

# SWEDEN

By Johan Karlsson and Helena Höök of Advokatfirman Vinge KB

## MERGERS

In 2012, the Swedish Competition Authority (the "SCA") dealt with two separate mergers relating to the sale of books in Sweden, both of which were subject to in-depth investigation.

The combination of Akademibokhandeln and Bokia, the two largest bricks-and-mortar retail book-sellers in Sweden raised both horizontal and vertical issues. The SCA's primary concern, however, was horizontal: that the removal of the competitive pressure that the two companies exerted on each other prior to the combination would lead to negative effects in the form of price increases, reduced selection, and closure of stores on local markets where the parties' stores were situated close to one another. The two parties had a combined share of some 70% of bricks-and-mortar book stores nationally. Without finding it necessary to take a final position on whether internet sales constituted part of the same relevant product market as bricks-and-mortar sales or whether the market was national or regional, the SCA found that there did not appear to be an incentive to abandon the current national pricing model and impose price increases on local markets. This was supported for example by the fact that the operation would be run under one and the same brand. Furthermore, it did not appear likely that the combination would result in reduced selection or closure of stores in local markets. Thus, the SCA found that the combination would not significantly restrain the existence or development

of effective competition in Sweden, and unconditionally approved the combination.<sup>448</sup>

The other case concerned Bonnier's acquisition of Pocket Shop, a chain of bookshops specializing in the sale of paperback books. Bonnier is Sweden's largest publisher of books and magazines and also the owner of internet book retailer Adlibris. The transaction did not meet both the turnover thresholds set forth in the Swedish Competition Act. However, the SCA found that there were particular grounds to order Bonnier to notify the transaction, a power it has where one of the turnover thresholds is met.<sup>449</sup> The SCA's Phase 2 investigation focused primarily on the vertical aspects of the merger. The authority, however, found that Bonnier would not have the incentive or ability to foreclose publishers' access to Pocket Shop as there were several other retailers to whom publishers would be able to turn. Furthermore, Bonnier would not have the incentive or ability to foreclose other book retailers' access to Bonnier's books as Pocket Shop's market share of the retail market was too small. The deal was thus cleared without remedies.<sup>450</sup>

## CARTELS AND OTHER ANTICOMPETITIVE PRACTICES

In a much anticipated judgment, the Swedish Market Court ruled on the dispute between the Swedish trade association representing independent wholesalers and retailers of automotive replacement parts

<sup>448</sup> SCA Decision dnr 452/2012, December 10, 2012.

<sup>449</sup> If the first of the two turnover thresholds are met, but not the second, the parties may voluntarily notify the transaction. In these circumstances, the SCA may also, where it finds that there are particular grounds, order the parties to notify. It is mandatory to comply with such order.

<sup>450</sup> SCA Decision dnr 289/2012, May 16, 2012 and SCA Decision dnr 370/2012, September 24, 2012.

<sup>451</sup> Market Court Case dnr A 3/11, MD 2012:13, December 4, 2012.

and their associated repair shop chains (Sw. *Svenska bildelsgrossisters förening SBF*), and KIA Motors Sweden (KIA).<sup>451</sup> The Court found in favor of SBF, who claimed that KIA's seven year warranty - conditional on the customer having regular services carried out by authorized KIA repairers, even where such services were not covered by the warranty - was in breach of Article 101 Treaty on the Functioning of the European Union ("TFEU") and the Swedish corresponding national legislation. The application by the authorized KIA repairers of the service requirement was found to amount to an agreement within the meaning of Article 101 TFEU which hindered unauthorized repairers from offering regular services for KIA cars under the warranty period. It was further found to hinder unauthorized repairers from competing for other repair work in connection with these services. The Court held that the condition therefore resulted in an inevitable foreclosure that must objectively be considered to have as its object the restriction of competition for regular service of KIA cars. This aftermarket was held to constitute a separate market in which KIA-authorized repair shops had some 80% market share. The restriction was found to be appreciable and not eligible for exemption. The Court ordered KIA to cease applying the disputed condition, subject to a conditional fine of SEK 5 million (approximately USD745 000) if KIA failed to comply.<sup>452</sup>

In another recent case, the Stockholm City Court imposed an administrative fine of SEK 4,600,000 (approximately USD660,000) and SEK 6,790,000 (approximately USD970,000) on two bus companies, Ölvemarks and Scandorama, for colluding on prices and dividing the market for package bus tours between 2007 and 2009.<sup>453</sup> The companies acknowledged that regular meetings took place, but claimed that they were part of a legitimate cooperation in the context of the proposed acquisition of Ölvemarks by

Scandorama, for which the parties entered into a framework and option agreement in 2007. The acquisition was to be completed by the conclusion of three different agreements for purchase of 10%, 10% and 80% of the shares, respectively, over a three year period. However, the deal was abandoned prior to the conclusion of the third agreement. The Court found that neither the first two agreements entered into, nor any other circumstances, conferred (sole or joint) control on Scandorama, nor was there any binding commitment to enter into the third agreement (but merely an option to do so). Thus, there was no concentration and the cooperation was not to be considered as an integration measure, but rather as collusion between independent undertakings.

The Market Court also delivered its judgment in a case concerning the Swedish Automobile Sports Federation ("SAFS") (Sw. *Svenska Bilsportförbundet*).<sup>454</sup>

The judgment follows the SCA's decision in 2011<sup>455</sup> finding that SAFS's statutory rules preventing licensed drivers and stewards from participating in races other than those organized by SAFS or its member clubs amounted to an illegal restriction of competition and ordering amendment of the rules. The Market Court confirmed the SCA's finding that the aim of the rules imposed by SAFS (to ensure that races are organized in a regulated, uniform and fair manner and to ensure of safety at car races) is legitimate, but that the prohibition goes further than what is necessary in order to achieve these aims. The Court therefore prohibited the application of the contested provisions and imposed a conditional fine of SEK 1 million (approximately USD143 000) if SAFS failed to comply.

In another sports-related case, the SCA found that the decision of the Swedish Hockey League (the "SHL") (Sw. *Svenska Hockeyligan AB*), to prohibit its member clubs from entering into short term contracts with players during the lockout of the National

452 SCA Decision dnr 447/2010, February 24, 2010.

453 Stockholm City Court Case T 19974-10, February 24, 2012.

454 Market Court Case dnr A 5/11, 2012:16, December 20, 2012.

455 SCA Decision dnr 709/2009, May 13, 2011.

Hockey League (the “NHL”) constituted a breach of the Swedish and EU competition rules.<sup>456</sup> The SCA therefore issued an interim decision that the SHL may not impose sanctions on clubs deviating from the SHL’s decision until the matter has been finally decided, subject to a conditional fine of SEK 20 million (approximately USD2.9 million) if SHL did not comply.

On appeal, however, the Market Court reversed the interim decision finding.<sup>457</sup> The SCA subsequently closed the case without taking a final decision. Since the NHL lockout ended, the authority found there was no longer a reason to pursue the case.<sup>458</sup>

## ABUSE OF A DOMINANT POSITION

In November 2012, the Stockholm City Court handed down its judgment in one of few Swedish direct private damage actions based on a claim of abuse of dominant position through discrimination.<sup>459</sup> The case concerned a claim for damages made by Preem, one of Sweden’s largest oil companies, against the Port of Gävle. Preem claimed to have suffered loss through the port’s application of a higher price for the discharge and transit of Preem’s petroleum products than that applied for another company, Afab. The Court found that the provision of port services for the discharge and transit of all petroleum products to temporary storage constituted one market which was limited to the Port of Gävle and on which the port held a monopoly position. While the port did apply different prices for equivalent transactions, the Court found that this did not lead to a competitive disadvantage for Preem since it did not compete with Afab on any upstream or downstream market. Afab’s sole activity is the distribution of jet fuel to Arlanda Airport while Preem produces and sells its products on the fuel and heating market. Nor were any of Preem’s competitors customers of the port. The claim was therefore dismissed.

### Advokatfirman Vinge KB

[www.vinge.se](http://www.vinge.se)

Smålandsgatan 20

Box 1703, SE-111 87

Stockholm

Sweden

T: +46 010 614 30 00

F: +46 010 614 31 90

<sup>456</sup> SCA Decision dnr 501/2012, September 20, 2012.

<sup>457</sup> Market Court Case dnr A 2/12, December 3, 2012.

<sup>458</sup> SCA Decision dnr 501/2012, January 21, 2013.