



ICLG

The International Comparative Legal Guide to:

Cartels & Leniency 2019

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General Chapters:

1	Cartel Updates: Recent Trends in Fine Calculations and Cartel Liability – Elvira Aliende Rodriguez & Geert Goeteyn, Shearman & Sterling LLP	1
2	The Proposed Whistleblowers Directive – Ingrid Vandenborre & Thorsten Goetz, Skadden, Arps, Slate, Meagher & Flom LLP	6
3	Navigating the Tensions Between Leniency Cooperation and the Risk of Private Follow-On Damage Claims in Cartel Cases – Niels Ersbøll & Jane Wessel, Arnold & Porter Kaye Scholer LLP	12
4	Disincentives to Leniency: Expect Fewer Golden Eggs if You Harass the Goose – Frédéric Louis, Wilmer Cutler Pickering Hale and Dorr LLP	18

Country Question and Answer Chapters:

5	Australia	King & Wood Mallesons: Sharon Henrick & Wayne Leach	23
6	Austria	Preslmayr Rechtsanwälte OG: Dieter Hauck	33
7	Belgium	Crowell & Moring: Thomas De Meese	40
8	Canada	Cassels Brock & Blackwell LLP: W. Michael G. Osborne & Chris Hersh	46
9	China	King & Wood Mallesons: Susan Ning & Kate Peng	53
10	Ecuador	ML Abogados: María Teresa Lara & Ricardo Montalvo	62
11	European Union	Shearman & Sterling LLP: Elvira Aliende Rodriguez & Geert Goeteyn	70
12	Finland	Borenus Attorneys Ltd: Ilkka Aalto-Setälä & Henrik Koivuniemi	80
13	France	Aramis: Aurélien Condomines & Pierre Galmiche	87
14	Germany	Shearman & Sterling LLP: Mathias Stöcker	94
15	Hungary	Bán, S. Szabó & Partners: Chrysta Bán & Álmos Papp	102
16	India	Cyril Amarchand Mangaldas: Avaantika Kakkar & Bharat Budholia	109
17	Italy	Shearman & Sterling LLP: Paolisa Nebbia	116
18	Japan	Nagashima Ohno & Tsunematsu: Yusuke Kaeriyama & Takayuki Nakata	123
19	Macedonia	Debarliev Dameski & Kelesoska, Attorneys at Law: Dragan Dameski & Jasmina Ilieva Jovanovik	128
20	Malaysia	Rahmat Lim & Partners: Raymond Yong & Penny Wong	136
21	Malta	Mamo TCV Advocates: Annalies Muscat & Laura Spiteri	142
22	Netherlands	AKD: Joost Houdijk & Robbert Jaspers	150
23	New Zealand	MinterEllisonRuddWatts: Jennifer Hambleton & Alisaundre van Ammers	157
24	Portugal	Morais Leitão, Galvão Teles, Soares da Silva & Associados, R. L.: Luís do Nascimento Ferreira & Inês Gouveia	164
25	Singapore	Drew & Napier LLC: Chong Kin Lim & Dr. Corinne Chew	176
26	Spain	King & Wood Mallesons: Ramón García-Gallardo	183
27	Sweden	Hannes Snellman: Peter Forsberg & Haris Catovic	199
28	Switzerland	AGON PARTNERS: Patrick L. Krauskopf & Fabio Babey	206
29	Turkey	ELIG Gürkaynak Attorneys-at-Law: Gönenç Gürkaynak & Öznur İnanlır	212
30	United Kingdom	Shearman & Sterling LLP: Matthew Readings & Ruba Noorali	221
31	USA	Paul, Weiss, Rifkind, Wharton & Garrison LLP: Charles F. (Rick) Rule & Joseph J. Bial	229

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Sweden

Hannes Snellman

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1 The Legislative Framework of the Cartel Prohibition

1.1 What is the legal basis and general nature of the cartel prohibition, e.g. is it civil and/or criminal?

The Swedish Competition Act (2008:579) (Competition Act) came into force on 1 November 2008 and governs all aspects of Swedish competition law. The legal basis for the prohibition of anticompetitive agreements is provided in Section 2 of the Competition Act and it is under this provision that cartels are regulated. The Competition Act does not provide a legal definition of what a cartel is, but it is generally understood to be an agreement entered into between competitors to distort competition.

The Swedish Competition Authority (SCA) is the central administrative authority for the enforcement of the competition rules in Sweden and is entrusted with investigative powers as well as rights of intervention; however, the SCA does not have the power to impose fines in individual cases.

Swedish competition law is of a public and administrative nature and does not prescribe criminal sanctions. The prohibition against anticompetitive agreements in the Competition Act primarily affects undertakings and not individuals. The public sanctions comprise orders to bring an infringement to an end, interim measures and imposition of administrative fines. The civil sanctions constitute actions for damages by private litigants. However, a trading prohibition can be imposed on an individual in cases of particularly severe cartel infringements. The SCA will impose a trading prohibition only in situations where it is considered to be in the public interest and the individual in question has seriously failed to fulfil its obligations.

1.2 What are the specific substantive provisions for the cartel prohibition?

The legal basis for the prohibition of anticompetitive agreements is set out in Section 2, paragraph 1, of the Competition Act and is modelled in accordance with the prohibition provided in Article 101(1) TFEU. The prohibition consists of four elements and becomes applicable if: (i) there is an agreement or concerted practice; (ii) between two or more undertakings and the agreement or concerted practice; (iii) has as its object or effect, the prevention, restriction or distortion of competition; and/or (iv) in the Swedish market to an appreciable extent thereof. The Competition Act contains a non-exhaustive list of corporate conduct that is prohibited

by the prohibition in Section 2, paragraph 1, and corresponds in its entirety to Article 101(1) TFEU.

An exemption from the prohibition against anticompetitive agreements is provided in Section 2, paragraph 2, of the Competition Act and correlates in substance and structure with Article 101(3) TFEU.

1.3 Who enforces the cartel prohibition?

The prohibition against anticompetitive agreements is administered and enforced by the SCA as well as the courts. As of 1 September 2016, a new court system for competition law infringement proceedings was established. The Patent and Market Court (PMC) was established as a division within the Stockholm District Court (SDC) as the first instance in competition law violation and merger control proceedings. The PMC is also the first instance in damages actions, including “stand alone” actions, which are handled as civil law matters. Decisions and judgments by the PMC can be appealed to the Patent and Market Court of Appeal (PMCA), which replaced the Market Court (MC) as, in principle, the highest instance. A precondition for the PMCA to hear and conduct an examination of an appealed case or matter is that the court grants leave to appeal. The reorganisation of the court system was deemed necessary due to the complex and comprehensive nature of competition law and merger control cases. The intention is to obtain a more uniform examination and handling of competition law matters.

1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

The SCA conducts cartel investigations either on its own initiative, on the basis of a complaint from a third party or following a leniency application. The powers of the SCA stem from the provisions in Section 5 of the Competition Act and provide the authority with tools to gather sufficient evidence to establish the existence of an infringement. The SCA’s investigative powers include, for instance, conducting unannounced on-site inspections (dawn raids) upon approval by the PMC. If the court approves the SCA’s application to conduct an inspection, the authority is empowered to examine business records, take copies of documents as well as having access to any of the inspected undertaking’s premises, land, means of transport and other areas. Independently of a court approval, the SCA may order undertakings to submit information, order employees and representatives of the inspected undertaking and other individuals likely to be in possession of relevant information

to appear for interrogation. Once the SCA has gathered sufficient evidence, a draft summons application (which is equivalent to a statement of objections (SO)) will be issued for review by the concerned undertakings. Before the SCA can bring an action for prohibition of the alleged anticompetitive agreement, the implicated undertakings must be given an opportunity to comment upon the SCA's draft summons application. Subsequently, the SCA may file the summons application to the PMC, which is the first instance in competition law and merger control proceedings. The PMC's judgment can be appealed to the PMCA, which is (in principle) the final instance in competition law matters.

1.5 Are there any sector-specific offences or exemptions?

The Competition Act includes legal exemptions from the prohibition against anticompetitive agreements, such as certain arrangements relating to the agriculture, forestry and horticulture sectors (Section 2, paragraph 4) and taxi services (Section 2, paragraphs 3 and 5). The taxi services exemption provides a safe harbour for certain written agreements between taxi undertakings and a central booking service. In addition, the Swedish competition law regime includes block exemptions which are equivalent in substance to those that apply at EU level.

1.6 Is cartel conduct outside your jurisdiction covered by the prohibition?

The scope of the prohibition against anticompetitive agreements is not necessarily limited to anticompetitive conduct within the Swedish territory. The Competition Act becomes applicable to any infringement with an effect on the Swedish market, irrespective of whether the agreement itself or the undertakings concerned have any connection to Sweden and regardless of whether the infringing practice was conducted in Sweden or abroad.

2 Investigative Powers

2.1 Summary of general investigatory powers.

Table of General Investigatory Powers

Investigatory Power	Civil/Administrative	Criminal
Order the production of specific documents or information	Yes	N/A
Carry out compulsory interviews with individuals	Yes	N/A
Carry out an unannounced search of business premises	Yes*	N/A
Carry out an unannounced search of residential premises	Yes*	N/A
■ Right to 'image' computer hard drives using forensic IT tools	Yes	N/A
■ Right to retain original documents	No	N/A
■ Right to require an explanation of documents or information supplied	Yes	N/A
■ Right to secure premises overnight (e.g. by seal)	Yes*	N/A

Please Note: * indicates that the investigatory measure requires the authorisation by a court or another body independent of the competition authority.

2.2 Please list specific or unusual features of the investigatory powers referred to in the summary table.

During an unannounced on-site inspection, the SCA does not have the legal right to review documents or storage devices containing information covered by legal privilege. In the event of a dispute on whether a particular document is legally privileged, the document in question is immediately to be sealed and sent by the SCA to the PMC for the matter to be determined without delay by the court. In practice, the threshold to establish that a particular document is protected by legal privilege is set rather low. In matter Å 6673-11, *Posten AB et al.*, the SCA discovered a memorandum written by the undertaking's in-house legal counsel during an unannounced on-site inspection. The undertaking claimed that the document was written for the purpose of obtaining external legal advice and, as such, it should be covered by legal privilege. The court agreed with the claimant and consequently considered that every written document which has been entrusted to a counsel within its profession is protected by legal privilege. The court reached a similar conclusion in matter PMÅ 13109-16, *Geberit AB*, with respect to notes drafted by a managing director in advance of a meeting with external legal counsel.

In order for the SCA to examine and take copies of electronically stored data to be reviewed at its own premises, the undertaking or individual subject to the inspection must give its consent. Representatives or legal counsels of the inspected undertaking are entitled to be present and supervise while the SCA investigates digital data.

In MD 2015:15, the MC held that the SCA did not have the authority to use previously mirrored material collected at an unannounced on-site inspection relating to another alleged violation to investigate a potentially new infringement of the Competition Act, hence clarifying that "fishing expeditions" are unlawful.

2.3 Are there general surveillance powers (e.g. bugging)?

The SCA is not empowered to use general surveillance powers in cartel investigations.

2.4 Are there any other significant powers of investigation?

The SCA can order an undertaking subject to an unannounced on-site inspection to provide the SCA with the information and documents needed for the investigation. The SCA may also order oral clarifications and explanations directly on the site.

2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?

Searches of business and residential premises are carried out by SCA officials. The SCA is often accompanied by the Swedish Enforcement Authority, which can assist in gaining access to the premises and may seal these premises during an unannounced on-site inspection.

The undertaking has the right to have a legal representative present during an investigation; however, generally, the presence of legal counsel is not a precondition for the commencement and execution of the inspection. The undertaking's legal representative shall always be given the opportunity to review all the documents that the SCA intends to make a copy of before the unannounced on-site inspection finishes.

2.6 Is in-house legal advice protected by the rules of privilege?

Solely legal advice by an external legal counsel which is a member of the Swedish Bar Association or his/her associate is legally privileged (Section 5, paragraph 11, of the Competition Act). However, case law has confirmed that memorandums written by an in-house counsel for the purpose of obtaining external legal advice are also covered by legal privilege (see question 2.2 for a detailed account).

2.7 Please list other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

According to Section 5, paragraph 13, of the Competition Act, individuals or undertakings that are subject to an obligation to supply information pursuant to the Competition Act must not be unduly burdened. The provision reflects a general principle of proportionality that the SCA must comply with when it exercises its investigative powers. The SDC has on some occasions (e.g. matters Å 5791-11 and Å 7672-11) dismissed the SCA's application to conduct an unannounced on-site inspection. Both applications were, however, approved on appeal to the MC, where the SCA provided clarifications to its application for carrying out the inspections.

2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used? Has the authorities' approach to this changed, e.g. become stricter, recently?

Undertakings and individuals subject to an unannounced on-site inspection of business or residential premises have a general obligation to cooperate with the SCA. There are no direct sanctions in case of non-compliance with this obligation, although a decision to conduct an inspection can be combined with an administrative penalty in the event of non-compliance. However, it is a criminal offence to either obstruct an official function or damage or remove an official seal.

3 Sanctions on Companies and Individuals

3.1 What are the sanctions for companies?

At the request of the SCA, the PMC may order the investigated undertaking to pay an administrative fine. The administrative fine may not exceed 10 per cent of the annual turnover of the concerned undertaking in the preceding financial year and is calculated based on the relevant economic entity's aggregated annual turnover, e.g. a fine to be imposed on a subsidiary of a corporate group is calculated on the basis of the turnover of the whole corporate group. If the action relating to the administrative fine is brought against several undertakings, the fine is determined individually for each undertaking. The SCA uses a two-step methodology when determining the amount of the fines. As an initial step, the sanction value of the infringement is set for each undertaking. The sanction value is determined by reference to the turnover in the relevant market, the gravity of the infringement and its duration. Infringements such as horizontal price-fixing, market-sharing and output-limitation agreements are in principle deemed to be severe in nature and will place the sanction value high on the scale. The second step adjusts the sanction value upwards or downwards, depending

on aggravating and mitigating circumstances attributable to the violation. Examples of aggravating circumstances are, *inter alia*, if an undertaking has coerced another undertaking to participate in the infringement, or if it had a leading role. Conversely, mitigating circumstances are, for example, if an undertaking's participation in the infringement was of a limited extent, or if it participated in the infringement through negligence.

In practice, the courts tend to set the amount of the administrative fines at a lower level than what was originally claimed by the SCA. For instance, in the *Passenger Cars Cartel* (MD 2008:12), the SCA claimed that the members of the cartel were liable to pay administrative fines totalling SEK 71.3 million. The concerned undertakings were ultimately imposed administrative fines of approximately SEK 21 million.

The SCA has the power to issue an injunction against an undertaking to terminate an infringement of the prohibition against anticompetitive agreements. The injunction is made effective immediately and may be imposed in combination with an administrative penalty in the event of non-compliance.

Furthermore, the SCA is authorised to impose an interim order to stop the infringing practice until a final court decision is taken on the matter.

3.2 What are the sanctions for individuals (e.g. criminal sanctions, director disqualification)?

A trading prohibition can be imposed on an individual in cases of particularly severe cartel infringements, such as price-fixing arrangements, limiting or controlling production or market-sharing. The SCA will only bring a claim for the imposition of a trading prohibition where it is considered to be in the public interest to do so and if the individual has seriously failed to fulfil its obligations. Furthermore, an individual can obtain immunity from a trading prohibition if the person: (i) has a position at an undertaking that has been granted immunity from or reduction of an administrative fine; or (ii) personally has cooperated to a significant extent in facilitating the SCA's investigation of the infringement.

3.3 Can fines be reduced on the basis of 'financial hardship' or 'inability to pay' grounds? If so, by how much?

Section 3, paragraph 8, of the Competition Act specifies that the administrative fine shall be set according to the sanction value of the infringement. When assessing the sanction value, account is taken of the gravity and nature of the infringement and its duration. As a mitigating circumstance, Section 3, paragraph 10, of the Competition Act states that special account is taken of whether a cartel member has participated in the alleged infringement to a limited extent. While the Competition Act does not explicitly mention "financial hardship" or "inability to pay" as a basis to reduce the administrative fine, the provision appears to leave discretion to the courts in this regard.

3.4 What are the applicable limitation periods?

The SCA may only impose an administrative fine if the allegedly infringing parties are served with a summons application within five years from when the infringement ceased.

However, if the undertaking concerned has been subject to an unannounced on-site inspection or has been given the opportunity to respond to a draft summons application within the five-year period, the limitation period instead starts from that later point in time. In

all circumstances, an administrative fine may only be imposed if the summons application has been served within 10 years from the date when the infringement ceased.

3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

Since an administrative fine based on an infringement of competition law cannot be imposed on an individual employee, this issue is not of relevance in Swedish cartel proceedings.

3.6 Can an implicated employee be held liable by his/her employer for the legal costs and/or financial penalties imposed on the employer?

According to Section 4, paragraph 1, of the Swedish Tort Liability Act (1972:207), an employee may only be held liable for damages caused within the employment in exceptional circumstances, with regard to the nature of the damaging act, the status of the employee, the interests of the injured party and other relevant circumstances. Exceptional circumstances can be at hand if the employee has committed a severe criminal offence or been in situations of serious or repeated negligent acts. However, no damages can be claimed if the employee caused the harm with only minor negligence.

3.7 Can a parent company be held liable for cartel conduct of a subsidiary even if it is not itself involved in the cartel?

The parent company of a company group can be held jointly and severally liable for the infringing conduct committed by another company over which the parent company exercises decisive influence (i.e. control), even in the absence of any blame or involvement on the part of the parent company.

4 Leniency for Companies

4.1 Is there a leniency programme for companies? If so, please provide brief details.

The Competition Act regulates the leniency programme in Section 3, paragraphs 12 to 15. These rules were amended in 2014 to introduce greater predictability and to further mirror the EU leniency system, particularly through the addition of a marker system. The SCA has issued guidelines regarding its interpretation of the provisions regulating the leniency programme, the requirements for immunity or reduction from the administrative fines and the procedure that the SCA applies in these matters (Leniency Guidelines).

The Swedish leniency regime entitles the SCA to grant an undertaking either immunity or a reduction of an administrative fine.

In situations where the SCA has not yet obtained sufficient evidence to conduct an unannounced on-site inspection, immunity may be granted to the first undertaking to notify the authority of an infringement. This is on condition that it is as a result of information provided by the leniency applicant, and that the SCA has collected sufficient information to take action against the infringement (category 1 leniency).

Alternatively, if the SCA has already obtained sufficient evidence to conduct an unannounced on-site inspection without the information provided by the leniency applicant, immunity may still be granted if the undertaking is first to provide information which establishes

the existence of an infringement or facilitates the investigation of the infringement in some other way to a very significant extent (category 2 leniency).

In both situations described above, an undertaking applying for leniency must also fulfil the following cumulative conditions: (i) provide the SCA with all the information and evidence about the infringement which the undertaking has at its disposal or gets access to; (ii) actively cooperate with the SCA during the whole investigation of the infringement; (iii) not destroy evidence or in another way hinder the present or future investigation of the infringement; and (iv) terminate its participation in the infringement as soon as possible after a leniency application or after it has provided the information.

Pursuant to Section 3, paragraph 13, of the Competition Act, an undertaking which is not the first to apply for leniency can still receive a reduction of the administrative fines. A reduction will be available to undertakings which provide the SCA with information that facilitates the investigation to a significant extent. The cumulative conditions (i) to (iv) explained above in relation to leniency applicants apply equally to those seeking a reduction of the administrative fines. The SCA states in the Leniency Guidelines that it applies a restrictive interpretation of the provision and that the possibilities to obtain a fine reduction are very limited.

The first undertaking to fulfil the relevant conditions will be eligible to a 30–50 per cent reduction; the second undertaking can receive a discount of up to 20–30 per cent; and additional undertakings stand to benefit from a reduction of up to 20 per cent. In determining the adequate reduction, the SCA will take into account the timing of providing the information, the extent to which the information has added value and the continuity of the applicant's cooperation throughout the investigation.

Leniency from administrative fines will not be granted to an undertaking that has coerced another undertaking to participate in the infringement. If an undertaking, following threats or pressure, has coerced another undertaking to participate in the infringement, this undertaking does not fulfil the conditions for leniency in the form of immunity from fines. An undertaking that has initiated, maintained or played a leading part in the infringement is, however, not excluded from immunity. An undertaking that has coerced another undertaking to participate in the cartel may instead be granted a reduction of the administrative fine.

4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

The marker system within the leniency regime allows an undertaking to apply for a marker and thus be granted an extension period for submitting the extensive information. The minimum requirement in order to obtain a marker is that the initial notification contains information about which product the infringement relates to, which other undertakings are participating in the infringement and the subject matter of the infringement. The SCA gives the undertaking an extension period to provide the extensive information required for granting immunity from an administrative fine. The extension period is set to two weeks, as a general rule. Another undertaking cannot jump the queue for leniency, unless the undertaking applying for a marker fails to submit the extensive information within the prescribed period.

4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

Leniency applications are not required to follow a certain form and can be made both by written submissions and orally.

4.4 To what extent will a leniency application be treated confidentially and for how long? To what extent will documents provided by leniency applicants be disclosed to private litigants?

In Sweden, there is a strong legal tradition of transparency. As a starting point, all public documents created by, or submitted to, a public authority can in principle be requested. However, access to certain information and data in the SCA's investigations can be restricted due to that material falling within the scope of the Public Access to Information and Secrecy Act 2009:400 (Secrecy Act) and as such, being protected by confidentiality. The decision to grant access to a public document is made by the authority in possession of the document and each document is individually assessed. From the submission to the SCA to at least when the authority files a summons application, leniency applications are confidential under Section 30, paragraph 3, of the Secrecy Act. Nevertheless, in order to guarantee a party's right to properly prepare its defence and to safeguard its interests, a party to the matter has the right to access files even if they are confidential, unless there are exceptional reasons not to disclose the information in question.

Further, confidentiality is available for business secrets, information which may be injurious to an individual concerned and to protect the integrity and objectives of the SCA's investigative process.

After the conclusion of a cartel investigation, private litigants may demand access to the public documents regarding the investigation. However, information covered by confidentiality during the SCA's investigation continues to be confidential once the cartel investigation has ended, if it can be assumed that disclosure of the information would cause significant damage or detriment to a private party. The files are confidential for a maximum period of 20 years. Consequently, private litigants have limited possibilities to gain access to, for instance, a leniency application once the SCA's investigation has concluded.

4.5 At what point does the 'continuous cooperation' requirement cease to apply?

The leniency applicant shall actively and continuously cooperate with the SCA throughout the whole infringement investigation. The Leniency Guidelines state that the applicant is also expected to cooperate with the SCA during potential court proceedings. The leniency applicant has an obligation to uphold the information it submitted to the SCA throughout the court proceedings.

4.6 Is there a 'leniency plus' or 'penalty plus' policy?

There is no "leniency plus" or "penalty plus" available within the current Swedish leniency regulatory framework.

5 Whistle-blowing Procedures for Individuals

5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

Any third party can make an anonymous complaint or provide the SCA with information regarding a competition law infringement.

6 Plea Bargaining Arrangements

6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)? Has the competition authorities' approach to settlements changed in recent years?

The SCA cannot agree to a plea bargain to resolve an investigation, but there is a form of settlement procedure. In cases where the facts are uncontested between the parties, the SCA may issue a fine order to settle the cartel investigation. The settlement proceeding is based on voluntariness and the undertaking concerned may choose to either accept or disregard the SCA's terms for settlement. A fine order is a binding settlement and the SCA issues a simplified decision on competition law liability. However, the settlement can be appealed to the PMC within a year from the written confirmation.

7 Appeal Process

7.1 What is the appeal process?

In Sweden, it is not the SCA that takes an infringement decision. Upon hearing the arguments of the SCA and the defendants and reviewing the written and oral evidence of the case, it is the PMC which decides the imposition and the amount of the administrative fines. The PMC's judgment and decisions can be appealed to the PMCA, which in principle is the second and ultimate instance in competition law infringement proceedings. An appeal to the PMCA will involve a full examination of facts and substance, affecting both the legal assessment and sanctions. The PMCA must grant leave to appeal before the court will hear and conduct an examination of an appealed case or matter. The PMCA will, for instance, grant leave to appeal if there is an alleged error of law in the PMC's judgment or if the judgment by the PMCA is necessary because of the importance of the case for the future application of the law.

7.2 Does an appeal suspend a company's requirement to pay the fine?

If the PMC's judgment is appealed, the imposed administrative fine will not be legally enforceable until the matter has finally been determined by the PMCA.

7.3 Does the appeal process allow for the cross-examination of witnesses?

Oral hearings are part of the court proceedings in cartel cases and witnesses can be cross-examined by the SCA and the defendant.

8 Damages Actions

8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct? Is the position different (e.g. easier) for 'follow on' actions as opposed to 'stand alone' actions?

On 27 December 2016, a new act on antitrust damages (the Competition Damages Act (2016:964)) entered into force in Sweden.

The Competition Damages Act governs actions for damages for infringements of competition law and implements the EU Antitrust Damages Actions Directive (Antitrust Damages Actions Directive). The aim of the new legislation is to facilitate for companies and consumers that have suffered harm to claim compensation for competition law violations. The new legislation changes and clarifies rules on liability, limitation periods, compensation, right of recourse, the passing-on defence, disclosure and other procedural matters.

Section 2, paragraph 1, of the Competition Damages Act states that an undertaking which intentionally or negligently commits a competition law infringement shall compensate the damage that is caused thereby. As a general rule, if there is more than one infringer, the infringers are jointly and severally liable for the damages caused by the infringement. Competition damages actions follow the general principles of the law on torts and the burden of proof rests with the claimant. However, in cartel infringements, there is a presumption that the cartel infringement caused the damage. The scope of those entitled to claim damages is not defined in the Competition Damages Act but is limited by general principles of tort law, including proximate cause. If an indirect purchaser has suffered a loss due to the passing-on of overcharges, this will in principle give standing to bring an action for damages. The consequence of this is that defendants are permitted to argue *vis-à-vis* direct purchasers that their losses have been passed on downstream to end consumers.

A party that has suffered economic harm due to an infringement of competition law is entitled to claim compensation if the party can prove causation and the extent of the harm. The compensation for the harm suffered covers compensation for pure economic loss, i.e. actual losses and loss of profit as well as interest. The right to recover damages is compensatory in nature and does not involve a punitive element. In relation to indirect buyers, the Competition Damages Act states that when calculating the compensation, an overcharge will, unless otherwise proven, be considered to have been passed on to an indirect buyer if the infringement caused an overcharge for the direct buyer.

Certain practical difficulties are frequently united with the assessment of damages, for instance providing sufficient evidence to prove the existence of damages suffered due to a competition law infringement. To this end, Section 35, paragraph 5, of the Swedish Code of Judicial Procedure (1942:740) (Judicial Code) provides the court with discretion to estimate the damages to a reasonable amount if full proof cannot be presented. According to the preparatory works of the Judicial Code, application of this rule is particularly appropriate in proceedings regarding competition law damages actions.

The PMC is the first instance handling actions for cartel damages. The PMC's judgment or decision can be appealed to the PMCA. However, the PMCA will have to grant leave of appeal prior to hearing and conducting an examination of an appealed case or matter.

The law does not distinguish different procedures for "follow on" and "stand alone" actions, respectively. However, in practice, a "follow on" action eases the claimant's burden of proof, since the competition law infringement has been established by a court judgment. A "stand alone" action increases the investigatory and evidential burden of the claimant, since the injured party cannot base its claim on a court decision or judgment.

8.2 Do your procedural rules allow for class-action or representative claims?

Swedish procedural rules allow for a group of undertakings or

consumers to bring a claim for damages collectively. However, to our knowledge, this possibility has never been used in Swedish competition law damages cases. Furthermore, if the court finds it appropriate, the SCA's claim for the imposition of administrative fines may be jointly processed with a private litigant's action for damages.

8.3 What are the applicable limitation periods?

The Competition Damages Act stipulates a statutory limitation period of five years from the moment when the infringement ceased, provided that the claimant became aware of, or could reasonably be expected to have been aware of, the infringement, that this behaviour caused harm and the identity of the infringer. The limitation period will be suspended or interrupted when the SCA initiates infringement proceedings. A new limitation period commences from the day when there is a legally binding decision on the infringement or if the authority concludes its investigation.

8.4 Does the law recognise a "passing on" defence in civil damages claims?

The "passing-on" defence is recognised by Swedish competition law. See question 8.1 for a more detailed description of the passing-on defence in Swedish competition law litigations.

8.5 What are the cost rules for civil damages follow-on claims in cartel cases?

The legal cost rules stipulated in the Judicial Code for civil matters apply in competition damages actions. The main rule is that the losing party in a civil matter shall reimburse the opposing party's litigation costs. However, the litigation costs may be determined and apportioned in relation to the amount of damages that the party has claimed and the degree of success of each party. If compensation for litigation costs are to be compensated by several parties joined on the same side, the parties are severally liable for the costs.

8.6 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct? If there have not been many cases decided in court, have there been any substantial out of court settlements?

We are not aware of any successful judgments in regard to competition damages claims for cartel conduct, but there have been a number of cases initiated where the involved parties eventually decided to settle the dispute out of court. There are, however, several damages actions related to abuse of dominance cases where private litigants have been successful in recovering damages.

9 Miscellaneous

9.1 Please provide brief details of significant, recent or imminent statutory or other developments in the field of cartels, leniency and/or cartel damages claims.

There are no imminent statutory developments to report.

9.2 Please mention any other issues of particular interest in your jurisdiction not covered by the above.

There are no other issues to report.

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