

COMPETITION ECONOMICS HANDBOOK 2019

Published in association with:

Cornerstone Research

Copenhagen Economics

Berkeley Research Group

E.CA Economics

NERA Economic Consulting



The Handbook of Competition Economics 2019

A Global Competition Review Special Report

Reproduced with permission from Law Business Research Ltd
This article was first published in November 2018
For further information please contact Natalie.Clarke@lbresearch.com



The Handbook of Competition Economics 2019

Insight business development manager Gemma Chalk
gemma.chalk@lbresearch.com
Tel: +44 20 3780 4122

Insight account manager Bevan Woodhouse
bevan.woodhouse@lbresearch.com
Tel: +44 20 3780 4291

Head of production Adam Myers
Deputy head of production Simon Busby
Designer James Green
Editorial coordinator Hannah Higgins
Production editor Harry Turner
Subeditor Simon Tyrie

Research editor Tom Barnes
Researcher Helen Barnes

Editor, Global Competition Review Pallavi Guniganti
Publisher Clare Bolton

To subscribe please contact
Global Competition Review
87 Lancaster Road
London, W11 1QQ
United Kingdom
Tel: +44 20 7908 9205
Fax: +44 20 7229 6910
subscriptions@globalcompetitionreview.com

No photocopying. CLA and other agency licensing systems do not apply.
For an authorised copy contact claire.bagnall@globalcompetitionreview.com

This publication is intended to provide general information on competition law, economics and policy. The information and opinions that it contains are not intended to provide legal advice, and should not be treated as a substitute for specific advice concerning particular situations (where appropriate, from local advisers).

© 2018 Law Business Research Limited
ISBN: 978-1-78915-106-0

Printed and distributed by Encompass Print Solutions
Tel: 0844 248 0112

The Handbook of Competition Economics 2019

Published in association with:

Cornerstone Research

Copenhagen Economics

Berkeley Research Group

E.CA Economics

NERA Economic Consulting

CONTENTS

Albania.....	1	El Salvador	37
Algeria	3	Estonia.....	39
Argentina.....	4	European Union	40
Armenia	6	Claus Kastberg Nielsen, Adina Claiaci, Julia Sabine Wahl and Elisa Pau	
Australia	8	Copenhagen Economics	
Austria	11	Fiji.....	48
Azerbaijan	12	Finland.....	51
Barbados.....	13	Emmi Martikainen and Anssi Kohonen	
Belgium	14	Copenhagen Economics	
Bosnia.....	16	France.....	54
Brazil.....	17	Germany	56
Bulgaria.....	19	Hans W Friederiszick, Simone Kohnz and Rainer Nitsche	
Canada	21	E.CA Economics	
Channel Islands.....	24	Greece	63
Colombia	25	Hungary.....	64
Croatia	27	Iceland.....	66
Cyprus.....	29	Indonesia.....	67
Czech Republic.....	30	Ireland.....	69
Denmark.....	31	Israel	71
Henrik Ballebye Okholm, Torben Thorø Pedersen and Holger Vandel Rasmussen		Italy	72
Copenhagen Economics		Jamaica.....	73
Egypt.....	36	Japan.....	75
		Hiroaki Ishigaki	
		NERA Economic Consulting	
		Kenya.....	81

Korea	83	Serbia.....	122
Latvia	84	Seychelles	124
Lithuania	86	Singapore.....	126
Luxembourg.....	87	Slovakia	127
Macedonia	88	Slovenia	129
Malaysia	90	South Africa	130
Malta.....	92	Spain.....	132
Mauritius	93	Swaziland	134
Mexico	95	Sweden.....	135
Montenegro	97	<i>Karl Lundvall, Mattias Almqvist and David Nordström</i> Copenhagen Economics	
Netherlands	99	Switzerland	140
New Zealand.....	101	Tunisia	142
Norway	103	Turkey	143
<i>Henrik Ballebye Okholm and Karl Lundvall</i> Copenhagen Economics		Ukraine	146
Pakistan	108	United Kingdom	148
Peru	111	<i>Vikram Kumar and Maria Maher</i> Cornerstone Research	
Philippines	112	United States.....	154
Poland	113	<i>Henry J Kahwaty and Cleve B Tyler</i> Berkeley Research Group	
Portugal.....	115	Zambia.....	160
Romania	117	Zimbabwe	162
Russia.....	119		

Global Competition Review is delighted to publish this twelfth annual edition of *The Handbook of Competition Economics*.

With economics at the centre of competition law, this handbook identifies the issues that antitrust economists are tackling today. The book's comprehensive format provides contact details for competition agencies' economists in 77 jurisdictions. A Q&A format illustrates how the advisers are organised and their input into the regulation and enforcement process.

Much of the information has been provided by the agencies themselves and we are, as ever, grateful for all their cooperation.

The Handbook of Competition Economics is one of five special reports included in a *Global Competition Review* subscription, alongside nine issues of the magazine and two signature surveys, 'Rating Enforcement' and 'The GCR 100', each year.

We would like to thank all those who have worked on the research and production of this publication.

The information listed is correct as of October 2018.

Global Competition Review

London

October 2018

Overview

Karl Lundvall, Mattias Almqvist and David Nordström
Copenhagen Economics

Economic analysis continues to play an important role in Swedish enforcement of competition law. There is an increasing trend among parties of using bite-sized economic support, analysis and screening early in the process. In addition, effects analysis is becoming more important to succeed in court, thereby putting more pressure on the parties to present careful economic documentation and analysis. Both these trends require an enhanced integration of the lawyer-economist collaboration.

This article is based on interviews with prominent Swedish competition lawyers from the law firms Bokwall Rislund, Cederquist, Delphi, Eric Ericsson, Front Advokater, Gernandt & Danielsson, Hannes Snellman, Kastell, Lindahl, Mannheimer Swartling, Roschier, Setterwalls and Vinge, as well as with the management of the Swedish Competition Authority (SCA).

Mergers: economists involved early in the process

There has been much merger-related work in the past year, but no Phase II investigations since summer 2017. While the SCA has, since 1 January 2018, had the power to prohibit mergers, lawyers do not believe that this explains the lack of Phase II investigations. Economists are increasingly involved early in the process to help lawyers with screening and to prepare brief analyses on potential issues and remedies, as well as more comprehensive economic analysis that can be used proactively. Defining the relevant market is still key in most merger cases. More sophisticated methods, such as upward pricing pressure (UPP) analysis and merger simulations, appear only in complex mergers.

Anticompetitive agreements: effects analysis is necessary

Swedish courts have increasingly required careful effects analysis, including in cases involving anticompetitive agreements. Lawyers and the SCA are unanimous in the view that this is often now necessary in Sweden. They believe effects analysis will consume a substantial amount of the SCA's resources and consequently lead to fewer prioritised cases and fewer cases taken to court. To pass the SCA's

increasingly strict prioritisation or to be successful in court, it will be crucial for parties to demonstrate anticompetitive effects (or a lack thereof), which often require economic analysis.

One recent case emphasised the need to demonstrate effects. It centred around a five-year non-compete clause between two merging firms in the international moving industry. The Patent and Market Court of Appeal rejected the SCA's claim that the clause had been anticompetitive by object, thereby confirming the judgement at first instance. It did not find the clause to be anticompetitive by object because it found it unreasonable that the clause could be considered procompetitive in the first few years and then, literally overnight, be viewed as anticompetitive by object. In the absence of a sufficient effects analysis from the SCA, the court dismissed the claim. This shows that the further away from the typical hardcore restrictions, the more important it becomes to demonstrate effects.

Abuse of dominance: closed investigations and acquittals

There has been little work for economists in relation to abuse of dominance in the past year. According to most of the lawyers, many clients do not prioritise compliance with rules regarding abuse of dominance as much as compliance with rules regarding anticompetitive agreements, public procurement and corruption. One reason is that the clients find the risks of non-compliance in terms of fines and negative publicity to be comparatively low.

In November 2017, the SCA closed two four-year investigations into potential abuse of dominance. A key reason for closing the first investigation, concerning wholesale locksmith hardware, was that the as-efficient competitor test of the pricing scheme showed no sign of foreclosure. The second investigation, concerning a nationwide lottery and its agreements with its beneficiaries, was ultimately closed after several years of investigation. The two cases indicate that the SCA may close investigations if there are no exclusivity conditions or anticompetitive effects cannot be demonstrated.

There have also been court verdicts of acquittal in two abuse of dominance cases brought by the SCA. Economists provided analysis and expert testimony in both cases. The first case concerned Swedish Match, producing and selling snuff, which had introduced a uniform labelling system on its snuff coolers. The second case concerned Nasdaq OMX, operating a stock exchange, which had made an operator of server rooms refuse to supply a competing stock exchange operator.

Looking forward, lawyers partly differ in their views regarding the potential effects of the *Intel* judgement in Sweden. They agree that the judgement is likely to lead to fewer cases taken to court because of the increased need for careful effects analysis. However, they disagree on how quickly this will be manifested in practice.

Damages: Swedes rarely sue

There is consensus among lawyers that the main explanation for the few damages cases in Sweden is a culture of not suing for damages. Clients do not find it worthwhile to engage in a process with an uncertain outcome that will take several years and potentially ruin the relationship with a trading partner. In addition, there have been few judgments on breaches of competition law in recent years to base new damages claims on. The damages directive, implemented in December 2016, is not expected to affect this situation significantly.

However, three long-lasting damages cases, *Yarps/Telia*, *Tele2/Telia* and *Net at Once/GothNet*, have been ruled upon in the past year. All three cases concerned telecommunications services and relied heavily on

analysis and expert testimony by economists. In both cases involving Telia, the second instance overturned the first instance's judgment. No damages were awarded in any of the cases, which may lead to smaller incentives to claim damages in the future.

The SCA: winds of change

On 1 September 2017, Rikard Jermsten, a judge from the Administrative Court of Appeal took office as the new director general of the SCA. Many lawyers interpret his early actions, including closing long-lasting investigations, as a sign that he wants to start with a clean slate and prioritise cases that are more likely to be won. The SCA has also recruited Marie Östman as new chief legal officer, starting on 1 September 2018. She has previously worked for the SCA and most recently as a lawyer at the law firm Vinge.

Internal quality assurance of the SCA's own analysis has become more important with its new power to prohibit mergers. As a response, the chief economist and the chief legal officer will have more pronounced roles as quality assurers. Lawyers welcome this but believe that it will consume even more of the SCA's resources. Together with the need for more careful effects analysis, this is likely to make the SCA more selective in its prioritisation. This provides both a challenge and an opportunity for parties. Being proactive and providing the SCA's team with information and analysis may increase the possibilities of influencing an investigation, by for example affecting the likelihood that an abuse case is prioritised.



Karl Lundvall
Copenhagen Economics

Karl Lundvall helps clients with economic arguments and analysis in competition law cases, providing support that helps them present their cases convincingly. He specialises in competition and regulation cases where he excels at clearly arguing, for example, the value creation that stems from sound competition in various markets. He is listed in the *Who's Who Legal: Competition Economists*. Karl spent seven years working for the Swedish Competition Authority prior to Copenhagen Economics and taught economics at the University of Gothenburg.



Mattias Almqvist
Copenhagen Economics

Mattias specialises in the fields of competition, regulation and disputes. He has experience from analysing competition law matters, the effects of regulation and quantifying damages from a range of industries such as postal, telecommunications, electricity, healthcare and construction. Mattias has an MSc in economics from Stockholm School of Economics and from University of St Gallen.



David Nordström
Copenhagen Economics

David Nordström aids clients in competition law and regulatory matters by delivering economics-based advice and support. David has been involved in several competition law litigations in Swedish courts as co-author of economic expert opinions. David holds an MSc in economics from Lund University and a post-graduate diploma in EU competition law from King's College London.



Kungsgatan 38
111 3 Stockholm
Sweden
Tel: +46 7 6181 8820

Karl Lundvall
kl@copenhageneconomics.com

Mattias Almqvist
maa@copenhageneconomics.com

David Nordström
dan@copenhageneconomics.com

www.copenhageneconomics.com

Copenhagen Economics is one of the leading economics firms in Europe. Founded in 2000, we currently employ more than 85 staff operating from our offices in Copenhagen, Stockholm, Helsinki, and Brussels.

Based on established research methods and in-depth sector knowledge, we help our clients make better choices in their political and commercial reality. Our senior team provides pragmatic economics solutions to law firms, private companies, regulators, and policy makers all over the world.

We are particularly dedicated to 12 service areas, including Competition, Dispute Support, Digital Economy, and Postal and Delivery.

The Global Competition Review (GCR) lists Copenhagen Economics among the Top-20 economic consultancies in the world, and has done so since 2006.

LAW BUSINESS RESEARCH

Visit globalcompetitionreview.com
Follow @GCR_Alerts on Twitter
Find us on LinkedIn

ISBN 978-1-78915-106-0