

# SWEDEN

By Johan Karlsson and Helena Höök of Advokatfirman Vinge KB

## LEGISLATIVE DEVELOPMENTS

The Swedish “block exemptions” concerning vertical agreements,<sup>1</sup> vertical agreements in the motor vehicle sector,<sup>2</sup> research and development agreements<sup>3</sup> and specialization agreements<sup>4</sup> were amended to reflect changes in the corresponding EU regulations. Block exemptions provide automatic exemption from competition law for agreements which satisfy particular conditions.

## MERGERS

The Swedish Competition Authority (the “SCA”) adopted new regulations on the notification of concentrations between undertakings, which entered into force on November 15, 2010.<sup>5</sup> The SCA also published accompanying guidelines.<sup>6</sup>

One of the most important cases dealt with by the SCA in 2011 concerned the combination of Arla Foods and Milko. Arla Foods was the largest and Milko the third largest dairy company in Sweden. The SCA initiated a second phase investigation and found that the merger would have led to a considerable limitation of competition in respect of the supply of milk, sour milk, yoghurt and several other products in Sweden to the detriment of consumers. Whilst acknowledging Milko’s difficult financial situation, the SCA did not accept the parties’ failing firm defense. Following commitments to divest a dairy plant and some brands, the SCA however ultimately approved the combination.<sup>7</sup>

Another notable case was Comhem’s proposed acquisition of Canal Digital Kabel TV (“Canal Digital”), which concerned the Swedish television market and in particular the provision

of television services to landlords. Following a second phase investigation, the SCA found that Comhem would strengthen its already dominant position and, consequently, that the acquisition would significantly impede competition. The SCA found that the criteria for the failing firm defense were not fulfilled and that the commitments offered by Comhem did not alleviate the competition concerns. The SCA therefore initiated an action before the Stockholm District Court to prohibit the concentration. The parties subsequently abandoned the deal.<sup>8</sup>

## CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

The SCA carried out several inspections (“dawn raids”) in various industries in 2011<sup>9</sup> and there are currently two cartel cases pending before the Stockholm City Court. One of these cases concerns alleged bid rigging between Däckia (owned by Goodyear) and Euromaster (Michelin) in connection with tenders for tyres and services.<sup>10</sup> In this case, the parties claimed that the SCA’s investigation was out of time as the statutory limitation period had expired. The court, however, held in favor of SCA in an interim judgment.<sup>11</sup> The judgment has been appealed to the Swedish Market Court. The other cartel case concerns two bus companies, Ölvemarks and Scandorama, which allegedly colluded on prices and divided the market for package bus tours between 2007 and 2009.<sup>12</sup>

On May 13, 2011, the SCA adopted a much debated decision against the Swedish Automobile Sports Federation, Svenska Bilsportförbundet (“SBF”), which is a member of Fédération Internationale de l’Automobile (“FIA”). The decision concerned SBF’s statutory rules, which prevented licensed drivers and stewards from participating in races other than those organized by SBF or its member clubs.

1 Swedish Law 2008:581, “om gruppundantag för vertikala konkurrensbegränsande avtal”.

2 Swedish Law 2008:584, “om gruppundantag för vertikala konkurrensbegränsande avtal inom motorfordonssektorn”.

3 Swedish Law 2008:583, “om gruppundantag för konkurrensbegränsande avtal om forskning och utveckling”.

4 Swedish Law 2008:582, “om gruppundantag för konkurrensbegränsande specialiseringsavtal”.

5 Swedish Competition Authority, Regulations on the Notification of Concentrations between Undertakings under the Swedish Competition Act (2008:579), available at: [http://www.kkv.se/t/Page\\_\\_\\_912.aspx](http://www.kkv.se/t/Page___912.aspx).

6 Swedish Competition Authority, Guidance for the notification and examination of concentrations between undertakings, available at [http://www.kkv.se/t/Page\\_\\_\\_912.aspx](http://www.kkv.se/t/Page___912.aspx).

7 SCA Decision dnr 445/2011, October 24, 2011.

8 SCA Summons application, dnr 758/2011, November 24, 2010.

9 Following the inspections, investigations were initiated in the postal sector, dnr 262/2011; the financial sector, dnr 376/2011; the market for spare parts for motor boats, dnr 399/2011; the hotel market, dnr 549/2011; and the market for medical devices, dnr 579/2011.

10 Swedish Competition Authority Summons Application dnr 605/2010, November 24, 2010.

11 Stockholm City Court Case T 18896-10, October 17, 2011.

12 Swedish Competition Authority Summons Application dnr 645/2010, December 8, 2010.

## DEVELOPMENTS IN SWEDEN

The SCA found that these rules amounted to an illegal restriction of competition which could not be objectively justified. The SCA ordered SBF to amend its rules and to publish information about the amendments.<sup>13</sup> SBF appealed the SCA's decision to the Market Court and applied for suspension of it, which was not granted. At the time of writing the Market Court had yet to rule on the substance of the case.<sup>14</sup>

The SCA brought before the Stockholm City Court the first cases under the prohibition against anti-competitive sales activities by public entities, which was introduced into the Competition Act on January 1, 2010.<sup>15</sup> The provisions concern situations where the State, a municipality or a county council (or other legal person in which a public entity has decisive influence) engages in activities of an economic or commercial nature. Abusive conduct by a public entity which distorts or impedes effective competition in the market may be prohibited by an injunction.<sup>16</sup> The cases are still pending.

### ABUSES OF A DOMINANT POSITION

A long-running abuse of dominance case concerning VPC (now Euroclear Sweden) came to an end in 2011. Euroclear Sweden is the central securities depository in Sweden and therefore operates the register of almost all shares and debt securities held in the country. The case started in 2008 when the District Court ordered Euroclear Sweden to pay damages to Europe Investor Direct for abusing its dominant position by, amongst other activities, refusing to supply, in electronic form, contact details for shareholders in Swedish companies to Europe Investor Direct. Euroclear Sweden appealed to the Svea Court of Appeal which, in a judgment of January 19, 2011,<sup>17</sup> upheld the District Court's judgment in all material respects but reduced the damages by almost 50% because it considered that the abuse had ceased earlier than found by the District Court. VPC's arguments that the services constitute an exercise of official authority and that

the refusal was in any event justified by the Personal Data Act were both rejected.

In June 2011, the Market Court ordered Posten, the Swedish postal incumbent, to cease applying a retroactive rebate for large deliveries of bulk mail. The background to the case was a complaint by Bring CityMail ("CityMail") to the Swedish Competition Authority, which had decided not to pursue the case.<sup>18</sup> CityMail therefore initiated a private action before the Market Court, which found that Posten's rebate system amounted to an abuse of a dominant position in the market for bulk mail in Sweden. CityMail was active only in the three largest cities in Sweden and on the island of Gotland, whereas Posten covered the whole country. The Market Court found that Posten, with a 85% national market share, was supra-dominant, that CityMail was its only competitor and that the rebate tended to restrict competition by foreclosing CityMail from the market for bulk mail. The Market Court considered that Posten had not proven to the requisite legal standard that the rebate was economically justified and that it did not go beyond what was necessary in order to achieve the potential advantages. The Market Court concluded therefore that the rebate constituted an abuse of dominance under the Swedish Competition Act. The abuse was not deemed to affect trade between EEA member states.<sup>19</sup>

In another case, the Market Court dismissed a private action initiated by Stockholm Transfer Taxi against state-owned Swedavia, which operates several airports in Sweden, including the largest, Arlanda Airport. Stockholm Taxi Transfer alleged that Swedavia abused a dominant position by maintaining a discriminatory queuing system for taxis at Arlanda Airport. In particular, the claim was that Swedavia's queuing system gave the largest taxi companies a competitive advantage and that Stockholm Taxi Transfer was unable to increase its market share. The Market Court found, however, that it was necessary to have a system for taxis outside the airport and that Stockholm Taxi Transfer had not been able to show that Swedavia's system amounted to an abuse.<sup>20</sup>

Finally, in December 2011, the Stockholm District Court, following a preliminary ruling of the Court of Justice of the

13 Swedish Competition Authority Decision dnr 709/2009, May 13, 2011.

14 See Market Court Case dnr A5/11.

15 Swedish Competition Authority: Summons Application dnr 304/2010, Rådningstjänsten Dala Mitt, May 26, 2011; Summons Application dnr 391/2011, Skelleftebuss Aktiebolag, May 31, 2011; and Summons Application dnr 438/2011 Mälarenergi Statsnät AB, June 22, 2011.

16 Swedish Competition Act (2008:579), Chapter 3, Sections 27-32.

17 Svea Court of Appeal Case T 10012-08, January 19, 2011.

18 SCA Decision dnr 702/2006, October 31, 2007.

19 Market Court Case dnr A 3/10, MD 2011:14, June 8, 2011.

20 Market Court Case dnr A 2/10, MD 2011:2, February 2, 2011.

European Union,<sup>21</sup> ruled that TeliaSonera had abused its dominant position in the ADSL broadband market during 2000-2003.<sup>22</sup> The Court concluded that TeliaSonera had offered broadband connection services at such prices that the margin between the wholesale price and the end consumer price was negative or insufficient to cover TeliaSonera's own costs for the sale of broadband to end consumers. This margin squeeze restricted the ability of TeliaSonera's dial-up Internet competitors to expand on the ADSL broadband market. The Court imposed a fine of SEK144 million (approximately US\$20 million). TeliaSonera has appealed the judgment to the Market Court, which has granted leave to appeal.<sup>23</sup>

### Advokatfirman Vinge KB

[www.vinge.se](http://www.vinge.se)  
 Smålandsgatan 20  
 Box 1703, SE-111 87  
 Stockholm  
 Sweden  
 +46 8 614 30 00  
 +46 8 614 31 90

21 Case C-52/09, Konkurrensverket v TeliaSonera Sverige AB, February 17, 2011.

22 Stockholm City Court Case, T 31862-04, December 2, 2011. SCA summons application with the Stockholm City Court, dnr 1135/2004, December 21, 2004.

23 See Market Court Case dnr A 8/11.