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April 2012

## Merger control in Sweden

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*Despite several attempts by the Swedish Competition Authority, Swedish courts have not yet prohibited any mergers, although a number of concentrations have been subject to commitments.*

*The number of notified concentrations has decreased in Sweden following the new thresholds which were introduced in 2008 but there were some 2011 filings that called for special attention regarding cable TV, dairy products and directory enquiries. We provide here information about the thresholds, statistics regarding notifications, and commitments and comment upon a few of the much discussed decisions from 2011.*

### Notification thresholds

In order for there to be a duty to notify a concentration, the undertakings concerned must have a joint turnover in Sweden of SEK 1 billion (approximately € 107,5 million) and at least two of the undertakings concerned must each have a turnover in Sweden of at least SEK 200 million (approximately € 21,5 million).

### Statistics on prohibitions in Sweden

As of 2008, the Swedish Competition Authority applies the SIEC-test. The Competition Authority does not, however, have the power to block mergers but must apply to the Stockholm District Court for a prohibition. The judgment may be appealed to the Market Court as the last instance. The parties to the concentration may make commitments in order to get the concentration cleared. The commitments may be subject to a fine. Such decisions are to be taken by the Stockholm District Court following a claim made by the Competition Authority.

According to statistical information from the Competition Authority, 2,352 concentrations have been notified to the Authority since 1993. Of these, 74 have been subject to a Phase II investigation. However, so far no concentration has been blocked in Sweden.

Of the 74 concentrations that were made subject to a Phase II investigation, the Competition Authority only brought action in the Stockholm District Court in eight cases. Three of these claims for prohibitions were rejected by the Court, while four were withdrawn by the parties and one dismissed on procedural grounds. In addition, nine cases were withdrawn after announcement of a Phase II investigation. Of the cases that entered into Phase II, 57 were approved of which 17 with commitments from the parties. Contrary to the Merger Regulation there are no sanctions under the Swedish rules where a concentration is not notified. However, the Competition Authority is able to initiate proceedings at the Stockholm District Court within two years of closing. A consequence for the parties may be that all legal acts that were taken in order to implement the concentration have to be reversed. So far, this has never happened.

### Concentrations which the Authority tried to prohibit during 2011

Com Hem/Canal Digital – Com Hem provides cable television/triple-play services to apartment blocks. Com Hem sought to acquire Canal Digital which is also active in the distribution of TV-services via cable (and to a limited degree over fibre-LAN) to apartment blocks. The relevant market was defined as the distribution of TV-services through

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collective agreements with landlords in Sweden. Under this quite broad definition (although more narrow definitions were possible) the combined entity would have a market share of 68.8 % and the Competition Authority underlined that there were substantial barriers to entry. The Competition Authority applied to the Stockholm District Court for a prohibition on implementing the concentration, under penalty of a fine of SEK 100 million. Com Hem thereafter abandoned the concentration.

### Concentration approved with undertakings

Arla/Milko – the multinational dairy co-operative Arla, which is the single largest dairy company in Sweden (60-70 % market share), entered into an agreement to acquire the third largest dairy co-operative in Sweden, Milko (5-10 % market share). The Competition Authority identified a number of dairy-related markets where both parties had substantial market shares and where the merged entity would almost have a monopoly. Despite this, and while noting that this might not be an ideal solution, the Competition Authority approved the merger contingent upon a number of commitments to sell certain trademarks and one of the dairy production facilities under a penalty of a fine of SEK 100 million.

One of the main reasons for approving the concentration with commitments was the very difficult financial situation which Milko was experiencing. The concentration was, however, not approved under the failing firm doctrine, as it did not meet the requirements under this doctrine.

At present, all of the trademarks have been sold, but the production facility is still to be sold by a trustee.

### Filing withdrawn in Phase II

Eniro 118 118/Teleinfo Brahegatan (118 800) – Eniro 118 118 is the major telephone information services company in Sweden and it intended to acquire the price-maverick Teleinfo 118 800. The undertakings constituted two of three players on a narrow market for directory enquiries by phone, text and on the internet. During the Phase II-investigation, Eniro received indications from the Competition Authority that the merger would be contested. Eniro subsequently withdrew the merger filing.



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