# THE DOMINANCE AND MONOPOLIES REVIEW

Tenth Edition

**Editors**
Maurits Dolmans, Henry Mostyn and Patrick Todd

THE LAWREVIEWS

# THE DOMINANCE AND MONOPOLIES REVIEW

TENTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in June 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

**Editors**
Maurits Dolmans, Henry Mostyn and Patrick Todd

THE LAWREVIEWS

B

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS
Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Isabelle Gray

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Anne Borthwick

SUBEDITOR
Martin Roach

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk



ISBN 978-1-80449-083-9

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALLEN & GLEDHILL LLP

ANJIE LAW FIRM

BAKER MCKENZIE LLP

BECCAR VARELA

BERNITSAS LAW

CASTRÉN & SNELLMAN ATTORNEYS LTD

CLEARY GOTTLIEB STEEN & HAMILTON LLP

CMS

ELIG GÜRKAYNAK ATTORNEYS-AT-LAW

KOIKE & KASHIWAGI LAW OFFICE

LANE NEAVE

LENZ & STAEHELIN

P&A LAW OFFICES

PELS RIJCKEN

SPASOV & BRATANOV LAWYERS' PARTNERSHIP

VINGE

# CONTENTS

# PREFACE

It seems apt that in the preface to *The Dominance and Monopolies Review*'s 10th edition we confront the existential question facing the law governing unilateral conduct. That is: is *ex post* antitrust enforcement dying out?

Antitrust enthusiasts have three main reasons to be nervous. First, a decade of debate about under-enforcement has resulted in a wave of multi-jurisdictional regulatory initiatives to constrain the behaviour of large digital platforms and open up digital markets to more competition. These proposals vary, but tend to govern conduct that would traditionally have been subject to *ex post* antitrust enforcement. Second, authorities are turning to alternative tools to tackle unilateral conduct, such as market studies. Third, some perceive that authorities face a high evidentiary burden of successfully bringing abuse cases. Put together, these trends could leave a diehard abuse of dominance practitioner in low spirits about antitrust's future, at least in digital markets.

But other developments give cause for hope. Authorities remain adamant that digital regulations will complement rather than replace their existing abuse toolboxes, and that they will continue to investigate conduct that falls outside the scope of new regulation. Agencies, in particular the UK Competition and Markets Authority (CMA), have used their existing enforcement powers nimbly to open investigations and secure commitments from defendant companies quickly. And recent cases affirm that the abuse toolbox is not inflexible, putting into practice the classic mantra that the categories of abuse are not closed. There is space for abuse of dominance rules to be applied flexibly to conduct not previously explored, for example in relation to sustainability, although this raises separate issues regarding certainty for businesses.

As these trends and developments show, the law governing abuses of dominance, and the role it plays in competition policy, are constantly evolving and becoming more complex, bringing new challenges for businesses and practitioners to navigate. To provide some respite, this 10th edition of *The Dominance and Monopolies Review* seeks to provide an accessible and easily understandable summary of global abuse of dominance rules. As with previous years, each chapter – authored by specialist local experts – summarises the abuse of dominance rules in a jurisdiction, provides a review of the regime's enforcement activity in the past year and sets out a prediction for future developments. From those thoughtful contributions, we identify three main trends, as previewed above.

## i Antitrust v. regulation

Over the past year, regulators and legislators have moved from consultation to action, as they have set out competing proposals for regulation to address perceived competition problems caused by concentration in digital markets. Mostly, these proposed regulations cover similar themes, such as prohibiting leveraging and self-preferencing, mandating interoperability and maximising user control over choices online.

Perhaps most significantly, the EU, with its draft Digital Markets Act (DMA), has formulated *ex ante* 'dos and don'ts' for large gatekeeper platforms. The UK has set up a digital markets unit (DMU) to create enforceable conduct requirements for companies with 'strategic market status'. While the legislation giving the DMU necessary enforcement powers has not yet been introduced, the DMU is operating in 'shadow' form to operationalise enforcement of the new regime. The CMA has also conducted two market studies into digital advertising and online platforms and mobile ecosystems to identify activities that should be subject to the regime. In Germany, the German 10th Amendment to the Act against Restraints of Competition introduced new rules to tackle companies with 'paramount cross-market significance' (PCMS). In essence, the law enables the Bundeskartellamt to designate firms as holding PCMS, and then to impose *ex ante* prohibitions on certain defined practices. The Bundeskartellamt adopted its first PCMS decision against Google in 2021, and a second PCMS decision against Meta in 2022. In the US, the American Innovation and Choice Online Act, which would regulate similar conduct as its foreign counterparts, is currently before the US Senate.

It is perhaps understandable that regulators and legislators seek to regulate rather than pursue individual cases. Regulatory rules can potentially reach quicker outcomes than antitrust cases, which can be long and complex and require proof that harm has or is likely to occur. As Commissioner Vestager has explained as the motivation for the DMA: 'We need regulation to come in before we have illegal behaviour and to be able to say these are the rules of the game and this is what you must do.'

The DMA will prohibit conduct directly covered by past and current abuse of dominance cases. For example, the DMA's prohibition on self-preferencing targets conduct that was the subject of the Commission's 2017 *Google Shopping* decision, currently on appeal to the CJEU. The DMA's prohibition on gatekeepers using non-publicly available data generated or provided by their business users to compete with those business users would address the conduct challenged in the Commission's ongoing investigations into Amazon and Meta. And the prohibition on gatekeepers requiring business users to use the gatekeeper's own payment service would address conduct alleged in the Commission's ongoing investigation into Apple.

Rules that are set to be enacted in the UK and US are similarly expected to displace antitrust enforcement against digital platforms like Amazon, Meta, Apple and Google. Unlike in the EU, though, these regimes appear to allow companies the opportunity to justify their behaviour, on the grounds of consumer benefits or that alternatives would lead to harm. For example, the CMA recognises that 'conduct which may in some circumstances be harmful, in others may be permissible or desirable as it produces sufficient countervailing benefits', and it has advised that conduct should be exempted under its new regime if it 'is necessary, or objectively justified, based on the efficiency, innovation, or other competition benefits it brings'. Likewise, the new German rules allow a company to justify its practices. That seems a better approach – for competition and consumers – and it is troubling that the DMA does not contain any analogous provision.

How will these new rules affect antitrust enforcement in digital markets? Will abuse of dominance give way completely to *ex ante* regulation?

We think not. As Commissioner Vestager said recently, antitrust and regulation 'are complementary – both will remain necessary. No one should expect the new [DMA] to replace Article 101 and 102 enforcement actions.' There are at least three reasons why there is space for antitrust enforcement to carry on – and expand – when regulation provides additional recourse.

First, though the DMA is broad, it applies to a discrete set of firms (those designated as gatekeepers), products/services (designated as 'core platform services') and practices (set out in the text of the DMA). Forms of conduct that fall between the cracks will therefore have to be addressed by traditional antitrust enforcement. For example, the DMA focuses on consumer-facing digital products and services, and practices involving business-to-business services could potentially slip through the net. The Commission is currently investigating various practices by Microsoft in relation to its collaboration software, Teams, and infrastructure-as-a-service software, Azure, following allegations of unlawful tying, bundling, and denial or degradation of interoperability. The Commission and the CMA also recently announced concurrent investigations into an agreement between Meta and Google (Jedi Blue), alleging that it could distort competition in the online display advertising market. And that's just digital markets. Antitrust enforcement has played, and will continue to play, a role in traditional markets. Recent cases in the EU and UK cover non-digital industries such as pharmaceuticals, electricity trading services and electric vehicle charge points.

Second, at least in the near term, antitrust enforcement remains the only recourse even for conduct that may be covered by forthcoming regulation. The DMA does not come into force until 2024, and UK and US equivalent laws are likely to be further away still. In February 2022, the chair of the House of Lords Communications and Digital Committee wrote to the CMA, urging it to take a 'more robust approach to using [its] existing enforcement powers' given that the 'new legislation could take a significant amount of time to come into force'. By way of reply, in March 2022, the CMA stated that it had 'identified options for taking further action in digital markets under [its] market investigation and competition enforcement tools, ahead of the DMU receiving its powers'.

Third, recent cases showcase the potential for abuse of dominance cases to be opened, investigated and closed quickly, parrying the oft-cited concern that abuse of dominance cases close the stable door after the horse has bolted. In the UK, the CMA opened an investigation into Google's proposal to remove third-party cookies from its Chrome browser, tested two rounds of commitments and closed its case in just over one year. It quickly opened an investigation into exclusivity contracts for electric vehicle charge points on motorways and secured commitments from the parties following a market study.

We therefore expect antitrust cases to continue to play an important role in maintaining competitive markets, even in the digital sector.

### ii The evidentiary burden for authorities in abuse of dominance cases

Antitrust law has long suffered from the criticism that the existing abuse toolbox is too unwieldy – and the standard of proof for authorities too high – for necessary antitrust cases to be sustainable, in particular in the US. In its 2020 report on digital markets, for example, the US House of Representative antitrust subcommittee said, 'In the decades since Congress

enacted [the Sherman, Clayton, and FTC Acts], the courts have significantly weakened these laws and made it increasingly difficult for federal antitrust enforcers and private plaintiffs to successfully challenge anticompetitive conduct and mergers'.

In recent years, the perception that antitrust cases are prohibitively hard to bring appears to have subsided as authorities have opened more cases. In 2021 and early 2022, the CMA opened seven new abuse of dominance cases, having not opened any in 2020. The European Commission, for its part, opened six new abuse of dominance investigations, and US authorities have also been relatively active recently, following years of inaction compared with their European counterparts.

The European Commission has been the pioneer of big ticket antitrust cases in the past decade, issuing record-breaking fines to Intel, Google and Qualcomm. In 2022, though, the General Court partially annulled the Commission's 2009 decision imposing a €1.06 billion fine on Intel for abusing its dominant position through the granting of exclusivity-conditioned rebates. The judgment followed an initial General Court judgment in 2014 concluding that exclusivity rebates by dominant undertakings are per se abusive, regardless of the circumstances of the case, and that the Commission did not therefore have to establish that Intel's conduct was capable of restricting competition and there was no need for the General Court to review the Commission's as-efficient competitor (AEC) test. In 2017, the CJEU overturned the General Court's judgment, explaining that, although exclusivity rebates are presumptively unlawful, the presumption is rebuttable if the defendant shows that the conduct is not capable of restricting competition and foreclosing AECs.

In 2022, the General Court rendered a *renvoi* judgment annulling in part the Commission's decision and the fine in full. Applying the CJEU's judgment, the General Court found that the Commission had not established to the requisite legal standard that the rebates were capable of having, or were likely to have, anticompetitive effects. In particular, the Court identified errors in the AEC tests carried out by the Commission and found that the decision failed to properly consider two of the five criteria identified by the Court of Justice to assess rebates' ability to restrict competition, namely their market coverage and duration. Because it was not possible to identify the amount of the fine that related solely to the 'naked restrictions', which in the General Court's view the Commission correctly qualified as per se unlawful, the General Court annulled the entire fine.

The case establishes – at least in respect of exclusionary discounts – that if authorities choose to assess the anticompetitive effects of presumptively unlawful conduct, they must get that assessment right. Officials have claimed that the judgment raises the bar of enforcement to an unacceptably high level. Andreas Mundt, head of the German competition authority, said that the judgment 'might lead to a situation where the law becomes unenforceable because it takes even more time, it gets even more complex'. We disagree. The case establishes a roadmap for authorities to follow and guardrails to operate within when assessing exclusionary discounts. For example, the General Court criticised the Commission for running its AEC analysis in respect of a short time period, then extrapolating its analysis to cover a longer period. That approach is insufficient, which authorities will recognise going forward. Cases like *Microsoft (Windows Media Player)* show that, where the Commission appreciates that an effects-based analysis is required, it can undertake such an analysis and survive judicial review.

### iii Expanding the abuse toolbox

Finally, recent EU and UK cases have shown that the abuse toolbox can be applied flexibly to new forms of conduct not previously examined by the courts.

In November 2021, the General Court upheld the Commission's decision finding that Google had committed an abuse by favouring its own comparison shopping service (CSS). The Commission previously found that Google positioned and displayed, in its general search results pages, its own CSS more prominently than competing CSSs. The Commission imposed on Google a fine of €2.42 billion. In the judgment, the General Court largely dismissed Google's appeal against the Commission's decision and confirmed the amount of the fine.

The General Court rejected Google's argument that the Commission should have established the legal conditions for a duty to supply (indispensability and risk of eliminating competition), because the case related to the issue of access to prominent placement on Google's results pages. The General Court accepted that the case is not 'unrelated to the issue of access', but it found the conduct 'can be distinguished in their constituent elements from the refusal to supply'. On that basis, the General Court held that the conduct constituted an 'independent' abuse, separate from a refusal to supply. Accordingly, the Commission was not required to show that the duty to supply conditions were met.It remains to be seen whether this legal test will survive on appeal, but it shows the Commission can apply the existing tools flexibly.

Another case showcasing the elasticity of the abuse toolbox comes from the UK. In October 2021, the Competition Appeal Tribunal (CAT) certified opt-out collective proceedings and rejected a claim for summary dismissal in *Justin Gutmann v. First MTR South Western Trains and Stagecoach South Western Trains*. The proceedings arose out of allegations that certain rail companies failed to use their best endeavours to ensure awareness among their customers of boundary fares (i.e., fares for travel to and from outer boundaries of Transport for London's rail zones) so that customers who took journeys beyond the outer zone covered by their Travelcard would not purchase a fare covering the totality of their journey (thereby paying for parts of their journeys twice). This, the proposed class representative claimed, constituted an exploitative abuse of dominance.

In response to the defendants' claim for strike out, the CAT held that the case on abuse was reasonably arguable. If the charging of unfair and excessive prices, or the use of unfair trading terms, by a dominant company can constitute an abuse, the CAT did not regard it as 'an extraordinary or fanciful proposition to say that for a dominant company to operate an unfair selling system, where the availability of cheaper alternative prices for the same service is not transparent or effectively communicated to customers, may also constitute an abuse'. In doing so, it held that the 'law on what constitutes unfair trading conditions, in particular, is in a state of development'.'

It also referred to the 2019 decision of the German Federal Cartel Office that Facebook had abused its alleged dominance by not giving its users a genuine choice over whether it could engage in unlimited collection of their personal data from non-Facebook accounts as one that was 'challenged as an extension of the boundaries of the law on abuse of dominance'. That case is making its way through the German appellate courts, and is pending the outcome of a preliminary ruling by the CJEU.

These cases remind us that, at least in the EU and UK, the existing abuse of dominance toolbox can be adapted to confront novel abuses (albeit with a high risk of judicial scrutiny). There is, for example, no inherent reason why sustainability could not be incorporated into an abuse of dominance assessment. Analyses of pricing practices could take environmental costs into account: the concept of 'competition on the merits' could include competition on sustainability (and reject competition based on overexploitation of public goods), and there

could be *sui generis* abuses that involve unsustainable business practices that also restrict competition. In addition, conduct that might otherwise be abusive could be excused because of sustainability-based objective justification.

With extensions of the case law, however, come increased uncertainty for businesses planning their practices. *Google Shopping*, for example, extends the law governing the circumstances in which dominant firms will be forced to provide access to a facility to their rivals, without that asset necessarily being indispensable for those rivals to compete.

As in previous years, we would like to thank the contributors for taking time away from their busy practices to prepare insightful and informative contributions to this 10th edition of *The Dominance and Monopolies Review*. We look forward to seeing what the next year holds.

**Maurits Dolmans, Henry Mostyn and Patrick Todd**
Cleary Gottlieb Steen & Hamilton LLP
London
June 2022

**Chapter 20**

# SWEDEN

*Marcus Glader and Trine Osen Bergqvist*[1]

## I INTRODUCTION

Chapter 2, Article 7 of the Swedish Competition Act[2] prohibits the abuse of a dominant position. The provision reads as follows: 'Any abuse by one or more undertakings of a dominant position on the market shall be prohibited.'

The abuse may, in particular, consist in:

*a* directly or indirectly imposing unfair purchase or selling prices, or other unfair trading conditions;

*b* limiting production, markets or technical development to the prejudice of consumers;

*c* applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

*d* making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which by their nature or according to commercial usage, have no connection with the subject of the contracts.

The Competition Act entered into force on 1 November 2008. The prohibition against the abuse of a dominant position has remained intact since it was introduced in the former Competition Act[3] in 1993. It corresponds to Article 102 of the Treaty on the Functioning of the European Union (TFEU), which applies in parallel to the Swedish provision if the dominant position covers a substantial part of the internal market and the abuse may affect trade between EU Member States.

The Competition Act is enforced by the Swedish Competition Authority (SCA). Neither the legislator nor the SCA has issued any formal guidance on the interpretation of the prohibition. In practice, the SCA and the Swedish courts interpret Swedish and EU case law.

## II YEAR IN REVIEW

Over the past few years, the SCA's enforcement activities in the field of abuse of a dominant position have been remarkably low. Last year[4] was no exception. No infringement decisions were adopted. One investigation regarding a refusal to grant access to infrastructure in the

1 Marcus Glader is a partner and Trine Osen Bergqvist is a senior expert at Vinge.

2 The Swedish Competition Act (2008:579).

3 The former Competition Act (1993:20).

4 1 April 2021 to 31 March 2022.

air fuel market was closed without finding an infringement.[5] According to public records at the time of writing, the SCA has two ongoing investigations, one in the market for freight transport by rail[6] and one in the market for home sale statistics.[7] In the latter case, which concerns an alleged refusal to supply, the SCA has issued an interim order to the investigated undertaking to continue to supply home sale statistics on current terms until the matter has been finally decided.[8] The interim decision was upheld by the Patent and Market Court (PMC).[9] Apart from this decision from the PMC, which was not appealed, no judgments regarding abuse of dominance were delivered by the Swedish courts.

The SCA's apparent reluctance to investigate and intervene in cases regarding abuse of a dominant position may to some extent be explained by several heavy court defeats in this field over past years. Following the entry into force of the new court system on 1 September 2016, all three cases on abuse of dominance brought by the SCA were ultimately dismissed by the Patent and Market Court of Appeal (PMCA). In 2021, the SCA engaged Professor Torbjörn Andersson and Associate Professor Magnus Strand from Uppsala University to conduct a contract research study on the SCA's court proceedings. The purpose was to identify plausible causes for the SCA's lack of success. According to the report,[10] which was submitted in December 2021, some of the PMCA's rulings have been perceived as surprising. In the field of abuse of a dominant position, the report questions parts of the PMCA's reasoning in all three cases covered by the study. In relation to the PMCA's judgement in *Swedish Match*,[11] in which the PMCA found Swedish Match's system for shelf labels in its wet tobacco coolers to be exclusionary yet objectively justified, the report concludes that the outcome was surprising and that it cannot even in retrospect be argued that the SCA should have made the same legal assessment as the PMCA.[12] The report also questions the PMCA's stated reasons for dismissing the SCA's action in *Nasdaq*.[13] In its judgment, the PMCA concluded that the disputed conduct, i.e., Nasdaq's actions to prevent Burgundy from moving its trading system to the same data centre as Nasdaq, could not affect competition between Burgundy and Nasdaq because Burgundy's trading system was much less effective (i.e., slower) than Nasdaq's at the time of the disputed conduct. It was not until six months after the disputed conduct that Burgundy got a training system with the same latency as Nasdaq's. On this basis, the PMCA concluded that Nasdaq's conduct was not even capable of restricting competition in the way alleged by the SCA. It noted that fines of a penal nature cannot be imposed based on circumstances that occurred after the disputed conduct. The PMCA's way of reasoning implies that a dominant company would be entitled to take any action against less efficient competitors to prevent it from becoming as efficient as the dominant company. The report

5 Decision dated 22 September 2021 in case 726/2020.

6 Case 363/2021.

7 Case 348/2021.

8 Decision dated 1 July 2021 in case 348/2021.

9 Judgment dated 4 February 2022 in case PMÄ 11170-21. The decision was not appealed.

10 Contract research report 2021:4.

11 Case PMT 1988-1716822-14, *Swedish Competition Authority v. Swedish Match North Europe AB v. SCA*.

12 Traditionally, it has been hard for dominant companies to convince courts that an exclusionary conduct is objectively necessary for health reasons or similar. The PMCA nevertheless found that Swedish Match was entitled to request that the coolers were not used in a way that could constitute an infringement of the Tobacco Act.

13 Case PMT 1443-18, *SCA v Nasdaq AB et al.*

considers this a far-reaching interpretation. Finally, in relation to the judgment in *FTI*,[14] in which the PMCA annulled an order issued by the SCA against FTI to revoke a termination of an agreement with its competitor, the authors question the court's decision not to refer the case to the CJEU for a preliminary ruling on the applicability of the *Bronner* criteria in cases regarding termination of agreements with existing customers. The report also notes that the court's evaluation of the SCA's evidence appears to have been rather strict.

Irrespective of the above, the SCA has repeated its wish for new tools to supplement the Swedish competition rules.[15] In a recent report on competition in the Swedish building materials industry,[16] the SCA states that certain competitive issues related to market structures cannot be rectified with the existing prohibitive legislation and that there is a need to consider certain amendments to the Swedish Competition Act. The SCA would like to see a new and flexible tool enabling the supervisory authority to correct competitive issues currently not covered by prohibitive legislation. The tool should, in the view of the SCA, be focused on identifying the causes of competition issues and enable the supervisory authority to counteract them through future-oriented actions, even when the causes are not related to the behaviour of any individual firm.

## III MARKET DEFINITION AND MARKET POWER

### i Market definition

Neither the legislator nor the SCA have adopted guidelines on how to define the relevant market. In its decisions and judgments, the SCA and the courts regularly refer to EU case law and the Commission's notice on the definition of the relevant market.[17]

The purpose of the market definition in abuse cases is to assess whether the undertaking in question has the possibility to prevent effective competition from being maintained on the market by giving it the power to behave to an appreciable extent independently of its competitors.[18]

The small but significant and non-transitory increase in price (SSNIP) test has been accepted by the courts as an established method for defining the relevant market.[19] A SSNIP test may, however, be misleading in cases regarding abuse of dominance if the test is based on a price that is already above the competitive level (the 'cellophane fallacy'), or if the market is

14 Case PMÖÄ 1519-19, *Svenska Förpacknings- och Tidningsinsamlingen AB v. SCA*.

15 Last year, the SCA made a call for supplementary regulation to make it easier to intervene against competition concerns in digital markets.

16 Report 2021:4.

17 See, for instance, the PMCA judgments in PMÖÄ 1519-19, *Svenska Förpacknings- och Tidningsinsamlingen AB v. SCA*, 28 February 2020, p. 10; the Market Court's judgment in MD 2013:5, *TeliaSonera AB v. SCA*, 12 April 2013, p. 38; and the Patent and Market Court (PMC) judgments in case PMT 16822-14, *SCA v. Swedish Match North Europe AB*, 8 February 2017, p. 134; case PMT 7000-15, *SCA v. Nasdaq AB et al*, 15 January 2018, p. 22; and case PMÄ 2741-18, *Svenska Förpacknings- och Tidningsinsamlingen AB v. SCA*, 21 January 2019, p. 16. Even the preparatory works refer to the said notice, see Government Bill 2007/08:135, p. 71.

18 Judgment from the Market Court, MD 2013:5, *TeliaSonera AB v. SCA*, 12 April 2013, p. 38.

19 See, for instance, MD 2013:5, *TeliaSonera AB v. SCA*, 12 April 2013, p. 38; and the PMC cases PMT 16822-14, *SCA v. Swedish Match North Europe AB*, 8 February 2017, p. 135 and PMT 7000-15, *SCA v. Nasdaq AB et al*, 15 January 2018, p. 22 (not changed by the PMCA in PMÖD PMT 1443-18, *SCA v. Nasdaq AB et al*).

characterised by strong network effects.[20] In practice, the assessment is based on a number of circumstances, including not only quantitative evidence of substitution, but also qualitative aspects such as the qualities of the products and their intended use.[21] Market definitions in previous cases may provide guidance, but are not precedential.[22]

### ii Market power

The term dominant position is interpreted the same way as it is in Article 102 of the TFEU. As regards a definition of the term, the preparatory works to the previous Competition Act (preparatory works)[23] refer to the judgment of the Court of Justice of the European Union (CJEU) in *United Brands*, in which a dominant position was defined as:

> *a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.*[24]

The term dominant position includes both single and collective dominance.[25]

The assessment of dominance is based on a number of circumstances that are not individually decisive. A company's market shares are a natural starting point for the analysis. Market shares above certain thresholds may lead to presumptions of dominance.[26]

Despite the existence of market share presumptions, the assessment of dominance is usually based on a full assessment of all the relevant facts in the case, including, in particular:

*a* barriers to entry and expansion;
*b* advantages (financial, technological, regulatory, historical, etc.);
*c* vertical integration;
*d* presence in neighbouring markets;
*e* whether the company is an unavoidable trading partner; and
*f* whether customers have counterweighing buyer power.

20 Judgment from the PMC, PMT 7000-15, *SCA v. Nasdaq AB et al*, 15 January 2018, p. 23 (not changed by the PMCA in PMÖD PMT 1443-18, *SCA v. Nasdaq AB et al*).

21 See, for instance, MD 2013:5, *TeliaSonera AB v. SCA*, 12 April 2013, p. 38.

22 See, for instance, the PMC's judgment in case PMT 7000-15, *SCA v. Nasdaq AB et al*, p. 26, which referenced OECD, Market Definition, DAF/COMP(2012)19, p. 87.

23 Government Bill 1992/93:56, p. 85.

24 Case C-27/76, *United Brands Company et al v. Commission of the European Communities*, EU:C:1978:22, pp. 65 and 66.

25 Like Article 102 of the TFEU, the prohibition covers abuse by one or more undertakings. In MD 2011:28, *Uppsala Taxi 100 000 AB v. Europark Svenska AB et al*, 23 November 2011, the Market Court considered that Europark and Swediavia, by virtue of their agreement concerning the taxi allocation system at Arlanda Airport, had a collective dominant position.

26 According to the preparatory works to the former Competition Act (Government Bill 1992/93:56, pp. 85 and 86), market shares above 40 per cent constitute a clear sign of dominance; market shares above 50 per cent lead to a presumption of dominance; and market shares above 65 per cent lead to a presumption that is almost impossible to rebut; in particular, if the competitors are relatively small.

In two recent cases, *Swedish Match*[27] and *Nasdaq*,[28] the Patent and Market Court (PMC) refrained from relying on a market share presumption, despite high market shares. However, following an appeal of the judgment in *Swedish Match*, the Patent and Market Court of Appeal (PMCA) stated that market shares of more than 70 per cent in volume and value provided a strong indication that Swedish Match had a dominant position, and that it would have to be exceptionally easy for new players to enter the market, or expand, for Swedish Match not to be deemed to have a dominant position.[29]

The courts have also referred to the European Commission's guidance paper on exclusionary abuses for further guidance on the term dominant position.[30]

## IV ABUSE

### i Overview

The prohibition against the abuse of a dominant position does not define the term abuse; the type of abuses mentioned in the prohibition are only examples, and do not constitute an exhaustive list. For a definition of abuse, both the SCA and the Swedish courts regularly refer to the CJEU's judgment in *Hoffman-La Roche*, in which an abuse was defined as:

> *an objective concept relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of markets where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.*[31]

The prohibition covers both exclusionary and exploitative abuses.

Over the past decade, the enforcement of the prohibition has gradually shifted from being rather legalistic to being more effect-based. In 2016, the SCA adopted a new prioritisation policy for its enforcement, which states that the most important factor for prioritising cases is the potential harm to competition and consumers.[32] It may also be noted that the PMC in a recent judgment questioned the existence of 'naked restrictions', that is, unilateral restrictions that are so harmful to competition that there is no need to show anticompetitive effects to establish an abuse.[33]

27 Case PMT 16822-14, *SCA v. Swedish Match North Europe AB*, 8 February 2017, p. 144.

28 Case PMT 7000-15, *SCA v. Nasdaq AB et al*, 15 January 2018, p. 85. The judgment was upheld by the PMCA in PMÖD PMT 1443-18, *SCA v. Nasdaq AB et al*, but the PMCA did not assess whether Nasdaq had a dominant position.

29 Case PMT 1988-17, *Swedish Match North Europe AB v. SCA*, 29 June 2018, p. 7.

30 See, for instance, the PMC's judgment in case PMT 16822-14, *SCA v. Swedish Match North Europe AB*, 8 February 2017, p. 140.

31 Case C-85/76, *Hoffman-La Roche & Co AG v. Commission*, ECLI:EU:C:1979:36, p. 91.

32 The prioritisation policy, which was updated on 12 February 2020, is available on the SCA's website, https://www.konkurrensverket.se/globalassets/dokument/engelska-dokument/english_prioritisation_policy_for_enforcement.pdf.

33 The PMC's judgment in case PMT 7000-15, *SCA v. Nasdaq AB et al*, 15 January 2018. The judgment was upheld by the PMCA in PMÖD PMT 1443-18, *SCA v. Nasdaq AB et al*, 28 June 2019.

Evidence of an anticompetitive strategy is not sufficient per se to establish an abuse, but in practice it has sometimes seemed to play a rather important role.[34] The SCA has used evidence of anticompetitive intent to argue that conduct does not constitute competition on the merits,[35] and that a dominant company has considered it likely that the conduct is capable of having anticompetitive effects.[36] The PMC has taken evidence of anticompetitive intent into account in its assessment of a conduct's effects on competition.[37]

### ii Exclusionary abuses

Although the prohibition covers both exclusionary and exploitative abuses, the SCA's enforcement focuses on exclusionary abuses. The SCA's enforcement policy states that the SCA prioritises unilateral conduct that is capable of excluding effective competition. When deciding whether conduct is sufficiently harmful to warrant an investigation, particular consideration is given to the share of the market affected by the conduct and, in cases where the foreclosure concerns an input, to what extent the input is essential to enable effective competition. When it comes to price-based conduct, the SCA considers whether the pricing is capable of foreclosing as-efficient competitors.[38] Therefore, although as-efficient competitor tests are not strictly necessary to establish an abuse, the SCA regularly performs such tests in cases regarding price-based abuse to decide whether an intervention is warranted.[39]

### iii Discrimination

Like Article 102 of the TFEU, the Swedish provision prohibits the application of 'dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage'. The prohibition applies not only to discriminatory prices, but also to other discriminatory terms. It covers discrimination of a dominant company's competitors (first-line discrimination) as well as discrimination of its customers (second-line discrimination). The latter form of discrimination (sometimes referred to as pure discrimination) is less likely to lead to foreclosure of effective competition, and thus less likely to be prioritised by the SCA.[40] These cases are more likely to occur in private litigation.[41]

---

34 In case PMT 16822-14, *SCA v. Swedish Match North Europe AB*, 8 February 2017, several pages of the PMC's judgment are devoted to the question of whether Swedish Match's conduct was based on an anticompetitive strategy but with a different motivation. The judgment was set aside by the PMCA in case PMT 1988-17, *Swedish Match North Europe AB v. SCA*, dated 29 June 2018 because the conduct was deemed objectively motivated. It was thus not necessary to determine whether the conduct was based on an anticompetitive strategy.

35 See the SCA's summons application in case 815/2014, *SCA v. Swedish Match North Europe AB*, 9 December 2014, p. 383 with further references.

36 ibid., p. 385 with further references.

37 See the PMC's judgment in case PMT 16822-14, *SCA v. Swedish Match North Europe AB*, 8 February 2017, p. 183. The judgment was set aside by the PMCA in case PMT 1988-17, *Swedish Match North Europe AB v. SCA*, dated 29 June 2018, as the conduct was deemed to be objectively justified.

38 See footnote 24.

39 See, for instance, the SCA's decision in case 494/2013, *Assa AB et al*, 22 November 2017.

40 See footnote 24.

41 See, for instance, MD 2011:2, *Stockholm Transfer Taxi in Stockholm AB v. Swedavia AB*, 2 February 2011, concerning the alleged discriminatory allocation of taxi lanes at Arlanda Airport. When the complaint was rejected by the SCA on priority grounds, the complainant brought private actions in the Market Court. Considering that the taxi space outside Arlanda was limited, the Market Court agreed that Swedavia was obliged to ensure that the allocation of taxi lanes was neutral from a competition perspective, but it did not

### iv Exploitative abuses

Exploitative abuses are covered by the prohibition. Cases regarding pure exploitative conduct are, however, rare, in particular in public enforcement. From 2016 to 2020, the SCA's prioritisation policy did not even mention exploitative abuse, and the SCA has not initiated any investigations or legal proceedings regarding pure exploitative conduct. In the latest version of the Prioritisation Policy, which was adopted on 12 February 2020, an amendment was made regarding exploitative abuse stating that the SCA may prioritise exploitative abuse if there are clear signs that a dominant firm is directly exploiting customers or consumers as a result of non-functioning competition.[42] However, the SCA has not initiated any in-depth investigations of exploitative conduct following the amendment. Cases regarding exploitative abuse occasionally occur in private litigation.[43]

## V REMEDIES AND SANCTIONS

### i Overview

The main remedies and sanctions against abuse of a dominant position are:

*a* administrative fines;
*b* orders imposing obligations (under threat of a fine for default);
*c* infringement decisions;
*d* commitment decisions;
*e* nullity; and
*f* damages.

### ii Administrative fines

An undertaking that intentionally or negligently infringes the prohibition against abuse of a dominant position may be ordered to pay administrative fines.[44] Following a legislative amendment on 1 March 2021, the SCA has decision-making powers in cases regarding fines.

When determining the amount of the administrative fines, account shall be taken of the gravity and duration of the infringement, and possible aggravating or mitigating circumstances.[45] The gravity is based primarily on the nature of the infringement, the size and

agree that the allocation was discriminatory. The Court found that the allocation was based on customer demand and that it did not lead to a competitive disadvantage for the complainant. Accordingly, the conduct did not constitute an abuse.

42 See footnote 24.

43 The most recent example of a case regarding pure exploitative abuse is a case from 2011 concerning a 'sign fee' imposed by the airport operator Swedavia for pre-ordered taxis at Arlanda Airport. The fee was imposed on taxis that picked up customers in the arrival hall with a sign with the customer's name on it. When the complaint was rejected by the SCA on priority grounds, the complainant brought successful private actions to the Market Court. In a judgment delivered on 23 November 2001, MD 2011:28, the Market Court found that there was no 'necessary connection' between the fee and the pre-ordered taxi traffic. Without considering whether the fee was excessive, the Court found that the fee was unfair and thus abusive. Following the judgment, the SCA submitted a summons application with a request for fines. In its judgment delivered on 9 June 2016 in case T 9131-13, the request was dismissed by Stockholm City Court. The Court agreed that the fee was anticompetitive but found that it was objectively justified by capacity issues at the airport. The SCA chose not to appeal the judgment.

44 Chapter 3, Article 5 of the Competition Act.

45 Chapter 3, Article 8 of the Competition Act.

significance of the market, and the infringement's actual or potential impact on competition.[46] The amount may be increased if there are aggravating circumstances (if the company has persuaded other companies to participate, or has played a leading role in the infringement) and reduced if there are mitigating circumstances (if the company's participation has been limited).[47] As well as circumstances referable to the infringement, particular account shall be taken of the undertaking's financial status, whether the undertaking has previously infringed any of the competition prohibitions and whether it has quickly discontinued the infringement.[48]

The SCA has published guidelines describing its method of setting administrative fines.[49] The purpose of the guidelines is to provide greater clarity on how the SCA interprets and applies the provisions on administrative fines in the Competition Act. The guidelines do not pre-empt the interpretations made by the courts.

The fines may not amount to more than 10 per cent of the undertaking's total annual turnover.[50] The highest fine ever imposed by final judgment in a Swedish case concerning abuse of dominance is 35 million Swedish kronor.[51]

### iii Orders imposing obligations

A company that abuses its dominant position may be ordered by the SCA to terminate the abuse.[52] According to the preparatory works, such orders may not be more far-reaching than what is necessary to eliminate the anticompetitive effects of the infringement.[53] The SCA has the power to impose behavioural obligations (e.g., order the undertaking investigated to end an agreement or stop a certain conduct) as well as structural obligations (e.g., order the undertaking to divest operations or trademarks).

If there are particular grounds, the SCA may issue an interim order for the period until a final decision is adopted.[54] According to the preparatory works, interim measures should be taken in cases where the infringement is more serious and may lead to significant negative effects if the company is not ordered to terminate the conduct immediately. Account shall also be taken of the effects on the company addressed by the order.[55]

A final or interim order to terminate an abuse may be imposed under threat of a fine for default.[56]

46 ibid.
47 Chapter 3, Articles 9–10 of the Competition Act.
48 Chapter 3, Article 11 of the Competition Act.
49 Policy statement 2021:1, published 2 July 2021. Available on the SCA's website.
50 Chapter 3, Article 6 of the Competition Act.
51 MD 2013:5, *TeliaSonera AB v. SCA*, 12 April 2013.
52 Chapter 3, Article 1 of the Competition Act.
53 Government Bill 1992/93:56, p. 90.
54 Chapter 3, Article 3 of the Competition Act.
55 Government Bill 1997/98:130, p. 62.
56 Chapter 6, Article 1 of the Competition Act.

### iv Infringement decision

As of 1 March 2021, the SCA has the power to adopt infringements decisions (i.e., decide that an undertaking has infringed a competition prohibition without taking any measures against the infringement).[57] Such decisions have precedential value in competition damages cases, which means that the infringement as such may not be reassessed.[58]

### v Commitment decision

If the undertaking investigated offers commitments, the SCA may adopt a commitment decision stating that there are no longer grounds for action.[59] As long as the decision applies, the SCA may not issue orders imposing obligations regarding the conduct covered by the decision.[60]

### vi Special right to legal action

If the SCA decides not to investigate a complaint, or to end an investigation without issuing an order, undertakings affected by the conduct are entitled to institute private proceedings before the PMC, and to request that the court orders the company to end the abuse.[61]

### vii Nullity

An agreement that infringes the prohibition against abuse of a dominant position is considered null and void.[62] This means that the agreement, or at least the infringing provisions thereof, cannot be enforced by a court.

### viii Damages

An intentional or negligent abuse of a dominant position may lead to liability to pay damages.[63]

57 Chapter 3, Article 1(a) of the Competition Act.

58 Chapter 5, Article 9 of the Competition Damages Act (2016: 964).

59 Chapter 3, Article 4 of the Competition Act.

60 See, for instance, the SCA's decisions dated 3 May 2017 in cases 630/2015 and 210/2017, *Arla Foods amba*. In February 2016, Arla introduced restrictions in the right for members of the Arla group to supply organic milk to diaries other than Arla. The SCA initiated an investigation regarding abuse of a dominant position (case 630/2015). Considering that the members' right to supply milk to competing dairies was subject to a commitment decision from 2010, which was unlimited in time, the SCA found that it was not entitled to issue an order against the restrictions introduced in 2016. The new restrictions were, however, deemed to constitute a violation of the said commitment decision. For the SCA to be able to intervene against the new restrictions, the SCA revoked the commitment decision (case 210/2017).

61 Chapter 3, Article 2 of the Competition Act.

62 This does not follow directly from the Competition Act, but is stated in the preparatory works, Government Bill 2003/04:80, p. 54.

63 The liability to pay damages for competition law infringements is described further under Section VII.

## VI PROCEDURE

### i Overview

Following the implementation of Directive (EU) 2019/1 to empower the competition authorities of the Member States to be more effective enforcers (ECN+ Directive), the SCA now has similar investigative and sanctioning powers as the European Commission and the national competition authorities of other Member States.

### ii SCA investigations

SCA investigations are governed by the Competition Act and the Administrative Act.[64] Subject to certain limitations set out in the Public Access to Information and Secrecy Act,[65] a party to an investigation has extensive rights of access to files.

Most SCA investigations regarding abuse of a dominant position start with a tip-off or a complaint from a customer, supplier or competitor. *Ex officio* investigations occur but are quite rare. The SCA does not investigate all tips and complaints that it receives: the process of selecting cases for investigation is described in the SCA's Prioritisation Policy for Enforcement.[66] If the SCA decides not to open an investigation, the case is closed with no further explanation other than a short reference to the Authority's prioritisation policy. If the SCA decides to open an investigation, the case is allocated to the Market Abuse Unit, a specialised unit that handles cases regarding abuse of dominance, vertical restraints and competition neutrality.

The SCA has extensive investigative powers. It may order parties and third parties to provide information and documents, conduct interrogations and, upon prior authorisation from the PMC, conduct unannounced inspections at the premises of companies.[67] As of 1 March 2021, it is entitled to impose administrative fines on undertakings that intentionally or negligently violate certain administrative decisions during the SCA's investigation (e.g., by submitting incorrect, incomplete or misleading information, failing to ensure that a representative appears for interrogation, breaking a seal or otherwise obstructing an inspection).[68] Such fines may only be imposed on the undertaking investigated, not on third parties, and may amount to a maximum of 1 per cent of the undertaking's turnover during the previous financial year.[69]

Before the SCA decides to impose fines for competition law infringements, the party must be given the opportunity to comment on the SCA's draft decision.[70] The Competition Act contains no corresponding provisions to communicate draft orders to impose obligations or draft infringement decisions. The SCA has nonetheless developed a practice of communicating draft orders before adopting a final decision, and it appears likely that the SCA will communicate draft infringement decisions as well.

64 The Administrative Act (2017:900).

65 The Public Access to Information and Secrecy Act (2009:400).

66 See footnote 32.

67 Chapter 5, Articles 1 and 3 of the Competition Act.

68 Chapter 5, Article 21 of the Competition Act.

69 Chapter 5, Article 23 of the Competition Act.

70 Chapter 3, Article 5 of the Competition Act.

A party that receives a draft decision may request an oral hearing of the case. The main purpose of the oral hearing is to complete the party's written submissions with oral comments and ensure that the SCA's decision is well-supported.[71]

When the investigation is completed, the main findings and a proposed decision are presented to the Director General, who makes the final decision on whether to intervene or close the case.

The SCA does not have the opportunity to give negative clearance. Thus, when the SCA decides to close a case, the closing decision normally states that the SCA has not taken a final stand on whether the conduct constitutes an infringement.

The duration of the SCA's investigations varies from case to case, depending on the complexity of the case and whether the investigation leads to the finding of an infringement. Investigations regarding abuse of dominance tend to take longer than investigations of other competition infringements. In cases that lead to the finding of an abuse, the investigation may take several years.[72]

### iii Early resolutions and settlement procedures

The SCA does not have the power to make settlement agreements. Its previous power to issue fine orders with the same effect as legally binding judgments was repealed on 1 March 2021 when the SCA gained decision-making powers in respect of fines.

### iv Appeals and judicial review

The right to appeal decisions adopted by the SCA is governed by Chapter 7, Article 1 of the Competition Act. Decisions to impose fines, orders to impose obligations and infringement decisions may be appealed. Decisions not to investigate a case may not be appealed, but undertakings affected by the conduct may institute private proceedings and request that the court issues an order to end the conduct.[73]

As of 1 September 2016, the competent court in competition law cases is the PMC, a division of Stockholm District Court that specialises in competition, patent and market law.[74]

Judgments and decisions by the PMC may be appealed to the PMCA, which is a division of the Svea Court of Appeal. Leave to appeal is required. Decisions and judgments by the PMCA in competition cases may normally not be appealed. The PMCA may, however, allow the judgment to be appealed to the Supreme Court if the Supreme Court's review is important from a precedential perspective.[75] This opportunity has mainly been used in cases concerning procedural issues.

The courts' review is not limited to a legal review: both the PMC and the PMCA make a full review of the case.

The number of judgments regarding abuse of a dominant position delivered by the courts following the introduction of the new court system is too limited to make any general

71 The oral hearing is described on the SCA's website (Swedish only), https://www.konkurrensverket.se/konkurrens/tillsyn-arenden-och-beslut/kvalitetssakring-av-beslut/.

72 From recent investigations leading to the finding of an abuse, it may be noted that the SCA's investigations of FTI, Swedish Match and Nasdaq took approximately one-and-a-half years, two-and-a-half years and four-and-a-half years, respectively.

73 Chapter 3, Article 2 of the Competition Act.

74 Chapter 8, Article 1 of the Competition Act.

75 Chapter 1, Article 3 of the Act on Patent and Market Courts (2016:188).

conclusions regarding the length of the court proceedings. In the three cases in which final judgments have been handed down, the total proceedings lasted from two to four years.[76] Considering the complexity of this type of case, it is fair to assume that court proceedings will take at least two years and most often several years (appeals included).

## VII PRIVATE ENFORCEMENT

A company that intentionally or negligently abuses a dominant position may be held liable to pay damages for the harm caused. The right to claim damages is governed by the Competition Damages Act,[77] which implements the EU Directive on Competition Damages into Swedish law.[78] When the Competition Damages Act entered into force on 27 December 2016, it replaced the previous provisions on competition damages in the Competition Act.

The liability covers compensation for actual loss, loss of profit and interest. The claimant has to demonstrate the existence of an abuse, the extent of the harm, and the existence of a causal link between the abuse and the harm. In contrast to cartels, abuse of a dominant position is not presumed to cause harm. Following the entry into force of the Competition Damages Act, final infringement decisions of the SCA or Swedish courts constitute full proof that an infringement has actually occurred.[79]

Collective actions are available and governed by the Swedish Group Proceedings Act,[80] which is based on an opt-in system.

Swedish case law on damages for competition law infringements is very limited. To our knowledge, there are no Swedish court cases in which a claimant has been awarded damages for abuse of a dominant position.

Last year,[81] no judgments regarding damages for abuse of a dominant position were delivered. Notably, the Swedish price comparison firm PriceRunner has recently filed an action for damages against Google for about €2.4 billion for having abused its dominant position by favouring its own price comparison shopping service. The case, which is a follow-on action on the Commission's 2017 infringement decision in *Google Shopping*,[82] recently upheld by the General Court,[83] is followed with great interest by the competition law practitioners.

There are no general prohibitions against third-party funding of private litigation.

76 Following the entry into force of the new court system, final judgments from the PMCA have been delivered in three cases: *Swedish Match* (PMT 1988-17), in which the court proceedings lasted for three-and-a-half years, *Nasdaq* (PMT 1443-18), which took approximately four years and *FTI* (PMÖÄ 1519-19), which took approximately two years. The proceedings in the PMC are somewhat lengthier than in the PMCA.

77 The Competition Damages Act (2016:964).

78 Directive 2014/104/EU of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

79 The Competition Damages Act applies to infringements conducted and harm that arose after the Act entered into force on 27 December 2016.

80 The Swedish Group Proceedings Act (2002:599).

81 1 April 2020 to 31 March 2021.

82 COMP/AT.79340.

83 Case T-612/17, *Google and Alphabet v. Commission*, EU:T:2021:763.

## VIII FUTURE DEVELOPMENTS

The SCA's enforcement activities against abuse of dominance continues to be low. Several heavy court defeats appear to have made the SCA less inclined to invest the extensive time and resources needed to investigate these types of cases. The above-mentioned contract research study on the SCA's court proceedings,[84] which questions some of the reasons stated by the PMCA in its dismissals of the SCA's actions, may perhaps help the authority regain the confidence needed to take on such cases. Another key aspect for the future is whether the SCA's repeated call for supplementary regulation will be heard. The arguments presented in favour of supplementary rules have not yet been convincing.

84 Contract research report 2021:4.

**Appendix 1**

# ABOUT THE AUTHORS


**MARCUS GLADER**

*Vinge*


Marcus Glader specialises in competition law and is a partner in Vinge's EU, competition and regulatory practice group. Marcus works with all types of EU and competition law matters, and focuses in particular on transactions, abuse of dominance issues and competition law litigation. Marcus has a wealth of international experience after several years in Brussels, including at the European Commission and a leading international firm, before managing Vinge's Brussels office. He is ranked among the top five competition law specialists in Sweden.

Marcus holds a doctor of laws degree from Lund University, and is a guest lecturer at Lund University and Stockholm University.


**TRINE OSEN BERGQVIST**

*Vinge*


Trine Osen Bergqvist works as a senior expert in Vinge's EU, competition and regulatory practice group. With more than 20 years' experience, of which almost 10 years have been spent in different expert and managerial positions at the Swedish Competition Authority, Trine's expertise spans the entire field of competition law. Trine is the co-author of the 6th edition of the *Swedish Handbook on Competition Law* (*Konkurrensrätt – En handbook*) (2022). She holds an LLM from the University of Bergen (1996), a master's degree from Stockholm University and postgraduate diplomas in competition law and economics of competition law from King's College London. She is a non-government adviser in the International Competition Network working group for unilateral conduct.


**VINGE**

Smålandsgatan 20
Box 1703
111 87 Stockholm
Sweden
Tel: +46 10 614 30 00
marcus.glader@vinge.se
trine.osenbergqvist@vinge.se
www.vinge.se

ISBN 978-1-80449-083-9