THE PUBLIC COMPETITION ENFORCEMENT REVIEW

Twelfth Edition

Editor
Aidan Synnott

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PREFACE

In the reports from around the world collected in this volume, we continue to see international overlap among the issues and industries attracting government enforcement attention. This year, we read with particular interest the discussions of activity in many jurisdictions regarding digital platform competition issues.

We also continue to see the evolution and refinement of general approaches to competition law enforcement in several jurisdictions. For example, The International Competition Network, which is a group of national and multinational competition authorities, adopted a Framework on Competition Agency Procedures, and 62 agencies have signed on. Mexico adopted 'regulations related to client–attorney privilege protection in the context of antitrust investigations'. Japan has also introduced an 'attorney–client privilege [which] will apply to administrative investigation procedures against' cartels, and the discussion in that chapter of how this privilege will be applied will be of interest to many. The chapter from Belgium discusses that country's newly modified competition law, and in this edition we welcome to the *Review* a new chapter from Nigeria, which provides an informative overview of that country's new competition law. Before this law was enacted, our authors write, 'Nigeria had no comprehensive competition legislation that dealt with antitrust, abuse of dominant position and merger control issues'.

In the past year, antitrust compliance featured prominently on several enforcers' agendas. In 2019, the US Department of Justice (DOJ) notably focused on encouraging compliance efforts: the agency announced a new policy allowing, under certain conditions, companies to receive credit for antitrust compliance programmes when the DOJ considers criminal charges. Elsewhere, the Taiwan Fair Trade Commission has made efforts in the past year to assist Taiwanese business organisations in their antitrust compliance efforts. Poland implemented an online whistle-blower platform and Brazilian authorities issued a whistle-blower protection ordinance.

The policing of cartels remains a focus of competition agencies around the globe. The chapter from Greece notes an increase in cartel enforcement activity in 2019. Authorities there conducted their largest dawn raid yet, and they have also updated the manner in which they prioritise particular cases. The authors of that chapter note that 'it appears that the [Hellenic Competition Commission] has taken a turn toward more pre-emptive action against cartels, by emphasising dawn raids and *ex officio* investigations and by acting swiftly on complaints and news publications about price increases in specific sectors'. Portuguese authorities are reported to have imposed their largest fines to date. The contribution from Japan notes an aggregate level of penalties that is higher than in recent years, which, the authors note, is partly attributable 'to the record-breaking surcharge imposed in the asphalt cartel case' there.

That country is implementing a revised leniency programme. Meanwhile, the chapter from Mexico notes a decline in the number of leniency applications there.

As noted above, online platforms – and the 'digital economy' more generally – continue to be the subject of regulatory scrutiny, including in Brazil, France, India, Japan, Mexico, Poland and the United States. For example, both United States competition enforcement agencies are investigating large platforms, and the UK Competition and Markets Authority (CMA) has launched a market study of online platforms and digital advertising. Taiwan has also begun to prioritise this area. In addition to platform issues, there have been several other notable developments in the areas of restrictive agreements and dominance. Authorities in Canada concluded an inquiry into several pharmaceutical companies without taking action but 'confirmed that healthcare remains a top enforcement priority'. The United States authorities remained active in this area. In addition, Belgian authorities conducted a dawn raid in the pharmaceutical sector. Several jurisdictions took enforcement actions against resale price maintenance (RPM) practices: the UK's action involved guitars; an action in Poland involved online sales of printers and was the result of a whistle-blower complaint; and Japanese authorities took action against manufacturers of various baby products. China concluded four RPM matters.

Merger review and enforcement activity remains robust. The chapters that follow note activity in many sectors. The chapter from Argentina discusses the Antitrust Commission's new merger control guidelines and the chapters from France and India report on streamlined merger control procedures there.

Once again this year, the chapter from the United Kingdom is particularly informative. In addition to describing a busy year of merger and conduct enforcement activity for the CMA, the chapter discusses the effect of Brexit on the competition enforcement regime there, including the transition period and how competition law may factor into the negotiation of a trade agreement between the UK and the EU. Our contributors discuss the future of the CMA and potential consequences of various possible future scenarios. We will continue to watch with interest to see how competition enforcement in the United Kingdom evolves in the year to come.

Aidan Synnott
Paul, Weiss, Rifkind, Wharton & Garrison LLP
New York
March 2020

Chapter 20

SWEDEN

Peter Forsberg, Johan Holmquist and David Olander[1]

I OVERVIEW

The current Swedish Competition Act (Competition Act)[2] entered into force on 1 November 2008 and governs all types of actions that may distort competition. The Competition Act aims to incorporate EU competition law as far as possible. It is, therefore, interpreted in accordance with the case law of the Court of Justice of the European Union.

The Swedish Competition Authority (SCA) is the central administrative authority for enforcement of competition law in Sweden. It is entrusted with investigative powers and, to some extent, decision-making powers. Following an amendment to the Competition Act on 1 January 2018, the SCA can adopt decisions in merger control cases. In behavioural cases (i.e., anticompetitive agreements and abuses of dominant positions), the SCA rather acts as a prosecutor and will have to make its cases before a court. If the SCA can prove a violation, a court may impose a corporate fine of up to ten per cent of company turnover. For 'hard core' cartel conduct (price-fixing, bid-rigging, output restrictions and market sharing) a court may also impose a director disqualification for a period of three to 10 years. However, the SCA may itself impose an injunction to stop ongoing infringements.

As of 1 September 2016, a reorganisation of the court system was made effective, where the Market Court, formerly the highest competition court, ceased to exist. The reorganisation was intended to create a more unified and concentrated judicial system for competition cases. The Patent and Market Court (PMC), a division within the Stockholm District Court, is now the competition court of first instance. Its decisions and judgments can be appealed to the Patent and Market Court of Appeal (PMCA), a division within the Svea Court of Appeal in Stockholm. A leave to appeal is required if the PMCA is to hear a case. The PMCA is, in general, the court of last instance. However, in certain instances, the PMCA can grant leave for a judgment or decision to be appealed to the Supreme Court. If that were to happen, the Supreme Court would also need to grant a leave to appeal before the case could be heard.

II CARTELS

Chapter 2 of the Competition Act holds the substantive provisions relevant for cartels and other anticompetitive agreements. Chapter 2, Sections 1 and 2 are modelled on Article 101(1) and 101(3) of the Treaty on the Functioning of the European Union (TFEU). Section 1

1 Peter Forsberg is a partner, and Johan Holmquist and David Olander are associates at Hannes Snellman Attorneys Ltd.

2 The Swedish Competition Act (2008:579).

prohibits the cooperation between undertakings that has as its object or effect the prevention, restriction or distortion of competition in the market to an appreciable extent, whereas Section 2 sets out the possible exemptions to the prohibition found in Section 1.

The Swedish leniency programme was amended in 2014 to better reflect the EU leniency system. The new leniency regime introduced a marker system whereby a company may apply for a marker and submit limited information about an ongoing infringement. The minimum requirement to obtain a marker is to submit information on the market affected by the infringement, the other companies involved and the nature of the infringement. To secure the marker, the company must submit a complete application within a specified period. If the company with the marker fails to submit the outstanding information, another company cannot jump the queue for immunity. In circumstances where either the company benefits from leniency or the individual has contributed and personally cooperated to a significant extent, the SCA may grant immunity from a director disqualification.

i Significant cases

Insurance services – reviewability of dawn raids

In April and June 2017, the SCA conducted a dawn raid against a number of insurance companies (Söderberg & Partners et al.) for suspected bid rigging in procurements of insurance services. This was done after a prior decision by the PMC allowing the raid. During the raid the SCA 'mirrored' several hard drives and, with the consent of the companies, brought and reviewed them at the premises of the SCA. However, when the SCA copied certain documents from the hard drives and included them in the case file, one company appealed the measure to copy the documents, arguing that the documents were outside the scope of the PMC's dawn raid decision. After both the PMC and the PMCA had rejected the appeal, the Supreme Court heard the case.[3] The Court stated that if a company contests the SCA's right to review or copy certain material on the grounds that the measure is out of scope of the original dawn raid decision, the SCA must refer the dispute to the Swedish Enforcement Agency and request its assistance in order to review or copy the contested material. In this case, the SCA had not requested such assistance, which the Supreme Court found to be a violation of the company's right to a fair trial under the European Convention on Human Rights. The Court stated, however, that the appropriate remedy for such a violation was economic compensation, rather than to create a new right of review before the PMC. The decisions of the lower courts were thus affirmed.

Data communications services in Gothenburg – bid rigging?

The SCA sued Telia, Sweden's largest telecommunications operator, and GothNet, a local network operator in Gothenburg, and requested a total fine of 35 million kronor for having formed a bid-rigging cartel during a public procurement procedure by the City of Gothenburg in 2009. The SCA claimed that when the City of Gothenburg procured data communication services, Telia and GothNet agreed that Telia would refrain from submitting a tender in the procurement, even though GothNet and Telia were competitors. Subsequently winning the bid, GothNet contracted Telia as a subcontractor. The PMC ruled in favour of the SCA's claim and ordered each of the parties to pay 8 million kronor in fines. Telia appealed the

3 Supreme Court, decision of 30 November 2018 in case No. Ö 5652-17.

judgment, which was reversed by the PMCA. In its judgment from February 2018,[4] the PMCA stated that the nature of the information provided by Telia to GothNet entailing that Telia would not be submitting a bid in the procurement was a concerted practice within the meaning of the competition rules. However, considering the economic and legal context of the procurement in which the coordination took place, the court held that the information exchange could not be regarded anticompetitive by object. Since there was not sufficient evidence of anticompetitive effects, the SCA's claim was rejected.

Moving companies – market sharing?

The SCA sued three companies in the moving company sector, Alfa Quality Moving, NFB Transport Systems and ICM Kungsholms, for a total fine of 42 million kronor. The companies had in two merger transactions included non-compete clauses of five years, which, according to the SCA, were too far-reaching. The SCA claimed that the clauses constituted illegal market sharing agreements. However, the PMC held that the clauses were not anticompetitive by object and that the SCA had not shown any anticompetitive effects. The PMCA affirmed the judgment on appeal.[5] The court pointed out that non-compete clauses may be necessary for the successful implementation of a merger transaction, since these clauses provide the buyer with a certain degree of security. The SCA had argued that the moving companies knowingly had exceeded the three-year period outlined in the Commission's guiding notice on ancillary restraints. However, the PMCA found that the three-year period reflects the duration under which companies normally can assume to be protected under the Commission notice rather than the maximum duration allowed for a non-compete clause. Accordingly, the court did not hold the non-compete clauses to be anticompetitive by object. The PMCA further concluded that the SCA did not provide evidence of any anticompetitive effects.

ii Trends, developments and strategies

On average, the SCA conducts a handful of dawn raids per year, and it receives approximately five leniency applications per year, of which approximately half are summary applications.[6] Sectors that have been investigated more recently include construction, electronic equipment, insurance and retail.

In December 2018, the SCA conducted a questionnaire survey of the level of corruption in the construction industry.[7] Among the responding firms, 49 per cent believed that there were cartels in the industry, and 29 per cent of those believed that cartels operated on a regular basis.

iii Outlook

The fight against cartels is one of the main priorities of the SCA, and measures relating to the detection of cartels has increased, especially concerning bid-rigging cartels in public procurement procedures. There are several ongoing investigations at the SCA of companies suspected of having colluded at the bidding stage.

4 PMCA, judgment of 13 February 2018 in case No. PMT 761-17.

5 PMCA, judgment of 29 November 2017 in case No. PMT 7498-16.

6 During the period 2010–2014.

7 Report series 2018:10.

In the past, the SCA has been successful in obtaining large fines in cartel cases against companies in, inter alia, the asphalt and petrol businesses. However, since the reorganisation of the competition court system in 2016, the SCA has so far lost all cases that have reached the PMCA. As a result, the SCA has indicated that it will take a more lax stance on litigation in the future. For instance, in November 2019, the SCA concluded an investigation of information exchange of production volumes in the asphalt sector, by accepting commitments from three competitors rather taking the case to court. Indeed, the SCA has become more active in using alternative enforcement methods such as communication in media.

III ANTITRUST: RESTRICTIVE AGREEMENTS AND DOMINANCE

Chapter 2, Section 1 of the Competition Act prohibits the cooperation between undertakings that has as its object or effect the prevention, restriction or distortion of competition in the market to an appreciable extent, whereas Chapter 2, Section 7 of the Competition Act sets out the prohibition against abuse of a dominant position. The provisions are modelled on Articles 101 and 102 TFEU.

i Significant cases

Stock exchange services – foreclosure of competitor

The SCA sued the operator of the Stockholm stock exchange, Nasdaq, for abuse of dominance and requested fines of 28 million kronor. The case revolved around a data centre provided by Verizon. Nasdaq leased one area in the data centre, and offered its customers, such as high frequency traders, the opportunity to rent space in the same area. The co-location with Nasdaq gave the customers a fast connection to Nasdaq's trading systems. The events were triggered when Burgundy, a Nasdaq competitor, publicly announced that it had entered into a deal with Verizon and intended to move into the same data centre as Nasdaq. In effect, Burgundy would become part of Nasdaq's co-location service without having to set up its own service. Nasdaq responded by putting pressure on Verizon, threatening to move to another data centre if Burgundy was allowed into the centre. The SCA did not argue that access to the data centre was essential. Instead, it relied on the concept of a 'naked restriction', claiming that Nasdaq's reaction to Burgundy's announcement had no other purpose than to restrict competition. The PMC, however, held that this was a normal exercise of contractual rights and competition on the merits and consequently rejected the SCA's claim. On appeal, the PMCA[8] upheld the PMC's judgement. According to the PMCA, the investigation showed that the additional costs for Burgundy connected with having to establish itself in another data centre did not raise any barriers to entry or expansion for Burgundy.

Access to waste collection infrastructure

In February 2018, the SCA imposed an injunction on FTI, a waste management company, ordering it to withdraw a contract termination with its competitor, TMR. FTI allows packaging producers to fulfil their legal obligation by offering a service to collect and recycle packaging waste emanating from their products in exchange for a weight-based fee. FTI's waste collection is primarily based on a nationwide infrastructure of public waste containers. Since 2012, FTI had granted access to this infrastructure to TMR, which offered its services

8 PMCA, judgment of 28 June 2019 in case No. PMT 1443-18.

in competition with FTI. In 2016, FTI terminated the access contract with TMR. Having investigated the case, the SCA found that the infrastructure of public waste containers constituted an essential facility and that FTI had abused its dominant position by refusing to deal with TMR. The PMC upheld the injunction on appeal.[9] FTI has appealed the decision, and the case is pending before the PMCA.

Tobacco coolers labelling system

The SCA sued Swedish Match, a major supplier of *snus* (a moist tobacco product), for abuse of dominance. The SCA claimed that Swedish Match had foreclosed its competitors by implementing a uniform system for shelf labels in *snus* coolers that it had lent to retail stores. Although Swedish Match permitted sales of other suppliers in those coolers, the SCA argued that the labelling system restricted competitors from marketing their products in terms of price and brand, especially since the marketing of tobacco products in general is subject to significant legal restrictions. Swedish Match, on the other hand, had argued, inter alia, that its intention was to ensure that the labelling system complied with the strict marketing regulations relating to tobacco products. The PMC found that Swedish Match had abused its dominant position, and imposed fines of 38 million kronor. However, the PMCA reversed and ruled in favour of Swedish Match. In its judgment from June 2018,[10] the PMCA held that the labelling system indeed was capable of foreclosing competitors by way of restricting their marketing possibilities. However, the court further held that such exclusionary behaviour by a dominant undertaking is objectively justified – a concept rarely accepted by the EU courts – when the purpose is to ensure compliance with tobacco marketing regulations.

ii Trends, developments and strategies

The SCA is continuing to investigate markets and sectors at risk of competition concerns. Certain sectors are more closely scrutinised by the SCA due to previous regulations that have created structural imbalances in the market (such as the pharmacies and telecommunications sectors). As abuse of dominance cases are difficult to prove, the SCA has formed a division specialised in such anticompetitive behaviours.

iii Outlook

In Sweden, many sectors have previously been characterised by a monopoly or few companies dominating the market. Many of these markets are now in the process of being, or have recently been, deregulated, which has often resulted in a market with non-existent, or low, competition. Therefore, the SCA has focused its efforts on these markets.

9 PMC, decision of 21 January 2019 in case No. PMÄ 2741-18.

10 PMCA, judgment of 29 June 2018 in case No. PMT 1988-17.

IV SECTORAL COMPETITION: MARKET INVESTIGATIONS AND REGULATED INDUSTRIES

i Significant cases

E-commerce and the sharing economy[11]

In 2017, the SCA analysed the Swedish e-commerce and sharing economy sectors, and concluded that the emergence of these industries has resulted in increased price transparency and price competition, which is beneficial for consumers. Swedish e-commerce companies are facing increased foreign competition, as this sector has grown significantly over the past few years. The technical development of a digital payment infrastructure has made it more secure for consumers to purchase products or services online. The SCA's investigation found that a large majority of the sales in the retail sector are still made in physical stores, although e-commerce constitutes a competitive restraint on the physical stores. The SCA also stressed that the increased digitalisation and technical improvement of the e-economy has resulted in new challenges for competition authorities to tackle, for instance that the higher degree of price transparency may facilitate price collusion. The SCA indicated that the increased digitalisation of companies' business models in the e-commerce and sharing economy sectors will require the SCA to implement more advanced and sophisticated investigation routines.

The investigation found that the sharing economy sector is largely based on digital platforms, which give rise to network effects. The services provided within the sharing economy increase the supply on the market, which results in lower prices and increased choice for consumers. A platform can decide to offer its services for a low price or without charging for its services at all, usually in exchange for user data, in order to expand more rapidly. A large number of users and collection of user data can give a platform a significant market power, due to, for instance, indirect networks effects, which its competitors may not be able to replicate. The SCA's investigation found that there is a risk that the current merger control regime does not cover concentrations between platform companies with low revenue but that have significant market power and the potential to impede or hinder the development of effective competition. The SCA has indicated that one solution could be to complement the current turnover thresholds with a 'size of transaction' system. However, the SCA already has the discretion to order a party to notify a concentration if particular grounds are at hand.[12]

ii Trends, developments and strategies

The SCA may commence a market investigation either by itself or after a complaint. The sector investigation may result in an additional investigation of a specific undertaking or the provision of guidance to the undertakings concerned so that they can modify their behaviour in order to avoid an additional investigation.

iii Outlook

Similarly to the Commission, one of the SCA's priorities concerns the development of the e-economy and sharing economy, and how the growth of these sectors will affect the competition authorities' enforcement function as well as the risk of anticompetitive conduct.

11 Report series 2017:2.

12 Chapter 4, Section 7 of the Competition Act.

The SCA has recognised that the authority's investigation methods are challenged with the increased digitalisation of the economy as the competition rules need to be applied to digitalised (rather than offline) market conditions. It can be expected that the development of the e-economy and sharing economy will remain one of the SCA's main priorities.

V STATE AID

There is no specific national legislation concerning state aid. However, procedural rules on the application of Articles 107–109 TFEU were adopted in 2013.[13] In addition, the Local Government Act[14] states that giving support and financial aid to individual businesses is forbidden. According to Chapter 2 Article 8 of the Local Government Act, municipalities and counties are allowed to implement measures to promote local business in general, but not to target their efforts towards a specific company.

The Swedish Transparency Act[15] is based on the state aid rules, and requires reporting to the Commission of all publicly owned or financed operations reaching certain thresholds.

i Significant cases

State aid cases are not common in Swedish courts. In particular, the cases have concerned the sale of facilities from municipalities to private operators below market price. Sweden has also been under review by the Commission multiple times, as only the Commission can approve targeted state aid.

Sale of a property

The Supreme Administrative Court has on two occasions heard cases on state aid concerning the sale of public property. In the first case,[16] the municipality of Karlskrona decided to sell a property to the construction company NCC for 5 million kronor, despite a higher bid from another interested buyer. The Court stated in its judgment that the municipality had failed to conduct an independent valuation of the property, and not considered the higher bid. The Court therefore concluded that the agreement entailed individually targeted support to NCC, and that the contract with NCC was in conflict with the Local Government Act.

However, in the second case,[17] the Supreme Administrative Court concluded that that there was no question of illegal state aid. Here, the City Council of Årjäng decided, through an exchange contract with a natural person, to transfer a property for 650,000 kronor and to acquire another property for 4.9 million kronor. An independent valuation was not conducted, and the sale of the property was not publicly announced. Shortly after the transaction, the municipality made an independent valuation of the properties through an independent valuation company. The first property was then valued at 600,000 kronor and the latter at 5.5 million kronor. The Court found that the municipality had not intended to directly support the acquiring company and that the transaction in itself did not constitute this support.

13 Act (2013:388) on the Application of the European Union's State Aid Rules.

14 The Local Government Act (1991:900).

15 The Swedish Transparency Act (2005:590).

16 Supreme Administrative Court 2010 ref 119.

17 Supreme Administrative Court 2010 ref 119 II.

The Commission approving Swedish state aid

In recent years, the Commission has on several occasions approved financial support for different infrastructure projects. For example, in 2013, the Commission authorised the municipality of Uppsala to co-finance a new multi-purpose arena.[18] The Commission stated that the public financing was proportional to the objectives pursued. Furthermore, in 2014, the Commission approved a national aid scheme to regional airports.[19] In 2016, the Commission also approved a state aid by the Swedish government to the operator of the two airports in Sundsvall and Skellefteå.[20] Finally, in 2017, the Commission approved a state aid for a seaport infrastructure project in Piteå.[21]

ii Trends, developments and strategies

The majority of previous state aid cases in Sweden have been related to municipalities selling property at significantly lower prices than market value. There has, however, been a decrease in the number of these cases in recent years.

The SCA has considered it unnecessary to submit a report to the Commission in accordance with the Transparency Act when the state or the municipalities do not control manufacturing undertakings with a turnover exceeding €40 million.

iii Outlook

Certain projects concerning infrastructure facilities in the more remote areas of Sweden are dependent on financial support and state aid. Those projects will depend heavily on authorisation from the Commission.

VI MERGER REVIEW

In 2019, the SCA reviewed 74 merger notifications. Four cases went to Phase II, of which two were unconditionally cleared. One concentration was prohibited by the SCA, but later abandoned by the parties, while the fourth case is currently pending.

A concentration meets the thresholds and needs to be notified to the SCA if the combined aggregate turnover in Sweden of all undertakings concerned exceeds 1 billion kronor, and each of at least two of the undertakings concerned has a turnover in Sweden exceeding 200 million kronor.

Where the first threshold of 1 billion kronor is met, but the second threshold is not, the SCA may order the concentration to be notified if the SCA finds particular grounds for doing so. These grounds may be met when an undertaking already holds a strong market position

18 State aid: Commission authorises public co-financing of Uppsala arena in Sweden. www.europa.eu/rapid/press-release_IP-13-394_en.htm (2 May 2013).

19 State aid: Commission decisions on public financing of airports and airlines in Germany, Belgium, Italy and Sweden – further details. www.europa.eu/rapid/press-release_MEMO-14-544_en.htm (1 October 2014).

20 State aid: Commission approves public service aid to Sundsvall Timrå and Skellefteå airports in Sweden. www.europa.eu/rapid/press-release_IP-16-103_en.htm (19 January 2016).

21 State aid: SA.46749 (2016/N) - Sweden. Aid for investment in the Haraholmen Logistic centre in the port of Piteå. https://ec.europa.eu/competition/state_aid/cases/266720/266720_1898414_86_2.pdf

and acquires a smaller or newly established undertaking. In these circumstances, the acquirer may also submit a voluntary notification. In general, the SCA encourages undertakings to make voluntary notifications of mergers.

i Significant cases

Cheese brands[22]

In December 2018, three dairy producers (Arla Foods, Norrmejerier and Falköpings Mejeri) notified their intention to acquire the intellectual property licensing company Svensk Mjölk via a joint venture arrangement. Svensk Mjölk licenses several cheese brands to some 20 companies, including dairy producers, food wholesalers and retailers. After an initial market survey, the SCA opened an in-depth review in February 2019. The SCA found that the concentration would entail a collaboration on licensing terms, including pricing, sale terms and product design, in an already concentrated market with high entry barriers. The SCA also found that the JV's ownership structure and profit distribution mechanisms would indirectly limit the incentive to increase production volumes. Against this background, the SCA concluded that the concentration could significantly reduce the competitive pressure between the parties and, in the absence of countervailing factors or efficiency gains, the SCA prohibited the concentration. The parties appealed the decision to the PMC, but later abandoned the concentration since, in a turn of events, an arbitration tribunal had declared Svensk Mjölk's general meeting decision to merge null and void.

Metal supply[23]

In July 2019, the SCA opened an in-depth review of Alumeco Sverige AB's acquisition of Metallservice i Göteborg AB. The parties were active in the market for wholesale of standardised aluminium products and the market for manufacturing and direct sales of aluminium in Sweden. The SCA found that the parties' combined market shares of 31 per cent did not give rise to anticompetitive concerns, as it was possible for competing wholesalers to import aluminium products from producers and wholesalers in Germany. The investigation also showed that Swedish end-customers had good opportunities to buy aluminium products directly from German producers and wholesalers. Consequently, the SCA cleared the concentration unconditionally.

Technical production services for TV productions[24]

In June 2019, the SCA opened an in-depth review of NEP Sweden AB's acquisition of HDR Sweden AB. The parties provided technical production services for TV productions through a wide range of services, including outside broadcast trucks and rental TV studios. The SCA found that the parties were the two largest suppliers of such services in Sweden and that NEP would get a significant market share and strengthen its market position while eliminating the competitive pressure from HDR. However, the investigation showed that a number of countervailing factors would mitigate the potential anticompetitive effects. For

22 SCA, case No. 661/2018.

23 SCA, case No. 374/2019.

24 SCA, case No. 435/2019.

instance, foreign suppliers were able to enter the Swedish market and constrain the merged entity. Ultimately, the SCA concluded that the concentration would not harm the effective competition and cleared it unconditionally.

Mobile payment solutions for parking[25]

In October 2019, the SCA ordered EasyPark AB to notify its intention to acquire Inteleon Holding AB. After an initial investigation, the SCA could not rule out the risk that the concentration would significantly impede the effective competition as the concentration would reduce the competitive pressure between the two largest suppliers of mobile payment solutions for parking. Against this background, the SCA decided to open an in-depth review that is currently ongoing.

ii Trends, developments and strategies

In comparison to previous years, the number of notifications to the SCA has increased steadily in Sweden and a majority of the notifications have been cleared in Phase I. In cases where there is an absence of vertical links and horizontal overlaps, the SCA often handles the matter with speed and a decision may be received significantly quicker than 25 working days.

Another topic of interest is that the Swedish merger control regime makes it possible for the SCA to request a transaction to be notified if there are particular reasons to so do, even if the turnover thresholds are not exceeded. In such circumstances, the acquirer may also decide to submit a notification voluntarily. The SCA has issued guidance that explains that a voluntary notification should be considered if the transaction can be expected to awaken fears and criticism among customers or competitors. The feature of voluntary notification is a mechanism particular to Swedish merger control.

In 2015, the SCA introduced further guidance for notifications and the assessment of concentrations. The purpose of the guidance is to improve awareness of the investigations of the SCA, contribute to greater predictability and ensure good conditions for cooperation between the parties and the SCA, contributing to a more efficient and effective investigation.

iii Outlook

As of 1 January 2018, the Competition Act was amended to grant the SCA extended decision-making powers in merger control cases. One argument for the reform was to increase conformity with the merger control procedure of the Commission and in other Member States. However, the reform did not receive a uniformly positive response, and it has been argued that the safeguards surrounding the SCA's decision-making process are not as well developed as, for example, the Commission's. It remains to be seen how the reform will be implemented in practice.

25 SCA, case No. 698/2019.

VII CONCLUSIONS

As of September 2016, a reorganisation of the court system was made effective. The reorganisation was intended to create a more unified and concentrated judicial system for competition cases. Since the inception of the new court system, the SCA has so far lost all cases that have reached the PMCA. As a result, the SCA has indicated that it will take a more relaxed stance on litigation in the future, and focus on rule of law issues in its decision-making procedure.

Appendix 1

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