

## **The Swedish Asphalt Cartel and Methods to Detect Cartel Activity**

### **The Asphalt Case**

**Anders Gerde**

Senior case officer

**Anne Vadasz-Nilsson**<sup>1</sup>

Senior case officer

#### *Background*

During the mid 90th's and onwards small asphalt companies complained that they were denied to buy asphalt from large producers. The Swedish Road Administration also complained about high price levels.

In august 2001 the Swedish Competition Authority was contacted by a small company and two former employees from one of the largest companies in the market. They informed the Authority about an ongoing cartel in the Swedish asphalt sector.

The information given by the informants made it possible for Stockholm District Court to permit the Swedish Competition Authority to carry out inspections/dawn-raids in October 2001.

#### *The Case*

Asphalt services are mainly sold through public procurement. The informers told the Authority that the companies NCC, Skanska, Peab and the Swedish Road Administration, acting as a seller, had decided to fix prices and split the market between them. They also agreed on sales quotas. The companies meet yearly before the asphalt season started and agreed on all coming procurements.

During the investigation the Authority found out that the cartel had been going for a very long time (probably since world-war two).

#### *Evidence and Investigative Methods*

Most of the documents taken during the dawn-raid and given by the informers were undated. Oral hearings with representatives from the asphalt companies were therefore necessary.

In total 80 hearings was held during the investigation. The hearings were taped. A transcript was also made of each hearing. Apart from the hearings questionnaires was sent to the companies in order to obtain more information. The investigation was time consuming taking approximately one and a half year.

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<sup>1</sup> Address SE-103 85 Stockholm

Visitors address Sveavägen 167

Telephone +46 8 700 16 00

Fax +46 8 24 55 43

[konkurrensverket@kkv.se](mailto:konkurrensverket@kkv.se)

### *The Lawsuit*

Only a court can impose fines for breaches of the Swedish Competition Act. The Swedish Competition Authority must therefore sue companies involved in a cartel offence to the District Court in Stockholm. A ruling from the District Court can be appealed to the Market Court.

The lawsuit in the asphalt case was sent to the District Court in March 2003. According to Swedish legislation seriousness and duration of the offence is the main criteria when calculating fines. A horizontal bid-rigging cartel is by nature a very serious infringement. The Swedish asphalt cartel was of long duration. In total the companies has therefore been sued 1.6 billion Swedish crowns.

Immunity from fines can, according to the Swedish Leniency program, be given to a company that first reveals a secret cartel. The information about the asphalt cartel was originally given by a small company. This company has therefore not been sued.

### **Methods to Detect Cartels**

#### *Immunity from Fines*

A company can be given immunity from fines if it notifies the infringement to the Swedish Competition Authority before the Authority has received sufficient material to take action against the infringement and no other undertaking which has been involved in the infringement has made a prior notification.

The company must also provide the Swedish Competition Authority with all the information relating to the infringement which it has access to and co-operate fully during the investigative phase. It also has to discontinue its cartel activity without delay.

#### *Reduction of Fines*

A reduction of fines can be given if a company provides significant assistance in the investigation regardless of when the information is given. The reduction can range from 20-50 % depending on when the information is given and the value of the given information.

### *Tips and Complaints*

Tips and complaints can be an effective way to detect cartels especially if those giving the information have inside information about a cartel.

To make sure that vital information is taken care of in the best manner the Swedish Competition Authority has formed a special task force dedicated to handle tips and complaints.

### *Other Methods to Detect Cartel Activities and other Competition Problems*

Functioning competition is a mutual goal both for public procurers and competition authorities. Public procurers can help competition authorities in their fight against cartels. The Swedish Competition Authority therefore works systematically to get information from public procurers. A checklist with indications of bid-rigging activities has been developed to help procurers to detect competition problems and forward the information the Swedish Competition Authority.

Many competition authorities use sectoral studies to find out more about competition problems in concentrated markets. The Swedish Competition Authority is now using this method in the Swedish building and construction market.