

# Consortia in public tenders:

## Däckia/Euromaster

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# The public procurements

## » Gästrike Inköp

- » Association of local authorities
- » Tires+tire services, 3m euros per year
- » Separate contracts signed for each of the involved municipalities
- » Possible to submit bids for part of the demand
- » All bidding companies were accepted

## » Rikspolisstyrelsen

- » The National Police Board
- » Only tires, about 20,000 per year
- » All police units in Sweden would have the possibility to buy tires from this agreement
- » Possible to submit bids for part of the demand
- » All bidding companies were accepted

# About SDF (the Swedish Tire Association)

- » Companies providing tires and tire services
- » Created in 1980
- » Sole purpose is to participate in tenders
- » An open cooperation
- » 37 members, 160 outlets
- » Däckia (59 outlets) and Euromaster (55 outlets) were the biggest members
- » The SCA investigated only Däckia and Euromaster as they were two of the largest tire outlet chains in Sweden

# The tire outlet market

- » The biggest tire service companies in Sweden were
  - » Däckia (owned by Goodyear)
  - » Euromaster (owned by Michelin)
  - » Vianor (owned by Nokian)
- » Market shares
  - » Däckia and Euromaster had 5% market share each in car tires, SDF 15%
  - » In a more general tire market, SDF hade 25-30%

# Questions in the court procedure

- » Not disputed: SDF had made some joint bids and was an association of undertakings
- » Gästrike Inköp: Could Däckia and Euromaster be held responsible for the agreement?
- » Rikspolisstyrelsen: Capacity issues
- » Both procurements
  - » By object or effect?
  - » Not a secret cartel

# Capacity issues

- » Different interpretation of the request for tenders implied different geographical demand:
  - » Did the RPS procurement comprise only tires, or also tire services?
  - » Would a winning bidder have to have a high density of outlets in the whole of Sweden?

# Necessity of a joint bid

Facts speaking against the necessity of a joint bid:

- » SDF outlets often overlapped geographically → in any case a too far reaching cooperation
- » There was no actual request on geographical coverage in the procurement documentation.
- » SDF had not analysed the objective necessity to cooperate
- » The National Police Board said they had no particular geographical demands in the procurement
- » Two of the four accepted bidders had no tire outlets at all, but were tire manufacturers

# The judgement

- » Däckia and Euromaster had participated in a horizontal commercialisation agreement
- » The Commission´s Guidelines on horizontal cooperation (p. 234): "Price fixing is one of the major concerns arising from commercialization agreements between competitors. [...] Such agreements are therefore likely to restrict competition by object".
- » But (p. 237): "A commercialization agreement is normally not likely to give rise to competition concerns if it is objectively necessary [...]"



# The judgement (continued)

- » Anticompetitive object - only price fixing, no efficiencies
- » Criteria of 101(3) not met
- » The burden of proof shifted to the parties. Unreasonably difficult for the competition authority to have the burden of proof, but low threshold for Däckia and Euromaster to show capacity
- » Däckia and Euromaster could not show lacking capacity
- » Whether the cooperation is secret or open does not affect the object or effect question

# Concluding remarks

- » A well written tender documentation means clear demands → improved predictability of what is allowed according to competition law
- » This was an unusually obvious example of a clear-cut price cooperation
- » Interesting clarifications by the Court: an open cooperation can be an infringement by object, and the burden of proof to show necessity shifts to the parties

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