

## A stately affair?

The clash of national and supranational institutions in a post-compliance process – the case of Swedish interconnectors

# Preface

I want to thank the persons who have made this thesis possible. I especially want to thank the Chamber of Commerce and Industry of Southern Sweden for the thesis commission. Maria Hedlund, my academic supervisor, for the valuable insights and support. Thank you to family and friends for your time, encouragement and support.

Any misunderstanding or misinterpretation is my responsibility.

Rebecka Kjellström

# Abstract

The area of electricity is politically poorly explored. Yet, it is something that affects citizens of the European Union daily. In 2003 the electricity market became a part of the internal market project. This thesis is a case study of the case of Swedish interconnectors, which uses principal-supervisor-agent analysis to illustrate the institutional conflicts that arise when national and European institutions co-operate in a post-compliance process. Due to a complaint in 2006 the Swedish transmission operator, Svenska Kraftnät, was reported to the European Commission for possible breach of article 102 Treaty of the functioning of the European Union. This eventually led to a division of the Swedish electricity market's core grid system into four bidding zones. The essay explores the interaction between the different actors of the case, Svenska Kraftnät, the European Commission and the Swedish state, and how the interaction affected the institutions' ability to reach an internal market. The thesis will find that even though the institutions strive towards the same objective, conflict tend to arise nonetheless, which affects the institutions' ability to fulfil the political ambition of an internal market. Instead the turnout is politically suboptimal, where a lack of objectives, possible accountability and information can be noted.

*Key words:* institutions, P-S-A analysis, core grid, the European Commission, internal market, post-compliance process, Svenska Kraftnät, Swedish interconnectors

Words: 9 999

# Table of contents

<b>1</b>	<b>Introduction</b> .....	<b>3</b>
1.1	Disposition .....	4
<b>2</b>	<b>Purpose, problem and relevance</b> .....	<b>5</b>
<b>3</b>	<b>Method</b> .....	<b>7</b>
3.1	Method and material.....	7
3.2	Limitations .....	8
3.3	Definitions and operationalizations.....	9
<b>4</b>	<b>Theory</b> .....	<b>11</b>
4.1	Rational choice and new institutionalism.....	11
4.2	Principal – agent theory.....	12
4.3	Principal – supervisor – agent theory and clashing institutions.....	14
4.3.1	The different parties of the EU enforcement in the P-S-A model.....	15
<b>5</b>	<b>The Swedish core grid, the internal market and EU competition law</b> .....	<b>17</b>
5.1	The evolvement of the Swedish core grid and electricity market.....	17
5.2	The internal market and EU competition law .....	18
5.2.1	The internal market and EU competition law .....	18
<b>6</b>	<b>Analysis</b> .....	<b>20</b>
6.1	Part one: The actors of the case.....	20
6.1.1	The agent, principal and supervisor – who is who? .....	20
6.2	Part two: the Case.....	22
6.2.1	Intentions of article 102 and Regulation No 1228/2003 .....	22
6.2.2	The fire alarm .....	23
6.2.3	The Commission gets involved.....	24
6.3	Part three: Information distortion.....	25
6.4	Summary .....	26
<b>7</b>	<b>One reality, just another political dream?</b> .....	<b>27</b>
7.1	Discussion .....	27
7.2	Conclusion.....	28
7.3	Future research .....	30
<b>8</b>	<b>Bibliography</b> .....	<b>31</b>
	<b>List of Appendices</b> .....	<b>35</b>
	Appendix 1. Cross-Sections and bidding zones in Sweden.....	35
	Appendix 2. Timeline .....	36

# Abbreviations and expressions

Bidding areas/zones	Different areas divided by the bottlenecks, the areas are decided by the local TSO
Bottlenecks	Physical constraints on the grid, congestion passages
Counter-trade	TSOs pay generators or large consumer (within a bidding area) to change their planned production or consumption in order to reduce transmission flow
Cross-section	Cuts where it appears bottlenecks (see appendix 1 for Swedish cross-sections)
DaE	Dansk Energi, trade association
EBL	Norwegian Electricity Industry Association
Energinet.dk	Denmark's TSO
EU	The European Union
NCA	National competition agency
Price zones	An area where the spot price is the same, can consist of several bidding zones
SvK	The enterprise Svenska Kraftnät, Sweden's TSO
TFEU	Treaty of the functioning of the European Union
The Commission	The European Commission
TSO	Transmission System Operator
Öresundslink	The transmission link between South Sweden and Eastern Denmark

## List of figures

Figure 1. The principal & agent relationship	13
Figure 2. The P-S-A relationship	15
Figure 3. The P-S-A relationship in the case of Swedish interconnectors	21
Figure 4. Noted trends in the P-S-A relationship in the case of Swedish interconnectors	26

# 1 Introduction

Today you have probably made yourself a brew, switched the flip, given someone a ring and/or put a charger in the socket. And you have probably not once thought that the process of getting you a certain amount of electricity in Sweden today is affected by political processes on European, national, regional and local level.

The electricity market reflects a wide spectrum of issues, usually concerning technical possibilities and economic costs. What about the political aspects of the electricity market? Some parts of the electricity market are no longer a direct concern for the state but the distribution, the national core grid, is very much still an area regulated by the government in office and the Swedish parliament. The core grid is a topic shrouded in a political mystery, which under the investigative eye raises a lot of questions. It is a complex subject and instead of talking about one market, there are reasons to talk of several co-existing markets with strong national traditions (Nilsson, 2011: 1509). Since the 90's the Swedish electricity market has changed abruptly, through deregulation and integration (Bergman, 2013:261).

The commodity *electricity* has traditionally been viewed as a fundamental input for the industry and society as a whole (Holmberg & Tangerås, 2013: 207). Because of its social utility function the power supply and the grid has often been a subject of the state although the core grid was not subject to the deregulation in 1996. It is still under governmental jurisdiction (the Chamber of Commerce and Industry of Southern Sweden, 2011:6). Hence, the state is still an important actor. The distinction between power production and distribution is therefore vital. Nevertheless, after 1996 there have been a growing number of actors, such as the European Union (EU), institutional frameworks and stages in the power distribution process (*Ibid.*). The interaction between the growing number of actors and institutions creates an outcome, which affects the political sphere, and the citizens/consumers of the European Union.

In 2003 the electricity market was included in the project of the internal market (Regulation No 1228/2003). Parallel with this, the Nordic countries have been trying to integrate their markets, initially without involvement of the EU. In an ambition to integrate the Nordic and the European market the question of how to organize the state-owned grid has been raised and the development has not been without conflict. Beyond technical possibilities and economic costs, components such as compliance and implementation become areas of interest. Where does one draw the line between the market and the politics, the nation-state and the European Union and when it does not work, who is accountable?

This thesis will present a case study of the case of Swedish interconnectors and the political costs of institutional conflicts in search for an internal market.

## 1.1 Disposition

This thesis endeavours to create a comprehensive framework where the reader understands the concept of institutions and the move towards European integration. The second chapter presents the problem, the purpose and its relevance. Instead of presenting the thesis' theory, the third chapter consider the method; the nearness to the empirics eases the transition from theory to empirics. The following chapter briefly describes the evolvement of the Swedish national core grid and electricity market. The analysis is in the sixth chapter. The chapter is divided into three subparts: the role of the actors and their ambitions, a descriptive part of the case and a subchapter on information flow. The seventh chapter is discussion and conclusion, where the question at issue is further discussed, rounded up by a short remark on future research.

## 2 Purpose, problem and relevance

One of the main original ideas of the European Union (EU) is the idea of the internal market. Being one of the main pillars of the EU project it is important to critically view the policies that aim to guide the EU towards an internal market beyond nation borders. However, the political milieu still requires the existence of nation-states.

The study's purpose is to examine how clashing institutions create a suboptimal institutional outcome for democratic accountability. In the midst of political ambition and reality, things do not always add up. In the end, it is a study of different governance mechanisms of political institutions to fulfil the political dream of one European market.

The whole EU project is built on the thoughts of an internal market (Buonanno & Nugent, 2013:142ff). Regulation No 1228/2003 on the conditions for access to the network for cross-border exchanges in electricity, included the energy market into the concept of the internal market despite that the national core grids often are under state monopoly. Such as many infrastructure issues the electricity market is faced with problems of limited transportation space, similar to road and water pipe congestion.

The Swedish transmission system operator (TSO) is the enterprise Svenska Kraftnät (SvK), which is under jurisdiction by the Swedish state (SvK 1). Through the high level of integration the Nordic energy market has often served as a leading example of electricity integration in the EU (Radetzki, 2004:111). Despite this, the European Commission was led to believe that the Nordic energy region, more precisely the interconnectors, was not functioning as desired and Sweden was the subject of suspicion. After ifs and buts, Sweden ended up with four different bidding zones, which led to a higher electricity price in the southern part of Sweden (e.g. Ei R2013: 15f).

The Commission's sole purpose is *more Europe*: the instalment of the internal market. Nevertheless, there is reason to question whether this is actually what one end up with in *post-compliance* and *implementation processes*. Compliance is the observance of the EU laws and regulation. The focus is on the process after the law/regulation has been implemented, where there are audit authorities that monitor whether the implementation was correct according to the law. With that in mind this thesis aims to answer:

*How does the interaction between Svenska Kraftnät, the European Commission and the Swedish state affect these institutions' ability in fulfilling the political ambition of an internal market in a post-compliance process?*



The hypothesis is that through interaction these institutions collide and create a political suboptimal outcome through distortion of information, different institutional objectives and difficulties in accountability.

The studies of European governance are still few or limited of post-compliance processes and this issue has not been fully addressed until recently (Knill & Lehmkuhl, 2002:255).

From a political science perspective this shed light on different instances' relation to the concept of market liberalism, in how to approach the question of market liberalism from the EU and the nation-states. In addition, this also sets the stage on how nation-states interact with each other under supranational influence. In reality the official institutions of Sweden face an integration process, which requires integration on multiple levels, which challenge the concepts of accountability, legitimacy and representation. It also changes the roles of national institutions. To which extent do we enter willingly in these interactions and how much decision-space does Sweden, as a state, have?

The questions Swedish and European electricity markets are certainly unexplored (Nilsson, 2011). Being one of the areas that the EU intends to improve and integrate, it eventually becomes a question about legitimacy and democracy for the member states' populations. Through theory the thesis aspire to reveal the underlying political issues of the case, which is not apparent at first sight.

The Swedish and Nordic electricity market has for long been viewed as a front-runner in deregulation and liberalisation (Radetzki, 2004:111). The EU's involvement in different policy areas varies greatly. Yet, the internal market is one of the Union's main objectives, it is reasonable to argue, that supranational influence tendencies are greatest here (Buonanno & Nugent, 2013:3). The case can also be viewed as a least likely case, least likely to actually need EU intervention (Teorell & Svensson, 2007:154).

## 3 Method

### 3.1 Method and material

The thesis explores the problem through method of single qualitative case study based on principal-supervisor-agent (P-S-A) theory by Jonas Tallberg. As common in case studies this study is abductive and of intensive nature (Teorell & Svensson, 2007: 51, 74). The thesis is conducted through an interpretive text analysis with P-S-A theory as an analytical tool, which enables the study's result to be generalizable to other EU-national institutional relationships. The thesis' emphasis is empirical rather than theoretical. Yet, theoretical suggestions will be made. The thesis has elements of exploratory and descriptive ambitions, and these can very well overlap each other, the descriptive part is vital in pursuance of an exploratory research (Yin, 2003:5f, 9). As a result of the scarcity of similar research the method is of exploratory character, to explore whether given theory can be used in this peculiar context and note tendencies and trends for further inquiry.

The decision on method is based on several considerations. First, the research question illustrates specific relationships between a set of institutions. These institutions are specific, both in their function in the political institutional system, as well as in their relationship to each other. Second, the EU legal framework is multidimensional. Third, as a researcher I have no control over behavioural events. Instead I have chosen to focus on the peculiar and revealing case in order to illustrate the institutions' ability to institutional changes in delegation and implementation.

The institutions' *interaction* is the independent variable, which affects the dependent variable, *the political goal of an internal market*. In reality, and in the case, variable relationships are interdependent and can to a large extent affect each other. Unlike a comparative case study, the variables exist within the same context (Esaiasson *et. al*, 2007:120). Supranational influence is the intermediate component.

The material has two different strands, a European and a national trend. The European perspective of the material rarely investigates the national aspect of compliance within a specific market. On the other hand, the vast majority of national publications only investigate the electricity market from a national or a Nordic perspective (e.g. Brännlund *et al.*, 2014; Statskontoret 2012).

The material is chosen from an *ex post* situation, which makes it easier to determine what is relevant. Many different studies have been made but rarely in relation to each other or with similar focus. Therefore different chapters are in general answered by different reports and research studies. Beyond that, the material is also mainly based on secondary sources. To mainly rely on secondary

sources can pose as a problem, but by cross-referencing, awareness and intersubjectivity pitfalls can be avoided.

The analytical framework poses as a measuring instrument, however it is hard to talk about measurements in absolute terms, with interpretation as a method. In order to achieve concept validity and reliability, which together create the result validity, I operationalize concepts such as interaction, internal market and optimal outcome. Therefore I can find measurable indicators on theoretical phenomena and know how to approach my material in a traceable way (Esaiasson *et. al*, 2007:64; Yin, 2003:38). Through comparison the material's results are verified further.

Because of the chosen method the generalization ambition is analytical and not statistical, which is the difference between statistical and qualitative research (Skärvad & Lundahl 2008:194). To enable this generalization, the study fluctuates between theory and empirics. Can the researcher generalize from a single case? Very few researches generalize from a single case, even in the case of experiments. The case study itself is rarely subject for generalization, although put in the context of theory and research, an analytical generalization can be made (Yin, 2003:10). When the researcher generalize it is only to the "theoretical propositions and not to populations and universe" (*Ibid.*). The generalization ambition also lies within the replication logic; you try the generalization multiple times (Yin, 2006: 58f).

## 3.2 Limitations

The interaction between institutions and political realisation are the study's two key variables. The independent variable, interaction, reflects both a practical and relevance decision. First, there are several ways of conducting this research and several ways of analyzing whether the political ambition of an internal market is realized or not, even in the context of Swedish bidding zones. Do the residents of Scania consider this outcome unfair? Did the distribution of electricity improve? In spite of this, a study with an institutional focus is still more useful. It makes it easier to generalize to existing theories and to the broad field of European political science. Second, it is easier to study official institutions rather than thoughts and opinions of citizens because: how do you aggregate the meaning of individual opinions? This also intersects with the top down approach of this thesis, where the systems are broken down into sub-systems, instead of building them up in more complex dimensions. The focus is on the different authorities and decision-makers. Furthermore, the study concentrates on the output and what happens after that, or in another term, post-compliance.

As Tallberg points out (2003:1) the majority of research done on institutionalism in the EU concerns the decision-making phase. Compliance is a central point in implementation processes and important to study. As in the classical catchphrase, actions and consequences, the rule of law and the political state work with the same contrasts. That is what makes the EU project so special;

no other supranational organization has the same amount of powers to actually govern a whole state.

Due to the nature of the research question, it makes it easier to know how to limit the collection of the material. It should only concern the case of Swedish interconnectors and official documents. The limitation in the number of institutions also helps to a great extent.

### 3.3 Definitions and operationalizations

The problem raises a lot of questions about definitions and operationalizations therefore the ambition of this chapter is to clarify some key concepts in pursuance of this problem.

What do *institutions* mean? Institutions can be formal, informal, authorities, norms, rules and organizations. Institutions have and are currently defined and re-defined and poses a whole field of study. This study assumes that it is through institutions compliance processes transpire. In this research, institution is understood as an official and formal national or supranational institution installed by the state or through the state. These formal institutions are Svenska Kraftnät, the European Commission and the Swedish state: the Swedish parliament and government. These two parts of the Swedish state co-exist. The government cannot exercise legislative power without the support of the parliament.

*Optimal* and *suboptimal outcome* are two other terms that offers a whole range of interpretations. The traditional way of talking about optimal outcome in rational choice terms are in numbers. Instead of talking about economic costs, this study's deals with costs in political terms. The post-implementation of the internal market is seen as a political process, which should be dealt within representative institutions. The orientation for democratic activities of citizens is national and uniform legal rules raise the issue of legitimacy (Hojnik 2012:118, 121). The political optimal is to strive towards a high level of legitimacy, compliance and possible accountability. Indicators of political suboptimal outcomes are difference in proposals, information distortion and lack of common objectives. The political suboptimal can also be seen as the political costs.

The concept of the *internal market* includes a broad field of policies and markets. The electricity market alone has many layers to take into account: the producer's market, the national core grid, the regional grid and so on. How can this study grasp the concept of an internal market without missing its mark on precision? For the purpose of the essay the chosen definition of the internal market is in the light of article 102 Treaty of the functioning of the European Union (TFEU). Further on, the subsidiary principle is assumed to permeate the concept of the internal market (EU 1). Consequently, the focus is on the consumers/citizens and the closeness of the process to these individuals.

The operationalization of *interaction* is that interaction can be understood as the official documents and reports produced by Nordic official authorities and the investigation made by the Commission. Besides the pronounced views of the

institutions, interaction is also *action* and *non-action* by these official institutions. There are multiple ways of how to perceive the phenomenon of non-action and Tallberg argues that compliance *ex ante* with the principal's wishes is a sign of strong influence and an effective control mechanism (2003:9).

The study relies heavy on the assumptions of the first dimension of power by Lukes, that policy preferences can be observed through political action (Lukes, 2005:29). Basically, the study examines pronounced and overt preferences and ambitions of official institutions.

## 4 Theory

Since the birth of the European Coal and Steel Union scholars have tried to form a theory with the ability to analyze the development of the European community and regional integration. The main discussion has revolved around the nature of the European Union's (EU) institutions and whether the political system of the EU should be interpreted as a *supranational* or *intergovernmental* system (Kerremans, 1996:217). In conclusion, this discussion has led to the creation of the two dominating orientations on the area, the neo-functional, respectively the intergovernmental school (e.g. Buonanno & Nugent, 2013: 23, McGowan 2007:2). The neo-functional argues that the EU's institutions are the very core of European integration while intergovernmentalists claim that the institutions only function as obedient servers. Any power the institutions may have is solely given by the national governments (Tallberg, 2003: 1).

Being mutually excluding the theories unfortunately restricts the ability of analyzing the institutions of the EU and their role in European integration in a multidimensional way. Unlike the previous theories on European integration *new institutionalism* does not exclude the different claims made by either of schools (Tallberg, 2003:6).

*Rational choice theory (institutionalism)* found its way into the world of political and social institutions with the new wave of institutionalism. An analytical tool, which emerged within this orientation, was *principal-agent* (P-A) analysis. The P-A analysis offers an adaptable framework where the focus is on the quality of autonomy and influence rather than from where it originates (*Ibid.*). Upcoming subchapters discuss rational choice institutionalism, principal-agent theory and principal-supervisor-agent theory further. These theories are additions to each other.

### 4.1 Rational choice and new institutionalism

New institutionalism marked a rediscovered interest in institutions as a political phenomenon but the term itself remained unclear (Tallberg, 2003: 15, Hall & Taylor, 1996: 936). Powell defines new institutionalism as:

The core idea that organizations are deeply embedded in social and political environments suggested that organizational practices and structures are often either reflections of or responses to rules, beliefs, and conventions built into the wider environment (2007:1).

The term reflects a body of different works rather than one line of thought (*Ibid*). Hall and Taylor divide the school of new institutionalism into three sub-categories: *historical*, *rational choice* and *sociological institutionalism* (1996:936). All the subcategories arose as a reaction to the behavioural perspective and they all have the ambition to highlight institutions' significant role in political and social outcomes (*Ibid*).

The literature within rational choice institutionalism is also diverse, but the basic assumptions remain the same, the importance of institutions (Tallberg, 2003:16). The theory emerged in the works of Kenneth Shepsle (1979). Rational choice institutionalism theory seeks to answer two types of questions, "how institutions shape political, economic and social behaviour, and how institutions originate, persist, and change" (Tallberg 2003:16). Hall and Taylor identify four main features of rational choice institutionalism (1996:944). First, rational institutionalists argue that actors have a fixed set of preferences, act in a certain way in order to maximize these preferences and act through strategic calculation. Second, politics are viewed as a series of collective action dilemmas and that these tend to collide. As a result, the outcome becomes collectively suboptimal. Famous theoretical examples of this are *the prisoner's dilemma* and *the tragedy of the commons* (e.g. Tucker & Kuhn, 1953; Ostrom, 1995). Third, the rational choice theory defined how an actor is likely to act in any given situation. An actor is expected to act strategically and adjust to expected behaviours of other actors. Institutions offer structure to these interactions through information, enforcement tools and agenda setting. Finally, rational theorists argue that institutions are created through actors. Institutions arise in the actors' ambition to fulfil certain functions/values. In conclusion, two important points are to be made; institutions are a voluntary agreement between participating actors and that in competition, an institution survives if it provides more benefits than other institutional arrangements (Hall & Taylor 1996:944f). In the end, organizational structures seek to minimize transaction, production and influence costs (Hall & Taylor, 1996:946).

Rational choice theory has formed a direct conception of institutions and behaviour. The simplistic approach is what makes the theory so usable. At the same time the theory's generalizable set of concepts is sometimes almost too simplistic. The political human has multiple layers of motivation, which are easy to miss and hard to interpret especially in *ex ante* situations (Hall & Taylor, 1996:950).

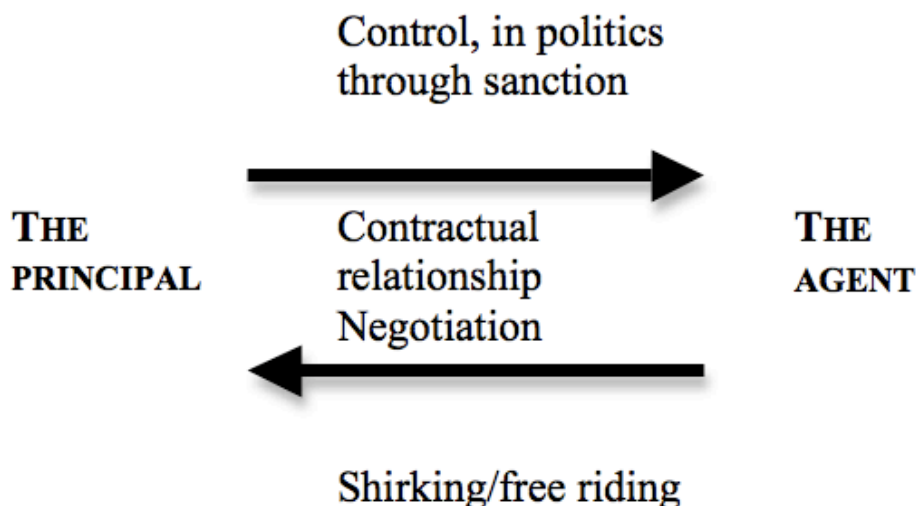
## 4.2 Principal – agent theory

Principal – agent (P-A) theory was originally moulded within the school of *new institutional economics* and rational choice. The primary analytical focus was of mathematical and economical nature, what the cost to monitor the agent was and the losses that arose from undetected free riding (Tallberg, 2003:17). In the aftermath of the 80's new institutionalistic trend, the use of P-A analysis in a

political context surfaced (Tallberg, 2003:18). However, political theorists realized that a modification was needed to apply these economic theories to political systems (Scott, 2001:35). The main difference is that the economic part of the literature tends to focus on incentive mechanisms while the political one focus on sanctions (Tallberg, 2003:23). This primarily because rewards are notably absent in the political world whereas the threats of sanction often occur (*Ibid.*).

In its most basic form the P-A theory is a theory about the relationship between a principal and an agent. This relationship arises when one party, the principal, assigns certain work/assignments to another party, the agent. However, the agent is more likely to pursue its own interests rather than the principal's – so-called *shirking* or *free riding* (Tallberg, 2003:16). Therefore the agent is more aware about its actions than the principal is. It leads to a distortion of information and ability to control.

In conclusion, two (or more) parties enter a contractual relationship and P-A analysis addresses two specific arising problems with this contract, information distortion and conflicting interests (Tallberg, 2003:19). Through monitoring and/or threatening of sanctions the principal tries to control the agent (Tallberg, 2003:5). The more extensive monitoring and sanctioning framework the principal forms, the less incentives the agent has to shirk. Nevertheless, monitoring and sanctions generates costs for the principal and therefore it is unlikely that the principal invests to such an extent that free riding and non-compliance can be eliminated (Tallberg, 2003:19). The P-A connection is not a one-way street, it is rather a dynamic and two-sided relationship where the parties can negotiate and bargain (Tallberg, 2003:23).



*Figure 1. The principal and agent relationship*

In reality the P-A model offers a comprehensive applicable model but it has one great weakness. The explanatory power declines with a growing numbers of actors (Tallberg, 2003:24). More actors can, in the end, mean that the whole P-A



relationship gets redefined and the rules of the game are altered. Multiple actors/parties means multiple wills (*Ibid.*). Therefore the theory needs further development by an addition, the supervisor (Tallberg, 2003:25). Thus, the added dimension opens up space for more parties to be involved without jeopardizing the explanatory power of the P-A model, which leads to the *principal-supervisor-agent theory*.

### 4.3 Principal – supervisor – agent theory and clashing institutions

The focus of Tallberg's principal-supervisor -agent (P-S-A) theory is on the post-compliance part of institutionalism (Tallberg 2003: 6). The P-A relationship transforms to a P-S-A relationship because of two reasons. First, the member states have collectively given the supranational institution right to solve problems with non-compliance. Second, it is a direct consequence of the shift to post-decisional enforcement (Tallberg, 2003: 7, 25f). The member states are both principals and agents whereas the EU institutions are supervisors (*Ibid.*). However, the supranational institutions do have interests of their own in a post-compliance era (*Ibid.*).

In the end, there are two similar P-A relationships, which are defined by conflicting interests and struggle for autonomous action (*Ibid.*). Three suggestions are made about supranational influence and what brings it about: the private enforcement agendas of the EU institutions, the level of supranational influence and what kind of supervision that is most likely occur (Tallberg 2003:7). It is to assess the quality of supranational influence.

There is also a level of possible collusion between the supervisor and the principal (Kofman & Lawarrée, 1996:384). It all depends on the abilities of the supervisor. In some cases the supervisor is dishonest towards the principal, and instead of solving the problem of the agent, two collusions arise (*Ibid.*). Sometimes the principal does not have the luxury of choosing its supervisors, and risks using a supervisor, which collides with the other actors. In spite of this, the principal can engage a supervisor despite this uncertainty; collusion can be used as a punishment as well (Kofman & Lawarrée. 1996:385).

The relationship between the supervisor and the agent is dependent on when the supervisor makes the observation – the *timing zone* (Kessler, 1999:288). In different stages the agent has different levels of understanding of the upcoming outcome. The punishment or the incentive is created in this timing zone (*Ibid.*).

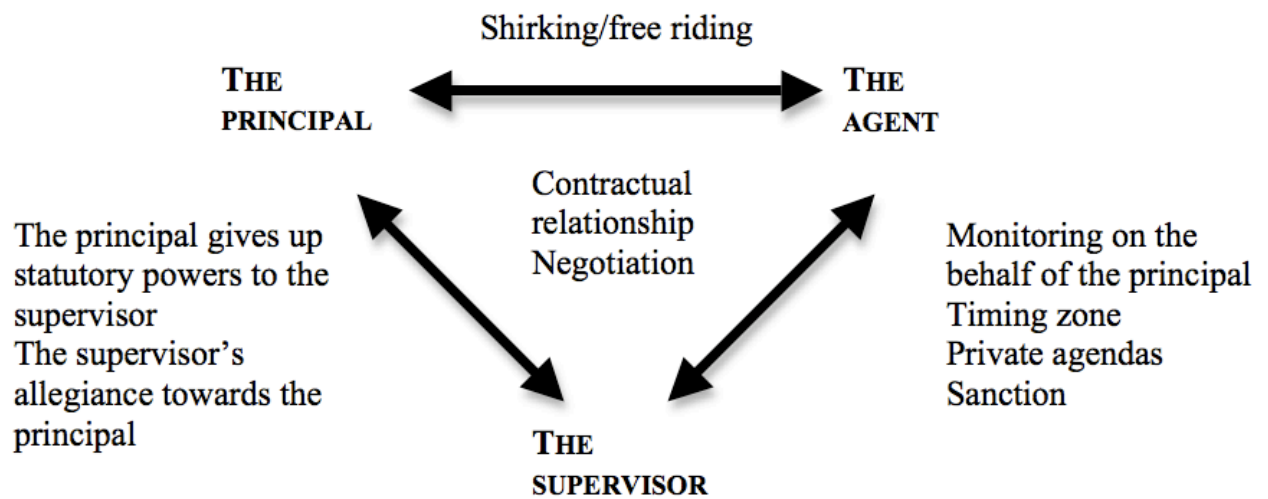


Figure 2. The P-S-A relationship

#### 4.3.1 The different parties of the EU enforcement in the P-S-A model

It is commonly agreed upon that the preferences of the Commission is highly pro-integration; or as often put "more Europe" (Tallberg 2003:28). The Commission's motivation for more Europe is not surprising with its position at the core of the EU. Nevertheless, it does not mean that the Commission naturally tries to strengthen its position but rather to utilize its ability to influence (*Ibid.*).

Engaging the Commission and the Court as supervisors [...] does not solve the problem of shirking *per se*. Rather, it replaces governments' concern with one form of shirking – state noncompliance – with another – supranational influence. (Tallberg, 2000:107)

Tallberg later on explains supranational influence further:

Supranational shirking therefore does not translate into supranational influence unless the institutions, and the measures they have introduced, survive possible ex-post sanctions by national governments (Tallberg, 2000: 113).

The preferences of the member states are harder to boil down into one objective, rather to three main traits. In the role as a principal, it is in the interest of the governments that policy proposals made in agreement with the Council are carried out properly and complied with (Tallberg, 2003:29). Still as a principal, the member states are protecting the sovereignty of the state. In a post-compliance context, this means that member states' governments try to restrict the supranational institutions' enforcement mechanisms to a minimum and that the institutions shall not transcend their competence (*Ibid.*). However, as agents, the states wish to reduce the regulation demands of the EU policies on the nation-state's political, economical and administrative spheres (*Ibid.*). To adjust national institutions, law and practices is not cheap and sometimes the institutions

themselves are very inadaptable. Another difficulty is how to put the two central institutions, the parliament and the government into one principal role.

Kofman and Lawarrée discuss supervisors, principals and agents from a business perspective, where the charge of admission is of different character than from a political perspective. In today's context Sweden cannot choose whether or not to be monitored by the Commission. Instead the auditing process relies on the *fire alarm* mechanisms established by the Commission (Tallberg, 2003:59). With the fire alarm mechanism it is meant that someone besides the Commission has to initiate the anti-trust case and make a complaint in order to start up the monitor process.

As mentioned above, it is difficult to capture the different states' preferences. Nevertheless, these three objectives can be seen as stable and constant (Tallberg, 2003:30). What may differ between states is to which extent they focus on each preference. How each preference are weighted and adjusted by Svenska Kraftnät, the Swedish state and the Commission are addressed in chapter 6.1 Part one: the actors of the case.

# 5 The Swedish core grid, the internal market and EU competition law

The chapter's ambition is to provide the reader basic information for a better understanding of the case.

## 5.1 The evolvement of the Swedish core grid and electricity market

There are three events that affected the Swedish electricity market significantly: the deregulation, the shift of power production in Sweden and the creation of bidding zones.

The deregulation redefined the market through an increased integration with the Nordic states. Together with Norway Sweden created the first multinational electricity market (Holmberg & Tangerås, 2013: 212). Later on Denmark and Finland were included (Holmberg & Tangerås, 2013:210f).

In spite of the deregulation the produced electricity still had to be distributed throughout the state-owned core grid. Inevitably, this results in a limitation that cannot be avoided. The grid's capacity has a cap that only can be elevated through added cable grids. This natural limitation in combination with that the power production balance-shift in 2005<sup>1</sup> has led to a heavily strained grid system (the Chamber of Commerce and Industry of Southern Sweden, 2011: 7). This results in congestion with large quantities of power having to travel south, where the majority of consumption is. Until 2011 Svenska Kraftnät (SvK) tackled the congestion problem through restricting the electricity distribution to Denmark in order to keep the electricity price even nationally. Nowadays an internalisation of that price difference has been made through the four bidding zones within Sweden (see appendix 1). In roughly 80 percent of the time the electricity price is the same throughout Sweden. At the most Sweden have three zones of different prices (Ei R2013: 15ff).

The model of having a state-owned grid is justified by the arguments of natural monopoly. Natural monopoly often occurs in the infrastructure area. The reason being that the core grid is hard and expensive to develop for private actors, the usual functions of competition do not work (Bergman, 2013: 268f). The grid is

---

<sup>1</sup> Barsebäck, a nuclear plant in southern Sweden closed in 2005, which led to an even larger portion of electricity production shifted further north (South Sweden Chamber of commerce 2011: 7).

financed by national net tariffs (Prop. 2008/09:1, chapter 21). Producers and consumers within Sweden pay the net tariff, which also finances all the counter-trade that occurs. Besides the net tariff, the National Debt office (Riksgälden) finances the development of the grid (*Ibid.*).

The Swedish audit authority (Riksrevisionen) emphasizes that a distinction between investing in the national grid and the Nordic grid is of great importance (RiR 2013:28).

## 5.2 The internal market and EU competition law

Sweden became a member of the European Union in 1995. The decision had been preceded with tough debate and the bill only passed with slight majority (the EU information 2). Even though Sweden has been critical to the European collaboration from the start, the level of compliance with the European framework is high (EC 2013/726 (COM)).

The EU's ability to influence and affect the national institutions and policies differs. Competition law is one of the areas where the EU has a strong presence. Nevertheless, the power still has to be divided with the member states in the implementation of the internal market (the EU information 1).

### 5.2.1 The internal market and EU competition law

The nature of the European policy portfolio is ever changing. Since the beginning the focus of the policy portfolio has been on economic aspects and cooperation. Under different names the internal market has been one of the Union's main projects (Bernitz & Kjellgren, 2002: 4, Buonanno & Nugent, 2013:142). The goal to create an internal market is pronounced as early as in the 1957 EEC Treaty (Buonanno & Nugent, 2013:142). Since then the portfolio has expanded remarkably. Nevertheless, the economic policies are still the major part of the European policy portfolio (Buonanno & Nugent, 2013:5ff). The internal market is the very heart of these policies, and even though the internal market in itself is not contested, the means of reaching it are. The question about how one should include e.g. infrastructure in this liberalization and integration has been one of many stumbling blocks.

The main argument for the internal European Market has remained the same since the 50's: "the internal market is the most effective EU policy to achieve increased employment, growth and global competitiveness" (Buonanno & Nugent, 2013: 144, 166). There are many advantages to be made with free trade such as unification of regulations and tariffs. The limitations of the internal market have changed over time and depending on political trends. However, over time there has been a broadening decision-space for the internal market with great advances to be made (Buonanno & Nugent, 2013 145f).

EU competition law has been relatively unchangeable until 2004 (Buonanno & Nugent, 2013: 159). The 2004 changes decentralized the system and gave member states a larger part in the implementation process simultaneously as the Commission gained more power in inspection rights (*Ibid.*). The new and the old system primarily differ in how the processes work, execution order and to what degree the national competition agencies (NCA) are involved. However, even though a larger number of cases are handled by NCAs, the competition regulatory power still lies with the Commission. In comparison with the US, the EU has not set up an independent competition Agency. The Commission has resisted such proposals with the argument that politics is a natural factor in antitrust policy and therefore it should be a part of the Commission's responsibilities (Buonanno & Nugent, 2013:161).

# 6 Analysis

## 6.1 Part one: The actors of the case

The European Commission is considered being the very heart of the EU (Bernitz & Kjellgren, 2002:60). The commissioners are appointed by the national governments and later on accepted, as a whole, by the European parliament. Even though the national governments appoint the commissioners, they are expected to work independently while working for a EU wide interest (Bernitz & Kjellgren, 2013:61). The Commission itself has many roles; the key roles are as an initiator for policies, mediator between different actors and executive actor (Buonanno & Nugent, 2013: 40ff). Competition law is one of the policies that the Commission implements directly. By its supranational influence the EU tries shift the national institutions into a desired direction, towards the internal market.

Svenska Kraftnät (SvK) was founded in 1992 and the Swedish state is SvK's principal and the government guide the institution by annual appropriation letters. The parliament decides on the budget, the financing and the investments of the grid (SvK 1). Besides that SvK has the right to act independently and can act on the state's behalf in dealing with the Commission (SFS 2007:515, §27).

The principal is the state: the Swedish parliament and the government. The Swedish parliament represents, with its 349 members of parliament, the citizens of Sweden (The Swedish parliament 1). The Constitution states "all public power in Sweden proceeds from the people"<sup>2</sup> (SFS 1974:152, chapter 1, §1). The parliament's task is to legislate, budget decisions, monitoring the government, work with the EU and form the foreign policy. Since Sweden became a member of the EU, the Union has the right to make legislate decisions concerning Sweden without consulting the parliament first (The Swedish parliament 2). However, the parliament has a role of guarding the subsidiary principle; decisions should be taken as closely to the citizens as possible (RiR, 2013:32). The government plays a key role in this relationship, where they are supposed to inform and speak for the Swedish parliament in the EU (*Ibid.*). Any powers the government may have are given to them through the parliament.

### 6.1.1 The agent, principal and supervisor – who is who?

---

<sup>2</sup> Free translation

In this particular context the Commission is the supervisor, SvK the agent and the state (the parliament and the government), the principal. Traditionally the member state is seen as an agent (e.g. Tallberg, 2003: 29). Thus, by being an extension of the state, I argue that SvK assumes the role of as an agent and the state solely becomes a principal.

As stated before the Commission aspire more Europe, the agent, SvK, tries to soften the adjustment demands of EU policy as it requires a great deal of costly modifying, and as a principal, the state has two key preferences (Tallberg, 2003:29). First, the state want to see EU rules implemented correctly and complied with. Second, it is still concerned with the sovereignty. On another note, the Commission have strong enforcement agendas of its own, as well as being a major influence in European governance (Tallberg, 2003: 10). The Commission has engineered ways of monitoring and here, Dansk Energi (DaE), fire alarm as a result of the decentralized control mechanisms set up by the Commission (Tallberg, 2003:59).

SvK's and the Swedish state's relationship have, 1996 up to now, been defined by information distortion and lack of control (RiR 2013: 29, 33). Eventually this has led to an underdeveloped core grid. The state's inability to address the issue and having a rigid control has been a contributing factor in the delays of the grid expansion. The government binds the parliament and SvK together, as an information exchange and delegation actor. The principal has also in recent years been unclear on what to prioritize in the investments of the grid (RiR 2013: 28).

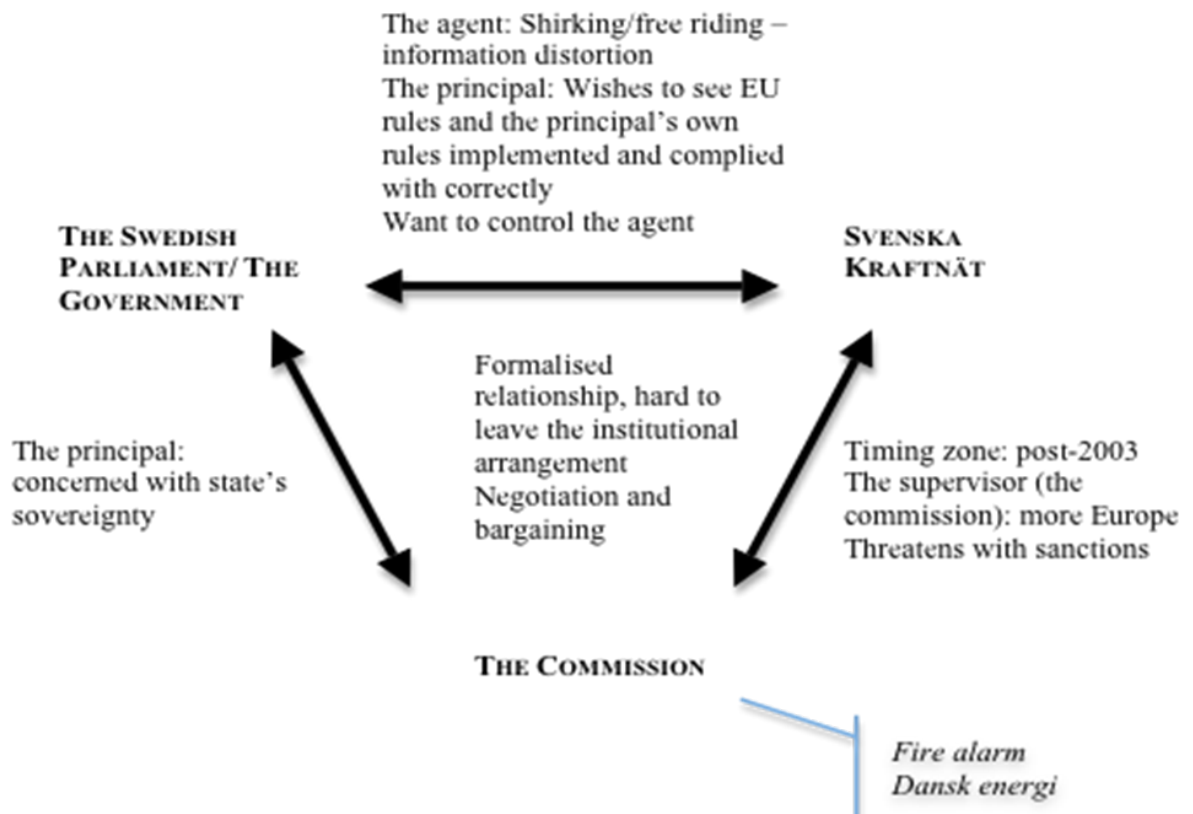


Figure 3. The P-S-A relationship in the case of Swedish interconnectors



## 6.2 Part two: the Case

SvK was accused of using its dominant position on the Swedish electricity market. The article, 102 Treaty of the functioning of the European Union (TFEU) is a part of the antitrust policy and gives the Commission the right to issue fines, cease and break-up monopolies if the antitrust policy is violated (Buonanno & Nugent, 2013: 158). See appendix two for a timeline, which marks the important events of the case.

### 6.2.1 Intentions of article 102 and Regulation No 1228/2003

Article 102 TFEU (former article 82 TEC) reads:

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

The objective of the policy is to create an optimal allocation of resources and protecting consumers (Korah, 2007:470). Nevertheless, EU competition law is vague in how to interpret article 102. One of the main problems is how to recognize different kinds of domination (Korah, 2007:6). The Commission have had a tradition of acting strongly upon export restrictions without hesitation, which has been problematic when not all restrictions are destructive. Furthermore, competition law has traditionally, despite its objectives, focused on the small business owner (Korah, 2007:17, 459). Competition law also create a tension between a states' right to intervene in the economy and the European community's objection to such interventions (Korah 2007:240). The Union itself lack governmental instruments to regulate the national markets, which makes the Union even keener to have an efficient market that allocates resources accurately (Korah, 2007:11).

With the EC regulation No 1228/2003 the European Union launched a platform for greater cooperation on the energy market. The regulation recognizes the differences between member states' electricity markets and called for a greater harmonisation (Regulation No 1228/2003 no. 11). Furthermore the regulation also recognize that market intervention is necessary in some cases and therefore allow them to exist as long as the interventions give the right economic signals (Regulation No 1228/2003 no. 17).

To limit the core grid is not *per se* a violation of EU competition law, and different methods are used to remedy electricity congestions (EC 4.14.2010: 11). In spite of this, the member states cannot restrict the electricity flow on basis of nationality (Ei R2013:8).

## 6.2.2 The fire alarm

It was in July 2006 that Dansk Energi, a commercial and professional interest group of Danish energy companies, put forward a complaint to the Commission. DaE was concerned with SvK's restriction of the transmission of electricity between southern Sweden and Eastern Denmark (EC 14. 4.2010, p. 3). DaE argued that SvK/Sweden limited the transmission capacity in order to keep the same price within Sweden and avoid costs connected to counter-trade (*Ibid.*). Furthermore, these regulations also damaged the competition and had a negative effect on consumers in Eastern Denmark. It was estimated that Sweden's export restrictions cost Danish consumers about 725 MSEK extra in electricity costs (Copenhagen Economics 2006: 5). DaE called for an investigation on possible breach of article 81 and 82 TEC, abuse of dominant position, nowadays article 101 and 102 (EC 14. 4.2010, p. 4). The Norwegian Energy Industry Association (EBL) backed Dansk Energi's complaint (EBL, 2006).

Sweden's transmission export restrictions had stirred up reactions before. At the Nordic Minister council the issue had been on the table in 2003 (RiR 2013:3, 32). SvK also got reported to the Commission in 2003 by another Danish interest organisation but the complaint did not lead to action (Ei R2013:8). Interestingly enough the Öresundslin (the interconnector) has a great capacity and its capacity has never been fully utilized (Svenska Kraftnät 2006:2).

SvK denied an illegitimate abuse of dominant position in a submitted response to the accusations. They argued that the high electricity prices in Eastern Denmark was not a direct consequence of Sweden's transmission restrictions but rather a direct consequence of the actions of Danish companies (Svenska Kraftnät, 2006:1). SvK meant that the restrictions were upheld in order to secure the electricity flow and to avoid overload of the grid system, which was not something specific for Sweden but a common way of dealing with the limitations of the grids across Europe (Svenska Kraftnät 2006:2ff).

Svenska Kraftnät met the accusations on several points. SvK's main argument was that splitting up Sweden into several bidding zones would risk that some areas would suffer from a lack of competition and too little liquidity. Due to Barsebäck's closure the lack of supply was a reality. Controversy enough the Danish parliament even pushed for the closure of Barsebäck. Further on SvK argued that they did not discriminate on the basis of nationality. SvK had offered Energinet.dk to be a financial partner of the grid and thus be able to influence decisions on concerning the grid, but the Danish TSO declined. SvK was also criticised for having an economic agenda, in which they replied that having an economic objective is not incorrect when the objective was based on the instructions handed to SvK by the Swedish government. In conclusion, SvK argued that all proposed adjustments would lead to reduced incentives to invest and expand the Swedish grid. In the end, SvK meant that they acted economically optimal under given circumstances (Svenska Kraftnät 2006).

Both the complaint and the defendant referred several times to the Price areas on the electricity market (POMPE) report (EMIR, 2007:2). Shortly after the complaint was handed in, the POMPE report was released in 2007. The report

does in general agree with the reply from SvK (EMIR, 2007: 7ff). The report stressed that bidding zones, especially in zone SE4 (see appendix 1), would lead to reduced competition and too little liquidity. In agreement with SvK, the report also highlighted that usage of full import and export capacity is not possible (EMIR 2007:32). Furthermore, the authors stated that a completely integrated system, without any transmission congestion, is an economic impossibility (EMIR 2007:64). The grids in the Nordic regions are developed nationally, locally and regionally (EMIR 2007:21, 27, 74). Nevertheless, Denmark has a peculiar situation; it is often an object of export and its own system's integration relies heavily on import from Sweden and Germany (EMIR 2007: 46).

### 6.2.3 The Commission gets involved

It was not until 2009 the Commission opened procedures (Memo/09/191). The Commission decided to open procedures based on the suspicion that Svenska Kraftnät abused its dominant position, article 102 TFEU (previous art. 82 TEC). In addition, the Commission stated that it seemed likely that SvK favoured Swedish consumers. In contrast to SvK, the Commission had reason to believe that the necessity for export restriction instead of bidding zones was debateable (*Ibid.*).

The Swedish government had forestalled the Commission's opening of proceedings with a government decision in 2008 regarding bidding zones in Sweden (Appropriation 2008/09:100). In 2008 the Nordic minister council decided on a pan-Nordic plan to integrate the market further. The Swedish budget proposition 2010 included that plan and requested SvK to start the process dividing the market into bidding zones (Prop. 2009/10:1 chapter 21). The Swedish government also sought a more refined way of tackling the congestion problem in Sweden. The political ambition, across the Nordic borders, was, and somewhat still is, to install a boundless Nordic energy market. However, the government wanted those bidding zones as soon as it seemed possible in respect to the technical investments and advancements on the area (*Ibid.*).

Despite differences in opinion, SvK offered to do a market test in 2009, as well as a voluntary commitment to split up the Swedish market, implementing two or more bidding zones in Sweden (IP/09/1425, OJ C. 239/9 No. 6.10.2009:1). The commitments would become mandatory after the market test assessment, complementary opinions and final decision.

Due to both the case investigation as well as the government's request to initiate the process of several bidding zones, SvK released another investigative report in the late of 2009 (Svenska Kraftnät, 2009:9f). SvK recommended cross-sections in the congestion zones of one, two and four (see appendix 1; Svenska Kraftnät 2009:23). Unlike previous reports produced by SvK, this report did not surprisingly agree with the fear of reduced competition in the fourth bidding zone area, SE4. SvK believed that the price differences that would occur would be of such a small quantity that it should not affect the market greatly (Svenska Kraftnät, 2009:47f). The SE4 would be most sensitive to the changes as a result

of the high level of consumption in the area and the low production (Svenska Kraftnät, 2009:33).

In 2010 the Commission handed in its final assessment and decision (Commission 14.4.2010). The final decision primarily focused on, if the commitments made by the SvK properly addressed the concerns of the primary assessment, which they did (Commission 2010: 24). Henceforth, the Commission did not see any need for further action.

In 2011 the bidding zones within Sweden came into force. The event did not pass unnoticed. When the Swedish energy cabinet minister, Anna-Karin Hatt, defended the government's decision and the actions of SvK, she indicated that the government had little say in the events taking place in years of 2009-2011 (Prot. 2011/12:38, 19§, stat. 113). The minister emphasized that the Commission's addressed the SvK directly, and that the SvK solely addressed these issues (*Ibid.*). Even though the government's ambition correlated with the Commission's, and the rest of the Nordic region, the government did not agree with the SvK's decision to enforce the zones as early as they did, while SvK stated that the 2011-implementation was not optional (*Ibid.*). Besides the previous instructions and the pan-Nordic decision in 2008 the government handed no further instructions to SvK. According to the director general of SvK, the decision of bidding zones was not a concern for the representative institutions since it was an anti-trust case (Bursell, 2012). The director general also stated that SvK only contested the Commission preliminary assessment "for the sake of appearance"<sup>3</sup> (*Ibid.*).

### 6.3 Part three: Information distortion

Information is often pointed out as a key element in political guidance and control (Tallberg, 2003:20f). The information flow between the different actors stand as an important element in how they perceive the different questions and priorities ahead. For example, the parliament has to know how the national grid situation looks like in order to vote the budget through. In this particular situation, there are two different lines of information exchange, the information fluidity between the parliament and government via SvK together with the information stream between the Commission, the parliament and SvK.

According to regulation No 1228/2003 the national governments and agencies are obliged to hand the Commission relevant information (section 19). Due to the changing ways of information exchange in the EU, the Commission especially requires information upon request (Tallberg, 2003:30). That means that the Commission's need for detailed information is limited until the fire alarm goes off.

The Swedish national audit office has pointed out that SvK and the government has been scarce on reporting back on the investments and

---

<sup>3</sup> Free translation

developments of the Swedish grid to the parliament (RiR 2013:29). Surprisingly there are no regulations on how and what the government are supposed to inform the parliament about when a case concerning Swedish institutions is brought to the Commission (RiR 2013: 33).

## 6.4 Summary

The parliament could be seen as isolated both from national institutions as the government and SvK, as well as the Commission due to lack of regulations on how to handle a Swedish institution which faces anti-trust law in the EU. However, the Commission and the Swedish state have in their actions acted in harmony. The Commission has managed to change the case of Swedish interconnectors through supranational influence. A rather high level of compliance can be noted on SvK's behalf. The EU ruled in DaE's favour and suggested two or more bidding zones and SvK invoked four bidding zone (three cuts) on the basis that the zones should be economically stable (RiR2013: 31). The Swedish government had preferred to see the division in a couple of years and the parliament had no say in the issue at all. Finally there is the trend of the government's key role, which questions the analytical framework.

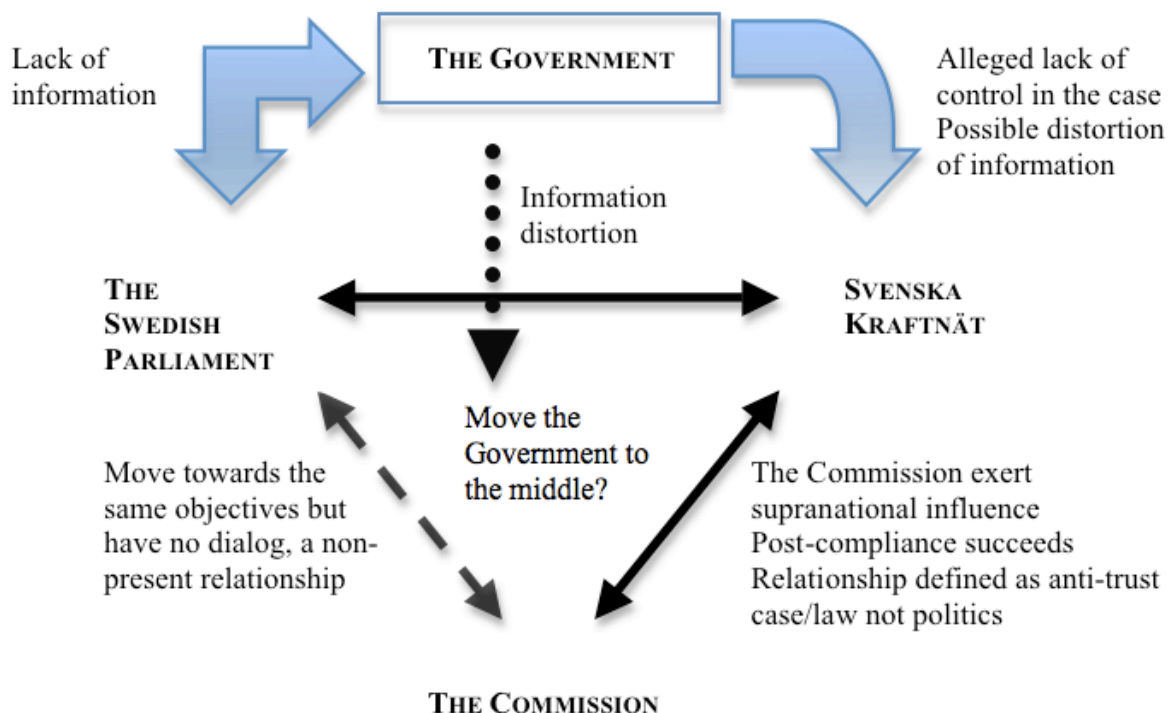


Figure 4. Noted trends in the P-S-A relationship in the case of Swedish interconnectors

# 7 One reality, just another political dream?

## 7.1 Discussion

Today's reality is that the core grid is invested in as a national project but politically both the Nordic region and the EU seek integration. The idea of an endless power grid, which can distribute without hick-ups, is an illusion. The fact is that the core grid cannot handle a complete level of European Integration. Instead, the different actors tend to turn to other institutional arrangements in order to optimize their own ambitions.

Even though the discussion of Sweden's export restrictions has been going on for a while, change did not come until a supranational institution was engaged. Once there, SvK and the Swedish state were quick to comply. Yet, the pronounced views of the involved institutions give the impression that conflict appeared nonetheless. DaE solved a Nordic conflict through engaging a supranational institution.

These institutional conflicts create a suboptimal turnout as the theory suggests. There is the network charge, which is not a tariff. Yet the Swedish consumers cannot choose not to connect to the state-owned grid. Therefore it becomes an indirect tariff nonetheless. In spite of this, the parliament had no say in the bidding zone reform. No democratic decision was taken and that leads us into the second arising political suboptimality. The argument SvK had for not bringing the question to the parliament/government was that this was a case of antitrust law, not a political question. Yet, the Commission view the internal market as well as competition law as a highly politicised area. The perceptions of EU competition law is notably different, SvK view it outside of the political sphere whereas the Commission view this as in midst of the political sphere.

As an agent SvK are supposed to carry out the instructions of the parliament/government but also the Commission's wishes. The line between the principal and supervisor are blurred with a supervisor that has clear ambitions of its own, and a principal, which has not. The tendency to be noted is the lack of objectives from the principal. Rather than talking about different objectives, the principal seem to have a hard time choosing between what to prioritize. This lack of objective could be a sign that supranational influence has replaced the principal's pronounced objectives. Another possibility is that, as a result of the pan-Nordic objective of the government, the will of the Commission can co-exist without causing a clash of institutional objectives. For reasons unknown the SvK chose to rhetorically frame the bidding zone question much more narrow than the Commission did. SvK could have chosen to just implement two bidding zones,

but decided on four. The SvK interpretation of the situation, in the 2009 report, was that a fourth bidding zone was appropriate, in direct conflict with the collaborative POMPE report. The institutional conflicts point at a twisted implementation process where information and knowledge is key in order to manoeuvre the agent institution in preferred direction.

The case process is in itself an indicator that the Commission expect the national institutions to adopt the objectives of the Commission and create monolithic institutions. One could interpret the ambitions of the institutions to be shadowed by the merge with the EU, the national and European balancing act. The evaluations of the situation tend to be of national character, not of consumers across borders. It also highlights the need for defining the boundaries of the optimal outcome, where should we draw the line and whom should we include? A case of Swedish interconnectors is not really of interest for the e.g. Portuguese electricity consumer, but the internal market in itself can be.

The theory's durability can be questioned when one dive into an intensive case study. The key involvement of the government raises the issue on how to define the member states' institutions and preferences. The government holds an important role, which cannot be overlooked or minimized. The government almost precedes the parliament in importance. The government's central role is as an information holder. Rather than including both the parliament and the government in the principal role, a way to further emphasize that key role of the government could be through an addition of an *information and delegation catalyst*. The government's role is possibly better understood that way, because, not only is the government obliged to inform the parliament about SvK but also about the Commission. A tendency is that with this many levels of institutions the government almost becomes a game leader, with large control over information, which occurs at the expense of the parliament.

The high level of integration makes it unlikely for the Nordic energy market to need supranational intervention in order to function as desired. Therefore it makes it unlikely that other parts of the European Union can integrate smoothly. On other areas of the internal market, post-compliance processes highlight the need of supranational institutions to make member states' institutions comply and collaborate.

## 7.2 Conclusion

*How does the interaction between Svenska Kraftnät, the European Commission and the Swedish state affect these institutions' ability in fulfilling the political ambition of an internal market in a post-compliance process?*

The interaction between the different institutions does affect the institutions' ability to fulfil the political ambition of an internal market. Furthermore, the interaction tends to be of conflicting matter even though the ambitions of the

institutions do not necessarily collide. The institutions work dynamically with each other but the risk of distortion is likely. The conflict does not necessarily mean that the political ambition of the internal market is worse-off than before. However, the outcome still remains suboptimal. Information distortion, lack of pronounced common objectives and difficulty in accountability indicate that this is the case. The level of supranational influence appears to make a difference.

So, in this combination there is no given space for non-compliance, the national institutions have to comply. And it is here the distortion of the political optimal is likely to happen. In short, compliance does not equal non-conflict. Instead of going against each other in the open the institutions tend to distort the instructions, information and/or decisions made by another institution.

An import point to make it that SvK did follow the Commission's wishes. However, how they choose to submit it to the Swedish parliament/government was limited in comparison to the adjustments suggested by the Commission. Therefore the final decision alternatives were limited. So even though some might argue that the question of the optimal remains unresolved the distortion of information shows tendencies on institutional disconnection. Moreover, two implementation processes were at work simultaneously, a pan-Nordic objective and a European objective, the Commission and the government ran parallel with each other, but the two political processes do not seem to have recognized each other.

A key is the importance of correct information. The Swedish parliament has no standard operating procedures on how to handle when a Swedish institution is reported to the Commission. Here, SvK and the government were supposed to inform the parliament of ongoing procedures. A better communication channel between the supervisor and the principal could lead to avoidance of information distortion. To have full control over the agent costs a great deal and it is hard to accomplish. However, we do need the national institutions in order to fulfil the internal market, the Commission cannot carry out the task by itself.

With a constitution that states that all official power should originate from the people, the question of the internal market should be ever-present in our political milieu. The supranational influence of the EU has evolved to such an extent that the institutions' perception of how much decision-space they have is non-questioned. At the same time the presence of people's representation is highly limited, which makes it hard to acquire democratic accountability. The question whether Sweden's institutions willingly interact is a non-question. It was just post-2011 the question of bidding zones was raised in the parliament.

The tendencies of the member states' seem to be that they seem to be the sum of their institutions and when these institutions have been installed, the politics takes a step back to make room for adaptation to other institutional frameworks, rather than highlighting the importance of the citizens. The national institutions' existence seem to be protected by the nation-states' demand for sovereignty, while the EU require a change of ambition and wishes to see the nation-state's interest to take an EU wide interest into account. Yet, the official power originates from the nation-state's population. This paradox creates an environment where it is



hard to satisfy both camps. Thus, the institution has to choose which interest is of greatest importance for the institution's survival.

In reality, we cannot really talk about a complete internal electricity market. The ambition would cost a great deal and would require resources beyond the national government. No matter what we want to do, there will be a restriction of the grid. The internal electricity market with fully connected grids remains a political dream nonetheless. If the European vision is to become reality, the politics need to motivate why this is a vision worth paying for.

### 7.3 Future research

A case a research that includes several power dimensions would be of great interest. Here we just have observed the pronounced differences. How the institutions reasoned within would be valuable to know. A study that not only note tendencies but also confirms them would be highly sought after. The question is, can one really modify national institutions to such an extent they comply optimally? Does that mean that post-compliance is really a question about streamlining institutions' ambitions?

In general, more research within the subject of post-compliance needs to be done as well as in the different parts of the internal market. Even though focus has been on decision-making and pre-decisional influence the academia should study the whole process. In some cases that has been the case, especially in controversial regulations as the common agricultural policy and the common fisheries policy. However, these policies do not directly touch upon the subject of the internal market and the political ambition of fulfilling it. Finally research that includes both the political and economic optimal would be of great interest.

## 8 Bibliography

- Bergman, Mats, 2013. "Svensk marknads- och konkurrenspolitik" in Lars Hultkrantz & Hans Tson Söderström (red.) *Marknad & Politik*. Lund: Studentlitteratur AB, (pp. 256-290).
- Bernitz, Ulf & Kjellgren, Mats, 2002. *Europarättens grunder*. Stockholm: Nordstedts Juridik
- Brännlund, Runar, Karimu, Amin & Söderholm, Patrik, 2014:14. *Elmarknaden och elprisets utveckling före och efter avregleringen: ekonometriska analyser*. CERRE working paper, Umeå University.
- Buonanno, Laurie & Neill Nugent, 2013. *Policies and policy processes of the European Union*. Houndsmills: Palgrave Macmillan
- Bursell, Jacob, 2012. "Elreform bröt mot grundlag" (*eng: The electricity reform violated the Swedish constitution*). *Svenska Dagbladet*. News story. 2012-03-14.
- Copenhagen Economics 2006. *The Economic consequences of capacity limitations on the Oresund connection*. Report, 11 December 2006. Copenhagen.
- EBL 2006 = The Norwegian Electricity Industry Association, 2006. *Congestion management – Dansk Energi's complaint regarding Swedish TSO practice*. 27 October 2006.
- EC 4.14.2010 = European Commission Decision, 2010. Commission Decision of 4.14.2010 relating to a proceeding under article 102 of the treaty on the Functioning of the European Union and article 54 of the EEA Agreement". Brussels: European Commission.
- EC 2013/726 (COM) = European Commission, 2013. "Report from the Commission – 30<sup>th</sup> Annual Report on Monitoring the Application of EU law (2012)". Brussels: European Commission.
- EU 1 = The European Union's website. Glossary, subsidiary. [Electronically] Available:  
[http://europa.eu/legislation\\_summaries/glossary/subsidiarity\\_en.htm](http://europa.eu/legislation_summaries/glossary/subsidiarity_en.htm). Retrieved: 2014-01-07.
- Ei R2013. *Evaluation of the electricity area reform – an interim report (original title: Uppföljning av elområdesreformen – en delrapport)*. The Swedish Energy Agency, Ei R2013: 12. Eskilstuna.
- EMIR, 2007. *Price areas on the electricity market (POMPE) (original title: Prisområden på elmarknaden)*. Report from the Energy market inspectorate (Energimarknadsinspektionen), Svenska Kraftnät, Sweden energy (Svensk Energi) and the Confederation of Swedish Enterprise (Svenskt Näringsliv). No 2007:2. Stockholm.

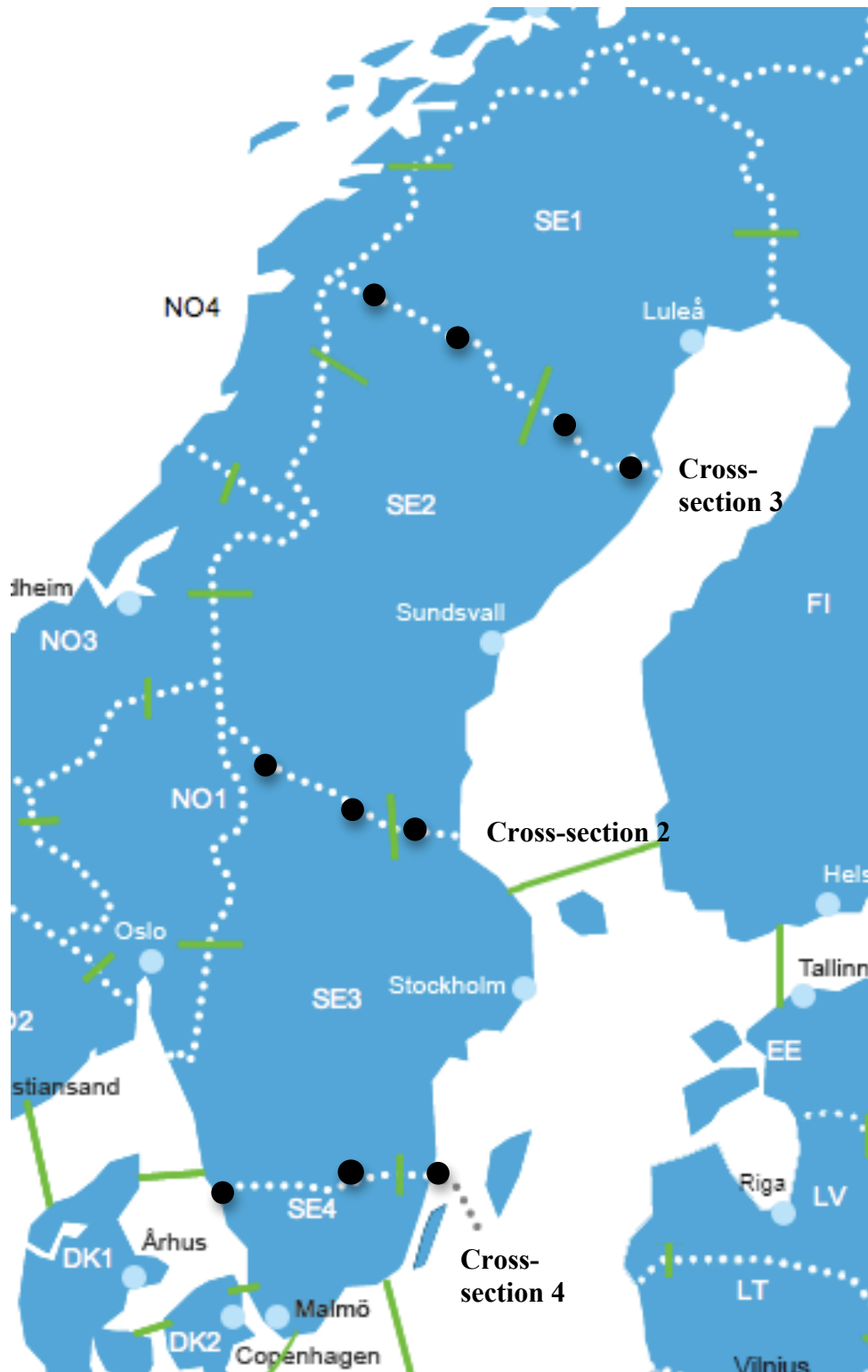
- Esaiasson, Peter, Mikael Gilljam, Henrik Oscarsson & Lena Wängerud, 2007. *Metodpraktikan – Konsten att studera samhälle, individ och marknad*. 3<sup>rd</sup> edition. Stockholm: Nordstedts Juridik
- Hojnik, Janja, 2012. “The EU internal market and national tradition and culture: any room for market decentralisation?” in *Croatian Yearbook of European Law and Policy*, vol. 8, (pp: 117-142).
- Holmberg, Pär & Tangerås, Thomas, 2013. “En gemensam elmarknad stärker EU:s konkurrenskraft” in Antonina Bakardjivea Engelbrekt, Lars Oxelheim & Thomas Persson (ed.) *Ett konkurrenskraftigt EU till rätt pris*. Stockholm: Santérus förlag, (pp. 207-236).
- IP/09/1425. *Antitrust: Commission market tests commitments proposed by Svenska Kraftnät concerning Swedish Electricity transmission market*. European Commission’s memorandum.
- Kerremans, Bart. “Do institutions make a difference? Non-institutionalism, Neo-institutionalism, and the logic of common decision-making in the European Union” in *An International Journal of Policy and Administration*. vol. 9, no. 2, 1996 (pp. 217-240).
- Kessler, Anke S. “On monitoring and collusion in hierarchies” in *Journal of Economic Theory*, vol. 91, issue 2, 2000, (pp. 280–291).
- Kofman, Fred & Jacques Lawarrée, “On the optimality of allowing collusion” in *Journal of Public Economics*, vol. 61 no. 3, 1996 (pp. 383-407).
- Korah, Valentine, 2007. *An introductory guide to EC competition law and practice*. Portland: Hart Publishing
- Knill, Christoph & Dirk Lehmkuhl, 2002. “The national impact of European regulatory policy: Three Europeanization mechanism” in *European Journal of Political research*. Vol. 41, issue 2, (pp. 255-280).
- Lukes, Steven, 2005. *Power: A radical view*, 2<sup>nd</sup> edition. Houndsmill: Palgrave Macmillan.
- Memo/09/191. *Antitrust: Commission opens proceedings against Swedish electricity Transmission System Operator concerning limiting interconnector capacity for electricity export*. European Commission’s memorandum.
- McGowan, Lee. “Theorising European Integration: revisiting neo-functionalism and testing its suitability for explaining the development of EU competition policy?” in *European Integration Online Papers*. Vol 11, no. 3. 2007.
- Nilsson, Måns, 2011. “Changing the decision space: European policy influences on energy policy and systems change in Sweden” in *Public Administration* vol.89, no. 4 (pp. 1509-152).
- OJ C. 239/9 No. 6.10.2009 V (announcement) = Procedure relating to the implementation of the Competition policy, Commission, notice published pursuant to Article 27(4) of Council regulation (EC) No 1/2003 in Case COMP/B-139.351 – Swedish Interconnectors. Brussels: European Commission
- Ostrom, Elinor 1990. *Governing the Commons: The evolution of institutions for collective actions*, Cambridge: Cambridge University Press.

- Powell, Walter W., 2007 (to appear in). "The New institutionalism" in Stewart Clegg & James R. Bailey (ed.), *The International Encyclopaedia of Organization Studies*, Sage Publishers.
- Prop. 2008/09:1. *Budget proposals for 2009 (original title: Budgetpropositionen för 2009)*.
- Prop. 2009/10:1. *Budget proposals for 2010 (original title: Budgetpropositionen för 2010)*.
- Prot. 2011/12:38. The Parliament's protocol 29<sup>th</sup> of November 2011.
- Radetzki, Marian, 2004. *Svensk energipolitik under tre decennier – En studie i politikermislyckanden*. Kristianstad: SNS Förlag
- Regulation No 1228/2003 = Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 of June on the conditions for access to the network for cross-border exchanges in electricity.
- RiR 2013 = The Swedish National Audit Office (Riksrevisionen), 2013. *State electricity market – actions for a functioning electricity transmission (original title: Staten på elmarknaden – insatser för en fungerande elöverföring)*. RiR 2013:3. Stockholm: Statens Intertryckeri.
- Scott, Richard W., 2001. *Institutions and organizations*, 2<sup>nd</sup> edition. Thousand Oaks: Sage Publications
- SFS 1974:152. The Constitution (*original title Regeringsformen*).
- SFS 2007:515. Public Authority Ordinance (*original title Myndighetsförordningen*).
- Shepsle, Kenneth A., 1979 "Institutional arrangements and equilibrium in multidimensional voting models" in *American Journal of Political Science*, Vol. 23, no. 1 (pp. 27-60).
- Skärvad, Per-Hugo & Ulf Lundahl, 2008. *Utredningsmetodik för samhällsvetare och ekonomer*. Malmö: Studentlitteratur.
- Statskontoret, 2012. *Evaluation of re- and deregulation – a survey (original title Utvärdering av om- och avregleringar – en kartläggning)*. 2012:10. Stockholm.
- SvK 1 = the enterprise Svenska Kraftnät's website, Om oss (*eng: About us*) [Electronically] Available: <http://www.svk.se/om-oss/>. Retrieved: 2013-12-17.
- Svenska Kraftnät 2006. *The complaint from Dansk Energi regarding the effects on the Danish electricity market of Svenska Kraftnät's congestion management methods*. Answer to the DaE's complaint, 13<sup>th</sup> of November 2006.
- Svenska Kraftnät, 2009. *Bidding areas on the Swedish electricity market – proposed market division (original title: Anmälningssområden på den svenska elmarknaden – förslag på marknadsindelning)*. Final report from the enterprise Svenska Kraftnät. No 2009/35. Stockholm.
- Tallberg, Jonas, 2000. "Supranational influence in EU enforcement: the ECJ and the principle of state liability" in *Journal of European Public Policy*, Vol. 7, no. 1, (pp: 104-121).
- Tallberg, Jonas, 2003. *European governance and supranational institutions – making states comply*. Abingdon: Routledge.
- The Chamber of Commerce and Industry of Southern Sweden, 2011. *Bottlenecks and evasions – How it came about that the South Swedish entrepreneurs and*

- families pay for the shortcomings of the Swedish power grid (Original title: Flaskhalsar och undanflykter – Hur det kom sig att Sydsvenska företagare och familjer betalar bristerna i det svenska elnätet).* Chamber of Commerce and Industry of Southern Sweden's report no. 2, Malmö: Sweden.
- The EU information 1 = the EU information website. EU:s makt varierar mellan olika politikområden. (*eng: The power of EU varies between different policy areas*) [Electronically] Available: <http://www.eu-upplysningen.se/Om-EU/Om-EUs-lagar-och-beslutsfattande/EUs-makt-varierar-mellan-olika-politikomraden/>. Retrieved: 2013-10-15
- The EU information 2 = the EU information website. Så blev Sverige med i EU. (*eng: How Sweden became a member of EU*) [Electronically] Available: <http://www.eu-upplysningen.se/Sverige-i-EU/Sa-blev-Sverige-med-i-EU/>. Retrieved: 2013-10-15
- The Swedish Parliament 1 = The Swedish Parliament's website, Riksdagens uppgifter (*eng: The Parliament's assignments*) [Electronically] Available: <http://www.riksdagen.se/sv/Sa-funkar-riksdagen/Riksdagens-uppgifter/>. Retrieved: 2103-12-17
- The Swedish Parliament 2 = The Swedish Parliament's website, Arbetar med EU-frågor (*eng: Working with EU-issues*) [Electronically] Available: <http://www.riksdagen.se/sv/Sa-funkar-riksdagen/Riksdagens-uppgifter/Arbetar-med-EU-fragor/>. Retrieved 2013-12-17
- Teorell, Jan & Torsten Svensson, 2007. *Att fråga och att svara*. 1<sup>st</sup> edition. Stockholm: Liber.
- Tucker, Albert W., & H.M Kuhn, 1953. *Contributions to the theory of games* (eds.) Princeton N.J: Princeton University Press
- Yin, Robert K., 2003. *Case study research, design and methods*. 3<sup>rd</sup> edition. Thousand Oaks: Sage Publications.
- Yin, Robert K., 2006. *Fall3studier: design och genomförande*. Stockholm: Liber.

# List of Appendices

## Appendix 1. Cross-Sections and bidding zones in Sweden



Source: Nord Pool Spot

## Appendix 2. Timeline

### CHANGES ORIGINATED FROM THE SWEDISH PARLIAMENT AND GOVERNMENT

**1992:** the enterprise Svenska Kraftnät is founded

**1996:** Deregulation and liberalisation on the electricity market

**2007:** The POMPE report is released

**2008:** The Nordic Minister Council make a plan to integrate the Nordic markets further, that plan includes splitting up Sweden into several bidding zones

**2009:** SvK releases a report suggesting four bidding zones

**2010:** The Commission hands in its final assessment and decision – due to commitments made by SvK no extra action is needed

**2011:** Four bidding zones are implemented in Sweden

### CHANGES ORIGINATED FROM THE EUROPEAN UNION

**2003:** The electricity market with the national grids gets included in the project of the internal market

SvK gets reported to the Commission

**2006:** DaE notifies SvK to the Commission

**2009:** The Commission opens proceedings