Merger Control

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Sweden

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Introduction

The current substantive legislation concerning mergers is contained in the Competition Act (2008:579) (the "**Competition Act**"), which entered into force on 1 November 2008. The Competition Act has been drafted to, as far as possible, assimilate EU competition law in substance, and the interpretation of the concept of "concentration" on EU-level acts as framework for the meaning of the Swedish concept. Hence, a concentration arises when there is a change in control of an undertaking on a lasting basis. This also includes an acquisition of the whole or a part of an undertaking and joint ventures categorised as "full-functioning". There are also other types of changes to the structure of ownership which may similarly lead to a change of control and therefore also constitute a concentration.

If the undertakings concerned trigger the turnover thresholds,[1] the contemplated transaction must be notified to the Swedish Competition Authority ("**SCA**") prior to implementation. A notification obligation always arises when the turnover thresholds are met. Whether or not the concentration gives rise to a substantive overlap is therefore irrelevant for the purpose of the obligation to notify the concentration to the SCA.

The SCA is the central administrative authority for the administration and enforcement of competition law in Sweden. The SCA plays a key role in the competition field and is entrusted with investigative powers as well as intervention and, to some extent, decision-making powers. The SCA is the competent authority for the review of merger notifications in Sweden and assesses whether a notified concentration risks significantly impeding effective competition within the country as a whole or a substantial part thereof. In line with EU practice, the SCA particularly looks at whether a dominant position is reinforced or created and uses the SIEC-test applied by the European Commission ("**Commission**") in its assessment.

In contrast to e.g. the Commission, the SCA does not have equally broad decision-making powers when reviewing mergers and cannot block concentrations itself. Rather, if the SCA considers that a concentration would significantly impede effective competition and ought to be prohibited, the authority must file a summons application to the Patent and Market Court ("**PMC**"), which is a division within the Stockholm District Court ("**SDC**"), requesting the prohibition of the concentration. Following a judgment from the PMC, the parties may appeal the decision to the Patent and Market Court of Appeal ("**PMCA**"). It is not unusual that parties abandon a concentration and withdraw the notification in cases where the SCA decides to file a summons application, due to the rather long court proceedings and associated risk that the deal will be hampered.

A legislative initiative has proposed to enhance the SCA's decision-making powers, including providing the authority with the power to prohibit mergers and impose fines as first instance, in order to reduce processing times and to further harmonise Sweden's decision-making order with other EU Member States. The reform is proposed to enter into force in January 2018, however the initiative has not received a uniformly positive response and it remains uncertain whether it will enter into force.

Merger notifications in 2016 and 2017

The amended and slightly higher turnover thresholds introduced in the Competition Act in 2008 resulted at first in a decrease of the number of notifications to the SCA in Sweden.[2] However, the downward trend of fewer notifications to the SCA may have been turned around and in comparison to previous years, the number of notifications to the SCA has been increasing. In 2016–2017,[3] 115 concentrations were notified to and reviewed by the SCA. The vast majority of these were unconditionally cleared during the SCA's preliminary investigation period ("**Phase I**"), i.e. within 25 working days, and in cases where there was an absence of vertical links and horizontal overlaps, the matters were often prioritised by the SCA and decisions were often given more swiftly.

Each year, only a few of the notified cases are subject to in-depth investigations by the SCA. Six in-depth investigations were initiated in 2015, three in 2014, three in 2013, two in 2012 and four in 2011. During 2016, four in-depth investigations ("**Phase II**") were initiated by the SCA: *Nibe/Enertech*, *Com Hem/Boxer*, *Visma/Fortnox* and *Blocket/Hemnet*.

During the first part of 2017, no in-depth investigations have been initiated.

Chicken products[4]

In the case of *Kronfågel/Lagerberg*, the SCA's suit was withdrawn following the parties' decision not to go through with the merger. The SCA's investigation showed that the sale of grilled chicken to retail stores in Sweden was highly concentrated and was dominated by three players, with Kronfågel being significantly larger than the others, and Lagerberg being number three. The market was characterised by capacity constraints and by consumer preference for domestic grilled chicken over imported. According to the SCA, Lagerberg exercised price discipline on Kronfågel through its role as a low-price option. Having conducted an upward price pressure analysis the SCA concluded that there would be an incentive for Kronfågel to raise prices post-merger. In addition to this, the SCA was in possession of Kronfågel's internal documents, which it interpreted as indicating that Kronfågel's long-term objective was to get rid of the competitive pressure exercised by Lagerberg.

The SCA focused on the retail sector's ability to switch supplier of grilled chicken in the event of an increase in price and concluded that Kronfågel's competitors did not have sufficient available capacity to satisfy demand. Retailers, especially the ones not connected to larger chains, had complained that their buying power was already weak. Having analysed the barriers to entry, the SCA stated that entry costs were high and the time required to establish a competing business was long, due to, *inter alia*, the application time for regulatory permits. Additionally, regulatory barriers to imports and consumer preference for domestic chicken in general, and the strength of the Kronfågel brand in particular, would make a new entry less likely. The SCA took into account the fact that Kronfågel is a vertically integrated company, with its own breeding facilities.

The last remaining competitor with a large market share, Guldfågeln, was expected to follow Kronfågel/Lagerberg's increases in price instead of exerting competition, and take the role

as price-cutter. Kronfågel did present voluntary commitments to the SCA which involved offers for deals which would make entering the market or expanding easier. However, the SCA filed summons at the SDC to prohibit the concentration. The parties withdrew the acquisition before the SDC could hear the case.

District heating pipes[5]

In October 2015, the SCA initiated a Phase II investigation to closer examine the notified acquisition by Logstor of Powerpipe. The relevant market was the market for production and sale of district heating pipes. The SCA expressed concern, as it concluded that Logstor and Powerpipe were the largest competitors on the market for sale of district heating pipes in Sweden. The SCA's investigation showed that the market only had four influential suppliers for district heating, as well as four buyers. Logstor was expected to obtain a market share of around 65% whereas the closest competitors would have no more than a 15% market share combined.

In February 2016, the SCA filed suit before the SDC, requesting that the concentration be prohibited. The SCA found that Powerpipe was an effective competitor on the Swedish market and exercised considerable competitive pressure on Logstor. Powerpipe was the only competitor with its own production facilities in Sweden. According to the SCA, the remaining competitors were not able to provide an equally competitive offering as the parties to the concentration, as the offering of the parties were to some extent superior. Logstor and Powerpipe had as close competitors been exercising price discipline on each other, rather than the remaining competitors filling this role. The SCA also made a comparison to the Danish market, were Logstor is the market leader, and pointed to how higher prices and margins in Denmark seem to indicate that Danish competitors, although better placed to compete, do not seem to be able to affect Logstor's pricing. The SCA highlighted the limited countervailing power in the market by pointing out how the buyers had tried to attract new suppliers to the market but with little success. The SCA concluded that the possible entrants on the market should not be seen as potential competitors in the light of the major buyers' failed attempt to attract them to the market.

The SDC found that the merger would not significantly impede the existence or development of effective competition on the market for production and sale of district heating pipes and dismissed the SCA's action in its entirety. The judgment was appealed by the SCA to the PMCA, where the key issue was the definition of the relevant geographic market. The SCA argued that the relevant geographic market solely covered the Swedish market. The PMCA found that the relevant geographic market comprised the EEA and Switzerland. The PMCA concluded that the newly merged entity would neither acquire a dominant position on this market, nor that there existed other circumstances that proved that the concentration would significantly impede the existence or development of effective competition. Consequently, the PMCA dismissed the SCA's action in its entirety. It is highly uncommon that the SCA loses an action to prohibit a concentration due to the definition of the relevant (geographic) market, this has never occurred in previous cases.

Heating products[6]

In November 2016, the SCA initiated a Phase II investigation to examine Nibe's notified acquisition of Enertech. Both Nibe and Enertech are manufacturers of heating products and energy efficiency solutions for residential and commercial use. The SCA's initial investigation indicated that the market for production of heating products was characterised by barriers to entry, particularly in the form of brand preferences by end consumers, and that distributors/installers are hesitant to change suppliers. Taking into account that Nibe

and Enertech are close competitors, the SCA was concerned that the new entity would acquire high market shares and thus gain a strong position in relation to wholesalers, which potentially could result in higher prices and impair the quality of the marketed products or reduce the undertakings' incentives to invest in research and development, thus harming consumers.

Following the SCA's Phase II investigation, the SCA segmented the relevant market into: (i) primary heating systems for residential use (further segmented based on the type of heating system); (ii) primary heating systems for commercial use; and (iii) complementary heating systems. The SCA found that the new entity would acquire high market shares in some sub-segments on the market for primary heating systems for residential and commercial use, respectively, and that that the new entity would have incentives to increase prices. However, the Phase II investigation did not indicate that the merger would significantly impede the existence or development of effective competition. The SCA focused on the conditions of competition post-transaction and found that wholesalers would still have possibility to change suppliers, and competitors had the capacity and technical know-how to increase production if needed. In addition, the SCA analysed the barriers to entry and expansion on the market and held that the new entity would not enjoy any technical or regulatory advantages, nor have access to essential facilities or intellectual property rights which could make it difficult for competitors to enter and/or expand on the market. Against this background, the SCA concluded that the concentration would not significantly impede the existence or development of effective competition, and the matter was closed without any further actions.

TV services[7]

Com Hem offers digital-TV, broadband and fixed telephony services to Swedish households and companies. In June 2016, Com Hem notified its intended acquisition of Boxer, a pay-TV operator through the digital terrestrial television network which offers digital-TV, broadband and telephony services in Sweden. In July 2016, the SCA decided to initiate a Phase II investigation. The SCA assessed the effects on competition from two aspects: (i) the provision of TV services to real estate owners and households (the "**sales market**"); and (ii) the purchase of TV channels from broadcasters (the "**purchase market**"). Regarding the sales market, the SCA emphasised that Com Hem and Boxer as two television distributors were actual competitors on the overall market for distribution of TV services. The acquisition would strengthen Com Hem's market position as well as reduce the number of competitors, thus resulting in a higher degree of concentration on the market. In addition, the SCA found that Com Hem and Boxer would, in comparison to other television distributors, acquire a relatively high combined market share, approximately 50%. However, the SCA's investigation did not identify any other circumstances indicating that the acquisition would cause any competition concerns. One of the aspects that the SCA emphasised was that Com Hem and Boxer use two different distribution platforms: the cable television network and the terrestrial television network, respectively. Cable television is primarily a solution for apartment buildings while the terrestrial network is an alternative for single-family houses. Furthermore, the SCA found that a merged Com Hem/Boxer would still meet effective competition from a number of competing television distributors.

As to the purchase market, the SCA underlined that both Com Hem and Boxer are purchasers of television channels and that the new entity would increase its buying power. The number of purchasers of television channels would also be reduced as a result of the acquisition. The SCA found, however, it unlikely that the acquisition would adversely affect competition

on the market. One factor was that there is a mutual dependence between the television distributors and the broadcasters (broadcasters want to reach as many television viewers as possible while the television distributors need the television channels in order to offer a broad and attractive offering to their subscribers). In addition, the SCA held that sellers of television channels have possibilities to reach end consumers through alternative channels than through television distributors, for instance, through streaming services. The SCA's investigation also found indications that a merged Com Hem/Boxer would see a decline in its share of purchase of television channels as Boxer's sales would decrease as a result of the current extension of fibre to single-family houses. Consequently, the investigation by the SCA did not indicate that the acquisition would significantly impede the existence or development of effective competition either on the sales market or on the purchase market, and the matter was closed without any further actions.

Digital housing search services[8]

In February 2016, Blocket Bostad notified its intended acquisition of its competitor Hemnet. Both Blocket, owned by Schibsted, and Hemnet, owned by various estate agencies, are active on the digital housing search services market. Hemnet operates its business through the website hemnet.se, where housing objects for sale are advertised. In March 2016, the SCA initiated a Phase II investigation to examine the transaction in closer detail. The initial investigation conducted by the SCA indicated that the notified acquisition would significantly impede competition on the market. The SCA was worried about the high market share that the merged entity would attain, thus acquiring a dominant position. The SCA also raised concerns in regard to price increases on digital housing advertisements and that the merged entity would take over services traditionally offered by real estate agencies. Furthermore, the SCA was troubled about the possible conglomerate effects in other markets for digital housing search services. Following the Phase II investigation and the SCA's communication to the parties of its intention to file a summons application to the SDC to prohibit the concentration, the parties decided not to complete the transaction and withdrew the notification.

Business systems for accounting and administration[9]

Visma and Fortnox provide Enterprise Resource Planning systems ("**ERP**"), which is a business software for managing resources such as employees, assets and finances. In March 2016, Visma notified its intended acquisition of Fortnox. The SCA's initial investigation indicated that the market could potentially be much narrower than the parties' estimations, consisting of small and medium-sized businesses which have the potential to be further segmented into locally installed ERP systems and cloud-based systems in Sweden. Furthermore, both companies have strong ties to accounting firms which to some extent act as sales channels for ERP accounting systems. The SCA decided to make a closer examination of the concentration and initiated a Phase II investigation. Following the SCA's communication to the parties of its preliminary assessment and intention to file a summons application to the SDC in order to prohibit the concentration, Visma decided not to complete the transaction.

New developments in jurisdictional assessment or procedure

The SCA has in recent years made more use of its power to review concentrations that do not meet the mandatory merger notification thresholds. Historically, the SCA has rarely used this possibility to order the submission of a notification, although the SCA had these powers even under the previous competition act. Pursuant to the Competition Act, a concentration

is subject to a mandatory notification requirement to the SCA only if both of the thresholds are met:

(i) the combined aggregate turnover in Sweden of all the undertakings concerned in the preceding fiscal year exceeds SEK 1 billion ("**combined turnover threshold**"); and

(ii) each of at least two of the undertakings concerned have a turnover exceeding SEK 200 million in Sweden ("**individual turnover threshold**").

However, if only the combined turnover threshold is met (but not the individual turnover threshold), the SCA may order the submission of a notification if there are particular grounds. The parties may also voluntarily submit a notification in such a case. The SCA has issued a guidance in this regard and explains that a voluntary filing should be considered if the transaction can be expected to awaken fears and criticism from customers or competitors. Although the preparatory works of the Competition Act state that orders to submit a notification should be used only in exceptional situations, the practice of the SCA seems to indicate that the authority gives the concept of particular grounds a rather wide interpretation and can request notifications as soon as there is a mere *prima facie* risk of effective competition being impeded. As a result, more voluntarily notifications are made to the SCA although there is no exact data regarding the number of these. The feature of voluntary filing is a particular mechanism in Swedish merger control.

An example of a matter where a concentration was not subject to a mandatory merger notification requirement, as the individual turnover threshold was not met but later on received an order to submit a notification from the SCA, is the case of *Swedbank/Svensk Fastighetsförmedling*. In December 2013, Swedbank's Fastighetsbyrån, a real estate agency, acquired its closest competitor, Svensk Fastighetsförmedling. The agencies are by far the two largest players on the market for real estate in Sweden. In addition to being competitors, both undertakings are jointly owners of the largest web page for real estate advertisements, Hemnet.com. The parties closed the transaction without prior seeking clearance from the SCA, as neither of the parties had turnover exceeding SEK 200 million (the individual turnover threshold). However, the threshold of a combined turnover of SEK 1 billion was exceeded and once announced, the merger was subject to significant media attention, which led the SCA to look into the merger. Swedbank therefore voluntarily submitted a notification to the SCA after the transaction's implementation whereby the company had already taken control over of the shares.

The SCA's investigation indicated that the transaction would result in Swedbank, in essence, acquiring control of the whole market for the sale of real estate, giving Swedbank as high post-transaction market shares as >95% on certain local markets. Subsequently, the SCA filed a complaint to the SDC requesting the SDC to prohibit the concentration subject to a fine of SEK 250 million.

The SDC ruled in favour of the SCA and prohibited the concentration, subject to a fine of SEK 100 million. The case was appealed by the parties to the Market Court, but during the proceedings the parties were able to reach an agreement with the franchisees in Svensk Fastighetsförmedling. The franchisees jointly acquired all shares in Svensk Fastighetsförmedling, allowing the parties to withdraw from the Market Court.

The Swedbank case is unusual as very few merger cases reach the SDC and the Market Court. The case shows what far-reaching consequences an order from the SCA to review a merger that does not reach the threshold of a mandatory notification may have. Parties to a particular transaction should therefore more thoroughly consider the impacts on competition once it falls below the individual turnover threshold but the combined turnover threshold is

exceeded. In such circumstances, the parties may always voluntarily submit a notification to the SCA. It is worth noting that the Swedbank case is unusual, as very few merger cases reach the SDC and the Market Court. In this case, the parties had already closed the transaction prior to the notification to the SCA which made it more difficult to unwind.

Moving agencies[10]

On 14 July 2014, the SCA filed proceedings before the SDC against NFB Transport Systems AB ("**NFB**"), ICM Kungsholms AB ("**ICM**") and Alfa Quality Moving AB ("**Alfa**"). The alleged infringement involves an agreement not to compete on the market for international household removal services, and took place in connection with Alfa's acquisition of NFB's and ICM's international removal service business. Prior to the acquisition, the three companies used to offer both domestic and international (cross-border) removals. The SCA requested the imposition of a fine totalling of more than €4.5 million for the companies' infringement of Chapter 2, Article 1 of the Swedish Competition Act and Article 101 TFEU.

In 2006, Alfa acquired NFB's international operations. The transfer agreement contained a non-compete clause which prevented NFB from competing with Alfa in the international removals market for a period of five years. At the time of acquisition, NFB, ICM, and Alfa were three of the four leading national players on the Swedish removal services market.

In 2010–2011, NFB acquired ICM, and its international operations were subsequently transferred to Alfa. As per the previous agreement, this also contained a non-compete clause which prevented ICM from competing with Alfa on the international removals market for a period of five years.

In the proceedings before the SDC, the SCA argued that the non-compete clause in the two transactions agreements went beyond what was reasonably necessary for the implementation of the two transactions. Clauses lasting for three years are permitted in circumstances where "goodwill and know-how" are transferred (i.e. they are ancillary to the transaction). The SCA estimated in the current case that a period of two years would be reasonably necessary and that the agreements were therefore not ancillary to the respective transactions.

On 16 May 2016, the SDC handed down a decision in the matter where it refused to impose fines, as argued by the SCA. In its decision, the court held that the SCA was incorrect in claiming that the acceptable duration was two years, as the transaction was to be characterised as a transfer of only goodwill, making the three-year duration applicable. The SDC also affirmed that non-competes with a duration exceeding three years can rarely be considered ancillary.

The court then went on to assess the object and effect of the non-compete clauses and found that the parties to the transaction were not potential competitors and that the non-compete clause therefore could not have as its object the restriction of competition. In assessing the effect of the non-compete clause, the court found that there was uncertainty regarding the definition of the relevant market, and that it was therefore unable to assess whether the non-compete obligation could, in fact, restrict competition. The SCA has appealed the decision and the case is pending before the PMCA.

Further, in 2015, the SCA introduced further guidance for notifications and the assessment of concentrations. The guidance is an update of the earlier guidance issued in 2010 and contains more accurate and updated information on merger control, based on previous experience from the SCA. The purpose of the guidance is to improve awareness of the investigations of the SCA, contribute to greater predictability and ensure good conditions for cooperation between the parties and the SCA, contributing to a more efficient and effective investigation.

Key industry sectors reviewed and approach adopted to market definition, barriers to entry, nature of international competition, etc.

The SCA does not have any predefined key sectors or key policy areas in merger control which it is more likely to review. Rather, any transaction that meets the statutory thresholds will be investigated by the SCA. In its assessment of notified concentrations, the SCA generally focuses on national and regional competition. The authority generally seeks guidance from EU case law, taking into account the national specifics of the market. In respect of the geographic market, the SCA typically defines markets as national or regional.

Naturally, the SCA tends to pay closer attention to mergers which involve companies active in market areas in which competition may be diminished for various reasons. In general, such areas have historic ties to regulated sectors. As such have become deregulated, competition on those markets tends to be low, with a few large players holding market positions close to dominance. Examples of such deregulated areas in Sweden are the telecommunications sector and the pharmacy sector.

Key economic appraisal techniques applied e.g. as regards unilateral effects and co-ordinated effects, and the assessment of vertical and conglomerate mergers

There has been a clear trend towards increased use of formal economic theory and quantitative methods in merger case analysis in Sweden during recent years. In 2013, the SCA used economic analysis and effect-based tests as standard procedure in its merger case investigations. Further, it should be noted that the authority, in 2013, accepted "failing firm defence" following detailed counterfactual analyses.

In general, it should be noted that, pursuant to the Competition Act, a concentration is prohibited if it would significantly impede the existence or development of effective competition in Sweden as a whole or in a substantial part thereof, particularly as a result of the creation or strengthening of a dominant position. When assessing a notified concentration, the SCA applies the "Significant Impediment of Effective Competition Test" ("**SIEC test**"), in line with the SIEC test applied by the European Commission.

In recent years, formal economic theory and quantitative methods have come to play a significant role in the SCA's assessment of concentrations' effects on competition. When assessing concentrations and relevant markets, the SCA has particularly used the upward pricing pressure method ("**UPP**"),[11] diversion ratio analyses and critical loss analyses to determine the effect on competition. The tests are based on quantitative (e.g. market shares, sales data and turnover) and qualitative (e.g. product properties, distribution networks, market researches and competitor analyses) information, provided by the concerned parties and/or the SCA. There has hence been a shift away from concentrating the competition analysis on market definition and market shares towards considering the degree of rivalry between the companies, including identifying the closest competitors. The UPP method focuses on the assessment of the parties' incentive to increase or decrease prices after the concentration, with emphasis on the following variables: diversion ratios (i.e. how close competitors the merging parties are), gross margins and efficiencies.

As of 2016, the SCA has used the UPP-test and diversion ratio analysis in one case, *Visma/Fortnox*, in order to estimate future pricing. Visma AS ("**Visma**") and Fortnox AB's ("**Fortnox**") provide Enterprise Resource Planning systems ("**ERP**"), which is a business software for managing resources such as employees, assets and finances. The SCA's initial investigation indicated that the market could potentially be much narrower than the parties' estimations, consisting of small and medium-sized businesses which have the potential

to be further segmented into locally installed ERP systems and cloud-based systems in Sweden. Furthermore, both companies have strong ties to accounting firms which to some extent act as sales channels for ERP accounting systems. The case was subject to a Phase II investigation and, following the SCA's communication to the parties of its preliminary assessment and intention to file a summons application to the SDC in order to prohibit the concentration, Visma decided not to complete the transaction.

In the earlier case of *Swedbank/Svensk Fastighetsförmedling*, the SCA used critical loss analysis for the purpose of investigating how large the share of sales lost to the private market would be if all real estate agents increased their commission by 10%.

Approach to remedies (i) to avoid second stage investigation and (ii) following second stage investigation

Undertakings can offer remedies to address competition concerns and avoid the prohibition of the concentration. The remedies will be accepted if the SCA considers them sufficient to eliminate the adverse effects on competition. Remedies can be offered at any stage in the notification process, during Phase I investigation in order to avoid a Phase II investigation, or later (once a Phase II investigation has been initiated). Generally, remedies are offered at the end of the Phase II investigation and after the notifying undertakings have received the SCA's draft summons application (i.e. statement of objections).

Although both structural and behavioural remedies may be considered and accepted, structural remedies, particularly divestments, are often considered to be more appropriate and effective than behavioural remedies. For remedies to be accepted during Phase I, the adverse effects on competition and the way to address those effects must be sufficiently clear-cut. Therefore, to be accepted in Phase I, it is advisable to offer remedies as early as possible in the Phase I period.

Generally, compliance with remedies or commitments may be enforced through a fine to be imposed in the event of the breach of such remedies/commitments (i.e. fine for non-compliance).

Key policy developments

The SCA has indicated that the authority is continually working on quality assurance in order to meet the requirements for legal certainty, effective and sound proceedings.

Reform proposals

As of 1 September 2016, a new court system for intellectual property, competition law and merger control proceedings was established. The PMC was established as a division within the SDC as the first instance in intellectual property, competition law and merger control matters. Decisions and judgments by the PMC can be appealed to the PMCA, which replaced the Market Court as the highest instance. The reorganisation of the court system was deemed necessary due to the complex and comprehensive nature of intellectual property and competition law cases. The intention is to obtain a more uniform examination and handling of these kind of cases and thereby increase legal certainty and reduce the risks of discrepancies in how the relevant legal provisions are interpreted.

A legislative initiative has proposed to enhance the SCA's decision-making powers, including providing the authority with the power to prohibit mergers and impose sanctions on undertakings not complying with the merger control rules. In addition, the legislative

initiative includes a proposal to extend the stand-still obligation in the Swedish merger control regime to automatically cover also Phase II proceedings. The current stand-still obligation only applies for the Phase I investigation. Furthermore, the initiative proposes to repeal the provisions in the Competition Act regarding liability for litigation costs when the SCA has withdrawn its action to prohibit a concentration, due to the fact that the parties to the concentration have withdrawn their notification and the provision relating to a party's right to compensation for litigation costs for reasonable expenses incurred after a party has been given an opportunity to express its view on the draft summons application of the SCA. The reform is proposed to enter into force in January 2018, however the initiative has not received a uniformly positive response and it remains uncertain whether it will become reality. The discussion regarding increased decision-making powers of the SCA will continue. One argument for increased powers of the SCA is to increase conformity of the Swedish competition regime with the Commission and other EU Member States. On the other hand, there have also been signals indicating that the SCA's decisions are not always in line with the SDC's. At the moment, the safeguards around the SCA's decision-making process are not as sophisticated and well developed as, for example, the Commission's. There is hence a risk that increased powers for the SCA may lead to a decrease in legal certainty.

The SCA has advocated that the current turnover thresholds for the assessment of concentrations should be reviewed and that other criteria may be introduced, e.g. a size-of-the-transaction threshold. The background is the increased importance of companies active in e-commerce and the sharing company which may not generate sufficient turnover to trigger any of the current turnover thresholds but may have more significant market power, for instance due to network effects, than their turnover figures demonstrate. It remains to be seen whether the turnover thresholds in Swedish merger control will be reassessed.

* * *

Endnotes

1. (a) the combined aggregate turnover in Sweden of all undertakings concerned exceeds SEK 1 billion; and (b) each of at least two undertakings concerned have a turnover in Sweden exceeding SEK 200 million.
2. In 2015, there were in total 63 notifications; in 2014, there were in total 67 notifications; in 2013, there were in total 48 notifications; and in 2012, there were in total 36 notifications.
3. 1 January 2016 – 2 June 2017.
4. Case No 52/2016.
5. Case No 578/2015.
6. Case No 630/2016.
7. Case No 411/2016.
8. Case No 84/2016.
9. Case No 107/2016.
10. Case No 511/2014.
11. The UPP test has explicitly been applied by the SCA in a number of recent cases, such as *Office Depot/Svanströms* (2011), *Arla/Milko* (2011), *Cloetta/Leaf* (2012),

Eniro 118 118/Teleinfo (118 800) (2012) and *Assa/Prokey* (2013) cases. *Office Depot/Svanströms* and *Cloetta/Leaf* were unconditionally cleared in Phase I, whereas the *Arla/Milko* case was cleared in Phase II subject to commitments. In the *Eniro 118 118/Teleinfo* case, the parties withdrew their notification due to SCA's intention to prohibit the concentration. In the *Assa/Prokey* case, the parties decided to abandon the planned acquisition after the SCA filed a suit to the District Court to block the concentration (see also above, under "New developments in jurisdictional assessment or procedure"). In addition, in the *Komplett/Webhallen* case (2013), the SCA used a number of economic analyses and unconditionally cleared the concentration in Phase II.

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