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**Case Prioritisation and Prosecutorial Discretion – Note by Sweden**

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## Sweden

### 1. Introduction

1. The Swedish Competition Authority (SCA) has complete discretion in choosing which cases to pursue, as well as in deciding whether to follow up on or dismiss complaints and allegations. The authority has a responsibility to use its resources as efficiently as possible. It therefore needs to prioritise its day-to-day work between different competition enforcement cases. The authority focuses on investigating issues that are of general interest and that lead to clear results in line with a published prioritisation policy.

2. This contribution explains:

- how the SCA identifies and prioritises new competition cases, as well as how it prioritises in the course of ongoing competition investigations;
- the contents and application of the SCA's prioritisation policy; and
- the wider priorities of the SCA as an enforcement authority.

### 2. Identification of new cases

3. Competition cases are initiated on the basis of an indication of a suspected infringement within the authority's enforcement remit. Indications of infringements may consist of tip-offs, complaints, reports under the so-called Whistleblower Act<sup>1</sup> or information that the authority itself identifies through various proactive methods. In the context of competition enforcement, the SCA also receives leniency applications<sup>2</sup> which may lead to investigations.

4. A large number of tip-offs and complaints are received by the SCA each year. The authority also has several tools at its disposal to identify infringements on its own initiative, such as data analysis, market monitoring, media analysis, and the screening of statistics from public procurement and other open sources.

5. The task of managing and evaluating indications of suspected infringements and initiating preliminary investigations is centralised within a dedicated team, the Tip-off and Monitoring Unit, which is also responsible for developing the SCA's proactive detection work. This team was strengthened in 2024 through the establishment of a separate unit, and now comprises 10 lawyers and economists covering the authority's competition and procurement remit.

6. The Tip-off and Monitoring Unit refers a selection of tip-offs and complaints to preliminary investigation, carried out within the same unit. Depending on the issue, a preliminary investigation may require extensive analysis in order to decide whether or not

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<sup>1</sup> The Act (2021:890) on the Protection of Persons Reporting Misconduct. The SCA has been appointed by the Government to receive, follow up on and provide feedback on reports of misconduct in the areas of competition and public procurement.

<sup>2</sup> The company that is first to report anti-competitive conduct to the SCA may be granted immunity from fines. <https://www.konkurrensverket.se/konkurrens/tillsyn-arenden-och-beslut/ett-arendes-gang-eftergift/>

a conduct is a potential competition infringement. This stage often involves external contacts to gather information and views from affected parties and other stakeholders.

### 3. Prioritisation of new cases

7. On the basis of the preliminary investigation, an internal prioritisation decision is taken in consultation with the authority's legal, chief economist and enforcement units. The authority may prioritise the case for further, detailed investigation by one of the competition enforcement units (i.e. the case is moved from the Tip-off and Monitoring Unit for further investigation), or it may choose to close the case.

8. The SCA selects which cases to prioritise for further investigation based on a prioritisation policy in which various circumstances and considerations are weighed against one another.<sup>3</sup> The general starting point of the policy is that the SCA focuses on investigating issues that are of general interest, that lead to clear results and that contribute to a high level of compliance. The aim is always to promote effective competition in private and public sector activities for the benefit of consumers. The prioritisation policy is reviewed regularly and when needed. The current policy is from 2023 and work is currently underway to assess the need for any updates.

9. Given the significant time and resources required to carry out a competition investigation, effective prioritisation is very important. It also means that the majority of tip-offs and complaints that the SCA receives each year are ultimately not prioritised. In 2025, for example, the SCA received around 720 tip-offs, complaints and other indications concerning competition questions. In the same year, 89 preliminary competition investigations were opened. Six competition cases were prioritised during the year for further investigation, with the remainder being closed. Ten cases that were closed on prioritisation grounds involved a guidance meeting with the undertakings in question (see more information about guidance meetings below).

10. At the stage of initial prioritisation, cases are selected on their merits, with reference to the prioritisation policy. In order to ensure a pipeline of the most relevant cases, available resources are not factored in at this initial stage.

### 4. The SCA's prioritisation policy

11. As noted above, the SCA has a prioritisation policy, which it uses in the initial prioritisation process when selecting which issues to investigate in more detail. Different circumstances are then weighed against one another. Not all criteria need to be met in every single case.

12. The following factors are taken into account when prioritising:

#### 4.1. Whether the problem causes harm to competition and consumers.

13. This is the factor that carries the most weight. If the SCA sees signs of serious harm, it will always prioritise the matter.

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<sup>3</sup> Ref. no. 814/2023, available in Swedish at <https://www.konkurrensverket.se/globalassets/dokument/overgripande-dokument/prioriteringspolicy-for-konkurrens-och-upphandlingstillsynen.pdf>

14. When assessing the extent to which the conduct is likely to harm competition and consumers, the SCA considers the benefits of intervention for a larger group of consumers and the socio-economic importance of removing the restriction on competition or imposing a deterrent sanction.

15. Corruption, conflicts of interest and other criminal or trust-damaging conduct are harmful to competition and consumers. Such conduct also has the potential to facilitate and exacerbate breaches of competition rules. It is not uncommon for elements of corruption to be present in competition law cases, and this may in itself be an indication that a conduct could cause harm to competition and consumers.

16. The SCA gives high priority to investigating and prosecuting anti-competitive cooperation, particularly cartels.

17. Vertical restrictions that have the potential to harm effective competition at any level of the supply chain are also prioritised for investigation. In prioritising, the SCA attaches particular importance to the proportion of the relevant markets covered by the restrictions, the market power held by the parties to the cooperation, and the degree of market concentration. If there are other similar instances of cooperation in the market, this may increase the likelihood that the authority will prioritise the matter.

18. The SCA gives particular priority to investigating potential abuse of dominance involving practices that have the capacity to restrict the ability of other companies to exert effective competitive pressure at any level of the supply chain or in an adjacent market. In prioritising, particular importance is attached to the share of the market covered by the conduct and, in the case of input foreclosure, the importance of the input in enabling effective competition in the market. When assessing price-based practices, the authority also considers whether the pricing is capable of excluding a competitor that is hypothetically as efficient as the dominant undertaking.

19. The authority may also prioritise investigating exploitative abuse where a dominant undertaking directly exploits customers and consumers as a result of non-functioning competition.

## **4.2. Whether the conditions exist to effectively investigate and intervene**

20. As a public authority, the SCA has a responsibility to use its resources as effectively as possible and therefore weighs the expected resource expenditure against the benefits of intervention. Where an individual enforcement case is not deemed an effective means of achieving results, the authority may in certain cases choose to address the problem in other ways, for example through a letter to the government (for example suggesting legislative changes) or in a published report.

## **4.3. Deterrent effect and need for guidance**

21. A case may be prioritised where an intervention or a reasoned decision to close the case can prevent companies and other stakeholders from making mistakes, and where the authority, through its enforcement work, can clarify how to do things correctly.

22. There may be a need for guidance if an infringement is deemed to be widespread or if it is important to intervene to achieve a general deterrent effect. This may also concern situations where the legal position is unclear or where rules have not had the effect intended by the legislator, or where there is a need for further case law on the matter in hand.

#### 4.4. Whether the SCA is best placed to intervene

23. The SCA may refrain from intervening in cases where another authority or actor is better placed to act. If, for example, another authority has more appropriate tools to address a particular competition or market problem, this may mean that the SCA does not prioritise investigating the matter itself. The SCA is an active member of the European Competition Network, which is relevant in this regard. The SCA also has close dialogue with other Swedish state regulatory authorities such as the Financial Supervisory Authority, The Post and Telecom Authority and the Energy Markets Inspectorate.

#### 5. Prioritisation in ongoing investigations

24. The SCA makes regular prioritisation assessments in its ongoing competition investigations as to whether it should continue to investigate the case or not. There may be several reasons why the authority closes investigations without taking action at a later stage, but it is not the prioritisation policy that is relied on in such cases.

25. Available resources, as well as the number and scope of other ongoing investigations, including merger reviews, influence the need to prioritise ongoing investigations. Hence, even cases in which the SCA has invested significant time and resources may be closed on priority grounds, although in practice it is not common that cases are closed at a late stage owing to a lack of resources.

26. Merger control is governed by statutory deadlines that set short case-handling times, meaning that the authority does not have discretion in how it exercises its duties in this regard. The number of notified mergers and how many of these lead to in-depth investigations affects the allocation of resources to other competition investigations and thus also their case-handling times.

27. The SCA cannot influence how many concentrations are notified, meaning that the distribution between different types of cases varies from year to year. Many simple merger review cases can be resolved with limited investigation. However, certain more complex cases require extensive investigation. In 2025, 95 mergers were notified, of which 93 could be cleared without action in phase 1. The SCA opened a phase 2 investigation in two cases, which were also closed during the year. Both of these cases were closed without action, one of which following commitments.

28. Another form of task over which the SCA cannot exercise discretion is assignments set out in the government's appropriation letter to the authority. These typically take the form of studies into competition or procurement issues within particular areas or sectors. Under the constitution, the government is prevented from directing the SCA to carry out specific enforcement investigations under the competition rules. The scope of government assignments nevertheless has a bearing on the prioritisation of enforcement cases since government assignments must be prioritised and are strictly time-limited.

#### 6. Decisions not to prioritise a case

29. Cases that the SCA chooses not to prioritise are closed. A written closing decision is published, briefly explaining the facts, the investigation performed and explaining that the case has been closed on prioritisation grounds.

30. In cases that the SCA chooses not to prioritise, but where it nevertheless sees an opportunity to raise the awareness of the companies concerned regarding the competition

law framework, the authority may choose to hold a guidance meeting. Such contact gives the SCA the opportunity, for example, to explain what it sees as potential problems with the conduct in question, before concluding the preliminary investigation. Where appropriate, the SCA regards closing a case at the preliminary investigation stage following a guidance meeting as an effective way of increasing compliance without the extensive investigative measures required by an in-depth investigation.

31. The SCA's prioritisation policy states that if it deems that an individual enforcement case is not an effective way to promote effective competition, it may instead choose to address the problem in another way, for example in a report. The production of reports is an important tool in the authority's advocacy work. The authority can prepare reports either on its own initiative or upon assignment from the Government.

32. Reports provide an opportunity to highlight problems which, for various reasons, cannot be effectively addressed through individual intervention under the competition rules. In some cases, the reports can contribute to a change in behaviour within the sectors highlighted, and sometimes contain proposals for regulatory changes that can contribute to long-term regulatory reforms and improved competition. Reports can also support the SCA's priorities by providing insights into certain markets and identifying the existence of competition problems that the authority should take into account when handling tip-offs and complaints received.

## 7. Decisions on prioritised investigations

33. The SCA may take formal action against a suspected infringement of the competition rules through the issuing of fines or injunctions, or by accepting binding commitments. The authority may reach a decision finding that a breach of the prohibitions has occurred, without taking any further action<sup>4</sup> against the party responsible for the infringement. The finding of an infringement is relevant to any subsequent proceedings for damages, as a court may not re-examine the infringement in question in such subsequent proceedings.

34. The SCA can also decide to close prioritised investigations without formal intervention. Such a decision does not constitute a position on whether the conduct is in compliance with competition rules or not.

- **Closure on the basis of changed conduct** – If, during an investigation, undertakings change their conduct in such a way that the risk of restrictions on competition is reduced, the SCA may close the investigation on this basis, but without making the changed conduct a binding commitment in its decision.
- **Closure in conjunction with a call for a review of the rules** – In cases where the SCA assesses that intervention under competition law is not appropriate to address the problems it has identified, but that changes to the regulatory framework would be desirable, it may choose to close the case and, in connection with this, call for a regulatory review by the government or another relevant body.
- **Closed without action** – If the investigation does not give the SCA grounds to intervene, the case is closed without action. Such a decision is taken, for example, if the investigation does not support the initial suspicion, or if the authority deems

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<sup>4</sup> Such as a decision on a competition infringement fine or an injunction.

that the competition problem identified could be addressed more effectively by means other than intervention under the competition rules.

35. In 2025, the SCA adopted three decisions to intervene by imposing competition fines, which is more than in previous years. Two investigations were closed following a change in behaviour, and a further six investigations were closed without further action.

36. The SCA considers that cases concluded through intervention or in light of changed behaviour demonstrate that its enforcement work has contributed to resolving a competition problem. The authority also considers that investigations concluded in conjunction with calls for a review of the rules contribute to resolving competition problems in cases where existing legislation is insufficient or inappropriate to address the problem.

### 7.1. Prioritisation decisions cannot be appealed

37. The SCA's decision not to investigate a matter further cannot be appealed. This follows from Chapter 7, Section 1 of the Competition Act (2008:579).

38. However, the undertakings affected by the proceedings or the activity may, on their own initiative, bring an action before a court to have the matter examined in accordance with Chapter 3, Section 2 of the Competition Act.

## 8. The SCA's wider priorities

39. The SCA's vision is '*Welfare through well-functioning markets*'. The authority's operational plan aims to clarify how it will work to achieve its objectives, carry out its tasks and move closer to that vision.<sup>5</sup> The plan covers a three-year period but is reviewed and adjusted annually.

40. The SCA has seven objectives in its operational plan, one of which is overarching and forms the basis for the effective functioning of the authority. All objectives apply to the entire authority and there is no hierarchy between them, even though different parts of the organisation are affected to varying degrees by each individual objective. The objectives are translated into more concrete lists of activities and annual plans within management and the units' own planning processes. The authority has also formulated the outcomes it wants to achieve by 2029 with the aim of ensuring that it moves in the right direction towards that vision over time.

41. In its operational plan, the authority also identifies sectors and issues that it will focus specifically on during the year. This does not necessarily imply that enforcement work will be carried out in these sectors, rather the work could also involve advocacy initiatives.

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<sup>5</sup> Available in Swedish at [https://www.konkurrensverket.se/globalassets/dokument/om-oss/konkurrensverkets-verksamhetsplan\\_2026-2028.pdf](https://www.konkurrensverket.se/globalassets/dokument/om-oss/konkurrensverkets-verksamhetsplan_2026-2028.pdf)