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**Co-operation between Competition Agencies and Regulators in the Financial Sector
- Note by Sweden**

4 December 2017

This document reproduces a written contribution from Sweden submitted for Item 3 of the 64th meeting of the Working Part No. 2 on Competition and Regulation on 4 December 2017.

More documents related to this discussion can be found at:

www.oecd.org/daf/competition/cooperation-between-competition-agencies-and-regulators-in-the-financial-sector.htm

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Sweden

1. Background

1. As stated in the letter from the chair, a consensus has emerged that financial institutions should be regulated more strongly to improve their stability.
2. The OECD Competition Committee has stressed the need for increased competition as well as acknowledged that the absence of regulation may be problematic for competition.
3. Closer co-operation between competition- and financial regulatory authorities in the financial sector is considered of utmost importance to achieve policy objectives on a broader scale, including both competition and financial stability.
4. In Sweden, there have been several instances of co-operation involving the competition authority and the financial regulator. It may, therefore, be of interest to draw from these experiences. That is the main purpose of this paper.
5. Focus in this paper is on the material issues at hand, not on the practical arrangements surrounding co-operation. The material issues at hand have frequently been of a consumer protection nature. But other areas also have implied the need for co-operation between the two authorities. Thus, in one instance the issue at hand was about counteracting macroeconomic and financial stability risks. In yet another case the question was whether the proposals were apt to lead to increased competition or to the very opposite.

2. Method

6. Initially, a review was performed of written materials from the two national authorities, revealing their respective standpoints on legislative matters, so-called consultation matters. Under the Swedish constitution, the Government must draft proposed legislation with the assistance of, inter alia, affected authorities. This is usually performed through a kind of consultation, in which authorities and other affected parties are given the opportunity to present written opinions during a set time period, normally up to three months.
7. Next, information was gathered from case officers who have, in various ways, taken part in joint work involving both of the authorities. The Director-Generals of the two authorities have met informally once and a meeting has been held at a lower level to discuss historical standpoints and the most suitable design of a contribution to the OECD.
8. Lastly, a deeper analysis has been performed in collaboration between the two authorities regarding the four regulatory matters that, based on the initial mapping, have been assessed as those which most clearly reveal the differences between the mandates of the two authorities. The supporting documents used have been notes, e-mails and existing decisions and memorandums.

3. Disposition

9. Initially, a more general review of the Swedish administrative structure is made (4), especially as regards the area in question, as well as the conditions and mandates in place for the two authorities (5).

10. Next, the more formal collaborations occasioned by the respective adjudication processes and other general tasks of the two authorities are presented (6), before the focus shifts to the kind of regulatory matters that are the main subject of the discussion within the OECD.

11. As an introduction to the regulatory matters, the review of the two authorities' official standpoints in regulatory matters (so-called consultation responses) is presented, and conclusions are drawn regarding which main differences of opinion that have become evident therein (7).

12. The matters that most clearly reveal the differences between the mandates of the two authorities are then described thematically, with a basis in the discussions that have arisen between and within the authorities regarding each respective matter (8–11). Thus, the text deals with, in turn, the matters of interest rate transparency, a ban on commissions and freedom of choice in the pension system, all of which have an element of consumer protection. Lastly, the so-called mortgage amortisation requirement is mentioned, which has primarily served to prevent macroeconomic and financial stability risks connected to household debt.

13. In conclusion, a presentation is given of the current status of the four legislative matters prioritized in this description. As will be clear, the outcome is mixed. A discussion is ongoing regarding the possibility of retroactively evaluating the decisions made and the significance of the respective standpoints of the authorities. In addition, an analysis is performed of which overall differences can be discerned in the prioritizations and deliberations of the authorities, and of which similarities exist, where the collaboration can be strengthened. It is concluded, in this context, that further research into how consumers and undertakings assimilate market information on financial topics would be useful to simplify the work performed by the authorities in future, both individually and jointly (12).

4. The Swedish administrative structure

14. The Swedish civil service is characterized mainly by the independence of the administrative authorities from the governmental powers, which is evident in the constitution as regards the exercise of public authority in relation to the individual citizen. This includes, among other things, a ban on ministerial rule in such matters, which are always to be settled independently, by the authority in charge.

15. Administrative matters and appeals are normally not settled within the Government Offices or by ministers. To the extent that this has formerly occurred, regulations have in several areas been altered, and administrative matters and appeals have been handed over to authorities or courts.

16. As regards the investigative operations etc., which do not involve the exercise of public authority, the government essentially has a right to govern the authority; however,

as the power of government is only exercised in a co-operative manner, this occurs relatively seldom in any formal sense.

17. A reflection of the independence of authorities in matters relating to the adjudication process can be seen in the fact that Swedish authorities, in a broad international comparison, generally have only limited dealings with legislative matters of various kinds. The authorities give their opinions in connection with consultations, but the actual phrasing of legal rules and the relatively extensive preparatory works performed ahead of Swedish legislation, usually fall upon the Government Offices or the independent inquiry organisation.

18. Authorities are headed by either a Director-General or a board. Authorities that are headed by a board do also, as a general rule, have a Director-General, appointed by the Government. Director-Generals are usually appointed for a period of six years, with an option for certain extension. Nowadays, many Director-Generals are appointed following an open application procedure, something that was formerly rare. Applications are covered by secrecy, excepting the application of the person later appointed. The Government is not obliged to advertise Director-General positions, is not bound by any particular rules in appointing Director-Generals (or members of a board) and is essentially free to fill such a position with someone who has not applied for it, which does occur.

19. The starting point is that all the decision-making power of the authority falls upon the Director-General or the board, if there is one. The actual practice is different and in all authorities of some size, there are extensive delegation routines, which in practice place decision-making in many frequently occurring matters at a lower level. Such matters are generally delegated to authority employees or, when there is a board, to the Director-General. Many decisions are made in the presence of several officials. However, it is usually a single official who makes the decision, unless the entire board does so jointly. Other officials who are present have the right to have a dissenting opinion noted in the decision, which is, however, relatively rare.

20. In relation to other state authorities under the Government, the authorities are expected to assist one another in performing their respective tasks, albeit without waiving their own regulations or their own tasks or goals, for the sake thereof. Conflicting goals or regulations are typically seen as a matter the legislator should be informed about, to the extent that these are not intentional or unavoidable. There is, however, as a general rule, no expectation on the administrative authorities that they reconcile their opinions or adjudication processes with those of other authorities, to a greater extent than what is possible within the framework of customary interpretation of the law, or than what follows from customary rules for managing conflicts of norms. This is yet another reflection of the relative independence of Swedish administrative authorities in an international comparison.

5. The two national supervisory authorities

21. Both the Swedish Competition Authority and the Swedish Financial Supervisory Authority are authorities under the Government, although they fall under different ministries and ministers within the Government Offices. The Financial Supervisory Authority is the responsibility of the Ministry of Finance and the Minister for Financial Markets, while the Competition Authority belongs within the Ministry of Enterprise and

Innovation, under the Minister for Enterprise and Innovation. Both the Competition Authority and the Financial Supervisory Authority were established in their current forms during the 1990s.

22. **The Financial Supervisory Authority** (Finansinspektionen, www.fi.se) was established in 1991 through a merger of the Bank Inspectorate and the Insurance Supervision Authority. The Financial Supervisory Authority is responsible for supervision, regulation and review of permits relating to financial markets and financial undertakings and shall take actions to prevent financial imbalance, in order to stabilize the credit market, but taking into account the effects of its actions on the financial system. The authority shall also strive to ensure that the financial system

- is stable and characterized by high confidence, with well-functioning markets that meet the needs for financial services among households and undertakings, and
- provides strong protection for consumers.

23. In particular, the authority shall be responsible for monitoring and analysing the development in its field. If the authority assesses that the instability in the financial sector creates a risk of negatively affecting the functioning of the Swedish financial system, the Government shall be informed.

24. The authority shall also ensure that the regulations and routines that the authority is in control of are cost-effective and simple for citizens and undertakings to understand and observe.

25. The costs of the Financial Supervisory Authority totalled SEK 598 million in 2016, of which one sixth came from fees and the rest from grants. The number of employees was around 450.

26. **The Competition Authority** (Konkurrensverket, www.kkv.se) was established in 1992, around the time that the National Price and Competition Board and the Office of the Competition Ombudsman were discontinued. The new Competition Act entered into force shortly thereafter, in 1993. The Act was based on the prohibition principle already applied within the EC. Any party that transgressed the prohibitions could be subject to sanctions. The prohibition principle was a great change as compared with the abuse principle formerly applied nationally.

27. In 2001, it became possible for the Competition Authority to apply the competition rules of the EU; however, the principles therein were already reflected in the tightened national legislation relating to competition. The rules on competition have been further tightened, for instance in 2002, 2004, 2008 and 2010. Currently, rules have been drafted on increased decision making powers for the Competition Authority in matters relating to concentrations of undertakings. The new provisions will enter into force in January 2018.

28. In addition to adjudication processes in the competition area, the Competition Authority has supervisory tasks relating primarily to public procurement.

29. Beyond its supervisory tasks, the Competition Authority shall also strive for efficient competition in private and public operations, to benefit consumers, and efficient public procurement to benefit the public and market parties. The Competition Authority shall ensure that the regulations and routines that the authority is in control of are cost-effective and simple for citizens and undertakings to understand and observe.

30. The Competition Authority shall also make note of obstacles to competition in public and private operations and public procurement, give suggestions on regulatory reforms to promote competition, as well as monitor the development in its field and, within the framework thereof, strive to increase the chances for small and medium-sized enterprises to participate in public procurements.

31. The costs of the Competition Authority totalled SEK 156 million in 2016 and the authority has around 150 employees.

32. The Competition Authority and the Financial Supervisory Authority apply different styles of governance. The authority is governed by a Director-General and has no board. The Financial Supervisory Authority, however, is a board authority, governed by a board with at most ten board members. Currently, the board consists of eight members, including the Director-General.

33. A person who is a board member or employee of the authority may not, according to the ordinance governing the authority, for him-/herself or on someone else's account, operate or own part of an undertaking that conducts operations which require permits or registration or are subject to registration at that authority or a corresponding authority in another country. The member or employee may not be an employee of or perform tasks for any such undertaking.

34. Both the Financial Supervisory Authority and the Competition Authority are geographically located in the capital, Stockholm, and have offices in the city centre. The decisions of the authorities are appealed and/or tried at local courts in the Stockholm area as the first instance. Matters relating to the Financial Supervisory Authority are mainly tried in administrative courts, while matters relating to the Competition Authority are mainly tried in general courts, which then have a certain composition (making up the so-called Patent and Market Court).

6. Existing collaborations between the two authorities

35. It is the nature of things that the Competition Authority's field of responsibility extends to the financial undertakings that fall under the supervision of the Financial Supervisory Authority and that there can therefore be cause for the Competition Authority, in some kinds of matters, to request information and inquire into experiences regarding undertakings and markets from within the framework of the Financial Supervisory Authority's operations. This has also been done for various matters, primarily in relation to questionable procedures in the financial sector, especially stock market operations and insurance trading.

36. This collaboration has simplified for the Competition Authority in obtaining relevant information regarding markets and undertakings. However, in practical collaborations, it has been observed that the authorities have sometimes had differing focal points regarding industry sectors, as the sectors in which the Competition Authority has investigated transgressions have not been prioritized in the risk-based supervision model applied by the Financial Supervisory Authority. This risk-based supervision model is based on first evaluating the areas within each supervisory area in which there are heightened risks, and then prioritizing supervisory efforts.

37. In addition, the Competition Authority has had contact with the Financial Supervisory Authority, for instance to check statistical data. All insurance undertakings

report a large amount of data to the Financial Supervisory Authority, for example regarding premiums earned and cost of claims, and the Competition Authority has also gained valuable information on the regulations that surround insurance undertakings and their operations.

38. Correspondingly, the Financial Supervisory Authority supervises undertakings encompassed by legislation on competition. The Financial Supervisory Authority has therefore striven to collaborate with the Competition Authority, in particular as regards efforts to draft new rules for financial undertakings and when rules could affect competition on the market. The purpose of such collaboration is to understand the Competition Authority's view of the suggested rules, at an early stage, as well as to gain solid insight into how the rules can affect competition conditions on the markets and for the undertakings affected by the new rules, and to explore other regulatory options to, in so far as possible, design rules with the least possible impact on competition.

39. This collaboration may take on various forms. For instance, the Competition Authority has been invited to participate in the external reference groups that the Financial Supervisory Authority has established. The purpose of such groups is to gather the opinions and viewpoints of various stakeholders already during the Financial Supervisory Authority's work in drafting new rules (both instructions and administrative guidance). Furthermore, the Competition Authority is consulted when the Financial Supervisory Authority requests consultation regarding proposals for new regulations. In this way, the Competition Authority is granted another opportunity to comment on and give its view of proposed rules and thus another chance to influence the design of the rules. When the Competition Authority has had particularly strong opinions, special meetings between the two authorities have been held to discuss the issue at hand, to understand the competitive aspects that the Competition Authority considers to be potentially affected by the regulation and, in so far as possible, achieve a joint view.

40. Chapter 8 Paragraph 1.3 of the Act (2010:751) on Payment Services states that

"The Financial Authority shall consult with the Competition Authority ahead of any supervisory actions being taken or interventions being made against a party responsible for a payment system due to violation of Chapter 7 Paragraphs 1 and 2."

41. The Financial Supervisory Authority has not, however, since this act entered into force, performed any such interventions and has therefore not been in contact with the Competition Authority for any such consultation.

42. The Competition Authority has also, during 2012, reviewed the case management of the Financial Supervisory Authority, when the Competition authority was considering streamlining management of its own case stream. There are contacts between individual officials, such as legal counsel at each respective authorities, and meetings at the Director-General level have been relatively common. Lastly, the Competition Authority participates, along with the Financial Supervisory Authority and a number of other authorities and undertakings, in a payment committee hosted by the Swedish Riksbank.

7. Comparison of the standpoints of the two authorities

43. A systematic review indicates that the two authorities have been consulted in the same consultation matter at least 34 times since 2014.

44. The decidedly most common outcome of a comparison at the case level is that at least the Competition Authority has not responded to the matter to which the consultation relates, which has occurred in more than twenty of these cases. Where this has been the outcome, it has not been reviewed if the Financial Supervisory Authority has responded.

45. One conclusion that could be drawn on the back of this is that the interests of the Competition Authority (KKV) and the Financial Supervisory Authority (FI) do not fully overlap and that the prioritizations of the Competition Authority in this sector are stricter and narrower. This is not surprising, given the competition authority's much smaller resources, combined with its responsibility for what is, in effect, the entire economy.

46. In all, ten consultations have, during the years 2014–2017, been responded to by the two authorities in a way that lends itself to making a comparison; see the table below.

Table 1.

Case title	Comments
A new legal act on insurance distribution Ds 2017:17	KKV: Asks for a more detailed analysis of the consequences for online comparison services. FI: Welcomes an increased consumer protection, even in excess of the minimum demands of EU-law, and would also like further rules for certain ancillary operations.
Memorandum on An increased fee to the resolution reserve	KKV: Objects to the proposal affecting competitiveness negatively for Swedish parties, especially in light of already existing disadvantages. FI: Recommends rejection as the resolution fee, once the reserve has been built up, will be considered constitutionally equivalent to a tax and states that traditional taxation would be better in such cases. Supports the concept of a risk-based fee per se.
Report on Taxes on financial operations (SOU 2016:76)	KKV: Recommends rejection in view of the competitiveness of Swedish parties and distortion between small and large undertakings. The financial markets, which change rapidly, will suffer damage, according to KKV. KKV instead suggests a joint solution at the EU level, if taxation is needed. FI: Supports the ambition behind the tax, but considers it not to be neutral, to entail significant distortion and to affect the market through higher prices, lower availability and emigration of operations.
Report on A focus on premium pensions(SOU 2016:61)	KKV: Recommends rejection of passive pension savers being automatically given the default option pension plan, but accepts various information measures with the same purpose. Opposes one of the inquiry's alternatives in particular, which entails low risk-taking in all eligible funds and a limited number of eligible funds. FI: States that the suggestions aim in the right direction, but are insufficient. Recommends one of the inquiry's alternatives in particular, which entails low risk-taking in all eligible funds and a limited number of eligible funds. This is motivated as it relates to mandatory savings that are to offer security after pensioning.
Payment services, brokerage fees and basic payment accounts (SOU 2016:53)	KKV: Supports the proposal on the whole and presents some additional proposals contributing to opening the market further. FI: Supports the proposal on the whole and presents some additional proposals contributing to opening the market further.
Memorandum on Certain financial market issues	KKV: Limits its comments to matters relating to cross-selling and the ban on commissions. Opposes the ban on commissions in accordance with earlier proposals and therefore welcomes that it has been discarded in the new proposal. FI: Agrees with the proposal on the whole, but also recommends a ban on commissions in accordance with earlier proposals.
A sustainable, transparent and competitive mutual fund market (SOU 2016:45)	KKV: Supports the proposal in all significant particulars, including the right for mutual funds to offer so-called investment savings accounts (ISK), the suggestions on mutual funds falling under corporate law and the requirements on information about active management and sustainability. FI: Presents similar viewpoints in the main, for these parts, but recommends rejection of the suggestions on mutual funds falling under corporate law, which KKV supports.
Report on Amortage amortisation requirement	KKV: Refers to an earlier statement in which it recommended rejection of the mortgage amortisation requirement and proposes an alternative phrasing. FI: Supports the proposal on the whole, but recommends rejection of exemption from the mortgage amortisation requirement for new buildings.
Brokerage fees for card payments - report from the 2015 Payment Services Inquiry (Fi 2015:02)	KKV: Supports the proposal on the whole, but recommends rejection of the possibility to make exceptions for third party payment systems. FI: Supports the proposal on the whole, but wants additional intervention possibilities for the financial supervisory authority (FI).
The financial securities market, MiFID II and MiFIR (SOU 2015:2)	KKV: Supports the information requirement, but recommends rejection of the ban on commissions. FI: Supports this in both respects, including the ban on commissions, for which KKV recommends rejection.

47. Based on this compilation of the respective consultation responses of the two authorities, and taking into account the general analysis and discussion that the work on this memorandum has entailed, one could conclude that the Financial Supervisory Authority sometimes accepts a certain gold-plating to satisfy the interest of consumer protection and financial stability, while the Competition Authority relatively often takes a stance which promotes similarity between regulations in different EU Member States.

48. Even in cases where the conclusion is the same – to recommend rejection of the proposal – the justifications for this can differ. As regards the resolution fee, for instance, the Competition Authority focused on the disparities in competition, while the Financial Supervisory Authority had constitutional objections pertaining to the constitutional conditions for taxation and charging fees. However, the justifications were similar in regards to taxation of financial operations.

49. The Financial Supervisory Authority relatively often focuses on the direct conditions for consumers on the financial markets, while the Competition Authority's focus on the same consumers appears to be more indirect. As regards information, this becomes apparent for instance in that the Competition Authority wants to protect the possibilities of third parties, such as price comparison sites, to offer information, while the Competition Authority has been more reluctant in requiring standardized information to consumers, and making drafting of such mandatory (see further in Section 8, below).

50. In regard to payment services it has, at least thus far, been relatively more difficult to see any clear differences between the standpoints of the authorities as compared with for other aspects of the finance and insurance markets. As is apparent from the below, matters relating to home loans, a ban on commissions in insurance brokerage, and mandatory pension systems have divided the two authorities when they have presented their respective opinions on proposed legislation.

51. In several of these cases, the differences of opinion are not fully reflected by the review of the authorities' consultation responses to the Government. This is due to the fact that both the mortgage amortisation requirement and interest rate transparency have been regulated directly by the Financial Supervisory Authority, and that several opinions on the matter have been sent directly from the Competition Authority to the Financial Supervisory Authority. The differences in opinion regarding these matters are, however, clear and well-known, and will be discussed further below.

8. New rules on information regarding interest rates on home loans (so-called interest rate transparency)

52. The Competition Authority and the Financial Supervisory Authority have had differing opinions on a requirement of publication of price comparisons for home loans, so called interest rate transparency.

53. Already in 2013, the Financial Supervisory Authority published a report with relatively far-reaching demands for increased transparency for interest rates on home loans. The suggestions therein were, however, not possible to realize, given the legal conditions. The focus was instead directed at a more limited reform, to make generally available the banks' respective interest rates on home loans. One important purpose with this was to give consumers a better idea of the actual interest levels, which seldom corresponded to the advertised list prices once the frequently occurring discounts were taken into account.

54. The matter was discussed by a reference group at the Financial Supervisory Authority, in which the Competition Authority also participated. According to the Financial Supervisory Authority, the work of the reference group supported the idea that publishing data on historic rates at an aggregate level for each financial institution would not obstruct competition. In September 2014, the Financial Supervisory Authority sent out a memorandum for consultation, in which mandatory publication of average interest

rates was suggested. In its consultation response of October 2014, the Competition Authority recommended rejection of the proposal.

55. The Competition Authority pointed out that the home loan market was a risk market, on which price signalling had the potential to work well. This was considered to indicate that the regulated provision of information was particularly risky from a competition perspective. Increased knowledge of the margins and market strategies of other banks would, according to the Competition Authority, facilitate coordination. According to the Competition Authority, increased transparency is mainly recommended for fragmented markets, where the costs for a consumer to search for information are high. The home loan market is rather characterized by a high market concentration and high transfer costs with consumers being locked in.

56. Both the Competition Authority and the Financial Supervisory Authority recognized the dual and contradictory effects of increased price transparency, i.e., improved transparency and a decreased deficit of information for consumers, which could also facilitate price signalling and coordination between parties active on the home loan market. However, the two authorities made diametrically opposed assessments of the balance between the positive and negative effects of such a measure. The Competition Authority was also the only entity consulted which recommended rejection of the proposal.

57. The Financial Supervisory Authority focused on that the rules would decrease the information deficit of the consumers and create incentives for increased client mobility, as well as making it easier to compare the offers of different undertakings and assess the room for negotiation. The Financial Supervisory Authority suggested that increased client mobility and awareness among consumers would, in this way, open for more effective competition. More specifically, the Financial Supervisory Authority suggested that the undertakings already had a good sense of the interest rates offered by their competitors. In regard to the inertia, which the Competition Authority had indicated as a risk factor, it was considered to be in part due to the information deficit. The suggestion of the Competition Authority, to instead publish statistical data with a higher level of aggregation and greater lag, was considered not to satisfy the purpose of the regulation.

58. The Financial Supervisory Authority thus implemented new regulations and administrative guidance as of June 1 2015, which meant that banks and credit market undertakings offering home loans to consumers must inform about the interest rates on these loans using an average interest rate for the preceding month, for each fixed rate period offered by the bank in its marketing. The Financial Supervisory Authority based the new regulations on an existing authorization in the form of what is known as “the soundness rule.”

9. Freedom of choice in the premium pension system

59. As regards the pension system, the differences in the perspectives of the two authorities have been obvious. There is a long-standing discussion regarding the so-called premium pension system, which is a state-regulated pension system that channels a smaller portion of the funds deposited for pensions and combines mandatory deposits with the freedom to invest these deposits. Banks and fund managers offer mutual funds for the individual to choose between, within the framework of the premium pension system.

60. The Financial Supervisory Authority has proposed a limited choice of options, which will all offer low risk, and that people who do not make an active choice shall automatically default to an institutionally pre-determined investment option. The justification for this is that it relates to mandatory savings that are to offer security after pensioning. The background has been, among other things, that many people are inactive and that the large number of options offered within the system has been seen as administratively onerous and confusing for the public.

61. The Competition Authority, however, has opposed such automatic defaults and has expressed a wish for more options and greater possibilities for pension savers to choose their own risk level. The Competition Authority has, in this context, also focused on the significance of facilitating new entry and diversity on the fund market, and the importance that this has for consumers of mutual funds in general. The authorities have thus, in summary, made different assessments of the possibilities to use improved information toward consumers to give them the possibility to make use of the options which exist within the framework of the premium pension system.

10. The ban on commissions

62. In the insurance area, it is mainly the ban on commissions that has created differences of opinion between the two authorities. The Competition Authority has been against this ban, while the Financial Supervisory Authority has supported a ban for certain insurance brokers to accept commissions from the undertakings for which they broker insurance.

63. The Competition Authority has made the assessment that a ban on commissions would favour undertakings that offer investment products and have their own distribution network, such as large banking corporations and large insurance undertakings, at the expense of undertakings without their own distribution network (such as smaller mutual fund undertakings).

64. The incentives for undertakings with their own distribution network to offer external products will thus decrease, which should in turn lead to a decrease in the number of undertakings that offer investment products and a return to greater market concentration. It is generally recognized that smaller suppliers without their own distribution network are more dependent on being able to pay commissions than larger entities.

65. The Financial Supervisory Authority has, however, presented the opinion that a ban on commissions serves an important purpose in ensuring, through the incentive structure, that consumers get reliable and independent advice in making difficult financial choices.

11. New rules on mortgage amortisation of home loans

66. The so-called mortgage amortisation requirement, entailing new rules on amortisation of home loans, has been a matter of particular weight in the Swedish public debate, as it can so clearly be expected to affect the development of the housing market and competition between home loan providers. The regulation has also had a special character in the collaboration between the two authorities, as the focus here has been to

counteract macroeconomic and financial stability risks associated with household debt, rather than various aspects of consumer protection.

67. Sweden has, since the late 1990s, had a fast increase of household debt and rapidly rising housing costs. In just the last three years, the cost of housing has risen by almost 40 percent and household debt by 20 percent, a development that can entail risks for both the macro-economy and the stability of the financial system. One background to this development has been that Swedish housing credits have not entailed any large degree of required amortisation.

68. The purpose of the mortgage amortisation requirement has mainly been to strengthen the resilience of households. The Financial Supervisory Authority has stated that the risk of credit losses in the banking sector is currently minimal. However, the high levels of debt among Swedish households can lead to macroeconomic risks. If the economic climate changes, unemployment rises or housing prices decrease, this could affect household consumption. Households with high debt levels tend to decrease consumption more than households with low debt levels. This could, in turn, reinforce a recession, affect the private sector and, eventually, affect the financial sector through its exposure to undertakings and the economy at large.

69. The Financial Supervisory Authority has therefore taken a series of actions to counteract this development. In 2010, the Financial Supervisory Authority implemented a home loan ceiling, meaning that loans could not be taken which exceeded 85 percent of the home's value. In 2014, implementation also of a mortgage amortisation requirement was more widely discussed and from the spring of 2014 the industry association Swedish Bankers Association recommended that home loans be amortised down to 70 percent of the home's market value within 10–15 years.

70. In October 2014, the bankers' association announced that its board had decided to further sharpen its recommendation, mainly by requiring continued amortisation down to 50 percent of market value; in so far as can be assessed, this was in part to avoid state regulation of this matter. The Competition Authority initiated an adjudication process case because of this sharpening, which would affect a larger part of the total number of loans than before.

71. During this investigation, the Competition Authority, within the framework of its adjudication process, met with the Financial Supervisory Authority to hear the authority's opinion on the circumstances in the matter and to better understand the background and justification of the recommendation of the bankers' association. The two authorities naturally focused on different aspects of the amortisation rules; the Competition Authority focused more on how they had arisen and who had suggested them, while the Financial Supervisory Authority focused on the contents and significance of the rules as such.

72. In addition to this meeting, the Financial Supervisory Authority was kept informed about the development of the matter when the Competition Authority in November 2014 chose to publically present its assessment and the preliminary analysis that the authority had given to the bankers' association, i.e., that their recommendation might contravene competition regulations. The Competition Authority also made clear the risks of industry agreements and the benefits of state regulations, if amortisation needed to be regulated at all.

73. On the back of this, the bankers' association in November 2014 chose to cease its efforts in drafting the aforementioned recommendations. However, the Financial

Supervisory Authority was anxious for the implementation of new rules on amortisation requirements and fairly quickly presented its intention to draft regulations in this area. A proposal was thus created entailing that home loans of over 70 percent of a home's value should be amortised with 2 percent annually and thereafter with 1 percent annually, until the loan was 50 percent of the market value; i.e., using the same principle that the bankers' association had intended to recommend to its members. Still, the Financial Supervisory Authority stated that an overall goal was also to avoid decreased competition on the banking market as a result of the amortisation requirement. The Financial Supervisory Authority was therefore anxious that the requirement, to the greatest extent possible, would be designed so that the conditions for a borrower to switch lenders would not be worsened.

74. The proposal was sent out for consultation in March 2015, despite the Competition Authority having presented its negative opinions already during the previous work in the reference group. The Competition Authority recommended rejection of the proposal. It was considered to limit competition between home loan providers and to direct savings toward savings forms with lower expected returns, as well as increasing the lock-in effects on the housing market, affecting both the supply and the demand of housing and, by extension, the pricing thereof.

75. As the legal situation was unclear in regard to if the Financial Supervisory Authority had the authorization to present the proposed regulations, the procedure was stayed until the Government in September 2015 sent out a memorandum for consultation which would indirectly grant the Financial Supervisory Authority such authority. The Competition Authority used this opportunity to present a new design for an amortisation requirement that would not, in the same way, regulate the actual client offering and thus not affect competition to the same extent. The proposal did not gain a hearing.

76. The Financial Supervisory Authority finally sent out for consultation a new proposal on an amortisation requirement in December 2015 and this entered into force, with a few modifications, in June 2016. In its last consultation response in the matter, presented in January 2016, the Competition Authority stated that it stood by its recommended rejection in the main, but also presented certain practical suggestions so the amortisation requirement would not hinder switching banks. The Competition Authority further criticized the consequence analysis and the proposal to exempt certain new buildings from the requirement. These opinions did not gain a hearing.

77. The decision of the Financial Supervisory Authority on the amortisation requirement makes clear that it, on the whole, considered the benefits of an amortisation requirement to exceed the negative socio-economic consequences that follow from most regulations. Further, the Financial Supervisory Authority stated that it was not desirable, as regards the matter of competition, that home loan providers competed by offering amortisation-free loans to households with high levels of debt, even though an obstacle to this could lead to a certain decrease in competition on the home loan market. The lock-in effects of an amortisation requirement would, according to the Financial Supervisory Authority, decrease over time, when households took out new home loans despite the lock-in effects. The Financial Supervisory Authority concluded that savings were in fact directed toward savings forms with relatively low returns, but that this was not necessarily detrimental, as the risks of such savings could also be lower.

12. Closing comments

78. At this point in time, we have some final results. The matter of freedom of choice in the premium pension system is still being discussed and is not settled. Matters relating to the pension system in Sweden have clear political dimensions and a long tradition of cross-bloc collaborations and deals. The matter can therefore be expected to be settled based on many considerations in addition to those presented by the Competition Authority and the Financial Supervisory Authority in this context.

79. The ban on commissions in insurance brokerage was not implemented, as the Competition Authority wanted. However, the amortisation requirement was implemented, as the Financial Supervisory Authority wanted. These were obvious matters for balancing, where the legislator picked a certain path and priority. Counteracting macroeconomic and financial stability risks was seen as more important than competition, while the smaller mutual fund undertakings were seen as more important than the incentive risks of commissions.

80. As regards interest rate transparency, this was a matter where the Financial Supervisory Authority had the authority to implement the regulation. It did so, despite the recommendation of rejection given by the Competition Authority. The core here was that the Financial Supervisory Authority made a completely different assessment of the impact on competition through these measures than the Competition Authority did. Who was right in the end is an empirical question that might be well-suited for a follow-up study.

81. In connection with its decision in the matter of interest rate transparency, the Financial Supervisory Authority stated in its decision memorandum that

"The main task of the Competition Authority is to work for efficient competition in private and public operations to benefit consumers. The main task of the Financial Supervisory Authority is to contribute to a stable financial system that meets the needs for financial services among households and undertakings, while also ensuring high levels of protection for consumers. Thus, the tasks of the authorities coincide as regards consumer protection. As the conditions on the financial market are unique, it is part of the task of the Financial Supervisory Authority to safeguard consumer interests on this market in particular and, in this case, specifically on the home loan market."

82. If one is to attempt to summarize, the two authorities have clear, joint interests in keeping the consumers on the financial markets mobile and well-informed. The immediate focus of the Competition Authority has been on mobility, while that of the Financial Supervisory Authority has been to ensure that consumers are well-informed. The Financial Supervisory Authority has considered information to the consumer to be a prerequisite for, and an incentive to, mobility. If the consumer is not aware that there is a better offer, the consumer has no incentive to switch service suppliers. The Competition Authority, on the other hand, has focused on the fact that if there is no possibility of switching, consumers will not have an interest in comparing different options. Both points are correct and relevant. The question is if it is possible to meet to an even greater extent, regarding how the two aspects depend upon one another and which concrete measures thus become vital.

83. Further research into how consumers and undertakings assimilate market information in the financial field could be valuable to further facilitate the continued work

of the authorities, both individually and jointly. The basic question, which is of interest for both authorities, is whether well-informed consumers become mobile because they are well-informed. Or do consumers take in information only if they have the possibility to be and/or are mobile? Or are both aspects actually valid, so that mobility and competence support one another, each in turn, and also depend on one another? And, if so, how should the relative weight of the different circumstances be evaluated from a consumer perspective?

84. An illustration of the potential need for further studies is seen in that the view on transparency apparently differs between the two authorities. Consumers were expected to be able to assimilate regulated information, while undertakings were not considered to have any use for such, when new rules on interest rate transparency were implemented by the Financial Supervisory Authority. The Competition Authority, however, has faith in that consumers can assimilate non-systematic information circulating on the market, but has assumed that undertakings cannot use it in the same way. This was one of the fundamental sources of conflict as regards the matter of interest rate transparency.

85. That the authorities could not agree on the mortgage amortisation requirement is less surprising, relatively speaking, as this was a clear matter of balancing, where financial stability in some sense opposes competition and financial change.