

## Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

### Swedish Competition Authority, Sweden

The following template is submitted by **the Swedish Competition Authority, Sweden**, pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

#### I. Introduction

[The Swedish Competition Authority](#) (the “SCA”) is an independent administrative authority for competition issues, sorted under the Ministry of Enterprise and Innovation. It is led by a Director General who has full responsibility for the agency’s activities. The objective of the SCA is to promote effective competition in the private and public sectors for the benefit of consumers, as well as to work for efficient public procurement for the benefit of society and market participants. The vision of the SCA is “Welfare through well-functioning markets”. The SCA applies [the Swedish Competition Act \(2008:579\)](#) (the “Competition Act”) and the EU competition rules. The SCA is also a supervisory body for public procurement, as well as unfair trading practices in the agricultural and food supply chain.

#### II. Laws, Regulations, and Policies relevant for the implementation of the CAP

*For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.*

*Please update your Template reflecting significant changes as they relate to the CAP, as needed.*

##### b) Non-Discrimination

*Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.*

The SCA does not differentiate between domestic and foreign persons in the investigation and enforcement of the competition rules. All persons are treated in the same way irrespective of their nationality, residence or origin.

[The Instrument of Government \(1974:152\)](#) (one of the constitutional acts of Sweden) states that public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the individual. Furthermore, government agencies and other public bodies are to combat discrimination (Chapter 1, Section 2). Chapter 1, Section 9 states that courts of law, administrative authorities and other subjects performing public administration functions shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality.

According to Section 5, Paragraph 2 of [the Swedish Administrative Procedure Act \(2017:900\)](#) (the “Administrative Procedure Act”), public authorities must be objective and impartial when carrying out their activities.

When applying the EU competition rules, Article 18 of the Treaty on the Functioning of the EU prohibits any discrimination on the grounds of nationality.

### c) Transparency and Predictability

- i. *Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. *Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. *Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. *Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. *Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

All Swedish laws and regulations, including those relevant to competition enforcement, are published on [the Swedish Government Offices’ legal database](#) (in Swedish). Laws in this database are made public in their amended versions, with all amendments incorporated into the text.

In order to enhance transparency and predictability of investigations and enforcement proceedings, a broad range of general information is available on [the SCA’s website](#) about the competition rules, procedures, relevant administrative provisions, etc.

On its website, the SCA has made available links to competition laws and regulations, *inter alia*, [the Competition Act](#) and [the Swedish Competition Regulation \(2021:87\)](#), as well as links to applicable EU competition rules.

Various SCA guidelines and policies covering both the SCA’s interpretation of substantive rules and procedural matters have also been published. Where up to date versions are available, the links below are made to English translations. These include:

- [Regulations on the Notification of Concentrations between Undertakings under the Swedish Competition Act \(KKVFS 2010:3\)](#);
- [Guidance for the Notification and Examination of Concentrations between Undertakings](#);
- [General Guidelines on Immunity from Fines and Reduction of Administrative Fines \(KKVFS 2021:1\)](#) (in Swedish);
- [General Guidelines on Agreements of Minor Importance that are not covered by the Prohibition in Chapter 2, Section 1 of the Competition Act \(KKVFS 2017:3\)](#) (in Swedish);
- [Method for Determining the Size of the Administrative Fine](#);
- [Prioritisation Policy for Enforcement Activities](#);
- [Information about unannounced inspections](#) (in Swedish).

[The SCA's webpage](#) (in Swedish) also provides information about the SCA's decisions in competition cases (e.g., decisions on fines, injunctions, commitments and decisions to close a case in selected cases of a wider interest), as well as judgments from the Patent and Market Court and the Patent and Market Court of Appeal in appealed cases. In [the SCA's registry](#) (in Swedish) there is a comprehensive list of all registered cases from 1998 onwards, including cases currently pending at the SCA.

The SCA also publishes various [reports and brochures](#) (in Swedish), including its Annual Reports, which provide an overview of the most prominent cases of the year as well as information on average duration of investigations and enforcement proceedings. Annual Enforcement Reports are also published, giving a detailed account of information and statistics related to the SCA's enforcement work.

#### **d) Investigative Process**

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

#### **Information to undertakings subject to an investigation**

The SCA informs an undertaking that is the subject of an investigation as soon as it is practical and legally permissible, according to the status and specific needs of the investigation. This is typically done in conjunction with a formal investigative measure, such as a request for information or the commencement of an unannounced inspection. The information provided to the undertaking includes the legal basis for the investigation and the conduct or action under investigation.

#### **Right against self-incrimination**

[The Competition Act](#) explicitly provides the right against self-incrimination (Chapter 5, Section 13). It states that a party, which is the subject of an investigation, shall not be forced to admit an infringement of the competition rules.

## **Investigative requests for information**

According to Chapter 5, Section 1 of [the Competition Act](#), where this is necessary for the performance of its duties under the Act, the SCA may require, *inter alia*: (1) an undertaking or any other party to respond to requests for information; (2) a person who is expected to be able to provide relevant information to appear for an interview at a time and place decided by the SCA.

A request for information is considered “necessary”, if the information, documents and other material requested are relevant to the SCA’s assessment in the case. The SCA cannot request more information than is needed for conducting its investigation. The link between the information requested and the infringement under investigation must be such that it is reasonable to assume that the information can assist in determining whether an infringement has taken place. The SCA is not entitled to request information for the purposes of finding evidence of another possible violation than the one at issue in the respective investigation (so-called “fishing expeditions”).

A request to provide information must always be proportionate and the party subject to the request must not be unduly burdened (Chapter 5, Section 13 of [the Competition Act](#)). Such a request may also be subject to a conditional fine in the case of non-compliance (Chapter 6, Section 1, Paragraph 1(6) of [the Competition Act](#)). The SCA may also impose a special investigation fine<sup>1</sup> if the undertaking has provided incorrect, incomplete or misleading information in response to a request for information, or has not provided the requested information, documents or other material within the specified time limit (Chapter 5, Section 21 of [the Competition Act](#)).

Pursuant to Section 9, Paragraph 2 and Section 24 of [the Administrative Procedure Act](#), the case handling procedure shall primarily be in writing, but if a party wishes to submit oral statements in a case, such an opportunity should be given, unless it is considered to be unnecessary. If the SCA receives information in some other way than in writing, it must document it as soon as possible, if such information can be of significance to a decision in that case (Section 27 of [the Administrative Procedure Act](#)).

[The Competition Act](#) contains a special provision on documentation of the interviews. A statement made by the party being interviewed shall be recorded in writing, and the record shall be read out or the person interviewed shall be given an opportunity to review the record in some other way (Chapter 5, Section 2).

## **Reasonable opportunities for meaningful and timely engagement**

The subjects of the SCA’s enforcement proceedings or parties to a merger can submit information at any time during the investigation. They are also offered opportunities, either on their own initiative or upon the initiative of the SCA, to meet with the case team or other SCA staff, if considered appropriate, and to make their points of view known. In particular, the SCA offers state of play meetings where procedural matters or preliminary views may be discussed.

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<sup>1</sup> According to Chapter 5, Section 21 of the Competition Act, an investigation fine may also be imposed for non-compliance with inspections or other fact-finding measures during the course of the SCA’s investigations.

Parties also have the opportunity to meet the SCA staff once they have received the SCA's draft decision. Further information is provided under section (h) on notice and opportunity to defend.

**e) Timing of Investigations and Enforcement Proceedings**

*Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.*

Section 9 of [the Administrative Procedure Act](#) states that every case where a private party is involved should be handled in as simple, expedient and cost-effective a manner as possible without jeopardizing legal certainty. There is no specific time limit for concluding investigations or enforcement proceedings with regard to antitrust investigations according to [the Competition Act](#), however, the SCA has introduced internal deadlines for its enforcement proceedings, meaning that the Authority communicates an overall time frame to the parties for each case it investigates.

**Limitation periods**

According to Chapter 3, Section 20 of [the Competition Act](#), an administrative fine may only be imposed if the SCA has issued a decision on such a fine within five years from the date on which the infringement ceased. If the undertaking in question receives a decision within this period concerning an unannounced inspection or is given an opportunity to express its views on the SCA's draft decision, this period shall instead be counted from the date on which this occurred. However, in such cases an administrative fine may only be imposed if the SCA's decision is issued within ten years from the date on which the infringement ceased.

The limitation periods described above shall be interrupted for the duration of enforcement proceedings before a national competition authority of another EU Member State or the European Commission. The limitation periods shall be interrupted when at least one undertaking is notified of the first formal investigative measure. The interruption shall apply to all undertakings that have participated in the infringement. A new limitation period shall commence on the day when an infringement decision is taken or when the national competition authority in another EU Member State or the European Commission has closed its proceedings in another way. However, the new limitation period shall never extend beyond ten years from the date on which the infringement ceased (Chapter 3, Section 20a of [the Competition Act](#)).

**Merger deadlines**

With regard to notifications of proposed mergers, from the date of receiving a complete merger notification, the SCA must take a decision within 25 working days (phase 1) on whether to clear the merger or to initiate an in-depth investigation (phase 2). The phase 1 investigation can be extended to 35 working days if a party to the concentration submits commitments.

After a decision to initiate a phase 2 investigation, the SCA must take its final decision within 3 months on whether to clear or prohibit the notified merger. This period may be extended if the parties to the concentration give their consent or if there are exceptional reasons. Detailed time limits and the stand-still obligation during the SCA's investigation are covered in Chapter 4 of [the Competition Act](#).

If the SCA's decision is appealed, the Patent and Market Court must decide on the matter within six months of the receipt of the appeal. If that decision is appealed, the Patent and Market Court of Appeal must decide on the matter within three months from the date of expiry of the period for appeal. These time limits may also be extended under the same conditions provided above.

#### **f) Confidentiality**

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

#### **Rules, policies and guidance regarding the identification and treatment of confidential information**

The principle of public access to information is one of the main Swedish constitutional law principles. [The Swedish Freedom of the Press Act \(1949:105\)](#) (one of the constitutional acts of Sweden) regulates the right to obtain official documents. This means that everyone – the public and the media – is guaranteed insight into the activities of central government and municipal authorities. All “official” documents in competition case files (i.e., antitrust and mergers) fall within the scope of this legislation. Consequently, the public at large (Swedish and foreign citizens alike) are entitled to read the authorities’ public documents to the extent the documents are not classified as confidential according to [the Swedish Public Access to Information and Secrecy Act \(2009:400\)](#) (the “Public Access to Information Act”).

A document is deemed official if it is held by a public authority and, according to special rules, is regarded as having been received or drawn up by a public authority. However, not all documents drawn up by a public authority are considered official (e.g., preliminary outlines and drafts, internal memoranda (notes) are not official documents if they have not been retained for filing).

Upon a request for a document, the SCA will assess whether the information requested is “official” or not and whether it falls within any of the confidentiality provisions in [the Public Access to Information Act](#). The source of the information may claim confidentiality and make the Authority aware of the applicable provision and the potential harm that may occur if such information were disclosed. However, the SCA makes the final decision as to granting access to an official document. A decision not to disclose information, or to grant access to information subject to reservations, can be appealed to court. An assessment of potential confidentiality is always made at the time of the request, and the assessment may change over time. Maximum time limits for confidentiality are provided within [the Public Access to Information Act](#).

## **Protection of confidential information**

With regard to the SCA's activities, the following categories of information are explicitly protected by confidentiality pursuant to [the Public Access to Information Act](#).

### ***Confidentiality in the public interest***

Confidentiality applies to information on planning or other preparations for the SCA's inspections, audits or other examinations, if it can be assumed that the purpose of such activities would be undermined if the information were disclosed (Chapter 17, Section 1 of [the Public Access to Information Act](#)).

Confidentiality applies to information relating to the SCA's investigations of anticompetitive agreements or abuse of dominant position practices if it is of particular importance for the purpose of the investigation that the information is not disclosed (Chapter 17, Section 3 of [the Public Access to Information Act](#)).

Confidentiality applies to information in activities relating to legal assistance in international competition matters (namely, requests for information and inspections at the premises of undertakings) if it can be assumed that the legal assistance is requested on condition that such information would not be disclosed (Chapter 17, Section 5 of [the Public Access to Information Act](#)).

### ***Confidentiality in the interest of a private party***

#### *Business secrets*

Confidentiality shall apply in the SCA's supervision and investigation activities:

- to information concerning a private party's business or operating conditions, inventions and research results, if it can be assumed that disclosure of such information would cause harm to the private party; and
- to information concerning other economic or personal circumstances other than those referred to above with respect to a party in a business or equivalent relationship with the party that is the subject of the SCA's activities (Chapter 30, Section 1 of [the Public Access to Information Act](#)).

#### *Information in leniency statements and settlement submissions*

Confidentiality shall apply to the SCA for information in leniency statements and settlement submissions (Chapter 30, Section 1a of [the Public Access to Information Act](#)). However, confidentiality does not apply if such information is included in certain types of decisions, such as decisions on administrative fines or investigation fines.

#### *Information in notifications or statements of private parties*

Confidentiality shall apply to the SCA in cases concerning the investigations of anti-competitive agreements or abuse of dominant position practices with respect to information in a notification or a statement of a private party, if it can be assumed that the disclosure of such information would cause substantial harm or significant injury to the private party (Chapter 30, Section 3 of [the Public Access to Information Act](#)).

### **Sweden's international relations**

Confidentiality shall apply to information which relates to Sweden's relations with another state or information that otherwise concerns another state, international organisation, authority, citizen or legal person in another state or a stateless person, if it can be assumed that disclosure of the information would disrupt Sweden's international relations or cause harm to the country (Chapter 15, Section 1 of [the Public Access to Information Act](#)).

Confidentiality shall also apply to information that the SCA has received from, or has collected with the purpose of transferring to, a foreign body in accordance with (1) a binding EU legal act or (2) an agreement entered into by the EU or approved by the Swedish parliament with another state or international organisation. This applies if it can be assumed that Sweden's ability to participate in the international cooperation intended by the act or agreement would be impeded if the information were disclosed (Chapter 15, Section 1a of [the Public Access to Information Act](#)).

### **Absolute confidentiality**

A number of provisions do not lay down any special conditions (such as a requirement of damage) for confidentiality to apply. One then usually refers to confidentiality being "absolute". This includes advice prior to the notification of mergers. Such information from the parties to the authority is subject to absolute confidentiality (Chapter 30, Section 2 of [the Public Access to Information Act](#)).

### **Rights of parties**

Parties to an enforcement proceeding are provided with more extensive rights of access to documents than the public at large. This is further explained below under section (h) on notice and opportunity to defend.

## **g) Conflicts of Interest**

*Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.*

### **Conflicts of interest**

According to Section 5, Paragraph 2 of [the Administrative Procedure Act](#), public authorities must be objective and impartial when carrying out their activities. All public employees must avoid situations involving conflicts of interest.

Sections 16-18 of [the Administrative Procedure Act](#) contain provisions concerning conflicts of interest that apply to anyone who, on behalf of a public authority, takes part in its handling of cases in a way that may influence the authority's decision on the case. A conflict of interest arises if:

- (1) the person concerned or anyone closely related to them is a party to the case or can otherwise be assumed to be affected by the decision to a not-insignificant extent;



- (2) the person concerned or anyone closely related to them is or has been a representative or counsel of a party to the case or of anyone else who can be assumed to be affected by the decision to a not-insignificant extent;
- (3) the person concerned has been involved in the final handling of a case by another authority and, as a result, has already taken a position on issues that the authority in question shall consider as a higher instance;
- (4) there are other special circumstances that may put into question the impartiality of the person concerned in the particular case.

Anyone who has a conflict of interest may neither take part in the handling of a case nor be present when the case is being decided. However, such person may be allowed to perform tasks that no one else can perform without the process being significantly delayed.

Anyone who knows of a circumstance that could put them in a conflict of interest shall immediately report this to the authority which, in turn, shall consider this question as soon as possible.

The Department for Public Administration at the Swedish Ministry of Finance and the Swedish Association of Local Authorities and Regions has published guidelines for public sector employees [On Bribery and Conflicts of Interest](#).

#### **Secondary activities**

[The Swedish Public Employment Act \(1994:260\)](#) contains rules that prohibit public employees from having other employment or assignments that may adversely affect confidence in their impartiality at work or in any other way harm the reputation of the authority (Section 7). These rules are intended to guarantee objectivity and impartiality in the public sector. The SCA has an internal policy explaining the kinds of activities which may not be allowed alongside employment at the SCA.

#### **h) Notice and Opportunity to Defend**

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

### **Timely notice of alleged violations and access to information**

The right of parties to have insight into the case file is stipulated in Section 10 of [the Administrative Procedure Act](#). Parties therefore have a more extensive right of insight into the case file than the public at large. Access to confidential information is granted in accordance with Chapter 10, Section 3 of [the Public Access to Information Act](#) if the SCA deems that the interest of the parties' right to insight into the case file outweighs other interests confidentiality aims to uphold. Depending on the nature of the investigation, a party to the investigation may request to be granted access to confidential information in the case file throughout the course of the investigation.

According to Chapter 3, Section 5 and Chapter 5, Section 21 of [the Competition Act](#), before the SCA decides to impose an administrative fine or an investigation fine, the parties shall be given the opportunity to express their views on the SCA's draft decision.

Furthermore, the SCA has an obligation to communicate all materials of significance for a decision and give the parties an opportunity to respond to this information, prior to taking a decision (Section 25 of [the Administrative Procedure Act](#)). The SCA communicates these materials at the latest when it sends the parties a draft decision.

### **Opportunity to defend**

For information about timely and meaningful engagement during investigations, see also section (d) above.

In antitrust investigations, undertakings are given a reasonable time to respond to a draft decision. The period for responding is not regulated in law and can vary, usually from three to four weeks. If the parties' observations lead to significant changes in the draft decision, the parties shall be given an opportunity to comment again. In merger cases involving a prohibition decision or decision to impose an obligation on a party (such as an obligation to divest), the period to respond is normally two weeks.

In addition, parties are offered the opportunity to complement their written observations on the SCA's draft decision at a formal oral hearing (this, however, does not apply to decisions on investigation fines, but even in these cases an oral hearing may be held if the SCA deems it appropriate). Both the oral hearing and the rights of the subject in the enforcement proceedings are governed by [the Administrative Procedure Act](#). The general principle of public access to documents as well as relevant confidentiality provisions apply to oral hearings.

The oral hearing is generally attended by the case team, head of respective unit, Chief Legal Officer and, where necessary, Chief Economist. In cases where the SCA acts as a decision-making body in the first instance, the decision maker, i.e., the Director General is also present.

The SCA has an independent function, separate from the case teams, which is responsible for questions of due process, in particular, parties' procedural rights, during the Authority's investigations (including oral hearings). There is also another internal "independent reviewer" function which offers an independent perspective on the SCA's investigations that is entirely separate from the case team, reporting directly to the Director General.

## **i) Representation by Counsel and Privilege**

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

### **Representation by counsel**

According to Section 14 of [the Administrative Procedure Act](#), anyone who is a party to a case may make use of a representative or counsel who is suitable for the assignment. However, a party that uses a representative shall participate in person if the authority so requests. If a representative or counsel is considered unsuitable for the assignment, the authority may decide that he or she may no longer be involved in the case.

The undertaking has the right to have a legal representative present during an on-site inspection (Chapter 5, Section 9 of [the Competition Act](#)). However, there is typically no legal requirement for the SCA to await the arrival of a representative in order to commence the inspection. This is the situation in those cases where the court has issued a decision to allow an inspection without the undertaking being given the opportunity to be heard.

### **Legal professional privilege (LPP)**

The protection of LPP is upheld by Chapter 5, Section 11 of [the Competition Act](#) and applies both to requests for information and the SCA's powers during unannounced inspections. The SCA may not read or make copies of documents covered by LPP. LPP applies to written documents, 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/her associates as a witness about it; and which are in his/her or their associates' possession or in that of the party protected by his/her duty of professional secrecy. The scope of LPP under the Swedish law in general corresponds to the scope of the limitation as interpreted under EU law (e.g., it does not cover correspondence between representatives of the undertaking and an in-house counsel).

[The Competition Act](#) provides for a specific procedure with regard to inspections to ascertain whether the document in question contains LPP (Chapter 5, Section 11, Paragraphs 2-3). If an undertaking claims that LPP applies to a certain document, the responsible officer at the SCA will have to try to assess its content without reading it thoroughly. If the SCA's officer in charge does not agree with the representative of the undertaking, the document shall immediately be sealed and delivered promptly to the Patent and Market Court. The Court shall then without delay decide whether the document shall be included in the SCA's inspection or whether it is covered by LPP.

## j) Decisions in Writing

- i. *Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. *Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Since the 1st of March 2021, the SCA has the power to impose administrative fines for the violations of the competition rules (instead of bringing a case before the court by submitting a summons application). In addition, the SCA can issue decisions ordering an undertaking to terminate an infringement or establishing that an infringement has been committed in the past, as well as imposing or approving commitments submitted by the parties. The Authority also decides on mergers. According to Section 32, Paragraph 1 of [the Administrative Procedure Act](#), a decision that may be assumed to affect someone's situation in a non-negligible way shall contain explanatory reasoning, unless it is considered clearly unnecessary. Such reasoning shall contain information on the rules that have been applied as well as the relevant factors which the SCA took into account.

[The Competition Act](#) does not explicitly require the SCA to make its decisions (either adverse or affirmative) public. However, as mentioned in section (f) on confidentiality, all official documents, including the SCA's enforcement decisions, fall within the scope of the general Swedish legislation on public access to documents. For the purposes of transparency and predictability, the SCA publishes all its final decisions, including commitment decisions, as well as relevant court decisions in competition law cases on its website for anyone to see (see also section (c) on transparency and predictability). If a decision contains business sensitive information, the SCA prepares a public version to be ready at the same time as the full version or as soon as possible thereafter.

According to Chapter 3, Section 4, Paragraph 3 of [the Competition Act](#), the SCA shall give third parties the possibility to comment on commitments before deciding to accept them. The SCA often market tests commitments, whereby it will publish a summary of the case and the alleged infringement, including the proposed commitments in order to give the interested third parties an opportunity to comment on whether the proposed commitments are adequate to eliminate the adverse effects on competition. The final decision adopted by the SCA is later published on its website together with the voluntary commitments. Any business secrets in the decision are removed pursuant to the confidentiality rules (see section (f) on confidentiality).

### **k) Independent Review**

*No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).*

Chapter 7, Section 1 of [the Competition Act](#) provides an exhaustive list of SCA's decisions that may be appealed to the Patent and Market Court. For instance, pursuant to this Section, decisions to order an undertaking to terminate an infringement, decisions establishing that an infringement has been committed in the past, as well as decisions to impose administrative fines or investigation fines are subject to appeal.

With respect to mergers, the SCA's decisions to prohibit a merger (or part of it) and conditional merger approval decisions (i.e., where the SCA orders an undertaking to take certain measures in order to eliminate harmful effects of a concentration) may also be appealed.

The Patent and Market Court acts as court of first instance in, *inter alia*, cases regarding appeals of decisions taken by the SCA, as well as the SCA's applications to conduct unannounced inspections. The Patent and Market Court of Appeal acts as a second and final instance in competition law cases. Both instances' review is on matters of fact and law.

There is a possibility to appeal decisions by the Patent and Market Court of Appeal to the Supreme Court, but it is left to the discretion of the Patent and Market Court of Appeal to decide whether to allow an appeal or not. The appeal may be allowed if the Supreme Court's review is considered important in terms of providing precedent in the application of the law. This possibility does not apply to mergers, however.