



Konkurrensen i Sverige 2013

Rapport 2013:10



KONKURRENSVERKET
Swedish Competition Authority

Summary and policy recommendations

The Swedish Competition Authority's task

The objective of the Swedish Competition Authority is to promote effective competition in the private and the public sectors for the benefit of consumers and an efficient public procurement for the benefit of the general public and the market players.

The Competition Authority's main tasks are:

- Law enforcement and supervision of the competition act and public procurement.
- Promoting policy and other measures for effective competition and public procurement.
- Research in the fields of competition and public procurement.

Government assignment to review competition in Sweden

The Swedish government has assigned the Swedish Competition Authority with the task to provide an overview of competition in Sweden and to suggest relevant policy measures to address the problems identified. This report presents the results of this task.

Focus areas

In this report, the Competition Authority has selected to focus on competition in the markets for housing construction, road fuel retail

and dental care for adults. Another focus area is the favouring of competition and conditions for competition neutrality in the cross-section of public and private competition. This topic is highlighted against the background of first, the legislative framework of anti-competitive sales activities by public entities, and second, The Act on System of Choice in the Public Sector. Effective competition also requires an effective legislative framework and appropriate investigative and decision-making powers, why the report also highlights areas where the Competition Authority assesses that there is both need and scope for increasing the efficiency and effectiveness of the Competition Authority's supervision tasks. Finally, the report also sums up policy recommendations that have not required an in-depth analysis in the same manner as the aforementioned focus areas, but nevertheless should be highlighted in the greater context of reviewing competition in Sweden.

Housing construction

There is a shortage of new housing in Sweden. The shortage is most prominent in and around the major cities, in fast growing areas and university towns. This shortage has generated an excess demand, which in turn causes high and rising property prices. Moreover, many sectors of the market are characterised by weak competition. Four major construction companies dominate the market and the way in which the market functions today, tends to disadvantage small and medium sized firms.

The Swedish Competition Authority recognises that the housing shortage needs to be addressed on a broad front and through the coordination of different policy areas and legislative frameworks. Yet, the Competition Authority believes that the favouring of

competition could contribute towards the solving of this problem. In this report, the Competition Authority highlights two major areas and a set of corresponding policy measures believed to have the potential to increase competition in the market, thereby contributing towards balancing supply and demand in this market.

First, the Competition Authority has for a long time argued that the complexity and the long handling times of the planning process need to be reduced. In this regard, the main policy recommendation that the Competition Authority puts forward in this report is to abolish the zoning plan, which would allow a developer to apply for planning permission directly against the comprehensive plan. Moreover, the Competition Authority advocates that planning permission should normally not be needed if there is a zoning plan in place. Taken together, measures such as these entail a simpler and quicker planning and building permission process. Second, the lack of transparency and competition when municipalities sell land assets for development also constitutes an obstacle to a more dynamic and effective market. In this respect, the Competition Authority argues that the forms for municipal land sales may need to be regulated, municipal land should be sold mainly through tenders, and the land sale should occur earlier in the planning process.

Road fuel retail

The Swedish retail market for road fuel has become highly concentrated over the past two decades and is now dominated by four main companies. The price differences between them are in general very minor, which the report identifies depends mainly on factors such as high price transparency, product homogeneity and the high degree of vertical integration in the market. This high degree of

vertical integration is a characteristic that distinguishes the Swedish market from many other international markets. In Sweden, the companies' headquarters largely control the pricing even in local markets and adjust prices to local competition characteristics. The high degree of vertical integration may also explain why pricing patterns such as Edgeworth-cycles and so-called "rockets and feathers" that have been widely observed in the international academic literature, are not as marked in Sweden. However, there are some regional differences where prices are the highest and also very similar in rural areas, where competition is presumably the weakest and greater Stockholm, where competition is supposedly the highest. This is a somewhat surprising result, which the underlying statistics cannot explain.

Another feature of the Swedish road fuel retail market is that the companies publish recommended prices online, for corporate and private customers, respectively. The covariance of these recommended prices is high, and they are seemingly identical. However, their role with respect to carrying information towards private customers about where and when prices are the lowest is questionable, since the prices charged locally deviate from the recommended price. Still, the recommended prices and the publication thereof may be of relevance to corporate customers whose rebate agreements are linked to the companies' recommended prices.

With respect to the explanatory factors for the small price differences and high covariance in pricing that can be observed, an analysis of so-called coordinated effects has been carried. The hypothesis is that the reduction in the number of market players that has occurred may have limited competition by facilitating firms to coordinate their market behaviour. The econometric analysis of coordinated effects does not support this hypothesis. However, the statistics of

price trends, gross margins and profitability show some signs which could be interpreted as being the result of higher market concentration.

To sum up, it is clear that the Swedish road fuel retail market is highly concentrated and dominated by four large companies. This fact, together with the prevailing ownership structure, high degree of vertical integration, price transparency and product homogeneity, naturally affects the conditions for effective competition in the market. However, from a competition point of view, it is important that such a structure is not consolidated, but that it is possible for small or new players to expand or enter the market. Measures that can reduce barriers to entry therefore contribute towards a more competitive market environment. Moreover, the structural changes that the market is undergoing with respect to changing consumer habits, composition of the vehicle fleet and the shift towards fossil-fuel alternatives, risk affecting the conditions for dynamic competition. Well-defined and long-term rules of play reduce the uncertainty regarding future market developments and are therefore an important prerequisite for dynamic competition.

Based on the analysis of the Swedish road fuel retail market in this report, the Swedish Competition Authority believes that the Swedish government could to take the following two actions to improve competition:

- investigate the role and possible market impact of recommended prices and the online publication thereof, and
- evaluate whether The Act on the Obligation to Supply Renewable Fuels is restricting market entry.

Moreover, the Competition Authority wishes to emphasize the importance of:

- well-defined and long-term strategies and policy tools for Swedish fuel supply goals.

Dental care

The Swedish Competition Authority concludes that competition in the market for dental care for adults is weak, but that there is scope for increasing competition in this market. A fundamental problem is the patients' weak position with respect to their dentist, due to information asymmetries and limited possibilities to easily compare prices and quality between different dental care providers. It is very likely that this contributes to the low patient mobility that can be observed in the market, where patients rarely change dentists. In addition, the awareness of the public dental insurance scheme is low. The scheme subsidises a part of the cost of more comprehensive and costly treatments. This means that patients only pay a part of the treatment costs themselves, and that the Swedish Social Insurance Agency reimburses the dentist with the remainder of the cost.

To promote price and quality competition, the main challenge is to grant patients the possibility to compare different dental care providers based on competition parameters such as price and quality. If more consumers then use the opportunity to compare and even change providers, and also if more people could be encouraged to see a dentist if the awareness of public dental insurance was higher, it is likely that it would put pressure on dentists to provide high quality dental care at a reasonable cost.

Against this background, the Competition Authority argues that patients must be granted better possibilities to compare prices and quality between different dental care providers by:

- making it mandatory for dental care providers to provide updated price lists at the price comparison website available at www.1177.se,
- commissioning an investigation with the task to identify quality indicators for dental services which subsequently will be included in the online comparison tool.

In addition to the above, the Competition Authority also advises that:

- the Swedish Social Insurance Agency is assigned with the task to inform about the public dental insurance scheme. Information should also reach out to those who are not seeing any dentist today.

Finally, competition would also benefit from it being easier for patients to switch dentists. Therefore, it could be considered to:

- establish a national patient overview system for dental care services.

Anti-competitive sales activities by public entities

The public sectors' increasing market orientation has made the boundary between the public and private sectors have less distinct. To level the playing field between public and private enterprises and prevent public sales activities from distorting competition, new

rules on anti-competitive sales activities were incorporated in the Swedish Competition Act on 1 January 2010. Since then, the Competition Authority has handled a large number of cases under the new rules. During autumn 2013, the Competition Authority conducted a follow-up study of them. Based on this follow-up study, a questionnaire aimed at public entities conducting sales activities and two readily available surveys of how private firms perceive competition from public entities, the Competition Authority has identified that the following policy recommendations have great potential to promote effective competition and competition neutrality:

- Introduce a requirement that public entities should separate the financial accounts of their competitive activities from their non-competitive activities. The accounts should also be made public to increase transparency.
- Introduce a requirement in the Local Government Act that municipalities should implement a competition policy to ensure transparency and competitive neutrality.
- Introduce a requirement in the Local Government Act that public entities should review their sales activities regularly to ensure that these conform to the rules of anti-competitive sales activities by public entities.
- Assign the Swedish Competition Authority with the decision-making power to issue an injunction under penalty of fines for violations of the rules on anti-competitive sales activities by public entities.

Systems of Choice in the Public Sector

The Act on System of Choice in the Public Sector entered into force 1 January 2009. The Act applies when a contracting authority opens parts of its activities for competition, by establishing a system of choice for the services covered by the system. The idea is that systems of choice should favour quality competition between providers and lead to higher quality services, better accessibility and increased efficiency.

In establishing a system of choice the contracting authority transfers the possibility to choose a service provider within the system to the users of the services. The users may, in many cases, choose between private suppliers with whom the contracting authority has concluded a contract in the system of choice, or service providers within the contracting authority's own organisation. The level of payment given to the suppliers is set by the contracting authority and stated in the contract documents, and is depending on the amount of users choosing the supplier as their service provider.

According to the Act, contracting authorities are county councils, with regards to primary care, and municipalities who have decided to establish systems of choice in health care and social services. From 1 July 2010, also the Swedish Public Employment Service may apply the Act when procuring services within its labour-market activities, and by 1 May 2010, establishment of systems of choice is mandatory for some of its activities focusing on recently arrived immigrants.

The Swedish Competition Authority has been given the task to supervise the establishment of systems of choice. In order to prevent infringements, the Authority also gives general guidance

and information concerning the Act on System of Choice in the Public Sector.

In order to favour competition and competition neutrality within the systems of choice, the Competition Authority recommends that:

- contracting authorities separate the role of client and provider,
- the mandates of its own and external suppliers are clarified,
- the financial accounts of the provider organisation are accounted for separately, and
- post-costing for the contracting authority provider is disclosed.

The result of the disclosed post-costing is interesting for, amongst others, the contracting authority who will get an indication on the efficiency of its own provider, and the public who can get an insight of how tax funds are used.

Law enforcement

Effective competition requires an effective competition legislative framework. Law enforcement must be carried out efficiently, securely and promptly. It is therefore important that the Competition Authority's ability to enforce the competition law corresponds to the needs for supervision. In an international comparison of investigative and decision-making powers, it is apparent that Sweden in certain respects has less effective enforcement tools in comparison to other Nordic countries, EU and OECD Member States. Against this background, the harmonisation work in process within these institutions, and the Competition Authority's own

experiences from competition law enforcement, the Competition Authority has identified certain areas where expanded investigative and decision-making powers would favour the efficiency and effectiveness of the law enforcement task.

To strengthen its supervisory tasks, and thereby favouring effective competition in general, the Competition Authority suggest the following measures:

- Introduce a legal requirement for cooperation and extend the sanctioning possibilities for non-cooperation in the Authority's investigations.
- Give the Competition Authority the right to issue administrative fines.
- Give the Competition Authority the decision-making power to issue an injunction under penalty of fines for violations of the rules on anti-competitive sales activities by public entities.
- Give the Competition Authority decision-making powers in merger control.

Additional policy recommendations for well-functioning markets

In the final chapter of this report, the Competition Authority sums up policy recommendations which have been brought forward before in different contexts before and that the Authority believes are still relevant in the context of the government assignment that forms the basis of this report.

These recommendations are:

- Favour competition in the financial services market by:
 - investigating the possibility to offer consumers the right to freely move capital directly invested in funds to an Investment Savings Accounts (ISA),
 - investigating the possibility of enabling fund companies to offer ISAs,
 - introducing regulations which stipulate that the banks must report their borrowing costs for mortgages in a uniform manner,
 - introducing an annual statement of the total costs for banking services,
 - investigating a sale of state-owned bank SBAB, or clarify how SBAB should contribute to diversity and competition in the financial services market and ensure competition is not distorted, as well as
 - investigating the possibility of prohibiting price signalling.
- Regulate the access to the distribution network of the postal services market incumbent Posten.
- Introduce a uniform VAT-rate.
- Abolish the tax on advertising.

- Abolish the press subsidy in its current form and then phase out the support gradually.
- Protect companies who have been granted leniency in cartel investigations from exclusion in future public procurements.