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February 2012

## Cheaper to book taxis from Arlanda – success for Delphi in the Market Court

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*Delphi recently assisted Uppsala Taxi 100 000 AB in a competition case against Swedavia AB (publ) and EuroPark Svenska AB concerning booking fees for taxis from Arlanda Airport. On 23 November 2011, the Market Court prohibited Swedavia and EuroPark subject to a conditional fine of SEK 2 million from charging a fee for booked taxis from Arlanda if the customer wants to be received by a taxi driver with a sign in the arrivals hall. This will now result in cheaper taxi fares for customers booking their taxis. Elisabeth Eklund, who acted as counsel in the case, reports on the case.*

### Background to the case

In February 2011, Swedavia and EuroPark introduced new routines concerning travellers who booked taxis from Arlanda Airport. By administrating the bookings, Swedavia and EuroPark introduced a SEK 25 fee for those customers wishing to queue at a service counter and an additional SEK 25 for those wishing to be received by a taxi driver directly in the arrival hall. The companies demanded that the taxi companies entered information about their bookings into Swedavia's and EuroPark's computer system, and therefore deemed themselves entitled to charge fees for booked taxis. It may be added that taxi customers have been paying SEK 35 for the past few years as a so called "remote fee" in order for the taxi companies to be allowed to operate from Arlanda.

For some 30 odd years, Uppsala Taxi has received customers who have booked taxis in the arrival hall without any surcharge and did not have the need for Swedavia's and EuroPark's administrative services. Uppsala Taxi was of the opinion that the fees were too high and that Swedavia and EuroPark abused their dominant positions on the market. Therefore, Uppsala Taxi brought action against Swedavia and EuroPark before the Market Court.

A company is typically deemed to be dominant if it has a market share of over 40 %, but a number of other circumstances must also be at hand. Holding a dominant position is not, in itself, prohibited, only the abuse of it is, which can consist of exclusivity agreements, loyalty discounts, discrimination, predatory pricing, excessive pricing, unfair agreement terms and illegal tie-ins.

Swedavia is the state-owned company which owns Arlanda and EuroPark is the supplier procured by Swedavia which manages the taxi queues at Arlanda and which is the contractual party to Uppsala Taxi. Uppsala Taxi claimed that Swedavia and EuroPark abused their dominant positions by introducing and charging the fees.

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This abuse consisted of overcharging, unfair agreement terms and illegal tie-ins. Booking of taxis to Arlanda is nothing new but is something Uppsala Taxi, which always been at the technological forefront, has been working with since 1980 without any charge for the customer, who is met by his/her driver at the arrival. For customers traveling to Uppsala, it is very important to be able to book a taxi since it is very difficult to find a taxi in the queue willing to drive to Uppsala, since the majority of all taxis want to drive south to Stockholm and its environs, away from Uppsala. If Uppsala Taxi can plan its traffic, this means that the costs can be kept low and is positive for the environment as well.

Because Uppsala Taxi did not previously charge for the service to collect the customers in the arrival hall, Swedavia's/EuroPark's new fees lead to the corresponding cost increase for Uppsala Taxi and, in the end, the taxi company's customers. In addition, other costs arose for Uppsala Taxi due to the new booking services and the resulting administrative work.

If the customer wishing to book his/her taxi chose not to pay the signage fee, but the lower cost, he/she instead had to go to Swedavia's service counter and wait for his/her driver, which could take up to ten minutes.

**The Market Court decision**

On 23 November 2011, the Market Court prohibited Swedavia and EuroPark, subject to a conditional fine of SEK 2 million from charging the additional signage fee. Uppsala Taxi primarily claimed that Swedavia and EuroPark had not shown that the fees were justified from a cost perspective; that it had emerged that the companies in calculating the size of the fees had also taken legal fees, from previous proceedings regarding the design of the queue system, into account; that there was no real possibility for Uppsala Taxi only to use the normal lane for customers wanting to go north; and that the costs were irrelevant since Uppsala Taxi did not need the services.

The Market Court found through the examination in the case that the purpose of the introduction of the booking services was, among other things, to make the flow of taxi traffic at Arlanda more efficient. In light of what emerged in the case and with respect to the limited space at Arlanda airport, the Market Court deemed that the introduction of a booking service and the charging of fees for the service counter did not constitute an unfair agreement term nor did the court deem that any excessive pricing or illegal tie-ins were at hand.

As regards the signage fee, the Market Court deemed that it constituted an abuse of dominant position in the form of unfair agreement terms. The court concluded that the SEK 25 fee had been determined after negotiations between Swedavia and EuroPark. Only 85 öre of this fee referred to a cost for a badge to facilitate the identification of authorized drivers in the arrival hall and the remaining portion was transferred to an "environmental fund" which was managed by EuroPark but with decision rights for Swedavia. However, no more detailed explanation was given as regards how the money in this fund was accounted for in the two companies.

The Market Court found that the signage fee lacked the requisite connection with the booked taxi traffic. No circumstances were presented which could satisfactorily show that the fee would lead to increased efficiency and shorter waiting times, and thus increased satisfaction amongst customers and taxi companies. Further, the court concluded that it could not be ruled out that possible problems could have been solved in other ways.

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Thus, the Market Court found that it must be deemed unreasonable to force the signage fee in question upon Uppsala Taxi. According to the Market Court, in this part such circumstances had been shown that both Swedavia's and EuroPark's actions are to be deemed as abuse of a dominant position. Swedavia and EuroPark were therefore ordered to cease charging the SEK 25 signage fee in question, subject to a conditional fine of SEK 2 million.

#### Conclusions

In order for a company to be able to bring action before the Market Court, the company is first required to submit a complaint to the Swedish Competition Authority. In this case, as in many other cases, the Competition Authority chose not to hear the complaint and dismissed it. The case at hand is one of several cases where a party uses its subsidiary right to bring action pursuant to the Competition Act and successfully litigates in the Market Court. Earlier in 2011 Bring CityMail Sweden AB was successful against Posten Meddelande AB. A so-called sorting discount was deemed to constitute abuse of a dominant position, and Posten was ordered to cease the discount, subject to a fine. Thus, once again it is worth emphasizing that the Competition Authority's dismissal of matters in certain cases does not mean that the action does not violate the competition rules, but is rather a reflection of the authority's priorities.

The judgment is an important success for Uppsala Taxi, which also means that travellers using other taxi companies do not have to pay the signage fee either. The fact that the Market Court chose not to deem the service counter fee to be an abuse of a dominant position can however be seen, in practice, as the result of a very high burden of proof being imposed on Uppsala Taxi. Especially in light of the fact that Uppsala Taxi did not have any need for the service in question since the company had handled this on its own for many years.

For those players which have a dominant position, the decision emphasizes the need to analyse, in great detail, price increases, the introduction of new fees and other pricing strategies in order to ensure that these are in compliance with the competition rules in order to avoid competition risk exposure.



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