



30 November 2014

EUROPEAN COMMISSION
DG Competition
Attn: Madalina RADULESCU

Subject: SA.33887 (2011/CP) – Swedish Board of Agriculture

We thank you for your reply and for the time you have spent on our complaint regarding the Board of Agriculture's state-subsidised activities.

In our opinion, the activities conducted by the state-run organisation "District Veterinarians" are not to be regarded as "a service of general economic interest". Therefore our opinion is that the Board of Agriculture uses most of the approximately EUR 12 million it receives annually in state aid to subsidise the commercial part of its activities, leading to an unhealthy competitive situation in Sweden. Part of this state aid goes to the district veterinarians' basic salaries, tax and social security contributions. The remaining portion of their income consists of a bonus from the commercial activities.

In this document we will divide our argument to illustrate this into three parts:

1. Summary
2. Facts
3. Discussion and Conclusion

1. Summary

In our opinion, the activities conducted by the state-run organisation “District Veterinarians” are not to be regarded as “a service of general economic interest”.

The Board of Agriculture, which is the authority that supervises the district veterinary organisation, knowingly commits a manifest error when it claims the major part of the activities the district veterinarians are engaged in is a service of general economic interest. The reason the Board knowingly makes this false judgement is because it wants access to state aid.

The Board has also deliberately placed the level of this aid to under EUR 15 million to avoid a detailed audit by the Commission.

More than 99% of the district veterinarian organisation’s activities in 2013 consisted of veterinary care and the sale of dog and cat food. At least 73% of veterinary care consisted of the treatment of pets and sport horses. All veterinary care conducted by the state is to be considered as commercial activity. It is conducted in exactly the same way as the veterinary care private veterinarians are engaged in worldwide. In all EU member states the veterinary care provided by the Board of Agriculture is considered to be a commercial activity. In no other country, to the best of our knowledge, is it considered as “a service of general economic interest”.

Across the country there is a well-functioning private preparedness activity designed for small animals.

The Board of Agriculture is the Government’s expert authority, which can in this capacity draw up proposals for regulations that favour its own commercial activities. In this capacity, the Board also has many opportunities to influence politicians and other decision makers. This dual role, in combination with the Board of Agriculture’s aggressive marketing of its commercial activities, undermines the authority’s credibility. Additionally, the Board of Agriculture is the regulator for clinical veterinary activities.

The Board of Agriculture’s claim that just 3.2% of its activities are considered to be commercial is incorrect even if one were to consider its small animal care as an activity of general economic interest. According to our

calculations, they sell accessories, such as dog leashes and cages, and dog and cat food for at least EUR 4 million annually; this alone is more than 3.2% of total sales.

The state-employed district veterinarians' salaries are made up of two parts; a fixed basic salary and a bonus of roughly the same amount. This system encourages the district veterinarians to take on as many cases as possible. The cases they take during irregular working hours pay more.

The organisation ViS estimates that the cost of the general economic interest conducted by the Board of Agriculture amounts to a maximum of EUR 1.5 million annually. The cost of participating in a preparedness organisation in the event of outbreaks of infectious animal diseases amounts to a maximum of EUR 1 million. As in other EU member states, preparedness for on-call veterinary care need not cost anything since private players can provide this without any cost to each member state. In Sweden, however, in the initial stage, a maximum EUR 500,000 needs to be set aside for contingencies in remote parts of the country.

The Swedish Competition Authority, the pertinent body for competition issues, writes: *“The market for veterinary care is characterised by competition problems and conflicts between the DVO and private veterinarians. Important prerequisites for effective competition and efficient resource utilisation that are of benefit to the general public, animal owners or consumers are lacking. This can be particularly detrimental to the small companies in veterinary care. The Competition Authority is of the opinion that it is inappropriate to combine business and customer relations with the exercise of public authority, where the customers are subject to supervision. Furthermore, the Competition Authority is of the opinion that the Board of Agriculture has dual roles, i.e. both a producer and a regulatory role, which involves the exercise of public authority. It is important to distinguish between the exercise of public authority, which in the Competition Authority's view should most appropriately be pursued in the public sector, and other undertakings, which in some cases may warrant a spin off. The Competition Authority has previously proposed various measures to address these problems”.* (App. 11)

The Competition Authority considers that the Board of Agriculture's commercial activities, i.e. all veterinary care, should be separated from the authority. (App.11).

SOU, Swedish Government Official Reports, an authority that carries out government commissions of inquiry, agrees with the Competition Authority. (SOU 2007:24).

The organisation VIS considers it is quite remarkable, not to say offensive, that the Board of Agriculture claims that the types of activity in which it is mainly engaged, vaccinations of dogs and cats, trimming claws, neutering of cats etc, are classified as services of general economic interest.

2. Facts

The Government commission of inquiry SOU 2007:24 stated in its summary: *“One such example is the government mandate under which the state district veterinarians operate. The lack of clarity apparent in this respect means that district veterinarians are competing in the veterinary care market well beyond what can be reasonable limits of central government responsibility”.*

The ordinances referred to that justify the district veterinarian organisation’s activities have been drawn up by the Board of Agriculture, which is the principal for the district veterinarians. We have pointed out this, in our opinion, highly inappropriate relationship to the EU’s Directorate-General for Competition Unit E 1 – Anti-trust: Pharma and Health Services, which on 20 January 2014 informed us that this matter had been transferred to Yourselves. We hereby reiterate that in our opinion it is highly inappropriate that an authority engages in commercial activities. In this case, moreover, in competition with the supervised entities. (All veterinarians in Sweden, including private veterinary practitioners, are under the supervision of the Board of Agriculture). Sweden’s highest competition authority, the Competition Authority, has stated it believes it is inappropriate that the Board of Agriculture conducts veterinary care in this way and that the said Board should cease this activity. App. 7.

Appendices 1, 2, 3, 4 and 5 describe four state-run district veterinary stations located in various parts of the country. All these stations possess well-equipped small animal clinics and are to be found in the immediate vicinity of private clinics that conduct exactly the same types of activities. In our opinion, it cannot in any circumstance be considered as “a service of general economic interest” to conduct such activities.

The Board of Agriculture refuses to show any financial records for the district veterinary organisation, which means that the figures we report are approximate and are derived from the information available. You write in your response that you enclose “the non-confidential version” of the Board of Agriculture’s response. Do You have access to confidential information that enables you to have better insight into their finances than we have?

Approximately 0.7% of the district veterinarians’ undertakings consisted of official undertakings, undertakings to animal health organisations and

to other authorities. (From the Board of Agriculture's 2013 Annual Report).

Approximately 99.3% of the district veterinarians' undertakings consisted of commercial veterinary care, of which assignments relating to small animals and sport horses accounted for 73%. (From the Board of Agriculture's 2013 Annual Report). The total revenue generated from this activity amounted to some EUR 45 million in 2013.

The district veterinary organisation sells dog and cat food. Since the Board of Agriculture refuses to disclose the district veterinarians' financial accounts, it is impossible for outsiders to be able to report the exact amount. The Board of Agriculture's 2013 Annual Report states that the District Veterinarians' purchases of food and medicines in 2013 amounted to more than EUR 7 million. In all probability, they sell dog and cat food for EUR 3-4 million annually.

This activity has been conducted since 1995 and has received an annual state subsidy of some EUR 11 million, which means that they have received a state subsidy of approximately EUR 209 million so far. This grant has been used to create a nationwide chain of animal clinics with advanced medical equipment mainly for dogs and cats, which has created an unhealthy competition situation in the country and has led to serious conflicts between state-employed district veterinarians and private veterinary practitioners. The reason for these conflicts is that the state organisation engages in exactly the same commercial activities as private veterinary companies.

The Board of Agriculture has veterinary stations in 100 places throughout the country. (App. 1 and 2).

At these stations, the Board of Agriculture has some 470 employees, of whom some 350 are veterinarians and approximately 120 are veterinary assistants.

In these places, the Board of Agriculture runs small animal clinics and itinerant commercial veterinary activities, including for sport horses. In some places, there are also specialist clinics for sport horses.

More than 73% of commercial veterinary care for small animals and sport horses is provided by the Board of Agriculture's activities in these places.

The Board of Agriculture has a presence in some 100 places in Sweden. In almost all places there is advanced medical equipment for small animals and sport horses. For example, we can name digital X-ray facilities, advanced ultrasound equipment, equipment for treating teeth, laboratory equipment for the diagnosis of diseases, operating theatres and surgical equipment, all designed to treat small animals and sport horses. In 2009 the Board of Agriculture introduced the "Primary Care concept". Please note that this concept was not defined until 3 April 2014, i.e. after our complaint to the EU.

In many places there are veterinarians with special expertise in the treatment of small animals and sport horses.

In many places there are veterinary assistants trained solely in the treatment of small animals and sport horses.

In most places, they sell accessories intended for pets, such as dog leashes, cat cages etc, as well as dog and cat food.

Please note that none of the examples of clinics run by the Board of Agriculture that we enclose are in rural areas, but in areas with well-functioning veterinary care for sport horses and pets.

In *"Notes on the principles concerning the calculation of compensation for veterinary services of general economic interest and for certain revenue and expenditure distribution in the district veterinarians' activities of 19 September 2014"* the Board of Agriculture argues *"to the extent that at a certain point there are resources, which at a certain time are not required for the basic mission, these may be allocated to veterinary services"*. This, in our opinion, is not true since, according to the 2013 Annual Report, 99.3% consisted of commercial activities. This is just an attempt by the Board of Agriculture to try to hide its real business and we insist that under no circumstances can it be termed services of general economic interest. We are of the opinion that the phrase *"at a certain time"* applies all day.

In many of the places in which it operates, within the catchment area, are a very small number of farm animals. In some places we are talking about fewer than 10 dairy herds. In most of the places where there are activities, there is no pig production at all.

In light of this, in a large number of places in the country, private veterinary practitioners do not dare set up business because the district veterinary organisation is already established there. The same competition constraints naturally affect veterinarians from other EU member states wishing to set up business in Sweden.

In its reply to you, the Board of Agriculture writes that it was re-organised during 2013, with a view to increasing the independence of the district veterinary organisation. The only re-organisation we have been able to note is that the head of the district veterinary organisation is now a member of the Board of Agriculture's management team, which further reinforces the confusion of authority and commercial activities. App. 8.

Across the country, there is a well-functioning private preparedness activity designed for small animals.

When it comes to pig production, virtually all veterinary consultation in the country is handled by the Swedish Animal Health Service AB (Svenska Djurhälsovården), a company owned by Scan AB, Avelspoolen AB and KLS Ugglarps AB.

In Denmark, which has more livestock producing animals than Sweden on a much smaller area and directly connected by land with Germany, 25 veterinarians work half-time on disease control preparedness in the country.

In Sweden the risk of widespread epizootic disease is far less than in other countries owing to the large distances between livestock and because the country is surrounded by water and not directly adjacent to the continent. In our opinion, this means that the annual budget for disease control preparedness can be maximised at EUR 1 million, which corresponds to 10 full-time veterinarians.

In all European countries, private practicing veterinarians provide a 24-hour on-call response for emergencies at no cost to the state. In no other country is there a state organisation designed for such activities. In its response to the Commission, the Board of Agriculture terms this "animal welfare activities". Sweden has, in our opinion, no need of such an extensive state preparedness since there is a well-functioning private preparedness activity for small animals. In an initial phase, during a transition to a fully private preparedness activity, there may need to be in re-

mote places state aid, which can be estimated at a maximum of EUR 500,000 annually.

As for the cheap loans provided by the Swedish National Debt Office to the Board of Agriculture, one can only note that no private entrepreneur can ever receive such a cheap loan. Therefore, we consider the discussions as to why the Board receives these cheap loans have absolutely no relevance in this context. The cheap loans give the Board of Agriculture a huge competitive advantage over private veterinary practitioners. The loans amount to several hundred million kronor. All Swedish authorities, which furthermore are not profit-driven, must place their liquid assets with the Debt Office.

The state, in this case the district veterinary organisation, cannot go bankrupt, which gives it further competitive advantages since it can more easily obtain large loans for investment in advanced equipment.

The Board of Agriculture has won all contracts, bar one, for preparedness activities in Sweden. The reason for this is that the Board of Agriculture has a special agreement with the veterinarians union, the Swedish Veterinary Association, SVF, which makes it much cheaper for the Board of Agriculture to have people on duty during irregular working hours. The private veterinary practitioners have a different agreement with SVF, making it more expensive for private companies to conduct preparedness activities. We regard this special agreement between the Board of Agriculture and SVF as extremely limiting to competition, which has been clearly seen in the procurement of preparedness activities.

The reason why the Board of Agriculture did not win one of the contracts was that it had made an agreement with a state veterinary clinic that was to be sold to the employees not to submit a tender for the procurement of preparedness.

The only contract signed in which a private company received a grant to conduct preparedness activities in Sweden was formulated in such a way that the private player undertook to conduct preparedness in a “half county” for some EUR 10,300 annually (the north part of Bohuslän). Extrapolating this to the whole of Sweden, preparedness in 24 counties would cost around EUR 494,000 annually. This is far removed from the assertion made by the Board of Agriculture in its letter to the Commission about the cost of preparedness. One should also be aware that the fact that a veterinary company conducts 24-hour preparedness gener-

ates large amounts of income. It is for this reason the Board of Agriculture is so keen to spread the message about its preparedness activity. The Board is well aware of the fact that private players would like to have this opportunity.

The Board of Agriculture does not openly report its finances. There is no way for outsiders to see how much revenue is generated, or how this relates to different animals. However, we are convinced the Board of Agriculture has detailed control over the district veterinary organisation's finances.

Even those who expect to participate in the procurement of preparedness have no opportunity to see how much revenue is derived from preparedness activities since the Board of Agriculture refuses to disclose this information.

One of the leading global law firms "Linklaters" made 2005 on our request an investigation called "Veterinary activities in Sweden – Competition issues" and came to the conclusion that the State Subsidy to the DVO is illegal. (App 10)

From Linklaters conclusions:

"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.

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.

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.

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."

Discussion and Conclusion

It is obvious to us that the main purpose of the Board of Agriculture's district veterinary organisation is to provide veterinary care for small animals and sport horses in competition with the private market.

In almost all places there is advanced medical equipment for small animals and sport horses. For example, we can name digital X-ray facilities, ultrasound equipment, equipment for treating teeth, laboratory equipment for the diagnosis of diseases, operating theatres and surgical equipment, all designed to treat small animals and sport horses. In our opinion, there is no possibility for the Board of Agriculture to conduct these activities without significant state subsidies. If it is claimed that the EUR 12 million received annually is spent on something else, such as salaries to the employees in order to maintain preparedness, these funds must, in our opinion, still largely be regarded as subsidies for commercial activities.

In our opinion, the Board of Agriculture makes no real distinction between services of general economic interest and commercial services, which among other things manifests itself in their claim that just 3.2% of their activities are to be considered to be commercial. According to our calculations, they sell accessories, such as dog leashes and cages, and dog and cat food for EUR 3-4 million annually; this alone is more than 3.2% of total sales.

The Board of Agriculture has deliberately exaggerated the number of veterinarians and veterinary assistants needed to maintain an acceptable level of disease control and animal welfare in order to provide, using this large workforce, comprehensive care for small animals and sport horses.

In our opinion, all work performed at a small animal clinic should be regarded as a commercial activity.

In small communities, particularly in the northern parts of Sweden, the district veterinarians hold such a dominant position that no private veterinarian dare invest money to start up a competing business. The Board of Agriculture uses this lack of competition to justify its presence in these places. They claim "the animals would lack acceptable veterinary care if we weren't here". This is what they mean when they say they are responsible for animal welfare. In our opinion, this approach is completely wrong. If the Board of Agriculture were to cease its activities in such a

place, private veterinary practitioners would immediately set up in business.

Disease control preparedness in Sweden could be met with a maximum of 10 full-time veterinarians.

Animal welfare, if by this one means that there should be on-call veterinarians available across the country, could be met by private veterinary practitioners without it costing the state anything, in the same way as elsewhere in Europe.

The salaries paid to the exaggeratedly high number of veterinarians who, it is claimed, are needed to maintain an acceptable level of infectious disease control and animal welfare must be regarded as subsidies intended for the pursuance of extensive commercial veterinary care of small animals and sport horses.

The infectious disease control and animal welfare conducted in Sweden should in total cost a maximum of EUR 1.5 annually, which means that at least EUR 10.5 million annually goes to subsidies for the Board of Agriculture's commercial activities. See below:

“Ordinance (2009:1397) on veterinary services of general economic interest

§1 This ordinance applies to questions concerning veterinary services of general economic interest.

By veterinary service of general economic interest is meant the following activities:

- 1. Participation in an organisation for preparedness in outbreaks of infectious animal diseases.*
- 2. Preparedness for veterinary care during on-call hours.*
- 3. Animal health and veterinary care in areas of the country where it is judged that adequate veterinary services cannot be provided on a commercial basis.”*

Regarding the costs for veterinary services of a general economic interest, the ViS organisation estimates the following:

1. EUR 1 million annually
2. EUR 500,000 annually
3. 0

The Board of Agriculture has informed the Commission that external auditors have “looked more closely at” the amount of compensation and found that the accounts for services of general economic interest during the period 2011-2013 showed a deficit and it is therefore out of the question overcompensation might have been paid during this period. In our opinion, this is totally irrelevant since the auditors have most probably not taken into consideration whether the items they have examined have been booked as services of general economic interest or if they were instead booked as commercial activities.

The proportionality principle is a principle in law, which means there must be a balance between means and ends. Can this principle not be applied to the Board of Agriculture? We believe it is likely that at least 73% of the district veterinarians’ income, (the state subsidy is not included), emanates from veterinary care for small animals and sport horses.

It is impossible for outsiders to gain access to the Board of Agriculture’s finances in order to work out where the revenue comes from. Can the EU ask to obtain this information? Is it not an aggravating factor for the Board of Agriculture to refuse to disclose this information? For this reason, it is possible to draw any conclusions, based on the figures reported to the EU, which say they have not cross-subsidised the commercial activities? Cross-subsidies stand and fall with the way in which one defines “commercial activities”.

In our opinion, the Board of Agriculture’s convoluted calculations of miscellaneous items are completely irrelevant to the issue of competition, but rather are intended to divert attention from this and to limit the transparency of the Board of Agriculture’s finances.

In many areas of the country, the organisation ViS’s members are seriously affected by the competition the Board of Agriculture’s district veterinarians subject them to. This is an indisputable fact. Our members have a hard time understanding how the state tax they pay can be used to set up small animal clinics and equine clinics, which in some cases are no more than a few hundred metres from their own practices.

In general, it can be said that the Board of Agriculture’s presence in the form of small animal clinics spread across the country stifles private veterinary practitioners wanting to set up business in these places.

In your letter you suggest we should raise the issue with the Competition Authority. We wish to remind you that the Competition Authority has already ruled on this issue. The Authority has said it believes the Board of Agriculture should cease its commercial activities, as it believes these are to be regarded as unhealthy competition. (App. 7). The Board of Agriculture has not complied with this and is supported in its refusal by the Ministry for Rural Affairs. This is the main reason why we are requesting help from the EU.

A hypothetical question is whether, if in 10-20 years the Board of Agriculture has been so successful with its commercial activities in the field of veterinary care for small animals that with 3,000 veterinarians and 3,000 veterinary assistants at 300 clinics in the country, it could then put forward exactly the same financial argument as it does today. Should this be the case, all private activity would be wiped out. The scenario is not inconceivable, if they are given carte blanche to expand unhindered.

Our hope is that the EU's competition authority will endeavour to ensure that the Board of Agriculture only engages in regulatory authority and other exercise of public authority, and will endeavour to ensure the Board of Agriculture will wind up its extensive commercial activities, consisting mainly of veterinary care for small animals and sport horses, which we believe are being subsidized by state funds.

On behalf of ViS

Lars-Håkan Håkansson
Chairman

Appendix 1a: Map. The District Veterinarians' small animal clinics in Sweden

Appendix 1b: The District Veterinarians' small animal clinics in Sweden

Appendix 2a: The District Veterinarians' small animal clinic in Vännäs

Appendix 2b: Map. The District Veterinarians' small animal clinic in Vännäs

Appendix 3a: The District Veterinarians' small animal clinic in Hedemora

Appendix 3b: Map. The District Veterinarians' small animal clinic in Hedemora

Appendix 4a: The District Veterinarians' small animal clinic in Skara

Appendix 4b: Map. The District Veterinarians' small animal clinic in Skara

Appendix 5a: The District Veterinarians' small animal clinic in Flyinge

Appendix 5b: Map. The District Veterinarians' small animal clinic in Flyinge

Appendix 5c: Map. The District Veterinarians' small animal clinic in Karlskrona

Appendix 6: The Swedish Board of Agriculture's 2013 Annual Report

Appendix 7a: The Swedish Competition Authority's opinion. Swedish

Appendix 7a: The Swedish Competition Authority's opinion. English

Appendix 8: New management team at the Swedish Board of Agriculture

Appendix 9: The Swedish Competition Authority criticises the Swedish Board of Agriculture

Appendix 10: Linklaters

Appendix 11: The Swedish Competition Authority's opinion