



**LUNDS**  
UNIVERSITET

**Master of European Affairs**

**European Business Law and Business Administration**

**2002 - 2003**



## **The Swedish housing shortage in 2003**

*Does it result from competition problems in the construction industry or is Sweden's housing policy to blame?*

Tutors:

Cécile Brokelind and Fredrik Malmberg

Author:

An Van Goey

*Började falla som ett löv.  
Ångrade sig halvvägs ner,  
förvandlades till en gul fjäril  
och flög sin kos.  
(Eeva Kilpi)*

I would like to express my thanks to the people that helped me to conduct research into the Swedish housing and construction industry: the interviewees and participants in the survey, and my tutors Cécile Brokelind and Fredrik Malmberg for their continuous encouragement and help. Now that I have completed an important part of my life, I would also like to thank my parents and my brother Tom for supporting my studies in Belgium, Germany, Japan and Sweden. I hope that I can make them proud by using the knowledge I gained at university well in my future career. Last but not least, a big thank you to my friends in Lund for teaching me what really matters!

## *Table of Contents*

<b>ABSTRACT</b> .....	<b>5</b>
LIST OF ABBREVIATIONS .....	6
LIST OF FIGURES .....	7
<b>PART I – INTRODUCTION</b> .....	<b>8</b>
1 MOTIVATION AND METHODOLOGY .....	10
1.1 <i>Personal motivation</i> .....	10
1.2 <i>Purpose of the study and main question</i> .....	10
1.3 <i>Methodology</i> .....	11
1.4 <i>Delimitations</i> .....	12
1.5 <i>Structure of the thesis</i> .....	13
2 CONSTRUCTION AS PART OF THE SWEDISH BUSINESS ENVIRONMENT.....	14
2.1 <i>Quantitative assessment</i> .....	14
<b>2.1.1 Construction industry</b> .....	14
<b>2.1.2 Residential building industry</b> .....	15
<b>2.1.3 Growth prognoses</b> .....	17
2.2 <i>Qualitative assessment</i> .....	17
<b>2.2.1 Political factors</b> .....	17
<b>2.2.2 Economic factors</b> .....	18
<b>2.2.3 Social factors</b> .....	18
<b>2.2.4 Technological factors</b> .....	19
2.3 <i>Conclusions and problem formulation</i> .....	19
<b>PART II – STRUCTURAL PROBLEMS IN THE SWEDISH CONSTRUCTION INDUSTRY</b> .....	<b>20</b>
3. A CONCENTRATION PROBLEM IN THE CONSTRUCTION INDUSTRY .....	22
3.1 <i>Economic analysis of Porter's model</i> .....	22
<b>3.1.1 Horizontal competition</b> .....	22
<b>3.1.2 Vertical competition</b> .....	24
<b>3.1.3 Conclusions</b> .....	26
3.2 <i>Legal aspects</i> .....	27
<b>3.2.1 Swedish and European view on competition legislation</b> .....	27
<b>3.2.2 Antitrust behavior by Swedish and European construction companies</b> ..	28
3.3 <i>Conclusions</i> .....	32
4 THE LOCAL NATURE OF THE BUSINESS .....	34
4.1 <i>Few foreign construction companies in Sweden</i> .....	34
<b>4.1.1 Quantitative research</b> .....	34
<b>4.1.2 Qualitative research</b> .....	35
4.2 <i>European legislation and case law related to cross-border investment in the construction industry</i> .....	36
<b>4.2.1 The Four Freedoms</b> .....	37
<b>4.2.2 The right of establishment</b> .....	38
4.3 <i>Conclusions</i> .....	39

<b>PART III - INSTITUTIONAL PROBLEMS IN SWEDEN .....</b>	<b>40</b>
5 THE ROLE OF THE SWEDISH GOVERNMENT IN THE RESIDENTIAL BUILDING INDUSTRY ...	42
5.1 <i>Swedish housing policy</i> .....	42
5.2 <i>Swedish aid to the residential building industry</i> .....	44
5.2.1 <b>Instruments of political intervention</b> .....	44
5.2.2 <b>Short historical overview of direct and indirect aid</b> .....	45
5.2.3 <b>Two recent aid instruments under scrutiny</b> .....	46
5.3 <i>Conclusions</i> .....	47
6 STATE AID RULES APPLICABLE? .....	49
6.1 <i>State aid as an impediment to competition</i> .....	49
6.2 <i>Benchmarking: the United Kingdom</i> .....	50
6.3 <i>Applied to the Swedish investment plan for MHCs</i> .....	51
6.3 <i>Conclusions</i> .....	52
<b>CONCLUSIONS .....</b>	<b>54</b>
<b>APPENDICES .....</b>	<b>58</b>
Appendix A.....	59
Appendix B.....	60
Appendix C.....	62
<b>BIBLIOGRAPHY .....</b>	<b>65</b>
Articles, papers and reports.....	66
Books .....	69
Cases and decisions.....	70
Official Documents.....	71
Journals, press releases and magazines.....	72
Websites.....	74

## ABSTRACT

In this master thesis it is investigated where the housing shortage that Sweden faces in 2003 comes from. Starting from two alternative scenarios, a scapegoat is looked for: either the industry is responsible for lowering the supply of housing by increasing the cost of dwellings through illegal cartel agreements, or the state is to be blamed for distorting market forces through an inadequate housing policy. The latter comprises several possibilities: for example, strengthening the position of the domestic market players by discriminatory legislation or granting unlawful state aid to remedy malfunctions of the system. A combination of both was found in the 2002 Municipal Housing Company rescue plan and hence deserves a lot of attention in the final chapter. Openness of the Swedish construction industry, as an important aspect of competition, and problems related to cross-border investments in construction, as a general characteristic of the industry, are not focused on but were nevertheless included for the entrepreneur-reader.

In parts one and two a quantitative and qualitative assessment of construction as part of the Swedish business environment is done. A PEST-analysis allows familiarization with the topic, where after Porter's model is the basis for assessing market concentration, supplemented with a legal perspective on the local nature of construction in a holistic view. The Porter model of five competitive forces was chosen to highlight the industry rivalry (concentration at the top) in order to evaluate whether there is a competition problem. Since concentration is a facilitating force for the creation of cartels, it is assessed how big the likelihood of cartelization in the Swedish construction industry is by benchmarking with previous cartel cases in the Dutch and Norwegian market, but also by linking previous participation of Swedish companies in building material cartels to the construction market itself (construction in a strict sense). Finally, a hypothetical and preliminary conclusion on cartel infringements by Swedish construction companies is weighed against a plausible bad national housing policy (part three).

The legal analysis in this paper includes potential infringements of Articles 81 & 82 EC Treaty on the one hand, and possible infringements of European regulations on state aid (Art. 87 – 89 EC) on the other hand. The first are fairly presumptive in nature whereas the conclusions for the latter could be made more explicit. The analysis of the Swedish investment aid program (of two who are currently under scrutiny) for support to financially weak public housing companies is effectuated before the European Commission made its final decision public.

The guiding question throughout the paper is which major forces created the Swedish housing shortage in the beginning of the 21<sup>st</sup> century: the market actors themselves, the government or an interaction of both the industry and the State.

*Key words:*

*construction, housing market, residential building, concentration, cartel, state aid*

## ***List of abbreviations***

Art.	Article
CFI	Court of First Instance
COM	Commission
CPD	Construction Products Directive
DG	Directorate General
EC	European Community
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EPF	European Property Federation
EU	European Union
EUR	Euro
FIEC	Fédération de l'Industrie Européenne de la Construction European Construction Industry Federation
GDP	Gross Domestic Product
ITPS	Institutet för Tillväxtpolitiska Studier
M&As	Mergers and Acquisitions
MHC	Municipal Housing Company
MS	Member States
Nma	Nederlandse Mededingingsautoriteit Dutch Competition Authority
OECD	Organization for Economic Cooperation and Development
OJ	Official Journal
PEST	Political, economic, social, technological
ROE	Return on Equity
ROT	Reparation, Ombyggnad, Tillbyggnad Repairing, Reconstruction, Additional construction
SABO	Sveriges Allmännyttiga Bostadsföretagens Organisation Swedish Municipal Housing Corporations' Organisation
SEK	Swedish Crowns
SPK	Swedish national Price and Cartel Board
SPO	Samenwerkende Prijsregelende Organisatie Cooperative Price-regulating Organization
UK	United Kingdom

## ***List of figures***

Figure 1.1 Thesis structure

Figure 2.1 Ownership structure of the Swedish housing stock (2001)

Figure 2.2 Housing investments in Sweden (1950-2000)

Figure 3.1 Summary of Porter Model for the Swedish construction industry

Figure 4.1 Foreign owned construction companies' share of some financial facts (2000)

Figure 5.1 Instruments of political intervention

## PART I – INTRODUCTION

The effect of size is becoming increasingly important for a company operating in a more intensely integrated environment like the European Union. In Southern Europe a growing number of concentrations by means of takeovers and M&As (mergers and acquisitions) is apparent nowadays, but this process already started several decades ago in the Swedish construction industry.<sup>1</sup> Although these Swedish firms are very active abroad, foreign entrepreneurs hardly ever see Sweden or the Nordic market as an opportunity, probably because of its oligopolistic market structure in most countries. Fear that the market is already divided and the vertically integrated organisation of the companies might deter investors who cannot rely on established personal links.

Indeed, the overall impression of the Swedish construction industry is one of lacking competition, and therefore the Swedish competition authority Konkurrensverket has undertaken in-depth investigations. On a European level, the Commission is vigilant as well, and both DG (directorate general) Enterprise and DG Competition monitor the industry carefully. It has to be asked, however, whether competition problems are not inherent to the industry. For public (mainly infrastructure) works, numerous efforts have been taken to increase the level of competition, e.g. by means of introducing a European tender information system, but on the residential building market European harmonization is not that easy. There the local nature of the business might deter companies to operate in another member state simply because of lack of knowledge of the foreign legal framework.

In looking at the Swedish construction industry there are some indications that the sector is harder to penetrate compared to other Member States. Whether this is due to protectionism from the established market players, from the government by means of legislation or simply the result of a lack of interest from foreign construction companies, remains to be seen, but it is proven that the cost structure and competitiveness of the Swedish construction industry do not meet the level of other Member States.<sup>2</sup>

In a 1997 Communication<sup>3</sup> on the competitiveness of the construction industry, the Commission expressed an overall determination to improve the regulatory framework to

---

1 Within Scandinavia three Swedish companies (NCC, Skanska, PEAB) occupy the first spots in a list of twelve construction companies. For the exact ranking see appendix A. I the European ranking of construction companies these companies occupy spots 1, 12 and 32, alongside big French and English groups. (Le Moniteur, November 2002, p. 179)

2 See for example *Skärpning Gubbar!* Report SOU 2002:115.

3 COM(97)539Final. DG Enterprise's interest in the sector was followed by a Pilot study that benchmarked the performance of the European Construction Industry between December 1999 and early 2001.



remove barriers to trade to make the Single Market work. Is it indeed regulations that need to be harmonised in order to open up the Swedish construction industry, or should a solution to the current problems in the construction industry come from the enforcement of competition law<sup>4</sup>? In focusing on the residential building industry the problems of cost structure and competitiveness are still present, but here Swedish consumers are more concerned about the lack of housing possibilities nowadays. In Stockholm and the growth regions around university towns there is an unsatisfied demand for construction of (new) dwellings.

Throughout this master thesis the author analyses the impact of Swedish housing policy on the supply and demand side of the residential building industry in order to answer the following question: who is the scapegoat in the present housing shortage situation that affects several Swedish growth regions... the industry or the state?

---

<sup>4</sup> The most important articles of the Treaty establishing the European Community (hereafter referred to as the (EC) Treaty) that are used in this paper can be consulted in appendix C. More specifically, Art. 81 & 82 (ex-Art. 85 & 86) EC Treaty on competition rules for undertakings, and Art. 87-89 (ex-Art. 92-94) EC Treaty on aids granted by States. In November 2002 the Council approved the Commission's proposal for a new Regulation implementing Art. 81 & 82 of the Treaty which will substitute the 40-year old Regulation 17/62 as of the 1<sup>st</sup> of May 2004. (OJ 2000 C 365/284) Changes include a greater cooperation with and delegation of powers to national Competition Authorities, and the abolition of the Commission's monopoly to apply article 81(3) and the notification system. Hence the Commission hopes to achieve increased enforcement in national courts of Art. 81 & 82. With the modernisation that decentralises the EU antitrust rules to a national level, the Commission hopes "to concentrate its efforts on foreclosure of the markets, international cartels, abuse of dominant positions and principal issues." (Sven Norberg and Luc Gyselen, seminar in Lund, 29/11/2002)

# **1 Motivation and methodology**

## **1.1 Personal motivation**

When searching for appropriate housing in Lund, the author came across the peculiar real estate situation in Sweden. At first glance, it seemed relatively cheap to buy an apartment in comparison to her home country Belgium. Nevertheless, some additional costs make the affordability and availability housing less transparent, and thus interesting to investigate.

In the beginning, this paper looked for answers on the following questions: Supposing that there is need for building more dwellings, would new companies then stand a chance to gain field or is the market too closed already? And how would the situation be for foreign European companies that want to enter the Swedish construction market, would they start from an equal position? Afterwards, a focus on the housing shortage was introduced: it was asked whether the Swedish government deliberately controls the amount of houses that are built, and whether there is a change to be expected on the supply or the demand side within the next few years due to changes in housing policy.

Having no background in the construction or residential building industry, this master thesis was a challenging endeavor, but the relevance of the topic made it worthwhile: construction acts as the biggest industrial employer in Europe and on average represents about 10% of GDP<sup>5</sup>.

## **1.2 Purpose of the study and main question**

The President of the European Construction Industry Federation (FIEC) points out that “in Europe, linguistic barriers and different legal and tax systems mean that only a very small amount of construction work is carried out in another Member State”, and adds that it is not likely to change in the future.<sup>6</sup> The author of this paper, on the other hand, believes that however difficult cross-borderization of the construction industry is, it can still be facilitated or made more difficult by a Member State through regulations. Therefore, this paper unravels the organization of the Swedish construction and residential building

---

5 See sector study in FIEC Annual Report, 2002, p. 61. In addition, the industry has a high multiplier effect on job creation: 1 job in the construction sector creates 2 jobs in other sectors. In 2000, the Swedish construction industry and related activities accounted for about 355 000 employees (Sveriges Byggindustrier, 2001, p.1).

6 Senator E.h. Dipl-Kfm Wilhelm Küchler, President of FIEC in FIEC News, 10/12/2002.

industry while emphasizing compliance with European legislation on competition law and state aid rules. It tries to find the underlying issues that led to a shortage situation on the Swedish real estate market by starting from the hypothesis that market forces were put aside because of either the existence of cartels or improper state aid.

In line with some authors' view that they are not mutually exclusive but even linked to one another, it is also considered that the housing shortage stems from interplay of cartelization and state aid. Fölster and Peltzman (1995, p. 6, p. 41, p. 43) for example feel that “cartelization often appears to be a consequence of regulation” and “that the effect of regulation is more substantial than the effects of cartels.” They were not able to quantify the impact of Swedish cartels, regulations and market structure on prices in Sweden and on costs and productivity, but confirm that market power is easier to be felt in highly concentrated industries.<sup>7</sup>

The purpose of this study is to look for a potential link between competition problems in the residential building industry and competition problems due to the Swedish housing policy. *Therefore this paper tries to answer what the underlying issue is for the housing shortage on the Swedish residential building market: cartels, state aid or both?* It does not want to identify barriers to entry in the Swedish construction market per se. Unrelated to the research question some European case law on cross-border investment in the construction industry is presented since it identifies bottlenecks for entrepreneurs.

### 1.3 Methodology

Both theoretical and empirical research was carried out: apart from literature on the construction industry as a whole, on European case law and legislation and on international business strategy, numerous surveys and interviews were done.

The basic research is of a meso-economical nature: "meso-economics" include social, market and political structures that lie between the micro world of the firm and the individual consumer, and the macro world of national economies<sup>8</sup>. “It deals with entire sector economies and puts focus on industry infrastructure in developed economies as well as the political dimensions of economic development and policy formation”<sup>9</sup>.

In practice, the business study starts with two classic research models: the PEST-analysis and Porter's Five Forces of Competition model<sup>10</sup>. For the analysis of the legal aspects a benchmarking approach was chosen. A benchmark is a tool that is used as a standard by which other things can be judged or measured. By comparing construction cartels and the assessment of state aid given to housing in other European Member States conclusions for

---

<sup>7</sup> Concentration, however, is a poor measure of monopoly power. In addition, “high profitability could reflect either high prices or low costs”. (Fölster & Peltzman, 1995, p. 10)

<sup>8</sup> Holland, 1987, mentioned in Andersson and Malmberg, 2002

<sup>9</sup> Preston, 1984, mentioned in Andersson and Malmberg, 2002

<sup>10</sup>The first looks at four aspects to assess a business environment: political, economic, social and technological factors. The latter takes five forces into account: threat of entry, threat of substitutes, industry rivalry, and finally buyer and supplier power.

the Swedish situation are made.

The empirical research encompassed a small electronic survey that was sent to the 50 biggest construction companies of 14 Member States of the EU (Sweden excluded), asking whether they have tried to enter the Swedish market in the past and/or have intent to do so in the future. Since responsiveness was low, no conclusions could be derived and therefore the outcome was not relevant for the paper. Interviews with internal and external actors in the Swedish construction industry, however, proved to be useful to gain insight in the residential building environment. Swedish construction and housing companies, governmental organizations, sector federations and researchers having specialist knowledge were interviewed<sup>11</sup>. The fieldwork was supplemented with the attendance to the 3<sup>rd</sup> Nordic Construction Conference held on 23<sup>rd</sup> and 24<sup>th</sup> of April 2003 in Lund.

## 1.4 Delimitations

This thesis only deals with the Swedish construction industry and neglects related areas such as engineering and consulting, as well as pure technical or portfolio issues. The building material industry can be seen as part of the construction industry because it is usually very integrated with the contractors' activities, but as a sub industry it is not focussed upon. For this paper, the construction industry is restricted to building, so it does not include infrastructure and civil engineering works such as roads, railways, bridges and tunnels. Building then has been limited to (new) residential building, also referred to as "housing" in this context. Statistics and other information avoid renovation and repair activities when possible. In order to allow some variation in vocabulary, the term construction is sometimes used to replace residential building, which does not include industry buildings, offices, schools, and hospitals.

Due to time and volume restrictions, neither historical Swedish competition rules nor tax legislation have been included into the analysis. Instead, the author has chosen to focus on present and future political actions by the Swedish government since subsidies indirectly impact the construction industry. The Merger Regulation<sup>12</sup> is not included, nor the rules on state monopolies and public undertakings (Articles 31 & 86 EC). The analysis is restricted to antitrust (Articles 81-82 EC) and state aid rules (Articles 87-89 EC)<sup>13</sup>, and mainly considers the evolution over the 1990s.

---

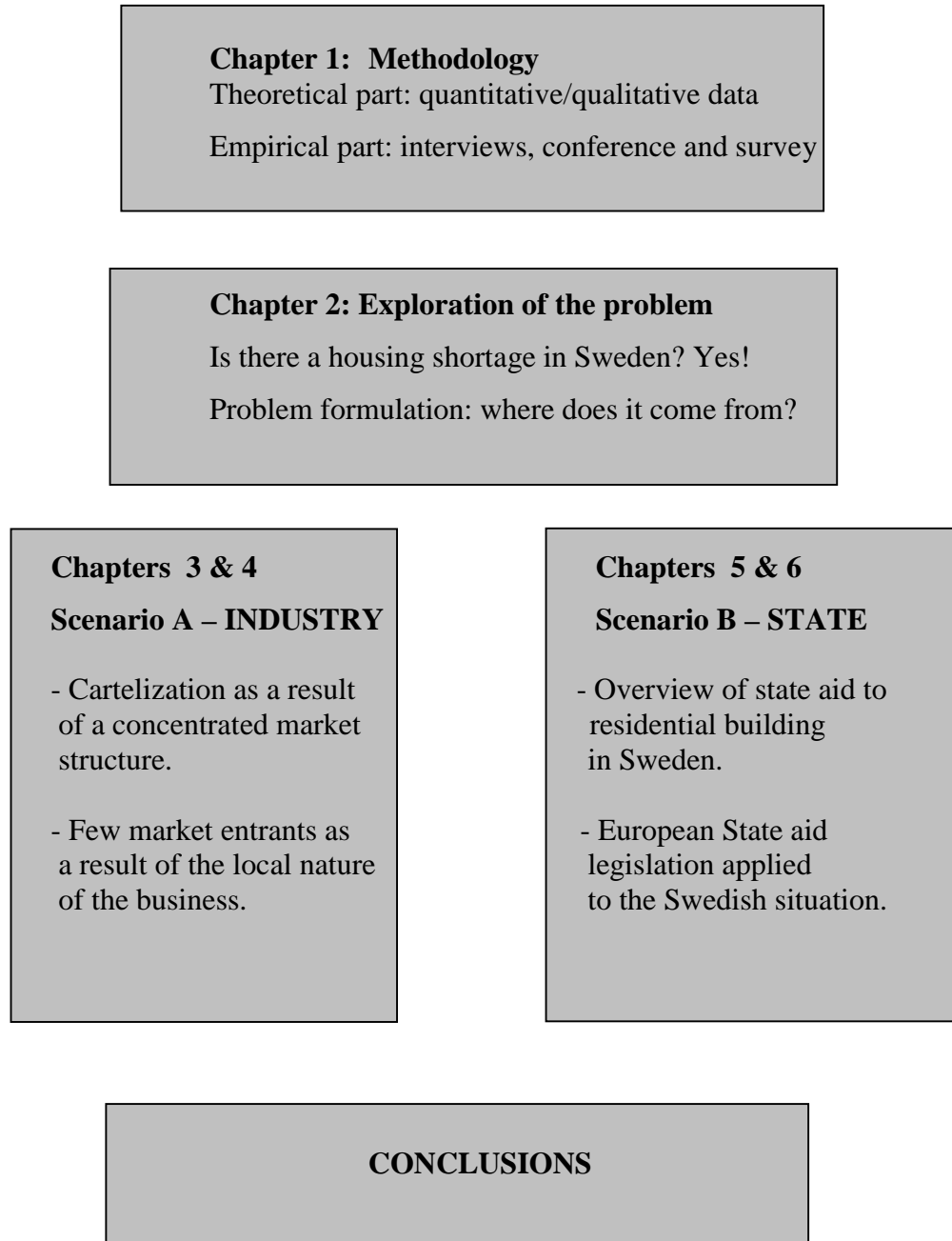
11 Either by telephone or in person. Names of contact persons can be consulted in the bibliography, together with the websites of the institutions. Their wish to remain anonymous in the text body is respected.

12 Regulation 4064/89. "As long as the segmentation into national markets persists, the geographical market is limited in small countries compelled to large countries. One potential negative consequence is to impede domestic mergers in small countries like Sweden. If this is felt to be a problem, the first step to take should be a review of the public regulations drawn up by Swedish authorities, which protect Swedish companies from foreign competition." (Braunerhjelm, 2002, p. 18); e.g. the "crash tests" in the Volvo/Scania case.

13 See articles in appendix C. In order to exemplify barriers to the exercise of the four freedoms in the construction industry, some case law on infringement of other Treaty articles is briefly presented, but since it is of no importance for the research question these are not mentioned in appendix.

## 1.5 Structure of the thesis

*Figure 1.1: Thesis structure*



## ***2 Construction as part of the Swedish business environment***

Some structural problems in the Swedish economy receive continual attention as they are part of the “Swedish Model”: large public sector spending; a strongly interventionist stabilisation policy via the redistribution of taxes; government interventions by allocating financing instruments and subsidies; increased centralisation in the public and the private sector; and centralized wage bargaining.<sup>14</sup> The effect of these characteristics is not only felt in the construction industry, but throughout the whole Swedish economy.

This chapter, as an introduction to the problem formulation, presents a quantitative and qualitative analysis of construction as part of the Swedish business environment. Quantitative studies have been a traditional research tool in the positivist era, but the gathering of statistical data is still highly appreciated, also in social sciences. Qualitative studies, on the other hand, are increasingly recognized as an appropriate research method. Given the lack of prior knowledge in the field of construction, the author has chosen to include interviews. According to Tesch's classification (1991) the analysis of the underlying data is of a descriptive or interpretative nature: attempts are made to develop a coherent and comprehensive view of the subject material from the perspective of those who are being interviewed.<sup>15</sup>

### **2.1 Quantitative assessment**

First, we have a look at the importance of the construction industry for the national economy before we narrow down on the residential building sector. Finally, growth prognoses are addressed.<sup>16</sup> In appendix A figures from the European construction and residential building industry can be consulted.

#### ***2.1.1 Construction industry***

The Swedish construction industry depends to a great extent on the state of the economy as a whole. Its impact on the national economy has decreased in the 1990s. During the 1960s and 1970s the production of houses accounted for 6-7% of GDP, but today its share has dropped under 2%, which is about the same level as at the end of the 19<sup>th</sup> century.<sup>17</sup>

---

14 See NBER Report by Freeman et al. (1997), OECD and IMF sources (mentioned in Jakobsson , 1999, p. 18); also Lindbeck, 1997, p. 12-13.

15 Fellows and Liu, 2003, p. 91-104

<sup>16</sup> Although figures are given for the last half century, the analysis is usually limited to the 1990s.

<sup>17</sup> Sveriges Byggindustrier, 2001, p. 8

Housing construction is at a historically low level since 1993.

### 2.1.2 Residential building industry

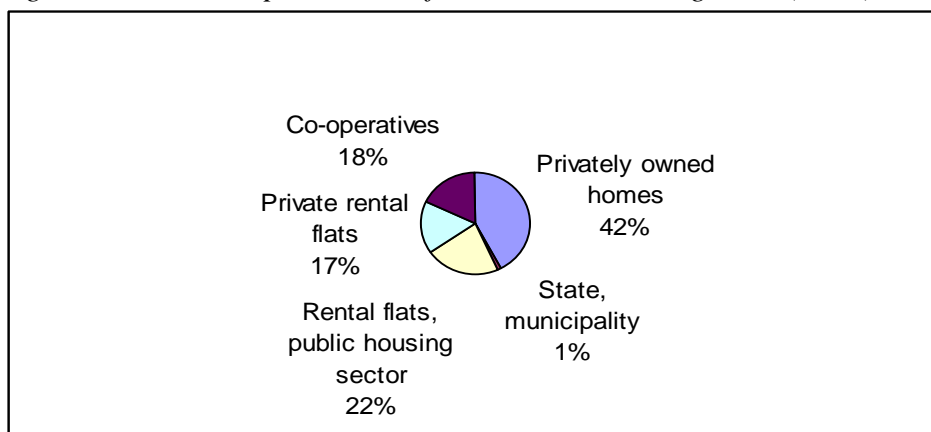
When assessing the status of the Swedish residential building industry, ownership structure and figures of investment in housing are relevant. “There are 4.2 million residences in Sweden, 28 percent of which are flats built during the Million Homes Program.”<sup>18</sup> “Almost 75% of all housing in Sweden is built after 1945, and almost half of the dwelling blocks after 1965.”<sup>19</sup> In comparison to the other European Member States, Sweden, with a little over 1000 dwellings per million inhabitants, built the least amount of housing facilities<sup>20</sup>.

- **Ownership structure**

When it comes to ownership, about 40% of the housing stock is rented accommodation. Private companies own around half of these dwellings and municipal housing companies (MHCs), i.e. the non-profit housing sector, own the other half.

Flats in semi-detached houses usually belong to private persons, whereas apartments in multi-dwelling buildings are owned by three different categories: municipal housing companies (*allmännyttan*<sup>21</sup>), private owners (real estate companies included) and tenant-owner's associations (*bostadsrättsföreningar*). The latter is a special form of cooperatively owned housing: “The cooperative owns the building and the initial members pay a share of the building costs for the right to occupy a certain dwelling in the building. This share is thereafter passed on to the following occupants, each time at a market fixed price.”<sup>22</sup>

Figure 2.1 Ownership structure of the Swedish housing stock (2001)



Source: SABO<sup>23</sup>

18 Sabo, 2001

19 42% of these units are single-family houses, 40% rented dwellings and 18% tenant-owned dwellings. (Swedish Ministry of Finance, 2000, p. 7)

20 European Housing Statistics, in: Sveriges Byggindustrier, 2001, p. 43

21 “The total number of municipally-owned housing companies in Sweden today is about 330.” (Sabo, 2001)

22 Sak and Raponi, 2002, p. 66

23 Sabo is an interest organization for the municipal housing companies of Sweden. Taken together, the 300 member companies own and operate 900 000 flats, corresponding to 21% of Sweden's housing. Some 1.5 million people rent a flat from a SABO-affiliated member company. The size of a SABO company can range from 20 flats to 50 000. 43% of them have fewer than 1000 flats, while the 19 largest companies

In conclusion, Swedish housing can be divided into<sup>24</sup>: (1) the rental housing sector (40% in 2000); (2) a sector comprising owner-occupied housing (42%); (3) the cooperative sector (18%). The rental sector consists of municipal and private housing companies<sup>25</sup>. The first counts some 300 companies, the latter about 45000. The amount of firms, however, is no measure for the division of the market since the MHCs have an average market share exceeding 50% on their respective local markets. As of 1 April 2002, public utility housing companies may be owned by private companies, provided they are non-profit companies which are approved.

- **Investment in housing**

We already mentioned that the production of new dwellings is at an historical low. Since the beginning of the 1990s demand for new apartments is falling, mainly as a result of reduced subsidies<sup>26</sup>. In addition, the deteriorating economic situation and lack of investment capital were limiting even sound construction projects. “Thus, the decline was not only a business-cycle phenomenon but also one of a structural nature”.

Although the effects of the recession are partly faded out in 2003, the demand for housing is not restored completely, probably also because of the fact that housing expenses in Sweden are among the highest in Europe in terms of disposable income.<sup>27</sup> That in itself is not only due to a changing cost structure in the industry, but it also results from the radical tax reform from 1990-1991 that was financed through the housing sector.<sup>28</sup> Consequently, housing costs rose on average by about 20% in fixed money terms between 1989 and 1991.

“Housing investment in the 1990s slumped with the market crisis and the sharp reduction in state support. From 1995 to 1999, it languished at between 1 to 2% of GDP – far lower than the EU average of 5 to 6% – and it has not risen much since then.”<sup>29</sup> As a result, in the second half of the 1990s market shortages began to appear in the Swedish growth regions. “In 2001, 20% of municipalities where 45% of the population lived were reporting housing shortages.”<sup>30</sup> Housing construction costs are high at around 30% above the EU average, according to the OECD because of previous eras of high housing subsidies, low levels of construction imports, and heavy regulations.<sup>31</sup>

---

stand for 40% of the flats. (Sabo, 2001) For more info on municipal housing companies (MHCs) see chapter 5.

24Pocket info of SABO, Swedish Association of Municipal Housing Companies

25“The largest private housing companies in Sweden, in terms of gross income from residential rents in 2001, include Drott, Mandamus, AP Fastigheter, Skandia, Stena Fastigheter, Tornet, Wallenstam and Wihlborgs.” (Linklaters & Alliance, 2002, p. 3)

26 By cutting down on subsidies, the Swedish government tried to finance the radical tax reform of 1990-1991.

27 “An average household spends almost 30% of its disposable income on rent.” (Swedish Ministry of Finance, 2000, p.16)

28 Generally, the tax reform resulted in a reduction in income taxes while the VAT rate applied to building and operating costs for building management was increased to the highest rate, i.e. 25%.

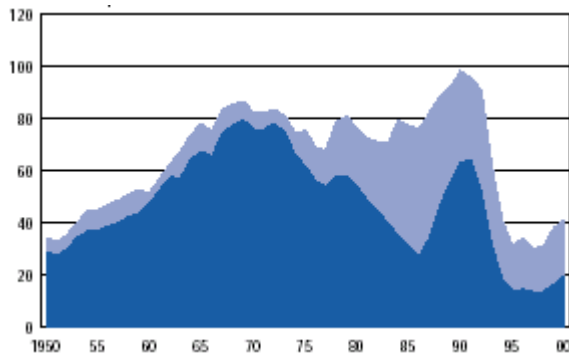
29Ball, 2003, p. 96

30Ball, 2003, p. 96

31Ball, 2003, p. 98



Figure 2.2 Housing investments in Sweden (1950-2000)



Source: SCB (in billion SEK), in: Sveriges Byggindustrier, 2001, p. 5

### 2.1.3 Growth prognoses

Although the production of new dwellings in Europe decreased with 3.9% in 2001<sup>32</sup>, Swedish investments were increasing with 4.2% in 2001, especially in the fast-expanding regions. The Swedish government's goal to build 30.000 new dwellings a year between 2003 and 2006 is criticised by Boverket (the national board for housing, building and planning) and Sveriges Byggindustrier (the Swedish construction industry's federation).

## 2.2 Qualitative assessment

A PEST-analysis classifies external influences that impact firms' activities into four different categories (political, economic, social and technological factors<sup>33</sup>), and is presented as an introduction to the analysis of the thesis problem.

### 2.2.1 Political factors

Both regulation and public ownership have characterized the "Swedish Model" for decades. It is commonly accepted that political decisions that result in highly regulated markets create barriers to entry. Also the negative effect of public ownership<sup>34</sup> on competition and competitiveness is acknowledged: "the very opportunity to exert (political) influence may be sufficient to frighten off potential competitors", mainly because these institutions are able to operate on lower margins than privately owned companies.<sup>35</sup>

"The dominant political force underlying social and economic change in Sweden has for a long time been collectivist in nature (...) in the pursuit of standardised solutions that are the

---

32 FIEC Annual Report, 2002, p.14

33 Legal aspects also largely determine the degree of activity, but are discussed throughout the rest of the paper.

34 "The pre-1990 Swedish tax system strongly disfavoured younger, smaller and less capital-intensive firms and sectors and discouraged entrepreneurship and family ownership of businesses in favour of institutional ownership." (Davis and Henrekson, 1995, abstract)

35 Jakobsson, 1999, p. 38-39

same for everyone.”<sup>36</sup> However, EU membership triggered a political need for deregulation in a number of previously highly protected (oligopolistic) markets so as there seems to be a shift of system to contract the public sector,<sup>37</sup> also on the housing market.

### **2.2.2 Economic factors**

“The Swedish economy has gone through a period of recovery and stabilisation following the crisis in 1992. Substantial success has been achieved in establishing a low rate of inflation and a balanced public sector budget.”<sup>38</sup> Nevertheless, an inflationary element emerged in the 1980s when asset prices exploded, including the prices of real estate and shares. Because government waited until 1989 to fully deregulate the market for foreign exchange and allow free international portfolio investments, there was an extra pressure on the economy. “So an increased domestic demand for assets, including real estate, was to a considerable extent 'bottled up' in the Swedish economy.”<sup>39</sup>

### **2.2.3 Social factors**

The “Swedish Model” can be viewed as a cultural characteristic that results in certain consumer behaviour, mainly driven by corporatism and egalitarianism.<sup>40</sup>

Corporatism refers to formalized (administrative) co-operation between private organizations and the state. Jakobsson et. al. (1999, p. 25-27) argue that it negatively affects competition: since interest organisations and trade unions are able to provide protection for existing companies and impede the entry of newcomers.<sup>41</sup>

Egalitarianism, on the housing market, is seen in the fact that Swedes “aim to ensure a decent housing standard for all.” As a result, public housing cannot be compared to social housing in other European countries where these dwellings are only for the most disadvantaged groups.<sup>42</sup>

In this context, large and undifferentiated municipal housing complexes appeared together with a specific rental value system.<sup>43</sup> These dwellings were intended for all Swedes, but now differentiated consumer patterns have emerged: “Over half of what is being built today is individual housing.”<sup>44</sup> Where some consumers prioritize on economic criteria, others prefer aesthetic or functional aspects. Timber-frame houses are an example of

---

36 Jakobsson, 1999, p. 18-19

37 Sabo & Cesam, 2000, p. 6

38 Jakobsson, 1999, p. 13

39 Lindbeck, 1997, p. 64

40 It has to be noted that consumer behavior is also influenced by governmental rules on subsidies.

41 To what extent, if any, are efforts by undertakings to persuade public authorities to limit competition contrary to Articles 81 and 82 EC, is therefore an interesting topic. See for example Vossestein (2000).

42 Swedish Ministry of Finance, 2000, p. 4

43 It was introduced in 1968 to protect tenants from excessive rent increases: the rent levels in various municipalities are fixed in negotiations between the local tenants' associations and the municipal housing companies. What is striking is that “the private landlord is not allowed to have a higher rent for comparable dwellings. The rents and the business plans in the public companies therefore are of great importance for the private landlords as well.” (Sabo & Cesam, 2000, p.5)

44 Sabo, 2001; Most of the multi-residential buildings going up are co-operatives or student housing. It is vital that there be an increase in the construction of ordinary rental flats.

Swedish taste, and demonstrate the preference for industrialised techniques in the Swedish construction industry in order to decrease production costs.

#### ***2.2.4 Technological factors***

Generally speaking, no major technological changes have occurred in the construction industry over the last decade in Sweden. Nevertheless, it can be stipulated that construction in the Nordic countries requires special care for isolation. Another factor that plays a role is the fact that a lot of building material cannot be imported since it has to be made available close to the construction site (concrete, cement, asphalt etc.). Also the import of other prefabricated goods has been low since national regulation did not allow its use, but the European Construction Products Directive (CPD)<sup>45</sup> will bring about free movement for construction products.

### ***2.3 Conclusions and problem formulation***

Statistical data indicate that the Swedish construction industry is important for the overall economic structure of the country, and hence its decline has to be monitored, especially in the residential building sector where a deteriorating situation affects the population in a direct way. The present housing shortage results from a decade of underinvestment, and goes together with high housing costs for the Swedes.

A shift on the supply side is not to be expected considering the characteristics of the Swedish business environment. The political climate does not favour an increase in competitive pressure that could trigger new development projects, nor do economic or social factors seem likely to encourage property developers to increase the amount of dwellings. The harmonization process in the field of construction products could bring down building costs via imports, but it takes time. Therefore, it seems that the shortage situation remains unless an active housing policy is taken up.

An important consideration in the housing debate involves the market structure of the Swedish construction industry. A concentrated industry that is not open for new (foreign) entrants cannot be made subject to aid programmes without reinforcing market power of established players. Before making conclusions on the need for or appropriateness of state intervention, distortions in the construction industry itself are examined.

---

<sup>45</sup> Directive 89/106/EEG, as of 1 July 1991. More information in chapter 4.

## **PART II – STRUCTURAL PROBLEMS IN THE SWEDISH CONSTRUCTION INDUSTRY**

“Compared to other OECD economies, Sweden has the lowest rate of self-employment, a dominant role for larger firms, and highly concentrated ownership and control of private sector economic activity.”<sup>46</sup> This combination of characteristics makes changes in the structure of an industry hard, especially in the construction industry where retaliation from financially strong established market players is plausible. Indeed, the high degree of concentration risks lowering competitive pressures and avoids market entry<sup>47</sup>. De Valance (1999) identified a number of barriers to entry<sup>48</sup> to the building industry: the cost of investment necessary to become a participant, the market power of established actors, the acquisition of the skills and workforce needed and the state of the market.

In economic literature the structure of an industry can range from a perfect competition situation to a monopoly. In between lays an oligopolistic industry structure, which is characterised by the concentration of a few firms, a potential for product differentiation, imperfect availability of information and significant entry and exit barriers<sup>49</sup>, concepts that are all referred to in Michael Porter's Competitive 5 Forces Model. Also DG Competition looks at the forces of rivalry in order to safeguard the market structure. As industry rivalry is the central force in the said model, it was chosen as a basis for the business analysis. The legal perspective starts from benchmark techniques: an overview of European construction cartels on a national and international level allows drawing an analogy with the concentrated Swedish construction industry.

Cartelization involves infringements of Articles 81 & 82 EC Treaty. Article 81 (1) prohibits agreements, which “prevent, restrict, or distort competition.” For the legal analysis in this paper, competition does not only mean rivalry among undertakings, but the conceptualization follows the ordoliberal tradition that emphasizes the participation of market actors in the economy without overwhelming constraints from private and public power, thereby supporting Monti's reasoning.<sup>50</sup> Article 82, on the other hand, prohibits the abuse of a dominant position, examples of which can be found in unfair purchasing, selling

---

46 Davis and Henrekson, 1995, abstract

47 Market entry is the process taking place when a company decides to compete with the established actors in the market. The new actor on the market can be a newly founded company or a company that has previously been operating on another market, either domestically or not.

48 The difficulties in alignment with the entry of a new market are described as barriers to entry.

49 Grant, 2002, p. 71

50 “Recent case law supports the ordoliberal interpretation, as both European Courts have interpreted the notion of a restriction of competition in Art. 81 (1) as a restriction on freedom of action of market participants.” (Monti, 2002, p. 1059, p. 1061)

or trading conditions, different limitations upon consumers, dissimilar conditions to equivalent transactions, and unfair obligations to contracts. As mentioned before, the focus on cartels in the construction industry (in a strict sense) is chosen for this paper.

### ***3. A concentration problem in the construction industry***

Economic literature states that a greater consumer surplus goes along with a smaller producer surplus. This axiom is mainly driven by the amount of competition within the industry. Oligopolistic situations tend to increase consumer prices by creating bigger profits for the companies that benefit from a collective dominance situation. In order to check whether the housing shortage in Sweden is due to excessively expensive pricing from the supply side, it is investigated whether the market structure of the Swedish construction industry increases the likelihood of cartel infringements.

#### **3.1 Economic analysis of Porter's model**

Most strategic management and international business literature<sup>51</sup> refers to Michael Porter who uses five forces to gain insight in the degree of industry rivalry. "These five forces (...) include three sources of horizontal competition: competition from substitutes, entrants and established rivals; and two sources of vertical competition: the bargaining power of suppliers and buyers."<sup>52</sup>

##### ***3.1.1 Horizontal competition***

An analysis of threat of entry, threat from substitutes and industry rivalry facilitates the evaluation of the degree of horizontal competition on the construction market.

- **Threat of entry**

Economies of scale, absolute cost advantages and product differentiation do not play a major role, so as entry into the building sector is theoretically feasible for quite a lot of companies. According to de Valance (1999) the market power of existing actors on the market is also low because of few capital requirements, especially for residential building.<sup>53</sup>

Statistically, we can attempt to measure openness by means of new start-ups. In 2001 newly established companies in the Swedish construction industry accounted for 6% of the

---

51 See for example Grant (2002) and Czinkota et.al. (2001).

52 Grant, 2002, p. 72

53 Nevertheless, the need for a track record when tendering for large projects can constitute a barrier: as there are only a few major contractors capable of undertaking large projects in Sweden, established relations constitute a significant barrier for new contractors to entry to the market of large projects. (Malmberg, 2003, p. 131)

total amount in the sector, a decrease of 7 % compared to 2000<sup>54</sup> (in relative figures). However, we need to highlight their small size: self-employed owners run 75% of the new construction companies.<sup>55</sup> In actual figures, around 3000 new firms were created on an annual basis over the last decade, which is a fairly high figure given the downturn on the market.<sup>56</sup>

In these circumstances, the (bigger) established companies can retaliate newcomers more easily<sup>57</sup>, e.g. via their access to distribution channels.<sup>58</sup> Retaliation also occurs via takeovers of smaller companies or when financially strong companies do projects at lower margins. These actions can be considered as vertical restraints, and they are prohibited in the EU “when one or more competitors are restricted of entering the market.”<sup>59</sup> The interviewees also consider governmental policy and legal barriers regarding rent regulation as obstacles for new companies, especially for foreign companies that lack knowledge of the local market.

Overall, there is no insurmountable threat of entry in the Swedish construction industry: the amount of newcomers suggests that competition is not perceived as unbeatable, at least not in the residential building sector.

- **Threat of substitutes**

This part of Porter's model is not very relevant to the production of housing since buyers of residential buildings cannot find substitutes on the market. In the 1960s Maslow already introduced a hierarchy of human needs: in his typology shelter requirements fall under security needs, the second need a person has to fulfill to survive. In Western societies, there seem no alternatives<sup>60</sup> to dwellings available and hence there is no big threat of substitutes.

- **Industry rivalry**

Swedish construction is characterised by a vast number of small firms and few medium sized companies. All of them are locally and regionally active. Three major construction companies ('the Big 3') operate on the national and international market: NCC, PEAB and the largest Swedish contractor, Skanska. Other bigger companies are PNB and JM, who is the Swedish leader in residential building. Mergers and acquisitions have been an ongoing

---

54 ITPS, 2002a, p. 8-9

55 ITPS, 2002a, p. 15-16, p. 43, p. 50

56 ITPS, 2002a, p. 39

<sup>57</sup> No big barriers to entry exist due to a low need for operational capital to build dwellings. In some cases however, e.g. during a recession of the market like now in Sweden, barriers to entry are perceived to be higher, especially given the concentration of established contractors that can jointly deteriorate consumer welfare. As the European commissioner for competition, Mario Monti, said: “Industrial restructuring is integral to the functioning of markets. Excessive concentration, on the other hand, is harmful to economic welfare.” (The Economist, 9/11/2002, p. 71)

58 Although at Skanska there is still a lot of room for improvement of coordination of material supply for example, according to the interviewee.

59 Andenas and Papadopoulos, 2002, p. 196

60 Iglo's, tents and caravans are only used by a limited amount of people (for permanent residence).

phenomenon on the Swedish construction market since the 1970s, but the increased pace by which these have been effectuated in the 1990s has had a big impact on the industry's concentration.<sup>61</sup> Some claim that the competitive situation also worsened because of several joint ventures between NCC and Skanska. Although the industry is considered to be very concentrated, statistics do not show higher concentration indices for the construction industry than for other sectors. In 2000 a concentration index of 23,6% was measured.<sup>62</sup>

When looking at the diversity of the competitors, three companies can compete on every project: Skanska, NCC and PEAB. Regionally speaking, there are strong companies that can threaten the position of these companies, but only on a local level<sup>63</sup>. Their financial strength, however, cannot compete with the Big 3 who have the possibility to develop whole projects and sell them afterwards.<sup>64</sup> It also appears that there are two levels in operation: there are few significant barriers for small firms to enter the building industry, but for larger projects there are barriers to entry because of the need for a track record, financial capacity and technical capability. As a result, it seems hard to make the step from a small company to becoming a competitor of the Big 3.

How about product differentiation as a competitive advantage then? After the standardized houses that were built during the Million Homes Program, people now have clear individual preferences. Nevertheless, all construction companies can offer that, so no industry rivalry exists on this basis. Nor do exit barriers or excess capacity influence the degree of competition since a company can fairly easily unwind its activities.

Overall, we have to conclude that competition due to industry rivalry is fairly high, at least in the residential building industry which is a local business.

### ***3.1.2 Vertical competition***

Vertical competition is measured by the amount of bargaining power that suppliers and buyers have.

- **Supplier power**

A company like Skanska has about 180 centralized agreements that allow price negotiations throughout Scandinavia on a local level.<sup>65</sup> Considering the level of

---

61 Especially 1997 was a remarkable year with NCC acquiring Siab, Skanska buying Gaty- och Väg AB from AB Geveko and Optirocs' acquisition of Stråbruken from NCC. (Konkurrensverket, 2002, p. 160-163)

62 That is the accumulated turnover of the four biggest companies as a % of total turnover in the construction business. Figures obtained during interview at Sveriges Byggindustrier.

63 PNB in the South and Västbygg in the West, for example.

64 In light of the prohibition to set rents freely, there is no big return on investment (ROI) on the real estate rental market for the moment, which dampens the companies' eagerness to develop houses and flats. Partnering could act as an alternative, but is in its early stages in Sweden. (overall impression from the 3<sup>rd</sup> Nordic Construction Conference in Lund)

65 The size and concentration of the suppliers vary greatly, but it is noteworthy that only 20 to 30 big



competition on most supply markets, supplier power is low, both from a price and bargaining perspective. In addition, Skanska, NCC and PEAB are vertically integrated companies in the sense that they are active in different areas (asphalt, concrete, ballast), which makes them less dependent from suppliers. The smaller companies, on the other hand, need to rely to a greater extent on the bigger firms that supply these materials. It is not a great disadvantage since 40% of construction costs represents wages<sup>66</sup> and EU legislation in most cases prohibits refusal to supply anyway.

All this results into an overall impression of low supplier power, and the benefits of accumulated volumes could even be exploited more by the construction companies according to some interviewees.<sup>67</sup>

- **Buyer power**

Buyer power varies along with the nature of the clients, who are divided into two main categories: frequent professional clients and low frequency or one-time clients.

The professional clients repeatedly do business with major companies and consequently they establish a mutual relation with each other. On the rental market price sensitivity and bargaining power are high, and hence competition is fierce. Mainly because HSB, tenant-ownership associations (*bostadsrättsföreningarna*) and other professional clients have specific demands for economic returns.<sup>68</sup> Paradoxically, the construction companies increase the amount of price sensitivity themselves in certain cases. E.g. when JM sets up its own rent association, it is dealing with itself so that it needs to be very price-sensitive from both the selling and buying perspective (in a holistic view).<sup>69</sup> This buying pattern on the professional side increases competition although there is a limited number of buyers and sellers on the well-informed professional housing market.

The one-time clients (like households) obviously have a limited market position and thus few buyer power as they principally buy smaller (re)construction and maintenance services from the small companies.<sup>70</sup>

Generally speaking does buyer power, as a fifth force in Porter's model, not seem to create major competition problems, especially not from a consumer's perspective on the residential market.

Figure 3.1 gives a summary of the findings for the Swedish construction industry after applying Porter's Five Forces Model:

---

companies deliver about 80% of material to Skanska. Every three years they let a selected number of suppliers get into competition for these contracts, according to the interviewee.

<sup>66</sup> Sveriges Byggindustrier, 2001, p. 23

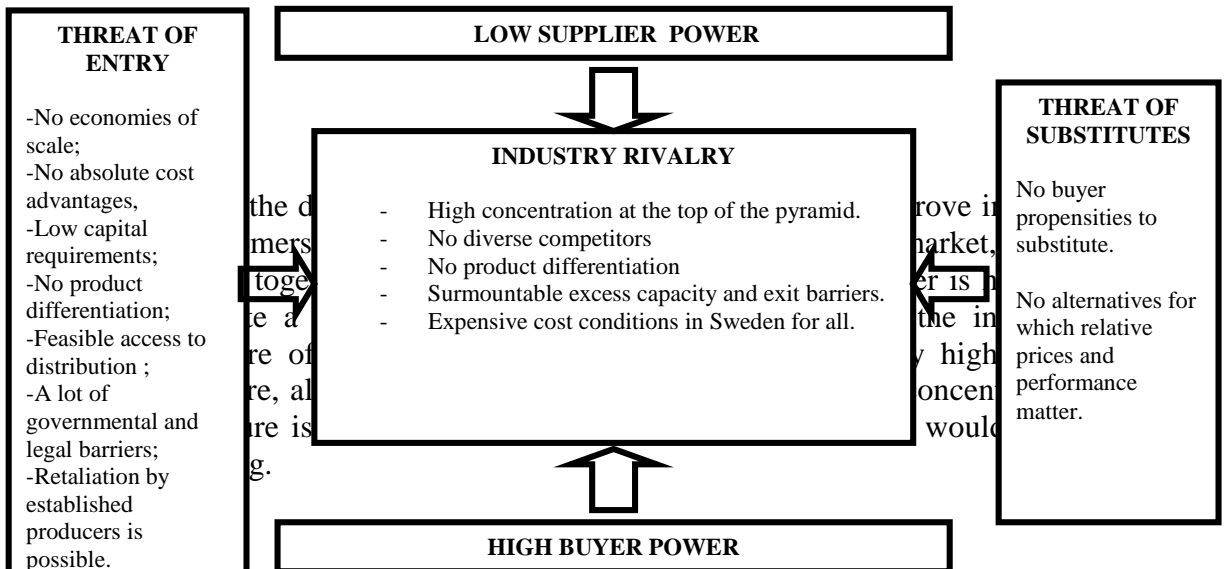
<sup>67</sup> Due to a high degree of subcontracting and the local nature of the business, decisions about material provision are dispersed, instead of increasing price pressure on the suppliers by means of accumulated volumes.

<sup>68</sup> Even the majority of local politicians of the communal housing companies look at economic performance instead of prioritizing housing availability. (*Vår Bostad*, May 2003)

<sup>69</sup> As a result, durability hardly ever is the decisive criterion, and the use of cheaper materials often leads to costly renewal activities afterwards.

<sup>70</sup> Wigren, 2000, mentioned in Andersson and Malmberg, 2002

Figure 3.1 Summary of Porter Model for the Swedish construction industry



analysis was not able to demonstrate the existence of a competition problem, maybe legal factors could alter the conclusions. In what follows, it will be investigated whether illegal practice that infringes competition law, more specifically cartelization, creates a loss of consumer welfare (i.e. the housing shortage) in Sweden through price-fixing and market sharing.

## 3.2 Legal aspects

Sweden's Accession Treaty to the EU<sup>71</sup> was based on the principle that the *acquis communautaire* should be fully applicable from the date of accession, the 1<sup>st</sup> of January 1995. Nevertheless, some permanent and temporary restrictions were granted.<sup>72</sup> The temporary restrictions on non-Swedish ownership of summerhouses in certain attractive areas have been lifted already. In general, “it is the duty of the Swedish courts to interpret and apply Swedish law in compliance with the relevant Community law and its purpose” and this even allows the scrutiny of national law.<sup>73</sup>

### 3.2.1 Swedish and European view on competition legislation

“Apart from purely economic considerations, some people have seen competition as an important means of avoiding excessive concentrations of power. Until the Second World War, the general view in Europe was that consensus and cooperation created more economic welfare than competition. In some countries, collaboration in the form of cartels and/or trusts was encouraged or even required by law.”<sup>74</sup> Now, DG Competition is determined to contribute to the welfare of consumers and the competitiveness of the European economy<sup>75</sup> by enforcing articles 81 & 82 of the EC Treaty.<sup>76</sup>

Swedish authorities recognize the lack of competition as a result of concentration, and over the 1990s different commissions, usually in coordination with Konkurrensverket, have undertaken studies.<sup>77</sup> The Competition Authority needs to implement Swedish competition law<sup>78</sup> in light of EU legislation. On July 1, 1993, a new Competition Act<sup>79</sup> went into effect and since 2001 Konkurrensverket has had the power to apply articles 81 and 82 of the EC Treaty. One of Konkurrensverket's tasks is “calling attention to both new and existing public sector regulations that may distort competition, and proposing deregulation

---

71 “The Accession Treaty between the EU and Austria, Finland, Norway and Sweden was signed at the European Council's meeting at Corfu on 24 June 1994, and slightly modified later, as Norway did not become a new EU member.” (Bernitz, 2001, p. 909) It is been implemented into Swedish law by the 'EU Act' (Swedish Official Journal 1994:1500, Lag med anledning av Sveriges anslutning till Europeiska unionen.)

72 Art. 165 of the Accession Treaty. For a general overview of Sweden's adjustment to the EU, see Miles (Ed.) (Sweden and the EU evaluated, London and New York, 2000), mentioned in Bernitz, 2001, p. 909.

73 Bernitz, 2001, p. 922

74 Braunerhjelm, 2002, p. 7, p. 16

75 See mission statement.

76 It should be noted that also Article 28 has been applied to rule against restrictive practices. This article relates to the free circulation of goods and is thereby applicable to practices that intend to compartmentalize the Common Market.

77 See also 'Konkurrens för ökad välfärd' (Competition for increased welfare) – SOU1991:59

78 Competition Law (Konkurrenslagen 1993:20) and amendments (2000:1021 and 2000:1022). Other competition related legislation can be consulted in the following propositions 1992/93:56, 1992/93:NU17, 1993/94:210, 1993/94:NU23, 1996/97:82, 1996/97:NU13, 1997/98:130, 1997/98:NUO9, 1998/99:144, 1999/2000:140, 2000/01:1, 2001/02:167. The latter deals with amendments to fight cartels more efficiently.

79 Konkurrenslagen, SFS 1993:20

measures that result in greater competition”<sup>80</sup> Complementary, the European Commission monitors industries “to identify actual competitors of the undertakings that are capable of constraining their behavior and to prevent them from behaving independently of an effective competitive pressure”<sup>81</sup> in order to fight cartels.

Antitrust infringements can occur in vertical and horizontal relationships. The former mainly dealing with parallel trade, price fixing and abuse of a dominant position. The latter basically covering cartel activities, like market sharing and price fixing. An example of price fixing that infringed horizontal competition was proved in the ABB case.<sup>82</sup>

As stated before, a high level of concentration or, in legal terms, collective dominance characterizes the Swedish business environment. As a result, cartel behavior is likely to occur, especially considering Sweden's historically lax cartel legislation that allowed cartel agreements till June 1993. “While they were not enforceable in the courts, firms were free to enter into essentially the whole range of agreements – price fixing, sharing of markets, allocation of retail outlets among manufacturers, etc. Only resale price maintenance agreements and joint tendering on public contracts were prohibited. Cartels had to be publicly registered on request from SPK, the Swedish National Price and Cartel Board. In principle, agreements could be struck down if found to be against the public interest.”<sup>83</sup> As of 1993, however, cartels were per se prohibited in order to comply with EC rules: horizontal price fixing and market sharing agreements were now illegal regardless harmful effects, while the only ground for exemption is increased competition<sup>84</sup>.

### ***3.2.2 Antitrust behavior by Swedish and European construction companies***

Stating that the constellation of the Swedish construction industry is apt to infringe antitrust legislation is one thing, but proving the actual existence of a cartel is another. Konkurrensverket is vigilant and due to modernization of European competition cooperation and an agreement with Nordic competition authorities,<sup>85</sup> it can benefit from information exchange to lay open a cartel situation more easily. That is important given the fact that the European Commission’s time to impose fines is limited to five years after the last infringement.<sup>86</sup>

---

80 Swedish Institute (2002), p. 1

81 OJ C 372 (9/12/1997)

82 T-31/99; The European Commission imposed a fine on Swiss-Swedish conglomerate Asea Brown Boveri “for the heavy-handed role one of its executives played in a price-fixing and bid-rigging scheme (for heating pipes) that people in the construction industry say is representative of similar cartels that are manipulating prices of plastic, cement and many other construction materials in various parts of Europe.” (Time Magazine, 1999, consulted on 03/05/03 on: <http://www.time.com/time/magazine/intl/article/0,9171,1107990322-22325,00.html>)

83 However, the 1946 legislation establishing the cartel register put few sanctions at the government's disposal, and, in spite of successive strengthening of the government's powers (1953, 1956, 1982), cartel agreements were largely unrestrained until 1993. (Fölster & Peltzman, 1995, p.2-4)

84 For example, an agreement between smaller firms can be accepted if it is shown to strengthen competitive pressures on larger firms.

85 The agreement between the Danish, Norwegian, Icelandic and Swedish Competition Authorities. (See press release Konkurrensverket, 10/04/03)

86 Article 1(1) of Regulation 2988/74/EEC.

Benchmarking is a strategic tool that can ease cartel investigations. Therefore the exposure of cartelization in the Dutch and Norwegian<sup>87</sup> construction industry is now described. By separating cartels in the construction industry in a strict sense from cartels in the building material business, the author wants to distinguish cartels that directly divide the amount of construction works (projects) among the participants from the ones that have an indirect influence on the construction sector by impacting the cost of building materials.

- **Cartels in the construction business (in a strict sense)**

**The Netherlands** - Several Dutch construction companies, also known as the Club of Eight, have “set up an illegal cartel system, making deals between themselves about tenders for major public building projects.”<sup>88</sup> As a result, the Competition Authority (Nma, *de Nederlandse mededingingsautoriteit*) fined four companies for about 1,2 million EUR at the end of April 2003. There seem to be no indications that cartel activities stopped.<sup>89</sup> All was brought to light when an employee revealed the secret bookkeeping of a big construction company.<sup>90</sup>

The situation in The Netherlands was rather peculiar since public authorities allowed construction companies until 1993 to charge a fee (*rekenvergoeding*) for tendering, but also (and even worse) to consult each other before offering a price. In fact, they “explicitly allowed construction cartels till the beginning of the 1990s”<sup>91</sup> by having a Cooperative Price-regulating Organization (SPO<sup>92</sup>). Regardless Prime Minister Lubbers' efforts to keep this system of pre-consulting, the Kingdom of the Netherlands lost cases before the CFI and ECJ in 1995 and 1996.<sup>93</sup>

Europe's “no” is understandable because the construction business is not just a national matter, and thus, as part of the Internal Market, it opens the door for cross-border cartelization. According to the findings of the Dutch parliamentary commission that investigated the construction fraud, five Belgian and nine German contractors have infringed cartel legislation in The Netherlands, and it has also been proven that Dutch

---

87 Although Norway is not a member of the EU, it is subject to European competition law because of the EEA agreement, which justifies it as a benchmarking country. Moreover, the situation in Norway is of peculiar interest to the Swedish Competition Authorities since a lot of companies involved in the cartel are also present in Sweden. In 2003 a lot of allegations towards Irish companies came to light, so that this might be used for future reference as well. “Complaints against the construction industry accounted for the largest number of reports of alleged operation of illegal cartels in Ireland last year (22%).” For more information, see [www.tca.ie](http://www.tca.ie) or <http://archives.tcm.ie/irishexaminer/2003/03/03/story869383636.asp>, consulted on 03/05/03.

88 Radio Netherlands Wereldomroep (2002) Projects included road building, high-speed rail links, and a railway tunnel at Schiphol international airport.

89 NRC Handelsblad, 26/4/03, consulted on: [www.nrc.nl](http://www.nrc.nl)

90 NRC Handelsblad 10/4/03; 72 companies were involved in Koop Tjuchem's bookkeeping that was shown to the Dutch Competition Authority by Ad Bos in November 2001.

91 NRC Handelsblad, 14/12/01, consulted on: [www.nrc.nl](http://www.nrc.nl)

92 The 'Samenwerkende Prijsregelende Organisatie' was an umbrella organisation for 28 price regulating associations of construction companies, with a total of 4000 members.

93 Commission Decision 92/204/EEC, published in official journal L 092, 07/04/1992; CFI T-29/92; ECJ C-137/95P; As a result of these lost cases, Dutch competition legislation was adapted in 1998.

companies committed offences abroad.<sup>94</sup> For example, companies have deliberately protected the market from foreign competition for the subway project in Amsterdam: German, Belgian and UK companies could not find subcontractors and had to pay 10 % extra for materials.<sup>95</sup> In these circumstances, refusal to supply is considered anticompetitive in the EU.

**Norway** - The Norwegian Competition Authority suspects four construction companies<sup>96</sup> of having formed a cartel between 1994 and 2000. It is noteworthy that two Swedish companies are said to be involved in the price fixing and market sharing practices. NCC acknowledges that it cooperated, while Skanska says not to have found any proof within the company that proves intolerable cooperation.<sup>97</sup> “The cases of illegal collaboration mainly affect public authorities and companies, but private real estate developers have also been affected.”<sup>98</sup>

Given the local nature of the business, cartels between construction companies usually involve national firms. In the building material business, however, an international dimension is found more frequently. The importance of cartels in this sub industry is non-negligible since the sector can be regarded as part of the construction industry: bigger companies often own subsidiaries that provide them with key building material. Cartels in the building material business are therefore likely to spillover to the construction industry in a strict sense due to established ties between the market players. Some major national and European cartel cases involve cement, distance-heating pipes, asphalt and plasterboard<sup>99</sup>.

- **Cartels in the building material business**

Three cartel cases, in which Swedish companies were involved, are addressed. The cement case that is described first, is of a particular interest since the Commission's decision<sup>100</sup> was reversed before the ECJ because it did not give sufficient reasons for fining certain

---

94 Report December 2002, cited in NRC Handelsblad, 14/02/03, consulted on [www.nrc.nl](http://www.nrc.nl)

95 Subcontractors usually have exclusive contracts with the biggest construction companies, and were forbidden to deliver services to the foreigners. In addition, the 18 biggest construction companies together own 4 asphalt centrals to allow them discriminatory pricing vis-à-vis external players.

96 Selmer Skanska AS, NCC Construction AS, Veidekke ASA, Reinertsen Anlegg AS

97 Konkurrentnytt nr. 2:2003, p. 5; see also annual report NCC, p. 45 “NCC's own enquiries have uncovered cases in which fictitious invoices were exchanged between Norwegian building contractors, apparently designed to function as compensation for the companies that were not awarded contracts”.

98 Press release Konkurransetilsynet, 27/02/03

99 This last case is not discussed since no link with Sweden or Swedish companies was established. Plasterboard – On 27 November 2002, the European Commission fined four companies for a total amount of 478 million EUR in the plasterboard market, which is “the largest in terms of value to have been covered by a Commission cartel decision in the last ten years or so.” The cartel affected 80% of consumers in the EU, namely in France, the UK, Germany and the Benelux between 1992 and 1996. The companies exchanged information on their sales volumes in order to avoid price wars. The Commission's decision is listed under COMP/37.152.

100 Decision 94/815/EC

undertakings, nor did it give enough details about the calculations of the fines.<sup>101</sup> One of the companies has now launched a case to recuperate default interest (interest on the overpaid fine).<sup>102</sup>

**Cement**<sup>103</sup> – By its decision of 30 November 1994, the European Commission fined 42 undertakings<sup>104</sup> in the European grey and white cement market after investigations between April 1989 and July 1990. Two secret committees<sup>105</sup> met regularly to coordinate the scheme and kept written records since 1986, when Greek cement makers started to export cheap cement powder into the rest of the EU. First, the European giants used their collective financial might to undercut Greek prices dramatically and then they forced the Greeks to enter the cartel. According to Ferguson one of the most telling signs of the cartel was “the almost total lack of movement of cement powder” between countries in Europe. He adds that the European condemnation “could prompt individual countries to institute their own punitive investigations”. That has been the case in Germany at the end of 2002 when the German Cartel Authority was about to fine recidivist cement companies.<sup>106</sup> Cartels were already forbidden by law since the beginning of the 1980s, so when evidence was found of price-fixing dating back to the 1970s the six companies<sup>107</sup> were fined a total of 660 million EUR. Given the fact that (heavy) cement cannot be transported by road over more than 200-300 km, it can be argued that the business is a “natural oligopoly”. Moreover, concentration could be competition and welfare increasing because of larger and more efficient plants, and big investments by their nature require a stable pricing strategy that is not based on marginal costs.<sup>108</sup> The Court, however, did not follow that reasoning nor did it take into account arguments regarding circumstances of dumping.

**Heating pipes**<sup>109</sup> - In October 1998, the Commission could terminate a cartel between

---

101 “The Court stated that the Commission was required to give some form of statement of reason (Art. 190 of the EC Treaty) but that this was a procedural requirement.” (Leighton, 2000) The Court reduced the total amount of fines from approximately 250 million EUR to 110 million EUR, although it did not take into account the circumstances at the time of the infringements. The defence that the cement industry had to protect itself from cheap imports into Europe was not accepted by the ECJ.

102 T-86/3; Action brought on 6 March 2003 by Holcim against the Commission of the European Communities, Official Journal of 10/5/2003.

103 “Cement powder is the basic ingredient in concrete, along with stone, sand and water. Concrete is used to form bricks, blocks, pipes, culverts and pre-stressed bridge spans. It is the primary structural component of office buildings, dams, tunnels, sewers, highways, airports, sidewalks, driveways and house foundations.” Therefore, it has a big impact on the overall economy. (Ferguson on [www.cementkiln.com](http://www.cementkiln.com))

104 Bigger companies involved: Lafarge Coppee and Ciments Français (France), Holderbank Financière Glaris Ltd. (Switzerland), Italcementi (Italy), Schancem International ANS (Norwegian-Swedish conglomerate), Blue Circle (the UK), Cimenteries CBR (Belgium), and Heidelberger Zement AG, E. Schwenk Zementwerk KG and Dyckerhoff AG (Germany). Holderbank and Lafarge are believed to have had the most influence in the cartel. According to Ferguson the European giants now reign the American cement industry after numerous take-overs thanks to a 1985 decision to eliminate antitrust barriers in the cement industry, and foreclosure of the Canadian market is a fact as well.

105 One was called ECMEC (European Cement Manufacturers Export Committee), the other was the Cement Task Force. (Ferguson on [www.cementkiln.com](http://www.cementkiln.com))

106 *Le Moniteur*, 2002, p. 174

107 Heidelberg Cement, Schwenk, Dyckerhoff AG, Lafarge, Holcim and RMC. (Construction Europe, May 2003, p. 7)

108 [www.cembureau.be](http://www.cembureau.be)

109 “In district heating systems, water heated in a central site is taken by underground pipes to the premises to be heated.” Those pipes must be insulated. (Judgment in T-31/99, paragraph 2)

producers of (district) heating pipes, which had jointly fixed prices and terms for tenders to public authorities as of the end of 1990. By 1994 almost the entire European<sup>110</sup> market was covered and the scheme operated as follows: a 'favorite' was assigned to win a contract, while the others submitted high prices in the tendering procedure and national markets were shared. "Quota's were allocated by the 'directors' club' to each undertaking at both European and national level."<sup>111</sup> In 1995, the Swedish undertaking Powerpipe AB reported the situation to the Commission, who imposed fines totaling approximately 92 million EUR. Swiss-Swedish ABB, one of the participants, disputed the amount of its fine and was proved right by the ECJ because the Commission did not apply the principle of equal treatment in the cartel case.<sup>112</sup>

**Asphalt** - In March 2003 the Swedish Competition Authority filed a lawsuit against 11 companies<sup>113</sup> in the asphalt-paving industry, petitioning for a fine of about 1.6 billion SEK. Presumptions of price fixing agreements and market sharing since at least 1993 underlie the accusations. It is believed that smaller companies' growth was hindered by means of fake invoices in order to abstain from tendering or to deliberately hand in a too expensive bid.<sup>114</sup> Surprisingly the reactions of the companies involved in the accusations differ. At NCC one seems to come clear with previous actions and now 1500 managers receive training in competition legislation.<sup>115</sup> At Peab, on the other hand, "the company maintains that it can not rule out participation in asphalt cartels."<sup>116</sup> The Stockholm City Court planned to begin the main proceedings during fall 2004.

### 3.3 Conclusions

Several Swedish construction companies are accused of (or convicted for) having formed illegal cartels, mostly in the Nordic countries. One of the consequences of the cartel cases is that firms lose credibility in the debate on the housing shortage: the Swedish government can now easily counteract the argument that taxes and housing policy are responsible for lack of affordable houses.<sup>117</sup> If cartels in the building material business grow into cartels that divide actual construction works, it would have an impact on the supply and demand of housing: as the Dutch case proved, cartelization increases the cost of construction, and thus also negatively affects the demand in holistic view, which can in turn lead to a

---

110 Germany, Austria, Denmark (start of the cartel), Finland, Italy, the Netherlands and Sweden.

111 European Commission, 20/03/2002

112 Case T-31/99; "ABB had been fined EUR 70 million and the Commission had taken into account the fact that, like two other companies, ABB had co-operated in communicating evidence and had reduced the fines of all three by 30%, pursuant to its leniency notice. However, CFI found that the Commission should also have taken into account the fact that, unlike these two other companies, ABB had not disputed the main facts. Consequently the CFI further reduced ABB's fine to EUR 65 million." (Stanbrook, 2002)

113 NCC, Vägverket Produktion, Skanska, Peab Asphalt, Peab Sverige, Peab Asphalt Syd, Sandahls, Bygg & Miljö, Kvalitetsasfalt, Oden Entreprenad, Svenska Väg. Markbyrån was granted immunity from a fine because of cooperation with the authorities.

114 Konkurrensnytt (Nr. 3/2003), p. 2-3

115 Press release NCC (21/03/03)

116 Press release Peab (31/03/03)

117 Affärsvärlden (Nr. 6/2002), p. 10



housing shortage situation.

Although infringements to articles 81 & 82 were proven in the building material business, the question remains if and why cartels are plausible in the Swedish construction industry. The concentration of a few big market players is not the only factor that plays, but it does help to establish personal links between a limited number of business representatives. A long tradition of working together in industry associations<sup>118</sup> and the permission of cartels that did not harm consumers' interests until 1993, could easily pave the path for market sharing and price fixing, especially when the sector is confronted with a recession. In addition, there is a view in Sweden that buyers lack both skills to negotiate and bargaining power.<sup>119</sup>

Achieving economies of scale to some extent requires a higher concentration in less densely populated countries like Sweden, and therefore it is hard to say whether a high degree of concentration is per se a competitive weakness.<sup>120</sup> "A pertinent question is whether concentration in production also conveys oligopoly power in the home market or whether import competition dissipates the effect".<sup>121</sup> If one considers foreign investments as "imported competition", one could reformulate the question as follows: would an increasing number of new foreign owned companies in an industry be able to impact a traditionally highly concentrated industry in such a way that competition problems dissolve automatically?

In the construction industry there is a natural reflex of treating it as a local business, mainly because of inconvergent legislative frameworks. The EU tries to increase the competitiveness of the sector by removing barriers to trade. An assessment of that work and the identification of obstacles to overcome when investing in construction works abroad follows now, as it demonstrates "the interaction and gaps between the free movement and competition rules of the EC Treaty", a topic that is attracting recent attention.<sup>122</sup> Although the chapter is only remotely related to the research question, it is included for the entrepreneur-reader.

---

118 "If past formal arrangements among rivals are replaced by similar informal understandings, some of the effects we uncover may endure." (Fölster & Peltzman, 1995, p. 4)

119 Werre, T. (EBAB) in *Fastighetsnytt* (Nr. 1/2002). He proposes to increase the use of Project Construction Management companies that try to obtain a work and divide it to several small construction companies afterwards.

120 "As the Prime Minister of Finland, Paavo Lipponen, put it: "We cannot accept that Nordic countries would be bottled up as special markets with our small companies, and the giants would go shopping around with free hands." (*Financial Times*, 5 October 2001)

121 Fölster & Peltzman, 1995, p. 6

122 See for instance J.B. Cruz (*Between Competition and Free Movement*, Hart Publishing, Oxford 2001), mentioned in Andenas and Papadopoulos, 2002, p. 195; Also Mortelmans (2001) and Gormley (2002).

## **4 The local nature of the business**

Construction in general is a highly regulated industry, mainly for safety reasons. The final product usually is unique and cannot be transported. Since a lot of key players are involved, a chain of competence and cooperation characterizes the heterogeneous and fragmented industry. Another important feature involves the industry's local character. In this respect, most authors refer to two factors. On the one hand, internationalization means an increase in transportation costs for labor, materials and equipment, especially for small and medium-sized enterprises. Secondly, companies need to get familiar with the regulatory framework of the target country, and that is not an easy task.

In this chapter, statistical data are supplemented with empirical research from the interviews to trace problems related to foreign investment in the Swedish construction industry. An overview of recent European case law related to cross-border investment in the construction industry brings some key factors to the attention of entrepreneurs that are planning to internationalize building activities.

### **4.1 Few foreign construction companies in Sweden**

The combination of quantitative<sup>123</sup> and qualitative research allows to get an idea of the amount of foreign construction companies in Sweden.

#### **4.1.1 Quantitative research**

Enterprises controlled by a foreign owner that has more than 50 % of the voting shares, are regarded as foreign controlled.<sup>124</sup> Foreign owned companies have increased their share in Swedish business over the year 2000, and “in both the construction and service sectors, foreign owned enterprises accounted for more than half of exports”. Still the turnover of foreign owned construction companies compared to the total industry's turnover barely reaches 6,5% in 2000 whereas it was 7,2% in 1999. Comparing these figures with an overall foreign ownership percentage of Swedish business of 24,5 % in 2000 and 22,3% in

---

123 Statistics were obtained from ITPS (Institutet för Tillväxtpolitiska Studier). Own empirical research (an electronic survey, see methodology) failed because construction companies did not want to give information regarding strategic investments in one country of the EU.

124 “The main principle is that an enterprise is defined as foreign owned if more than half the voting rights in the company are controlled by a foreign owner. If an enterprise is part of an enterprise group in Sweden and its parent company is foreign owned, then the enterprise is regarded as foreign owned. The nationality of an enterprise group is determined by that of the ultimate beneficiary owner i.e. a parent company which itself is not controlled by any other owner with more than 50 % of the voting rights.” (ITPS, 2002b, p. 2)

1999, one can conclude that the construction industry has not particularly been opened up for foreign investors.<sup>125</sup> In exact figures, there were 129 foreign construction companies active on the Swedish market in 2000, accounting for a 30% increase in comparison with 1999.<sup>126</sup> Figure 4.1 presents some data on their share of different financial facts for 2000.

*Figure 4.1: Foreign owned construction companies' share of some financial facts (2000)*

Net Turnover	Added value	Export	Investments	R&D	Labour Cost
6,40%	6,80%	57,70%	4,30%	71,00%	6,70%

*Source: ITPS, 2002, p. 24*

Figures about start-ups in the Swedish construction industry in 2001, however, seem to indicate another trend: 17% of newly established companies are foreign owned, that is 2% more than in 2000.<sup>127</sup> Whether this means that there is an increase of interest in the Swedish construction industry is not clear since the industry's turnover is not reflected in the data.

#### **4.1.2 Qualitative research**

Before 1993, Swedish legislation limited the possibility for foreigners to hold shares in Swedish corporations.<sup>128</sup> Although this barrier has been abolished, there remain some factors that complicate investment in Swedish construction companies. Since drawing up an exhaustive list of barriers to entry in the Swedish construction industry per se is not pursued here, only general European trade barriers in the industry are briefly reviewed<sup>129</sup>.

In the interviews four important barriers to entry were constantly put forward for foreign European companies that want to enter the Swedish residential building industry: language and cultural barriers<sup>130</sup>, technical standards<sup>131</sup>, labour regulations and the Swedish tax policy.<sup>132</sup> If we neglect the first one, we can conclude that the barriers are related to the

125 Own calculations, see ITPS, 2002b, p. 27

126 Own calculations, see ITPS, 2002b, p. 25

127 ITPS, 2002a, p. 21, p. 46

128 For an overview see McLure and Norrman, 1995; "Since the abolition, foreign ownership has risen from 8% in 1990 to above 20% in 1994." (p. 2)

129 In interviewing people at Boverket, <sup>129</sup> an interesting project was brought to the attention of the author: since 1998 an attempt to set up a "European village" was made around the harbour of Malmö in South-Sweden. The project tried to reveal barriers to entry that prevent cross-border investment in the European construction industry but, regardless the support by the European Commission, it was not a fruitful experience, mainly because few EU countries participated for lack of financing.

130 It is not surprising that Scandinavian companies have an easier task in acquiring building projects on the Swedish market since they are -apart from geographically- also linguistically and culturally close. Other European companies might have bigger problems, but this should not be overstated since proficiency in English and/or German is not scarce in Sweden.

131 Technical standards can constitute a non-tariff barrier, e.g. when Swedish construction specifications preclude import of building material or when domestic firms have different compliance costs. From the industry's perspective, however, technical standards play a minor role, especially in light of the harmonisation process that has been initiated by the Construction Products Directive (CPD)

132 Fölster and Peltzmann, referring to Davis and Henrekson, argue that the tax bias in favour of large, capital intensive, widely held firms may have discouraged new entry of small, privately held firms and "thereby removed potential competitive constraints on the established firms". "This bias may have been

Four Freedoms of the EC Treaty: the free movement of goods, persons, services and capital. More generally, one could say that “national jurisdictions divide markets up”, also in the construction industry.<sup>133</sup>

According to Gormley (2001, p. 520) this does not mean, however, that the Four Freedoms relate to competition law: he argues that “competition law analysis does not assist the removal of national barriers to trade within the Community through negative integration”, or vice versa.<sup>134</sup> The author of this paper, on the other hand, takes the view that European harmonization efforts *may* have a facilitating effect on cross-border investment and hence overcome competition problems due to concentration on certain markets. This is in line with the activities of the European Commission, as expressed in a 1997 Communication<sup>135</sup> on the competitiveness of the construction industry, which sets the goal to improve the regulatory framework, especially when it comes to the Single Market and public procurement, in order to remove barriers to trade.

#### **4.2 European legislation and case law related to cross-border investment in the construction industry<sup>136</sup>**

A construction company that decides to build abroad needs a strategic plan. Textbook case studies can help to identify the key factors that make cross-border investment in the construction industry successful.<sup>137</sup> In preparing for international expansion, advice from consultants and lawyers is usually necessary. Consultants pursue a thorough market analysis that allows an outcast of future projects and their viability, whereas lawyers map the companies' rights and duties. Due to the volume restrictions of this paper, the author has chosen to concentrate on rights that derive from the EC Treaty by giving examples of previous cases, supplemented with some European harmonisation efforts that aim to facilitate the Internal Market for construction. First, the Four Freedoms are discussed; where after the case of the Swedish construction company NCC is mentioned as an example of the exercise of the right of establishment.

---

motivated by the fact that income in small firms is difficult to separate from the owner's personal income. Therefore, small firms' income was taxed progressively in accordance with the welfare state's ambition to equalize incomes”. (Fölster and Peltzmann, 1995, p. 8-9)

133 See for example Andenas and Papadopoulos, 2002, p. 195: “Regulators should follow markets”

134 Negative integration refers to measures consisting of the abolition of a number of impediments to the proper operation of an integrated area. (Tinbergen, *International Economic Integration*, 2<sup>nd</sup> Edition, Amsterdam, 1965, p. 76), mentioned in Gormley, 2001.

135 COM (97) 539 Final; DG Enterprise's interest in the sector was followed by a Pilot study that benchmarked the performance of the European Construction Industry between December 1999 and early 2001.

136 Although this paragraph is probably less relevant for the overall analysis of the thesis problem, the author has chosen to include it because of its relevance for entrepreneurs that consider entering another European construction market.

137 See for example Deresky, 2000, p. 197-201 for a case about a Spanish construction company that expanded its international activities in Germany by taking over an existing German company.

### 4.2.1 The Four Freedoms

The Four Freedoms mentioned in the EC Treaty include the free movement of persons, services, capital and goods. Due to production at the place of use, high mobility of workforce is needed in construction, not only within the national boundaries but also internationally.

- **Persons**

Practical obstacles to this freedom are mainly found in the lack of recognition of professional qualifications outside the country of origin, and the problem of transferring social security rights that have been acquired elsewhere. Not only for public contracts<sup>138</sup> but also for the posting of workers<sup>139</sup>, harmonization efforts are made to ensure the free movement of persons. The 'Posting directive'<sup>140</sup> ensures that “workers (are guaranteed) the terms and conditions of employment<sup>141</sup> in the Member State where the work is carried out” in the field of certain activities, of which building is explicitly mentioned in the annex.

- **Services<sup>142</sup>**

In the 'Portuguese construction workers' cases<sup>143</sup> the European Court of Justice (ECJ) held that German Courts had the right to judge about the application of provisions aimed at protecting an industry from social dumping,<sup>144</sup> although economic aims such as the protection of domestic businesses cannot be a valid argument. The fact that an employer established in another Member State has no possibility of avoiding the obligation to pay the minimum wage laid down by the collective agreement creates unequal treatment contrary to Article 59 EC, and hence it is an unjustified restriction on the freedom to provide services. In a follow-up case,<sup>145</sup> the Commission succeeded in forcing the Federal Republic of Germany to change its legislation in this area, with the support of the Advocate General.<sup>146</sup>

- **Capital**

The concept of 'restriction on the free movement of capital' has been interpreted in a broad fashion in European case law, thereby including legislative and administrative obstacles.

---

138 On 10 May 2000, the Commission proposed to consolidate three Directives in order to coordinate the procedures for the award of public supply contracts, public service contracts and public works contracts. It is likely that the Directive will be adopted towards the end of 2003.

139 “For the purposes of this Directive, 'posted worker' means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.” (Directive 96/71/EC, article 2)

140 Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996

141 See article 3: maximum work periods, minimum rest periods, minimum paid holidays, ... etc.

142 The Posting directive was not put into effect at the time of the events in this case.

143 C-164/99 (Portugaia Construções)

144 Relevant paragraphs: 16, 19, 21, 26, and 28. Advocate general Mischo suggests in his conclusions of 03/05/2001 to accept the social dumping reasoning, even when it means that other goals (like protection of the national business) are met at the same time. (Paragraph 78)

145 C-493/99 (Commission of the European Communities v. Federal Republic of Germany).

146 Conclusions of advocate general Ruiz-Jarabo Colomer on 5 April 2001, paragraphs 14, 23, 33.

“It is not unknown for the ECJ to point to a protectionist object when demonstrating that legislation being examined by the national court is a restriction on capital”.<sup>147</sup> In the 'Hans Reisch et.al.' case<sup>148</sup> the Court, on a reference concerning Austrian mortgage registration rules, stated that, “as is apparent from Article 44(2)(e) EC, the right to acquire, use or dispose of immovable property on the territory of another Member State, which is the corollary of freedom of establishment ... generates capital movements when it is exercised”.<sup>149</sup> It is thus ruled that capital movements include investments in real estate on the territory of a Member State by non-residents, a necessary complement to the freedom of establishment.<sup>150</sup> The Austrian regulations required a prior notification and authorization regime for purchases of land, the former of which is not precluded by Articles 56 EC to 60 EC, whereas the latter is.

- **Goods**

According to the Cassis de Dijon principle that any product that is legal in one Member State can be freely imported into another one, the market for construction products has to be opened up. DG Enterprise pursues this mainly through the implementation of the Construction Products Directive (CPD). In the short term by supporting the production of standards and European Technical Agreements, and in the longer term by integrating dangerous substances and environmental requirements in the harmonised specifications.<sup>151</sup> The CPD requires essential performance criteria for buildings in six areas<sup>152</sup> by using common European building codes (Eurocodes). In practice, the directive demands compliance with one out of three standards (European standards, European technical standards or recognised national standards) in order to give a CE mark.<sup>153</sup> Obviously this can increase the level of competition for building materials in Sweden. The CPD has been integrated in Swedish legislation.<sup>154</sup>

#### ***4.2.2 The right of establishment***

In order to have legal capacity under German law, the Dutch company *Überseering*<sup>155</sup> had to transfer its centre of administration to Germany. When defective paintwork was done on its premises in Düsseldorf (Germany), it could not launch a case against NCC, the German construction company that performed the works although it had ‘passive’ legal capacity

---

147 Flynn, 2002, p. 778, p. 780

148 C-540/99 (joint case of cases C-515/99, C-519/99 to C-524/99 and C-526/99)

149 Flynn (2002, p. 789) rightly points out that the relationship between the right to acquire property and the freedom of establishment is more emphasized in the French version.

150 Using the nomenclature of capital movements set out in Annex I to the Third Directive. (Flynn, 2002, p. 777); Judgment C-540/99, para. 29-30. For this purpose, the case was included in the thesis: although it is not an explicit example of cross-border investment by a construction company, it sets out difficulties that can occur in acquiring real estate or land abroad.

151 [www.europa.eu.int/comm/enterprise/construction/unit/mission.htm](http://www.europa.eu.int/comm/enterprise/construction/unit/mission.htm)

152 Mechanical resistance and stability, safety in case of fire, hygiene, health and the environment, safety in use, protection against noise, energy economy and heat retention.

153 European Village Report, 2003, p. 21; “There are at the moment approximately 700 ratified harmonized product and test standards in the CPD directive area and further 300 standards are under approval and 100 are under development.”

154 1994:847. Boverket ensured that CE-marking requirements could be implemented as of 1 July 1997.

155 C-208/00

when being sued for non-paid bills. The ECJ ruled that German legislation constituted a restriction to the freedom of establishment as in articles 43 and 48 EC of the Treaty. Basically because the Dutch company was discriminated against resident companies that were registered in Germany.

Another problem that could arise regarding the right of establishment is the denial by a Member State to allow a company to perform works on its territory, e.g. for lack of qualifications. Therefore, the Commission has worked on a draft for a European qualification standard for construction enterprises, but ultimately the plans were halted.<sup>156</sup>

### 4.3 Conclusions

Statistical figures indicate that the amount of foreign construction companies in Sweden is fairly low. Reasons for the low presence are not just related to a lack of interest for or the high concentration in the Swedish construction industry, but also to industry-specific barriers to entry that can be linked to the Four Freedoms. A small review of case law and harmonisation efforts on the EU scene have highlighted problems that occur when investing across borders. The overall impression remains that, due to the local nature of the business, it is hard to harmonize the construction industry, especially when projects like the draft European qualification standard for construction enterprises are being abandoned after years of hard work.

The President of the European Construction Federation (FEIC) has formulated this rather concisely: “Even though it is true that the promotion of the principles of the freedom of movement of persons, services, capital and goods, the breaking down of technical barriers and the arrival of the euro have made a considerable contribution to facilitating exchanges between countries, the construction business is still mainly a local activity with deep cultural roots.”<sup>157</sup>

Therefore, in conclusion, no change in the concentrated structure at the top of the Swedish construction industry is foreseen at first sight, although a big takeover by one foreign company can, of course, easily counteract this statement.

---

156 On 20<sup>th</sup> September 2002, CEN/TC 330 decided not to continue with the work it had begun in 1995.

157 Senator E.h. Dipl-Kfm Wilhelm Küchler, President of FIEC, in: FIEC News – 10 December 2002

## PART III - INSTITUTIONAL PROBLEMS IN SWEDEN

Given the local nature of the construction business, cartel accusations are usually carried out through the national competition authorities, although they impact the whole European market. Cartels in pure construction works have not been proven, but the high concentration in the construction industry is not questioned. A concentration problem, however, does not always result from the market players' behavior: it could also stem from industrial protectionism detected in national legislation. The Swedish government regularly expresses its commitment to fight cartels<sup>158</sup>, but is it not creating an industrial environment that makes collusion easier at the same time?

The Lindbeck Commission<sup>159</sup> cited the housing sector in 1994 as an example of how the Swedish governmental regulations contribute to high prices by reducing competition: “In housing, regulation originated with public subsidies intended to overcome shortages induced by rent control. The government specified the features of buildings, which qualified for the subsidies. The housing regulation bred a web of political interests, including builders and their suppliers who influenced the subsequent evolution of the regulation. Design standards, product registration laws, licensing requirements, etc. tended to keep foreign contractors and suppliers out and to retard domestic entry as well.”<sup>160</sup>(1994, p.5) Already a decade ago, the commission thus pointed the finger at the Swedish government for impacting the housing sector negatively with interventionist actions.

The main factor that created a situation of an intolerably low amount of houses nowadays, however, is usually said to be the radical tax reform of the early 90s and not so much the level of subsidies. Nevertheless, different types of investment aid still stimulate demand for construction activity to a certain extent, and that is usually cheered upon by the industry. The European Construction's Association (FIEC) for example, expects the Swedish construction industry to grow because “the market faces a structural change and political decisions that are not affected too much by the cyclical decline in the economy”.<sup>161</sup>

The European Commission's DG Competition, on the other hand, is not that keen to see

---

158 Proposition 2001/02:167 that introduces a leniency program. Consulted on: [www.naring.regeringen.se](http://www.naring.regeringen.se).

159 Also known as the 'Long-Term Commission on Growth'; The fundamental cause for the bad functioning of parts of the economy was, in the view of the Commission, that prices were higher. “Another indicator was the large number of rules regulating the market, anti-competitive agreements between companies and a quasi-monopoly market structure in many industries.” (Konkurrensverket, 2002:4, p. 3)

160 OECD, 1992, pp. 82-83, mentioned in: Fölster & Peltzman, 1995, p. 5

161 FIEC Construction Activity Report, 2001, p. 13, p. 17, p. 109



Sweden set up another state aid scheme to get the residential building industry out of the turmoil, especially since it can be camouflaged as a protectionist measure for a national industry. Therefore, the DG uses its discretionary powers actively to make an individual decision of every Swedish aid that is reported to them to find violations of state aid regulations (Articles 87 – 89 EC Treaty).

An attempt to evaluate two recent investment aid plans is done in chapter 6, but first an overview of Swedish housing policy and aid to residential building follows to enable the reader to familiarize with past governmental actions that might have led to the present housing shortage a little more.

## ***5 The role of the Swedish government in the residential building industry***

Town and country planning are not actively pursued at the European Community level although it is mentioned in article 130s(2), but it regularly shows up in Commission documents and is indirectly referred to in other parts of the Rome Treaty. “Thus, the Community cannot force through compulsory purchase of land, but national property rules may be examined under the Treaty”<sup>162</sup>. Still, based on Article 222 EC and the principle of subsidiarity, housing policy is a matter of national, regional or local authorities. The division of power in Sweden is rather peculiar in that aspect.

### **5.1 Swedish housing policy**<sup>163</sup>

Sweden has by definition no social housing. Public housing encompasses multi-family rental buildings that are owned by municipal non-profit housing organizations. There are no restrictions on which households can rent such flats and the rent is the same as for privately owned flats of equal standard. “In Sweden housing allowances are used to help families that are less well off to pay the rent or housing costs irrespective of tenure form.”<sup>164</sup>

The responsibility for housing policy is divided between the central (legislation and financing) and the local government (planning, production and implementation)<sup>165</sup>. An ongoing debate between both governmental levels is the privatisation of the local housing companies,<sup>166</sup> a phenomenon that the social democratic minister of housing is trying to stop by issuing special temporary laws.<sup>167</sup> In addition, Swedish policy is surrounded by a “debate about ways of reducing the cost of housing production and about possible changes

---

162 The latter was done in the 'Hans Reisch' case that was mentioned in chapter 4; Kapteyn and VerLoren van Themaat, 1998, p. 1119-1120; The titles on Economic and Social Cohesion (regional policy), Transport, Trans-European Networks, and Industry refer to planning, as well as a Commission report from July 1994 on Town and Country Planning.

163 For a good historical overview of milestones in housing policy, see also Swedish Institute (2000).

164 Sak and Raponi, 2002, p. 66

165 “There are 286 municipalities in Sweden. Compared with local governments in most other European countries, they are strong and independent.” (Sabo, 1996, p. 4)

166 “They are independent, non-profit companies in which the municipality holds all the shares. The board is elected by the political parties and mirrors the majority in the municipality. Their source of income is rent, which has to cover capital costs and costs for administration and maintenance, and the companies' rent are to be considered normative. In Sweden, a fifth of all residences are publicly owned.” (Sabo, 2001)

167 Sabo & Cesam, 2000, p. 4, p. 7

in property taxes.”<sup>168</sup>

As an important element of social welfare policy, housing policy has always been characterized by a high degree of public intervention. In the 1940s Sweden already subsidized loans and introduced rent regulations.<sup>169</sup> After World War II municipalities<sup>170</sup> became formally responsible for the local housing provision, but at the same time the government created a link to their decisions by granting loans for the construction of dwellings.<sup>171</sup> In the mid-1960s the Parliament launched a housing construction program, the Million Homes Program: one million homes were to be built in ten years time (1965-1975). Therefore, large buildings and projects were favoured because they were more rational and economical, especially since public housing corporations that do not need a high return on equity usually set them up.<sup>172</sup> Following the Million Homes Program, the investments in renewal increased in the 1980s. At that time subsidies for renewal activities were granted, but the system “encouraged renewal activity at a very high cost.”<sup>173</sup> In the 1990s, the housing sector underwent sweeping changes, including the abolition of governmental exemptions for public housing companies, but the system of subsidies seems hard to abandon totally. “Targeted, income-related, subsidies are becoming more important, as are targeted subsidies to rundown housing areas.”<sup>174</sup>

Since the rent setting system in Sweden is very special, a side note needs to be made before continuing the analysis: rents are determined either by the landlord and the tenant, or by the landlord and a tenants' association. In case of disagreement, a rent tribunal takes a decision, based upon the 'utility value system'. (*Lag om Bruksvärdering, since 1968*). This system compares rents between similar flats. The overall costs of Municipal Housing Companies (MHCs) set the average rent level to encourage rent conformity across tenures. As a result, rents in attractive central urban locations are often well below market clearing levels. In the debate of liberalising rent control measures<sup>175</sup>, the government highlights institutional and legal constraints in addition to arguments about distributional objectives.<sup>176</sup>

---

168 Swedish Ministry of Finance , 2000, p. 16

169 In 1946, Parliament passed a bill that laid down the framework for public housing and Swedish housing policy that was to prevail for a long time. “Rent control made it necessary to subsidize or socialize housing construction to prevent it from collapsing, but as a result incentives to keep down building costs were largely removed.” (Lindbeck, 1997, p. 52); Afterwards: “In 1968, rent control was superseded by the Act on the utility valuation of rented dwellings (*Lag om bruksvärdering av hyreslägenheter*), under which the amount of rent is determined by the utility value of the housing unit to the occupant.” (Swedish Institute, 2000, p. 1)

170 It was believed that private housing companies could not meet up to the high demand for housing after the war, and hence public housing companies (*allmännyttan*) were created on a municipal level.

171 Sabo Utveckling, 1991, p.5

172 “The construction of new dwellings peaked in the late 1960s and early 1970s with the production of more than 100,000 dwellings per year, which roughly corresponded to an annual rate of 14 dwellings per one thousand inhabitants.” (Sabo Utveckling, 1991, p.6), also: Swedish Ministry of Finance (2000), p. 4

173 Sabo Utveckling, 1991, p. 12

174Ball, 2003, p. 103

175Such as the IMF’s suggestion in 2002 of having, as a first step, freely negotiated rents for new properties to encourage more rental supply in areas of high demand.

176Ball, 2003, p. 103

## 5.2 Swedish aid to the residential building industry

Although one can remark that Swedish government subsidies appear low compared to other EU countries, many subsidies are concealed so that “it is difficult to determine the real extent of state support”<sup>177</sup>, which exist under the form of direct aid (grants over the central government budget) and indirect aid (via the tax system). According to SABO, government support to the housing sector is unclear although “the goal to decrease the total cost of subsidies is clearly explicit”<sup>178</sup>.

Indeed, there was a trend towards a more liberalized housing market by deregulating the housing credit market and equalizing loan terms for all forms of rents and lettings in 1992, but even more important was the abolishment of favouring public housing companies vis-à-vis privately owned companies in 1994.<sup>179</sup> Regardless the importance of these deregulations, the analysis of Swedish state aid applied to housing is restricted to two recent plans in this paper. Benchmarking tools are used to make an evaluation of the legal character of Sweden's attempts to remedy the housing shortage, an analysis that is preceded by a short historical overview of direct and indirect aid. First, however, a general classification of political intervention on the housing market is given.

### 5.2.1 Instruments of political intervention

Davidson (1999) distinguishes two instruments that can have a *direct* or *indirect* effect on the housing policy: the first method is aimed at producers and covers the supply side, the alternative deals with consumers through demand intervention. (see figure 5.1)

The supply can be affected by construction programs in which the government builds or commissions its own housing for rent to lower-income households. The Swedish Social Democrats chose to subsidize municipal housing companies, thereby applying an indirect influence on housing availability. The demand, on the other hand, can be stimulated by subsidizing housing consumers via tax concessions (mainly to owner occupiers) or cash allowances (usually to rental tenants). In Sweden, housing allowances today are available to low-income families with children, and some retired and disabled people.<sup>180</sup>

Figure 5.1 (on the next page) gives an overview of the different political interventions in housing:

---

177 Braunerhjelm, 2002, p. 14

178 SABO Utveckling, 1991, p. 13

179 The benefit of standard taxation previously enjoyed by public housing companies was eliminated, so that all parties on the housing market could compete on equal fiscal and subsidiary terms.

180 Forsberg, 1986, p. 38, as mentioned in Davidson, 1999, p. 455

Figure 5.1 Instruments of political intervention

		POLITICAL INSTRUMENT	
		Producer/Supply	Consumer/Demand
APPLICATION	Direct	State production	Housing benefits
	Indirect	Subsidised production	Tax deductions

Source: Davidson (1999), p. 455

### 5.2.2 Short historical overview of direct and indirect aid

For several decades general subsidies under the form of tax reductions for interest payments in owner-occupied housing existed in addition to subsidies that guaranteed 3.4% (after tax) in the first year of a loan for all housing.<sup>181</sup> This changed with the tax reform of 1990-1991 that wanted “to lower the income taxes and finance that with a reduction of the housing subsidies”<sup>182</sup> At the same time loans for deferred interest with state credit guarantees were introduced, hence creating individual government support.<sup>183</sup> As of 2002 there are in principle no longer any interest subsidies, since “Parliament passed bills that sharply cut back on Government interest subsidies”.<sup>184</sup>

When it comes to direct grants over the governmental budget, two big plans are noteworthy: the already mentioned Million Homes Program and the 1983 plan to support repairing, reconstruction and additional construction ('ROT', Reparation, Ombyggnad, Tillbyggnad). Regardless the trend to cut back on direct investment grants, Swedish government has launched the idea<sup>185</sup> to introduce an additional investment aid for new residential buildings when there is a housing shortage in a region in 2000, similar to the one that was debated in the spring of 2003 (smaller dwellings plan).

181 Sabo, 1996, p. 1; The municipal housing companies were favoured in this system since they could borrow money (on these conditions) up to 100% of the production costs, whereas private companies were restricted to 95%.

182 Sabo & Cesam, 2000, p. 6

183 Sabo, 1996, p. 1

184 In 1992/93, the Government paid SEK 32 billion in interest subsidies. In 1999, the corresponding remuneration was approximately 7 billion, and by 2001 the sum was down to about 1 billion.

185 Proposition 2000/01:100, in Konkurrensverket, 2002, p. 157

### 5.2.3 Two recent aid instruments under scrutiny

Firstly, in 2002 the Swedish government has granted aid for a total value of 3 billion SEK to municipal housing companies (MHCs) that deal with financial problems.<sup>186</sup> Secondly, a proposition<sup>187</sup> was launched to grant aids between 2003 and 2006 for the construction of smaller rental apartments and student housing facilities (max. 60M<sup>2</sup>) in order to solve the housing shortage and make living in Sweden more affordable.<sup>188</sup>

- **MHC plan**

Municipal housing companies (MHCs) are non-profit oriented companies that are owned by municipalities. They provide local housing at rents that are normative in the rental housing market as a whole through the utility value system. A lot of MHCs outside the growth regions of Stockholm and the college cities suffer from financial problems nowadays because of demographic trends.

The aid scheme that was implemented is limited to MHCs, to the exclusion of private housing companies. The support the Swedish government gives, comprises direct financial support to municipalities, takeover of some flats<sup>189</sup> and ownership of (part of) the MHCs. In addition, capital injections and state loan guarantees are possible. The MHCs initially get support amounting to 300 million EUR until 2004, then more until 2010. A new government authority that administers the state aid since 1 July 2002 does the implementation of the program. By all means, the European Commission is to be notified of the MHC plan according to Article 88.3, which the Swedish state has neglected in this case.

The Confederation of Swedish enterprises (*Svenskt näringsliv*) and the Property Federation (*Fastighetsägarna*) argue that this plan is an intolerable impediment to competition vis-à-vis the private housing companies, and reported the aid to the European Commission<sup>190</sup>. Also the European Property Federation (EPF) blames the Swedish government for distorting competition because “the State will be empowered to acquire multifamily houses from the MHCs, to ease their economic burden and Vasallen (a state company) can convert some into commercial premises. The State will also be empowered to furnish the MHCs with equity capital apart from the state guarantees. This support will decrease the capital costs for MHCs and make it possible for them to set lower rents than comparable private

---

186 According to Sabo, the representative association of communal housing companies, circa 130 of its members need state support because of their bad economic situation. (Dagens Nyheter, 17/7/2002)

187 Promemoria Fi2002/4722

188 Obviously, it is not only state aid that can make construction of houses cheaper. All actors have to take responsibility, and hence the governmental construction commission pleads for cooperation in its analysis of quality, competition and costs in the construction industry. (See report 'Skärpning Gubbar!' ('Pull together, chaps!'), document SOU 2002:115)

189 “Around 30,000 units were sold by MHCs during 2000-1, mainly in the Stockholm Region. These have been at cost, which gives substantial windfalls to tenants, but the inability to make profits or to transfer sales receipts to municipalities' accounts means that there is limited incentive for large-scale MHC sales.” (Ball, 2003, p. 103)

190 Dagens Nyheter (5/06/2002) Linklater and Alliance, a London-based law firm, came to this conclusion for them.

companies.”<sup>191</sup> Therefore it submitted a memorandum with its grief to the European Commission.

- **Smaller dwellings plan**

A second (recently abandoned) proposition foresaw a 6% added value tax instead of the regular 25%.<sup>192</sup> An environmental assessment plan had to accompany the application because the program wanted “to contribute to sustainable developed construction”. The aid would have gone to the future proprietors via a credit to their tax account, and would have had to be reported to the EU Commission. In February 2003, the Swedish government justified the proposition refusal<sup>193</sup> by invoking “uncertain effects and costs” and “the need for stability in the construction and residential sector”. In the justification the authorities also refer to the industry's high cost development, bad competition and low productivity, and even partly take responsibility for creating this situation<sup>194</sup>. Regardless the aid being temporary, government does not want to create a situation in which there is a risk that private proprietors abstain from building to let out or even consider not building bigger apartments, both of which create an imbalance on the residential building market. A key argument in the refusal of the *Promemoria* refers to competition: “Decreased costs for real estate owners do not automatically lead to higher competition or lower construction costs”<sup>195</sup>, it is argued. That is a reasoning that has also been put forward by Konkurrensverket.<sup>196</sup>

### 5.3 Conclusions

From this chapter the overall impression of a continuous unclear<sup>197</sup> financial aid for housing remains: over the past decades the Swedish government has constantly tried to remedy the lack of available dwellings with direct and indirect grants, thereby distorting market forces inconsistently. The problem the industry has thus been confronted with is one of shocks due to ad hoc intervention instead of a long-term vision.

What effects the two mentioned recent state interventions have, remains to be seen. The

---

191 [www.epf-fepi.com/article2.mpl?id=90](http://www.epf-fepi.com/article2.mpl?id=90)

192 Husbyggaren (Nr.2/2003)

193 Statskontoret, 11/02/2003, p. 1-3

194 “Regleringar och subventioner har bidragit till en ineffektiv produktionsprocess och en oförmöga att anpassa sig till kundernas behov och krav.” (Statskontoret, 11/02/2003)

195 “Minskade kostnader för fastighetsägarna leder inte automatiskt till ökad konkurrens och lägre boendekostnader.” (Promemoria)

196 The Swedish competition authority believes that it reduces competitive forces and the dynamics in the construction sector. In its comments on the promemoria ‘Investment Aid to Residential Building’ (Investeringsstöd till visst bostadsbyggande) it argues that the residential building market does not work effectively, “partly because of insufficient competition” and is “hesitant towards the government's proposal to increase subsidies”. (Konkurrensverket, Konkurrensnytt nr. 2:2003, p. 4)

197 “Sveriges Byggindustrier, the construction industry's federation, even fears that “the market for residential building can collapse because of an unclear governmental policy” (Fastighetstidningen, Nr. 2/2003)

already implemented municipal housing companies' rescue plan seems very likely to infringe EC law on state aid at first sight. Also the plan to support the construction of smaller dwellings could turn out to be another example of bad governance, although it would probably help a sector in need more quickly than the market would do by itself. Do the construction and real estate sector really need (more) state intervention, or not?<sup>198</sup>

Before answering that question, an analysis of both plans is done from a European competition perspective whilst not taking into account information dating after 15 May 2003.

---

<sup>198</sup> For examples of decreasing state intervention in housing, see article of Sheridan (2002); also Davidson (1999). Both authors compare the Swedish situation with the one in New Zealand.



## **6 State aid rules applicable?**

“State aid poses a threat to the free movement of goods, since by conferring a benefit on a particular (normally domestic) undertaking or industry, it distorts competition between Member States and interferes with the functioning of the Single Market.”<sup>199</sup> There is no definition of state aid in the Treaty, but the Commission has extensively commented it, together with the European courts. It comprises “any advantages granted directly or indirectly through State resources.”<sup>200</sup> “State aid is given in many forms, and fiscal aid is just one of them. It does not receive preferential treatment in respect of its evaluation.”<sup>201</sup> Therefore, a tax measure like a reduction in tax rate or the granting of a tax credit both qualify as state aid.

### **6.1 State aid as an impediment to competition**

State aid is only allowed for in exceptional cases and does not cover all types of state intervention to lower the cost of acquiring certain goods or services, e.g. on the real estate market. “For example grants given to homebuyers may be of indirect help to the building sector, but would not always be considered as distorting competition and affecting trade between Member States and therefore, as being state aid.”<sup>202</sup>

On a micro-level, construction companies and real estate companies that feel discriminated by unjustified state aid can claim their rights before the ECJ as it was proven in the Cofaz case that the “position” of the applicant was “significantly affected” on the market by the aid.<sup>203</sup> Another possibility is to report their grieves before the Commission based upon Art. 88 EC. If member states do not comply, the Commission can initiate enforcement under Art. 226 EC.

On a macro level, a State cannot subsidize private companies according to Article 86 EC

---

199 Steiner & Woods, 2000, p. 194

200 Steiner & Woods, 2000, p. 198

201 Monti, M. (22/01/2002), p. 2

202 COM (2001) 403 final, p. 13

203 C-169/84 COFAZ v. Commission; If a legal or natural person wants to bring a case for the ECJ, it can either chose for an “action of damages” via the Court of First Instance (Art. 235 EC), or ask for a “preliminary ruling” via a national court (Art. 234). The latter has the advantage of not having to determine the locus standi of the parties concerned. Plaintiffs can either be Member States (as privileged applicants), Community insitutions or individuals, provided that there is a direct and individual concern to the former (Art. 230 EC). Where the requirement of direct concern is easily fulfilled, individual concern is not. The Plaumann formula of the 60ies deals with decisions that have been formally addressed to another person than the plaintiff, but is being opened up in recent 2002 judgements.

and following, nor can it provide specific and exclusive rights to public owned undertakings (Article 90 EC), nor can it create barriers to protect domestic industries. In some cases, however, exceptions are possible.

The application of state aid rules to the Swedish construction industry is done in an indirect way through an assessment of two plans in the residential building market: one that supports municipal housing companies, and one that tries to increase the production of smaller dwellings via subsidies.

## 6.2 Benchmarking: the United Kingdom

Although the residential building industry is suffering from a downturn in Sweden for the moment, it is not the only construction industry that takes a temporary beating in the EU. Moreover, because of its importance for the overall economy, have other Member States tried to support the industry, and that will probably continue to be the case.<sup>204</sup> For the analysis of the Swedish aid to the construction of smaller apartments, two UK cases are presented. In both situations, the European Commission found aid schemes to increase the building of dwellings compatible with state aid regulation.

The 'English cities fund'<sup>205</sup> sets up a public-private investment vehicle to encourage projects of regeneration in underdeveloped areas for a minimum return rate. The objective of the Fund is to operate as a commercial developer and investor, in areas where currently the private sector is not present. The Partnership would terminate on the tenth anniversary of the Agreement but can be liquidated earlier.<sup>206</sup> The Fund invests in projects sufficient to get a 12% return on each project. According to the UK, this is the minimum to require private sector investment in ECF. However, there would be *no guaranteed rate of return* to the private partners.<sup>207</sup>

“The scheme favors the private investors selected by providing equity for investments they would not have undertaken without the assistance. Furthermore, the undertakings are favored by the fact that risks are not equally shared between the public and the private Partners within the Fund.”<sup>208</sup>

Therefore, the European Commission concluded that the scheme meets the criteria of Art. 87 (1), but there is derogation possible for economically underdeveloped areas such as the ones in the present case. Since the UK scheme followed the Guidelines on national regional aid, the ECF is accepted to be in compliance with State Aid regulations in application of Art. 87 (3) (a) and (c). Moreover, the Commission acknowledges that environmental concerns are promoted through a more rational use of land as a natural resource.

---

204 For example: “The German Government has announced a 9.5 billion EUR program of state-subsidized loans and grants that should help boost the country's struggling construction industry. The aid will be targeted at Germany's municipalities, and will comprise 2 billion EUR of infrastructure spending, along with 7.5 billion EUR of low-cost loans.” (Construction Europe, April 2003, p. 7)

205 N 82/2001 – decision date: 25/07/2001- OJ decision announcement C 263/2001

206SG (2001) D/290547, p. 2

207SG (2001) D/290547, p. 8

208SG (2001) D/290547, p. 12

The 'Grants for owner occupation scheme'<sup>209</sup>, on the other hand, is not about equity capital, but uses grants as an aid instrument: it envisages “providing more affordable owner occupation housing in Scotland (...) tackling regeneration and social inclusion issues.” The scheme provides gap funding to private developers to meet the difference between the costs of production of social housing and the price, at which the completed housing will be sold to the owner-occupier. In this context, it is important to note that the applicants for aid are not the prospective owner-occupiers, but rather private suppliers of housing and housing trusts. Hence it falls under the scope of article 87 (1). The Commission classified the projects as “speculative” since the prospective owner-occupiers are not known at the time of the application. The Commission has also taken into consideration that, without the aid, the social housing at affordable prices would not be realized: that grant applicants (suppliers of housing) are incentivised to pursue reductions in cost and increases in value.<sup>210</sup> The Commission's conclusion therefore is compatible with the common market pursuant to Art. 87(3)(c).

Given the recent dismissal of the smaller dwellings plan,<sup>211</sup> only the MHC plan is going to be extensively commented.

### **6.3 Applied to the Swedish investment plan for MHCs**

Firstly, it should be assessed whether the scheme qualifies as State Aid as defined in Article 87(1). Secondly, one has to consider whether derogation is possible under Article 87 (3) EC. The state takes over parts of or entire MHCs and gives them access to state credit guarantees, although these companies cannot be qualified as institutions that provide social housing given the socio-economic and geographic profile of their tenants.

Article 87 (1) of the EC Treaty states that “any aid by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings (...) in so far as it affects trade between Member States” is incompatible with the common market. In this context, that condition is fulfilled since foreign real estate companies entering the Swedish market are affected by the preferential

---

209 N 497/2001 – decision date: 13/11/2001 – OJ decision announcement C 32/2002  
210C(2001)3459fin

<sup>211</sup> Since this plan was (in extremis) not implemented no state aid declaration had to be made to the European Commission. As a result, the following evaluation is of a hypothetical nature. Confer the 'Grants for owner occupation scheme'<sup>211</sup> it can be argued that without the aid, the housing at affordable prices would not be realised. One big difference, however is the nature of the beneficiaries: whereas in the UK property developers benefit from the plan, in Sweden the aid, of which the suppliers of housing are the direct beneficiaries through a swing in demand, is largely channelled to the future owner occupier. Another interesting feature in the Swedish plan is the inclusion of an environmental assessment “to contribute to sustainable developed construction”, most likely an evasive action to present the support to the building sector as environmental investments. Both factors plead in favour of the compatibility of the aid program with state aid regulations. First of all, no undertakings benefit from state funds, so as the plan falls outside the scope of Art. 87 (1) EC. Secondly, even if it were subject to state aid provisions, an environmental policy reasoning would probably be followed in the Commission's decision.

treatment of the municipal housing companies just as much as the present private competitors are. In addition, the Commission has in previous cases pointed out that “the property development business is a very mobile activity across Member States.”<sup>212</sup> The effect on trade between Member States, however, is only a basic condition. In order to satisfy the test for State aid, four elements must be shown<sup>213</sup>:

1. “the measure must be specific rather than general in nature;
2. it must grant an advantage to an undertaking;
3. the aid must come from State resources;
4. the advantage must distort competition and have an effect on inter-State trade<sup>214</sup>.”

For the MHC plan all criteria are met, so it has to be investigated whether the plan can benefit from a derogation under 87 (3). Paragraphs (b) and (c), both referring to economic activities that need help, are relevant for the assessment:

Considering the fact that the poor economic situation of the MHCs cannot be classified as a serious disturbance of the economy, nor can it be pursued without adversely affecting trading conditions, derogation is not possible, and hence this is most likely an example of unlawful state aid. In addition, point V.6.c of the Commission's Communication on State Aid and Risk Capital<sup>215</sup> states as follows: “In general, where a transfer made by the State would be compatible with the State aid rules, the Commission believes that a measure which provides a minimum incentive to other economic operators to make that same transfer should also be authorised, even if technically an aid to those operators is involved.” This minimum incentive is not given to other housing companies (private ones) in Sweden, and therefore the Commission again would decide of the aid to be non-compatible with Article 87.

The Commission is unlikely to grant an exemption on the basis of rescue and restructuring aid, sectoral aid or regional aid since it does not meet the criteria. Alternatively, no derogation is possible as services of general economic interest: even if the plan would qualify under this category, the “proportionality test” fails since it is neither a necessary nor a proportionate means for its operation.

Therefore one has to take the viewpoint that the plan leads to a distortion of competition in the rental housing market, which in turn creates a reduction in the housing provision by private housing companies.<sup>216</sup>

### 6.3 Conclusions

In chapter 5 it resulted already that the continuous investment aid schemes created an unclear and short-term approach to overcome the housing shortage. The present remedies to solve the issue are heavily scrutinized before European institutions, and after a closer

---

212 N 497/2001, p. 4

213 See Reports on Competition Policy, mentioned in Steiner & Woods, 2000, p. 198-203

214 In the ‘Grants for owner occupation’ scheme the Commission acknowledged that “the property development business is a very mobile activity across Member States.”<sup>214</sup>

215 OJ N° C 235 dated 21.08.2001, p. 3

216 Ahlborn et. al., 2002, p. 1

analysis it can be said that the MHC rescue plan is very likely to be squashed before the ECJ. The investment aid for smaller dwellings (that lowers VAT from 25% to 6%), however, seems a feasible option to stimulate residential building. Nevertheless, the Swedish government has now after several decades chosen not to intervene in the housing market and uses an expectant strategy to restore the sector by market forces rather than by intervention.

## CONCLUSIONS

*The author is fully aware of the fact that the partly hypothetical nature of the analysis can heap criticism upon her. Because of lacking access to information, neither cartelization in the field of building works nor Sweden's responsibility in impeding competition via a peculiar housing policy can be demonstrated. The outcome of this research has to be interpreted as a presumptive explanation for the housing shortage in Sweden in 2003.*

Following from statistics on Swedish housing investments, housing stock and growth prognoses, there is a serious lack of residential building in certain Swedish growth regions in 2003. An introductory analysis of Sweden's business environment reveals a fear that the present housing shortage is not going to be solved easily.

In Sweden's corporative and egalitarian society (from a welfare point of view) low competition in combination with an extensive public sector<sup>217</sup> creates industries with few firms or collective dominance<sup>218</sup>. The growth of a limited number of construction companies started in the 1950s. It did not only result from a need for efficient planning during the Million Homes Program, but also from Sweden's policy to favour bigger companies for tax avoidance reasons and to make them stronger to confront international competition abroad. Therefore, whether the possible lack of competition due to concentration is a problem, or whether it affects consumers' welfare for the better by lowering down construction costs through scale efficiencies, is a pertinent question.

The axioma that smaller consumer surplus goes along with a bigger producer surplus, leads to presume that shared market power by the few big construction companies can make them conclude secretive agreements on market sharing and price fixing, two offences that would mean a deliberate control of the amount of houses being produced. This scenario of construction cartelization of course is a threat to Swedish home buyers. The Swedish Competition Authority Konkurrensverket (2002) recognizes that the housing market “has a competition problem”, but argues, in line with the author of this paper, that market entry by foreign companies is not a likely alternative to increase the level of competition.

The local nature of the business usually proves to be an insurmountable barrier for new European and other entrants. Indeed, if they decide to take the step of cross-border direct investment, there are problems related to the Four Freedoms of the Treaty that can arise. In this field, the European case law and harmonization efforts that were presented in

---

217Braunerhjelm, 2002, p. 15, p. 35  
218SOU 1990:44

chapter four do not explain why there is a housing shortage in Sweden, but they do demonstrate that there is no change to be expected in the concentrated structure of the business due to cross-border investment, provided a high level foreign takeover.

It has to be stressed that, according to the findings in this paper there is no competition problem on the Swedish residential building market. The only conclusion that can be derived is that there is an indication that the prevailing market structure results from former housing policies in Sweden. In the welfare state, government has always carried out an active role in order to give all Swedes proper housing. After some decades subsidies are again being used to put right a shortage situation on the housing market, that has probably been created by previous legislative intervention.

The Swedish government is confronted with a set of rules that leads to an unfavorable climate to take up construction works, of which one is very important namely the rent regulations: they prevent private companies from making a minimum amount of profit which dampers investment in new (profitable) rental dwellings. Although the public housing companies could mediate this partly, the construction industry is affected as a whole, especially nowadays when lots of MHCs are suffering financial difficulties.

Also regarding construction cartels in a strict sense, no rules have been broken by the industry. Therefore, it seems that the underlying issue of the housing shortage can be termed as a “state” or a “policy” matter, encompassing a whole set of rules. As long as the Swedish housing policy does not infringe European competition legislation, e.g. by impeding foreign investors to penetrate the Swedish real estate market, no interference from Brussels is necessary in this matter. However, by implementing the MHC rescue plan, the national housing policy did protect the Swedish domestic real estate market via subsidies to public undertakings.

In looking at the historical housing policy, the housing shortage nowadays and the accompanying high costs in construction seem a combination of circumstances in Sweden: the collapse of the market in the beginning of the 1990s, the exposure of a cartel in the asphalt industry and the quite dramatic changes in tax rules and interest subsidies are only a few factors that have interacted. When deliberalizing the housing market the Swedish government now faces the culmination of adapting its housing policy towards a European-style model, in which social housing is weighed as an option. During the 1990s no state aid in whatsoever form has been granted, but ever since the population is faced with an acute need for housing, politicians get tempted to mediate again in the 21<sup>st</sup> century. The aid to the MHCs was the first proof, but luckily the decision makers resisted temptation to create a third investment aid program in the beginning of 2003.

The author agrees that a return to the subsidized construction of the 60s, 70s and 80s is not desirable: not from a housing policy perspective, nor from a competition or consumers' point of view. Regardless the growing amount of rental flats it increases costs and inflation. This reasoning is in line with Monti (2002, p. 1072-1073) who defends the Community's non-interventionist industrial policy. After all, promotion of an industrial policy is not a sufficient condition for exempting an agreement or state aid.

After outlining the main facts and findings, we can now return to the question that was set out in the beginning of this paper: what is the underlying issue for the housing shortage on the Swedish residential building market: cartels, state aid or both? Or, in other words, who is the scapegoat for the lack of dwellings in certain Swedish growth regions nowadays: the industry or the state?

The outcome of this study favours the scenario in which the Swedish government has created the housing shortage by itself for several reasons.

First of all, there is no proof of any cartel in the field of residential building in a strict sense: although some big companies are involved in an asphalt cartel law suit, no market sharing or price fixing of actual construction works, as was proven in the Dutch construction scandal, have been exposed.

Secondly, it would not be reasonable for the industry to deliberately keep the amount of dwellings low since that goes along with downsizing construction activities and hence creating overcapacity on a firm level. It could be a possibility if there were an intention to “overheat” the market to squeeze out some competitors. Given the reversed funnel-shaped structure of the market (few big companies, few medium sized companies, a lot of smaller companies) this does not seem necessary in Sweden for now.

Thirdly, the Swedish construction industry cannot be blamed for the lack of new entrants on the market. The concentrated market structure results from competitive behaviour, although it is said to have been reinforced by non-market factors like the interventionist Million Homes Program. That in itself was a first indicator to suspect Sweden of bad governance in housing policy.

Since looking for a scapegoat by definition is running after the facts, research to come up with solutions for the present housing shortage should be done. A first step is the governmental Construction Costs Forum that Boverket (the national Board of Housing, Building and Planning) set up “to demonstrate, on the basis of central government measures, in cooperation with the municipalities and the construction industry, practical methods of promoting competition, price pressure and ecological innovation and thus to stimulate the construction of good-quality, cheap housing.”<sup>219</sup> The “Skärpning Gubbar” report that was presented in December 2002 gives a good overview of what challenges the Swedish construction industry is faced with. Nevertheless, it is not only the industry that has to take up responsibility: the Swedish state has to make an effort too, preferably by means of a consistent housing policy. That is not an easy task given Brussels' watchdog.

---

<sup>219</sup>Swedish Ministry of Finance, 2000, p.16





## **APPENDICES**

Biggest construction companies in Northern Europe (Sweden, Finland, Denmark)

European construction and residential building industry

Relevant articles of the Treaty establishing the European Community (Art. 81, 82, 87-89)

## Appendix A

### Biggest construction companies in Northern Europe

<i>Ranking</i>	<i>Company</i>	<i>Turnover 2001 (million EUR)</i>	<i>Evolution 2001-2002 (in %)</i>
1	SKANSKA (Sweden)	17800	n.a.
2	NCC (Sweden)	4979	19
3	PEAB (Sweden)	2021	19
4	YIT-CORPORATION (Finland)	1623.1	31
5	VEIDEKKE (Norway)	1421.5	30
6	MT HOJGAARD (Denmark)	1181.2	9
7	LEMMINKAINEN (Finland)	1116.5	16
8	NCC DANMARK (Denmark)	903	21
9	NCC OY (Finland)	628.8	6
10	AARSLEF (Denmark)	338.2	-1
11	PIHL (Denmark)	304.4	13
12	SELMER = Skanska OY (Norway)	110	0

*Source: Le Moniteur*

### **Biggest construction companies in Sweden**

<i>Ranking</i>	<i>Company</i>	<i>Turnover 2000 (million SEK)</i>	<i>Employees in 2000</i>
1	Skanska Sverige AB	24841	15733
2	NCC AB	21629	14334
3	PEAB AB	14510	9040
4	JM AB	6088	1946
5	Vägverket Produktion	5009	2915
6	PNB AB	3095	1493
7	Banverket Produktion	2718	3382
8	Arcona AB	807	173
9	Midroc Construction AB	804	379
10	Interoc AB	543	428

*Source: Sveriges Byggindustrier (BI)*

## Appendix B

### European construction and residential building industry

#### *European construction industry*

Country	Procentual activity in Europe	2000 Figures (Bln. EUR)	Percentage of GDP
Germany	28,3	241	11,9
United Kingdom	13,7	116	7,4
France	13	110	7,9
Italy	11	93	8
Spain	10,3	88	14,5
The Netherlands	5,2	44	11
Belgium	3,2	27	11,1
<b>Sweden</b>	<b>2,9</b>	<b>24</b>	<b>10,3</b>
Austria	3,2	27	13,1
Denmark	2,4	20	11,4
Finland	2,1	18	13,7
Portugal	2,6	22	19,4
Ireland	2,1	18	17,8
Total	100	849	10,1

*Source: FIEC Construction Activity in Europe (2001), p. 10-11, no data available for Luxembourg and Greece.*

**European residential building industry***% variation of production in real terms on previous year.*

<b>Country</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Germany	4,5	11,7	0,3	-0,1	0,4	0,2	1,7	-2,8
United Kingdom	3,0	6,2	-2,0	-1,0	4,6	-1,1	-4,2	2,5
France	-1,5	2,8	1,5	-2,3	-0,7	2,2	6,3	5,1
Italy	-1,5	-2,3	-0,1	-1,4	-2,8	-0,6	1,8	2,5
Spain	-0,9	3,1	8,8	6,5	5,1	6,8	10,0	7,0
Netherlands	7,8	-4,0	---	1,2	3,9	0,1	1,8	1,0
Belgium	-4,6	5,3	7,3	-5,0	4,0	3,1	-7,8	2,7
Portugal	-0,3	13,3	---	4,4	12,8	8,6	8,4	6,8
<b>Sweden</b>	<b>-20,4</b>	<b>-18,6</b>	<b>-14,5</b>	<b>2,5</b>	<b>-4,7</b>	<b>2,2</b>	<b>12,7</b>	<b>5,6</b>
Austria	---	---	---	4,0	0,3	2,6	-2,5	1,1
Denmark	8,5	10,0	6,7	5,5	8,8	4,5	2,1	10,9
Finland	-10,5	0,5	-0,7	-0,8	21,8	8,9	6,8	4,3
Ireland	-10,7	26,2	12,8	20,5	9,8	4,6	11,3	7,1
Total	0,7	4,6	1,7	0,1	1,7	1,2	2,2	2,1

*Source: FIEC Construction Activity Report (2001), p. 14*

## Appendix C

### **Articles 81 & 82 from the Treaty establishing the European Community**

*Title VI - Common rules on competition, taxation and approximation of laws (ex title V)*

*Chapter 1 - Rules on Competition*

*Section 1 – Rules applying to undertakings*

#### **Article 81 (ex Art. 85)**

“1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

1. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

2. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
  - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
  - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.”

#### **Article 82 (ex Art. 86)**

“Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States. Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”

## **Articles 87 - 89 from the Treaty establishing the European Community**

*Title VI - Common rules on competition, taxation and approximation of laws (ex title V)*

*Chapter 1 - Rules on Competition*

*Section 1 – Aids granted by States*

### **Article 87 (ex Art. 92)**

“1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

The following shall be compatible with the common market:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
- (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.

The following may be considered to be compatible with the common market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) 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;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interests;
- (e) 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.”

### **Article 88 (ex Art. 93)**

1. “The Commission shall, in cooperation with Member States keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 87, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 226 and 227, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 87 or from the

regulations provided for in Article 89, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 87, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.”

**Article 89** (*ex Art. 94*)

“The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 87 and 88 and may in particular determine the conditions in which Article 88(3) shall apply and the categories of aid exempted from this procedure.



## **BIBLIOGRAPHY**

Articles, papers and reports

Books

Cases and decisions

Official Documents

Journals, press releases and magazines

Websites

## Articles, papers and reports

- Ahlborn, C. and C. Berg, Dahlquist** (2002), *Memorandum: the Swedish "Restructuring Proposal" - Is it compatible with European State Aid Rules?*, prepared for Linklaters & Alliance, London on 24/05/2002, pp. 18
- Andenas, M. and A. Papadopoulos** (2002), *Antitrust Law and International Companies*, in: European Business Law Review (vol. 13-3), pp. 193-216
- Andersson, N. and F. Malmberg** (2002), *Competition and Barriers to Entry the Construction Sector*, in: Construction innovation and global competitiveness, 10<sup>th</sup> Symposium at University of Cincinnati (USA), CRC Press, pp. 461-475
- Ball, M.** (2003), *RICS European Housing Review*, Rics Policy Unit and Rics residential property faculty, pp. 123, relevant chapter 5 (pp. 95-104), consulted on:  
[http://www.rics.org/resources/research/ehr\\_2003/page\\_10/page\\_10.html](http://www.rics.org/resources/research/ehr_2003/page_10/page_10.html)
- Bernitz, U.** (2001), *Sweden and the European Union: on Sweden's Implementation and Application of European Law*, in: Common Market Law Review (vol. 38-4), pp. 903-934
- Boverket** (February 2003), *European Village – a step towards a single market in the construction sector*, Final Report of the National Board of Housing, Building and Planning, Karlskrona, pp. 64
- Braunerhjelm, P.** (ed.) (2002), *Competition without boundaries: Sweden in an integrated Europe*, Kristianstads Boktryckeri AB, pp. 36
- Cattermole, E.** (2000), *The Development and Implications of Collective Dominance in EC Competition Law*, Master of European Business and Business Law, Lunds Universitet, Sweden, pp. 73
- Cembureau**, *Condition of market competition in the cement industry: the cement case*, consulted on:  
[www.cembureau.be/About/Cement%20Industry/Condition%20market%20com](http://www.cembureau.be/About/Cement%20Industry/Condition%20market%20com)
- Clobes, J.** (2001), *A Meso-Economic Analysis applied to the German Construction Industry*, LTH, Lund, pp. 71
- Davidson, A.** (1999), *Alternative Models of Social Housing: Tenure Patterns and Cost-renting in New Zealand and Sweden*, in Housing Studies, volume 14, No. 4, pp. 453-472
- Davis, S. J. and M. Henrekson** (1995), *Industrial Policy, Employer Size and Economic Performance in Sweden*, NBER/SNS Project, Paper N° 73 September 1995, pp. 64
- de Valance, G.** (2002), *Globalisation and Changes in Ownership of the Building and Construction Industry*, in: Construction innovation and global competitiveness, 10<sup>th</sup> Symposium at University of Cincinnati USA), CRC Press, pp. 556-572
- European Commission Representation in Ireland** (2002), *Commission imposes heavy fines on four companies involve in plasterboard cartel*, 27 November 2002, consulted on:  
[www.euireland.ie/news/comp/1102/plasterboardcartelfines.htm](http://www.euireland.ie/news/comp/1102/plasterboardcartelfines.htm)
- European Legal Forum, the** (2002), *Case review of C-208/00*, 2<sup>nd</sup> year November/December 2002 (6-2002), pp. 331-339
- Ferguson, J.**, *The sultans of cement*, consulted on: [www.cementkiln.com/sultans.html](http://www.cementkiln.com/sultans.html)
- Flynn, L.** (2002), *Coming of Age: The free Movement of Capital Case Law 1993-2002*, in: Common Market Law Review (vol. 39), pp. 773-805
- Fölster, S. and S. Peltzman** (1995), *The Social Cost of Regulation and Lack of Competition in Sweden*,

NBER/SNS Project Reforming the Welfare state, N° 67 January, pp. 68

**Giesen, R.** (2003), *Posting: Social Protection of Workers vs. Fundamental Freedoms?*, in: Common Market Law Review (vol. 40-1), pp. 143-158

**GmbHHR**(2002), *Gesellschaftsrecht - Ausländische GmbH: Anerkennung der Rechts- und Parteifähigkeit*, volume 22/2002, pp. 1137-1145, consulted on: [www.gmbhr.de/heft/22\\_02/gmbhr\\_2002\\_1137\\_ff.pdf](http://www.gmbhr.de/heft/22_02/gmbhr_2002_1137_ff.pdf)

**Gormley, L.** (2002), *Competition and Free Movement: Is the Internal Market the Same as a Common Market?*, in: European Business Law Review (vol. 13-6), pp. 517-522

**Halhuber, H.** (2001), *National doctrinal structures and European company law*, in: Common Market Law Review (vol.38), pp. 1385-1420

**ITPS (2002a)**, *Nyföretagandet i Sverige 2000 och 2001*, Institutet för Tillväxtpolitiska Studier Report S2002:008, pp. 64

**ITPS (2002b)**, *Utlandsägda företag – ekonomiska uppgifter 2000*, Institutet för Tillväxtpolitiska Studier Report S2002:010, pp. 41

**ITPS (2003)**, *Strukturstudie av näringslivet i Sverige 2000*, Institutet för Tillväxtpolitiska Studier Report S:2003:002, pp. 53

**Jakobsson, U.** (ed.) (1999), *The Road to Prosperity*, Kristianstads Boktryckeri AB, pp. 42

**Leighton, B.** (2000), *Cement cartel cases: European Commission fines*, consulted on: [www.legal500.com/devs/uk/ec/ukee\\_117.htm](http://www.legal500.com/devs/uk/ec/ukee_117.htm)

**McLure, C.E. and E. Norrman** (1995), *Tax Policy in Sweden*, NBER/SNS Project, Paper N° 62 January 1995, pp. 43

**Monti, G.** (2001), *The Scope of Collective Dominance under Articles 82 EC*, in: Common Market Law Review (vol. 38-1), pp. 131-157

**Monti, G.** (2002), *Article 81 EC and Public Policy*, in: Common Market Law Review (vol. 39-5), pp. 1057-1099

**Monti, M.** (22/01/2002), *EU Policy towards fiscal state aid*, speech during seminar on 'State Aid and Tax', Universiteit Nyenrode, pp. 6, consulted on: [www.europa.eu.int](http://www.europa.eu.int)

**Mortelmans, K.** (2001), *Towards Convergence in the Application of the Rules on Free Movement and on Competition?*, in: Common Market Law Review (vol. 38-3), pp. 613-649

**Rönnerberg, M.** (2002), *Staten fick Svarte Petter*, ESO Report, pp. 103, consulted on: [www.regeringen.se](http://www.regeringen.se)

**Sabo** (1996), *Municipal Housing Companies Experiences in Sweden: a housing policy*, pp. 13

**Sabo** (2001), *Information from Sabo*, Halmstad Tryckeri, pp. 16

**Sabo & Cesam** (2000), *Neighbourhood Democracy at Work*, pp. 50

**Sabo Utveckling** (1991), *Rosengård – New Approaches to the Management of Housing Estates in Sweden*, pp. 54

**Sak, B. and M. Raponi** (2002), *Housing statistics in the European Union 2002*, compiled for the Walloon Regional Government by University of Liège (CIRIEC), pp. 88

**Sheridan, T.J. and J. Manley, MacDonald, and Flynn** (2002), *Sliding Scale of Support: Government intervention in Housing*, in Housing Studies, volume 17, No. 2, pp. 337-347

- Stanbrook** (2002), *Incorrect application of the leniency notice*, Stanbrook Brussels Brief Volume 11-Nr.11, consulted on: <http://www.stanbrook.com/news/BB/articles2002/brief-vol11no11/events.html>
- Sveriges Bygginstitut** (2001), *Fakta om Byggandet*, pp. 48
- Swedish Institute** (1997), *The Swedish construction industry*, pp. 4, consulted on: [www.acadi.fi/english/sweden/industry/e-s-i-construction\\_industry.htm](http://www.acadi.fi/english/sweden/industry/e-s-i-construction_industry.htm)
- Swedish Institute** (2000), *Fact Sheet: Housing and Housing Policy in Sweden*, October issue, pp. 4
- Swedish Institute** (2001), *Fact Sheet: Taxes in Sweden*, November issue, pp. 4
- Swedish Institute** (2002), *Fact Sheet: Swedish Competition Policy and Public Procurement*, March issue, pp. 2
- Swedish Ministry of Finance** (2000), *Housing and Housing Policy in Sweden*, October, pp. 16
- Vossestein, A.** (2000), *Corporate Efforts to Influence Public Authorities, and the EC Rules on Competition*, in: Common Market Law Review (vol. 37-6), pp. 1383-1402

## Books

- Czinkota, M. and A. Ronkainen, M. Moffett, E. Moynihan** (2001), *Global business*, 3<sup>rd</sup> Edition, Harcourt College, Orlando, pp. 581
- Deresky, H.** (2000), *International Management: managing across borders and cultures*, 3<sup>rd</sup> Edition, Prentice Hall International, New jersey, pp. 614
- Export Vlaanderen** (2002), *Landenfiche Zweden*, pp. 110
- Fellows, R. and A. Liu** (2003), *Research Methods for Construction*, 2<sup>nd</sup> Edition, Blackwell Publishing, Oxford, pp. 262
- Grant, R.M.** (2002), *Contemporary Strategy Analysis: concepts, techniques, applications*, 4<sup>th</sup> Edition, Blackwell Publishing, Oxford, pp. 551
- Holland, S.** (1987), *The Market Economy: from Micro to Mesoeconomics*, Weidenfeld and Nicolson, London, pp. 363
- Kapteyn, P.J. and P. VerLoren van Themaat** (1998), *Introduction to the Law of the European Communities*, 3<sup>rd</sup> Edition, Kluwer Law International, London-The Hague-Boston, pp. 1447
- Konkurrensverket** (2002), *Konkurrensen in Sverige 2002*, Rapportserie 2002:4, pp. 430
- Korah, V.** (2000), *EC Competition Law and Practice*, 7<sup>th</sup> Edition, Hart Publishing, Oxford – Portland Oregon, pp. 419
- Krugman, P. and M. Obstfeld** (1995), *Economie internationale*, 2<sup>ième</sup> édition française, De Boeck Université, Paris-Bruxelles, pp. 891
- Lindbeck, A.** (1997), *The Swedish Experiment*, Norstedts Tryckeri AB, pp. 104
- Malmberg, F.** (2003), *Competition in the Context of Procurement*, Grahns Tryckeri, Lund, pp. 163
- Pindyck, R. and D. Rubinfeld** (1992), *Microeconomics*, 4<sup>th</sup> Edition, Prentice Hall International, New Jersey, pp. 726
- Steiner, J. and L. Woods** (2000), *Textbook on EC Law*, 7<sup>th</sup> Edition, Blackstone Press, London, pp. 586
- Swann, D.** (2000), *The Economics of Europe: from Common Market to European Union*, relevant chapter 5, New Edition, Penguin Books, London, pp. 390

## Cases and decisions

- 92/204/EEC** – Commission Decision of 5 February 1992 relating to a proceeding pursuant to Article 85 of the EEC Treaty (now 81 EC) – Cases IV/31.572 and 32.571 – Building and construction industry in the Netherlands (Dutch authentic text)
- 94/815/EC** – Commission Decision of 30 November 1994 relating to a procedure under article 85 of the EC Treaty (now 81 EC) – Cases IV/33.126 and 33.322 - Cement
- C-137/95P** - Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid and others v. Commission of the European Communities – judgment of the Court of 25 March 1996
- C-164/99** – Portugaia Construções – Directive 96/71/EC – judgment of the Court of 24 January 2002 – Opinion of Mr Advocate General Mischo delivered on 3 May 2001 (German version)
- C-493/99** – Commission of the European Communities v. Federal Republic of Germany - articles 43 and 49 EC – judgment of the Court of 25 October 2001 – Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 5 April 2001
- C-540/99** – Hans Reisch and others v. Bürgermeister der Landeshauptstadt Salzburg and Grundverkehrsbeauftragter des Landes Salzburg and Anton Lassacher and others v. Grundverkehrsbeauftragter des Landes Salzburg and Grundverkehrskommission des Landes Salzburg (joint case of cases C-515/99, C-519/99 to C-524/99 and C-526/99) – article 56 EC – judgment of the Court of 5 March 2002 – Opinion of Mr Advocate General Geelhoed delivered on 20 November 2001 (Dutch version)
- C-208/00** - Überseering BV v. Nordic Construction Company Baumanagement GmbH (NCC) – articles 43 and 48 EC – judgment of the Court of 5 November 2002 – Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 4 December 2001 (French version)
- N-82/2001** – English cities fund – approval without opening proceedings – no objections – Official Journal announcement C-263/2001
- N-497/2001** – Grants for owner occupation scheme – approval without opening proceedings – no objections – Official Journal announcement C-32/2002
- T-29/92** – Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid and others v. Commission of the European Communities – judgment of the CFI of 21 February 1995
- T-31/99** – ABB Asea Brown Boveri Ltd v. Commission of the European Communities – article 81 EC - judgment of the CFI of 20 March 2002
- T-86/03** – Action brought on 6 March 2003 by Holcim against the Commission of the European Communities, Official Journal of 10 May 2003

## Official Documents

### ▪ *European*

**Directive 96/71/EC** of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services

**European Commission** (9/12/1997), *Commission notice on the definition of the relevant market for the purposes of Community competition law*, published in OJ C 372, consulted on: [http://europa.eu.int/comm/competition/antitrust/relevma\\_en.html](http://europa.eu.int/comm/competition/antitrust/relevma_en.html)

**European Commission** (1997), *Communication on the competitiveness of the construction industry*, COM (97) 539 final, consulted on: [www.europa.eu.int/comm/enterprise/construction/suscon/finrepsus/sucop5v3sw.htm](http://www.europa.eu.int/comm/enterprise/construction/suscon/finrepsus/sucop5v3sw.htm)

**European Commission** (2001), *State Aid and Risk Capital*, 2001/C235/03, Official Journal of 21/08/01

**European Commission** (2001), *Ninth Survey on State Aid in the European Union*, COM 2001 – 403 final, 18/7/2001, pp. 151

**European Commission** (2001), *Commission's Communication on State Aid and Risk Capital*, OJ N° 235 dated 21.08.2001, pp.

**Regulation 2988/74/EEC** of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the EEC relating to transport and competition

### ▪ *Swedish*

**Konkurrensverket** (1996), *Byggsektorn – spelregler för ökad konkurrens*, pp. 274

**Konkurrensverket** (2000), *Konkurrensen in Sverige under 90-talet – problem och förslag – report 2000:1*

**Konkurrensverket** (2001a), *Utvärdering av Optirocs förvärv av Strabruken*, August 2001, pp. 76

**Konkurrensverket** (2001b), *Fighting Cartels – Why and how?*, Elanders Graphic Systems, Göteborg, pp. 202

**Konkurrensverket** (2002a), *Varför är byggvaror dyra i Skane och maten billig i Västsverige?*, Rapportserie 2002:1, pp. 115

**Konkurrensverket** (2002b), *Konkurrensen in Sverige 2002*, July 2002, Rapportserie 2002:4, pp. 430 (especially pages 141-169)

**Konkurrensverket** (2002c), *Competition in Sweden 2002: executive summary of the report 2002:4*, pp. 33

**Regeringskansliet** (March 2002), *Ändringar i konkurrenslagen för effektivare kartellbekämpning: sammanfattning av proposition 2001/02:167*, consulted on: [www.naring.regeringen.se](http://www.naring.regeringen.se)

**Regeringskansliet** (18/12/2002), *Ett nytt investeringsstöd till visst bostadsbyggande föresl°as fr°an den 1 januari 2003*, consulted on: [www.regeringen.se](http://www.regeringen.se)

**SOU 2002:115**, *Skärpning Gubbar! Om konkurrensen, kvaliteten, kostnaderna och kompetensen i byggsektorn*, pp. 221

**Statskontoret** (11/02/2003), *Promemorian (Fi2002/4722) Investeringsstöd till visst bostadsbyggande*,

## Journals, press releases and magazines

**Affärsvärlden** (Nr. 6/2002), *Efter avslöjandet om kartellbildning hotar byggindustrin att förlora sin röst i svensk bostadspolitik*, p. 10

**Annual reports:** JM, NCC, Peab, Skanska

**Byggindustrin** (Nr. 8/2003), *Intern (s)-kritik mot bostadspolitiken*

**Byggindustrin** (Nr. 12/2003), *Kraftigt ökat byggstöd*

**Construction Europe** (May 2003), *Cement cartel gets record fine*, Volume 14 N° 4, p. 7, consulted on: [www.construction-europe.com](http://www.construction-europe.com)

**Dagens Nyheter** (5/06/2002), *Bostadsakut strider mot EU-rätten*, consulted on: [www.dn.se](http://www.dn.se)

**Dagens Nyheter** (17/7/2002), *Statligt bostadsstöd anmält*, consulted on: [www.dn.se](http://www.dn.se)

**Economist, the** (9/11/2002), *Europe's merger monitor*, p. 71-72

**European Commission** (20/03/2002), *The CFI confirms the existence of a cartel in the European district heating market*, CJE/02/28, consulted on: [www.europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=CJE/02/28](http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=CJE/02/28)

**Fastighetsägarna** (14/02/2003), *Fastighetsägarna Sverige om regeringens investeringsbidrag: "Ett vallöfte som försvann"*, consulted on: [www.svefast.se](http://www.svefast.se)

**Fastighetsägarna** (20/03/2003), *Investeringsbidrag till studentbostäder och mindre hyreslägenheter*, consulted on: [www.svefast.se](http://www.svefast.se)

**Fastighetsnytt** (Nr. 1/2002), *Varför är kartellbildning inom byggbranschen möjlig?*

**Fastighetstidningen** (Nr. 2/2003), *Oklar politik bromsar byggande*

**FIEC** (2001), *Construction Activity in Europe*, pp. 199

**FIEC** (2002), *News*, December issue, pp. 4

**Husbyggaren** (Nr.2/2003), *Stimulerande stöd*

**Irish Examiner** (03/03/03), *Construction industry cartel complaints*, consulted on: <http://archives.tcm.ie/irishexaminer/2003/03/03/story869383636.asp>

**Konkurrensverket** (Nr. 2/2003), *Konkurrensnytt*, February issue of the monthly Newsletter from the Swedish Competition Authority

**Konkurrensnytt** (Nr. 3/2003), *Konkurrensverket stämmer elva asfaltföretag p<sup>o</sup>a över 1,6 miljarder*, March issue of the monthly Newsletter from the Swedish Competition Authority

**Le Moniteur** (2002), *Les 10.000 Premières entreprises de la construction*, November issue, pp. 226

**NRC Handelsblad** (constantly updated), *Dossier bouwfraude*, consulted on: <http://www.nrc.nl/dossiers/bouwfraude/1006242347462.html>

**Press release Konkurransetilsynet** (27/02/03), *Four construction companies reported for anticompetitive practises*, consulted on: [www.konkurransetilsynet.no](http://www.konkurransetilsynet.no)



**Press release Konkurrensverket** (21/03/03), *The Swedish Competition Authority takes legal action against eleven asphalt companies for more than SEK 1.6 billion*, consulted on: [www.kkv.se](http://www.kkv.se)

**Press release Konkurrensverket** (10/04/03), *Nordiskt avtal öppnar nya möjligheter i kartelljakten*, consulted on: [www.kkv.se](http://www.kkv.se)

**Press release NCC** (21/03/03), *Competition Authority demands SEK 472M in competition infringement penalties for NCC*, consulted on: [www.ncc.com](http://www.ncc.com)

**Press release Peab** (31/03/03), *Peab's comments on the summons application in the asphalt cartel case*, consulted on: [www.peab.com](http://www.peab.com)

**Radio Netherlands Wereldroep** (22/08/02), *Dutch Building Fraud Rampant*, consulted on: <http://www.rnw.nl/hotspots/html/nedii020822.html>

**The European Legal Forum** (November/December 2002), *ECJ 5 November 2002 – C208/00*, Issue 6-2002, p. 331-339

**Time Magazine** (22/03/99), *Alone against a Cartel*, consulted on: <http://www.time.com/time/magazine/intl/article/0,9171,1107990322-22325,00.html>

**Vår Bostad** (May 2003), *Vinsten viktigare än nya bostäder*, p. 8-10

## Websites

### European Union institutions

European Union [www.europa.eu.int](http://www.europa.eu.int)  
European Parliament [www.europarl.eu.int](http://www.europarl.eu.int)

### Swedish institutions

Boverket [www.boverket.se](http://www.boverket.se)  
(Bo Nilvall and Lars Svensson)  
Regeringskansliet [www.naring.regeringen.se](http://www.naring.regeringen.se)

### Competition Authorities

Dutch Competition Authority [www.nmanet.nl](http://www.nmanet.nl)  
Irish Competition Authority [www.tca.ie](http://www.tca.ie)  
Norwegian Competition Authority [www.konkurransetilsynet.no](http://www.konkurransetilsynet.no)  
Swedish Competition Authority [www.kkv.se](http://www.kkv.se) (Anders Gerde)

### Companies and federations that were contacted

Bostadskreditnamnd [www.bkn.se](http://www.bkn.se)  
Byggnadsekonomi LTH Lund [www.bekon.lth.se](http://www.bekon.lth.se) (Kristián Widén)  
EBAB [www.ebab.se](http://www.ebab.se)  
European Property Federation [www.epf-fepi.com](http://www.epf-fepi.com) (Michael MacBrien)  
Fastighetsägarna [www.svefast.se](http://www.svefast.se) (Per-Åke Eriksson)  
Fastigo [www.fastigo.se](http://www.fastigo.se) (Christian Dieckmann)  
GE Real Estate [www.gecapitalrealestate.com](http://www.gecapitalrealestate.com)  
Hyresgästföreningen [www.hyresgastforeningen.se](http://www.hyresgastforeningen.se)  
HSB [www.hsb.se](http://www.hsb.se)  
Institutet för bostads- och urbansforskning [www.ibf.uu.se](http://www.ibf.uu.se)  
Institutet för Tillväxtpolitiska Studier [www.itps.se](http://www.itps.se)  
Invest in Sweden Agency (ISA) [www.isa.se](http://www.isa.se)  
JM [www.jm.se](http://www.jm.se)  
LB Hus [www.lbhus.se](http://www.lbhus.se)  
MKB Fastighet [www.mkbfastighet.se](http://www.mkbfastighet.se) (Lars Birve)  
NCC [www.ncc.se](http://www.ncc.se) (Rickard Andersson)  
Peab [www.peab.com](http://www.peab.com)  
Riksbyggen [www.riksbyggen.se](http://www.riksbyggen.se) (Ingela Carlsson)  
SABO [www.sabo.se](http://www.sabo.se) (Tomas Lindencrona)  
Skanska [www.skanska.com](http://www.skanska.com) (Gunnar Jürss)  
Svenskt Näringsliv [www.svensktnaringsliv.se](http://www.svensktnaringsliv.se)  
Sveriges Byggindustrier [www.bygg.org](http://www.bygg.org) (Lars Jagrén)