

Sweden: Competition Authority

Artikel av generaldirektör Dan Sjöblom i *European Antitrust Review*, publicerad i *Global Competition Review*, augusti 2014.

In the past year, we have seen important enhancements to the Swedish Competition Authority's (SCA) responsibilities and organisational structure that will enable us to more effectively reach our goal of more efficient competition in the private and public sectors for the benefit of consumers, as well as more efficient public procurement for the benefit of society and market participants. At the same time, we are as dedicated as ever to ensuring rigorous and effective competition enforcement.

Competition and procurement

In addition to its role as the enforcement authority for competition and public procurement, in 2014 the SCA was assigned the task of providing procurement guidance and support, combining tasks previously undertaken by various different Swedish bodies.

We have introduced a new organisational structure which ensures a clear separation of procurement enforcement and support. But the benefit of having the responsibility for both sets of tasks is clear. Our enforcement efforts can inspire new support and guidance activities, and reduce the risk of further cases of the same type arising, while the support side can help to highlight areas where enforcement should be prioritised. Our aim is to provide world-class procurement support.

We have already observed the advantages provided by having the responsibility for enforcement of both competition and public procurement under one roof. In the procurement arena, we have been able to explain competition-related procurement issues such as bidding cartels. The SCA has produced online interactive guidance on the possibilities and limitations for cooperation in relation

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to procurements, as well as materials on how to minimise the risk of a contracting authority being exposed to bidding cartels and how to spot the signs of cartel activity. Having expertise in both competition and procurement law offers other important synergies. While investigating bidding cartels and other infringements connected to procurement markets, it is incredibly useful to receive input from our procurement experts. Our investigations into anti-competitive public sales activities under our rules on competition neutrality can also benefit from exchanging information and cooperating with our procurement enforcement departments.

Improved specialisation

We are taking a number of steps to ensure specialised and efficient competition enforcement. An important change to our organisational structure is the introduction of conduct-specific, rather than sector-specific, competition units. Cartels and mergers, abuse of dominance and vertical restraints, and anti-competitive public sales activities are now grouped under three respective units. We have, perhaps unusually, chosen to combine cartels and mergers, mainly since they involve more intensive, deadline-driven work that otherwise risks diverting resources from, for example, abuse cases. Other important tasks such as policy evaluation will be handled by a separate dedicated unit.

The benefits of this new structure will quickly become evident. Our case handlers can specialise in a specific type of conduct and enhance their expertise in that area. While it is certainly still necessary to prioritise our overall caseload, the prioritisation of resources within each area of enforcement will be clearer and more foreseeable for those who approach us with a competition problem. Our goal is for resources to be allocated more efficiently, and to be more focused on pure competition enforcement. I expect this to be reflected in average case-handling times by the end of the year. It is also now simpler to identify recurring competition problems and invest resources in a specific type of sector or public body where required.

Competition enforcement

We are pleased that important cases have been decided in favour of the SCA over the past 12 months. In November, the Authority's action against two tyre companies for a bidding cartel had its main hearing at the Stockholm City Court. The Court sided with the Authority and fined the companies 2.5 million kronor. The first judgments to gain legal force under the rules on the prohibition of anti-competitive public sales activities adopted in 2010 also went in our favour. These judgments are an important step for ensuring a level playing field so that private enterprises are not eliminated from the market by unfair competition from the public sector. Not only have we prioritised the enforcement of these rules, we have also combined this enforcement with strong advocacy efforts. Research

shows that public bodies are reviewing and adapting their operations in accordance with the rules.

Competition enforcement will remain a priority for 2014–2015. We have raised an action in the courts requesting fines of close to 30 million kronor for three companies on the health-care market for illegal cooperation in relation to a procurement. We have several other ongoing cartel and abuse of dominance investigations at the SCA across a range of sectors, and hope to bring some significant investigations to court soon. We also look forward to the resolution of further cases under our competition neutrality rules.

Cartel detection

Our prioritisation of cartel detection has led to us devoting even greater resources to developing our ex officio cartel detection methods. Beyond the obvious goal of uncovering cartels, we believe that an increased risk of detection will further incentivise leniency applications. Our message is clear that there is a risk of detection for companies that participate in cartels, whether through a leniency application or through us initiating an investigation as a result of our econometric analysis or tip-offs.

Undertakings that engage in cartels risk not only fines and trading prohibitions, but also exclusion from future public procurement procedures. It is therefore important that our leniency programme is clear and foreseeable for companies. We have advocated to the government a legislative amendment to make it explicit that companies that have been granted leniency from fines should also escape exclusion from public procurements. While it remains to be seen what the outcome of this proposal will be, it is our policy to advise procurers against excluding companies that have been granted leniency from future public procurement procedures.

We are also encouraged by the planned amendment to the competition rules to introduce a marker system into the leniency programme, a development the SCA has long advocated. This will make it even easier to notify us of a competition law infringement, further destabilising cartels on the Swedish market.

Dawn raids

It is important for us to have a carefully prepared strategy for how the SCA acts when conducting dawn raids. We have, for example, worked a great deal on ensuring that our case handlers act in a respectful manner when inspecting a company's premises. We recently published an informational brochure on dawn raids, and it is our ambition to hold consultations with legal counsel on the issues to identify further areas for improvement and ways to make the process more effective.

Merger analysis

In the coming year, we will update our external guidance for merger notifications and assessments. This will include a description of best practices for mergers being assessed in several member states, and will stress the importance of providing supporting documentation showing efficiency gains and counterfactual scenarios.

I welcome the proposed legislative amendment to allow the SCA to 'stop the clock' and extend the investigation period while waiting for requested documentation to be provided by the parties, which will enhance our capacity to undertake a high quality of merger analysis.

Abuse of dominant position and vertical restraints

Due to their legal and economic complexity, the introduction of conduct-specific competition units is particularly apt for improving the handling of abuse of dominance and vertical restraint cases. Abuse of dominance and vertical restraints are often based on similar theories of harm and we see clear synergies in handling these cases in the same unit. Now that our case handlers are able to specialise and enhance their expertise in this field, the SCA will be well equipped to handle increasingly complex cases, including novel types that arise in the digital economy.

In the coming year, we will focus on clarifying the rules and making enforcement more predictable for market participants. We will strive to bring further clarity regarding the types of cases we will prioritise, increase transparency in the investigative phase and provide more extensively motivated decisions when we decide to close an investigation. We will also seek to implement measures that can improve and speed up investigations, including identifying important cases that should be given additional resources and handled with high priority.

Quality assurance

In line with our publicly available prioritisation policy, we take into account the gravity of the suspected infringement and whether it is important to establish judicial practice in a particular area when initiating investigations. We also consider whether it would be more appropriate for another authority or our policy and support department to act to resolve a competition problem. In this way, we can ensure that our enforcement efforts are prioritised on the right matters to the benefit of Swedish consumers.

The SCA has established procedures for ensuring transparency and quality assurance in our investigations, including state of play meetings with parties and internal scrutiny panels involving our legal department and chief economist's department, during which theories of harm and evidence can be assessed. Only those cases which stand up to this rigorous internal scrutiny are carried through to a decision or summons application to court. In 2013, our investigative tools were further enhanced by developing routines for interviews and for the handling of sales data in connection with mergers. I believe that our results speak for themselves. The SCA has not lost a single case in substance in the past three years.

Assessing competition in Sweden

In December 2013, we published the wide-ranging government-commissioned report *Competition in Sweden*, which focused on areas where we have noted particular competition problems and proposed potential improvements to our enforcement tools. In the report, we focused on building and construction, the road fuel market, dental care and competitive neutrality.

In our recommendations to the government, we proposed enhancing the SCA's decision-making and investigative powers to be able to make binding decisions on administrative fines and on blocking mergers. I believe that changing to a system where the Authority's decision is immediately binding and can be appealed by the parties would have a greater deterring effect on companies' behaviour.

Similar past reports have been influential in developing competition conditions in the country and sharpening our enforcement tools, and we see the *Competition in Sweden* report as an important aspect of our advocacy work over the last year.

An enhanced authority for an enhanced role

In the coming year, we are committed to consolidating and building on the recent enlargement of the Authority's size and responsibilities. With a new organisational structure and proposed legislative amendments to sharpen our enforcement tools, coupled with a continued emphasis on thorough analysis and efficient case-handling, I am convinced the SCA is ideally placed to provide even more effective competition enforcement in the coming year, to the benefit of Swedish consumers.