



## **Cooperation of Competition Authorities under the new EU competition law**

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Thank you very much for inviting me to speak at this conference. Although Sweden and Finland are two different countries and represent different experiences, it is also clear that we share a more and more interrelated business community and we have historically a long tradition of close relationships.

These ties also have very personal expressions. Speaking after Matti Purasjoki from the Finnish Competition Authority is a bit like speaking after Odysseus. Not only was he a sailor, he also sailed the oceans successfully and managed to steer the ship clear between Schylla and Carybdis. I would like to thank Matti for his contributions in policy issues as well as in many practical cases where his leadership has been a stimulus and a challenge for us all. Furthermore he has for more than twenty years been an outstanding representative for Finland in the international arena. I would like to thank him for that and also with a bit of sadness say how much we regret that Matti will leave the leadership of the Finnish authority at the end of this year.

There are four main issues that I want to raise to day. Firstly, I will discuss the benefits of competition, and of larger markets, for consumers and companies. Second, I would like to describe the recent changes in the competition rules and enforcement as a necessary, and natural, consequence of economic development and integration. As our economies become increasingly common, so is the need to adopt and apply common rules. Third, an important aspect of the changes concerns the way in which competition authorities interact and cooperate. Indeed, that is also the title of my talk here today. Fourth and lastly, I will outline the three main challenges that we as competition authorities face.

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**1. The benefits of competition and larger markets**

Well-functioning markets are crucial to us all: for consumers to satisfy our basic needs, for companies to secure vital inputs and to safeguard a free and fair access to the marketplace. But well-functioning markets are not created by themselves. They also need fending and caretaking. They would not exist nor develop without rules or without institutions who enforce these rules. The rationale for competition rules is simple, almost trivial: businesses should compete, not divide up markets, abuse a dominant position or agree on prices. Companies should not become dominant by the means of purchasing rivals in the market. Competition is rivalry, and any action that eliminates such rivalry is to the detriment to consumers and companies.

When markets do not function well consumers lose in terms of higher prices, poorer service and eventually lower quality. But weak competition also have similar negative effects for companies. Over time, growth is negatively affected and the basis for our welfare erodes.

Therefore, welfare and economic growth requires markets that function well, and a balance in influence between consumers, companies and the government. Our vision for the competition policy reflects this – welfare through well-functioning markets. Sound competition is not a goal in itself but a means to achieve growth, variety and equity. The principal tool at our disposal is the competition rules, complemented with a strong advocative role to highlight the potential of markets.

Our economies are increasingly coming closer to each other. Companies try to enhance profitability and productivity by exploiting the economic gains that can be reached from international diversification and specialisation. Responding to costs and competences, companies may divide their research, production, marketing, and customer relations functions to different countries. If you call SAS from somewhere in Europe, it is not unlikely that you will end up in Tallinn, Estonia.

Generally speaking there are benefits for consumers and businesses to be realised from this. However, the process also entails costs to firms. Apart from different languages and different cultures, also rules differ. Not only do differences in rules and regulations represent direct costs for firms if they differ, costs also become visible in terms of opportunity costs. If a multinational company meets such differences when starting business in different countries this becomes an important consideration.

For consumers, the case is similar. If regulation creates barriers for firms to sell their products, or if products become more expensive, this clearly represents a

loss of welfare. Thus, strong forces can be identified that demonstrate the benefits of competition and larger markets, but also call for the streamlining of regulations.

## **2. Converging economies require common competition rules**

Also for Competition authorities and regulators the landscape has changed. In order to be efficient in our tasks we have to have a more uniform outreach in order to address problems that are multinational in character. The need for harmonisation in regulatory frameworks thus has become stronger over time.

The reforms of the competition rules within Europe should be understood in this perspective. In order to achieve a common market, competition rules need be fair and similar for players in different countries within the common market. When the modernisation regulation 1/2003 entered into force on the 1<sup>st</sup> of May, competition policy took a further step in this direction.

The fundamental changes that have taken place lately involve both technical advance and deregulation of markets characterised by natural monopolies. As trade increases, companies become more exposed to international competition. These developments are the main drivers behind the modernisation and international harmonisation of rules.

Fundamental changes also occur *within* national markets in many countries, including Finland and Sweden. A number of state-regulated markets have been reformed in order to allow for the forces of competition. Swedish examples include air and rail transport, electric generation and supply, telecommunications.

It is interesting to see that, as a consequence of these changes, this calls for a further integration of national markets. Let me just point at the market for electricity. The reforms that have been carried out have led to the creation of a common Nordic market. Although the different Nordic markets have been integrated, there are still concerns about how effective competition really is. Big national companies still have a large market share and might have considerable market power. This was analysed in a joint Nordic report last year "A powerful Competition Policy".

My view is that more competition is needed on the electricity market. One way of achieving that is by improving the infrastructure by strengthening the transmission capacity. The current bottlenecks in the infrastructure that connect the Nordic countries have the potential to occasionally restrict competition to national, or even smaller, markets. Further investments are therefore needed.

Another illustration of market changes that is a part of closer ties between economies is the development in the food retail sector in the Nordic countries. We have experienced new entries in the hard discount segment. The existing and dominating players respond to the enhanced competitive pressure with a strategy of both lowering prices and investing in high quality products. There are several indications that the development is to the benefit to consumers.

These changes make a uniform competition policy necessary. However, it also demonstrates that other parts of governmental policy are vital in order to achieve well-functioning markets.

If we look at competition rules more specifically, this development calls for more uniform and efficient *enforcement* on integrated markets. Important changes in the EU competition rules have thus been carried out. Companies can no longer notify their agreement routinely for clearance. Instead, this judgement now lies with the companies themselves. For this task, I believe they are well guided by 40 years of EC-case-law. The reform enables competition authorities in Europe to focus on the most serious competition problems, such as cartels.

The reforms also contain a framework for closer collaboration between competition authorities. This makes good sense as we employ the same rules when trade is affected. On a practical level, the authorities are connected to a newly developed electronic network, which serves as the platform for information exchange, the reception and request for advice on particular cases, and the coordinations of dawn raids.

The need for a more uniform approach goes even beyond enforcement. Also when dealing with *mergers* it is clear that companies invest on a pan-nordic or a European market. The multiple Swedish-Finnish mergers such as Stora Enso, Telia Sonera, Nordea and others are clear examples of this development.

Let me also say that competition authorities are not only engaged in applying the competition laws. Our task is also to see to it that national regulations do not impede foreign companies to enter national markets. In spite of the creation of the internal market, national barriers to entry are still an important competition problem within the European Union.

### **3. Cooperation between Competition Authorities**

The increased internationalisation of markets and companies during the last decades has led to an increased need for cooperation between competition authorities. As you all know, companies are seldom content by restricting their business to the domestic market alone. This development has also made it more likely that violation of competition rules are not confined to one country.

Exchange of information between competition authorities is therefore necessary. We have several platforms for exchange of non-confidential information – the Competition Committee of the OECD is one example. However, such exchange is not enough when it comes to revealing cartels and other serious violations of the rules.

To fill this gap, the competition authorities within the European Union launched a new and forceful instrument for cooperation, called the European Competition Network, ECN, on the 1<sup>st</sup> of May this year.

Four characteristics make this new form of co-operation special.

- The cooperation in the ECN is obligatory, not voluntarily as in other international forums for cooperation.
- Cases may be allocated between the members of the network
- Confidential information can be exchanged between the authorities
- The authorities can assist each other in information gathering, for instance in carrying out inspections to companies on the behalf of another authority.

The purpose is to make it possible for all competition authorities within the European Union, also including the European Commission, to detect and to stop serious violations of the competition rules in an efficient way. To achieve this, there are special mechanisms that make this cooperation different from other existing international cooperation agreements.

#### *Cooperation is obligatory*

The first characteristic I mentioned is the nature of this cooperation, namely that it is obligatory to cooperate. The 26 competition authorities in the EU are obliged to inform each other about new cases they intend to investigate. The motive for this obligation is the awareness that companies which operate in various countries may be engaged in illegal activities. If that is the case, competition may be damaged not only in one country. The information exchange may reveal that

there are indications that a cartel we suspect in Sweden is also operating here in Finland.

The obligation to exchange information also concerns the results of our investigations. The European Commission has a special role to monitor that the European competition rules are applied in a correct and consistent manner all over the Union. The Commission therefore scrutinizes the conclusions of our investigations before we take any final decision.

This is an important mechanism to ensure legal security for the companies. Businesses must be confident that the competition rules are applied in the same way, regardless of which competition authority is handling the case.

That leads me to the next characteristic of this co-operation: allocation of cases.

When markets in several countries are affected by a restriction of competition, for example a cartel, the question may arise - which authority is best placed to investigate the case? What is meant by "best placed"? Well, first of all the suspected violation must have a substantial effect in the jurisdiction of that authority. Second, the authority must be able to effectively take action, that is, to take a decision that stops the violation and to see to it that sufficient fines are imposed on the companies. Sufficient fines means that the fines have a real impact on the companies involved and have a strong deterrent effect on others.

In most cases, the competition authority that has received the complaint or started an investigation will be the one that handles the case. If more than three countries are concerned, the European Commission will generally be considered the best placed authority.

#### *Confidential information*

The exchange of confidential information is an absolutely necessary mechanism for the effectiveness of the cooperation between the competition authorities. At the same time it may be a mechanism of concern about legal security for companies. Confidential information that a company gives to a competition authority may be shared to other authorities in the network but every authority has to protect the information and cannot disclose it. This principle is very important.

This is also related to the leniency program, that is, the system applied in Sweden, Finland and the Union about immunity or reduction of fines. A company that reveals and collaborates with the authority in a cartel case of which it itself is a member, will be rewarded in terms of abolished or reduced fines. Is that a

guarantee of any value in the network? Well, the authorities in the network have declared that the company that has given the information will be protected and the information not used against the company even if that information is shared in the network. However, that guarantee does not extend to the other members of the cartel!

When the leniency system recently was introduced in Finland, it immediately demonstrated its potential! The Finnish Competition Authority received information from a company in the forest industry that seems to lead to the detection of one of the major cartel cases that have ever been revealed here in Finland.

#### *Assistance in the network*

The European Competition Network also gives the authorities the possibility to assist each other in the investigations. We can gather information for each other - let us say, the Finnish Authority may need information from a company active in Finland but domiciled in Sweden.

We may also carry out inspections, so called dawn raids, on the premises of companies on behalf of another national authority. Before the 1st May this year, this possibility was only open for the European Commission - the Swedish and Finnish authorities have several times assisted the Commission in its investigations in this way. That cooperation continues as before – the novelty is that we can also assist other national authorities.

Let me now try to sum up these changes in how we cooperate. The purpose of the cooperation in the European Competition Network is that all the competition authorities shall be able to use the European competition rules in an effective way against serious restrictions of competition on the market. The best placed authority will handle the case and the authorities can assist each other in the investigations and exchange confidential information.

The mechanisms for effective cooperation are in place. Investigations must no longer stop at the national border. The challenge for the competition authorities is now to effectively intervene against serious competition restraints that harm consumers and companies on the market.

#### **4. Challenges for competition rules enforcers**

The vision for competition is to achieve welfare through the establishment of well functioning markets. Companies should compete, not conspire against consumers by organising cartels or by abusing market power. This is an important mission for competition authorities. Hence, we meet three main challenges.

*The first challenge is to make enforcement effective*

We must free resources in order to detect and enforce cartels. This already features high on the agenda among Competition Authorities. The fact that as of May 1, companies will not have the possibility to receive clearance of their contracts, will facilitate the allocation of resources in this direction.

Furthermore, we must make sure that sanctions do have a sufficient bite. Fines should be set on a level that constitutes a true and real deterrence.

However, high fines are not enough. We must also spread the message that those who give information about their participation in a cartel can be freed from sanctions. Legislation across Europe has been modified so that informers can have real incentives to provide information. International experiences show that such rules are one of the most efficient means to destabilise and fight cartels.

As I mentioned recently our Finnish colleagues had a confirmation about this related to the forest industry.

From a Swedish perspective we have been struggling with problems in the asphalt industry. We have brought a number of companies before court, for taking part in a bid-rigging cartel. Municipalities and consumers have lost lots of money as a result of their price-fixing and market-sharing agreements. We have requested that the eleven companies involved should be imposed fines totalling 1.600 million Swedish kronas.

But we know that we are not alone in dealing with these problems. Investigations on cartels in the asphalt industry have also taken place in Norway and in Finland. Some companies are present in all investigations. My point is that there may be links between cartels in our countries and that modernisation gives us stronger weapons to deal with this.

In order to work with the detection of cartels or abuse we have upgraded a special function in the Swedish Competition Authority. The task is to collect and systemize information. One example is to look at procurement and to identify profiles of abuse. Another is to more rapidly collect information when complaints are filed.

Another important area to make the enforcement more efficient is to develop the collaboration within the network of European competition authorities. This will help us to better collect information, to coordinate and to analyse. This is still in its early stages and it will be up to the authorities to use the inherent potential. However, the start has been promising and the potential is big.

Another way to enhance efficiency is to develop the oral part of the investigation procedures. The Swedish Competition Authority will be improving proceedings by offering the parties the possibility to have oral proceedings. The experiences from the EU Commission show that this saves time, increases quality and facilitates a better focus. For companies, this improves the possibility to describe the conditions of a market.

*The second challenge is to contribute to a business culture where the rules are respected*

It is necessary to encourage a more widespread acceptance and respect for the rules among companies and their employees. This is a big challenge, but a number of good signs can be registered. Violations of competition rules are increasingly considered as just another kind of economic crime, as morally reprehensible as fraud, tax evasion or pure theft. This makes the climate in which we work more favourable to our objectives.

Companies must learn the rules. It is our responsibility to assist them in this quest for knowledge. The level of knowledge differs a lot among companies. It is also clear that companies that turn to us sometimes have unrealistic expectations about what can be achieved. This dialogue has a lot of potential since it can help companies better understand what is forbidden and what is acceptable. Better knowledge in the corporate sector is therefore paramount for better compliance of the rules. Another aspect of company culture is related to companies' perceptions of rules. If we use sanctions more aggressively it will create better incentives for proper behaviour.

*The third challenge is to make the voice of the victims heard*

Unfortunately, the victims of breaches of competition rules seldom or never get compensation for their losses. I am now talking about consumers, companies and tax-payers. This is true in the Nordic countries as well as in the European Union overall. Therefore the number of civil litigation processes in our courts must increase. In the US around 90 per cent of cases of breaches of competition rules relate to private litigation.

The Commission is currently working to increase civil litigation also in Europe. Of course, it is equally important also for national authorities. In Sweden we have a promising example. Recently ten municipalities sued asphalt companies for the excessive prices they paid as a result of their cartel. Money badly needed for schools, health care and welfare. As a citizen, it is understandable that these actions appear criminal. It is time to make the voice of the victims heard.