



English Summary of decision 2014:3 by the IMM Ethics Committee

Stockholm 2014-06-03

The matter

A private company that owns a chain of department stores have an agreement with a municipality. The agreement allows the employees of the municipality to make purchases of goods to the municipality from any of the company's department stores. Purchases can be made by calling or sending an email with an order for collection in store. Employees can also make direct purchases in any of the department stores owned by the company by presenting a contract number, their name (listed in order to be entitled to collect the goods) and a purchase code (reference number on the invoice).

The company has offered all employees within the municipality to buy lunch at a cost of 20 SEK in the restaurant located in one of the company's department stores. The offer is valid every day and has no time limit. All the employees need to do is to state the contract number of the municipality.

The lunch offer is aimed at all employees of all companies and public organizations that have contracts with the department store and is not unique to the employees of the municipality.

The municipality has asked the company not to provide the offer to their employees since it is in conflicts with the municipality's anti-corruption policy and since the municipality is of the opinion that it may be considered as a bribe.

The company has not withdrawn the offer and claims that the offer is from the restaurant located in the department store rather than the department store itself.

The company has also stated that it is an open offer directed to all contracted customers, not only to the municipality.

In the petition to the Ethics Committee the municipality questions whether it is compatible with Code of Business Conduct to offer the discounted lunches for municipal employees and if the answer is affected if the offer;

1. is provided by the restaurant located in the department store and
2. is addressed to all customers who have contracts with the department store.



After the municipality informed the department store of the referral to the IMM's Ethics Committee the store has broadened the offer to all customers that can provide a receipt that they have made purchases in the store adding up to 200 SEK. The municipality also wants the Ethics Committee to consider whether this extended offer has any relevance in the assessment.

The Ethics Committee bases its assessment on the description provided by the municipality.

Considerations

The question is whether it is compatible with the Code of Business Conduct offering employees of the municipality a lunch offer in the restaurant located in one of the companies department stores.

A condition for the lunch offer is the agreement between the department store and the municipality. It is obvious that there is a close link between the department store and the restaurant, even if it is operated independently from the department store management. It has no bearing on the Ethics Committee's assessment if the offer is submitted by the lunch restaurant located in the department store or by the department store itself or if it's offered to a broad group of recipients.

The municipality has stated that the current contract number is known among the employees of the municipality and that many municipal employees have had lunch at the restaurant on a daily basis.

The Code of Business Conduct is applicable according to section A 2. What the Ethics Committee has to decide is whether it is a question of inappropriate benefits pursuant to sections B 4 and B 5 of the code.

The offer is provided to all employees of the municipality. According to section B 4 Companies may not grant, promise or offer Improper Benefits conditional on how the recipient carries out his or hers employment or his or hers exercise of public authority or public procurement. In relation to all the other staff of the municipality section B 5 is applicable.

According to section B 5 particular interests apply to employees of and Contractors to Public Entities. Thus, there is particular reason to use caution when granting Benefits to such recipients. Any Benefit that is aimed at Influencing Actions shall under normal circumstances be deemed non-permitted. Any Attitude Influencing Benefits complying with what are considered accepted forms for interaction between the Market and Public Entities are, under normal circumstances, accepted.



The question of whether a Benefit is Improper must be reviewed on a case by case basis against the backdrop of all relevant circumstances.

The circumstances to be considered in particular are the following;

The value of the benefit

According to the Code of Business Conduct the risk of effects on a behavior increases with the value of the benefit (economical and personal value). In assessing if the value of the benefit is behavior-affecting the value must be viewed from the recipient's point of view.

The position of the recipient

The offer is provided to employees who have the ability to order from the agreement and from that position could be affected. It is not permitted to offer Benefits to employees of Public Entities that have deciding influence over matters of exercise of public authority or over a public procurement procedure in which the Company has interests. The offer is behavior affecting also in relation to the situation where the recipient has the authority to make purchases in the department store and non-permitted.

The nature of the Benefit

The lunch offer has no natural connection to and do not form a natural and useful part of the work carried out by the recipient. The offer cannot be seen as in line with ordinary forms of interaction between the private and public sector. Therefore it cannot be seen as acceptable even in relation to the employees of the municipality where it isn't behavior affecting.

The group of recipients and the forms for offering the Benefit

According to the Business Code of Conduct a benefit should be directed at a broad group of people rather than to specific individuals.

In the present case, the benefit is directed to all contract customers of the store. According to the Ethics Committee's assessment, however, attention should be paid to the fact that the municipality has requested the company to withdraw the offer since it is in conflict with the municipality's policy.

THE DECISION BY THE ETHICS COMMITTEE

The offer of lunch is, as has been described for the Ethics Committee, is not in line with the Code of Business Conduct.