

Case no 91/2023 – Summary of the decision

Effective competition in a market typically drives down prices, improves quality and increases the range of goods and services available on the market, thereby benefiting customers. Under Chapter 2, Section 7 of the Swedish Competition Act and Article 102 of the Treaty on the Functioning of the European Union, it is prohibited for undertakings to abuse a dominant position. The purpose of this prohibition is to prevent a dominant undertaking from using methods other than those that constitute competition on the merits to hinder the maintenance or development of effective competition. An undertaking that holds a dominant position therefore has a special responsibility not to impair or distort competition.

In this decision, the Swedish Competition Authority finds that Maveria AB (Maveria) has infringed the prohibition on abuse of a dominant position by applying exclusivity clauses in assignment agreements with companies providing medical advisory services. Through these exclusivity arrangements, a substantial proportion of insurance medical advisers in Sweden are prevented from entering into assignment agreements with Maveria's competitors. In several medical specialist fields, all or almost all active advisers are covered by exclusivity agreements. Maveria's use of exclusivity clauses has significantly impeded other operators from building up a network of insurance medical advisers within different specialist fields, which is necessary in order to enter and compete effectively with Maveria in the market for the intermediation of insurance medical advisory services.

Insurance medical advisory services arise in the context of personal injury claims under insurance policies. The advisory services are provided by insurance medical advisers who assess whether an injured party's condition is covered by insurance and issue opinions. Insurance companies then use these opinions when assessing the injured party's condition as part of the claims settlement process. The advisers are experienced specialist doctors who provide opinions within their respective medical specialist fields. In addition to their training and experience as specialist doctors, advisers must also possess knowledge of insurance medicine.

The Association of Medical Advisers (FMR) organises five annual training sessions on various topics relating to insurance medicine for insurance medical advisers, which are also recommended by the industry organisation Insurance Sweden.

Mavera provides an intermediary service consisting of a network of insurance medical advisers across different medical specialist fields, as well as a digital case management system through which insurance medical advice is delivered. A majority of the largest insurance companies in Sweden currently use Maveras service to meet their need for insurance medical advice. Previously, insurance companies typically contracted directly with insurance medical advisers. While a small number of insurance companies still primarily use directly contracted advisers, most now rely mainly on Maveras service.

In 2020, Maveras introduced exclusivity clauses in assignment agreements with insurance medical advisers, and these clauses remain in force. The clauses prohibit insurance medical advisers who accept assignments from Maveras from also working for competing providers. The application of these exclusivity clauses is the subject of the Swedish Competition Authority's decision.

The Swedish Competition Authority has defined the relevant market as the intermediation of insurance medical advisory services in Sweden. This refers to the provision of a network of insurance medical advisers across medical specialist fields. The market definition also includes the provision of opinions from the advisers via a digital case management system.

During the infringement period, Maveras market shares amounted to between 95 and 99 per cent. This alone strongly indicates that Maveras holds a dominant position in the relevant market. The market is also characterised by significant barriers to entry and expansion, resulting in low competitive pressure from smaller competitors and potential competitors. Although Maveras operations in Sweden are relatively small in relation to its customers', there is no significant countervailing buyer power. Maveras use of exclusivity agreements has reinforced and entrenched its strong market position, thereby raising the barriers to entry even further. Overall, the Swedish Competition Authority concludes that Maveras holds a dominant position on the relevant market.

For several years, Maveras was the only provider of intermediary services for insurance medical advisory services in Sweden. The exclusivity clauses were introduced when a new entrant was preparing to launch a competing service. The prohibition on advisers taking on assignments from competitors, together with other terms of the exclusivity clauses, significantly restricts competitors' ability to

recruit advisers who have exclusivity agreements with Maveria. Maveria's intention in introducing these clauses was precisely to make it more difficult for competitors to enter into agreements with such insurance medical advisers who undertake assignments for Maveria.

Through these exclusivity agreements, Maveria has tied up a substantial proportion of the insurance medical advisers active during the infringement period. In several medical specialist fields, Maveria has exclusivity agreements with all or almost all active advisers. Since insurance companies require advice across all specialist fields that may be relevant to claims settlement, and specialist doctors can only provide opinions within their respective fields, intermediary services must recruit specialists across all areas. However, competitors' ability to do so is significantly restricted by Maveria's exclusivity clauses, as a substantial proportion of these advisers are prevented from entering into agreements with other providers. This is particularly problematic in specialist fields where Maveria has exclusivity agreements with all or almost all advisers.

Furthermore, Maveria's exclusivity agreements cover just over half of all advisers who have completed FMR's training in insurance medicine. Advisers with such training or prior experience in insurance medical advice are particularly valuable to intermediary services. This is because the FMR training, or experience of providing advice, is a factor in ensuring the high quality of opinions, which is demanded by insurance companies. Such particularly valuable advisers must be among those provided by an intermediary service for it to be relevant for insurance companies to engage the intermediary service. Maveria's use of exclusivity agreements with a large proportion of FMR-trained advisers makes it difficult for competitors to recruit such advisers. Although some trained or experienced advisers are not bound by exclusivity agreements, it is not certain that they are willing or able to take on additional assignments as insurance medical advisers. Even if it were possible for competitors to recruit these advisers, the use of exclusivity clauses limit both the number of competitors that can enter the market and the manner in which they can enter and expand.

The existence of a large number of specialist doctors in Sweden who could potentially take on assignments as insurance medical advisers does not facilitate recruitment for competitors, as these specialist doctors do not have the training or experience sought by insurance companies.

Overall, the Swedish Competition Authority finds that Maveria's use of exclusivity agreements significantly impedes other operators from building up the network of insurance medical advisers necessary to enter and compete effectively in the market. By doing so, Maveria has competed using methods other than competition on the merits and has thereby abused its dominant position.

Mavera's use of exclusivity agreements in their current form is not compatible with the special responsibility of a dominant undertaking. In the Swedish Competition Authority's assessment, the conduct cannot be objectively justified with reference to the investments claimed by Maverá.

The Swedish Competition Authority orders Maverá to cease the application of the exclusivity agreements, subject to a conditional fine for non-compliance. Maverá is also required to pay a competition fine of SEK 14.3 million.