SNELS Conference on Competition in Fintech Markets, 6 May 2021 – Keynote Speech by Director General Rikard Jermsten

CHECK AGAINST DELIVERY

Introduction

Ladies and gentlemen,

It is no exaggeration to say that if we as a competition authority had been told 10 years ago that we would soon be starting to grapple with ideas such as cryptocurrencies, algorithmic collusion and blockchains, we would have assumed that they had been lifted from the pages of a sci-fi novel. But such is the incredible pace of change both in the Fintech sector and within competition enforcement today!

The Swedish Competition Authority places great emphasis on the capacity for competition to drive innovation to the benefit of consumers, compelling companies to develop better products and services, increasing choice, and lowering prices. It is hard to think of an area where innovation is more prized than in the area of Fintech. And that is why the focus of this conference is to be applauded. We will all benefit from frank discussions about how to keep the principles of competition at the heart of Fintech's future so that innovation is not stifled and market positions do not become entrenched.

Fintech's potential to drive competition

The Swedish Competition Authority tracks developments in banking and financial markets very closely. We have long observed that traditional banking markets in Sweden are characterised by stubbornly high market shares for the incumbent banks. While we can see improvements in recent years, there are significant barriers to entry such as efficiencies of scale, lock-in effects, infrastructure cooperation and regulation. And since we are in the game of promoting competition, the potential within Fintech to stimulate new ideas, offer consumers new choices, and bring dynamism to markets should be welcomed.

Address SE-103 85 Stockholm, Sweden
Visiting Address Ringvägen 100
Telephone +46 8 700 16 00
konkurrensverket@kkv.se
www.konkurrensverket.se

In our work, we see how fast moving the sector can be. A relatively new Fintech start-up that approaches us with a complaint about alleged anticompetitive conduct may well be the company that is being accused of having abused its dominance before too long. Back in 2012, we investigated alleged anticompetitive cooperation between the Swedish telecom operators in a payment service called Wywallet. In deciding not to take any action against the cooperation, we explicitly referred to the dynamic nature of the market at the time. Within 5 years or so, Wywallet was no longer operating in the market. One of the complainants against the actions of the mobile operators at the time, Klarna, is on the other hand very much alive.

Where are the potential competition pitfalls?

However, this is not to say that we see no potential problems. Fintech is clearly not just a story of maverick start-ups upsetting the apple cart of the financial services market; it also involves the conduct of incumbent banks and large technology firms, for example. Each of these groups of market players can bring different potential competitive advantages to the sector, but may also face different regulatory constraints depending on the nature of the businesses.

We also know that there are particular dynamics of digital platform markets that can raise specific challenges for competition law enforcement – such as strong network effects, first-mover advantages and extreme economies of scale – and some of these may too be relevant to digital financial services. Meanwhile, rapid technological advances pose questions about the potential for new forms of collusion assisted by algorithms or blockchain collaborations. Each conduct and each market needs to be assessed on its own merits, of course, but in order to do that effectively it is important for competition enforcers to keep abreast of more general technological developments.

Cooperation on infrastructure

One area where we have seen tangible effects of Fintech on the competitive dynamics in the market is cross-border payment solutions. In line with the growth of e-commerce, we have seen new and innovative solutions sprout up to serve businesses and consumers. Arguably, this has been a factor in spurring on the development of the P27 cooperation among traditional banks in the Nordics to create a pan-Nordic payment structure. This new structure could in turn provide the conditions for the development of new services to grow beyond national markets.

Studies commissioned by the Swedish Competition Authority suggest that cooperation in the development of financial infrastructure can be beneficial when new technology needs to be established and grow. However, we must also monitor such types of cooperation carefully to make sure that they do not lead to anticompetitive effects. Of the complaints that we see in relation to Fintech, access to infrastructure is one issue that comes up in different forms.

The companies that control important infrastructure may end up having access to valuable information about the services that other market actors are in the process of developing. Such information can give these companies vital insights about potential competition from new, innovative ideas. This could potentially give them the opportunity to see off these challenges through acquisitions or developing their own products.

One notable cooperation between large Swedish banks, the BankID service, is now ubiquitous for personal identification when using an array of different private and public services. This is an example of where it is extremely difficult for payment service providers to develop a service and enter the Fintech market without having to have some kind of cooperation with one or more of the large banks. E-identification is one area where we believe that a publicly developed service like those that exist in many other European countries would have been desirable.

New technology and the risk for collusion

While technology develops at breakneck speed, the fundamentals that guide our enforcement work stay the same. Cartels and other forms of anticompetitive collusion have serious, damaging effects on consumers, and we give them our highest priority. While algorithms and other technology can have a number of positive effects, there is the potential risk that they may facilitate harmful anticompetitive agreements. We are clear that the use of technology can be no excuse for companies seeking to evade responsibility for anticompetitive conduct.

E-currencies

Private companies are not the only actors making ventures into Fintech. The Swedish central bank, Riksbanken, has undertaken important work in investigating the conditions for issuing a central bank digital currency, the e-krona.

We welcome Riksbanken's efforts to evaluate the need for, and design of a possible e-currency. Our view is that more work is needed to analyse the competitive effects of such proposals. There are already a number of different payment service solutions available in Sweden serving different users' needs, and so any moves to widen the role of the state here would require careful consideration. In our view, the design of a future e-krona would serve competition best if it amounted to the provision of infrastructure, for example in the form of a platform with open access to payment service providers and Riksbanken's e-krona infrastructure acting as a catalyst in digital payment innovations. We are pleased that the government has appointed an inquiry to look at the various complex issues surrounding the state's role on the payment market.

Sustainable finance

I note with great interest the panel that will be held tomorrow on sustainable finance. The enormous challenges that we face due to climate change require us

all to look at what we can do to contribute to our climate goals. While competition law cannot be the main policy tool to attain our collective goals, we need to make sure that competition is part of the solution, not part of the problem.

Competition policy in Sweden and the EU aims, first and foremost, to improve consumer welfare. We believe that this underpinning goal of our work can, in itself, contribute to sustainability targets. Competition law's capacity to drive innovation and quality improvements also applies to products and services that can support our efforts to fight climate change.

The question that competition authorities are grappling with now is whether competition law prevents certain initiatives that would be positive from an environmental standpoint. Our view is that there is already a good basis within existing case law and guidelines to find many kinds of sustainability agreements to be permissible from a competition perspective.

However, there are ways that we could provide increased clarity on these matters. A first step could be creating a mechanism for the European Commission to offer undertakings individual guidance, for instance through comfort letters. By putting in place coordination measures within the European Competition Network, we as national enforcers could also contribute by issuing informal guidance. Formal decisions from the Commission in individual cases would also serve as important guidance in this context.

As a next step, once we have built up a body of practical experience, general guidance could be incorporated into the ongoing work of revising the horizontal block exemption regulations or guidelines, for example.

Killer acquisitions

A vital role for competition enforcers in promoting the right conditions for investment and innovation in fast-moving markets is ensuring that we have a well-functioning and robust merger control. A current concern for many competition authorities is the potential for large companies to use acquisitions to kill off future challenges by innovative start-ups, impeding competition in the process.

These nascent firms may be valued highly by the purchaser, but still have a low turnover. Because of the way that turnover thresholds for merger notifications are designed, these kinds of acquisition may risk slipping through the net of competition enforcers in some cases.

In addition to the turnover thresholds for mandatory merger notifications, we have an additional residual threshold in Sweden, which means that we can order the notification of a merger where a certain aggregate turnover is met and particular grounds exist for us to do so. An example of what may constitute

particular grounds includes when a strong undertaking in a concentrated market acquires a newly established undertaking that could possibly challenge the position of the acquirer. There is also the possibility for companies to notify mergers voluntarily based on the same residual thresholds.

Our ability to order notifications is used relatively sparingly, having ordered five notifications over the last 10 years. One of those ordered notifications led to the parties abandoning the merger after we had requested the court to block it. The possibility of voluntary notification is one that parties have made use of more frequently: - a total of 18 times over 10 years.

This tool is undoubtedly a useful one in Swedish merger control, since it provides one way to capture potentially problematic mergers in platform and Fintech markets. In the Easypark/Inteleon merger, where we ordered notification based on our residual threshold, we looked at the question of whether access to customer data through the merger could lead to anti-competitive effects. This concern was ultimately not borne out by our investigation and the merger was cleared.

Of course, there will always be mergers that fall under even the residual turnover thresholds. We have seen some notable examples from the Fintech sector in the last few years. The question then remains whether additional enforcement tools should be put in place. Some jurisdictions like Germany and Austria have opted for introducing additional transaction-based thresholds. However, this type of model raises its own challenges, and we are not convinced that it is the optimal way to go in the Swedish context. Rather, we may want to look at whether our residual thresholds need to be tweaked in some way.

In the context of a recent sector inquiry into digital platform markets, we also proposed that the question of potential additions to the merger control regime in Sweden should be investigated. One example we have looked at is the Norwegian model, whereby the competition authority has the power to impose a duty to inform the authority of mergers under the relevant thresholds within a specific market for a specified period.

In recent weeks, the European Commission has published new guidance on the application of the referral mechanism under the EU Merger Regulation. The new policy means the commission may accept the referral of certain types of mergers, even where they fall under the relevant thresholds in the member states. Candidates for this type of referral could be mergers involving the elimination of a recent or future entrant or the merger between important innovators. We are examining the implications of the new policy carefully. Above all, it is vital that we uphold legal certainty and foreseeability in our merger regime in order not to hamper investment and innovation.

Competition enforcement in fast-moving markets

In fast-moving markets characterised by rapid innovation, such as in the Fintech sector, it is vital that we as a competition enforcer make well-balanced interventions at the right time. Intervening too early can risk smothering innovation, while waiting too long to take action could risk competition on the market being irreparably damaged. This raises the stakes for us to be able to investigate complaints quickly and bring infringements to an end in an efficient manner.

This requires that we invest in the tools and expertise necessary to be able to investigate complex, technology-driven markets. For example, we are in the process of recruiting staff in non-traditional roles such as data scientists to enhance our investigative capacity. We are also expanding our arsenal of digital tools, for instance through investments in cartel screening and IT forensics, and have established a strategy for integrating artificial intelligence into our work.

Our investigative toolbox has also been enhanced through a raft of legislative changes that came into force in March of this year. Notably, we now have the power to decide on competition fines, which means that we will be able to deliver decisions in the first instance quicker than before. Our new powers to sanction companies that refuse to cooperate with our investigations will mean that firms will have a much greater incentive to engage in our investigations. We have also introduced internal deadlines for our investigations, which means that we will now be more restrictive in offering extensions on deadlines for complying with requests for information.

Another consideration in the case of fast-moving markets is whether interim decisions may be appropriate in cases where we see that the grounds exist for acting urgently to protect competition on the market. We adopted an interim decision in a case at the end of 2019 involving a company that offers users access to training facilities via a digital app. This was the first time in seven years that we had made use of the possibility of adopting an interim decision, though it is unlikely that it will take another 7 years before we find ourselves in that position again.

The need for new competition tools

We recognised that we needed to understand better the competitive conditions of complex digital markets, and this moved us to start a wide-ranging sector inquiry into digital platform markets in 2019. We recently published our results in a report that found that there are certain competition concerns on digital platform markets that cannot be addressed effectively with existing competition rules. These may, for example, involve structural competition problems or problems involving several market actors that contribute independently to serious competition concerns.

We have found that there is a need to supplement the competition law framework with new rules that can be applied in such cases. The European Commission has proposed a new Digital Markets Act (DMA) that would place certain obligations on very large platform companies related to conduct that limits contestability in the market or is deemed unfair. For example, the DMA proposes regulating questions of access and interoperability in relation to platforms acting as gatekeepers when it comes to ancillary payment services.

We believe that the DMA has the potential to address some of the competition concerns we have identified as far as they concern very large platforms acting as gatekeepers. However, we propose that a review should also be conducted of the Swedish competition law framework. In light of our sector inquiry, we believe that there is a need for an additional, flexible framework within the Swedish competition regime to be able to make targeted and tailored interventions on specific markets.

We propose that a new legal framework should enable interventions that apply to whole markets rather than only to specific market actors. Ideally, the framework should make it possible to remedy structural market failures instead of prohibiting specific conducts. One source of inspiration could be the UK model of market investigations, although different proposals should be explored.

The future of competition in the Fintech sector

I believe that the future development of competition in the Fintech sector will rely on a number of different factors working in tandem. As well as robust competition enforcement, we need to see well-designed regulation. In the course of our sector inquiry, we initially looked at digital payment services as one of six selected focus markets. However, after our initial consultations we considered that the issues raised by stakeholders regarding this market did not specifically lie within the scope of our inquiry, but rather pertained to the market power of banks or a lack of compliance with the second Payment Services Directive, PSD2.

In principle, we believe that PSD2 holds out promise for stimulating the entrance of innovative payment services and the improvement of competitive conditions. It would be fair to say that we have not observed a revolution in the area yet. Still, we are perhaps starting to see incremental changes in the right direction that we hope will build towards delivering tangible results in terms of competition.

The question of data collection and use is crucial when it comes to digital markets, but these are not exclusively questions for competition enforcers. We need to make sure that the right tools are used in the right situations. This is why we have developed a constructive cooperation with the Swedish Consumer Agency and the Swedish Authority for Privacy Protection on data use in digital markets. Ultimately, we want to make sure that consumers are empowered to make active choices and take advantage of competition in banking and financial markets.

Meanwhile, we will not hesitate to make full use of our powers when we see that problems in the sector can be remedied through competition enforcement.

Just as we have got to grips with the ideas of cryptocurrencies and blockchain, I have no doubt that some of you listening today are in the process of developing new ground-breaking ideas and sci-fi terms that we will all have to learn and understand. I am confident that we are well placed to keep up-to-speed with new developments and play our part in maintaining well-functioning and innovative markets that serve consumers best.