

RESPONSE TO UNILATERAL CONDUCT WORKING GROUP QUESTIONNAIRE

A. Objectives of unilateral conduct laws

1) The Swedish Competition Act, from 1993, contains prohibitions against abuse of dominant position. This prohibition is identical to Art 82 EC, except for the requirement under the EC rules that trade between member states must be affected. (Sweden has been a member of the EU since 1995.)

Similar to Article 82 EC, section 19 of the Competition Act prohibits abuse of a dominant position. Examples of such abuse are;

- i) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions,
- ii) limiting production, markets or technical development,
- iii) applying dissimilar conditions to equivalent transactions, thereby placing trading partners at a competitive disadvantage, or obliging parties to contracts to accept supplementary conditions.

The overall goal for competition policy is effective competition to the benefit of consumers or consumer welfare.

2) No, the provisions on abuse of dominance apply to all sectors of the economy.

3) See 2) above.

4) Current national competition legislation is based on Art 81 and 82 of the EC Treaty, and hence policy goals are fully compatible with core competition principles.

5-7) Not relevant.

8) The institutional setting in Sweden makes the Competition Authority independent regarding individual decision making. It is entirely a judicial process where decisions made by the Competition Authority may be appealed to the Stockholm City Court (first instance) and/or to the Market Court (last instance).

9) An observation from our case handling experience is that a relatively large share of cases with abusive conduct falls in so called liberalised industries (post, telecom, electricity rail and civil aviation). The notion is that the main contribution of competition law enforcement has been to prevent customer lock-in, rather than

purposes or to block products of the competitors. In this sense IP has an obvious competitive significance in assessing dominance.

An IPR does not automatically confer upon its holder a dominant position, thus IPR is not presumed to create dominance. The answer is no.

10) Sweden has a population just over 9 billion inhabitants (december 2005) and is considered as a relative small country, and its geographical location in the EU and the country's low population density create natural barriers to competition. But at the same time Sweden is by tradition an open economy heavily dependent on international trade. This also means in general low barriers to entry, which will be considered amongst other factors in analysis of an abusive conduct. The Competition Authority does not consider that the national market characteristics constitute a motive to change the level of market share in our assessments.

11) The Competition Law is in line with the EC rules.

C. State-created Monopolies

I. State-created Monopolies

1) Sweden has three trade monopolies; pharmaceuticals and alcohol retailing, and gambling.

The pharmaceutical retail monopoly was established in 1970. The aim is to safeguard future supply of pharmaceuticals, ensure safe and efficient distribution and keep prices down. The company Apoteket AB, which is fully state owned, is entrusted the monopoly for retail trade of pharmaceuticals through an agreement with the State.

The State owned company Systembolaget has the legal monopoly to sell alcoholic beverages directly to consumers. Access to alcohol is limited by regulations of the establishment of outlets and opening hours, and through selling rules (for example minimum age).

The market regulation of gambling and lotteries does not prescribe a strict monopoly, but gives exclusive rights to three categories of organisers, namely the State, the horse racing community and the popular movement (non-profit organisations).

2) In 2001 the pharmaceuticals monopoly was challenged by a private retailer who started selling non-prescription Nicorette patches and chewing gum in his store.

He was prosecuted for breach of the Law on Trade with Pharmaceuticals. The Swedish court requested a preliminary ruling from the European Court of Justice (ECJ), and the ruling (2005) pointed out that the existing sales regime did not meet the requirements for non-discrimination. This led to changes in the agreement between the State and Apoteket, and an independent supervisory agency was set up.

The Swedish retail monopoly for alcohol was an issue in the negotiations on Sweden's accession to the EU and the Commission specified terms for a non-discriminatory functioning of the monopoly. The Competition Authority has the task to monitor on a day to day basis the non-discriminatory function of the retail monopoly of alcoholic beverages and report to the Commission twice a year. A ruling by the ECJ in 1997 found the Swedish alcohol monopoly to be compatible with the EC rules of the free movement of goods and on state monopolies of a commercial character.

The Commission has initiated a proceeding in order to assess whether the Swedish gambling monopoly is compatible with EC law.

3) No. National competition rules do not override another national regulation. This general rule is not specific for State monopolies or private firms with public tasks.

4) There are no differences.

II. Privatization and Liberalization Process and the Advocacy Role of Competition Agencies

5-6) Information is not available due to recent shift in government. [See foot note 6, page 4]

7) Competition Law is applicable regardless of ownership. If a privatization of a State monopoly will meet the definition of a concentration within the meaning of the Competition Act depend of the process (shift of ownership etc.). We have no experience in this field.

8) The Authority's main objective is to promote effective competition in the private and public sectors in the interest of consumers. Activity areas of the Competition Authority that correspond to advocacy are:

Measures for improving competition:

- The Authority aims to contribute to effective competition in both private and

public sectors by submitting proposals on changes to rules and other measures to eliminate obstacles to effective competition.

Disseminating knowledge:

- The Authority shall promote a competition oriented view and also provide the players on the market with guidance and information on the rules of play for effective competition.

We are mostly involved in advocacy. The Competition Authority submits many proposals for improved competition by consultation statements, reports on its own initiative or by order by the Government. Some reports are made in co-operation with other competition authorities. It is almost impossible to get an accurate measure of the qualitative importance of the Authority's reports or other written statements. Normally the final outcome is a combination with other events and long time can elapse between a proposed change of regulation and its implementation.

Previous monopoly markets in Sweden such as domestic aviation, telecommunications and postal services are undergoing extensive changes. New market conditions have developed as a result of increasingly rapid technological advances, different demand patterns due to changes in customer behaviour, and the growing number of market newcomers.¹

An instrument that helps supervising State owned companies and private firms with public tasks is a new law (August 2005) on financial transparency. The EU Transparency Directive has been incorporated into Swedish law by this act.

The directive's aim is to ensure the European Commission's ability to examine the financial ties between public institutions (the state, the municipalities and the county councils) and publicly owned businesses as well as the financial activities of certain companies. The objective is that the Commission should have the possibility of ensuring that companies do not receive state aid or other benefits that violate the competition rules.

The Competition Authority supervises that the provisions of the law are observed and shall, if needed, collect accounting material requested by the Commission. To be able to implement the new accounting and reporting requirements, the

¹ Monopoly Markets in transition, Summary of the report 2004:3.

Authority can order a company to abide by the provisions of the law or to provide information. Such an order can be imposed under a penalty of fine.

D. General

1) Developed.