



EUROPEAN COMMISSION
Competition DG

Markets and cases V: Transport, Post and other services
State aids Post and other services

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Veterinärer i Sverige – Ordförande
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Subject: SA.33887 (2011/CP) - Sweden
Swedish Board of Agriculture

Dear Madam/Sir,

On 15 November 2011, your organisation, the Veterinärer i Sverige (hereinafter ViS), representing private practitioners, filed a complaint regarding the competences and commercial activities of the Swedish District Veterinaries (hereinafter DVO), an entity part of the Swedish Board of Agriculture (hereinafter BoA), which is itself subordinated to the Swedish Ministry of Rural Affairs. While your complaint addressed different issues, this letter will focus primarily on the allegations regarding potential State aid.

1/ State aid issues

Through your submissions, you alleged that:

- a) While DVO delivers genuine Services of General Economic Interests (hereinafter SGEIs), it would be overcompensated for the delivery of these services,
- b) Moreover, DVO would also deliver commercial services, without any clear separation of accounts between these activities and the SGEI activities, which could lead to cross-subsidisation of these commercial services.
- c) Finally, you alleged that, due to its public nature, DVO has access to favourable loans from the Swedish National Debt Office, therefore benefitting from lower interest rates than what it would obtain on the market.

The Commission services forwarded the non-confidential version of your complaint to the national authorities. The Swedish authorities have informed the Commission services that in their opinion the issue does not involve unlawful State aid. To that end, they provided substantial reasoning why they do not consider the alleged measures to be unlawful aid. We

Please specify the name of the case and the case number in all correspondence.

attach a copy of the non-confidential version of their reply for your information. That explanation might serve to allay your previously indicated suspicions as regards unlawful aid.

On that basis, the competent departments of the Directorate General for Competition have come to the following preliminary assessment:

Compensation compatible with the SGEI Decision

The Swedish authorities explained that, in practice, all the conditions for compatibility with the 2012 SGEI Decision¹ (formerly 2005 SGEI Decision²) were fulfilled.

Firstly, the amount of compensation remained below the threshold of the SGEI Decision: according to the figures provided by the Swedish authorities (see Annex 3), the SGEI compensation granted to DVO for nationwide coverage, on-call services and preparedness for infectious diseases control over the period 2011-2013 amounted to an annual average of € 10,7 million³, and has therefore remained under the € 15 million threshold of the 2012 SGEI Decision (and also under the € 30 million threshold of the former 2005 Decision). Moreover, as outlined in Annex 4, the forecast SGEI compensation for 2014 amounts to € 10,9 million.

Secondly, the DVO was entrusted with the compensated SGEI in line with the SGEI Decision: the conditions regarding the SGEI entrustment were established in the *Ordinance SFS 2009:1397 on veterinary services of general economic interest*, which regroups the principles of the 2005 SGEI Decision (see Annex 2), supplemented by the *Ordinance SFS 2009:1464 on the rules governing the Swedish Board of Agriculture* (see Annex 10).

It can be noted that, following the discussions with the Commission, the Swedish authorities also decided to adopt two additional decisions, in order to enhance the transparency of the SGEI compensation granted to DVO: the *Decision of the Swedish Board of Agriculture concerning principles for calculating compensation for veterinary services of general economic interest, principles for assessing the areas where the District Veterinarians operate and principles for certain distribution of revenue and expenditure in district veterinarian activity* (see Annexes 3 and 7) and the *Decision pursuant to Section 2 of the Ordinance (2009:1397) on veterinary services of general economic interest and in accordance with Section 23 of the Ordinance (2009:1464) containing instructions for the Swedish Board of Agriculture* (see Annex 4), both enacted by the Swedish Board of Agriculture on 26 June 2014⁴.

These acts form together the entrustment acts, containing all the elements required by the 2012 SGEI Decision, notably:

¹ *Commission Decision on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*, OJ L7, 11.01.2012, p. 3-10.

² *Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*, OJ L 312, 29.11.2005, p. 67-73.

³ The exchange rate used for all conversion in this letter is the ECB reference rate on 1 September 2014, i.e. € 1 = SEK 9,1921.

⁴ The first of the two decisions was later amended (on 19 September 2014) following a request for clarification concerning the allocation of costs and revenues of the commercial activities, which we have addressed to the Swedish authorities.

- the duration of the entrustment is 6 years, according to paragraph 3 of the Decision in Annex 4; thus it does not exceed 10 years as required by the SGEI Decision;
- according to paragraphs 6 and 8 of the Decision in Annex 4, DVO has to report separately the income and expenditure for both the veterinary services identified as SGEI and for the activities identified as non-SGEI;
- the methodology for calculating the amount of compensation is described in Article 4 of Ordinance SFS 2009:1397;
- the arrangements for avoidance, control and repayment of overcompensation are described in paragraphs 10 and 13 of the Decision in Annex 4; in addition, the BoA can review at any time the accuracy of DVO's declarations.

Thirdly, the cost allocation used by the Swedish authorities seems adequate:

- There seems first to be a real differentiation between SGEIs and commercial services by the Swedish authorities, as clearly reflected in the cost structure of these services (see Annex 9). More specifically, in Annex 4, the proportion of personnel costs versus other expenses is very different for SGEIs (which are much more personnel-intensive) and for commercial services (which are equipment- and product-intensive since they are provided as additional treatment, on top of the basic service representing an SGEI).
- Then the cost allocation method starts from the principle that the SGEIs require a minimum number of personnel per year, per veterinary station. The cost of these personnel is therefore allocated to the SGEIs, while the remaining, incremental cost is allocated to commercial activities. That incremental approach seems particularly justified in this case since DVO's commercial activities, as defined by the Swedish authorities, are ancillary as they account for only 3,2% of DVO's revenues over the past 3 years.
- Finally, the Swedish authorities base their prospective cost and revenues allocation on historical data that are extrapolated for the future budget. This is notably reflected in the Decision of 26 June 2014, amended on 19 September 2014 and which will be used for the ex-ante estimation for the future periods. In that decision, the revenues and expenses for commercial activities are estimated as 4% of total revenues and 3% of total expenses based on the 2011-2013 information. That prospective estimation will in any case be revised ex-post, if necessary.

As the cost allocation methodology employed by the DVO seems closely aligned to the type of services that they provide (i.e. mainly SGEIs and only marginal commercial services), we believe that the reality is well-reflected by that methodology. The correctness of the cost allocation is particularly important for establishing the absence of overcompensation and cross-subsidisation.

Fourthly, no overcompensation occurred over 2011-2013: external auditors reviewed the compensation amount and over the period 2011-2013 the accounts of the SGEI showed an overall deficit of € 1,1 million, which excludes any possible overcompensation for that period and supports the views of the Swedish authorities that the needs of the SGEI are well anticipated by the State. It can also be noted that, according to the Swedish authorities, should there be any surplus in a given year, the memorandum of appropriations from the Government to the BoA only permits the carry-over to the next year of a surplus equivalent to only 3% of the grant. Such a measure tends to further limit the risk of overcompensation.

Alleged cross-subsidisation of DVO's commercial services

As explained above, the cost allocation mechanism of the Swedish authorities seems acceptable. As the SGEI activities were not overcompensated in the last 3 years (see the figures in Annex 4), there is no risk of cross-subsidisation. Moreover, as this methodology is regularly revised, it seems that there should also not be any cross-subsidisation in the future.

Loans from the National Debt Office

The Swedish authorities recognise that DVO benefits from preferential interest rates for its loans, due to the fact that it is required to contract its loans for the financing of fixed assets from the Swedish National Debt Office. However, DVO is also required to invest liquid assets in an interest-bearing account at the National Debt Office, therefore gaining lower financial revenue from these assets as opposed to what it would obtain on the market. The net financial revenues gained in this manner remain however very small, with an average annual amount of approximately € 60 000 over the past three years (see the figures in Annex 3).

Such minimal advantage can be added to the compensation without changing the overall conclusion that DVO is not overcompensated.

2/ Other issues

As regards the other allegations concerning the BoA's potential abuse of its dominant position in the market, the services of DG Competition believe that the Swedish National Competition Authority is the relevant entity to address these issues.

You also alleged that the DVO was not an independent operator run under regular market conditions, and that it used this position to compete with private veterinaries which were placed at a disadvantage as they could not benefit from the same conditions in the market.

In this respect, the Swedish authorities took several steps in order to reduce the likelihood of distortions arising from the activities of DVO. In particular, since 17 September 2009, the Swedish government assigned to the BoA the implementation of a pilot project on the procurement of certain veterinary services and on the monitoring and analysis of developments in the veterinary market (see Annex 5).

The Swedish authorities explained that, with the Government Bill 2008/09:211 (pp. 41-42), they assert that the "district veterinary organisation (...) should exist only to the extent that is necessary to meet its objectives". In this respect, Section 12 of the *Ordinance SFS 2009:1464 containing instructions for the Swedish Board of Agriculture* restricts the activities of DVO to primary care level, defined in a decision of 3 April 2014 of the Director of the BoA as the first level of care from which more difficult cases, or patients requiring inpatient care, are referred onwards, and as care requiring limited equipment.

The Government Bill 2008/09:211 also insists on the fact that "the eligible operations should be procured", in order to enhance the cooperation between private veterinarians and the BoA. However, despite the fact that in the period 2010-2014, the BoA organised 95 procurement procedures, only one led to the transfer of the operation to a private veterinary clinic. For the other 94 tenders, only one bid was submitted by a veterinary surgeon in private practice, but it did not lead to a contract.


Finally, the Swedish authorities explained that achieving a more efficient organisation of the veterinary services is one of the main objectives of the Swedish Government. Likewise, it can be noticed that the BoA has been restructured in 2013 in order to grant more independence to DVO.

3/ Conclusion

The above arguments put forward by the Swedish authorities seem consistent with their view that DVO has not received illegal State aid and, in the absence of counter-arguments from your side, DG Competition does not envisage pursuing this matter further.

This position is not a definitive position of the Commission itself, but only a preliminary view of the services of DG Competition, based on the information available at present and pending any additional comments you might wish to make. Should you want to dispute the attached findings or inform us of any new particulars that might demonstrate the existence of an infringement of the State aid rules, we would ask you to submit any further comments, together with a non-confidential version thereof (if appropriate), in writing to DG Competition. If we do not hear from you within one month from the date of receipt of this letter, your complaint will be deemed to be withdrawn.

Yours faithfully,



ANNA COLUCCI
Head of Unit

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Annexes:

1. Submission of the Swedish authorities dated 24 June 2014
2. Bilaga 1 – Ordinance SFS 2009:1397 on veterinary services of general economic interest
3. Bilaga 2 – Decision of 26 June 2014 of the Swedish Board of Agriculture concerning principles for calculating compensation for veterinary services of general economic interest, principles for assessing the areas where the District Veterinarians operate and principles for certain distribution of revenue and expenditure in district veterinarian activity
4. Bilaga 3 – Decision of 26 June 2014 of the Swedish Board of Agriculture pursuant to Section 2 of the Ordinance SFS 2009:1397 on veterinary services of general economic interest and in accordance with Section 23 of the Ordinance SFS 2009:1464 containing instructions for the Swedish Board of Agriculture
5. Bilaga 4 – Assignment to initiate and evaluate a pilot project on the procurement of certain veterinary services and to monitor and analyse developments on the veterinary market

6. Submission of the Swedish authorities dated 26 September 2014
7. Bilaga 1 – Decision of 26 June 2014, *amended on 24 September 2014*, of the Swedish Board of Agriculture concerning principles for calculating compensation for veterinary services of general economic interest, principles for assessing the areas where the District Veterinarians operate and principles for certain distribution of revenue and expenditure in district veterinarian activity
8. Bilaga 2 – Amendments to the Decision of 26 June 2014
9. Bilaga 3 – Note on the principles for calculating compensation for veterinary services of general economic interest and for certain distribution of revenue and expenditure in district veterinarian activity
10. Ordinance SFS 2009:1464 on the rules governing the Swedish Board of Agriculture