it is not a question of *whether* regulation is needed or not, but of *how* regulation should be designed. Access regulation supplementing general competition policy has proved a key element when markets are opened for competition, but it is also problematic and controversial. Various models in use have both advantages and disadvantages.

In network industries, it is usually not in the interest of those who own the infrastructure to grant competitors access to it. Infrastructure owners may, for instance, choose to charge such a high price for the use of the infrastructure (bottleneck) that existing competitors are eliminated and potential newcomers are prevented from entering. To avert such situations, the regulator must decide which principles should be applied to the provision of infrastructure access.

In a regulated market, it is harder for infrastructure owners to charge fees that exceed the actual cost of the service, as the size of the fee normally has to be objectively justified. Owners are, however, in a position to raise the cost to competitors by only offering a package of services (bundling) instead of offering the services individually. Competitors may then have to purchase more services than they need in order to compete, which would mean paying an unnecessarily high price.

The main difficulty for governments lies in drawing up regulations that strike a balance between measures designed to boost infrastructure-based competition, i.e. competition between networks, and ones designed to boost service-based competition within the same network. Where infrastructure-based competition is viable it is to be preferred to service-based competition within the same network. The former is less in need of regulation, i.e. there is less risk of regulatory failure. Also, when there are competing networks, competitive pressure develops throughout the value chain.

Access regulation can be very complicated when it seeks to serve a number of different – and often conflicting – interests. To encourage market entry, access prices must be kept low. But excessively low access prices reduce the incentive to invest in infrastructure, and without competitive infrastructure, regulation cannot be abolished. Formulating a viable set of regulations, therefore, is a matter of creating both proper investment incentives and low entry barriers. In some cases, opportunities for developing an effective regulatory framework for market access have suffered from the fact that experience gained in one industry has not been adequately taken into account in other industries that encounter the same types of problems.

Vertical separation, i.e. separating infrastructure out of a former monopolist can be a supplement to access regulation. In most countries, however, vertical separation can only be undertaken if the infrastructure company is state-owned. To introduce effective access regulation will become even more important if the infrastructure is subject to privatization. In any case, the specific conditions in every industry must be analysed and the benefits and costs of separation versus integration should be carefully balanced.

To conclude: I have made some comments on three factors of particular importance to the process of market liberalisation: Forceful competition legislation and effective enforcement, well designed infrastructure regulations and last but not least, active and strong consumers.

Thank you for your attention.