The winner does not take it all. Swedish Court of Appeal says co-operation between competing bidders is not restrictive by object

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Introduction

The Swedish Patent and Market Court of Appeal (the PMCA) has in two recent cases assessed the lawfulness of co-operation and information exchange in public procurements. Both cases, *Aleris*[1] and *Telia*,[2] related to sub-contracting arrangements between at least potentially competing bidders. Somewhat surprisingly, the PMCA concluded that the arrangements could not be deemed to be object restrictions under art.101 of the EU Treaty and the corresponding prohibition contained in the Swedish Competition Act.

In both cases, the PMCA was apparently influenced by the judgment of the Court of Justice of the EU (the CJEU) in *Cartes Bancaires* where the CJEU provided a reminder that the concept of object restrictions must be interpreted restrictively.[3] But in contrast to *Cartes Bancaires*, which concerned a complex co-operation in a two-sided market, established to address genuine free-riding concerns, the arrangements in *Aleris* and *Telia* concerned co-operation and information exchange in procurements between firms with the capacity to submit individual bids. The Swedish Competition Authority (the SCA) pursued both cases on simple and well-tried theories of harm. The arrangements obviously reduced, if not eliminated, the strategic uncertainty between the co-operating firms. By ensuring that the winner would not "take it all", the conduct reduced the parties' incentive to compete. The SCA was successful in the first instance in both cases. The Patent and Market Court (the PMC) concluded that the arrangements constituted an object infringement and imposed fines.[4] On appeal, however, the PMC's judgments were overturned.

This article discusses the *Aleris* and *Telia* cases and examines the PMCA's object analysis. It concludes that the PMCA's reasoning is unconvincing and, in certain respects, difficult to reconcile with EU case law and underlying economic theory. It is submitted that the precedential value of the judgments is limited and that it would be risky to rely upon them as a justification for sub-contracting or similar arrangements between actual or potential competitors in procurements.

Aleris

Background

This case stems from 2008, when Stockholm County Council ("SCC") procured services within clinical physiology and clinical neurophysiology.

When patients in Stockholm are referred to specialists in clinical physiology, the examination is paid for by SCC. Doctors may only refer patients to healthcare providers that have a framework agreement with SCC, or sub-contractors to such providers.

In order to increase price competition between the bidders, the 2008 procurement was divided into different categories of services. Contracts were to be signed with the two bidders who submitted the lowest price for the respective category. If the two lowest bids did not cover the expected volume, contracts could be signed with more than two bidders. Bids could be submitted in whole or in part. SCC gave no guarantees regarding the volume or value of the purchases, but based on previous purchases, the value was estimated to be SEK 211 million.

Prior to the submission of their bids, the three healthcare providers Aleris, Capio and Aleris and Globen Heart and Medical Heart, which at the time supplied 77 per cent of the said services to SCC, entered into two written "sub-contracting agreements". One between Aleris and Capio and one between Aleris and Globen Heart and Medical Heart (later transferred from Globen Heart and Medical Heart to Hjärtkärlgruppen). In short, the agreements gave the losing party a right, but no obligation, to act as a sub-contractor to the winning party at a price amounting to 98 per cent of the price submitted in the winning bid. The defendants also revealed to each other which tender categories they would bid for. In effect, the agreements ensured that irrespective of who won the contract, all three healthcare providers would be able to provide, at least as a sub-contractor, healthcare services to SCC, at a price that was no more than two percentage points below the price in the winning bid. In

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[1] *Aleris et al v Swedish Competition Authority* (PMT 7497-16), 28 April 2017.
[2] *Telia et al v Swedish Competition Authority* (PMT 761-17), 13 February 2018.
[3] *Groupement des cartes bancaires v European Commission* (C-67/13 P) EU:C:2014:2204 at [58].
[4] *Swedish Competition Authority v Aleris Diagnostik AB et al* (T-12305-13), 18 December 2015 and *Swedish Competition Authority v Telia et al* (PMT 17299-14), 21 December 2016.

the Aleris/Capio agreement, the right to carry out sub-contracting services was, for most categories, limited to 50 per cent of the services. In the Aleris/Hjärtkärlgruppen agreement, there was no explicit guidance on how the volumes were to be shared.

In their bids, the defendants stated that they had entered into sub-contracting agreements, but the content of the agreements was not known to SCC until 2011.

When the SCA was informed about the arrangement, dawn raids were conducted at the defendants' premises. In 2013, the SCA concluded that the sub-contracting agreements constituted object restrictions in the form of volume sharing and commenced an action for fines before the PMC.[5]

Judgment by the PMC[6]

The PMC found that the object of the agreements was not to ensure that the main contractor would have access to sub-contracting services, but rather to protect the commercial interests of the losing parties. The arrangement was a "defensive manoeuvre", designed to protect the loser from having to leave the market. If the object had been to ensure that the main contractor would have access to sub-contracting services, the agreements would have provided a *right* for the winner to buy sub-contracting services, rather than a *duty* to give access to its volumes, the court reasoned. But in this case, the duty for the winner to give access to its volumes applied regardless of whether it had the capacity to perform the services itself.[7]

The PMC found that the defendants had bilaterally agreed to share volumes in equal parts between the winning and the losing party.[8] In the Aleris/Capio agreement, the 50/50 sharing was deemed to follow directly from the agreement. The Aleris/Hjärtkärlgruppen agreement did not provide explicit guidance on how the volumes were to be shared, but the court noted that the volumes were in practice essentially shared in equal parts.

In response to the defendants' contention that the object of the agreements was to ensure that patients would have access to services from several suppliers on the same occasion, the court found that this could have been achieved by less restrictive means, for instance by signing a sub-contractor agreement *after* the procurement. This would have given the losing party a less favourable negotiating position and less favourable terms than the winning party, which would have strengthened the incentives to compete for the contract.[9]

The theory of harm was carefully explained. By providing the losing firms with a second chance to gain access to volumes, the agreements reduced the incentives to compete rigorously for the contract. Even if being the main contractor involved certain advantages compared to being a sub-contractor, and competition between the defendants was thus not entirely eliminated by the arrangement, the arrangement *reduced* the difference between winning and losing and thereby impeded price competition. The agreements were even deemed to be distortive to competition, by cementing the existing market structure and limiting the dynamics in the procurements.[10]

Based on the above, the PMC concluded that the agreements were prima facie anti-competitive.[11] Their overall object was to reduce the risks of bidding competition.[12]

As regards the alleged efficiencies, the PMC agreed that the arrangement was beneficial for a small group of patients who needed examinations within different categories of services, and who would now have the chance to have several examinations on the same occasion instead of being referred to several suppliers. The efficiencies were, however, insufficient to outweigh the negative effects on competition. The PMC noted that SCC had intentionally divided the procurement into different categories to increase price competition, aware of the fact that this could be disadvantageous for certain patients.[13]

The fines were reduced by 30 per cent due to mitigating circumstances. The PMC found that the defendants had committed the infringement by negligence, and that the structure of the procurement had incentivised the co-operation. The court also noted that the co-operation was characterised by a relatively high degree of openness, which facilitated detection.[14]

Judgment by the PMCA[15]

With very brief reasoning, and without providing any comments on the PMC's object analysis, the PMCA concluded that the arrangement was not restrictive by object. Despite finding that the arrangement constituted a duty to appoint the losing party as a sub-contractor for an unspecified volume of services and thus give "access to the market"[16] the court concluded that there was no information in the agreements or the contacts between the parties to prove that certain volumes had been shared between them. It noted that SCC had not given any guarantees on the volumes to be purchased.[17]

[5] Summons application from the SCA in case 483/2013, 28 August 2013.
[6] *Swedish Competition Authority v Aleris Diagnostik AB et al* (T-12305-13), 18 December 2015.
[7] Pages 170–173.
[8] Page 172.
[9] Pages 170–171.
[10] Pages 174–175.
[11] Page 175.
[12] Page 189.
[13] Page 210.
[14] Pages 226–227.
[15] *Aleris Diagnostik AB et al v Swedish Competition Authority* (PMT 7497-16), 28 April 2017.
[16] In Swedish, "tillträde till marknaden".
[17] Pages 13–14.

An essential starting point for the PMCA's assessment was that SCC was the only purchaser of the services and that the ability to operate as a supplier on the market was determined by procurements which were carried out every few years. When the sub-contracting agreements were signed, the defendants thus faced a risk of having to leave the market. Without providing any references to case law or economic theory, the PMCA stated that it may to some extent be considered pro-competitive to ensure that several suppliers could remain in the market in the periods between procurements.[18]

Like the PMC, the PMCA found that the parties, regardless of the sub-contractor arrangements, had an incentive to compete on price to win a contract and be the main contractor. However, unlike the PMC, the PMCA did not move on and consider whether the agreements *reduced* the incentive to compete to such an extent that they were restrictive by object. It merely concluded that the agreements could not in any case have given the parties "insufficient incentives"[19] to compete. Based on the testimony provided by the defendants' company representatives, the court concluded that the price offered in the defendants' bids was a result of considerations regarding the performance and quality of the services, rather than a reduced risk caused by the sub-contracting agreements, and that there was no support for the conclusion that the agreements "at first sight typically had a price increasing effect in the procurement".[20] With reference to the CJEU's judgment in *Cartes Bancaires*[21] and the risk of mixing the object analysis with the effect analysis, the PMCA added that the possible price increasing effects of the agreements should in any case mainly be analysed as a part of the effect analysis. Based on the above, the PMCA concluded that neither the agreements nor the contacts that had taken place between the parties constituted an object infringement.[22]

Reflections

Unlike the reasoning of the PMC, which is comprehensive and legally stringent, the reasoning in PMCA's judgment is brief and unconvincing, and in certain parts hard to reconcile with EU case law and underlying economics.

First, the fact that the parties faced a risk of having to leave the market should not constitute an "essential starting point" for the object analysis. There is no EU case law or economic theory to support such a starting point for the analysis. On the contrary, the CJEU has in previous case law considered that the parties' risk of having to leave the market does not preclude the finding of a restriction by object. In *BIDS*, it was established that overcapacity in the beef industry would ultimately force players to leave the market, but an agreement to reduce overcapacity was still considered to be restrictive by object.[23] This is logic. As noted by the lower court, the risk of having to leave the market is an inherent part of the competition process.[24] If a "failing firm" defence should be accepted in the context of art.101 it should at least, for the sake of consistency, be based on the same strict criteria as the "failing firm" defence in merger cases.[25]

Further, despite the PMCA's reference to the CJEU's reminder in *Cartes Bancaires*[26] that we should not confuse the object analysis with the effect analysis, the PMCA ends up doing just that. When the PMCA states that there is no support for the conclusion that the agreements "at first sight typically had a price increasing effect in the procurement",[27] it seems to refer to the *typical* effects, but the court is in fact analysing the *actual* effects of the agreements. The court's conclusion that the agreements did not lead to insufficient incentives to compete is mainly based on testimony by the defendants regarding the considerations on which the price was based, i.e. the agreements' *actual* effects on the price. But as established by the CJEU, the fact that a co-operation does not have actual effects on competition does not preclude the finding of a restriction by object.[28] The judgment in *Cartes Bancaires* has not set aside this case law.[29] The lack of indications of actual price increasing effects should thus not be sufficient for the PMCA to conclude that the arrangement was not restrictive by object.

Regrettably, the PMCA did not ask itself whether the agreements *reduced* the incentives to compete. This question, which is the core question in the object analysis, should clearly be answered in the affirmative. The arrangement ensured that all parties would be able to continue to supply services to SCC at a price that would not in any case be more than two percentage points below the price in the winning bid. The arrangement effectively

[18] Page 13.
[19] In Swedish, "bristande incitament".
[20] In Swedish, "vid ett första påseende typiskt sett haft en prisdrivande verkan i upphandlingen".
[21] *Groupement des cartes bancaires v Commission* EU:C:2014:2204.
[22] *Aleris Diagnostik AB et al v Swedish Competition Authority* (PMT 7497-16), 28 April 2017, pp.14–16.
[23] *Beef Industry Development Society and Barry Brothers* (C-209/07) EU:C:2008:643.
[24] *Swedish Competition Authority v Aleris* (T-12305-13), p.195.
[25] In the merger context, the failing firm defence may provide an escape route for mergers that would otherwise be deemed problematic. The criteria for accepting a failing firm defence are, however, quite strict. The basic requirement is that the deterioration of the competitive structure cannot be said to be caused by the merger, because the failing firm would in any case be forced out of the market in the near future because of financial difficulties if not taken over by another undertaking. It is not sufficient to show that the target company would be forced out of the market. It must also be demonstrated that there is no less anti-competitive alternative than the notified merger and that, in the absence of a merger, the assets of the failing firm would inevitably exit the market. Considering the rather strict criteria, it is not surprising that there are few cases where the failing firm defence has been accepted.
[26] *Groupement des cartes bancaires v Commission* EU:C:2014:2204.
[27] In Swedish, "vid ett första påseende typiskt sett haft en prisdrivande verkan i upphandlingen".
[28] Preliminary ruling in *T-Mobile Netherlands BV v Raad van Bestuur van de Nederlandse Mededingingsautoriteit* (C-8/08) at [29]–[31].
[29] What the CJEU says in *Cartes Bancaires* is that proof of actual effects on competition is not sufficient to establish an object to restrict competition. The court does not say the opposite; that the lack of actual effects is sufficient to conclude that there are no typical effects and thus no restriction by object.

reduced the difference between winning and losing and significantly reduced the incentives to compete. This should be sufficient to conclude that the arrangement was restrictive by object.

The fact that the agreements did not quantify the *exact volumes* to be shared with the losing party does not mean that the agreements did not amount to volume sharing, or that they were not harmful to competition. The agreements provided a duty for the winning party to give up certain volumes to the losing party, regardless of whether the winning party had the capacity to provide the services itself. Even the PMCA found that the winner had agreed to give the loser "access to the market", which in this case should be the same as a duty to share volumes. The very purpose of the arrangement was to give the losing party sufficient volumes to be able to stay in the market. This should reasonably be sufficient to establish that the arrangement amounted to volume sharing, regardless of whether the volumes were to be shared 50/50 or in different proportions.

Telia

Background

This case stems from the City of Gothenburg's procurement of data communication services in 2009. The municipally owned company Gothnet, which owns fibre connections to many of the addresses specified in the procurement, ultimately won the procurement.

Prior to the deadline for submitting bids, certain contacts took place between the competing telecommunication providers Telia and Gothnet. Telia informed Gothnet that it did not intend to submit an individual bid and announced its ambition to become a sub-contractor if Gothnet won the procurement. The parties even exchanged a draft agreement in which Telia agreed not to submit an individual bid and Gothnet agreed to appoint Telia as its sub-contractor if Gothnet won the procurement, but a formal sub-contractor agreement was not signed until several weeks after the procurement.

The SCA commenced an action with a request for fines and contented that the parties had participated in an agreement or concerted practice to ensure that Telia would refrain from submitting an individual bid, in exchange for being Gothnet's exclusive sub-contractor.[30]

Judgment by the PMC[31]

The PMC found that Telia had the capacity to submit an individual bid in the procurement, that Telia had informed Gothnet about its intentions not to submit an individual bid, that these discussions took place at the same time as the discussions concerning a sub-contracting agreement and that Gothnet had even made active efforts to get assurances that Telia would not submit its own bid, which Telia later provided. Although the contacts were not sufficient to support the finding of an "agreement", they supported the finding of a "concerted practice". Telia's decision not to submit an individual bid was made independently, but the decision was used as a form of "currency" which improved Telia's chances of having a sub-contractor agreement with Gothnet.[32]

In the object assessment, the PMC asked itself whether this type of conduct would typically be harmful to competition on any market and answered the question in the affirmative. The theory of harm was simple. When a firm is informed that a competitor will not submit a bid, it can rely on the competition being less fierce, and will thus have a reduced incentive to compete. This may ultimately lead to a higher price than what would otherwise be the case, which may favour both the main contractor and the sub-contractor. The fact that the framing of the procurement had probably contributed to the conduct did not preclude the finding of a restrictive object. The court noted that Telia could have chosen to take legal action to challenge the procurement.[33]

Judgment by the PMCA[34]

Despite upholding most of the PMC's findings, i.e. that Telia was at least a potential competitor to Gothnet in the procurement, that Telia had informed Gothnet about its intentions not to submit a bid, that Gothnet had taken the said information into consideration, that the parties had thus participated in a concerted practice, and that the conduct was typically harmful to competition, the PMCA overturned the PMC's judgment and concluded, again with reference to *Cartes Bancaires*, that the conduct did not constitute an object infringement.

In the assessment of the conduct in its legal and economic context, the court stated that the purpose of the competition rules is to prevent certain conduct "on markets that are otherwise functioning and where the competition conditions are not impeded by, for instance, public regulations (..)".[35] The court considered that the design of the procurement had to a large extent hampered Telia's possibility to compete effectively and thus significantly impeded the conditions for effective competition. Despite finding that there was still room for competition and that the competition rules were applicable, it concluded, with no further reasoning, that the conduct was not restrictive by object.[36]

The two economic experts of the court delivered diverging opinions, both arguing that this type of conduct is prima facie anti-competitive and that the analysis of the legal and economic context cannot lead to a different

[30] Summons application from the SCA in case 848/2014, 17 December 2014.
[31] *Swedish Competition Authority v Telia et al* (PMT 17299-14), 21 December 2016.
[32] Pages 88–89.
[33] Pages 106–109.
[34] *Telia et al v Swedish Competition Authority* (PMT 761-17), 13 February 2018.
[35] In Swedish, "på marknader som i övrigt är fungerande och där förutsättningarna för konkurrens inte är störda av exempelvis offentliga regleringar (..)"
[36] Pages 11–13.

conclusion. One of the economic experts carefully explained why this type of information exchange can never lead to a lower price level, but typically leads to a higher price level, and why this is even more the case if the number of competitors is restricted because of the framing of the procurement: Suppose there are only two potential bidders, A and B, in the procurement, and A, which has a cost disadvantage compared to B because of the framing of the procurement, informs B that it will not submit a bid. In this case, B will know that B is the only bidder in the procurement and can submit a bid which is far above its costs. B can submit a bid that is so high that it would in fact have been profitable for A to submit a lower bid, despite A's cost disadvantage. But if B does not know whether A will submit a bid, B will, to be sure to win the procurement, have to submit a bid which is lower than the sum of A's estimated costs and a fair profit.[37]

Reflections

The outcome in *Telia* is even more remarkable than the outcome in *Aleris*. Admittedly, the procurement was structured in a way that may to some extent have incentivised the subcontractor negotiations between the parties, but this should not be sufficient to preclude the finding of an object infringement.

The purpose of the competition rules is not only to protect markets that are functioning. The CJEU has made it clear that arts 101 and 102 are applicable unless the anti-competitive conduct is *required* by national legislation, or the legal framework *eliminates any possibility* of competitive activity on their part.[38] As long as there is any competition left to restrict, the competition rules are fully applicable. Given that the PMCA considered that the design of the procurement was sufficiently good to leave some room for competition, the shortcomings of the procurement should arguably not be relevant in the object analysis. As noted by the PMC, Telia could have chosen to take legal action to challenge the procurement.

Besides, even if we accept that the design of the procurement induced and perhaps even justified a sub-contractor agreement between the parties, it cannot reasonably justify the exchange of information regarding Telia's intentions not to submit an individual bid. The parties could easily have negotiated and entered into a sub-contractor agreement without exchanging this very strategic information. Such a scenario would obviously be less harmful to competition as GothNet would have to take a potential bid from Telia into account when deciding on the price to be offered in the procurement.

Concluding remarks

There is no doubt that the "object box" is—and should be—small. The concept of object restrictions acts as a presumption and should only be applied to restrictions that are generally so harmful that there is no need to examine their effect in each individual case. Otherwise the competition authorities would be exempted from their obligation to prove negative effects, which is not the intention. The CJEU's reminder in *Cartes Bancaires* that the concept shall be interpreted restrictively is thus welcome.

However, a too restrictive approach should also be avoided. Certain types of co-operation are in general so likely to create harmful effects and so unlikely to involve outweighing efficiencies that negative effects on competition may safely be assumed. Volume sharing and exchange of strategic information between competitors are obvious examples. Whether secret or open, this type of co-operation is highly likely to be harmful to competition, and highly unlikely to involve efficiencies that cannot be created with less restrictive means. The effects on competition will in the best of circumstances be neutral, and the costs of potential over-enforcement are low.[39]

And we know from previous EU case law that the "object box" does not only cover hard-core cartels.[40] It covers a range of different restrictions. It even covers vertical restrictions like RPM and territorial restrictions.[41] The UK Competition Appeal Tribunal has recently considered bans on online sales to be restrictive by object.[42] These restrictions are generally less harmful to competition than horizontal restrictions and they often involve genuine efficiencies. The costs of over-enforcement are thus generally higher than for horizontal restrictions. In light thereof, it is hard to understand the outcome in *Aleris* and *Telia*. Treating volume sharing and exchange of strategic information between competitors as less serious restrictions than RPM and territorial restrictions, is simply illogical.[43]

In previous Swedish case law, co-operation in procurements between firms with the capacity to submit individual bids has been deemed to be restrictive by object, even when the co-operation has taken place in the open.[44] This makes sense. Joint bids or sub-contractor agreements between competing firms with the capacity to submit individual bids decreases the number of participants in the procurement and reduces the incentives

[37] Pages 16–18.
[38] *Deutsche Telecom AG v European Commission* (C-280-08) EU:C:2010:603 at [80].
[39] Given the absence of efficiencies, a presumption of illegality is not likely to have chilling effects on competition.
[40] *Beef Industry Development Society and Barry Brothers* (C-209/07) EU:C:2008:643 at [23].
[41] See, for instance *GlaxoSmithKline Services Unlimited v Commission of the European Communities* (C-501/06 P) EU:C:2009:610 at [54]–[67]; and *Football Association Premier League Ltd v QC Leisure* (C-403/08) EU:C:2011:631 at [134]–[146].
[42] *Ping Europe Ltd v Competition and Markets Authority* (1279/1/12/17), 7 September 2018.
[43] The risks and costs of over-enforcement is clearly lower in co-operation between competitors than in co-operation between non-competitors.
[44] Stockholm District Court, *Swedish Competition Authority v Däckia AB et al* (T-18896-10), 21 January 2014.

to offer a competitive price.[45] Such co-operation will in most cases be harmful to competition. The benefits of having a clear and predictable rule that is not dependent on an in-depth analysis should thus outweigh the costs of potential over-enforcement.

Regrettably, the brief reasoning in *Aleris* and *Telia* does not explain the rather surprising outcome. In the end, the PMCA seems to have been unwilling to impose sanctions for conduct that may to some extent have been induced or incentivised by the contracting authorities. But two wrongs don't make a right. To open the possibility for competitors to collude to defeat shortcomings in the way in which a procurement has been designed, rather than challenge the procurement in court, is clearly a dangerous route to travel.

It remains to be seen what impact the judgments will have on the Swedish enforcement of art.101 and the Swedish equivalent thereof. Their precedential value should be limited. The judgments are however part of an overall negative trend for the SCA. Since the entry into force of the new Swedish court system in 2016, the PMCA has sided with the defendants in all substantive competition cases that the court has heard. In a recent article, the newly appointed Director General of the SCA commented on recent case law and stated that the scope for by object restrictions is "extremely small".[46] Whether true or not, it is fair to assume that the SCA will become more reluctant to pursue this type of case in the future, at least without an in-depth analysis of the effects on competition. This may seem reasonable. But take a minute to think about it. How do you even prove that a co-operation between competing bidders has negative effects on competition, beyond showing reduced incentives to compete? A requirement to demonstrate actual effects on price would make it virtually impossible to sanction this type of case and lead to an obvious risk of under-enforcement,[47] which, in the long-term, would reduce the deterrent effect of the prohibition. It is thus hoped that the judgments will be confined to the "special circumstances" in these two specific cases and the PMCA will soon have the chance to "clarify" its position. Until then, firms should be cautious about relying upon the judgments to justify co-operation with competitors in public procurements.

[45] See, for instance, OECD, "Public procurement - The role of competition authorities in promoting competition", January 2008, pp.9 and 34. In the opinion of OECD, bidding consortia between firms with the economic, financial and technical capabilities to supply on its own bid should not be permitted. "(W)hen competing firms bid jointly, this usually reduces competition as joint bidding reduces the number of participants. This so-called reduced competition effect promotes less aggressive bidding and therefore has negative effects on competition." (…) "Allowing the winning bidder to enter into subcontracting arrangements has a potentially important effect on the likelihood of bid rigging. In particular, the mechanisms of the cartel may be such that bidders who agree not to lower their bid or not to participate at all might be compensated by being awarded a subcontract by the winning bidder." The report is available at *http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP(2007)34&docLanguage=En* [Accessed 1 February 2019].

[46] Article in GCR's European, Middle Eastern and African Antitrust Review 2019, available at *http://www.konkurrensverket.se/globalassets/press/tal-artiklar/artikel-rikard-jermsten-gcr_juli2018.pdf* [Accessed 1 February 2019].

[47] The number of interventions from the SCA in art.101 cases is already quite low. It has been four years since the last time the SCA took an art.101 case to court with a request for fines.