

The Swedish Competition Authority's Prioritisation Policy for Enforcement Activities

The Swedish Competition Authority has a responsibility to use its resources as efficiently as possible. Therefore, we need to prioritise between different matters. The selection of matters for further investigation by the Swedish Competition Authority is performed based on this prioritisation policy, whereby various circumstances are weighed against each other. Not all the factors that we weigh during prioritisation need to exist in each individual case.

This policy is used during the initial prioritisation of whether a matter should be investigated in greater depth. However, an assessment of whether a matter should continue to be investigated is also performed continuously as the investigation proceeds. The number and scope of other ongoing investigations may influence a prioritisation decision. However, we do not refrain from acting upon serious infringements because of resource constraints.

We focus on investigating matters which are of general interest and which will lead to clear results. Our aim is always to promote effective competition in the private and public sectors for the benefit of consumers, as well as to promote an effective public procurement process for the benefit of the general public and market participants.

The Swedish Competition Authority fulfils different functions with regard to the enforcement of the competition and procurement rules. This is reflected in the policy, which is divided into two parts. The two sections contain explanations of our priorities in our respective enforcement areas.

On our website you can find more information on how we work in practice with the prioritisation of our enforcement work.

Prioritisation in competition enforcement

In its prioritisation of competition enforcement, the Swedish Competition Authority primarily weighs the following factors:

- If the issue causes harm to competition and consumers.
- Whether conditions exist to investigate and remedy the issue effectively under the competition rules.
- The importance of securing a guiding precedent.
- Whether the Swedish Competition Authority is best placed to intervene.

In the choice between different matters that fulfil one of the grounds for prioritisation mentioned above, harm to competition and consumers is the factor that carries most weight. If we see signs of severe harm, the matter will always be prioritised, assuming that we see a feasible way to investigate and remedy the issue under the competition rules.

If the issue causes harm to competition and consumers

In assessing the capacity of the conduct to cause harm to competition and consumers, we take into account the benefits of intervention for a larger group of consumers, as well as the importance, from a socioeconomic perspective, of eliminating the anti-competitive conduct in question.

Corruption, conflicts of interest, and other actions that might undermine trust are harmful to competition and consumers. Such actions also have the capacity to facilitate and aggravate infringements of the competition rules. It is not uncommon that there are elements of corruption in competition enforcement matters and these can, in and of themselves, be an indication of a serious competition issue.

Cooperation between competitors

Cooperation between competitors (so-called horizontal cooperation) may result in significant harm to consumers. We take a serious view of companies jointly setting sales prices, limiting or controlling manufacturing, or dividing markets between them. We give high priority to investigating and taking legal proceedings against anti-competitive cooperation, in particular cartels.

Cooperation between non-competitors

Cooperation between firms active in different levels of the supply chain (so-called vertical cooperation) generally leads to efficient distribution and increased competition. Nonetheless, under certain conditions, it may result in restrictions that harm competition and consumers.

We prioritise investigating vertical restrictions that have the capacity to harm effective competition at any level of the supply chain. In our prioritisation, we give particular consideration to the share of the relevant markets that is affected by the restrictions, the market power held by the parties engaged in the cooperation, and how concentrated the markets are. If there are other similar

instances of cooperation on the market, this may increase the likelihood that we prioritise the matter.

Abuse of a dominant position

The desire of firms to attain and maintain market power and profitability is a key driving force for competition. However, under certain conditions, unilateral conduct by dominant firms may result in harm to consumers, either directly or by causing harm to competition.

We prioritise in particular actions that have the capacity to limit the conditions for other firms to exercise effective competitive pressure at any level of the supply chain. In our prioritisation, we give particular consideration to the share of the market that is affected by the action and, if foreclosure concerns an input, to what extent the input is essential to enable effective competition on the market. In assessing price-based conduct, we also consider whether the pricing is capable of excluding a competitor that is hypothetically as efficient as the dominant firm. We may also prioritise exploitative abuse if there are clear signs that a dominant firm is directly exploiting customers or consumers as a result of non-functioning competition.

Anti-competitive sales activities by public entities

When public entities operate on a competitive market, this may lead to distortion of the conditions for effective competition or may hamper the existence or development of such competition. We prioritise matters where the conduct of the public entity in question hampers or distorts the long-term conditions for effective competition.

This may be the case when the public entity's actions decrease the incentives or possibilities for private firms to operate on the relevant market. Examples of this are when private firms are hampered in their development or growth, when they are forced to close their business entirely or partially, and when new private firms find it difficult to establish themselves or expand.

Whether conditions exist to investigate and remedy the issue effectively under the competition rules

As a public authority, we have a responsibility to use our resources in the most efficient manner possible and therefore weigh the expected use of resources against the benefits of an intervention. In this assessment, we give particular consideration to whether conditions exist to effectively investigate the matter, to gather essential evidence, and to apply the competition rules to remedy the problem in an effective manner.

Where an individual enforcement matter is not deemed an efficient way to achieve results, the Swedish Competition Authority may in some cases opt to address the issue in a different manner, for instance through an external report.

The importance of securing a guiding precedent in the area

We take into account if a matter is expected to have a significant deterrent effect and/or if there is a need for guidance among a larger group of actors. This means that a matter may be prioritised where an intervention or a reasoned decision to close a matter can prevent firms and other market actors from infringing the rules and where we, through our enforcement, can clarify how to act correctly.

There may be a need for guidance if an infringement is considered to be commonly occurring. Guidance may also be needed where the legal position is unclear, or where rules have not had the effect that the legislator intended.

Whether the Swedish Competition Authority is the entity best placed to intervene

We may entirely refrain from acting in cases where another authority or party is better placed to intervene. Where another authority has more suitable tools to address a particular competition or market concern, we may choose not to prioritise the matter.

Prioritisation in procurement enforcement

In order to work as efficiently as possible, we divide our enforcement activities into two strands: planned enforcement and reactive enforcement. In our planned enforcement, we identify in advance which legal issues, sectors and authorities we should review. Our planned enforcement is preceded by an analysis with the aim of creating a solid basis on which to undertake different enforcement projects and matters. In order to analyse more thoroughly what we should be focusing on in our planned enforcement, we perform horizon scanning. The aim of this is to identify legal issues that should be clarified, sectors that should be reviewed, and contracting authorities or matters which might be appropriate for a more in-depth procurement review. The goal of such analysis is to have greater foresight in our enforcement activities.

In its prioritisation of procurement enforcement, the Swedish Competition Authority weighs the following factors:

- The deterrent effect and/or the need for guidance.
- Shortcomings in the conduct of the contracting authority or entity.
- If there are signs of corruption or other actions that undermine trust.
- Whether the Swedish Competition Authority is best placed to intervene.

- The resources required in relation to the conditions for achieving the desired results.

Whether a matter can have a deterrent effect and/or there is a need for guidance

We take into consideration whether a matter may be expected to have a significant deterrent effect and/or there is need for guidance among a larger group of actors. This means that an issue may be prioritised where our enforcement can be expected to prevent several contracting authorities or entities from infringing the rules, and where we, through our enforcement, can clarify how to act correctly. An infringement that may result in an application for procurement fines to be imposed is assumed to have a significant deterrent effect. There may be need for guidance if an infringement is considered to be commonly occurring. Guidance may also be needed where the legal position is unclear, or where rules have not had the effect that the legislator intended.

Whether there are shortcomings in the conduct of the contracting authority or entity

We take into consideration shortcomings that have come to light in the conduct of the contracting authority or entity. Poor routines or shortcomings with respect to competence, as well as inadequate or unstructured documentation, can often lead to infringements. Intentional or repeated infringements are generally regarded as shortcomings of a serious nature. In some cases we may choose to delay another intervention on our part in order to see the effects of past enforcement measures aimed at a certain actor.

If there are signs of corruption

Corruption, conflicts of interest, and other actions that might undermine trust are harmful to competition and consumers. Such actions also have the capacity to facilitate and aggravate infringements of the procurement rules. We therefore give particular consideration to suspicions of corruption when prioritising the tip-offs that we receive or when a certain issue is highlighted in our horizon scanning.

Whether the Competition Authority is the entity best placed to intervene

We may entirely refrain from acting in cases where it is deemed that another authority or party is better placed to intervene. For instance, there may be a possibility to have the matter tried in court, or there may be ongoing or recently concluded court proceedings.

The resources required in relation to the conditions for achieving the desired results

We take into account the resources which might be required, how extensive and costly the investigation may become in relation to the results the investigation is expected to provide, and our ability to efficiently investigate the matter.