

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 2 on Competition and Regulation**

**COMPETITION IN HOSPITAL SERVICES**

-- Sweden --

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## **1. The system of choice in the Swedish health care sector – The supervisory role of the Swedish Competition Authority**

### ***1.1. Background***

1. The Act on System of Choice in the Public Sector (2008:962) (the act on system of choice) can be employed by municipalities and county councils who wish to expose e.g. support activities and care of the elderly and the disabled or health care services, to competition.

2. The Swedish healthcare system is a third part funded system, i.e. funded by taxes, and largely decentralized. The responsibility for health care is shared by the State, the 20 county councils and regions and the 290 municipalities.<sup>1</sup> The county councils are responsible for the hospitals and out-patient medical clinics, while the responsibilities of municipalities include care for the elderly and the disabled in special forms of housing or in the form of home care (hemtjänst). Their responsibility also include care for people with mental disorders and for providing support and services for people released from hospital care as well as for school health care. The Health and Medical Service Act (1982:763) regulates the responsibilities of the county councils and municipalities. The act is designed to give the county councils and municipalities a greater flexibility in the provision of health and medical services. The role of the Government is to establish principles and guidelines and to set the political agenda for healthcare. This is done by laws and ordinances or by reaching agreements with the Swedish Association of Local Authorities and Regions, which represents the county councils and municipalities.

3. In Sweden, consumer choice models have been used by some local authorities since the beginning of the 1990s, a few even before that. The consumer choice models were mainly used for simpler services, such as foot care services for the elderly and people with diabetics, and in a relatively small scale. The experiences were quite positive, but the lack of legislation led to questions whether the models used were in line with the EU legislation and especially the public procurement directives. In spite of this, an important step was taken in 2007 when the county council in Halland introduced a consumer choice model for healthcare clinics (vårdcentraler). Only one year after that, in 2008, consumer choice models for healthcare clinics were introduced in additional two county councils, Stockholm and Västmanland. That same year, the Swedish parliament decided on the introduction of The Act on System of Choice in the Public Sector (2008:962) which entered into force on 1 January 2009. This Act applies when a contracting authority decides to apply a system of choice regarding services within health and social services and is an alternative to the Public Procurement Act (2007:1091). The Act can be applied to health care services and social services, i.e. B services, category 25 in annex 3 to the Public Procurement Act on system of choice. The act is a voluntary tool for municipalities but mandatory for county councils and regions.

### ***1.2. System of choice for increased competition and consumer benefits***

4. The main purpose of introducing the customer choice system has been to increase freedom of choice for users, quality, accessibility and efficiency by encouraging competition and diversity among players and supply in the Swedish health care sector. The act is supposed to provide municipalities and county councils with a new tool that they can use in situations where they wish to expose in-house provided health care services to competition and to transfer the choice of provider to the user. Thus, the opportunity for individuals to exercise choice will make publicly funded services more responsive to the needs and wishes of the individual user. This can lead to better opportunities for companies and NGOs to operate and develop by being able to compete in a simpler way with municipalities' and county councils'

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<sup>1</sup> One municipality, Gotland, an island in the Baltic Sea, has the same responsibilities for health care as the county councils.

in-house services. Furthermore, systems of choice are considered to favor diversity and provide greater opportunities for small businesses, value-based activities and cooperatives of various kinds to enter the market.

### **1.3. *Design of the system of choice***

5. The Act on System of Choice applies when a contracting authority opens up parts of its activities for competition by establishing a system of choice for the services covered by the system. In establishing a system of choice the contracting authority transfers the possibility to choose a service provider within the system to the users of the services. The users may, in many cases, choose between private suppliers with whom the contracting authority has concluded a contract within the system of choice, or service providers within the contracting authority's own organization. The level of payment given to the suppliers is set by the contracting authority and stated in the contract documents, and is depending on the number of users choosing the particular supplier as their service provider. According to the Act, contracting authorities are county councils, with regards to primary care, and municipalities who have decided to establish systems of choice in health care and social services. According to the Health and Medical Service Act, since 1 January 2010 it is mandatory for county councils to introduce a healthcare choice system within their primary healthcare service, which mainly concerns medical clinics.

6. The principles of system of choice are basically the same as for Public Procurement, i.e. non-discrimination, equal treatment, proportionality, transparency and mutual recognition, and must be considered during the whole procedure. Accordingly, service providers within the contracting authority's own organization and the private suppliers in the system of choice must be treated equally. Also the requirements set by the contracting authority, which the suppliers must satisfy, must be relevant. The contracting authority shall provide information about all suppliers within the system of choice to the users of the services. The contracting authority is also responsible for assisting the individual user and explaining what the freedom to choose entails and what providers are available. For people who are not capable of choosing by themselves, or who want help from someone else in making their choice, there are rules on deputies, representatives and legal assistance as in ordinary cases when a system of choice have not been introduced. An individual, who does not want to choose, will not have to do so. In these cases, the user will be referred to the no-choice alternative decided in advance by the public authority and described in the authority's information material. The same quality requirements apply to the no-choice alternative as to the other providers.

7. The individual also has to be given the chance to change provider in a simple way. It is the individual's opportunity to choose and choose again that is the very core of the system which is intended to help to maintain and further develop the quality of the services included.

8. A contracting authority that has decided to establish or change a system of choice shall publish the relevant contract documents on the national website specifically set up for this purpose ([www.valfrihetswebben.se](http://www.valfrihetswebben.se)) and continuously request applications for contracts. The database is administered by The Legal, Financial and Administrative Services Agency (Kammarkollegiet). If the contracting authority has breached a provision of the Act and this has meant that a supplier has suffered or may suffer damage, the general administrative court shall decide, after application by the supplier, that the contracting authority shall implement rectification. In contrast to the position for public procurement, relevant contract information about contracts will be advertised continuously. The main purpose of the database is to make it easier for providers to find municipalities and county councils that have introduced a system of choice. Another purpose to set up this database is to simplify the exchange of experience between authorities that are considering the system or wish to develop it. Advertising in the national database is mandatory but can also be made in other appropriate media. Suppliers interested in providing services in the authority's system of choice submit their application to the authority, which assesses

whether they meet the requirements specified in the contract documents. If so, the supplier is entitled to sign an agreement with the authority. Unlike under the Public Procurement Act, the tenders do not have to be assessed according to the principles of “most advantageous in financial terms” or “lowest price”. All providers that fulfill the requirements in the contract documents are admitted to the system. An agreement under civil law is signed between the authority and the provider.

#### **1.4. Requirements concerning providers**

9. One important part of the political process in applying the act on system of choice is deciding what requirements to specify for prospective providers of health care services. In addition to the fundamental requirement that the service has to be conducted in accordance with current law, there are a number of other requirements that municipalities and county councils can set up on the condition that they comply with the principles of Community law that are applicable in this context, i.e. non-discrimination, transparency, predictability, mutual recognition and proportionality. One question that the political leadership must decide upon is quality requirements. Other requirements that are relevant to set up for suppliers may include the level of education of staff and managers, liability insurance, financial capacity, cooperation between the provider and the authority, R&D cooperation, crisis and disaster preparedness, and accessibility. The list of requirements may differ substantially depending on the service being bought and the aims of the county council or municipality. The effects of the requirements set up must be assessed in advance so as to be able to attain the objectives specified for the system of choice. Small businesses and hence also female entrepreneurs may seldom be able to live up to high levels of requirements concerning financial capacity, for example. All requirements have to be stated in the contract documents.

#### **1.5. Contract documents**

10. When applying the act on system of choice, the county council or the municipality must specify in the contract documents what requirements the provider must meet for an agreement to be concluded. In addition, the authority also has to state the payment that the supplier will receive for providing a particular service. The basis of the system of choice is that there is no price competition between suppliers. The county council or municipality lays down the price in advance. All providers, including, in principle, the in-house provider, will be paid according to the same principles. The design of the payment can vary depending on the service being bought; the main issue is for it to be transparent and non-discriminatory.

11. In addition, there should be a description of the service, contact information, monitoring, follow-up and control rules as well as other contractual terms and conditions. In addition to the type of requirement set out above, this refers to rules on the term of agreements, rules for the amendment of contractual conditions, the duty to provide information, the monitoring and the follow-up of the service, cancellation of the agreement due to a breach of contract and the possibility for the supplier to cancel the agreement if, for instance, it does not succeed in attracting enough users.

12. The design of the reimbursement system differs across county councils and municipalities. In the council counties' primary care the reimbursement is often based on consumer choice (capitation) and performance (number of actual patient visits at the health care clinic). The balance between capitation and performance based reimbursement vary between different county councils. In the municipalities, the design of the reimbursement system differs between municipalities and type of services provided. In care for the elderly or home care, for example, the reimbursement is often based on actual performance, i.e. per hour of care, or on an estimated level of performance needed in order to provide the service with a certain level of quality. The basic idea is that the contracting authority is to design the reimbursement system for different types of services.

## 1.6. *Review*

13. The act on system of choice contains the possibility of requesting a review by a general court. The court has to order correction in cases where the county council or municipality has breached the fundamental principles of equal and non-discriminatory treatment or some other provision of the act. A correction can also be sought if an authority does not approve a provider because the authority assesses that the provider does not meet the requirements in the contract documents. In that case, the provider can request a review of the authority's decision by the County Administrative Court. For the Court to order correction, the applicant, i.e. a provider who has not yet been approved in the system, must show that it has suffered damage or may suffer damage as a result of the incorrect action of the authority.

## 2. **The Swedish Competition Authority's evaluation and supervision strategy**

### 2.1. *Implementation of the system of choice in Sweden - evaluation*

14. As stated above, since 1 January 2010 it is mandatory for county councils/regions to introduce a healthcare choice system within their primary healthcare service. The Swedish Competition Authority (SCA) has been assigned by the Swedish Government to supervise the reform from the perspective of competition. In order to prevent infringements, the SCA also gives general guidance and information concerning the Act. The SCA has evaluated the healthcare choice reform concerning primary care in the county councils in reports to the Government.

15. In 2010, the SCA conducted a first evaluation of the establishment of the system of choice in the county councils and regions' primary health care service.<sup>2</sup> In the evaluation report that was issued to the Government, the SCA concluded that the reform had been successful and that there had been a significant increase in the opportunities to choose healthcare clinic and also an increase in the number of alternatives to county councils' healthcare clinics. The number of healthcare clinics had increased by 223 (or 23 per cent) since healthcare choice was introduced and the number of clinics run privately increased from 28 per cent in 2009 to 37 per cent in 2010. Two out of three privately run clinics were operated by small enterprises.

16. The SCA also observed that the opportunity to establish new healthcare centres has been important in terms of generating and maintaining competition in the market. The initial process of listing patients appears to be important in terms of how many new healthcare centres could be set up. Furthermore, the report shows that the confidence that new healthcare providers have in the county council has clearly influenced their willingness to start-up healthcare centres.

17. The SCA has proposed that county councils should continue to develop healthcare choice systems for other types of health care services and areas, which has also been the case in several county councils. According to a survey assigned by the Government and conducted by the SCA in 2011, around half the county councils, 22 in total, had introduced or were exploring the possibility of introducing healthcare choice within more areas than just primary care. The number and the areas covered vary between these county councils and in several cases relate to operations that, within other county councils, already comprise part of the mandatory healthcare choice mandate within primary healthcare services. For example, the Stockholm County Council introduced a patient choice system in 2008 for somatic specialists. Since then the system has been supplemented with more than 20 additional health care areas

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<sup>2</sup> Swedish Competition Authority, 2010 "Uppföljning av vårdval i primärvården. Valfrihet, mångfald och etableringsförutsättningar – Rapport 2010:3" "Healthcare choice in primary healthcare services – freedom of choice, diversity and conditions for market entry"

such as maternity and pregnancy care, child dental care, vaccinations, and hip and knee replacement surgery.

18. Regarding the implementation of system of choice in the municipalities, the Swedish government has allocated about SEK 300 million for incentive grants to stimulate and accelerate implementation of system of choice in the municipalities since the reform was introduced. All municipalities have been able to apply and receive government grants to investigate the conditions for introducing a system of choice in their municipality. In total 247 of the 290 county councils and regions have applied and received the grants to investigate the issue. In December 2011, 102 of the 247 municipalities that had received the incentive grants had introduced a system of choice for care and health care services and another 61 municipalities have decided to implement a system of choice. 55 municipalities had not yet made a decision on the issue and 29 of the municipalities had after investigation decided not to introduce a system of choice. This means that more than half of the municipalities had already introduced the system of choice or had decided to do so. However, these municipalities cover an even larger part of the Swedish population as several of these municipalities have a large population.

## **2.2. *Future work – main areas to study and evaluate***

19. In a recent interim report to the Government on the implementation of system of choice in municipalities and its effect on competition, the SCA concluded that a main challenge is to design a system of choice that is neutral with regard to competition and does not discriminate against any provider.<sup>3</sup> One of the main reasons for this is that the contracting authority often has the role of both the party placing the order and providing services. According to the SCA, it is thus important that the contracting authority manages to differentiate between these two roles and that the design of the system do not favor the in-house provision or any specific external provider. Areas that the SCA considers to be relevant to examine is the impact of the reform in various municipalities, the diversity regarding size, ownership and offering among suppliers. Other areas of importance is how the design of contracts and no-choice alternative may have impact on market entry and competition neutrality, as the SCA has identified a risk that the contracting authority may favor its in-house provision or established players by designate them as no-choice alternatives. Furthermore, the SCA has concluded that the design of the reimbursement system, especially the balance between capitation and performance based reimbursement, may also affect market entry and competition. A reimbursement system based mainly on capitation will of course give established players and no-choice alternatives certain competitive advantages which in the long run will lead to barriers to market entry and less effective competition.

## **2.3. *Important starting-points for the supervision***

20. An important prerequisite for a well-functioning freedom of choice system is that there is a diversity of suppliers for individuals to choose amongst. The SCA's objective with the supervisory activities is to contribute to the rules being observed in accordance with the intention of the legislation. In this respect it is of particular importance that the suppliers act under competition-neutral conditions, that the conditions are transparent and that the procuring authority does not impose any additional demands on procurers than what is requested to fulfil the desired goals. Through the supervisory activities, the SCA wishes to increase the awareness of, and the knowledge about, the system of choice; notably within municipalities and county councils. The supervision strategy is based on a few supervision keywords. These state that the SCA's supervision should be:

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<sup>3</sup> Swedish Competition Authority, 2012, Rapport 2012:1, "Kommunernas valfrihetssystem- så fungerar konkurrensen" ("System of Choice in Swedish Municipalities – A Competition Perspective")

- **Initiative-driven** – this means that the SCA shall use tip-offs and complaints as a point of departure for the direction of actions and to a high extent take own initiatives regarding what matters to investigate.
- **Thematic** – this means for example that the SCA should study a certain aspect of the system of choice simultaneously in different county councils. When the SCA works in a thematic way, the authority shall prioritise typical problem areas and base the analysis on a representative sample of county councils or and /municipalities.
- **Focussed** – this means that the SCA shall focus on issues which are important for the development of practice.
- **Solution-oriented** – this means that the SCA shall communicate its own interpretation of the regulatory framework and provide examples of solutions that favour competition.

21. The supervision is carried out in dialogue with the concerned stakeholders since the Act on System of Choice does not contain any legal sanctions.

#### **2.4. *Prioritization of matters and other relevant areas***

22. The following factors are taken into account when selecting which matters to investigate:

- The severity of the problem or the occurrence.
- The importance to provide guidance.
- Whether any other authority or actor is better-suited to act on the matter, or whether the issue is better dealt with within a different regulatory framework.

23. According to the supervision strategy the SCA should also suggest improvements to the regulation to the Government and make the Government aware of legislation and practices which obstruct the freedom of choice. Furthermore, it is important for the SCA to convey relevant and up-to-date information about its activities, including information and guidance, e.g. through publications, booklets, oral and written replies to requests, through participating in conferences and seminars, and also through its website.

24. In order to cover several areas of the system of choice, the SCA cooperates with several public agencies to discuss matters regarding freedom of choice, such as the Swedish Agency for Economic and Regional Growth, The National Board of Health and Welfare, The Swedish Public Employment Service, The Legal, Financial and Administrative Services Agency and The Swedish Association of Local Authorities and Regions. The SCA also keeps a current dialogue with suppliers and supplier organisations to discuss issues regarding the legislation.