



Sweden ❖

Sweden is a country in North Europe and a member of the EU (1995). With an area of 450,000 square km (174,000 sq.mi.), Sweden is one of the largest countries in Western Europe. It has, however, only nine million inhabitants. This is equivalent to 20 inhabitants per square kilometer.

Economy¹

Sweden's position as one of the world's most highly developed post-industrial societies looks fundamentally secure. Unemployment is rather low and the economy strong.

Aided by peace and neutrality for the entire 20th century, Sweden has achieved an enviable standard of living under a mixed system of high-tech capitalism and extensive welfare benefits. It has a modern distribution system, excellent internal and external communications, and a skilled labour force.

Sweden is highly dependent on international trade to maintain its high productivity and good living standards. In 2012 (est), exports were equivalent to 45 percent of GDP. The most important export markets are in Western Europe. More than half of Swedish exports go to other members of the EU.

Timber, hydropower, and iron ore constitute the resource base of an economy heavily oriented towards foreign trade. Privately organised firms account for about 90 percent of industrial output, of which the engineering sector accounts for 50 percent of output and exports. Agriculture accounts for 1.8 percent of GDP and 1.1 percent of the the labour force by occupation. During the period 1980-2003, services gradually increased their share of business sector employment from 47 percent to 60 percent, while manufacturing fell from 32 to 25 percent.

Like many other highly developed industrial countries, Sweden has experienced weaker growth in recent decades.

Between 1980 and 2003, GDP rose by an average of 2.0 percent annually. This can be compared with 3.3 percent

PROFILE	
Population:	9.45 million***
GDP (Current US\$):	538.13 billion*
Per Capita Income: (Current US\$)	53,230 (Atlas method)*** 40,900 (at PHP.)*
Surface Area:	450 thousand sq. km***
Life Expectancy:	81.18 years**
Literacy (%):	99 (of ages 15 and above)
HDI Rank:	10***
<i>Sources:</i> - http://hdrstats.undp.org/en/countries/profiles/SWE.html * World Development Indicators Database, The World Bank, 2011 ** CIA The World Factbook, 2011 *** Human Development Report Statistics, UNDP, 2011	

in the 1950s and 4.6 percent in the 1960s. During the 1970s and the 1980s, Sweden had a lower GDP growth rate than both the average growth of the EU as well as the average growth of the OECD area. The recession in Sweden in the beginning of the 1990s led to a low mark regarding economic growth as the GDP growth rate actually fell during three years. Between 1990 and 1993, the GDP fell by about 4 percent in terms of volume. After 1993, the growth rate in Sweden accelerated again and was comparable to the growth rate of the OECD. During 1998-2000, the volume growth rate was actually higher than in comparable countries, at just over 4 percent per year.

After years of economic growth, the Swedish economy, as the rest of the developed world, was again affected by a sharp economic downturn because of the IT-crash in the beginning of 2000. The crisis was followed, however, by an economic boom. World trade increased sharply, which resulted in rapid export growth for Sweden.

The Swedish GDP growth rate reached 4 percent in both 2004 and 2006. In 2007 the economic growth slowed down again and in late 2008 the financial crisis resulted in a recession. The GDP growth fell during 2009, however, it recovered during 2010 and 2011.²

❖ Original paper written (2006-07) by Katarina Olsson & updated (October 2012) internally by CUTS International.

Sweden is among the EU countries that have implemented the most far-reaching reforms of public services. It has deregulated postal services, telecommunications, domestic civil aviation, railroads and the electricity market. The purpose of such deregulation is to achieve lower prices and better quality for the consumers. As a consequence of deregulation, number of service providers in these fields has increased.

Economic Policy Regime³

Due to the economic crisis of the early 1990s faced by Sweden, it became necessary to take steps to reverse the trend toward escalating State budget deficits. The crisis helped increase awareness of the need for structural reforms and changes in economic policy and its framework. Consequently, economic policy changed in a number of respects. A series of structural reforms were enacted. Meanwhile, clear fiscal and monetary policy goals were formulated. Sweden gave up its fixed exchange rate policy and introduced floating exchange rates.

In 1993 Sweden introduced a new, stricter Competition Act, expressly prohibiting anti-competitive collaboration between companies and abuse of a dominant market position. During the 1990s, a number of goods and service markets were deregulated, including transportation, telecommunications and electricity. In some cases, this meant the dissolution of earlier government monopolies. Labour legislation was also adjusted to meet demands for greater flexibility. Among other, these changes made it easier for companies to hire temporary employees.

In 1995, Sweden became a member of the EU. In recent years, the country has taken a number of significant steps to raise the efficiency of its public sector, for example, by allowing more competition. State grants to local governments have been restructured in order to streamline resource utilisation. A new Act on public procurement has been adopted.

The Government's commitment to fiscal discipline resulted in a substantial budgetary surplus in 2001, which was cut by more than half in 2002, due to the global economic slowdown, declining revenue, and increased spending. The Swedish GDP growth rate reached 4 percent in both 2004 and 2006. In 2007 the economic growth slowed down again and in late 2008 the financial crisis resulted in a recession. The GDP growth fell during 2009, however, it recovered during 2010 and 2011.

Competition Law: Evolution and Environment

In Sweden, as in many other smaller western European countries, the development of competition law has been fairly circumspect. In the middle of the 1800s, restrictions on commercial activities were replaced by a general rule of freedom of commercial activity. Restrictive agreements were considered as binding and valid according to the general rule of *pacta sunt servanda* – freedom of contract – far into the 20th century.

Competition Law and Policy

Competition law in Sweden is currently regulated under the Swedish Competition Act (2008:579 the Act). The Act entered into force on November 01, 2008, but its substantive provisions in relation to antitrust have been the same since 1993. The Act takes aim at three types of actions that may distort efficient competition, namely anti-competitive cooperation, unilateral conduct constituting abuse of dominant position, and structural changes (i.e., mergers and other types of concentrations). If a certain practice affects trade between member states within the EU, the Swedish Competition Authority (SCA) also applies articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). The national provisions are materially identical to the corresponding provisions of the TFEU. Hence, judgments from the Court of Justice of the European Union may be used to interpret the national provisions even in cases where there has been no effect on trade and thus no infringement of TFEU provisions.

In addition to these traditional types of substantive provisions, the Act contains a specific provision regulating publicly owned entities' conduct on competitive markets: i.e. a prohibition against anti-competitive public sales. This provision, which was introduced in January 2010, applies to all public bodies acting as a seller in a market. The reason for the introduction of this new provision is that public entities operate in the market under different conditions from private competitors, for example, benefiting from being financed through tax subsidies, meaning that their mere presence in the market can give rise to market distortions. The SCA has several actions before the court based on this provision, meaning that further guidance on the application of the provision is forthcoming.⁴

Competition Rules in a National Environment

Swedish domestic competition legislation aims to correspond, as far as possible, to EU rules. It is stated in the preparatory discourse in the Competition Act that the substantive rules should be interpreted against the background of the practice of the European Commission and the Court of Justice of the European Union as well as taking into consideration the practice from other countries that apply the 'prohibition principle.'

Where relevant, Swedish courts must apply Articles 101 and 102 TFEU, as these provisions have direct effect.⁵ At a first glance, it seems quite easy to work with two sets of competition rules – the EU system and the national system – that are basically identical. One has to bear in mind, however, that the EU competition rules rest on the general principles and aims of the TFEU. This means that one has to take into account different interests when applying or interpreting the rules. A competition question could be solved differently under EU rules and national rules although the wording of the rules is identical. The interests and purposes of the rules are not always identical. Nevertheless, the cooperation within the European

Competition Network (ECN), highlighted below, is aimed at ensuring consistent application of the competition rules across the EU.

Rules affecting competition, and in the wider sense consumers, consist of a vast variety of legal instruments spread out in many different legal acts and statutes in Sweden. The policy arguments and values that are reflected in the rules cannot easily be summarised or condensed under one heading. In this paper, the basic structure of the most important rules in competition law and consumer related law is presented.

The rules provide a basic framework for business activities in the market and involves questions of, *inter alia*, abusive conduct, misleading marketing, product safety, consumer contracts and door-to-door sales. The basic aim of the rules is to guarantee effective and fair competition among undertakings and to protect consumers. Some of the rules are directed towards the individual contract or behaviour in the market whereas for others it is a question of regulating a behaviour or conduct of a more general character. The system of remedies and sanctions often falls into two parts: administrative measures or sanctions of a private law character.

Competition law is not an isolated area of law but has to be examined in conjunction with rules and principles from neighbouring fields. For Sweden being a small country dependent on trade with other countries – it is also important to consider the impact of competition from abroad. Sweden's membership of the EU has greatly influenced legislation in many areas. The Competition Act of the early 1990s was modelled on the basic rules of EU competition law. The accession to the EU meant that market and consumer law rules have to a large extent been harmonised through EC Directives.

During the past 20 years, legislation in the area of competition, marketing and consumer protection has developed extensively. The primary sources of law are the various statutes. The preparatory discourses to the statutes are easily accessible and are used to assist the application and interpretation of the rules. Several statutes contain rather flexible rules giving room for the balancing between different interests recognised in law such as efficiency and ethics. The courts will set the borders for what is accepted behaviour.

Cooperation between the SCA and Competition Authorities in other Countries⁶

The SCA applies the EU competition rules in close cooperation with the other competition authorities within the European Competition Network, ECN.

The Authority also participates in international developments in the competition field in international organisations for example the Organisation for Economic Cooperation and Development, OECD, as well as

the United Nations Conference on Trade and Development, UNCTAD.

Great importance is attached to establishing and developing relations with competition authorities in other countries. In particular there is a close cooperation between the Nordic competition authorities. Sweden has a cooperation agreement with Denmark, Norway and Iceland regarding the exchange of confidential information in connection, for example, with cartel investigations and mergers. The authorities therefore have a useful tool in their efforts against cartels and other restrictions of competition.

The International Competition Network (ICN), is a network of competition authorities worldwide. The SCA has been reappointed as a co-chair of the ICN Unilateral Conduct Working Group for the period 2012-2013, together with the UK's Office of Fair Trading (OFT) and the Turkish Competition Authority.

European Competition Authorities (ECA) is an informal network for national competition authorities in Europe.

Institutions and its Competencies

The enforcement and supervising authorities – the SCA and the Consumer Agency – are entitled to issue regulations, notices and guidelines on certain issues. Such documents are often developed after consultations with the relevant business organisations.

The SCA is the central public authority for dealing with competition questions and cases and is equipped with powerful tools for carrying out its mission.⁷

Two courts – the District Court of Stockholm and the Market Court – are designated as responsible for dealing with competition questions on appeal from the SCA.

The overwhelming majority of cases that are settled by a formal decision by the competition authority are not appealed. The general courts also possess the competence to apply certain sections of the Competition Act as well as Articles 101 and 102 of the TFEU in private law cases on, for example, breach of contract. A question of damages according to Chapter 3, Article 25 of the Competition Act can also be raised in the general courts. The European Commission⁸ cooperates closely with the SCA. This is as of May 01, 2004 organised within the European Competition Network.⁹

The SCA and the courts have issued a number of decisions and judgements dealing with fundamental issues of competition law. The SCA has so far handled thousands of cases related to the Competition Act, few of which have been appealed to the courts. The fundamental changes in competition policy and regulation that took place in the early 1990s mean that previous case law is now largely irrelevant.

Anticompetitive Business Practices

• *Prohibition against Anticompetitive Cooperation*

Chapter 2, Article 1 of the Competition Act prohibits agreements between two or more undertakings, which have the aim of restricting, limiting or distorting competition on the market to an appreciable extent, or if it leads to such results. The wording of the section follows closely the wording of Article 101(1) of the EC Treaty. In Chapter 2, Article 1, para. 2, a number of examples of co-operation are given that are regarded as being particularly restrictive in terms of competition. The nullity sanction provided in Chapter 2, Article 6 is identical to Article 101(2), and the possibility of individual exemption that follows from Chapter 2, Article 2 is identical to Article 101(3). The only difference of significance between the EU rules and the Competition Act is that the Swedish rules lack the requirement that trade between Member States is affected. Of course this is a logical difference and gives a clear indication of the limit of jurisdiction.

Chapter 2, Article 1

Agreements between undertakings shall be prohibited if they have as their object or effect, the prevention, restriction or distortion of competition in the market to an appreciable extent, if not otherwise regulated in this act. This shall apply, in particular, to agreements which:

- directly or indirectly fix buying or selling prices or any other trading conditions;
- limit or control production, markets, technical development, or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which by their nature or according to commercial usage have no connection with the subject of such contracts.¹⁰

Prohibition against abuse of a dominant position

Chapter 2, Article 7 sets out prohibition against abusive exploitation of a dominant position by one or more undertakings. Chapter 2, Article 7, Competition Act, and Article 102, TFEU, are identically worded, except for the prerequisite of cross-border trade. Chapter 2, Article 7 provides a number of examples of practices that can be regarded as constituting abuse. There is no possibility for an exemption and there is no nullity sanction. For the prohibition to be applicable, an undertaking is required to have not only a dominant position on the market, but also be abusing this position. Being dominant is not in itself prohibited; what is prohibited is the abuse. A dominant position means that an undertaking occupies such a position that it is possible for the undertaking in question to prevent effective competition by acting independently of its competitors and customers and ultimately of consumers.

Box 1 : Prohibition Against Anticompetitive Cooperation Fine Order – Transport of Combustion Residues

The SCA issued a fine order regarding two companies in 2011 in the contracting sector that were found guilty of prohibited cooperation during procurement of the transport of residual products from incineration. The two companies agreed to pay SEK 175,000 (EUR 19,370) and SEK 293,000 (EUR 32,430) respectively.

Source: [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP/AR\(2012\)7&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP/AR(2012)7&docLanguage=En)

Chapter 2, Article 7

Any abuse by one or more undertakings of a dominant position on the market shall be prohibited. Such abuse may, in particular, consist in

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which by their nature or according to commercial usage have no connection with the subject of such contracts.¹¹

In order to determine dominance, the market has to be ascertained. Of critical importance in determining the product market is the extent to which one product can substitute another. Products with comparable characteristics in terms of price and usage are usually a part of the same product market. As a rule a dominant position is based on a number of factors, each of which in itself does not necessarily have to be critical. Examples of factors that are important are financial strength, barriers to entry on the market, access to capital goods, patents and industrial property rights as well as technology and other knowledge-oriented advantages. An important factor is the market share of the undertaking in the relevant market.

Concentrations

The rules on notification of so called concentrations (basically defined as mergers and acquisitions) in Chapter 4 of the Competition Act, resemble those of the EU¹² but are adjusted to Swedish conditions. A concentration must be notified to the SCA if (i) the combined aggregate turnover in Sweden of the undertakings concerned in the preceding financial year exceeds 1 billion SEK, and (ii) at

**Box 2 : Abuse of Dominant Position TeliaSonera v Konkurrensverket,
Tele 2 AB, Stockholm District Court, Case no T 31862- 04, 2 December 2011**

The Stockholm District Court found in its judgment of December 02, 2011 that the former telecom incumbent, Telia Sonera, had abused its dominant position through a margin squeeze. Telia Sonera was fined SEK 144 million (approximately EUR15mn) which is by far the highest fine ever imposed in an abuse of dominance case in Sweden.

The Swedish Competition Authority (Competition Authority) brought an action in the Stockholm District Court in 2004, claiming that Telia Sonera should pay a fine of a total amount of SEK 144 million due to a violation of Chapter 2, Section 7 of the Swedish Competition Act and Article 102 TFEU respectively. The Competition Authority claimed that Telia Sonera had abused its dominant position by applying a pricing strategy resulting in squeezed margins between the wholesale price for its resale products for ADSL broadband and the resale price for its ADSL services to end-users. The price squeeze had occurred on the Swedish market during the period April 2000 through to January 2003.

The Stockholm District Court decided on January 30, 2009 to stay the proceedings and referred the case for a preliminary ruling under article 267 TFEU to the ECJ regarding the interpretation of the application of Article 102 TFEU and whether the pricing strategy undertaken by Telia Sonera should be regarded as an abuse of a dominant position. The ECJ answered the referred questions through a preliminary ruling on February 17, 2011, *Konkurrensverket v. Telia Sonera Sverige AB*, case C-52/9, ECR 2011 p. I-0000.

The ECJ stated that in the absence of any objective justification, the fact that a vertically integrated undertaking, enjoying a dominant position on the

wholesale market for ADSL input services, applies a pricing practice of such a kind that the spread between the prices applied on that market and those applied in the retail market for broadband connection services to end-users, was not sufficient to cover the specific costs which that undertaking must incur in order to gain access to that retail market, may constitute an abuse within the meaning of Article 102 TFEU.

The District Court found that Telia Sonera had abused its dominant position by a margin squeeze by offering wholesale and end-user services for broadband connections at prices where the margin between the wholesale price and the price to households was insufficient to cover Telia Sonera's own costs for offering broadband to households. According to the District Court, Telia Sonera had, in several cases, applied higher prices towards competitors than private customers.

Telia Sonera was not considered to have squeezed margins resulting in effects on the market at large, but only during a limited period of time and towards specific customers. The margin squeeze was considered to have limited the opportunities for Telia Sonera's competitors to expand their business on the market for broadband connection. It delayed their entry on the market and forced them to sell their services at a loss or with very low profit with the consequence that they were unable to engage in active marketing to win new customers.

The judgment has been appealed to the Market Court (final instance). There are also two damage claims regarding Telia Sonera's margin squeeze (T 10956-05, *Telia Sonera AB v Tele2 AB* and T 15382-06 *Telia Sonera AB v Yaps Network AB*) pending in the Stockholm District Court.

Source: <http://www.mondaq.com/x/175918/Antitrust+Competition/Abuse+Of+A+Dominant+Position+ndash+Recent+Case+Law+In>

least two of the undertakings concerned have a turnover in Sweden in the preceding financial year which exceeds 200 million SEK for each of the undertakings. If the turnover requirement in point (i) is fulfilled, but the turnover does not exceed what is laid down in point 2, the SCA may in a particular case require a party to a concentration to notify the concentration where particular grounds exist for doing so.

Parties to a concentration may submit a notification as soon as they can show that they intend to undertake a contemplated transaction.

After notification, the Authority has 25 working days to consider whether to pursue a special investigation of the

concentration agreement. This is a stand-still-period under which the agreement may not be consummated (known as "Phase I"). This period is extended to 35 working days if commitments are offered by the parties to the concentration. If the SCA finds that the agreement contains restrictions on competition, an action can be initiated before the District Court of Stockholm with the aim of prohibiting the concentration. This action must be brought within 3 months of carrying out a special investigation ("Phase II investigation"). The SCA cannot itself prohibit a concentration and the decision is left to the Court.

A concentration can be stopped if it would entail considerable restriction on competition. The Competition Act contains the possibility of choosing a less intervening

method, an injunction for the acquirer to sell off part of the business or perform some other type of action that is positive for competition. Such an injunction is used if it is considered enough for preventing the harmful effects of a concentration. There is no possibility under the Competition Act to break up an existing company. At the time of writing no acquisitions have been prohibited by the District Court of Stockholm.

Merger Control

In the area of merger control, three main amendments are implemented with the 2008 Competition Act. The rules triggering a mandatory notification are amended, the standstill obligation is expanded, and the substantive test under which notifiable concentrations are to be assessed is changed. It follows from these changes that practical questions may arise during an intermediate period whether the 1993 or the 2008 Competition Act applies to a particular transaction. Apart from this, a number of minor amendments and clarifications are provided by the 2008 Competition Act.

For example, the Competition Authority's initial review period (i.e., Phase I) is extended from 25 working days to 35 working days if commitments are offered by the parties to the concentration. This brings the initial review period in this regard in line with the EC Merger Regulation. It is also explicitly provided in the Act that the parties to a concentration may submit a notification as soon as they can show that they intend to undertake a contemplated transaction. The 1993 Competition Act was silent on this particular issue and the Competition Authority initially took the position that in order to file, the parties had to submit a signed and finalised transaction agreement. The Authority changed its position though in January 2008 and then, in line with the EC Merger Regulation, began to allow filings based on a good faith intention to conclude an agreement.¹³

Box Story : Mergers

A prominent merger case that took place in Sweden is the Arla/Milko merger approved in October 2011. The case concerned a merger between the largest dairy manufacturer and the third-largest dairy manufacturer in Sweden. The underlying rationale for approving a three to two merger in this case was that Milko was on the verge of bankruptcy. It should, however, be stressed that all conditions for a 'failing-firm' defence were not fulfilled. In particular, it was not shown that all of Milko's assets would exit the market following bankruptcy. The merger was thus approved following conditions to sell on production facilities and certain brands.

Source: <http://www.globalcompetitionreview.com/reviews/47/sections/164/chapters/1851/sweden/>

• Enforcement, Remedies and Sanctions

The Competition Act provides several administrative remedies and sanctions and also remedies used in private enforcement. The SCA may enjoin the enforcement of a certain agreement or concerted practice or the abuse of a dominant position and the Competition Act provides for the possibility of remedies of an administrative character, such as fines and injunctions.

Competition fines (*konkurrensskadeavgift*), administrative penalties, may be imposed. Fines can be imposed in cases of a breach of Chapter 2, Articles 1 and 7 of the Competition Act. The fine may not be more than ten percent of the annual turnover of the company. When deciding the sum, consideration shall be given to the gravity and duration of the anticompetitive conduct. Infringement of competition law is not regulated in Swedish criminal law. The SCA must raise an action in the courts to request the imposition of competition fines.

The SCA may itself decide on a "fine order" if the infringement is established and the parties agree. A fine order that has been accepted is regarded to be a legally binding judgment. This possibility was introduced in 2008.

An undertaking must by itself, and at its own risk, decide whether an agreement is covered by an exemption, either under Chapter 2, Article 2 or under one of the group exemption regulations and thus exempt from the prohibition in Chapter 2, Article 1. These considerations involve no actions by the Authority.

The SCA can order an undertaking to provide information. The Authority also has the power to carry out investigations, including "dawn raids" to collect evidence of a suspected prohibited restrictive behaviour. The private law sanctions available are nullity and damages. The sanctions of damages in Chapter 3, Article 25 nullity in Chapter 2, Article 6 allow parties to solve their disputes within the private domain as a private law case in a general court. There are no special statutory rules for private enforcement. A competition law question can arise in a proceeding under contract law, concerning e.g. a breach of contract, where the defendant can argue that although he has committed a breach of contract, the contract is invalid under the Competition Act. It is for the general court to consider whether the Competition Act or the EU competition rules are applicable in relation to the defendant's argument. The competition rules – mainly the nullity sanction – will operate as a defence.

Chapter 2, Article 6, Competition Act, states that a prohibited contract is void; this means void *ex tunc*, i.e. from the very entering into the contract. As in EU law, only the prohibited clause or clauses are declared void unless the clauses are of such importance to the fulfilment of the contract that the whole contract shall be declared void. The effects of the nullity sanction have to be found

in the national rules on void contracts. Chapter 3, Article 25 of the Competition Act, states that an undertaking in breach of the rules in Chapter 2, Article 1 or 7 of the Act or Article 101 or 102 TFEU shall compensate an injury caused to another undertaking or a contractual party. Liability only occurs if intent or negligence caused the damage.

Sectoral Regulation¹⁴

Previous monopoly markets such as telecommunications, and electricity have undergone sweeping changes as a result of technological progress, internationalisation and new patterns of customer demand.

Telecommunications Sector¹⁵

Until July 1993 no specific regulation of telecommunications services in Sweden existed. Televerket, the former sole provider, had formal monopoly rights on service provision and on connecting terminal equipment. The connection monopoly was gradually lifted during the 1980's. To ensure the functioning of the already liberalised sector, a Telecommunications Act was introduced, in July 1993.

Post-och telestyrelsen (PTS), the Swedish National Post and Telecom Agency, is the governmental authority that monitors the electronic communications and postal sectors. PTS works in four primary areas: consumer issues; competition issues; efficient utilisation of resources and secure communications. The agency actively promotes healthy competition and supervises price trends. PTS also issues regulations and ensures that existing legislation is followed. Operators wishing to start or conduct postal and telecom operations are required to apply to PTS for a licence. PTS is also in charge of the Swedish numbering plan and allocates number resources to telecom operators. PTS is also responsible for allocating frequencies within Sweden, as well as coordinating its operations with other countries.

A new Electronic Communications Act, EkomL(2003:389) came into force in July 2003, replacing the Telecommunications Act. The aim was to create a cohesive, technologically neutral law for all e-communication. The Act was based on a number of directives adopted by the EU. Central to the EU's regulatory framework is an endeavour to develop e-communication in such a way that general competition law will suffice as an instrument for ensuring sound competition. As competition develops, the aim is to let special legislation give way to general competition law. During the transition, however, the two sets of regulations will exist side by side, and the competition-enhancing provisions in new act should therefore be seen as a supplement to competition law.

Under the Act on Electronic Communication, the National Post and Telecom Agency, is required to impose competition enhancing requirements on companies which

have a significant market power (SMP) in the market. Further, within the framework of the law, the National Post and Telecom Agency (PTS) shall request written statements from the competition authority before the agency makes decisions in certain issues.

The Electronic Communications Act was amended in 2008 to increase competition in the broadband market. Vertical functional separation was introduced, ensuring equal opportunity for all actors to access copper networks by separating business units that administer, operate and supply the copper access network from other operations, particularly sales operations.¹⁶

Energy Sector

The electricity sector in Sweden comprises three parts: production, network activities (distribution and transmission) and electricity trading. In 1996, both electricity production and electricity trading were opened to competition. Network activities were viewed as a natural monopoly and were exempted from competition.

When the electricity sector underwent regulatory reform, network activities were left as a monopoly, both in the case of local electricity networks (distribution) and in the case of high-voltage grids (transmission). Transmission is the responsibility of Svenska Kraftnät, a public enterprise. This monopoly position means that network companies do not need to compete with one another in their region, which in turn means there is a risk they may overcharge their customers. To preclude such a development, a special model has been introduced in Sweden for regulating network tariffs, known as the Performance Assessment Model. It is based on estimates of network companies' performance, i.e. number of customers, amount of energy transmitted, and efficiency etc. When companies overcharge in relation to their estimated performance, they are further scrutinised and obliged to make repayment.

The Swedish Energy Agency was formed in 1998. It is Sweden's national authority on issues regarding the supply and use of energy. It works towards transforming the Swedish energy system into an ecological and economically sustainable system through guiding state capital towards the area of energy. This is done in collaboration with trade and industry, energy companies, municipalities and the research community.

The Swedish government has established the Energy Markets Inspectorate as part of the Swedish Energy Agency. The Inspectorate provides a common channel for the collection and analysis of data from the energy markets, and also exercises surveillance over the electricity, natural gas and district heating markets. The Performance Assessment Model has been developed by the Inspectorate, which it uses to identify whether local network distribution utilities are charging unreasonable tariffs.

Consumer Protection

Sweden's consumer policy (under statute) is, to a great extent, based on prevention, which consists of consumer education and information, market surveillance, and product improvement through testing.¹⁷ The emphasis is on cooperation amongst the various parties, on a close collaboration between public and private consumer bodies and on the part played by the business community in improving the position of consumers in the market. Many consumer organisations also represent consumer interests.

The private law aspects of consumer legislation involve consideration of a specific agreement, focusing on one or several clauses in the agreement. From a private consumer law perspective, many of the rules have emerged from rules in general contract and sales legislation. Today there are also a number of acts of a marketing law character that protect consumers as a group.¹⁸ Most rules in consumer legislation are mandatory. Many of the acts in this area consist of rather detailed and sometimes complicated rules.

In Sweden, consumer protection against business malpractice in general is largely a product of the early 1970s. At that time the first Marketing Act was launched, along with the setting up of the Consumer Ombudsman and the Market Court. The legislation in this area does not interfere in specific agreements, but rather regulates the actions of undertakings on the market in general.¹⁹ The rules protect the interests of consumers as a group. The law deals with problems that arise when companies use their superior bargaining power *vis-à-vis* the consumer in an unfair way. Mandatory legal rules and direct intervention constitute an important part of consumer protection. Values, such as sound ethical standards, are also important.

Much of the work in implementing consumer policy is founded on results achieved by negotiations, agreements and recommendations. As the very low number of injunctions and cases brought to court indicates, the advocacy approach has been successful.

Marketing law regulates various types of marketing and advertising in the market by various media. Commercially-oriented messages have to comply with marketing law rules as regards fairness and credibility. The aim of the Marketing Act (SFS 1995:450) is to promote the interests of consumers and the business community in connection with marketing activities and to counteract marketing which is improper or unfair. Several institutions have been created in order to safeguard the consumer. These are the Consumer Agency, the Consumer Ombudsman, the National Board for Consumer Complaints and the Market Court. The Market Court is the highest court of appeal for marketing, consumer and competition questions.

Concluding Observations and Future Scenario

The future development of the Swedish competition law will to a large extent be closely parallel with the development of EU competition law, while at the same time taking account of specific Swedish conditions. 2011 was an eventful year in terms of enforcement, with the SCA launching 21 judicial proceedings²⁰, and the Authority's proactive approach to overseeing and enforcing competition law and policy in the country is likely to continue.

Suggested Readings

Katarina Olsson, Market and Consumer Law, Chapter 12, in Swedish Law in the New millennium (Michael Bogdaned. (2000). *Competition in Sweden 2004, 2005; Monopoly Markets in Transition 2004; Annual Report 2005* (Swedish Competition Authority publications)

Energy in Sweden 2005, Swedish Energy Agency

Endnotes

- 1 http://www.sweden.se/templates/cs/BasicFactsheet___2636.aspx
- 2 <http://www.ekonomifakta.se/en/Facts-and-figures/Economy/Economic-growth/GDP/>
- 3 http://www.sweden.se/templates/cs/BasicFactsheet___2636.aspx
- 4 Available at: <http://www.globalcompetitionreview.com/reviews/47/sections/164/chapters/1851/sweden/>
- 5 This also follows from Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty *Official Journal L1, 04.01.2003, pages 1-25*. The modernisation process within the EU aims—among other things at decentralising the application of EC Competition rules, see <http://europa.eu.int/comm/competition/antitrust/legislation>.
- 6 Available at: http://www.kkv.se/default___218.aspx
- 7 See the Competition Authority website at http://www.kkv.se/eng/eng_index.shtm.
- 8 http://europa.eu.int/comm/competition/index_en.html
- 9 Commission Notice on cooperation within the Network of Competition Authorities *Official Journal C101, 27.04.2004, pages 43-53*.
- 10 Available at: http://www.kkv.se/upload/Filer/ENG/Publications/The_Swedish_Competition_Act.pdf

- 11 Available at: http://www.kkv.se/upload/Filer/ENG/Publications/The_Swedish_Competition_Act.pdf
- 12 Council Regulation (EC) No139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), *Official Journal L24, 29.01.2004, pages 1-22.*
- 13 Available at: [http://www.vinge.se/upload/bocker_artiklar/GCP%20Aug-08\(2\).pdf](http://www.vinge.se/upload/bocker_artiklar/GCP%20Aug-08(2).pdf)
- 14 This section has been written by Manish Agarwal of CUTS in April 2006
- 15 <http://www.pts.se/Sidor/sida.asp?SectionId=803>(website of Swedish National Post and Telecom Agency)
- 16 http://oti.newamerica.net/telecommunication_overview_sweden
- 17 The Consumer Agency has information in English at www.konsumentverket.se.
- 18 See e.g. Consumer Credit Act (SFS1992:830), Consumer Services Act (SFS1985:716), Consumer Sales Act (SFS1990:932) Price Information Act (SFS2004:347), Acton Package Trips (SFS1992:1672), Consumer Insurance Act (SFS1980:38), Door-to-Door Sales Act (SFS2000:274), Debt Forgiveness Act (1994:334).
- 19 The main legal acts from a consumer point of view of market law character are the Marketing Act (SFS1995:450), the Consumer Contract Terms Act(SFS1994:1512) and the Product Safety Act (SFS1988:1604).
- 20 Available at :[http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP/AR\(2012\)7&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/COMP/AR(2012)7&docLanguage=En)