

**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Sweden****-- 2018 --**

This report is submitted by Sweden to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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## Sweden

### Executive summary

1. In 2018, the Swedish Competition Authority (SCA) remained focused on prioritising the detection, investigation and prosecution of practices, which by their very nature are harmful to competition, without sacrificing due process.

2. The year has brought important precedents from the courts, which confirmed that the scope for “by object” restrictions is very limited. We are therefore paying great attention to the distinction between restrictions “by object” and “by effect” in our investigations. For the purpose of “by effect” restrictions, we are improving our methods and tools to ensure that we can demonstrate the harmful impact of the conducts we investigate.

#### **Anti-competitive agreements**

3. In February 2018, the Patent and Market Court of Appeal overturned a judgment from the Patent and Market Court, finding that Telia was not involved in illegal collaboration with its competitor Gothnet in a procurement. In its judgment, the Patent and Market Court of Appeal noted that the nature of the information provided by Telia to Gothnet, i.e. that they would not be submitting a bid in the procurement, is typically harmful to competition. However, the court found that the information exchange between Telia and its competitor did not amount to a restriction of competition by object, and that anti-competitive effects had not been proven.

#### **Abuse of dominance**

4. One case concerned the dominant company Swedish Match’s introduction of a mandatory system for shelf labels in moist snuff fridges, limiting rivals’ ability to communicate their prices and brand. In 2018, the Swedish Patent and Market Court of Appeal overturned the judgment from the Patent and Market Court and found, contrary to what the SCA had argued in the case, that Swedish Match had not abused its dominant market position. The court found that Swedish Match enjoyed a dominant position in the Swedish snuff market during the period in question and that the rules for shelf labelling in themselves limited competition. However, the court also found that Swedish Match’s labelling system could be objectively justified according to national rules on tobacco marketing.

#### **Mergers**

5. In 2018, Metso Sweden AB’s acquisition of mobile crushing and screening solution provider Aktiebolaget PJ Johnsson och Söner, was cleared with remedies in phase 1. The SCA’s investigation indicated that a third party competitor would post merger no longer have the ability to compete effectively with the merged entity, which would result in less competitive pressure and increased prices. During the investigation, Metso offered certain commitments, which meant that the third party competitor during a transitional period could offer products which partly were produced by the target company and sell under its own brand. Subject to these remedies, the SCA cleared the merger.

#### **Anti-competitive public sales activities**

6. In September 2017, the SCA issued a summons application against the Municipality of Hässleholm in accordance with the Swedish Competition Act, which states that the courts can prohibit the state, county councils or municipalities from selling goods and services in a way that restricts competition. By refusing private companies access to land for laying fibre cables, the SCA alleged that the municipality harmed competition on the market for building and selling fibre access to end users in Hässleholm. In March 2019, the Patent and Market Court issued a prohibition order in accordance with the position of that SCA had argued in the case. The judgment has been appealed to the Patent and Market Court of Appeal by the municipality.

### **Advocacy and competition research**

7. As part of its advocacy activities the SCA produced a number of reports and replies to official consultations. In December 2018, the SCA published a report concerning the interface between competition matters and corruption. The report shows that corruption can occur in all types of cases and not only in procurements and cartels. This insight has generated a need for the SCA to develop better knowledge of the connections between corruption and other anti-competitive practices.

## **1. Changes to competition laws and policies, proposed or adapted**

### **1.1. Summary of new legal provisions of competition laws and related legislation**

#### *1.1.1. Mergers*

8. On a procedural level, the SCA has since January 2018, the power to adopt decisions to prohibit mergers that are liable to significantly impede the existence or development of effective competition. This change makes our procedures more efficient and reduce the time between a notification and a decision. Another aspect is that parties may have increased incentives to provide the information necessary for a robust decision early in the investigation.

### **1.2. Other relevant measures, including new guidelines**

#### *1.2.1. Prioritisation policy*

9. Although the SCA's primary ground for prioritisation remains whether a conduct harms competition and consumers, it has since May 2018, included corruption as new criteria in its prioritisation policy. This means, among other things, that the authority pays special attention to tip-offs that give rise to suspicions of corruption and that it co-operates with other agencies that investigate different types of corruption, conflict of interest and market manipulation, such as the National Anti-Corruption Unit.

#### *1.2.2. Nordic Agreement on co-operation in Competition Cases*

10. In September 2017, Denmark, Finland, Iceland, Norway and Sweden signed a new Nordic co-operation agreement. The agreement replaces the previous, more limited agreement. The new agreement gives greater opportunities for the competition authorities to gather information, for example through dawn raids, and to exchange information in conjunction with investigations. The agreement entered into force in November 2018 and is so far applicable in Denmark, Finland and Sweden.

### 1.3. Government proposals for new legislation

#### *1.3.1. ECN+ Directive*

11. The recently adopted ECN+ Directive aims to ensure that when applying the same legal basis – the EU antitrust rules – the competition authorities have the appropriate enforcement tools in order to bring about a genuine common competition enforcement area. To that end, the Directive provides for minimum guarantees and standards to empower national competition authorities to reach their full potential, e.g. the power to impose fines for infringements as well as the power to impose periodic penalties to enforce compliance with procedural obligations. The question whether SCA will get this power or not is under consideration by the Swedish Government. Creating unitary and minimum standards across the EU is, in our opinion, a positive development.

## 2. Enforcement of competition laws and policies

### 2.1. Action against anti-competitive practices, including agreements and abuses of dominant position

#### *2.1.1. Summary of activities of the SCA*

##### *Anti-competitive cooperation and abuse of dominant position*

12. During 2018, the SCA closed eight prioritised investigations of suspected infringements under Chapter 2, paragraphs 1 and 7 of the Swedish Competition Act and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). In one case, SCA ordered an undertaking to terminate an abuse of a dominant position. Another investigation could be closed following changed markets practice on part of the company.

##### *Anti-competitive sales and activities by public entities*

13. The SCA closed three investigations concerning anti-competitive sales and activities by public entities. One of the investigations was closed following changed market practice on part of the public entity investigated.

##### *Tips-off and complaints*

14. In 2018, SCA received 544 tips-offs and complaints from companies, customers and consumers related to competition. The SCA completed 58 competition investigations, of which 11 were prioritised for in-depth investigations.

15. The large inflow of tip-offs and complaints requires effective routines for prioritising the cases we pursue. Therefore, the SCA has developed a prioritisation policy for its enforcement activities and a policy on external communications concerning enforcement matters. The prioritisation policy is publicly available.

### *2.1.2. Description of significant cases, including those with international implications*

#### *Anti-competitive co-operation*

##### Construction contract work

16. SCA investigated a suspected anti-competitive co-operation between two companies active in public procurement concerning construction contract work. The investigation showed that the companies had exchanged strategic information, which may increase the risk of competition infringements and collusive behavior. However, due to specific circumstances concerning the information exchange, i.a. related to some staff leaving one company for the other, the SCA decided to close the investigation. (Ref no: 610/2017)

#### *Abuse of dominant position*

##### Manufacturing of coffins

17. The SCA investigated a case concerning rebates, bonuses and exclusivity clauses used by a manufacturer of coffins in contracts with funeral parlours. During the investigation, the manufacturer clarified to its customers that the contracts did not restrict in any way their rights to use other suppliers of coffins. The SCA concluded that the investigation did not show evidence of anti-competitive practices which threatened to lead to foreclosure and decided to close the investigation. (Ref no: 318/2017)

##### Sales of train tickets

18. In April 2018, the SCA started an investigation concerning whether the state-owned railway company SJ AB's refusal to sell other train operators' tickets through their online distribution channels constitute an infringement of the Competition Act's prohibition of abuse of dominant position and/or could be prohibited according to the rules concerning sales operations from public entities that limit competition. The investigation is still ongoing. (Ref no: 230/2018 and 380/2018)

### *2.1.3. Anti-competitive sales activities from public entities*

#### *Market for cleaning services*

19. The investigation concerned whether Samhall's pricing methods for cleaning services distorted or impeded effective competition according to the rules on anti-competitive sales activities from public entities that are regulated in Chapter 3 article 27 of the Swedish Competition Act. As part of the investigation, the SCA compared Samhall's prices with its competitors' prices in public procurement and found that the prices had been slightly lower. However, the SCA considered that the risk of harm to competition was lessened due to the significant number of other market players and the low entry barriers. During the investigation, Samhall also changed its routines and guidelines to ensure market based prices. The SCA decided to close the investigation. (Ref no: 260/2017).

#### *2.1.4. Summary of activities of courts*

20. The year has brought important precedents from the courts, e.g. concerning the scope for “by object” restrictions. Even if this reflects broader developments across many jurisdictions we have already started, and will continue, to pay greater attention to the distinction between “by object” and “by effect” restrictions in our investigations.

#### *2.1.5. Description of significant cases, including those with international implications*

##### *Anti-competitive agreement*

###### *Telia*

21. In February 2018, the Patent and Market Court of Appeal overturned a judgment from the Patent and Market Court, finding that Telia was not involved in an illegal collaboration with its competitor Gothnet in a procurement carried out in 2009. In its judgment, the Patent and Market Court of Appeal noted that the nature of the information provided by Telia to Gothnet, i.e. that they would not be submitting a bid in the procurement, was an attempt to restrict or distort competition. However, the court found that the information exchange did not amount to a restriction of competition by object, and that anti-competitive effects had not been proven.

##### *Abuse of dominant position*

###### *Swedish Match*

22. The main hearing against Swedish Match in the Patent and Market Court was held in 2016. Swedish Match had introduced a mandatory system for shelf labels in moist snuff fridges, limiting rivals' ability to communicate their prices and brand. In February 2017 the court, which upheld the SCA's claim, issued fines of 38 million SEK. Swedish Match appealed the judgment and in June 2018, the Swedish Patent and Market Court of Appeal overturned the judgment and found that Swedish Match's conduct had restricted competition, but was objectively justified with reference to national rules on tobacco marketing.

###### *The Swedish Packaging and Newspaper Collection Service*

23. In February 2018, the SCA found that the Swedish Packaging and Newspaper Collection Service (FTI) had abused its dominant position by terminating an agreement with a competing company, TMRresponsibility AB (TMR). Both FTI and TMR collect packaging from households via recycling stations. The SCA found that FTI's termination of the agreement with TMR constituted an abuse of a dominant position and ordered FTI to revoke its termination of the agreement with TMR. FTI appealed the decision to the Patent and Market Court. In January 2019, the court confirmed the SCA's decision and issued a judgment upholding it. The judgment has been appealed by FTI to the Patent and Market Court of Appeal.

###### *24. Nasdaq*

The case against Nasdaq had its main hearing in the Patent and Market Court in 2017. The SCA argued that Nasdaq should be ordered to pay approx. SEK 31 million in fines due to Nasdaq allegedly abusing its dominant position by putting pressure on Verizon Sweden in

order to prevent the competitor Burgundy from placing its trading engine in Verizon’s data centre. In January 2018, the Patent and Market Court found that Nasdaq had a dominant position but did not consider it had abused its position. The judgment has been appealed to the Patent and Market Court of Appeal where the case is still ongoing.

### *Anti-competitive public sales activities*

#### Municipality of Hässleholm

25. In September 2017, the SCA submitted an application to the Patent and Market Court, requesting that the municipality of Hässleholm should be prohibited from impeding and distorting competition by not granting land agreements and permits to companies for laying out fibre-optic cables. By refusing private companies such access, the SCA alleged that the municipality harmed competition on the market for building and selling fibre access to end users in Hässleholm. In March 2019, the Patent and Market Court prohibited the municipality from refusing access to land. The judgment has been appealed.

## 2.2. Mergers and acquisitions

### *2.2.1. Statistics on number, size and type of mergers notified and/or controlled under competition laws*

26. The SCA adopted 72 decisions relating to concentrations between undertakings. One merger was subject to an in-depth investigation. As stated above, the SCA has since 1 January 2018, the power to adopt decisions to prohibit mergers that are liable to significantly impede the existence or development of effective competition. As a result of the new procedural powers and for due process purposes, we have also strengthened the role of our chief economist, chief legal officer and introduced oral hearings.

27. The SCA has also the possibility to “stop the clock” if companies do not submit information required. This power was used twice during 2018.

28. The following table shows the number of new cases registered during 2018 under the Competition Act and the number of decisions during the same period.

**Table 1. Cases and Decisions**

Year	Registered New Cases		Decisions	
	2017	2018	2017	2018
Mergers	80	80	80	72

### *2.2.2. Summary of significant cases*

#### *Metso Sweden AB - Aktiebolaget P J Johnsson och Söner*

29. Metso Sweden AB:s acquisition of Aktiebolaget P J Johnsson och Söner was cleared with remedies in phase 1. The two companies are specialised in the supply of mobile crushing and screening plants to a wide range of customers in Sweden. The investigation showed that there was only one other competitor of mobile crushing and screening plants in Sweden, which was Sandvik Construction AB, and that the competitive position of that company would be threatened if the merger was approved. However, due to the commitments of the buyer, which meant i.a. that the Sandvik during two years could

buy mobile crushing and screening plants from Aktiebolaget P J Johnsson och Söner and sell the products under Sandvik's trademark, the SCA left the merger with no further actions. (Ref no: 239/2018)

#### *FS Gas - Swedegas*

30. In 2018, the SCA decided not to take actions against FS Gas's proposed acquisition of Swedegas. Swedegas owned the transmission grid for transmission of gas along the Swedish West Coast. FS Gas was, through its ownership of Weum Gas (former E.ON Gas), the largest owner of the distribution network for the transmission of gas to various end-users. Swedegas' customers consisted of distribution network companies and had a few directly connected end-customers. The SCA investigated whether the acquisition could result in increased difficulty for end customers to connect directly to the transmission networks. The SCA found that the concentration would not limit end customers' freedom to choose in a way that significantly impedes competition. (Ref no: 536/2018)

#### *Nokas - Avarn Security Holding AB*

31. The SCA investigated Nokas AS proposed acquisition of Avarn Security Holding AB. The aim was to investigate whether the acquisition would lead to any negative effects in terms of higher prices in the security services industry. The SCA did not take any actions against the merger. (Ref no: 425/2018)

### **3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

#### **3.1. Advocacy**

32. The SCA is responsible for identifying obstacles that may restrict or distort an effective competition in public and private operations. The agency presents proposals with the aim to open up markets to competition, initiate regulatory reforms and monitor developments within the area of competition. Furthermore, the SCA responds to official consultations and official communications initiated by the Swedish Government and provides comments and opinions to other public authorities that seek the agency's views on particular investigations or changes to the regulatory framework.

#### **3.2. Reports**

##### *3.2.1. Report on competition in Sweden 2018*

33. The focus of the 2018 report on competition in Sweden was to provide analysis on digitalisation, circular economy and competition. While the SCA could report that competition in Sweden is overall functioning well, two sectors stand out by showing competition concerns; namely the banking and construction sectors. In both these sectors, the SCA has observed that competition is weak. The SCA hopes that the report can be a source for further improvements.<sup>1</sup>

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<sup>1</sup> Report 2018:1 (<http://www.konkurrensverket.se/publikationer/konkurrensen-i-sverige-2018/>)

### ***3.2.2. Competition in the food supply chain***

34. The SCA was commissioned by the Swedish Government to describe and analyse competition in the food supply chain and the pros and cons of private labels. The grocery retail chains sales of private label products are growing, which has contributed to improved competition conditions in many product categories, but can also create new business and growth opportunities for food companies. The report also scrutinises the occurrence of unfair trading practices.<sup>2</sup>

### ***3.2.3. Competition within housing construction***

35. This report analyses the market for housing construction and performs a review of areas where there is a continued need for investigation. The report includes the entire chain of housing construction, i.e. access to land, planning, the work of constructors and the market for construction materials. Over the past five years, more players have taken up housing construction and the market has become slightly less concentrated. However, the report demonstrates that there are no clear signs that the property prices have been reduced. The report also finds that construction costs in Sweden are among the highest in the EU.<sup>3</sup>

### ***3.2.4. Report on sales activities by public entities***

36. The SCA followed up 25 cases from 2010–2017 concerning sales activities by public entities. During the investigations the public entities – on their own initiative – implemented measures to reduce the risk of harm to competition, or announced that they intended to implement such measures. The report shows that the public entities to a large extent have implemented the measures they announced.<sup>4</sup>

### ***3.2.5. Report regarding pet insurances***

37. The report examines the veterinary care sector and pet insurances from a consumer perspective. The report shows that price transparency within veterinary care is poor and address the lack of price comparison services that enable consumers to compare and switch pet insurances, which in turn would increase competition.<sup>5</sup>

### ***3.2.6. Corruption limits competition***

38. A report concerning the interface between corruption and competition was published in December 2018. One interesting point relates to the fact that corruption can occur in all types of cases investigated by an authority, and not only in procurements and

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<sup>2</sup> Report 2018:4 (<http://www.konkurrensverket.se/publikationer/konkurrensen-i-livsmedelskedjan/>)

<sup>3</sup> Report 2018:7 ([http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport\\_2018-7.pdf](http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2018-7.pdf))

<sup>4</sup> Report 2018:5 ([http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport\\_2018-5.pdf](http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2018-5.pdf))

<sup>5</sup> Report 2018:6 ([http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport\\_2018-6.pdf](http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2018-6.pdf))

cartels. This insight has generated a need to develop better knowledge of the connections between corruption and other anti-competitive practices.<sup>6</sup>

### *3.1.2 Responses to official consultations*

39. By providing opinions on proposals in reports and other inquiries, the SCA assists the Swedish Government and other authorities in the preparation of proposed law amendments and decisions. In 2018, the SCA issued 146 responses to official consultations.

40. The responses to official consultations included e.g. the following topics:

- Supervisory powers followed by the EU port regulation.
- The EU regulation on geo-blocking.
- Changes in the Public Access to Information and Secrecy Act.
- Several consultations regarding pharmaceuticals, pharmaceutical subsidies, pricing of pharmaceuticals, generic substitution and retail pharmacies.
- Regarding the construction, housing and spatial planning the SCA has sought to facilitate industrialised and digitalised procedures and to facilitate the participation of small and medium-sized enterprises (SME) and foreign companies.
- The SCA has opposed the co-ordination between major banks to provide cash services in rural areas since there are already major grants for the purpose not being used properly.
- The SCA has opposed restrictions in the public pension schemes, impeding the use of many private market investment funds.
- A number of consultations concerned proposed state aid in various forms, which have been rejected by the SCA on the basis that such aid would jeopardize competition.
- A proposed ban on the advertisement of alcoholic beverages in social media was rejected by the SCA.

## **3.3. Research**

41. The SCA has a mandate from the Swedish Government to grant funding for research, which is linked to competition and public procurement. In 2018, the Government's letter of appropriation allocated approximately SEK 14 million to such research. The research allocation is divided into funding for researchers at higher education institutions and funding for projects that researchers initiate themselves. As part of its activities, the SCA also arranges conferences, seminars and workshops with focus on providing information from the research and its findings.

### *3.3.1. Projects that received funding in 2018*

42. The SCA received 44 applications requesting funding for research within the fields of competition and public procurement. In 2018, the SCA granted funding to six new

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<sup>6</sup> Report 2018:10 ([http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport\\_2018-10.pdf](http://www.konkurrensverket.se/globalassets/publikationer/rapporter/rapport_2018-10.pdf))

projects, of which two projects covered the field of competition law and economics. In total, the SCA financed over SEK 11.5 million to ongoing and new research projects.

### *3.3.2. Conferences and workshops*

43. To share and advance knowledge about current competition-related matters, the SCA holds an annual international research seminar entitled “Pros and Cons”. Since the first seminar in 2002, researchers and experts have discussed the pros and cons of compelling questions in the field of competition law. The theme of seminar in 2018 was “The Pros and Cons of Rebates”. The conference addressed the question of how the competitive assessment of rebates has evolved and how the more economic approach is reflected in the assessment of rebates.

44. Around 120 researchers, academics, lawyers and representatives of competition authorities participated in or attended the conference.

### *3.3.3. Essay contest*

45. In an effort to promote interest in competition and procurement matters among students, the SCA holds an annual essay contest for university students. The contest is open for all topics that are relevant to the activities of the SCA. In 2018, five entries were awarded prizes and shared a total amount of SEK 100 000.

### *3.3.4. Communication and knowledge*

46. Part of the SCA’s task is to promote competition and provide appropriate information for companies and other stakeholders regarding important decisions, implementation of the rules and the content of these rules.

### *3.3.5. Ongoing focus on digital communication*

47. The SCA has continued to prioritise digital communication and strategic communication throughout 2018. It has communicated via its website, through digital newsletters social media and through traditional media, meetings and industry via national and international forums.

#### *Electronic newsletter: Procurement and competition*

48. The SCA publishes a newsletter that address relevant public procurement and competition matters. The newsletter is published bi-weekly and has 1 622 subscribers.

#### *Web-based customer service*

49. Questions and complaints to the SCA are primarily conducted via the “tip-off” function. To make it easier for the public to find the right answers to questions, the SCA has during the year, continued to develop its work with a web-based question forum. The SCA has also launched an anonymous whistle-blower tool.

### 3.4. International work

#### 3.4.1. European Competition Network

50. Within the European Competition Network (ECN), the SCA has a close co-operation with the EU Commission and the competition authorities of the EU member states in the application of Articles 101 and 102 of the TFEU.

51. The national competition authorities are obligated to consult the EU Commission before reaching decisions under Articles 101 and 102 of the TFEU. In 2018, the SCA consulted the EU Commission regarding one matter.

#### 3.4.2. Nordic co-operation

52. In September 2017, Denmark, Finland, Iceland, Norway and Sweden signed a new Nordic co-operation agreement. The agreement replaces the previous, more limited agreement. The new agreement gives greater opportunities for the competition authorities to gather information, for example through dawn raids, and to exchange information in conjunction with investigations. The agreement entered into force in November 2018 and is so far applicable in Denmark, Finland and Sweden.

#### 3.4.3. OECD

53. SCA participated in two meetings of the OECD Competition Committee. In June 2018, the SCA submitted two written contributions on taxi, ride-sourcing and ride-sharing services and implications of E-commerce for Competition Policy. In November 2018, the SCA submitted four written contributions concerning the publicly funded healthcare markets, regional competition agreements, investigative powers in practice and competition law and state-owned enterprises.

#### 3.4.4. International Competition Network

54. The SCA actively participates in the International Competition Network's (ICN) five working groups. Together with U.S. Department of Justice and the Competition Bureau of Canada, the SCA is a co-chair of the ICN Agency Effectiveness Working Group and has an important role to lead a project with the aim to present the correlation between organisational design and agency effectiveness in order to identify various strategies for competition agencies to achieve desired results.

## 4. Resources overall (current number and change over previous years)

### 4.1. Annual budget (in your currency and USD):

- 2017: SEK 143.322 million /USD 17.521 million
- 2018: SEK 146.813 million /USD 16.552 million

### 4.2. Number of employees

55. There were 131 full-time equivalents at the SCA during 2018. 115 worked on competition issues, of whom 100 were non-administrative staff.

### **4.3. Human resources (person-years) applied to:**

#### ***4.3.1. Enforcement against anti-competitive practices/Merger review and enforcement***

56. Enforcement against anti-competitive practices and merger review: 100 non-administrative staff (no. of employees in competition enforcement department, department for communications and international affairs, legal department and chief economist's department).

#### ***4.3.2. Advocacy efforts***

57. Advocacy efforts: 11 (no. of employees in Advocacy Department).

#### ***4.3.3. Period covered by the above information***

- 2018

### **5. Summaries of or references to new reports and studies on competition policy issues**

58. Reports issued during 2018 with references to where they can be downloaded and a brief description of their contents are found in section 3.2.