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COMMITMENT DECISIONS IN ANTITRUST CASES

-- Note by Sweden --

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*More documents related to this discussion can be found at
www.oecd.org/daf/competition/commitment-decisions-in-antitrust-cases.htm*

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SWEDEN

1. Introduction

1. During the past decade, the Swedish Competition Authority's (hereafter "SCA") experience of assessing commitment decisions in a number of antitrust cases has given the SCA valuable insight into the assessment of whether the conditions for adopting a commitment decision in a given case have been met. The SCA's experience shows that adoption of commitment decisions is particularly well-suited for cases concerning complex markets and cases where the conduct consists of complex contractual activities and exhibits both positive and negative elements.

2. In this contribution the legal requirements for the adoption of commitment decisions under the Swedish Competition Act are presented, followed by a presentation of the SCA's most recent cases where commitment decisions were adopted. The presentation is followed by a discussion of the benefits and risks associated with using commitment decisions as an enforcement tool. The discussion centres around the appropriateness of this enforcement measure with reference to the circumstances of a given case and a discussion of the criteria to be fulfilled in order to accept a commitment decision.

2. Power to adopt commitment decisions

3. The SCA can accept commitments from undertakings which are submitted within the course of an investigation into alleged anti-competitive conduct violating European and national competition rules.

4. The SCA's power to adopt commitment decisions stems from the inclusion of this instrument amongst the powers granted to competition authorities of the Member States of the EU for the application of Articles 101 and 102 of the Treaty on the functioning of the European Union (TFEU) under Regulation 1/2003.¹ National competition authorities are empowered to apply Articles 101 and 102 of the Treaty in individual cases.² For this purpose, acting on their own initiative or on a complaint, they are empowered to take decisions to accept commitments.

5. Following the entry into force of Regulation 1/2003, the Swedish Competition Act was amended in 2004 with the aim of achieving convergence with European law provisions.³ Through the amendment the SCA was granted the power to adopt commitment decisions.

6. If the question has been raised as to whether an undertaking has infringed any of the prohibitions regarding anti-competitive cooperation⁴ or abuse of dominance⁵ or has infringed Articles 101 or 102 TFEU, a commitment offered by the undertaking may result in a decision by the SCA

¹ Article 5, Regulation 1/2003.

² Article 5, Regulation 1/2003.

³ Government Bill 2003/2004:80, p. 100 ff.

⁴ Chapter 2, Article 1 of the Swedish Competition Act.

⁵ Chapter 2, Article 7 of the Swedish Competition Act.

stating that there are no longer grounds for action.⁶ Decisions made by the SCA may cover a specified period.

7. The SCA may revoke its commitment decision where (i) there has been a change in any of the facts which were material to the making of the decision, (ii) the parties commit a breach of any obligation attached to the decision, or (iii) the decision is based on incomplete, incorrect or misleading information which the parties have submitted.⁷

8. Unless otherwise decided, a commitment decision takes effect immediately.⁸ The SCA is bound by its decision to accept a commitment. As long as the decision applies, the SCA, as regards the circumstances concerning the commitment, may neither issue any obligation requiring an undertaking to terminate an infringement⁹ nor apply to the District Court for the payment a fine.¹⁰ The decision of the SCA to accept commitments cannot be appealed.¹¹ A company affected by the decision may bring an action before the Market Court requesting an injunction.¹² A commitment decision is not binding for general courts in civil-law disputes regarding nullity or damages.

9. The decision to accept a commitment can be made subject to the penalty of a fine.¹³ If the undertaking bound by the commitment decision breaches the commitment, the SCA can submit a claim to the Stockholm District Court for the payment of the fine.

3. Agency experiences regarding the adoption of commitment decisions in cases post 2010

10. Since the amendment of the Swedish Competition Act granting the SCA the power to adopt commitment decisions entered into force in 2004, the SCA has accepted commitments in a number of cases involving various sectors.¹⁴ This section presents an overview of two of the most recent commitment decisions of the SCA.

3.1 *SBS Discovery Radio AB (SBS Radio) and RBS Broadcasting AB (NRJ), Case number 174/2012*

11. In March 2012 the SCA initiated an investigation after receiving a complaint from MTG Radio, a commercial radio broadcasting service, claiming that its competitors SBS Radio and NRJ had entered into an anti-competitive co-operation agreement regarding the broadcasting of SBS-content and the sale of time-slots for advertisements on analogue commercial radio. Pursuant to the

⁶ Chapter 3 Article 4 of the Swedish Competition Act.

⁷ Chapter 3, Article 4 of the Swedish Competition Act.

⁸ See Chapter 6, Article 1 paragraph three of the Swedish Competition Act.

⁹ Chapter 3 Article 1 or 3 of the Swedish Competition Act.

¹⁰ Chapter 3 Article 7 of the Swedish Competition Act.

¹¹ See Chapter 7, Article 1 of the Swedish Competition Act.

¹² See Chapter 3, Article 2 of the Swedish Competition Act. An injunction can be sought in accordance with Chapter 3, Article 1 of the Swedish Competition Act.

¹³ Chapter 6, Article 1, paragraph 3 of the Swedish Competition Act.

¹⁴ Since then the SCA has issued commitment decisions in the following cases: dnr 784/2005 (2005-09-22) Schneider Electric Sverige AB, dnr 1113/2004 (2004-12-15) Nynäs Refining AB and Vopak Logistics Nordic AB, dnr 532/2004 (2005-12-13), 993/2005 (2005-12-13) Eco-Boråstapeter, dnr 130/2006 (2006-02-06), 994/2004 (2006-02-06) Reitan Servicehandel AB, dnr 488/2008 (2008-09-03) Sveriges Annonserer och Sveriges Annonserer AB, dnr 607/2011(2012-06-18) Rationella Kontors Varuinköp AB, , dnr 568/2009 Arla Foods Amba, dnr 402/2010 (2012-12-15) Make-up Store AB, dnr 174/2012 (2014-12-03) SBS Discovery Radio och RBS Broadcasting AB, dnr 596/2013 (2015-04-15) Booking.com.

agreement, SBS Radio was granted an exclusive right to sell all available advertisement time-slots on NRJ's radio channels to advertisers. Furthermore SBS and NRJ partly utilised each other's broadcasting licenses in order to broadcast their respective formats (radio channels). The SCA initiated an investigation into whether the agreement between these two undertakings constituted an infringement of article 101 TFEU and Chapter 2, Article 1 of the Swedish Competition Act.

12. In its preliminary assessment the SCA found indications that the sale of advertisement time-slots on analogue commercial radio on a local and regional level in each respective broadcasting area constituted a separate relevant market. The co-operation between SBS Radio and NRJ resulted in the elimination of competition on the market for the sale of advertisements in these broadcasting regions since advertisement purchasers no longer had the possibility to choose between different suppliers.

13. The commitments offered by the undertakings meant that SBS Radio and NRJ would cease to co-operate for the sale of commercial time slots on analogue radio with regard to certain broadcasting areas. This means that for these areas, the commercial time slots can instead be sold to advertisers by NRJ or another undertaking of NRJ's choice other than SBS Radio. Thus, a part of NRJ's time-slots for sale of advertisement pertaining to certain broadcasting regions were excluded from the co-operation agreement between the parties ("reserved space"). However, pursuant to the commitment, SBS Radio had the right to sell advertisement time-slots that had not been sold by NRJ or their partners if the reserved space had not been used up in due time for each broadcasting session.

14. Furthermore, NRJ undertook a commitment to follow a "business plan" to be submitted to the SCA and to report on how the commitment was adhered to. This commitment provides the SCA with the possibility to monitor that the undertakings are adhering to the commitments. In accordance with its obligation, NRJ has submitted business plans. The business plans have shown that SBS Radio has, in one instance, sold advertisements in accordance with its right to "reserved space" time-slots. The commitments are subject to penalty of a fine.¹⁵

3.2 *Booking.com, Case number 596/2013*¹⁶

15. This case involved an investigation into the online travel agency sector. Online travel agencies operate internet platforms, on which consumers can search for, compare and book hotel rooms. When a hotel room is booked through an online travel agency's internet platform, the agency receives a commission by the hotel.

16. In 2013, the SCA launched an investigation relating to price parity clauses in Booking.com's contracts with Swedish hotels. These terms required the room prices hotels offered via Booking.com to be the same or better than the prices hotels offered or applied in other sales channels. The SCA's investigation focused on whether those terms constituted an infringement of the prohibition against anti-competitive agreements. At the same time, parallel investigations were conducted by several European national competition authorities. The French, Swedish and Italian competition authorities coordinated their investigations, assisted by the European Commission.

17. In its preliminary assessment the SCA found that the price parity clauses in Booking.com's and other online travel agencies' contracts with hotels meant that the price of hotel rooms was the same on competing online travel agencies. Booking.com's price parity clause implied that increases in Booking.com's commission rate could not lead to a higher room price on Booking.com than that available through its competitors. This meant that Booking.com could raise its commission rate without losing customers to its competitors. Combined with the fact that hotels would generally want

¹⁵ If the undertakings breach the commitment decision they may be ordered to pay a fine amounting to 20 million SEK for SBS Radio resp. 15 million SEK for NRJ. See Chapter 6, Article 1, paragraph 3 of the Swedish Competition Act.

¹⁶ An English translation of the decision is available at <http://www.konkurrensverket.se/en/news/commitments-given-by-booking-com-benefit-consumers/>

to enlist on several competing platforms, the clause implied that Booking.com had less incentive to compete by offering hotels low commission rates than would otherwise be the case. This risked leading to higher commission rates, which in turn risked leading to higher hotel room prices.

18. The SCA concluded that the price parity clause requiring that Booking.com must be offered prices that are the same or better than those offered to its competitors, constituted a restriction of competition contrary to Chapter 2, Article 1 of the SCA and Article 101(1) TFEU and that there was no basis for an individual exemption in accordance with Chapter 2, Article 2 of the SCA and Article 101(3) TFEU with respect to the price parity between Booking.com and its competitors.

19. After being informed of the SCA's preliminary assessment, Booking.com offered commitments to change the clauses of its agreements in order to address the competition concerns identified by the SCA. In brief, the commitment meant that it would be possible for hotels to offer other room rates through Booking.com than through other online travel agents for the same hotel room. Booking.com could still state in its agreements with hotels that the hotels were not permitted to offer lower rates in their own sales channels (e.g. hotels' own websites) than through Booking.com.

20. A market test was launched and hotel market participants were invited to provide their opinions on the commitments. The respondents included the majority of the larger Swedish hotels and hotel chains as well as some online travel agencies and meta-search operators. The market test responses maintained that the proposed commitments were not sufficient to solve the competition problems on the market. They argued *inter alia* that Booking.com ought to commit to refraining from applying price parity clauses altogether in relation to the hotels' own sales channels.¹⁷ Otherwise, the commitments proposed would lead to the continued application in practice of price parity between competing online travel agencies.

21. Booking.com submitted a final, revised version of its proposed commitments whereby it undertook not to apply the parity terms regarding price and other conditions in relation to its competitors.¹⁸ The commitments were without prejudice to Booking.com's ability to request parity in relation to hotels' own publicly available online room prices. At the same time they did not prevent hotels from agreeing on other terms with Booking.com.

22. The SCA carried out an analysis of whether Booking.com's commitments resolved the competition problems identified and also looked into the concerns raised during the market test. Following the SCA's findings in the investigation, Booking.com revised its commitments so as to limit the scope of the price parity clause so that it would not apply in relation to hotels' offline sales.

23. The SCA thus concluded that the commitments were capable of resolving the competition problems which resulted from the price parity clauses in Booking.com's contracts with Swedish hotels. Booking.com offered the same commitments to the French and the Italian competition authorities.

¹⁷ For more information on the SCA's analysis of the application of price parity clauses (otherwise known as Most Favourable Nation (MFN) clauses) and the free-riding aspects see the Note by Sweden submitted in the Hearing on Across Platform Parity Agreements submitted for Item 7 of the 124th OECD Competition Committee.

¹⁸ Furthermore Booking.com undertook to not apply parity terms with respect to the number and type of available rooms. With respect to hotels' own sales, Booking.com undertook to not require parity with respect to room prices or other conditions as regards offline sales and undertook to not require parity regarding such room prices or other conditions that are were available online to the general public, but that were offered by the hotels only to certain customers or groups of customers. Finally, Booking.com undertook to not apply equivalent measures, i.e. measures which would mean the enforcement of such price, conditions or availability parity that is forbidden in accordance with the commitments.

24. The commitments are subject to penalty of a fine should Booking.com or its parent company breach them. The fine is set at SEK 5 million for Booking.com Sverige AB and SEK 30 million for Booking.com B.V. The SCA's decision foresaw a deadline for the implementation of the commitments (approximately two months from the date the decision was taken) and a timeframe for the application of the commitments; they will apply for a period of five years from the date of their implementation.

25. The SCA's commitment decision did not include a "*self-monitoring clause*", i.e. a clause whereby Booking.com would undertake to report on how the commitments were adhered to. Whether or not such clauses are needed in a commitment decision is discussed in the following sections.

4. Remediating competition law concerns through commitment decisions

4.1 Investigations where commitments may be an appropriate instrument

4.1.1 The timing

26. The underlying rationale of the provision on commitment decisions is to provide the SCA and the parties involved with an efficient and expedient procedure in order to solve identified competition concerns. The commitment procedure was designed to lead to administrative efficiencies for the SCA and, in this way, allow it to allocate its investigative resources in an efficient manner.

27. In order to achieve the benefits associated with opting for this enforcement tool, the SCA is able to accept commitments at an early stage of an investigation. According to the wording of the provision, it is sufficient that a "*question has been raised as to whether an undertaking infringes any of the prohibitions*" for the SCA to be able to decide on whether to accept offered commitments or not. In contrast to other jurisdictions, there is no requirement for the SCA to first issue a statement of objections in order to accept commitments. At the same time, the Swedish Competition Act does not foresee a deadline during an investigation by which commitments can be submitted to the SCA.

28. Hence, the earlier the commitment procedure is entered into during an investigation, the more beneficial it is from the point of view of efficiencies. However, as explained below, when the market involved and the market circumstances are complex, some in-depth investigation into the functioning of the market might be required in order for the SCA to be able to assess whether the proposed commitment resolves the competition concerns. In such cases, even though the investigation might still be at an early stage of the procedure, it is likely that much time and resources will have been dedicated to the investigation. In cases where the conduct may lead to efficiencies, a premature commitment decision could risk leading to false positives, thereby harming competition and consumers. In order to guarantee that these risks are minimised, it is important for the SCA to have identified a theory of harm and to have formulated a clear idea of the competition concerns.

29. This is also in line with what is foreseen in Article 9 Regulation 1/2003 regarding the Commission's power to accept commitments. Commitments are envisioned as being offered and assessed when the Commission reaches the stage where it "*intends to adopt a decision requiring that an infringement be brought to an end*".¹⁹ This implies that the Commission's assessment is more or less in its final stage.

4.1.2 Type of infringements

30. The Swedish Competition Act does not include a provision regarding which type of infringements are appropriate or not for commitment decisions. Commitment decisions are not appropriate in investigations in which the SCA aims at filing an application for administrative fines in court. The preparatory works to the Act stipulate that commitments are not an appropriate tool when it

¹⁹ Article 9 Regulation 1/2003.

comes to hardcore cartel infringements. Commitment decisions may thus not be an appropriate measure in cases concerning serious infringements. In such cases, the most appropriate measure would be to adopt an order imposing obligations forcing the undertaking to cease with the anti-competitive conduct (a cease and desist order) or to apply for administrative fines. It is worth noting that whereas it is clear that this measure is inappropriate for dealing with hardcore cartels, the same cannot be said for all types of conduct that would be categorised as “object” restrictions. In such cases, and depending on the specific circumstances of the case, it may be deemed appropriate to consider commitments.²⁰

31. A commitment decision cannot include a conclusion that the behaviour forming the commitment does not constitute an infringement of competition rules. According to Regulation 1/2003, a commitment decision may only find that there are no longer grounds for action without concluding whether or not there has been or still is an infringement. By its decision to accept commitments and close the investigation the SCA finds that there are no longer grounds to prioritise the case.²¹

4.1.3 *Type of conduct and markets under investigation*

32. Since one of the main aims of opting for commitments is to enable the SCA to resolve a case expediently and minimise related administrative costs, the adoption of a commitment decision is particularly well-suited for cases concerning complex markets. Even though a clear understanding of a market’s functioning is necessary in order to identify competition concerns, the SCA can adopt a commitment decision without having finally assessed all the components required to find an infringement. An example of this can be taken from the SCA’s investigation in the online hotel booking case involving complex market definitions, where the SCA accepted Booking.com’s commitments without having finally assessed the relevant market. In such cases where the market is complex, commitments provide both the undertakings involved and the SCA with the opportunity to co-operate in order to agree upon the commitments that are best suited to the complexity of the market in order to alleviate the concerns of the SCA.

33. Hence, the investigative efficiencies benefit not only the SCA but also the undertakings under investigation as well as other market players since the SCA does not need to request burdensome market data to make a final assessment.

34. Nevertheless, it should be stressed that a fundamental understanding of the market’s functioning is needed. This is also closely connected to the assessment that has to be made of the competition concerns. If the SCA is unable to understand the market mechanisms and the strategies and incentives of the market players, then this enforcement tool risks being counter-productive from a competition law enforcement perspective.

35. In respect of complex markets, since this task may be demanding as regards time and resources, the use of a commitment decision may also be efficient at a later stage in the investigation.

36. Commitment decisions may be appropriate enforcement measures in cases where the conduct consists of complex contractual activities. In complex contractual cases, the SCA might identify positive and negative elements that give rise to concerns since the negative effects might be considered to outweigh the efficiencies. In such cases, where the removal of elements of a contractual

²⁰ See for instance the SCA’s investigations franchise retail markets; Make up Store, dnr 402/2010 (1010-12-15) and Reitan, dnr 994/2004 (2006-02-06). The cases concerned the setting of retail prices by the franchisors through the use of cashier system. The SCA accepted commitments that enabled the franchisees to set their own retail prices.

²¹ For more information on the Swedish Competition Authority’s Prioritisation Policy, visit http://www.konkurrensverket.se/globalassets/english/about-us/english_prioritisation_policy_for_enforcement.pdf.

arrangement would resolve the competition concerns without necessarily changing the agreement as a whole, commitment decisions can be an appropriate solution both for the SCA and the undertakings involved for the reasons stated above. Guidance in the assessment of whether the competition concerns are resolved can be found in the criteria for exemption under Article 101(3) TFEU.

37. This is illustrated in cases where the conduct under investigation is a vertical agreement which has not fulfilled the requirements for exemption under Regulation 330/2010, or an agreement combining vertical and horizontal elements. Vertical restraints covered by the exemption are presumed to exhibit both positive and negative effects. If such an agreement exhibits negative effects which could, under the preliminary assessment, render it problematic, then a commitment decision could be appropriate if it could “remedy the agreement” thus solving the competition concerns identified.

38. However it is less certain whether this measure would be appropriate in the case of a so-called vertical hardcore restraint;²² this would depend on an *in casu* assessment. At the same time it should be kept in mind that the SCA cannot take a positive decision, in other words the decision cannot reach the conclusion that the conduct does not infringe the competition rules.

4.2 Legal requirements for adopting a commitment decision

39. The SCA may accept commitments offered by the undertaking under investigation provided that the offered commitment resolves the identified competition concerns.²³ This entails that (i) competition concerns must have been identified and (ii) that the commitments address the concerns.

4.2.1 Identification of the competition problems

40. According to the first legal requirement, competition concerns must have been identified. Unless the behaviour under investigation is considered an “object” restriction,²⁴ the SCA must, as a first step, establish a convincing theory of harm. This will enable it to evaluate, in a second step, whether the offered commitments are sufficient to resolve the competition concerns.

41. When a theory of harm cannot be established without conducting an in-depth investigation of the allegedly illegal practices and the market, the efficiencies that the commitment procedure strives to achieve are less likely to arise. Since in order to pursue such cases, the SCA will need to gather and analyse large amounts of data, this will considerably reduce the efficiencies connected with opting for commitments. It is vital that the SCA is transparent in communicating the theory of harm it has identified to the undertaking under investigation. Without an understanding of the reason for the SCA’s concerns it would be difficult for the undertaking to assess whether submitting commitments is a viable option and what commitments could be considered appropriate.

42. In complex or fast-paced markets, it may be difficult to assess the feasibility of a proposed commitment. Market testing a proposed commitment is therefore crucial in order to assess whether it addresses the competition concerns. The importance of the market test is illustrated by the role it had in the SCA’s commitment procedure in the Booking.com case. In this case, the market test responses were essential for the assessment of the scope of the final commitments.

²² See Article 4, Regulation 330/2010

²³ Chapter 3 Article 4 of the Swedish Competition Act.

²⁴ See for example Case 607/2011 Rationella Kontors Varuinköp AB (RKV) where the conduct involved a horizontal price recommendation for office supplies by different companies that were included in a catalogue issued by RKV. It was considered an object restriction. Despite this a commitment decision was considered as an appropriate measure.

43. Again, in new markets with many different business models and strategies, it can be difficult to foresee how the market will evolve, in particular if the market is characterised by fast-paced technological advancements and innovation. Therefore, caution and attention should be paid to the formulation of the commitments so as to make sure that equivalent measures to the conduct that gave rise to competition concerns are not permitted.

4.2.2 *Proportionality*

44. In accordance with the second requirement stated above, a commitment must resolve the competition concerns identified. This sets a requirement in respect of the minimum level a commitment shall fulfill (i.e. it shall address the competitive concerns).

45. In contrast to the proportionality standard applicable to injunction decisions, there is nothing hindering the adoption of commitments that go beyond what is necessary to solve the competition concerns. Under such circumstances, it is worth considering what consequences this can have on competition. Accepting a commitment that goes beyond what is necessary to solve the identified competition concerns risks leading to adverse effects for competition. Such an over-enforcement might however be limited as the commitments are voluntarily offered. This reduces the risk that an undertaking would offer commitments that would ultimately harm its competitive position. Additionally, the fact that undertakings offering commitments generally have an interest in the SCA guaranteeing a level-playing field for all the players in the market reduces the risk of over-enforcement.

46. In any case, in order to reduce the risk of over-enforcement, it is worth considering whether the use of time-limited commitments might be appropriate. In fast-moving markets, it may be beneficial for both the SCA and the undertaking under investigation to opt for time-limited commitments. This is a viable option in cases where the conduct concerned is assessed as an effects-based infringement. In such cases, the assessment of the infringement is dependent on the assessment of market circumstances. A time-limited commitment may also give the SCA the possibility to reassess the effectiveness of a commitment, as market circumstances might have evolved.

47. At the same time, it should be borne in mind that even though the commitment is not time-limited there is still a possibility for the SCA to revoke it should market circumstances change drastically.

4.2.3 *The requirement to motivate a decision to accept commitments*

48. The SCA is prohibited from extensively elaborating on the grounds for finding that the conduct under investigation would constitute an infringement in its commitment decision. Instead, the SCA is required to briefly motivate such grounds in its decision. An elaborated motivation has been considered to run counter to the rationale of the commitment procedure of efficiently addressing competition concerns. The requirement to briefly motivate whether the conduct would amount to an infringement of the competition rules must however be evaluated in light of the SCA's task to provide guidance in a transparent manner. Striking the right balance is crucial since it is becoming increasingly common in Europe for companies to propose commitments. The decisions the SCA adopts by means of commitments can give insight into the enforcement view of the SCA in specific cases as well as a better understanding of how the SCA prioritises.

49. A commitment decision should not be formulated in a way that could be interpreted by third parties as creating an obligation for them to follow conditions, simply because the decision states that these conditions are not prohibited. An example can be taken from the Booking.com case, where it was important to formulate the decision in such a manner that it did not prohibit hotels from negotiating better contractual conditions than those not prohibited through the commitments.

4.2.4 *Monitoring of commitment decisions*

50. Through a monitoring scheme the SCA can safeguard that the adoption of a commitment decision will resolve competition concerns. Monitoring functions not only as a tool to assess whether the undertaking is adhering to the agreed commitments but is also a way of evaluating whether there is reason to review the commitment decision on the basis that there has been a change in any of the facts which were material to the making of the decision.

51. In some cases, the undertaking commits to *self-monitoring* and undertakes to report to the SCA how the commitments are being followed.²⁵ On the face of it this could be a favourable option since the undertaking must take responsibility and show that it is following the agreement. However, depending on how far-reaching the reporting obligations are in terms of frequency and scope, such a measure may end up being too burdensome and costly for the undertaking.

52. Another alternative is to opt for *soft-monitoring* meaning that the commitment does not necessarily need to include a self-monitoring provision. The SCA relies instead on the market actors and consumers to monitor and report in case they observe deviations from the commitments. Since in most cases where the SCA enters a commitment procedure it communicates its preliminary concerns and the proposed commitments in connection with the launch of a market test, market actors and consumers become aware of the competition concerns. With the subsequent publication of the final commitments they are thus able to follow whether the undertaking involved is adhering to its obligations and can report in case of a perceived breach.

53. Furthermore, since it is a procedure that is entered into willingly by the undertaking under investigation, it has less of an incentive not to follow the commitments it proposes. A self-monitoring clause in such a case is therefore not always necessary.

54. What is most appropriate in a given case depends on the specific circumstances and is also largely dependent on what commitments the undertaking in question wishes to submit in order to ensure that the competition problems are resolved.

²⁵ See for example SBS Discovery Radio AB (SBS Radio) and RBS Broadcasting AB (NRJ), Case number 174/2012.