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

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SWEDEN

-- 2007 --

This report is submitted by the Swedish Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 11-12 June 2008.

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1. Changes to competition laws and policies proposed and adopted

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 A new Competition Act

1. A new Competition Act was proposed to the parliament and is proposed to be effective from 1 November 2008. The Competition Authority is suggested to be entitled to direct settlement involving fines in certain cases, a proposal that would shorten and simplify procedures and be beneficial to both society and the parties involved. The introduction of a prohibition (disqualification order) would enable society to enforce personal liability on the part of those in charge of businesses that enter into unlawful cartel collusion and the Competition Authority concludes that this would have a deterrent effect. An adaptation of the SIEC test of the EC Merger Regulation is also proposed.

2. It was also proposed that the Swedish leniency rules ought to be adapted to the European Competition Network (ECN) Model Leniency Programme. The adaptation offers a more effective and legally secure leniency programme that will contribute towards effective co-operation within the ECN. In general the proposals set forth in the report for the new act are, according to the Competition Authority likely to deliver increased efficiency in the application of competition rules.

1.2 Other relevant measures, including new guidelines

1.2.1 Action plan for simplification of rule

3. The Competition Authority delivered a final report on a simplification of a rule as requested by Government. The simplification of rule now also applies to the field of public procurement.

1.2.2 Need for sanctions against public procurers who do not comply with the rules

4. In order to more effectively supervise public procurement the Competition Authority suggested the use of sanctions against the public procurement organisations who do not comply with the rules. Non-compliance with the rules adversely affects small and medium-sized enterprises and hampers competition.

1.2.3 Proposed implications of rules on public procurement

5. In a letter to the Government the Competition Authority proposed simplified rules on public procurements up to the easy thresholds. Such a change would increase the number of bidders and reduce the risk of bidding cartels.

1.2.4 Impact analysis of proposals on Digital TV

6. On instructions from the Government the Competition Authority conducted an impact analysis of the effects of implementing the proposals presented in a report on licences for terrestrial transmission of digital television. The Competition Authority stressed those companies offering encryption of transmissions and other technical services should not simultaneously be allowed to provide TV channels to consumers.

1.2.5 Create competition, not dominance

7. In an answer to a governmental committee proposed plan for the sale of the pharmaceutical retailing monopoly, Apoteket, the Competition Authority stressed the importance of not allowing the

former monopoly to retain a dominant position on the newly liberated market. The Competition Authority proposed that Apoteket's initial market share should not exceed 40 percent of the total sale to the retailers. The Government have suggested to the Parliament that the majority of Apoteket's retail stores remains state owned something that the Competition Authority regards as a hindrance for an efficient competition on the liberalised market.

1.3 Government proposals for new legislation

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant position

2.1.1 Summary of activities of the Competition Authority

Application of the Competition Rules 2007

8. During 2007 the Competition Authority took 249 decisions under the Swedish Competition Act and Articles 81 and 82 of the EC Treaty. This sum includes the cases which were closed without a full scale investigation. We focused major resources on ongoing court cases in which the Competition Authority is a party. During the year the Competition Authority did not take any decisions on summons applications, injunctions or undertakings.

Mergers

9. The Competition Authority took 115 decisions on company mergers, including one after the parties had entered into a voluntary undertaking. No case was submitted to a special investigation. Five cases were referred to the European Commission, at the request of the parties.

The Competition Authority's application of EU Competition Rules

10. The Competition Authority applies Articles 81 and 82 of the EC Treaty in several cases and also cooperates with the other European competition agencies in the European Competition Network (ECN). When any national competition authority applies articles 81 and 82 of the EC Treaty in a case, ECN is informed at an early stage and the Commission must also be consulted before any decision is taken based on these articles.

Tip-offs and complaints

11. During 2007 the Competition Authority received in all 633 tip-offs and complaints from businesses, customers and consumers. In many cases tip-offs and complaints – verbal or in writing – are the starting point for our work on tracking down, and intervening in, cases of serious contravention of competition rules. Those complaints that are not contraventions of the law may be resolved in different ways. For example, we may propose rule changes to the Government.

- *Decisions and rulings of the courts in 2007*

12. The Stockholm District Court ruled on one competition law case during the year.

The Asphalt Cartel

13. Nine asphalt companies were ordered by Stockholm District Court to pay nearly SEK 500 million in fines for contraventions against the Competition Act. This is the highest fine yet imposed in Sweden. According to the Court the nine companies had a common purpose in sharing out the market and fixing prices for tenders submitted. Some of the companies found guilty have appealed the decision to the Market Court.

14. The Market Court ruled on one competition law case during the year.

An association of companies and their subsidiary

15. In a case against an association of car-towing companies and its subsidiary the Market Court ruled against the Competition Authority. The Court concluded that the Competition Authority had not proved that a board decision on price collusion had been in any way binding to the members of the organisation.

2.1.2 Description of significant cases, including those with international implications

16. In order to demonstrate activities aimed at counteracting serious competition restrictions, a selection of cases is described below.

- *Anti-competitive collusion*

Co-ownership of Energy generation questioned

17. The Competition Authority carried out an investigation of competition in the Swedish electricity market. Around a hundred operators in the market were given the chance to state their views. On conclusion of the investigation, the Competition Authority decided that there were no grounds for claiming that the three companies that jointly own Sweden's nuclear power facilities, have acted in breach of competition rules. In addition, the Competition Authority could not establish any grounds either for the claim that the companies' pricing conflicted with competition rules. On the other hand, the Competition Authority concluded that risks existed in the co-ownership of nuclear power in that it creates major opportunities for an unlawful information sharing. The Competition Authority recommended in a letter to the Government that the link between the power companies should be cut and each should be given ownership responsibilities for their own nuclear power plant.

Information sharing

18. At its own initiative, the Competition Authority investigated information sharing in the grocery retailing market in Sweden. The case centred on an queried instance of information sharing between grocery retailing chains within the scope of operations by a large marketing information company, AC Nielsen. In view of the nature of the information and the way the market functions, the Competition Authority found no reason to take action.

- *Abuse of a dominant position*

Pricing of postal services

19. Following a complaint from CityMail, the Competition Authority examined Posten's (the Swedish Postal Service) zonal pricing in five postcode areas. The Competition Authority found, after investigating, that no information had emerged to substantiate claims that the queried extension of Posten's

zonal pricing constituted abuse of a dominant position. The Competition Authority also consulted the Swedish National Post and Telecom Agency, which plans to conduct a total review of Posten's zonal pricing, against the background of the Swedish Postal Services Act.

Market in event tickets

20. In response to a complaint, the Competition Authority investigated whether the exclusivity conditions applied by Tinet as part of its terms and conditions/agreement vis-à-vis event promoters were in breach of competition rules. The Competition Authority assessed any impact of the conditions as barriers to the market and concluded that it may be financially justified for both promoters and Tinet to apply exclusivity conditions for a certain period. The Competition Authority also found that the agreements would in large part be exposed to competition in 2007, when the original agreements expired.

Problems of access to broadband market

21. The Competition Authority conducted an investigation into problems of access to TeliaSonera's metallic local loops for broadband connections. The investigation consisted of systematic analysis of a large number of former cases at the Competition Authority and the Swedish National Post and Telecom Agency regarding problems of access over the past five years. The Competition Authority concluded that competition had not been restricted in such a way that justified intervening on the basis of competition rules.

International co-operations

22. Following a complaint from a Swedish glazier, the Competition Authority initiated collaboration with other European competition agencies within the ECN, which in turn led to an investigation by the Commission. The Competition Authority also supported the Commission in an inspection on the cartel companies in 2005. The European Commission took action against the flat glass cartel and the autumn 2007 the companies involved in the cartel were fined around EUR 487 million.

23. The Competition Authority cooperated with its German counterpart, Bundeskartellamt in a cartel case in the paper industry, and in the autumn of 2007 the Competition Authority carried out an inspection on a Swedish company. The cartel involved Swedish, German and French producers, but had its main effects in the German market.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition law*

24. The following table shows the number of new cases registered during 2007 under the Competition Act – mergers, agreements and complaints – and the number of decisions during that same period. The total number of cases pending at the end of 2007 amounted to 40.

Year	Registered new cases		Decisions	
	2006	2007	2006	2007
Mergers	113	110	107	115
Anti-competitive co-operation	45	26	52	29
Abuse of dominant position	97	32	95	33
Other	113	71	123	72
Total	368	239	377	249

2.2.2 *Summary of significant cases*

Acquisitions of daily newspapers

25. The Competition Authority investigated, as one case, three company mergers in the media market. These mergers involved four different companies. The Competition Authority established that one of these companies was strengthening its position above all in the readership and advertising markets in its morning newspapers. Because the newspapers have mainly local circulations and therefore cannot be considered as competitors, the Competition Authority decided that the merger reported did not create or reinforce a dominant position.

3. The role of the competition authority in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

3.1 *Proposals for improved competition*

26. We present our proposals to improve competition in reports and consultation responses to the Government. We also state our opinion to other public authorities requesting the Competition Authority's view on a particular report or a change of legislation. In our reports we analyze how different markets function and propose improvements. In most cases these reports are produced at our initiative, but we also write reports commissioned by the Government. Our aim is to promote a competition based outlook and to spread the awareness of the importance of effective competition.

- *Reports*

Competition in Sweden 2007

27. The Competition Authority's appropriation document for 2007 commissioned the Competition Authority to deliver a report providing a broad overview of competition in Sweden. Especial importance was to be placed on the energy market and the construction market, as well as markets in which competition was weak and where it is difficult for new companies to become established. Our report *Konkurrensen i Sverige 2007* (Competition in Sweden in 2007) offer around 20 proposals for measures to increase market efficiency and benefit to consumers. In the report, the Competition Authority concludes that competition in Sweden is continuing to develop, but that the pressure for change must increase in various industries. The presence of foreign labour and foreign construction companies has risen in recent years. In the energy market, the Competition Authority concludes that certain issues merit further analysis, for example how to ensure that sufficient transmission capacity exists in the transmission network for an effective trade in electricity. In addition, the electricity generation resources should correspond to the demand that exists in the market. The report also focuses on public procurement and competition. If public procurement is to be conducted in a correct and efficient manner, there must be a sufficient number of bidders, and the bidders must not be permitted to restrict competition by various kinds of agreements. The report indicates that in more than half of the counties in Sweden, the number of bids received per public procurement exercise declined between 2000 and 2006. In 20 percent of public procurement cases where the lowest price was decisive, no more than two bids were entered. This is not a trend that is desirable.

Abolish the pharmaceutical retailing monopoly for consumer benefit

28. If pharmaceutical retailing in Sweden is opened up to competition, it will increase the chances of resources being used more efficiently, but safety and supervision are also important criteria. This is the conclusion of our report *Avveckla apoteksmonopolet med konsumentnyttan i fokus!* (Abolish the Pharmaceutical Retailing Monopoly for Focus on Consumer Benefit!) The report has around 20 proposals

on how Sweden's pharmaceutical retailing monopoly should be abolished in order to bring about effective competition to the benefit of consumers and the economy.

Increased consumer benefit in the healthcare sector

29. At the Government's request, the Competition Authority has studied the obstacles to effective competition for enterprise in the public sector, with particular reference to the healthcare sector. The report offers proposals to remedy these problems. It is suggested that consumers should be offered a say in the selection of who would provide home-help and primary care services, for example. Any reforms must focus on consumer choice.

Reports on alcohol retailing monopoly

30. The Competition Authority is tasked to report twice a year to the European Commission on the way Sweden's alcohol retailing monopoly is functioning. In the first report of the year, the Competition Authority reported on the growth in internet trade and direct imports of individuals. The second report described possible changes in Systembolaget's purchasing system, with particular emphasis on the available to-order range.

Capacity for Competition – Investing for an Efficient Electricity Market

31. The Nordic competition agencies co-produced a report *Capacity for Competition – Investing for an Efficient Electricity Market*. The report offered proposals for ways in which greater efficiency may be brought to the electricity market. To develop the capacity for electricity exports between the Nordic countries, the construction of new generation capacity should be facilitated. Electricity consumers should be able to buy electricity direct from suppliers in other countries, thus increasing competition in the end-user market. The report also criticized co-ownership of nuclear power plants, especially in the Swedish market, where nuclear power plants are owned by companies who in other industries should be competitors.

- *Responses to consultation statements*

Privatisation of the Swedish Rail Administration and the Swedish Road Administration

32. In a consultation response to the Government, the Competition Authority stated that privatisation of the Swedish Rail Administration and the Swedish Road Administration would establish more clearly defined roles and would also stimulate competition. Privatisation of the engineering and consulting activities of the Rail Administration and the Road Administration would result in the Government's role as client or procurer of services in these sectors becoming totally detached from the Government's role as producer in the markets concerned. The Competition Authority regards this as a matter of great importance. At the same time, we emphasize the importance of the Government investing in the measures that in the long term will secure an effective commissioning role for the Government in public procurement, in order to minimize the risk of cartel formation. Effective follow-up or supervision will also be required to verify fulfillment of the supplier's undertakings vis-à-vis the commissioning organisation.

No privatisation for the exercise of government authority

33. The Competition Authority takes the view that the exercise of Government authority should not be transferred to private-sector operators, and therefore rejected the proposal that Internet service providers should be able to terminate subscriptions that are being used for unlawful downloading of copyright material. A system in which a civil law organisation behaves like an organisation exercising Government authority creates the risk in the long term of damaging confidence in commercial operators. This task

should by and large fall within the remit of the law-enforcement agencies. Furthermore, the proposed system could lead to arbitrate decisions that could seriously undermine freedom of information, in view of the Competition Authority.

No to new work environment rules in Public Procurement

34. The Competition Authority rejected a proposal that public procurement organizations should consider the work environment of its suppliers during public procurement. This proposal could result in blurring the lines of responsibility between the parties, complicate the public procurement process and create unfavourable purchasing conditions, to the disadvantage of the economy and consumers.

No support for vertical separation

35. The Competition Authority found that the report from Swedish National Post and Telecom Agency (PTS) does not support the introduction of vertical separation in the form recommended by PTS. The Competition Authority therefore rejected the recommendation. Experience of implementing current systems of regulation indicates that problems with competition have existed and still exist in different parts of the market for broadband access. According to the Competition Authority, major elements of infrastructure-based competition already exist in different parts of the market in electronic communication. The legislation proposed risks damaging investment, innovation and market dynamics, to the disadvantage of consumers.

More effective law on electronic communication

36. The Competition Authority expressed a view on the proposals from the inquiry into an overhaul of the law on electronic communication. Contrary to the inquiry, we concluded that the legal hierarchy in the electronic communication sector should be coordinated with the one prevailing under the law on competition. The Competition Authority also emphasised the importance of making it credible that the path from ex-ante regulation to general competition legislation will become reality.

- *Investigations*

Abolition of the pharmaceutical retailing monopoly –Apoteket

37. The Competition Authority decided to investigate developments in distribution and sales of pharmaceuticals prior to the planned introduction of competition into the sector and abolition of the pharmaceutical retailing monopoly. As part of the investigation, the Competition Authority asked Apoteket a number of questions. The Competition Authority also invited a number of other stakeholders and organisations to provide any information or views that might be relevant to the development of an efficient market after the introduction of competition. In the absence of any replies by the state monopoly, the Competition Authority requested Apoteket to provide, by no later than November, information and documents on Apoteket's actions prior to the planned abolition of the pharmaceutical retailing monopoly. In support of this request, the Competition Authority cited the Swedish Price and Competition Act (Obligation to Provide Information Act). Apoteket at first appealed against the request to the Government, but they later provided the information and the Competition Authority withdrew its request and finalised the investigation.

Pricing for district heating in Stockholm

38. The Competition Authority received several complaints about the excessive pricing of district heating in Stockholm and in response began an investigation. The investigation is currently under way.

Pricing and calculation recommendations by trade and business associations

39. The Competition Authority has surveyed trade and business associations in Sweden and their various activities on behalf of member companies. The study aimed at producing a picture of the pricing and calculation recommendations and the type of statistics that are issued. The survey revealed that one third of the business associations that responded were engaged in activities that may not be compatible with the competition rules. The Competition Authority is considering providing guidance to the trade associations as a follow up of the survey.

4. Resources of the Swedish Competition Authority

4.1 Resources overall

4.1.1 Annual budget

40. SEK 92 million, equivalent to USD 14,2 million in December 2007

4.1.2 Number of employees

Economists	40
Lawyers	49
Other professionals	8
Support staff	16
All staff combined	113

4.2 Human resources (person years) applied to (total 90)

Enforcement against anti-competitive practices	60
Merger review and enforcement	5
Advocacy efforts	23
Public procurement	2

4.3 Period covered by the above information

41. 2007

5. Summaries of or references to new reports and studies on competition policy issues