The new Swedish Competition Damages Act

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The Swedish implementation of the Directive on antitrust Damages Actions (the “Directive”), is in force as of 29 December 2016 and has entered into force of the Swedish Competition Damages Act (the “Act”). The previous provisions on competition damages in the Swedish Competition Act (the “Act for the Time Being”) have thereby ceased to apply.

The Act introduces two main changes. First, the so-called reference rate plus interest for the harm suffered covers compensation for the increased price they pay due to the infringement why the claims for damages have been rejected. A number of Swedish cases (abuse of dominance) are currently also pending in the Patent and Market Appeal Court. In my view, such announcement is not enough since the

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The issue of legal costs is not regulated in the Directive but since that is of great practical importance it may be noted that the actual court application fee is EUR 280 and that the loser pays principle applies as a main rule according to the Code of Judicial Procedure. In competition damages cases so far none of the claimants have been completely successful with their claims and in the TeliaSonera-cases the court ordered each party to pay its legal costs. In the Euroclear-case the court ordered each defendant to pay 75 % of the costs of litigation in comparison to the normal 50 % when the parties have mixed success.

Possible class actions

It is possible to bring a class action in accordance with the Swedish Act on Class Actions (Sw. lag (2002:599) om grupprättegång), which provides for an opt-in system. It may be noted that class actions so far have been very rare in Sweden, also as regards other areas of law and that so far no class action has been initiated for a competition law claim.

Concluding remarks

The new Act brings about important rules which will probably open up for further competition damage litigation in Sweden. However, in order for more damages cases to take place in Sweden there has to be more cases brought by the Swedish Competition Authority, and such court cases have in the past been quite scarce. There is of course a possibility of stand-alone cases but there are always greater hurdles for bringing such claims since the actual competition law infringement has to be proved as well. However, at least one such case has been successful in the past and several are currently pending. Thus, it will be very interesting to see whether Sweden will be deemed by applicants to be an interesting jurisdiction for future claims. One thing that is for sure is that the exposure for competition law claims will be higher in the future. Most likely there will also be a number of questions for preliminary rulings to the ECJ in the future regarding interpretation of various aspects of the Directive.