

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

**ROUNDTABLE ON COMPETITION IN ROAD FUEL**

-- Note by Sweden --

*This note is submitted by Sweden to the Competition Committee FOR DISCUSSION under Item IX at its forthcoming meeting to be held on 19-20 June 2013.*

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## ROUNDTABLE ON COMPETITION IN ROAD FUEL

### -- Note by Sweden --

1. The Swedish Competition Authority has had experience of cartel detection and conviction in the market for road fuel. During 2013 the Authority is also undertaking a sector study of the domestic market for road fuel. The gasoline cartel and the on-going sector study are described in more detail in the following.

#### **1. The gasoline cartel**

2. Starting in October 1999, the Swedish Competition Authority received several complaints stating that the five largest gasoline companies Hydro, OKQ8, Preem, Shell and Statoil had announced to their customers that their prices and rebates would change in November of the same year. In several cases the announced changes were identical: -0.15 SEK per litre. At the same time, the companies informed their customers that their current rebates would decrease by a precise amount. The letters sent out by the gasoline companies contained essentially identical justifications for the price and rebate changes. In most cases, the letters also showed striking similarity in both wording and design.

3. Against this background, the Authority was granted permission by Stockholm City Court to carry out a dawn raid at the companies' premises as well as at their trade organisation the Swedish Petroleum Institute. The dawn raid took place on 16-17 December 1999. The Authority seized copies of notes, letters and other documents. After the dawn raid, the Authority held interviews with company representatives and officials about the rebate remediation they had just carried out.

4. During the investigation, the Authority confirmed their suspicions of a price and rebate cartel. The Authority argued that during the summer and autumn of 1999 company representatives had met under the pretext of discussing collaboration on environmental issues. During these meetings, they had discussed, planned and agreed what prices and rebates to apply to different segments of their gasoline customer base. Eventually the prices were raised again so that the customers, towards the end of 1999, lost part of their previous rebates.

5. Following the dawn raid and the subsequent investigation, the Authority brought an action against the five companies in Stockholm City Court in June 2000. The legal basis for the Authority's summons application was that the five companies, through their agreements or coordination of prices, discounts and other terms and conditions for the sale of road fuel to contract customers, had intentionally infringed the prohibition of anticompetitive agreements in Chapter 2 Article 7 of the Swedish Competition Act, which is equivalent to Article 101 TFEU. The Authority argued that the agreements or coordinated behaviour had aimed to prevent, restrict, or distort competition to an appreciable extent, or, in any case, had led to such a result. Against this background, the Authority argued that the infringement could not be considered minor and that the companies should be fined a total of SEK 651 million, or roughly EUR 91 million at current exchange rates.

6. Three years later, in 2003, the Court fined all five companies involved a total of SEK 52 million, or EUR 6.7 million at current exchange rates, which was considerably lower than the fine that the

Authority had argued. All parties appealed the decision to the Market Court which, in its decision of 2005, concluded that the parties were guilty of a serious *per se* violation of the Competition Act by way of a concerted practice with regard to the rebate remediation carried out in autumn 1999. The Market Court (which is a specialised court and final instance in competition and consumer matters) set the companies' total fines at SEK 112 million, roughly EUR 14.6 million at today's exchange rates. Decisions made by the Market Court cannot be appealed and therefore this verdict concluded the case.

7. A few points should be made regarding the Authority's appeal and the Market Court's decision:

- In its appeal, the Authority withdrew the *effects* claims and focused the argumentation around a *per se* violation of the Competition Act.
- The Market Court was not convinced by the evidence brought forward by the Authority to support an anticompetitive *agreement* having been reached, but held that the anticompetitive behaviour constituted a case of *concerted practice*. This cartel case was also the first time the Market Court had assessed a concerted practice case.
- The Authority argued that the cartel had lasted for a somewhat longer period than what the Market Court ultimately believed could be supported by written evidence. For the period August 13 – November 23 1999, the written evidence in terms of notes, e-mails etc. seized during the dawn raid was considered to be strong, and was further supported by the testimonials given in court. Prior to August 13, there was no such evidence to support the assertion that any contacts regarding information sharing of this kind had taken place.
- In its verdict, the Market Court acknowledges that a rebate remediation can most likely be carried out without collusion of this kind. If the market leader, in this case Statoil, reduces the pump price for gasoline, the other market players must follow. In order to finance the price decrease, the companies must as far as possible adjust their rebates. Rebates, at least in the short run, are the main competitive tool for the fuel companies, and consequently the companies try to keep informed about their competitors' offers. However, the Market Court concludes that the timing of a rebate remediation may be of great importance to a single company, since it is costly to be at the "wrong" rebate level even if only for a short period of time. Moreover, the Court concludes that the information exchange, including concrete information about the competitors' future actions and hence opportunities to adjust to their behaviour, can never be obtained from the market itself. Altogether, the Market Court concluded that the aim of the companies' actions had been to significantly reduce competition, which constitutes a violation of the Competition Act.

8. The Swedish Competition Authority has not followed up or evaluated the effects on market developments following the Market Court's decision. Statistics from the Swedish Petroleum & Biofuels Institute (SPBI) show declining gross margins between 2003 and 2007, but if and how this relates to the Authority's intervention and the Market Court's decision has not, at least to the best of the Authority's knowledge, been subject to any formal evaluation exercise.

## 2. The 2013 road fuel market study

9. In its 2013 appropriation letter, the government assigned the Swedish Competition Authority the task to review competition in Sweden and suggest measures to promote competition. The Authority was given the mandate to delimit and define the task itself, and the road fuel sector was selected as one of five focus areas. The final report will be presented to the Swedish government before the end of this year.

10. The motivation behind analysing the road fuel market is that the market has undergone significant structural changes in the 2000s, notably through mergers, which may have affected competition and pricing. There is also a great and pronounced interest from both the public and our stakeholders that the Authority reviews this market.

11. Pricing, conditions of price competition and possibilities of market entry are interesting areas to analyse further. A comparative analysis of pricing behaviour between Sweden and other countries is relevant in this context, as well as the question of the major petrol companies facing weaker competition from smaller companies than in the past, and how the conditions for new entry can be stimulated.

12. The Authority has commissioned two separate background reports to be authored by independent researchers. These reports will form the basis of a separate chapter on road fuel in the final report.

### ***2.1 Pricing behaviour in the Swedish market for road fuel***

13. The first background report will include a general analysis of the Swedish road fuel market, looking at how price decisions are made and seeking to establish whether any price cycles may be observed. The report will also contain a review of the literature on possible linkages between price and degree of competition in the road fuel market. A brief discussion of regulations in place in other countries, for example Austria, will also be made as part of this separate report.

14. For this study, the Authority is assisting the research by collecting the relevant data: daily price and volume data from roughly 200 gasoline stations countrywide and the carrying out of some 16 structured interviews with station owners in the Stockholm area.

### ***2.2 Ex-post analysis of structural changes in the Swedish market for road fuel***

15. The purpose of the second background report is to analyse whether mergers and acquisitions have given rise to anticompetitive effects and higher prices compared with a relevant counterfactual scenario with a lower degree of market concentration. The empirical analysis will focus on the Statoil-Hydro merger and the subsequent acquisition of ConocoPhillips's discount chain Jet.

16. The empirical analysis will focus on a systematic comparison of prices and profitability before and after the acquisitions. As far as possible and to the extent necessary, variation due to factors other than mergers and acquisitions will be controlled for. The analysis will focus on three main themes:

- A time series analysis of gross pricing based on the companies' daily prices for the period 1993-2012
- A time series analysis of the monthly net margin for retail fuel sales per company and for the period 1993-2012
- A panel analysis of gross and net margin of road fuel sales per company and per station for the period 2008-2012.

17. The empirical analysis of the companies' pricing and profitability may be complemented by an analysis of changes in stations' locations, which requires data on geographical coordinates of each company's network of stations, and an analysis of the companies' services, which requires data on opening hours and the range of complementary services.

### 3. Future market studies

18. The first background report mentioned above equally serves as an exploratory pre-study (Part 1) to a more comprehensive study (Part 2) that will be commissioned to the same researchers in the next budget year 2014. For that study, a more comprehensive dataset will be collected from a larger number of road fuel stations.

19. Based on the insights from the more general analysis of the Swedish gasoline market in Part 1, a structured econometric analysis testing different hypotheses about competition will be carried out in Part 2.

20. By collecting data across a much wider range of fuel stations, and over a longer period of time in comparison to what is done for Part 1, Part 2 will allow for the empirical testing of hypotheses which may be formulated based on theory and the exploratory analysis in Part 1. For Part 2, data will be collected on all price changes, corresponding quantities (and changes), and extended with data on newsstand and ready-meal sales which allows for the estimation of more structural econometric models. In that way, the results should be more detailed and precise with regard to the formulated hypotheses to be tested, and it will be possible to estimate models of demand that control for local competition. The latter requires geographical coordinates of the stations linked to demographic data from Statistics Sweden.

21. In Part 1, the structured interviews will ask for information about rebates and the corresponding quantity of sales, and how large a share of the quantity is sold without rebate agreements. To the extent that this information suggests that this is an important competition factor, Part 2 will collect quantitative data which allow for a comparison of prices and quantities with and without rebate agreements.

22. The Swedish Competition Authority will assist with the data collection and plans to initiate this before the end of June 2013.