

Linklaters

Memorandum

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From Joakim Lavér and Natasha Benalal, Linklaters

Direct telephone (+46 8) 665 66 53 and (+46 8) 665 41 73

Client *Veterinärer i Sverige* (non-profit organisation)

Veterinary activities in Sweden – Competition issues

1 Background

The organisation *Veterinärer i Sverige* (veterinarians in Sweden) (“**ViS**”) has engaged us to investigate whether it is possible to address the current system of veterinary practice in Sweden with the help of competition rules.

Private veterinary practitioners feel that district veterinarians have a distinct financial advantage because the district veterinarians receive additional funding in the form of an annual state subsidy for their activities (“**State Subsidy**”). In 2004 this grant amounted to some 93 million kronor.

The private veterinary practitioners also feel that the district veterinarians have a competitive advantage in that they can combine public law activities with clinical veterinary practice when visiting a farmer/animal owner. This is partly due to the fact that the farmer/animal owner may feel compelled to use the district veterinarian for clinical services as well, in order to facilitate the public law activities. Private veterinarians perceive this to be a growing problem since district veterinary stations are increasingly devoting their activities to the treatment of small animals. In 2004 around 61 per cent of all treatment of small animals and sport horses was carried out by district veterinarians.¹

In view of the above, the question has arisen whether the District Veterinary Organisation (“**DVO**”) uses state resources to fund activities that are exposed to competition, and whether this gives them a competitive advantage over the private veterinary practitioners.

2 Conclusions

- By state subsidy is meant state aid as defined in the prohibition in Article 87.1 of the EC Treaty. This aid represents a significant financial advantage from which only the district veterinarians benefit. The aid therefore distorts competition between district veterinarians and private veterinary practitioners. Since private veterinary practitioners may find it hard to set up business in Sweden because of the aid to the district veterinarians trade between EU member states is affected.

¹ The Board of Agriculture’s Annual Report for the 2004 financial year, page 47.

Since the State Subsidy is not limited to compensating the DVO for increased costs as a result of the DVO performing services of general economic interest (Article 86.2 EC) the aid does not fall outside the prohibition stated in Article 87.1 of the EC Treaty.

- The State Subsidy to the DVO has not been reported to the European Commission and is therefore illegal.
- It is also unlikely that the aid could be considered to be compatible with the common market. The aid does not fulfil the criteria for exceptions that exist for regional aid (Article 87.3 (c)) etc.
- State subsidies may be addressed either by launching a complaint to the European Commission or by taking legal action in the administrative court in Sweden (the county court in the first instance). It is also possible to combine these two methods. Both the Commission and Swedish administrative courts may prohibit the aid and demand repayment of any aid that has been approved since 1995.
- The Board of Agriculture's accounting for the DVO is unsatisfactory. For instance, it is not possible to separate the DVO's costs for treatment of sport horses and small animals from the organisation's other costs. Nor is there any detailed information on what the State Subsidy has been used for or on how it has been allocated across the country. As of the 2006 financial year, the Board of Agriculture's accounting must draw up more detailed records showing how the subsidy has been used and the DVO's various costs and revenues must be reported separately.

3 The veterinary market in Sweden

Veterinary activities in Sweden are provided by private veterinary practitioners (around 75 per cent of the clinical vets) and also by district veterinarians (about 25 per cent of the clinical vets).

The district veterinarians are employed by the Board of Agriculture and belong to the DVO. The activities of the DVO consist both of activities that bodies governed by public law engage in and commissioned activities. The latter activities compete with the activities of private veterinary practitioners and consist of treating farm animals, sport horses and small animals. The activities that bodies governed by public law engage in that the district veterinarians undertake on behalf of the Board of Agriculture include; issuing certificates relating to the import and export of animals, taking part in infectious disease control programmes, performing control measures under quarantine laws and taking salmonella samples from poultry. The district veterinarians' public law activities amounted to around one per cent of the DVO's activities in 2001.

The government pays out around 93 million kronor in subsidies to the DVO to carry out its tasks.² According to the 2005 budget bill, the DVO's commissioned activities provide revenues of around 401 million kronor. This means that around 23 per cent of the DVO's activities are funded by state subsidies.

3.1 DVO's task

According to the 2005 budget bill, the DVO is primarily assigned to satisfy the medical needs of farm animals and horses used in agriculture and forestry. If there is a need for animal protection care or where other veterinary care cannot be assigned, a district veterinarian is obliged also to provide veterinary care to other animals. It is, however, a fact that district veterinarians provide their services extensively to other animals also in cases where there is no need for animal protection or where other veterinary care can be assigned.

According to the bill, the subsidy that is paid to the DVO is burdened by salary costs, where the costs for on-call services form a significant part, as do the costs for training and the joint administrative costs of running the organisation. The subsidy also includes funds to reduce the veterinary costs for treatment of farm animals belonging to animal owners who live in remote areas. In 2004 around eight per cent of the subsidy went towards reducing the long transport fees for district vets.³

The letter of appropriation to the Board of Agriculture states that⁴:

“ The purpose of the district veterinary organisation is to

- provide a cost-effective nationwide emergency veterinary care and preventive animal health care,*
- no matter the time of day or night, live up to the obligation to provide veterinary care to all animals if there is a need for animal welfare or if other veterinary care cannot be assigned,*
- as a key priority in terms of veterinary care, to be responsible for farm animals and horses, primarily horses used in agriculture and forestry,*
- perform official duties within the framework of Sweden's EU membership and trade with third party countries and to*
- ensure that preventive animal health care and epizootic preparedness is good and that participation in control and eradication programmes in collaboration with the industry is effective.”*

² Bill 2004/05:1, page 43. The government has budgeted for an increase of this subsidy for the coming year (2005: 94.7 million kronor. 2006: 95.1 million kronor and 2007: 96.5 million kronor).

³ See the Board of Agriculture's Annual Report, page 48.

⁴ See <http://webapp.esv.se/statsliggaren/document.asp?regleringsbrevld=8112&visningTyp=1>.

The letter of appropriation for 2005 also states that costs that are not covered by fees shall be funded by the subsidy. The subsidy therefore takes the form of a contribution to the DVO.

The government does not provide detailed information regarding what costs shall be covered by the subsidy.⁵ As far as we understand, however, the State Subsidy is primarily intended to cover the additional costs that arise for the DVO in ensuring that there are veterinarians in areas of lower animal density and that they operate a “24-hour-service” even in these areas. It is clear from the Board of Agriculture’s Annual Report for 2004 that most (88 per cent) of the DVO’s activities are carried out during normal hours.⁶

The table below shows that there are a large number of district veterinarians even in parts of the country with a high animal density.

Figure 2. District veterinarians in relation to all veterinarians

Source: Report from the collaboration group within the veterinary area, page 7.

According to the letter of appropriation, the Board of Agriculture shall endeavour to ensure that the relationship between the district veterinarians and the private veterinary practitioners does not affect competition.

4 Current rules

4.1 EU rules on state aid

The EU’s rules on state aid are intended to create equal competition opportunities for all players in the EU and to prevent certain players from gaining an unfair competitive advantage as a result of state aid measures. This is ensured by a general ban in Article 87.1 in the EC Treaty against all aid that is given by a member state or with the aid of state resources which distorts or threatens to distort competition by favouring certain undertakings or certain production, insofar as the aid affects the trade between the member states.

Such aid is incompatible with the common market if it is not contained in any of the exceptions stated in Article 87.2 – 87.3 EC. For instance, aid that is intended to promote the development of certain industries or certain regions, promote jobs or promote the implementation of important projects of common European interest (Article 87.3 EC) for the good of the common market.

It is only the European Commission (“**Commission**”) that can determine whether aid falls under any of the exceptions in the EC Treaty.

⁵ The letter of appropriation states only that: “in the subsidy are included funds to reduce the cost of veterinary care for food-producing animals belonging to animal owners who live in remote areas. The subsidy funding to animal owners in remote areas shall not exceed 7,300,000 kronor of the total appropriation. These funds may be used to pay for the services of a vet within the district veterinary organisation”.

⁶ See the Board of Agriculture’s Annual Report, page 46

4.2 Does the State Subsidy to the DVO constitute state aid?

Article 87.1 of the EC Treaty states that: “*aid granted by a member state or through state resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or certain production, [is] incompatible with the common market insofar as it affects trade between member states*”.

The following criteria must be met to determine whether the State Subsidy to the DVO constitutes state aid:

- “*aid*”: the State Subsidy shall favour the DVO financially and not constitute market compensation for work carried out by the DVO on behalf of the state.
- “*granted by a member state or by the application of state funds*”. The State Subsidy involves a transfer of state resources, either by direct transfer (e.g. a grant) or by foregoing revenue (e.g. a state that provides a guarantee without compensation).
- “*favouring certain undertakings*”. The State Subsidy will favour some undertakings, but not others, i.e. be selective. It is also necessary that it is an “undertaking” that is favoured.
- “*which distorts or threatens to distort competition*”. Potentially at least, the State Subsidy must have a distorting effect on competition, i.e. the aid can result in the district veterinarians’ competitors being put at a competitive disadvantage.
- “*affects trade between member states*”. Potentially, at least, the State Subsidy must affect trade between member states.

We will next analyse whether the above criteria are met when it comes to the State Subsidy to the DVO.

4.2.1 The existence of “aid”

The Court of Justice of the European Union (hereinafter called the Court of Justice) has given the concept of “aid” a broad interpretation. The concept does not just include tangible benefits such as subsidies to an undertaking but even measures which in various ways reduce the costs that are normally included in an undertaking’s budget and which, therefore, are similar in character and have the same effect as subsidies.⁷ The aid is thus identified by its effect, not its form. Aid is further characterised by unilateralism, i.e. the lack of adequate and fair consideration from the beneficiary.

According to Article 86.2 of the EC Treaty, compensation to an undertaking entrusted with the operation of services of general economic interest may fall outside the ban in Article 87.1 of the EC Treaty if this rule, legally or in practice, prevents the undertaking from carrying out

⁷ See for example the Court of Justice’s ruling from 15 March 1994 in case C-387/92, *Banco de Credito Industrial SA, now Banco Exterior de Espana SA v Ayuntamiento de Valencia*, item 13.

the tasks that have been assigned to it, and if the development of trade is not affected to an extent that is contrary to the common interest.

The Commission has, however, said that any infringement justifiable by Article 86.2 of the EC Treaty must be limited to the measures strictly necessary for the proper functioning of a service of general economic interest.⁸

The Court of Justice has clarified the conditions for when compensation, in accordance with Article 86.2 of the EC Treaty, shall fall outside the prohibition in Article 87.1 of the EC Treaty.⁹

- The recipient undertaking must actually have public service obligations to discharge and these obligations must be clearly defined.
- The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings.
- The compensation cannot exceed what is necessary to cover all or some of the costs incurred on the discharge of public service obligations.
- The level of compensation must be determined on the basis of an analysis of the costs which a typical and well-run undertaking would have incurred in discharging these obligations, taking into account the relevant receipts and a reasonable profit on the discharge of the obligations.

It is only when the above four conditions are met that aid may fall under Article 86.2 of the EC Treaty and consequently not be found to constitute state aid. If the conditions are met, there is no obligation to give prior notification of the compensation to the Commission as described below.

We describe in the following section whether the four above-named criteria are met with in the case of the State Subsidy.

(i) Having public service obligations to discharge

As regards the first condition, it is questionable whether the DVO really has a duty to discharge public service obligations in the meaning of Article 86.2 of the EC Treaty and, if the DVO has such a duty, how extensive this is.

The Commission has stated that member states have wide discretionary powers when it comes to deciding the services that are of such general economic interest but the Commission has also stated it will ensure that the definition of services of general

⁸ See, for example, the Commission's ruling on 14 December 2004 in case 2005/474/EC, item 37.

⁹ The Court of Justice's ruling on 24 July 2003 in case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH and Oberbundesanwalt beim Bundesverwaltungsgericht (Altmark)*.

economic interest is not given to competing services that do not belong to this sector and are not in the public interest.¹⁰

As noted above, the Board of Agriculture has an obligation, via the DVO, to provide cost-effective, nationwide emergency veterinary care and preventive animal health care to primarily serve the needs of farm animals and horses that are used in agriculture and forestry, as well as to ensure good animal welfare throughout the country and also to carry out official commitments within the framework of Sweden's EU membership.

Firstly, it can be stated that the obligations imposed upon the DVO are not clearly defined. For this reason, therefore, the condition for exception under Article 86.2 of the EC Treaty is not met.

The State Subsidy is used for the DVO's commissioned activities, i.e. not for the activities in which a body governed by public law engages. The question is whether the State Subsidy is used in such *public services* as the DVO has an *obligation to provide*.

A certain limited portion of the DVO's commissioned activities could possibly be regarded as a public service, which the DVO has an obligation to provide. However, more than 60 per cent of the DVO's activities consist of the treatment of horses and pets and these activities can definitely not be considered to be a public service and do not fall under the services the DVO has an obligation to provide. The treatment of horses and pets is a competitive market.

If the DVO provides any services of general economic interest the benefits the DVO receives exceed what is necessary for these services to function. The benefits are thus abused by the DVO in order to promote activities outside the public services sector.¹¹

Since any public services the DVO is obliged to provide are not clearly defined and since most of the services that the State Subsidy is used for are neither public services nor services such as the DVO has an obligation to provide the first criterion is not satisfied.

(ii) Compensation must be established in advance in an objective and transparent manner

With respect to the second criterion, we do not have access to any information that describes how the State Subsidy has been arranged, or what exactly it will be used for. It is extremely doubtful as to whether any such basis of calculation has been approved. The State Subsidy would appear not to be established in advance in an objective and transparent manner.

¹⁰ See the Commission's Non-Paper of 12 November 2002, *Services of general economic interest and state aid*, page 2.

¹¹ See the Commission's Non-Paper of 12 November 2002, *Services of general economic interest and state aid*, page 2.

(iii) No excess compensation

The Court of Justice has emphasised that it is imperative that this condition is observed so that it can be ensured that any advantage which distorts or threatens to distort competition, by favouring the recipient undertaking's competitive position, is not given to those undertakings. In other words, a contribution may only offset the obligations the undertaking has and may not provide any additional advantages.

We do not know the exact scale of costs the DVO incurs on fulfilling the obligations it has been assigned, nor do we know of any mechanism that the DVO has adopted to ensure that any excess compensation is refunded. Since the vast majority of the DVO's activities are purely commercial, it is likely that any public service the DVO is obliged to provide is excessively compensated.

In this context it should be emphasised that the Court of Justice in its ruling in the *Ferring* case confirmed that the amount of compensation in excess of that required to fulfil the obligation to provide a service of general interest constitutes state aid which cannot be allowed within the meaning of Article 86.2. The question as to whether such aid may be compatible with the Treaty should therefore be examined on the basis of the general rules on state aid.¹²

(iv) Reasonable costs

The fourth criterion applies to undertakings which discharge public service obligations and which have not been selected after a public procurement procedure that allows the selection of the tenderer capable of providing those services at the least cost to the community.

The veterinary services the DVO provides have not been procured and the amount of compensation must be determined on the basis of an analysis of the costs that a typical and well-run undertaking would have incurred in order to fulfil the tasks the DVO has been charged to provide, taking into account the revenue that would have been received and a reasonable profit on the performance of these tasks.

We do not have access to any information that enables us to analyse whether the DVO has been run efficiently and incurred reasonable costs on the activities.

Since in the present case we are discussing a direct subsidy from the state to the DVO that exceeds the increased costs the DVO could reasonably incur to perform any services of general economic interest, the State Subsidy must be regarded as aid in the meaning of the EC Treaty.

4.2.2 Transfer of state funds

In order for the State Subsidy to be considered to be state aid under Article 87.1 EC, it must constitute a transfer of state resources.

¹² The Court of Justice ruling of 22 November 2001 in case C-53/00; *Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS)*.

Since, in this case it is a question of a direct transfer of resources from the state to the DVO, this criterion must be considered to be fulfilled.

4.2.3 Selectivity

The State Subsidy must favour certain undertakings over others, if it is to constitute state aid.

In this context it must first of all be investigated whether the DVO is deemed to be an “undertaking” under EU rules on state aid.

According to EU case law, the concept of undertaking encompasses every entity engaged in economic activity, regardless of the entity’s legal status and regardless of how it is financed.¹³ A characteristic feature of the concept of economic activity is that the activity consists of offering goods or services on a given market.¹⁴

The DVO is clearly involved in economic activities, especially since the majority of the DVO’s activities can be carried out by private veterinarians and since the district veterinarians are direct competitors to the private veterinary practitioners. The DVO must therefore be regarded as an undertaking within the legal sense of the EC.

Since the State Subsidy only applies to the state-employed district veterinarians, via the DVO, and not their private competitors, it must be considered selective.

4.2.4 Distortion of competition

The State Subsidy must place the district veterinarians’ competitors, i.e. the private veterinary practitioners, at a competitive disadvantage, if it is to fall within the prohibition for state aid in the EC Treaty.

On the Swedish veterinary market at least two kinds of distortion can be identified in this case.

First and foremost, the very fact that the DVO received 93 million kronor in annual aid from the state means that the district veterinarians have a significant financial advantage over their competitors. The aid corresponds to almost five per cent of the value of the entire veterinary market in Sweden.¹⁵

This distortion is amplified by the fact that the district veterinarians have dual roles, i.e. the role of an authority and a purely commercial role. Since the same district veterinarians that treat agriculture and forestry animals also perform official duties on the animals, such as health checks, this leads to many farmers feeling obliged to hire the district veterinarians for

¹³ See for example the Court of Justice’s ruling of 23 April 1991 in case C-41/90 *Klaus Höfner and Fritz Eiser v Macrotron GmbH*, item 21.

¹⁴ See for example the Court of Justice’s ruling of 18 June 1998 in case C-35/96, *Commission of the European Communities v Italian Republic*, item 7.

¹⁵ The total turnover of the veterinary market in Sweden totals close to 2 billion kronor annually, according to a report from the cooperation group in the veterinary field, page 5.

the treatment of the animals. This makes it even more difficult for the private veterinary practitioners to compete with the district veterinarians.

It is thus clear that the State Subsidy distorts competition in the sense of the EC Treaty rules on state aid.

4.2.5 Effect on trade between member states

The term “effect on trade between member states” is broadly defined. The Court of Justice has inter alia stated that aid which strengthens the position of one undertaking in relation to other undertakings in intra-community trade shall be deemed to affect this trade.¹⁶ The fact that whosoever receives the aid only provides local or regional services and does not provide services outside the state of origin does not mean that trade between member states cannot be affected.¹⁷

The number of foreign veterinarians who are active in Sweden is limited. This is partly due to the fact that foreign veterinarians have difficulty setting up as vets in Sweden given the strong district veterinary organisation. Foreign veterinarians would to a greater extent than today be able to set up as vets in Sweden if there did not exist a corps of state veterinarians who, with the help of government grants, are given competitive advantages over the private veterinary practitioners. For example, Danish veterinarians could easily cross the Öresund Bridge and treat animals on the Swedish side.¹⁸

It is thus inevitable that the State Subsidy, potentially at least, affects trade between member states and therefore falls under the prohibition in Article 87.1 EC.

The fifth and final criterion for state aid is also satisfied regarding the State Subsidy.

4.2.6 Summary

To sum up, given the above, we can conclude that the State Subsidy is state aid under Article 87.1 EC. This aid represents a significant financial benefit (some 93 million kronor annually), from which only the state district veterinarians benefit. The aid therefore distorts competition between district veterinarians and private veterinary practitioners and probably leads to fewer private veterinary practitioners and consequently affects the trade between member states.

¹⁶ See for example the Court of Justice’s ruling of 17 September 1980 in case C-730/79, *Philip Morris Holland BV v Commission of the European Communities*.

¹⁷ See for example the Court of Justice’s ruling of 24 July 2003 in case C-280/00, *Altmark Trans GmbH and Reglerungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, item 77. See also case C-102/87 of 13 July 1988, item 19 and case C-305/89 of 21 March 1991, item 40.

¹⁸ Only those individuals who are authorised to practice veterinary medicine may work as a veterinary in Sweden. Anyone who holds a veterinary certificate or diploma from an approved veterinary college in an EEA member state and who is a citizen in an EEA member state does, however, have the right to received a Swedish veterinary certification. Therefore, the requirement for veterinary certification is not a legal or actual barrier for veterinarians in the EEA to set up as a vet in Sweden.

4.3 The State Subsidy does not meet the conditions for exception

A measure that constitutes state aid under Article 87.1 EC may be compatible with the common market if it meets the conditions for any of the exceptions set out in the EC Treaty. Only the Commission may grant an exception from the general prohibition on state aid.

In order to obtain an exception, the government has had an obligation since 1995, i.e. since Sweden joined the European Union, to notify the Commission of any aid that it plans to introduce. Failure to notify a state aid measure is sufficient for it to be declared illegal under EC law.

Most of the exceptions stipulated in the EC Treaty clearly do not apply to the State Subsidy and are, therefore, not covered within the framework of this memorandum.¹⁹

The State Subsidy would in any case be exempted under the exception regarding aid to facilitate the development of certain economic activities or of certain economic regions (Article 87.3 (c) EC).

In this context it should be noted that this exception opportunity presupposes that trade is not adversely affected to an extent that conflicts with the common interest. Given the extent of the distortion described above, we consider that, for this reason alone, it is doubtful whether the State Subsidy would be covered by this exception.

4.3.1 Exception in Article 87.3 EC

According to Article 87.3 (c) EC, state aid may be considered to be compatible with the common market and thereby excluded from the general prohibition in Article 87.1 EC if the purpose is to facilitate the development of certain economic activities or of certain economic regions, “where such aid does not adversely affect trade to an extent that is contrary to the common interest”.

In its practice and in its guidelines, the Commission has identified a number of situations that may fall under this provision. Such situations are: (i) rescue and restructuring of firms in difficulty; (ii) regional aid; and (iii) sector-specific aid.

It can hardly be claimed that the DVO would be in such financial difficult as referred to in the Commission’s communication on state aid for rescuing and restructuring firms in difficulty. Moreover, such aid can only be paid once and the State Subsidy is paid annually.

¹⁹ Such exceptions that clearly do not apply to the State Subsidy include: (i) aid of a social character, granted to individual consumers (Article 87.2 (a) EC); (ii) aid to make good the damage caused by national disasters or exceptional occurrences (Article 87.2 (b) EC); (iii) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany (Article 87.2 (c) EC); (iv) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment (Article 87.3 (a) EC); (v) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a member state (Article 87.3 (b) EC); (vi) aid to promote culture and heritage conservation (Article 87.3 (d) EC), and (vii) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

Regional aid may be given to develop less-favoured areas by supporting investment and job creation in the context of sustainable development. Regional aid must be combined with the investment and the jobs created must be maintained for a certain time in the less-favoured areas. The Commission has accepted some areas, particularly in northern Sweden, as disadvantaged, which could qualify for regional aid.²⁰ However, the State Subsidy is used in the entire country and therefore cannot be considered as such regional aid as only promotes less-favoured regions.²¹

Member states may also aid some sectors so they can develop. The Commission has adopted guidelines for a number of sectors but not for the veterinary field.²² Nor does the State Subsidy meet the conditions the Court of Justice and the Commission have identified for sector-specific aid since, among other things, the aid only benefits some veterinarians, i.e. the district veterinarians.

Therefore, the State Subsidy does not fall under any of the exceptions in Article 87.3 EC.

4.3.2 Summary

By reason of the above, it can be stated that since the State Subsidy has not been reported to the Commission, it is illegal. We further find it unlikely that the Commission would accept that the State Subsidy is compatible with the common market. The State Subsidy does not meet any of the conditions for exception that are stipulated in the EC Treaty.

5 Right to challenge the aid

Various forms of legal action may be considered depending on the type of aid. The Court of Justice makes a distinction between “new aid”, i.e. such aid as was decided upon after Sweden’s membership of the EU in 1995, and “existing aid”, i.e. all aid that was decided upon before 1995. We have no information as to when the State Subsidy was first paid, but in the following it is assumed that the aid is new aid.

One possible way to challenge the State Subsidy is to bring a complaint to the Commission, which in turn will investigate whether the aid measure is compatible with the EC Treaty’s rules on state aid and whether it is compatible with any of the exceptions in the Treaty.

²⁰ The Swedish map of regional aid for the period 2000-2006, which has been accepted by the Commission under State aid N639/1999 (letter SG (2000) D/103189 of 17 April 2000), lists the regions that fall under Article 87.3 (c) EC.

²¹ According to the Board of Agriculture, the district veterinary stations in Vannäs, Tibro, Vimmerby and Kungsbacka were the only ones that were funded by fees in 2001 (of a total of some 80 district veterinary stations) see 2002/03 RR12, page 37). The Board of Agriculture stated in a press release when a new district veterinary station opened in Falköping that “we see huge potential for the station in the future. ..It is situated in area rich in animals”.

²² The sectors covered by the Commission guidelines are postal relations, radio and television broadcasting, audiovisual production, textiles, clothing and synthetic fibres, motor vehicles, agriculture, fisheries, transport, coal, steel and boat building.

The Commission may, if it finds that it is a question of state aid that does not fall under any of the exceptions, may prohibit the aid and require the DVO to repay all such State Subsidies as have been approved since 1995.

Another possibility, which may be combined with a complaint to the Commission, is to sue the State in the county administrative court. In such a case the county administrative court has the powers to declare that the aid is illegal and that all such State Subsidies decided after 1995 must be repaid.²³

6 EU's Transparency Directive

Since 1 August 2005 public undertakings have an obligation by law (2005:590) to disclose their financial relationships with the public so that it is clear which public funds the undertaking has received and how these funds have been used. Undertakings whose net turnover is less than 40 million euros and companies providing services that do not affect trade with other EEA countries to any appreciable extent are exempted from this obligation.

Since the DVO's turnover is in excess of 40 million euros and since the services the DVO provides affects trade with other EEA countries (see the discussion above under item 4.2.5), the DVO is required to apply the provisions of the law.

The aim of the law, which is a consequence of the European Union's Transparency Directive (Directive 2000/52/EC), is that the Commission shall have access to the necessary financial information to ensure that undertakings do not receive such government aid or other benefits from a member state that are in breach of EU competition rules or rules on state aid.

Since the DVO, probably at least to some extent, has been entrusted to provide services of general economic interest and receives aid for this, and also pursues other economic activities, it has an obligation to draw up a specific financial report (separate report). There is an obligation for the DVO to describe the organisation and financing of the various activities undertaken and to report revenues and costs in the undertaking's activities for the area where special rights have been granted separately from revenues and costs in other activities.

The Swedish Competition Authority oversees the undertaking's compliance with this reporting obligation. If this is needed in order for the Swedish Competition Authority to provide the Commission with information or otherwise perform its duties, the Authority may require undertakings or others to provide information, documents or other details and require undertakings to comply with the rules of the Transparency Act.

The obligation to draw up a separate financial report applies for the first time to undertakings for the financial year that commences after 31 July 2005, which means that the first time the DVO has such an obligation will be for the 2006 financial year.

²³ See for example the County Administrative Court in Sundsvall, ruling of 21 May 2002 in case 1965-1997, *Kommuninvest*.