

Swedish Competition Act



KONKURRENSVERKET
Swedish Competition Authority

The Swedish Competition Act

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The Swedish Competition Act (2008:579)

(Only the Swedish version is authentic)

Chapter 1 Introductory provision

Article 1

The purpose of this Act is to eliminate and counteract obstacles to effective competition in the field of production of and trade in goods, services and other products.

Article 2

This Act shall not apply to agreements between employers and employees relating to wages and other conditions of employment.

Article 3

The 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 Treaty¹ and the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings contain provisions that are relevant to the implementation of this Act.

Article 4

The Government determines which courts and other authorities shall be competition authorities in accordance with the 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 in the Treaty, if this is not stipulated in this Act.

Definitions

Article 5

For the purposes of this Act an undertaking shall be defined as a natural or legal person engaged in activities of an economic or commercial nature. To the extent that such activities involve the exercise of authority they shall not fall within the scope of this definition.

¹ Since 1 Dec 2009 Articles 101 and 102 of the Treaty on the Functioning of the European Union.

The term undertaking shall also include associations of undertakings.

Article 6

The provisions of the Act relating to agreements shall also apply to

1. decisions by an association of undertakings, and
2. concerted practices of undertakings.

Article 7

In this Act a primary agricultural association is defined as an economic association whose members are individual farmers or other undertakings engaged in agriculture, horticulture or forestry. If associations of such undertakings are members of an association, the latter is, however, only regarded as a primary agricultural association providing that such associations only contain local associations of undertakings operating activities of the kind specified.

The Act (2000:1025) on the meaning of the terms agricultural, horticultural and forestry produce as used in the Competition Act (2008:579) contains special provisions on what is meant by such produce under this Act.

Article 8

For the purposes of this Act a taxi undertaking is an undertaking providing or carrying out taxi services or comparable transport services.

A central booking service refers to a joint or independent function which receives orders and distributes transport assignments between taxi undertakings. The function can also perform related activities.

Article 9

According to this Act, a concentration shall be deemed to arise if there is a change to the control of an undertaking of lasting basis as a consequence of:

1. two or more previously independent undertakings merge, or
2. either one or more persons, already controlling at least one undertaking, or one or more undertakings acquire whether by purchase of securities or assets, by contract or by any other means direct or indirect control of the whole or parts of one or more other undertakings.

The creation of a joint venture, which on a lasting basis fulfils all the functions of an autonomous economic entity, constitutes a concentration within the meaning of the first paragraph, point 2.

Contents of the Act

Article 10

The Act contains provisions concerning

- anti-competitive co-operation between undertakings (Chapter 2),
- measures against anti-competitive co-operation between undertakings (Chapter 3),
- control of concentrations(Chapter 4),
- investigations of cases (Chapter 5),
- penalty of a fine (Chapter 6),
- appeals (Chapter 7), and
- court proceedings (Chapter 8).

Chapter 2 Prohibited restrictions of competition

Anti-competitive cooperation between undertakings

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:

1. directly or indirectly fix purchase or selling prices or any other trading conditions;
2. limit or control production, markets, technical development, or investment;
3. share markets or sources of supply;
4. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
5. 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.

Exemptions from the prohibition on anti-competitive co-operation between undertakings

Article 2

The prohibition in Article 1 does not apply to agreements which

1. contribute to improving the production or distribution or to promoting technical or economic progress;
2. allow consumers a fair share of the resulting benefit;
3. only impose on the undertakings concerned restrictions which are indispensable to the attainment of the objective referred to in paragraph 1, and
4. do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the utilities in question.

Article 3

Exemptions from the prohibition in Article 1 shall apply to categories of agreements laid down in

1. Act (2008:580) concerning block exemption on anti-competitive agreements on certain co-operation concerning taxi services,
2. Act (2008:581) concerning block exemption on vertical anti-competitive agreements,
3. Act (2008:582) concerning block exemptions on anti-competitive specialisation agreements
4. Act (2008:583) concerning block exemption on anti-competitive agreements concerning research and development.
5. Act (2008:584) concerning block exemption on vertical anti-competitive agreements in the motor vehicle sector
6. Act (2008:585) concerning block exemption on anti-competitive agreements in the insurance sector, and
7. Act (2008:586) concerning block exemption on anti-competitive technology transfer agreements.

If an individual agreement as a result of a block exemption according to the first paragraph is exempted from the prohibition in Article 1 but has effects which are incompatible with Article 2, the Swedish Competition Authority may determine that the agreement shall not be covered by the block exemption.

Article 4

The prohibition in Article 1 does not apply to those agreements within a primary agricultural association or its subsidiaries that concern co-operation between the members of the association on

1. the production, collection, processing, sale or related activities such as the use of jointly owned facilities, storing, preparation, distribution or marketing of agricultural, horticultural or forestry produce, or

2. the purchase of goods or services for such activity as is referred to in 1.

The first paragraph does not, however, apply to agreements which have as their object or effect

1. the prevention or impairment of free mobility of a member on the market

a) with respect to choosing a buyer or a supplier,

b) with respect to the possibility of leaving the association, or

c) in other respects of equivalent importance, or

2. that selling prices are directly or indirectly fixed for goods when the sale takes place directly between the member and a third party.

Article 5

The prohibition in Article 1 does not apply to a written agreement between taxi undertakings or between a central booking service and taxi undertakings if the agreement

1. concerns joint transport activities through co-operation by means of a central booking service or in other ways for the purpose of achieving efficiency gains or other such financial advantages,

2. is needed to satisfy the public interest in having access to taxi services, and

3. covers a maximum of 40 taxi vehicles.

The exemption under the first paragraph does not apply

1. to the extent that the co-operation concerns practices or conditions which involve or cover

a) the setting of joint prices,

b) the division of markets,

c) a period of notice for participating taxi undertakings which exceeds six months from the date when notice is given, or concerning an economic association, conditions that notice may not be given until six months at the earliest, or a longer period after entry, or

d) prohibition against participating taxi undertakings to compete after the expiry of the agreement with joint transport activity, and

2. to the extent that it is evident that the purpose of the joint transport activity or interest in access to taxi services in accordance with the first paragraph, points 1 and 2 can be satisfied without the co-operation covering such practices or conditions as set out in 1.

Nullity

Article 6

Any agreements or provisions included in agreements that are prohibited under Article 1 shall be void.

Abuse of a dominant position

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

1. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
2. limiting production, markets or technical development to the prejudice of consumers,
3. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, or
4. 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.

Chapter 3 Actions against restrictions on competition

Obligation

Article 1

The Swedish Competition Authority may require an undertaking to terminate an infringement of any of the prohibitions laid down in Chapter 2, Article 1 or 7 or Article 81 or 82 in the Treaty.

An obligation pursuant to first paragraph shall take effect immediately, unless other provision is made.

Article 2

If the Swedish Competition Authority decides in a particular case not to impose such an obligation pursuant to Article 1, the Market Court may do so at the request of an undertaking that is affected by the infringement. Such a right to legal action, however, does not exist if the decision of the Swedish Competition Authority is based on Article 13 of the Council Regulation (EC) No 1/2003.

Article 3

If particular grounds exist, an obligation pursuant to Article 1 may be imposed for the period until a final decision is taken on the matter. The Market Court may only impose such an obligation following commencement of legal proceedings.

Commitments*Article 4*

If the question has been raised as to whether an undertaking infringes any of the prohibitions laid down in Chapter 2, Article 1 or 7 or in Article 81 or 82 in the Treaty, a commitment offered by the undertaking may result in a decision by the Swedish Competition Authority stating that there are no longer grounds for action. Decisions made by the Authority may cover a specified period. As long as the decision applies, the Authority in the circumstances concerning the commitment, may not issue any obligation pursuant to Article 1 or 3.

The Swedish Competition Authority may revoke its decision under the first paragraph where

1. there has been a change in any of the facts which were material to the making of the decision,
2. the parties commit a breach of any obligation attached to the decision, or
3. the decision is based on incomplete, incorrect or misleading information which the parties have submitted.

Administrative fines*Article 5*

The Stockholm City Court may, at the request of the Swedish Competition Authority order an undertaking to pay an administrative fine where the undertaking, or a person acting on behalf of the undertaking, intentionally or negligently has infringed the prohibitions in Chapter 2, Article 1 or 7 or Article 81 or 82 in the Treaty.

The proceeds of the fine shall go to the State.

Before the Swedish Competition Authority institutes proceedings against an undertaking regarding an administrative fine, the undertaking shall be given an opportunity to express its views on the draft summons application of the Authority.

Article 6

The administrative fine may not exceed ten per cent of the annual turnover of the undertaking in the preceding business year.

If an action relating to the fine is brought against several undertakings, the fine shall be determined individually for each undertaking.

Article 7

An administrative fine may not be imposed

1. in respect of measures taken in compliance with a decision pursuant to Article 1, 2 or 3 a prohibition pursuant to Article 27 or 30 issued under penalty of a fine in accordance with the provisions of this Act,
2. for measures which have been taken during the period when a decision on acceptance of the commitment pursuant to Article 4, first paragraph applies, if the measures are compatible with the decision, or
3. in minor cases.

Pursuant to first paragraph, point 2, an administrative fine may be imposed, if the decision has been revoked pursuant to Article 4, second paragraph, point 3.

Article 8

The administrative fine shall be set according to the sanction value of the infringement.

When assessing the sanction value, account must be taken of the gravity of the infringement and its duration.

When assessing the gravity of the infringement, particular account must be taken of the following:

1. the nature of the infringement,
2. the size and significance of the market, and
3. the infringement's actual or potential impact on competition in the market.

Article 9

As aggravating circumstances when considering the undertakings infringement particular account especially shall be taken of:

1. if an undertaking has persuaded another undertaking to join the infringement, or
2. if the undertaking has had a leading role in the infringement.

Article 10

As attenuating circumstances when considering the infringement of the undertaking special account shall be taken to whether the undertaking has participated in the infringement to a limited extent.

Article 11

When determining the amount of the administrative fine, besides the circumstances referable to the infringement itself, particular account shall be taken of the following:

1. whether the undertaking has previously infringed the prohibitions contained in Chapter 2, Article 1 or 7 or in Article 81 or 82 of the Treaty,
2. whether the undertaking has discontinued the infringement quickly after it has been pointed out by the Swedish Competition Authority, or
3. the financial status of the undertaking.

Leniency and reduction of administrative fine*Article 12*

Leniency regarding an administrative fine may be granted for an undertaking which has infringed a prohibition contained in Chapter 2, Article 1 or in Article 81 of the Treaty, if the undertaking is the first to notify the infringement to the Swedish Competition Authority and if it is only owing to the information contained in the notification that the Authority has obtained sufficient material to take action against the infringement.

When the Swedish Competition Authority has already received sufficient material to take action against the infringement and no declaration in accordance with Article 15 has been made, leniency may be granted for the administrative fine regarding an undertaking that has infringed the said prohibition, provided

1. the undertaking is the first to provide such information that results in it being established that the infringement occurred, or
2. the undertaking in some other way has to a very significant extent facilitated the investigation of the infringement.

However, leniency may not be granted for the administrative fine regarding an undertaking that has compelled another undertaking to participate in the infringement.

Article 13

The fine may be set at a lower amount than would be the case when applying Articles 8-11 for an undertaking which has infringed the prohibition in Chapter 2, Article 1 or Article 81 in the Treaty, if the undertaking provides the Swedish Competition Authority such information that facilitates the

investigation of the infringement to a significant extent.

When assessing the amount of the reduction, account must be taken of whether any other undertaking has already provided such information that has to a significant extent facilitated the investigation.

Article 14

In order to be granted leniency or reduction according to Article 12 or 13 the undertaking shall in addition to these provisions

1. provide all the information and evidence about the infringement the Swedish Competition Authority which the undertaking has or gets access to,
2. actively cooperate with the Swedish Competition Authority during the investigation of the infringement,
3. not destroy evidence or in another way hinder the future or the present investigation of the infringement, and
4. as soon as possible after an application or after it has provided the information stop its participation in the infringement.

Article 15

Upon application by an undertaking which notifies an infringement of a prohibition pursuant to Chapter 2, Article 1 or Article 81 in the Treaty, the Swedish Competition Authority shall state whether the conditions for granting immunity from the fine as provided for in Article 12, first paragraph, are fulfilled. Such a decision is binding on the Authority as well as the Stockholm City Court and the Market Court.

Fine order

Article 16

Instead of instituting proceedings regarding an administrative fine in accordance with Article 5, the Swedish Competition Authority may order an undertaking to pay such a fine (fine order).

Such an order may only be issued if the Swedish Competition Authority considers that the material circumstances regarding the infringement are clear.

Article 17

A fine order shall contain details of:

1. the undertaking to which the order refers,
2. the infringement and the circumstances that are necessary to characterise it,
3. the provisions applicable to the infringement, and

4. the administrative fine that the order imposes on the undertaking.

The undertaking shall be informed in the order that proceedings regarding an administrative fine may be instituted if the undertaking does not consent to the order within the time specified by the Swedish Competition Authority.

Article 18

If the undertaking consents to a fine order in writing within the time specified by the Swedish Competition Authority, proceedings may not be instituted under Article 5. A consent that is not given in this way is without effect.

Article 19

A fine order for which consent has been given shall upon appeal be set aside under the preconditions specified in Chapter 59, Section 6, first paragraph of the Code of Judicial Procedure. The provisions of the Code of Judicial Procedure regarding summary penalty order and the suspect, apply instead in this connection to fine order and undertaking respectively.

A party who wishes to appeal must do so in writing to Stockholm City Court within one year from consent being given for the order. In cases concerning appeal against a fine order, the Swedish Competition Authority is the respondent party.

If a fine order is set aside, the undertaking may not thereafter be imposed an obligation to pay a higher administrative fine for the same infringement.

Time limits

Article 20

The administrative fine may only be imposed if the summons application has been served on the party against whom the claim is directed within five years from when the infringement ceased. If the undertaking affected has received a decision within this period concerning an inspection according to Chapter 5, Article 3 or is given an opportunity to express its views on a draft summons application of the Swedish Competition Authority, this period shall instead be counted from the date on which that occurred. However, in such cases a fine may only be imposed if the party against whom the claim is directed has been served with the summons application within ten years from when the infringement ceased.

Provisional attachment

Article 21

In order to secure a claim for a fine, the Court may issue a provisional attachment order. The provisions of Chapter 15 of the Swedish Code of Judicial Procedure concerning provisional attachment in respect of debts shall in relevant parts be applicable. If a petition concerning a fine has not yet been submitted, legal proceedings on provisional attachment will be heard by the Stockholm City Court.

Payment of fines

Article 22

A fine shall be paid to the Swedish Competition Authority within thirty days of a judgment gaining legal force or the fine order was approved or a longer period as stated in the judgment or the fine order.

If the fine is not paid within the right period of time, the Swedish Competition Authority shall hand over the demand for collection. Provisions on collection are set out in the Act (1993:891) on the collection of debts to the state etc. Execution may take place according to the provisions of the Enforcement Code.

Article 23

A fine that has been imposed shall lapse if the relevant judgment is not executed within five years gaining legal force or the fine order was approved.

Trading prohibition

Article 24

The Trading Prohibitions Act (1986:436) contains provisions on the issue of trading prohibitions for certain infringements of the prohibition contained in Chapter 2, Article 1 or in Article 81 of the Treaty.

Damages

Article 25

If an undertaking intentionally or negligently infringes any of the prohibitions contained in Chapter 2, Article 1 or 7, or in Article 81 or 82 in the Treaty, the undertaking shall compensate the damage that is caused thereby.

The right to such damages shall lapse if no action is brought within ten years from the date when the damage was caused.

Article 26

The Stockholm City Court shall always be competent to examine cases relating to damages pursuant to Article 25.

Anti-competitive sales activities by public entities

Article 27

A certain conduct by the State, a municipality or a county council within a sales activity covered by Chapter 1, Article 5, first paragraph, may be prohibited through an injunction, if such conduct

1. distorts, by object or effect, the conditions for effective competition in the market, or
2. impedes, by object or effect, the occurrence or the development of such competition.

An injunction may not be imposed in relation to conduct that can be justified by public interest considerations.

A certain sales activity by a municipality or a county council may also be prohibited in cases referred to in the first paragraph. However, such a sales activity may not be prohibited if it is compatible with law.

An injunction shall take effect immediately, unless decided otherwise.

Article 28

The provisions of Article 27 shall also be applicable to conduct or activities of another legal person if the State, a municipality or a county council directly or indirectly has a decisive influence over the legal person through ownership, financial participation, applicable rules or through any other means. The provisions concerning the State, a municipality or a county council shall then apply to the legal person.

Article 29

An injunction pursuant to Article 27 may also cover a practice or an operation that essentially corresponds with the practice or the operation that is prohibited.

Article 30

If there are particular reasons to do so, an interim injunction pursuant to Article 27 may be imposed. Such an injunction may only be imposed following commencement of legal proceedings.

Article 31

If the Court has rejected an application for an injunction pursuant to Article 27, the matter may be subject to retrial if there has been a change in any of the facts which were material to the outcome of the case.

An injunction pursuant to Article 27 may be subject to retrial, if there are particular reasons to abrogate or mitigate the prohibition.

Article 32

Cases concerning injunctions pursuant to Article 27 or retrial pursuant to Article 31, second paragraph, are tried by the Stockholm City Court on application by the Swedish Competition Authority. An application for retrial of an injunction may also be brought by the party against whom the injunction has been imposed.

If the Swedish Competition Authority in a particular case decides not to apply for an injunction pursuant to Article 27, an application for an injunction may be brought by an undertaking that is affected by the conduct or activity in question.

Chapter 4 Control of concentrations

Prohibition against concentrations

Article 1

A concentration shall be prohibited, if it significantly restrains occurrence or the development of effective competition within the country as a whole, or a substantial part thereof. During the examination of the concentration and the question whether it will be forbidden account shall specially be taken to whether it creates or strengthens a dominant position.

A prohibition may only be carried out if no significant national or security- or supply interest will be set aside.

To the extent that the creation of a joint venture, which constitutes a concentration in accordance with Chapter 1, Article 9, second paragraph, has the aim or effect of coordinating the competitive behavior of the undertakings which remain independent, in the examination of a prohibition against the concentration, the co-ordination shall be appraised in accordance with Chapter 2, Articles 1 and 2.

Article 2

If it is sufficient to eliminate the adverse effects of a concentration, a party to a concentration, instead of being subject to a prohibition pursuant to

Article 1, may instead be required

1. to divest an undertaking, or a part of an undertaking, or
2. to take some other measure having a favorable effect on competition.

An obligation under the first paragraph may not be more extensive than is required to eliminate the harmful effects of a restriction on competition.

Article 3

In consequence of a decision to prohibit a concentration, a transaction which constitutes a part of a concentration or has as its aim to carry out a concentration shall be void. This does not, however, apply to such transactions constituting an acquisition which has taken place on a regulated market as referred to in 1 Chapter, paragraph 5, point 20 in the Market Securities Act (2007:528), an equivalent market outside the area of the European Economic Agreement or multilateral trading facilities referred to in 1 Chapter, paragraph 5, point 12 in the Market Securities Act or by a bid at an executive auction. In such cases, the undertaking making the acquisition may be ordered to divest the assets acquired.

Article 4

If a question has arisen whether there will be a prohibition pursuant to Article 1 or an obligation pursuant to Article 2, a commitment from a party to the concentration may lead the Swedish Competition Authority to leave the case without any further actions.

Article 5

A decision by the Swedish Competition Authority not to take any action with regard to a concentration shall also cover restrictions directly related and necessary to the implementation of the concentration that has been notified.

Notification of a concentration

Article 6

A concentration shall be notified to the Swedish Competition Authority if

1. the combined aggregate turnover in Sweden of all the undertakings concerned in the preceding financial year exceeds SEK 1 billion, and
2. at least two of the undertakings concerned had a turnover in Sweden the preceding financial year which exceeds SEK 200 million for each of the undertakings.

Article 7

If the turnover requirement according to Article 6, point 1 is fulfilled, but the turnover does not exceed what is laid down in Article 6, point 2, the Swedish Competition Authority may

1. require a party to a concentration to notify the concentration, where particular grounds exist for so doing, or
2. a party and other participants in a concentration voluntarily notify a concentration.

Article 8

If a concentration consists of several transactions between the same persons or undertakings, whereby parts of one or more undertakings are acquired, for the purpose of calculating the turnover the transactions which have taken place within a period of two years shall be treated as only one concentration.

Article 9

A concentration pursuant to Article 6, shall be notified by the party or parties acquiring control over an undertaking or a part thereof. If the concentration means that two or more undertakings consolidate, the notification shall be made by these undertakings.

Article 10

A notification of a concentration between undertakings may be made as soon as a party or some other participant can demonstrate that they intend to implement a concentration.

A notification of a concentration between undertakings shall be made before the concentration is implemented.

Special investigations of concentrations

Article 11

The Swedish Competition Authority shall within 25 working days from a complete notification of a concentration decide to carry out a special investigation of the concentration or leave it without any further actions.

If the Authority within the period in the first paragraph has received a commitment from a party to the concentration aiming to a decision where the Authority shall leave the concentration without any further actions, the period will be prolonged to 35 working days.

Article 12

During a period pursuant to Article 11 a party to a concentration or some other participant may not take any action to put the concentration into ef-

fect. This prohibition is not valid if the Authority, before the period has expired, has decided to leave the concentration without any further actions.

If there are certain reasons, the Authority may grant an exemption from the prohibition laid down in the first paragraph.

If it is necessary to secure the prohibition in the first paragraph, the Authority may decide about a prohibition or a obligation to the parties or other participant of a concentration.

Action on a concentration

Article 13

If the Authority, within the period of time pursuant to Article 11, has decided about a special investigation, the Authority may make a summons of application to the Stockholm City Court concerning a prohibition pursuant to Article 1 or an obligation pursuant to Article 2.

Such a summons of application shall be made within three months from a decision concerning a special investigation of the concentration. Before the Authority makes its summons of application it shall give the party of the concentration or other participants the opportunity to comment the application.

If the Authority has decided to leave a concentration without any actions, may a summons of application pursuant to first paragraph be brought to the Court only if the decisions of the Authority are based on false information from a party to the concentration or other participants.

Article 14

The Stockholm City Court may, at the request of the Swedish Competition Authority, extend the time limit pursuant to Article 13, second paragraph by not more than one month at a time, if the parties on a concentration give their consent. If another participant has notified the concentration according to Article 7, second point even his consent is necessary. If the concentration have taken place in the manner provided for in Article 3, second point, the consent of the acquiring party is sufficient.

If there are exceptional reasons, the time limit may be prolonged without such consent as mentioned in the first paragraph.

Article 15

A prohibition or obligation pursuant to Article 1 or an obligation pursuant to Article 2 may not be imposed more than six months after an action has been brought before the Stockholm City Court.

The time limit in first paragraph may be extended, under the same conditions as mentioned in Article 14. A prohibition pursuant to Article 1 or an obligation pursuant to Article 2 may not be imposed more than two years after a concentration has occurred.

Article 16

If an appeal is made against the judgment of the Stockholm City Court, the Market Court shall make a ruling within three months of expiry of the period for appeal. The provisions in Article 15, second paragraph also apply to the Market Court's examination of the case.

Prohibition before final decision

Article 17

The Stockholm City Court may, before a prohibition or obligation finally has been settled and at the request of the Swedish Competition Authority, prohibits the parties and other participants in a concentration from taking any measure to put the concentration into effect. Such a decision demands that a prohibition is motivated by a public interest stronger than the inconvenience caused by such a measure.

Time limit for decisions on concentrations

Article 18

A motion about a prohibition pursuant to Article 17 may not be granted unless the party to whom the decision applies and the party who has made the notification in accordance with Article 7, second point, have been given the opportunity of expressing their views. If the concentration has taken place in the manner stated in the second sentence of Article 3, only the party making the acquisition has to be given the opportunity of expressing its views.

If exceptional grounds exist, a prohibition pursuant to Article 17 may be imposed immediately and apply until otherwise decided, without hearing those mentioned in first paragraph.

An application pursuant to Article 17 shall be in written, where no action is pending.

Article 19

A prohibition pursuant to Article 17 which has been decided on where no action is pending, shall be withdrawn immediately, if the Swedish Competition Authority does not bring an action pursuant to Article 13. The same

shall apply where the Authority decides not to take any action concerning the concentration.

Legal force and review

Article 20

If the Court has left an application of summons concerning prohibition or obligation pursuant to Article 1 or 2, the matter may be reviewed where one party or another participant of the concentration have given false information about the facts of significant matter for the outcome of the case. Such an application of summons shall take place within one year from the final judgment of the case.

Article 21

A prohibition pursuant to Article 1 or an obligation pursuant to Article 2 may be reviewed, where there are reasons to abrogate or mitigate the prohibition or the obligation because it is no longer necessary or appropriate.

An application of summons shall be brought to the Stockholm City Court by the Swedish Competition Authority or someone affected by the decision.

Chapter 5 The investigation of competition cases

Investigations initiated by the Swedish Competition Authority

Article 1

Where this is necessary for the performance of its duties under this Act, the Swedish Competition Authority may require

1. undertakings or other parties to supply information, documents or other material;
2. persons who are likely to be in a position to provide relevant information to appear at a hearing at a time and place decided by the Authority; or
3. a municipality or county council engaged in activities of an economic or commercial nature to account for the costs of and revenues from these activities.

An obligation pursuant to first paragraph shall take effect immediately, unless other provision is made.

Article 2

In connection with questionings in accordance with Article 1, first paragraph, item 2, statements made by the party being questioned shall be written down. The statement shall be read up or an opportunity given to the party questioned to examine the record in some other way.

The record shall be drawn up and examined before the questioning is concluded or, if the questioning is particularly extensive or covers complicated material circumstances, as soon as possible thereafter.

The party questioned shall be asked whether he or she has any objection regarding the content of the record. An objection that does not result in any amendment being made shall be noted. The record may not be changed after the examination.

Article 3

Upon application by the Swedish Competition Authority, the Stockholm City Court may decide that the Authority may carry out an inspection on the premises of an undertaking to establish whether it has infringed any of the prohibitions contained in Chapter 2, Article 1 or 7, or Article 81 or 82 in the Treaty, where

1. there is reason to believe that an infringement has been committed,
2. the undertaking does not comply with an obligation imposed pursuant to Article 1 first paragraph point 1, or there is a risk of evidence being withheld or tampered with, and
3. the importance of the action taken is sufficient to outweigh the interference or other inconvenience caused to the parties affected by it.

Article 4

A decision pursuant to Article 3 may also refer to an undertaking other than that to be investigated, if

1. the conditions in Article 3, first paragraph, points 1 and 3 are satisfied,
2. there is a strong indication that the undertaking referred to in the application is in possession of evidence, and
3. the said undertaking does not comply with an obligation imposed pursuant to Article 1, first paragraph, point 1, or where there is otherwise a risk of evidence being withheld or tampered with.

Article 5

A decision pursuant to Article 3 may also concern homes and other premises of the board and employees in the undertaking which is subject to investigation, if

1. The conditions in Article 3, point 1 and 3 are satisfied,
2. There are indication that the party referred to in application is in possession of evidence,

3. The party referred to in application does not comply with an obligation imposed pursuant to Article 1, first paragraph, point 1 or where there is otherwise a risk of evidence being withheld or tampered with, and
4. The investigation concerns an infringement which is serious.

Article 6

When carrying out an inspection the Swedish Competition Authority shall be empowered to,

1. examine the books and other business records,
2. take copies of or extracts from the books and business records,
3. ask for oral explanations on the spot; and
4. have access to any premises, land, means of transport and other areas.

Article 7

A decision about an inspection may be issued without the party referred to in the application being given the opportunity to be heard if it is thought that the inspection would otherwise be undermined.

Decisions pursuant to the first paragraph shall only be communicated to the Swedish Competition Authority. When an inspection is initiated, the Authority shall present a copy of the decision to the party on whose premises the inspection shall be carried out.

Article 8

A decision concerning an inspection shall specify

1. the subject matter and purpose of the inspection,
2. the date on which the inspection is to begin; and
3. the Swedish Competition Authority's powers under Article 6.

Decision pursuant to first paragraph shall take effect immediately, unless the Court decides otherwise.

Article 9

The party on whose premises the inspection is to be carried out shall have the right to summon a legal representative.

Pending the arrival of such a representative, the inspection shall not begin. However, this shall not apply, where

1. the inspection is unduly delayed as a result, or
2. the decision to conduct an inspection is taken pursuant to Article 7 first paragraph.

Article 10

The Swedish Competition Authority may request assistance from the Enforcement Service in carrying out the measures referred to in Article 6, points 1, 2 and 4.

The provisions of the Enforcement Code are applicable to such enforcement as laid down in Enforcement Code about execution on obligation other than an obligation to pay or eviction. The Enforcement Services shall not, however, inform the party being inspected prior to the commencement of such inspection.

Article 11

Action taken pursuant to Article 1 or 6 may not relate to written documents

1. the contents of which may be assumed to be such as to preclude the possibility of examining a member of the Swedish Bar Association or any of his associates as a witness about it; and
2. which are in his possession or in that of the person protected by his duty of professional secrecy.

If the Swedish Competition Authority is of the opinion that a certain document should be subject to the investigation under first paragraph, and the party subject to the action claims that the document is a privileged communication, the document shall immediately be sealed and delivered without delay to the Stockholm City Court by the Swedish Competition Authority.

The Stockholm City Court shall without delay determine whether the document shall be included in the inspection by the Swedish Competition Authority.

Article 12

At measures taken by the Swedish Competition Authority pursuant to Article 1 or Article 6 there is no obligation to disclose business secrets of a technical nature.

Article 13

Persons or undertakings that are subject to an obligation to supply information under this Act must not be unduly burdened.

Examination requested by the European Commission or an authority in another Member State

Article 14

The provisions in Article 1 and Articles 11-13 concerning obtaining information also apply when the Swedish Competition Authority takes action at the request of a competition authority of another Member State in the European Union.

Article 15

The provisions in Articles 3-13 about inspections also apply to an application which the Swedish Competition Authority makes at the request of a competition authority of another Member State in the European Union.

Article 16

The provisions in Article 6 and Articles 9-13 also apply when the Swedish Competition Authority at the request of the Commission of the European Community carries out an inspection as laid down in Article 22 (2) in the Council Regulation (EC) No 1/2003. However, the provision of Article 9, second paragraph, first sentence, does not apply if it may be feared that the relevance of the inspection would be impaired, if it was not commenced immediately.

The first paragraph also applies when the Swedish Competition Authority, at the request of the Commission, undertakes an inspection pursuant to Article 12 (1) of the Council Regulation (EC) No 139/2004.

Article 17

When the Commission of the European Communities has ordered an inspection pursuant to Article 20 (4) of the Council Regulation (EC) No 1/2003 or pursuant to Article 13 (4) of the Council Regulation (EC) No 139/2004, the Swedish Enforcement Authority may on application by the Swedish Competition Authority decide on enforcement assistance in order to enable such inspection to be implemented.

Article 10, second paragraph, applies in connection with enforcement assistance in accordance with the first paragraph.

Article 18

Questions concerning prior authorization concerning Article 21 (3) in the Council Regulation (EC) No 1/2003 are examined by the Stockholm City Court at the request of the Swedish Competition Authority.

If a decision about prior authorization has been given pursuant to first paragraph, the provisions in Article 17 about assistance are applicable.

Legal assistance to an authority in another state*Article 19*

The Swedish Competition Authority may issue an obligation pursuant to Article 1, if it is so requested by an authority in a state with which Sweden has entered into an agreement on the provision of legal assistance in competition cases. If such an obligation is made the provisions in Articles 11-13 apply.

Article 20

On application by an authority in a state with which Sweden has entered into an agreement on the provision of legal assistance in competition cases, the Stockholm City Court, on application by the Swedish Competition Authority, may decide that the Authority may carry out an inspection of an undertaking or of some other person to assist the other state in its investigation of whether its rules on competition have been infringed, if

1. the conditions in Article 5, paragraphs 1-3, are satisfied, and
2. the practice which is being investigated is of such a nature that under the application of this Act or the competition rules of the European Community, the practice would have constituted an infringement of Chapter 2, Article 1 or 7 or Article 81 or Article 82 in the EC Treaty, if any of these regulatory frameworks had been applied to the practice.

In cases pursuant to first paragraph, the provisions in Articles 6-13 apply.

Chapter 6 Fines

Penalty of a fine

Article 1

The following obligations or prohibitions may be imposed under penalty of a fine:

1. an obligation pursuant to Chapter 3, Article 1, 2 or 3,
2. an injunction pursuant to Chapter 3, Article 27 or 30,
3. an injunction pursuant to Chapter 4, Article 1,
4. an obligation pursuant to Chapter 4, Article 2 or 3
5. a prohibition or obligation pursuant to Chapter 4, Article 12, third paragraph.
6. a prohibition pursuant to Chapter 4, Article 17, and
7. an obligation pursuant to Chapter 5, Article 1.

A decision to conduct an inspection pursuant to Chapter 5, Article 3 or 20 may be imposed under penalty of a fine. The Swedish Competition Authority may also impose under penalty of fine a decision concerning the fulfillment of obligations pursuant to Chapter 4, Article 6 or 7, point 1.

The Swedish Competition Authority may make a decision to accept a commitment pursuant to Chapter 3, Article 4, first paragraph or Chapter 4, Article 4 subject to the penalty of a fine. Such a decision takes effect immediately, unless otherwise decided.

Imposition of fines

Article 2

Actions for the imposition of fines pursuant to the provisions of this Act shall be brought before a district court by the Swedish Competition Authority. In the case of fines imposed by the Market Court at the instance of an undertaking, an action for the award of fines may also be brought by that undertaking.

The Stockholm City Court shall always be competent to examine cases pursuant to first paragraph.

Chapter 7 Appeals

Article 1

Appeals may be made to the Market Court against decisions taken by the Swedish Competition Authority on the following matters

1. obligations which the Authority has issued pursuant to Chapter 2, Article 3, second paragraph,
2. obligations pursuant to Chapter 3, Article 1, first paragraph or Article 3,
3. decisions pursuant to Chapter 3, Article 4, second paragraph,
4. prohibitions or obligations pursuant to Chapter 4, Article 12, third paragraph,
5. obligations pursuant to Chapter 5, Article 1, and
6. revocation of an exemption pursuant to Article 29 (2) of the Council Regulation (EC) No 1/2003.

No appeals may be made against other decisions taken by the Swedish Competition Authority under the provisions of this Act.

Article 2

Appeals against judgments and decisions of the Stockholm City Court may be lodged with the Market Court. However, this only applies to judgments and decisions in cases concerning damages when such a case has been jointly processed with a case concerning administrative fine in accordance with Chapter 8, Article 7.

The first paragraph does not apply to cases where the action is brought for the judicial confirmation of the imposition of a default fine in accordance with Chapter 6, Article 2.

Appeals against decisions of the district court dealing with matters referred to in Chapter 3, Article 30 and Chapter 4, Article 17 may be made separately.

Chapter 8 Court procedures

Applicable regulation

Article 1

Without prejudice to the provisions of this Act, the provisions in Articles 2-4 shall be applicable.

In other cases than those mentioned in the first paragraph, the Act (1996:242) on Examination of Non-Contentious Matters is applicable.

Article 2

The provisions of the Code of Judicial Procedure concerning disputes where settlement out of court is not permitted shall apply to cases referred to in

- Chapter 3, Articles 2 and 5, 27 and 31 and Article 32, second paragraph.

Article 3

In cases concerning setting aside a fine order for which consent has been given in accordance with Chapter 3, Article 19, the following provisions apply.

Chapter 52, Sections 2, 3 and 5 to 12 of the Code of Judicial Procedure apply in connection with processing in Stockholm City Court. In this connection provisions referring to the Court of Appeal shall apply instead to the City Court.

Chapters 49 and 52 of the Code of Judicial Procedure apply regarding appeals against a decision by the City Court as a result of an appeal against a fine order. The provisions contained in the Code referring to the Court of Appeal shall apply instead to the Market Court.

The City Court and the Market Court may decide that a fine order may not be enforced until further notice.

Article 4

The provisions contained in the Code of Judicial Procedure regarding criminal cases apply to cases concerning judicial confirmation of the imposition of a default fine in accordance with Chapter 6, Article 2.

Article 5

In cases and matters pursuant to Chapter 7, Article 2, the provisions in the Swedish Code of Judicial Procedure relating to courts of appeal in Chapters 49, 50 and 52, as well as in Article 39, first paragraph in the Act (1996:242) on Examination of Non-Contentious Matters shall instead be applicable to the Market Court.

Joint processing

Article 6

Cases and matters under this Act may be joined when the case and examination is dealt with by the same court, if there are benefits for the examination. The proceeding shall take place according to the provisions in Article 2.

The first paragraph does not apply to cases referred to in Chapter 6, Article 2. The same applies to cases concerning damages unless such a case is jointly processed with a case concerning administrative fine in accordance with Article 7.

When matters are joined in one proceeding in the Market Court of cases according to Chapter 3, Article 2 and matters under this Act, the rules of district courts laid down in the Code of Judicial Procedure shall apply. In other cases the rules for the Courts of appeal shall be applied.

Article 7

Stockholm City Court may decide, if appropriate, that a case concerning damages shall be jointly processed with a case concerning administrative fine. If the continued joint processing would entail significant inconvenience, the City Court may decide to separate the cases.

Constitution of the district court

Article 8

At main proceedings in cases referred to in Chapter 7, Article 2, second paragraph, except penalty of a fine, the district court shall consist of four members, two of which shall be legally qualified judges and two shall be experts in economics. One of the legally qualified judges shall be chairperson of the Court.

If, after the main proceedings have begun, one of the members is prevented from being present, the Court still constitutes a quorum.

At main proceedings in cases referred to in Chapter 1, Article 3 a, second or third paragraphs of the Swedish Code of Judicial Procedure the district court shall consist of a legally qualified judge. In such cases, however, an expert in economics may also participate as a member of the Court.

Article 9

At decisions in cases without main proceedings and at examination of issues related to the proceedings, the district court shall consist of a legally

qualified judge. In such cases, an expert in economics may also participate as a member of the Court. However, if there are particular grounds concerning the nature of the case or the issue, the district court may have the constitution as referred to in Article 8, first paragraph.

Article 10

At examinations of cases referred to in Chapter 5, Article 3 third, paragraph, 18 or 20 in its facts, the district court shall have the constitution referred to in Article 8, first paragraph. However at such examinations, the district court may instead consist of a legally qualified judge, or such a judge and an expert in economics if this is sufficient taking into account the nature of the case.

In other proceedings of cases the district court shall consist of a legally qualified judge or such a judge and an expert in economics.

Article 11

The Government appoints for a given period of time those who shall serve as experts in economics on Stockholm City Court.

If, while an expert in economics is participating in the examination of a case, circumstances should occur which entail the expiry of the appointment, the appointment shall irrespective of this be considered as having continuous validity during the current case.

That person who shall serve as expert in economics shall be Swedish citizen and may not be a minor or be in bankruptcy or have a trustee pursuant to Chapter 11, Article 7 of the Code on Parents, Guardians and Children.

The Swedish Competition Authority as a party

Article 12

For the purposes of matters covered by this Act the provisions of the Swedish Code of Judicial Procedure relating to prosecutors shall, with respect to orders concerning parties and the non-appearance of a party, apply to the Swedish Competition Authority.

Statement from other than a party

Article 13

A statement which has been submitted by the Commission of the European Community or the Swedish Competition Authority, thereby applying Article 15 of the Council Regulation (EC) No 1/2003, may be taken into account by the Court without the plea of a party. The parties shall be provided the opportunity to comment on the statement.

Hearing at the Court

Article 14

Chapter 36, Section 16, second paragraph of the Code of Judicial Procedure applies in connection with judicial questioning of a party or other person regarding what he or she has stated at the Swedish Competition Authority upon a questioning in accordance with Chapter 5, Article 1.

Costs of legal proceedings

Article 15

In cases and matters pursuant to this Act, the provisions in Chapter 31 the Swedish Code of Judicial Procedure relating to costs of legal proceeding, unless nothing else is stipulated in this Act.

In cases pursuant to Chapter 3, Article 2 and Article 32, second paragraph and in cases concerning damages Chapter 18 in the Swedish Code of Judicial Procedure is applicable.

If particular grounds exist, the Court may, in such a case as referred to in Chapter 3, Article 2 or Article 32, second paragraph decide that each one of the parties is liable for their own legal costs.

Article 16

In cases referred to in Chapter 3, Article 5, compensation for litigation costs is payable for reasonable expenses that have been incurred after a party has been given an opportunity to express its views on the draft summons application of the Swedish Competition Authority. In such cases compensation may be payable to the state for the expenses of the Swedish Competition Authority that have subsequently arisen owing to a party intentionally or by carelessness having occasioned unnecessary litigation.

Article 17

In cases as referred to in Chapter 4, Article 13, compensation for litigation costs are payable for reasonable expenses incurred after a party has been given an opportunity to express its views on the draft summons application of the Swedish Competition Authority. If such a case is dismissed on the grounds of the Swedish Competition Authority having withdrawn its action, the state is not liable for the litigation costs of the parties. This provision only applies when the withdrawal results from the parties to a concentration between undertakings having withdrawn their notification to the Swedish Competition Authority.

Article 18

If a case for damages has been jointly processed with a case concerning administrative fine, the party who brought the action for damages is only liable for the special costs that such a party has caused. A party who has requested an administrative fine is not liable for such costs.