

TRANSLATION
ONLY THE SWEDISH TEXT IS AUTHENTIC

Alleged competition concern – car advertising platform market

Decision of the Swedish Competition Authority

The Swedish Competition Authority will not investigate the matter further.

The Case

Complaints

During the autumn of 2015, the Swedish Competition Authority received anonymous complaints against Blocket AB (Blocket). In these complaints, car dealers claimed that Blocket was abusing a dominant position. The alleged abuse consisted of the conditions set by Blocket for car dealers to be able to advertise on Blocket. One of the conditions implied that car dealers could not advertise on Blocket unless the car dealers first entered into a subscription agreement to advertise on a website owned by Blocket's sister company Byt Bil Nordic AB (Byt Bil).

Background

Blocket provides an advertising site on the internet where car dealers and individuals can advertise vehicles for sale. Byt Bil also provides an advertising site on the Internet where car dealers, but not individuals, can advertise vehicles for sale. Blocket offers advertising subject to certain general terms and conditions for classified advertisement subscriptions. According to the terms and conditions in force at the time of the complaints, car dealers that wanted to advertise on Blocket had to make their advertisements available for import to Blocket via Byt Bil. In order to be able to do so, car dealers also had to advertise on Byt Bil. The conditions thus meant that car dealers' advertisements on Blocket's advertising site also required advertisement on Byt Bil's advertising site.

In March 2017, Blocket and Byt Bil informed the Swedish Competition Authority that an internal project for the development of a new strategy specifically for the advertising category of cars is ongoing. The new business model is based on a

basic product that includes advertising on Blocket. The car dealer will then be able to purchase additional services such as advertising on Byt Bil as an add-on to this basic product. During May 2017, Blocket and Byt Bil have informed their customers about the changed business model. The new business model will be implemented later in the year.

The companies

The Schibsted group is an international media group with its head office in Norway. In 2015, the Schibsted Media Group had an operating turnover of just over NOK 15 billion.¹ In the same year, the turnover for the group's Swedish operations was just under NOK 4 billion.²

Blocket and Byt Bil are part of the Schibsted group. In 2015, Blocket's annual turnover was just under SEK 869 million, and in the same year the company had 152 employees. In 2015, Byt Bil's annual turnover was just under SEK 86 million, and in the same year, the company had 27 employees.

The Swedish Competition Authority's investigation

The Swedish Competition Authority's investigation has focused on assessing whether Blocket and Byt Bil are applying terms and conditions which risk leading to the foreclosure of customer demand for competitors to Blocket and Byt Bil, and whether the practice thus constitutes an abuse of a dominant position contrary to Chapter 2, Section 7 of the Swedish Competition Act (2008:579), hereinafter KL.

In the course of the investigation, the Swedish Competition Authority requested that Blocket and Byt Bil provide information on *inter alia* their contractual terms and conditions, and market conditions. The Swedish Competition Authority has also gathered information from competitors, customers and industry associations. In addition, the Swedish Competition Authority has conducted a survey with questions addressed to car dealers, which were answered by just over 1000 respondents.

The investigation has shown the following:

There is a large number of car dealers in Sweden that advertise different vehicles for sales to vehicle customers. Individual vehicles are advertised for sale through classified advertisements that have previously mainly been advertised in various types of newspapers and magazines. In the last 20 years or so, vehicle advertisements have shifted to a large extent to various websites on the internet. On the internet, Swedish car dealers advertise on their own websites and also on various advertising platforms for vehicle advertisements on the internet such as

¹ Schibsted Media Group Annual Report 2015, p. 10

² Schibsted Media Group Annual Report 2015, p. 6

Blocket and Byt Bil. Many car dealers advertise only on advertising platforms on the internet.

Vehicle advertising on advertising platforms on the internet has increased significantly in the twenty-first century. Advertising on these platforms often constitutes a large majority of a car dealer's total advertising costs.

Advertising platforms for vehicle advertisements on the internet bring together vehicle advertisements from car dealers throughout Sweden and offer tools for vehicle customers to search and compare a large number of different vehicles. The advertising platforms' search tools give visitors the opportunity to sort vehicles on the basis of a number of different characteristics such as brand, model, colour, year, etc. Many different types of vehicles are advertised on the platforms. In addition to cars, the platforms advertise motorcycles, vans, and campervans etc, for example. Both new and used vehicles are advertised on the advertising platforms, but in general the great majority of the vehicles are used.

The advertising platforms are specialised in advertising vehicles and related products and services³, and the majority of the platforms do not advertise other types of goods or services. In comparison with other platforms for vehicle advertisements, Blocket offers a larger, more general advertising site for many different types of goods and services, but on this advertising site, Blocket also has a section focusing on vehicles where visitors can choose only to search among a large number of vehicle advertisements. Other advertising platforms for vehicle advertisements could therefore be seen as more specialised on vehicle advertisements in comparison with Blocket.

Blocket and Byt Bil are the two biggest advertising platforms for vehicle advertisements in Sweden in terms of both the number of advertised vehicles and the number of advertising car dealers. Besides Blocket and Byt Bil, there are a number of other advertising platforms for vehicle advertisements, but these platforms have a smaller number of advertised vehicles and fewer advertising car dealers compared with Blocket and Byt Bil. Even with regard to traffic on the advertising platform (the number of visits by prospective vehicle customers), Blocket and Byt Bil are bigger than other platforms. Among the other advertising platforms for vehicle advertisements in Sweden, Bilweb, Biltorget and Bilgaraget are the main ones.

³ The advertising platforms can also have advertisements for different accessories and spare parts for vehicles for example, and can also advertise related services such as workshop/repair shop services.

Reasons for the decision

Legal basis

Pursuant to Chapter 2, Section 7 of KL, and Article 102 of the Treaty on the Functioning of the European Union (TFEU), the abuse of a dominant position is prohibited. Such abuse can particularly take the form of the dominant firm limiting production, markets or technical development to the prejudice of consumers.

Relevant market and dominant position

A dominant position has been defined by the EU Court of Justice as a position of economic strength, which enables an undertaking, to an appreciable extent, to act independently of its competitors, customers and ultimately of its consumers. In general, a dominant position derives from several factors which, taken separately, are not necessarily determinative.⁴

In order to assess whether an undertaking has a dominant position, it is necessary to define a relevant product market and a relevant geographic market. The relevant product market comprises those products that the customers considers to be substitutable – that is, such products that in terms of price, function and general characteristics can satisfy the same needs of the customer. The relevant geographic market comprises the area within which the undertakings concerned provide the relevant products, where the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring geographical areas primarily because of appreciable differences in the conditions of competition.⁵

For visitors, i.e., vehicle customers, advertising platforms offer them the opportunity to search among a large number of vehicle advertisements from a large number of car dealers throughout Sweden in one place. Advertising platforms also offer tools that simplify the searching process for vehicle customers and give them the opportunity to sort their results in a variety of ways based on a number of different vehicle characteristics. Consequently, for vehicle customers searching among vehicle advertisements, advertisement on advertising platforms on the internet differ from vehicle advertising in other channels.

Also for the advertising car dealers, advertisement on advertising platforms on the internet differs from advertising in other channels. The Swedish Competition Authority's survey conducted among Swedish car dealers shows that many car dealers only advertise on advertising platforms on the internet. Furthermore,

⁴ See the EU Court's decision in case C-27/76 *United Brands v European Commission* REG 1978 p 207, p 65.

⁵ The Commission Notice on the definition of relevant market for the purposes of Community competition law. OJ C 1997/C 372/03.

different actors operating advertising platforms on the internet consider other similar advertising platforms as their main competitors.

As regards the geographic market, the platforms offer opportunities for Swedish car dealers to advertise their vehicles. The Swedish Competition Authority's investigation has shown that very few car dealers in other nearby countries advertise their vehicles on the advertising platforms. The Swedish car dealers who advertise are spread across the whole country.

These circumstances indicate that the relevant market consists of a Swedish market for advertising platforms for vehicle advertisements on the internet. However, the Swedish Competition Authority does not take a position on the definition of the relevant market since it is not necessary to do so in order to decide on the case.

The investigation has shown that Blocket and Byt Bil have a strong market position among Swedish advertising platforms for vehicle advertisements on the internet. More than 95 per cent of the respondents to the survey conducted by the Swedish Competition Authority advertise on Blocket and Byt Bil while other competing advertising platforms are used to a significantly lesser extent. The Swedish Competition Authority's investigation also indicates that Blocket and Byt Bil together have substantially more traffic in the form of visiting vehicle customers to their advertising platforms compared with other competing platforms. The investigation has further shown that car dealers consider advertising on Blocket as essential in order to operate commercial sales of mainly used vehicles.

These circumstances could indicate that Blocket and Byt Bil have a dominant position. However, the Swedish Competition Authority does not take a position on this question since it is not necessary for the decision in the case.

Abuse

Abuse is an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where the degree of competition is weakened as a result of the very presence of the undertaking in question and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.⁶

⁶ See EU Court's decision in Case C-85/76, *Hoffmann-La Roche & Co. AG v Commission of the European Communities*, p. 91.

An abusive practice can be exclusionary if it forecloses or marginalises existing competitors on the market or prevents new companies from gaining access to the market. An example of such an exclusionary abusive practice can be so-called tying, or tied selling, which refers to situations where a customer who purchases a product must also purchase another product from the dominant company.

Advertising platforms for vehicle advertisements on the Internet are so-called multi-sided platforms, where car dealers constitute customers who buy advertising space on one side of the platform, while the visitors in the form of vehicle customers constitute users on the other side of the advertising platform. On this type of multi-sided platform, there is generally a relationship between the demand on each side of the platform, which is referred to as network effects. In the present case, a greater number of vehicle advertisements and advertising car dealers implies that the advertising platform may become more attractive to visitors that want to search for and compare vehicles, while a larger number of visitors on the advertising platform can make it more attractive for car dealers to advertise there. This relationship between the different sides implies that advertising platforms that can attract a large number of car dealers and a large number of visitors can enjoy significant economies of scale in relation to platforms that have fewer advertising car dealers and/or fewer visitors.

The relationship between the two sides of the platforms also implies that advertising car dealers become an important input for advertising platforms in order to attract visitors. The more advertising car dealers and the more vehicle advertisements there are on an advertising platform, the more attractive it may become for visitors, who have the opportunity to search among, and compare between, more vehicles in one place. A limited customer base in the form of car dealers who can advertise their vehicles on the platform can therefore make it more difficult for other advertising platforms to compete with Blocket and Byt Bil.

Since customers' incentives to seek competing advertising platforms can be adversely affected by a requirement to advertise on both Blocket and Byt Bil, such requirements could risk limiting the customer base for other advertising platforms. This could discourage the existence and development of effective competition.

As shown above, Blocket and Byt Bil informed the Swedish Competition Authority in March 2017 that they intend to change their business model in a way that means that advertising on Blocket is part of a basic product offered to customers. In the new business model, advertising on Byt Bil will constitute an add-on service to the basic product that the car dealers can choose freely. This means that the previous requirement that advertising on Blocket required advertising on Byt Bil will no longer apply. Blocket and Byt Bil have furthermore informed their customers that their changed business model will be implemented

later in the year, which is something that the Swedish Competition Authority intends to monitor.

Taking this into account, the Swedish Competition Authority finds no reason to investigate the case further.

Conclusion

With regard to what the investigation has shown, the Swedish Competition Authority finds no reason to prioritise further investigation. The Swedish Competition Authority therefore closes the case.

The decision of the Swedish Competition Authority not to investigate the matter further does not constitute a position on whether the practice is in breach of the competition rules.

Separate action

The Swedish Competition Authority's decision not to investigate the alleged competition concern further cannot be appealed. This is pursuant to Chapter 7, Section 1 of KL.

Those companies affected by the decision may, however, independently bring an action before a court to have the matter tried under Chapter 3, Section 2 of KL.

Separate action on the prohibition of abuse of a dominant position within the meaning of Chapter 2, Section 7 of KL (or pursuant to Article 102 of the TFEU) may be brought by an application for summons to the Patent and Market Court.

This decision has been taken by the Acting Director General. The case was reported by Competition Counsel Erik Westerström.

Karin Lunning

Erik Westerström

This decision is published on the Swedish Competition Authority's website.

Copy to:

Attorney Marcus Glader, Advokatfirman Vinge (agent for Blocket and Byt Bil)