

The Government's preparation of its proposal in relation to the sale of six companies

Translation of RiR 2007:8 Regeringens beredning av förslag om försäljning av sex bolag
ISBN 978 91 7086 118 8

Print: Riksdagstryckeriet, Stockholm 2007

To the Government
Ministry of Enterprise, Energy and Communications

Date 25 May 2007
Ref. No.: 33-2006-1400

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The Swedish National Audit Office (SNAO) has examined the Swedish Government's review of arguments for and against participation by the Swedish State in the ownership of the six limited companies which the Government has announced are going to be sold. The results of this examination are presented in this audit report.

The report is submitted to the Government in accordance with Section 9 of the Act on the Audit of Government Activities (SFS 2002:1022). It is submitted at the same time to the Board of Directors of the SNAO. Representatives of the Government Offices have had the opportunity to perform a factual check of a draft version of the audit report.

Auditor General *Lennart Grufberg* has had the right of decision in this matter. Audit Director *Dimitrios Ioannidis* has been in charge of presenting material, and Audit Director *Dan Ljungberg* and Director *Göran Hyltander* have taken part in the final handling of the matter.

Lennart Grufberg

Dimitrios Ioannidis

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Summary

In its Budget Bill for 2007, the Swedish Government announced its intention to carry out a review of all State-owned companies in which the arguments for and against participation by the State in the ownership of these companies would be weighed up against each other. The Government plans to sell companies worth a total of SEK 200 billion during its current term of office. On 14 December 2006, the Government made public its intention to reduce the State's shareholdings in six limited companies: Nordea Bank AB, OMX AB, Sveriges Bostadsfinansieringsaktiebolag SBAB, TeliaSonera AB, Vasakronan AB and V&S Vin & Sprit AB. On 1 March 2007, the Government decided to submit a Government Bill to the Riksdag (Swedish Parliament) relating to the sale of the companies mentioned.

The sale which is being prepared is very important to the public finances and national economy of Sweden in both the short and the long term. International experience shows that the sale of State-owned companies involves a risk that substantial errors may occur in the sale process and that the documentation underpinning decisions may have shortcomings.

The Swedish National Audit Office (SNAO) has examined whether the Government has carried out, for each of the six companies it intends to sell, the review of arguments for and against State ownership which was announced in the Budget Bill for 2007. The SNAO's audit has also aimed to establish whether the Government has prepared Government Bill 2006/07:57 in a satisfactory way as regards this review and whether the preparatory work has been documented.

The SNAO finds that the preparation carried out in relation to this matter does not meet the requirements as to preparation laid down in the Instrument of Government (part of Sweden's Constitution), in part because the Government has failed to obtain comments from government agencies in possession of relevant expertise. The SNAO's audit shows that the Government has failed to carry out, for the six companies in question, a review as announced in the Budget Bill. The Government has given the Riksdag and the general public an unclear picture of the review underpinning the choice to sell these particular six companies.

The SNAO notes that the limited analysis conducted by the Government has not been based on area-specific expertise, such as that which can be found at various government agencies, and that it

has not covered areas of relevance to the respective companies and the markets in which they operate. As a consequence, the SNAO finds that the documentation produced by the Government to underpin the proposal to the Riksdag is not sufficiently comprehensive for assessing whether it would be appropriate to sell the companies.

The shortage of documentation relating to the review carried out by the Government has made it difficult to make an *ex post* examination of the Government's action and of important chains of events in relation to its management of State-owned companies. The SNAO's conclusion is that the documentation carried out at the Ministry of Enterprise, Energy and Communications fails to meet the requirements as to documentation stated by the Committee on the Constitution of the Riksdag.

1 Introduction

1.1 Background

In its Budget Bill for 2007, the Swedish Government announced that the State's shareholdings in companies would be reduced and that its objective was to sell State-owned companies corresponding to a value of SEK 150 billion over the course of three years. According to the Government, the State should remain as a long-term owner only in cases where there are strong reasons in favour of this. In its Budget Bill, the Government also announced its intention to carry out a review of all State-owned companies in which the arguments for and against participation by the State as owner would be weighed up against each other.

During the examination by the Riksdag (Swedish Parliament) of the Budget Bill, its Committee on Industry and Trade expressed support for the relevant working methods described by the Government in its Budget Bill.¹

On 14 December 2006, the Government made public its intention to reduce the State's shareholdings in six companies: Nordea Bank AB, OMX AB, Sveriges Bostadsfinansieringsaktiebolag SBAB, TeliaSonera AB, Vasakronan AB and V&S Vin & Sprit AB. On 1 March 2007, the Government decided to submit a Government Bill² to the Riksdag requesting authorisation to sell SBAB, Vasakronan AB and V&S Vin & Sprit AB as well as requesting changes to the terms of the authorisations already granted to the Government in relation to the other three companies.³

¹ Government Bill 2006/07:1, Expenditure Area 24; Committee Report 2006/07:NU1; Riksdag Written Communication 2006/07:62.

² Government Bill 2006/07:57.

³ Older, valid authorisations for Nordea Bank AB (Government Bill 1991/92:69; Committee Report 1991/92:NU10; Riksdag Written Communication 1991/92:92), for OMX AB (Government Bill 2004/05:1; Committee Report 2004/05:NU1; Riksdag Written Communication 2004/05:117) and for TeliaSonera AB (Committee Report 2000/01:NU11; Riksdag Written Communication 2000/01:272).

1.2 Questions asked in the audit

1.2.1 *The audit is based on two questions:*

1. Has the Government carried out the review of arguments for and against State ownership which was announced in the Budget Bill for 2007? Such a review should have been carried out for the six companies where the Government intends to reduce the State's shareholdings (TeliaSonera AB, OMX AB, Nordea Bank AB, SBAB, Vasakronan AB and V&S Vin & Sprit AB) as well as for the two companies which are presently excluded from being sold (Vattenfall AB and LKAB).
2. Has the Government prepared Government Bill 2006/07:57 in a satisfactory way as regards this review? Has the preparatory work been documented?

1.3 Reasons for the audit

The Swedish National Audit Office (SNAO) examines the operations conducted by, among others, the Government, the Government Offices and the State-owned companies. It is one of the bodies charged with exercising the powers of scrutiny vested in the Riksdag. Its task is to carry out independent audits in order to bring about democratic transparency and help ensure the economic use of resources in public operations and the effective and efficient administration of public affairs.

The sale which is being prepared is very important to the public finances and national economy of Sweden in both the short and the long term. International experience shows that the sale of State-owned companies involves a risk that substantial errors may occur in the sale process and that the documentation underpinning decisions may have shortcomings.

There are several reasons for the SNAO to examine the review carried out by the Government. This review relates to the State ownership of six companies, the total proceeds from the sale of which are estimated to be SEK 200 billion.

In its Budget Bill for 2007, the Government presents arguments for and against State ownership in a number of areas. A review of these areas of analysis which is carried out at an early stage may also identify important factors which influence the likelihood of an effective and efficient sale process. Such factors may be, for instance, the need for market regulation to strengthen competition after a sale or the need for important restrictions on the purely commercial sale of individual companies. An effective and

efficient sale process is a prerequisite for a good outcome, financially and in other respects.

The fact that the SNAO examines the review may be important to bolster the confidence of the general public and the Riksdag in the documentation underpinning the proposal relating to the sale of certain State-owned companies.

1.4 Starting-points and bases for assessment

In its audit, the SNAO starts from the decisions taken by the Riksdag and the Government as well as the guidance relating to the audit of sales of State-owned companies developed by the International Organisation of Supreme Audit Institutions (INTOSAI).

The Budget Bill for 2007

In its Budget Bill for 2007, the Government announced its intention to:⁴

– ‘carry out a review of all State-owned companies where the arguments for and against participation by the State as owner are weighed up against each other’;

and to:

– ‘ensure that the State’s management of the companies it owns is explicit and professional, meeting the demands for transparency and possibility of democratic scrutiny which should be placed on all State operations’.

In the Budget Bill, the Government describes arguments for and against State ownership in a number of areas. The SNAO considers that these arguments can be summed up under six areas of analysis:

- the development of the company;
- the competitive situation;
- employment;
- national interests;
- tasks to provide public goods;
- the State’s double role as owner and as responsible for the design of rules governing the operations of business and industry.

The Riksdag’s examination of the Budget Bill

The Riksdag Committee on Industry and Trade states the following in its report on the Budget Bill:

⁴ Government Bill 2006/07:1, Expenditure Area 24.

‘In its Budget Bill, the Government also announces its intention to carry out a review of all State-owned companies where the arguments for and against participation by the State as owner are weighed up against each other, whereupon the Government intends to come back to the Riksdag with a request for a broad mandate to reduce State shareholdings in companies [...] The performance of this work has the full support of the Committee.’⁵

The Riksdag Committee on Finance states the following in its report on the Budget Bill:

‘As regards the sale of the companies, the Committee is of the opinion that continued State ownership may be justified in cases where there are specific national interests or tasks relating to the provision of public goods which are difficult to manage without State influence over the companies. In most cases, companies operating under full market conditions function better under private ownership. The principal task of the State in the field of economic and industrial policy, as the Committee sees it, is to design good systems of rules and frameworks so as to create conditions enabling companies to develop and grow. The Committee wishes to emphasise that the sales must be carried out in a responsible manner, with due care for taxpayers’ money and in such a way that the competitive or other conditions in the market improve.’⁶

Requirements as to preparation laid down in the Instrument of Government

According to Chapter 7, Section 2, of the Instrument of Government (part of Sweden’s Constitution), the necessary information and opinions shall be obtained from the public authorities concerned in the preparation of Government matters. Organisations and private persons shall be afforded an opportunity to express an opinion as necessary. It is clear from the background material to the Instrument of Government that the *modus operandi* of the Government’s internal work to prepare matters should not be constrained by the Constitution, except as regards the provisions of Chapter 7, Section 2, of the Instrument of Government. It should be possible to carry out such work in the manner which appears to be the most appropriate in the individual case. However, the background material indicates that consultation is an important element of the Government’s work to prepare matters:

‘The fact that opinions from public authorities, organisations and private persons are obtained to a large extent during the work carried out to

⁵ Report 2006/07:NU1.

⁶ Report 2006/07:FiU1.

prepare Government matters is a characteristic and important feature of the Swedish political decision-making process.’

It is therefore, according to the background material to the Constitution, ‘natural to maintain a reference in the Instrument of Government to the system whereby the Government requests opinions as part of its work to prepare matters’.⁷

The Committee on the Constitution of the Riksdag has scrutinised the Government’s preparation of legislative proposals on several occasions, within the framework of its scrutiny of the exercise by ministers of their duties and the handling of Government matters.⁸

The Committee on the Constitution has also had reason to deal with the preparation of Government matters which are not legislative proposals. Such matters have been treated in the Committee’s annual reports relating to investigations conducted following notification by Members of the Riksdag. For instance, the Committee dealt with the Government’s preparation of a decision to relocate a government agency in Report 2005/06:KU20. In explaining its position on the matter, the Committee stated the following:

‘The Committee initially wishes to recall that it has previously stated that it may be a very important element of the preparation of Government matters for interested parties to be afforded the opportunity, at various stages of the preparatory process, to present their opinion as to what the finished final product should contain. In these contexts, moreover, the Committee has emphasised the importance of ensuring that the documentation underpinning decisions is adequate also in the case of Government Bills which do not relate to legislative proposals (Report 2004/05:KU20 p. 127 f.).

These statements were made by the Committee during its scrutiny of the preparation of Government Bill 2004/05:43, “The basic organisation of the Swedish Armed Forces”. It should be noted that the matter which is currently subject to scrutiny by the Committee relates to the preparation of a Government decision which does not involve the submission of a Government Bill to the Riksdag. However, the Committee is of the opinion that the statements presented above, made by it in relation to a previous case of scrutiny, are also applicable to the preparation of such Government decisions.’

In connection with its examination, presented in Report 2004/05:KU20, of the matter referred to, the Committee also states the following in support of its position:

⁷ Government Bill 1973:90, p. 287.

⁸ See, e.g., Report 1999/2000:KU10 and Report 2003/2004:KU10.

‘Preparatory consultation on proposals intended to form the basis of Government Bills may, also in cases where they do not contain legislative proposals, afford the entities consulted an opportunity to take an overview of the consequences of such proposals in various parts of society. It is the opinion of the Committee that the comments thus obtained from public authorities and other entities concerned may constitute an important basis on which both the Government and the Riksdag may decide their positions.’

The provisions of Chapter 7, Section 2, of the Instrument of Government can thus be considered applicable to all matters decided by the Government.

Requirements as to documentation

As regards the management by the Government of State-owned companies, the Committee on the Constitution has repeatedly emphasised the importance of ensuring that the Government exercises direction over State-owned companies in a manner which enables the *ex post* scrutiny of the Government’s action.⁹

Further, the Committee on the Constitution has stressed the importance of ensuring that the documents kept at the Government Offices are organised in a manner which enables the SNAO to form a correct idea of the information available and which does not unnecessarily make it more difficult for the SNAO to carry out audits.¹⁰

The SNAO’s bases of assessment

Certain provisions of the Instrument of Government place certain requirements on the preparation of Government matters. The Government’s decision to submit to the Riksdag Government Bill 2006/07:57 with a request for the initiation of the process relating to the sale of certain State-owned companies closed the preparation of a Government matter. In its Bill, the Government justifies its proposals by reference to its conclusion that the six companies in question operate in markets which are fully commercial and thus characterised by free access and free competition. The proposals and this conclusion relate both to the three companies for which authorisation is required prior to the sale under the State Budget Act (SFS 1996:1059) and to the three companies for which the Riksdag has already granted authorisations.

In its Budget Bill for 2007, the Government announced its intention to carry out a review of all State-owned companies where the arguments for and against a sale would be weighed up against each other, as well as its

⁹ See, e.g., Report 2005/06:KU10.

¹⁰ Report 2004/05:KU20.

intention to come back to the Riksdag with a request for authorisation to sell State-owned companies.

In their examination of the Budget Bill, the Committee on Finance and the Committee on Industry and Trade of the Riksdag supported the reasons for the sale presented by the Government and took the Government's intention to be that the review would be completed before it came back with a request for authorisation.

In its audit, the SNAO uses the following bases for assessment:

- The Government Bill on the sale of certain State-owned companies should be preceded by a review;
- The review should involve the production and weighing up of arguments for and against State ownership for each of the companies to which the Government Bill relates;
- The review should include the six areas of analysis described above;
- The Government's preparation and documentation of the review should meet the requirements laid down by the Instrument of Government and stated by the Committee on the Constitution of the Riksdag.

1.5 Delimitation

The SNAO's audit covers the review of arguments for and against State ownership as announced in the Budget Bill for 2007 as well as the Government's preparation of Government Bill 2006/07:57 as regards that review. The aim of the audit has been to ascertain whether the areas of analysis indicated by the Government in its Budget Bill were covered by the review. However, the audit has not examined the quality of individual elements of the analysis. Further, the type of review covering analyses which should be carried out before the execution of the actual sale is also not included in the audit.

1.6 Implementation

Through a number of meetings with representatives of the Ministry of Enterprise, Energy and Communications, the SNAO obtained oral information about the extent of the review as well as access to some

written documentation relating to the planning of the sale process, etc. These meetings took place between 5 March and 4 May 2007.¹¹

Auditor General Lennart Grufberg sent a written request to the Government on 26 April 2007 to ensure that the SNAO would have access to all documentation and all information of relevance to the review. Following this request, the SNAO heard a presentation by two representatives of the Government, Ministers Maud Olofsson and Mats Odell, at a meeting on 4 May 2007, during which the SNAO was also able to ask questions of the two Ministers.

Further, the SNAO obtained information from the Government's press conference on 14 December 2006, from the interpellation debate of the Riksdag on 10 April 2007 and from the public hearing organised by the Committee on Industry and Trade of the Riksdag on 26 April 2007 in relation to the Government's proposal to sell certain State-owned companies, and the SNAO has also had access to opinions submitted by various government agencies on their own initiative or at the request of the Government Offices.

1.7 The SNAO's access to information

For the conduct of its audits, the SNAO must be granted access to all written and oral information which could shed light on the areas audited. At our meeting with the two Ministers, we were told that the SNAO had been given access to all information underpinning the review announced in the Budget Bill. The meeting with the two Ministers satisfied the SNAO's request for information from the Government.

1.8 Structure of the report

Chapter 2 presents a summary of the proposal submitted by the Government to the Riksdag, the other information provided by the Government to the Riksdag in Government Bills and in the context of interpellations, and the information given by the Government to the media. Chapter 3 presents comments from government agencies which may be of importance to a review and which have been provided on the agencies' own initiative, at the request of ministries or as part of other reporting carried out by the agencies. In Chapter 4, the SNAO presents the observations it has

¹¹ Most of the data collection was conducted through preparatory audit work within the framework of the pre-study initiated by the SNAO on 5 March 2007. Auditor General Lennart Grufberg decided on 26 April 2007 that an audit would be carried out.

made on the basis of presentations given by representatives of the Government and the officials in charge of the relevant matters at the Ministry of Enterprise, Energy and Communications as well as on the basis of statements made by government agencies and tasks given to agencies by the Government. Chapter 5 presents the overall conclusions of the SNAO.

2 The Government's statements in relation to the review

This chapter presents the proposals submitted by the Government to the Riksdag as well as the reasons given and other statements made by the Government in relation to the sale.

2.1 The Budget Bill for 2007

In the fiscal-policy plan included in its Budget Bill for 2007, the Government describes its view that State shareholdings in companies should be reduced. The Government says that the main task of the State in the field of economic and industrial policy is to determine frameworks and rules for the operations of business and industry so as to help create conditions which are propitious to long-term growth. The Government forecasts that the sale will generate a total of SEK 150 billion, evenly distributed across the next three years. The aim of the sale, according to the Government, is to create better conditions for company growth and to contribute to a positive development of employment. The Government stresses that due care must be given to taxpayers' money in the sale of companies and that it is therefore important that the sale should be conducted in a responsible manner.

The Government elaborates on its reasons in the framework of Expenditure Area 24, entitled 'Business and Industry: Economic and Industrial Policy'. The reasons mentioned concern the six areas of analysis described in Section 1.4 above:

- the development of the company;
- the competitive situation;
- employment;
- national interests;
- tasks to provide public goods;
- the State's double role as owner and as responsible for the design of rules governing the operations of business and industry.

The Government is of the opinion that the State should remain as owner of companies only where there are strong reasons for this. It mentions a few problems that may arise if the State both owns companies and regulates the operations of business and industry: competition may be distorted, investment decisions may be sub-optimal and it may be difficult to inject capital into companies which need it to expand (this description refers to

the area of analysis relating to the State's double role as owner and as responsible for the design of rules governing the operations of business and industry).

Further, the Government is of the opinion that, in most cases, the State is not the most suitable owner in terms of the prospects for the companies. According to the Government, privatisation has led to enhanced efficiency, better profitability and increased investment (the development of the company). In addition, the Government considers that privatisation helps strengthen the development of employment in the companies and sectors concerned (employment).

However, the Government believes that there may be companies over which the States needs to maintain influence. There is no reason to sell companies which will develop better under State ownership (the development of the company). Nor should a sale be carried out if market conditions are such that it would reduce competition (the competitive situation) or counteract a positive development of employment (employment). Further, the Government considers that the continuation of State ownership may also be justified in cases involving particular national interests or tasks to provide public goods which could probably not be managed unless the State was able to exercise influence over the companies in question. In this context, the Government finds that Vattenfall AB and LKAB are not suitable to be sold at present.

In its Budget Bill, the Government announces its intention to:

- 'carry out a review of all State-owned companies in which the arguments for and against participation by the State in the ownership of these companies will be weighed up against each other';
- 'review the capital structure of the State-owned companies to achieve an optimal capital structure for them';
- 'come back to the Riksdag with a request for a broad mandate to reduce State shareholdings in companies';
- 'take the measures necessary to ensure that the State's management of the companies it owns is explicit and professional, meeting the demands for transparency and possibility of democratic scrutiny which should be placed on all State operations'.

2.2 The press conference on 14 December 2006

On 14 December 2006, Maud Olofsson, Minister for Enterprise, Energy and Communications and Mats Odell, Minister for Financial Markets, called a press conference on the sale of State companies. The Government had then

decided to start the sale process. At the press conference, the two Ministers presented the Government's intention to reduce shareholdings in Nordea Bank AB, TeliaSonera AB, OMX AB, Vasakronan AB, SBAB and V&S Vin & Sprit AB. These companies, according to the Government, operate in markets which are fully commercial and where competition works well. For the three fully-owned companies, the Government announced its intention to submit proposals to the Riksdag requesting authorisation to sell them. The Government had not yet decided when, how or in what order the companies were to be sold. It was also announced at the press conference that Mats Odell had been given responsibility for the sale process. According to the Government, the analysis relating to the six companies announced on 14 December 2006 had been completed. As regards the other companies, the Ministers stated that it would be announced at a later time, once the relevant analyses had been completed, whether they too would be sold.

2.3 The Government Bill on the sale of certain State-owned companies

On 2 March 2007, the Government submitted Government Bill 2006/07:57, entitled 'Sale of certain State-owned companies', to the Riksdag. The Government stated the following: 'After a first review of the State-owned companies, the Government considers that the sale process should be initiated.' The reduction of State shareholdings was to begin with the six companies already announced. In its Bill, the Government first referred to the presentation it had made in the Budget Bill. The Government also considered that it had not been necessary, during the preparation of the matter, to obtain the opinions of government agencies, organisations or private persons.

The Government Bill contains proposals for the Riksdag to:

- give the Government authorisation to sell all or part of the State's shares in the three fully-owned companies;
- give the Government authorisation to receive, as payment for the sale of shares in the six companies, shares or other types of assets; to sell the assets thus received as payment; and to take any other action required for such transactions;
- approve the deduction of the cost of the sale against the revenue from it.

To justify its proposal for authorisation to sell the fully-owned companies, the Government states that they operate in markets which are fully commercial and thus characterised by free access and free competition, and that, as a consequence, there is no reason for the State to remain their

owner. The general reasons for reducing State shareholdings in companies presented in the Budget Bill are also repeated in this Government Bill to support the proposal. Further, the Government states that it retains its position that Vattenfall AB and LKAB are not suitable to be sold at the present time.

Under another heading of the Government Bill, it is stated that the condition of operating in fully commercial markets applies to all six companies.

According to its Government Bill, the Government will examine various options as regards the conduct of the sale of the companies so as to find the one which is considered to be the overall most businesslike one. The Government Bill also states, as a general explanation of the provisions of the State Budget Act¹², that 'businesslike means that the price should be as advantageous to the State as possible and that no sale should be carried out below market price'.

An annex attached to the Government Bill provides short descriptions of the six companies in terms of operations and key financial ratios.

2.4 The 2007 Spring Fiscal-Policy Bill

In the 2007 Spring Fiscal-Policy Bill¹³, the forecast of revenue from the sale was raised by another SEK 50 billion in 2010; that is, to a total of SEK 200 billion for the 2007–2010 period.

2.5 Interpellations

A number of interpellations have been made in relation to the issue of the sale of State-owned companies.¹⁴ For example, Bosse Ringholm (Social Democratic Party) raised issues relating to impact assessments of State-owned companies.¹⁵ In his interpellation, he asked Maud Olofsson, Minister for Enterprise and Energy, three questions regarding the presentation of assessments of the impact on public finances, competition, consumers and the location of headquarters.

¹² State Budget Act (SFS 1996:1059).

¹³ Government Bill 2006/07:100.

¹⁴ Interpellation 2006/07:81 on the State's shareholdings in Nordea Bank AB and TeliaSonera AB; Interpellation 2006/07:281 on the loss of revenue and influence in the case of a sale; Interpellation 2006/07:422 on impact assessments relating to State-owned companies; Interpellation 2006/07:461 on the role of ministry officials in the sale of State-owned companies; and others.

¹⁵ Interpellation 2006/07:422.

In her answer given in the Riksdag on 10 April 2007, the Minister for Enterprise and Energy stated that the Government had announced, in its Budget Bill, its intention to carry out a review of all State-owned companies in which the arguments for and against participation by the State in the ownership of these companies would be weighed up against each other; and that the Government had submitted to the Riksdag, on 2 March 2007, a Government Bill entitled 'Sale of certain State-owned companies' which shows that the Government considered that the process of selling six of the State-owned companies could be initiated at that time and describes the Government's reasons for its proposal.

In the subsequent debate, the Minister for Enterprise and Energy added that the Government had stated, both in the Government Bill and before the general election, why these six companies were to be sold. The analysis of the six companies for which the sale process had been initiated had been completed, according to the Minister. As regards Vattenfall AB and LKAB, for which the Government had decided against a sale, the analysis had also been completed. For the other companies, reviews would be carried out and findings presented at a later time, according to the Minister.

3 Comments made by government agencies

The SNAO has investigated the existence of opinions and reports from various central-government agencies in which aspects of importance to the review are presented.

The opinions presented by government agencies have been submitted on the agencies' own initiative, in response to the general directions issued by various ministries to the individual agencies in connection with their appropriations, or following a specific request in connection with the sale of the companies in question.

3.1 Opinion given on an agency's own initiative

One example of an opinion submitted by a government agency on its own initiative is the letter sent by the Swedish National Property Board to the Ministry of Finance on 15 February 2007. In its letter, the Board concludes that it does not have a comprehensive picture of the real-estate holdings of Vasakronan AB. However, based on the picture it did have, the Board stated in its letter that there might be reason to consider not permitting a transfer to private ownership of certain parts of these holdings because they are part of Sweden's national cultural heritage. Four premises owned by Vasakronan AB (all located in Stockholm) were claimed by the Board to be part of the national cultural heritage: the Royal Swedish Academy of Music, the Royal Swedish Mint, the former Swedish Board of Customs and the Swedish Patent and Registration Office. The Board also mentioned the Stockholm City Law Courts, for which continued State ownership might be justified, according to the Board, not only for reasons of cultural history *per se* but also for other reasons. Moreover, the Board pointed out that it should be examined whether the premises of the Swedish National Police Academy in Solna should remain under State ownership.

3.2 Opinions given at the request of ministries

Below are a few examples of opinions submitted by government agencies following requests by various ministries.

The Ministry of Defence requested, on 7 March 2007, that the Swedish Armed Forces should account for the consequences for itself and for

Sweden's military defence of the sale of all or part of the State's remaining shareholdings in TeliaSonera AB. Under the terms of the request, the Armed Forces was to pay special attention to a possible situation in which TeliaSonera AB came to be dominated by foreign ownership. The Armed Forces submitted its account on 20 March 2007. It had found that the sale of TeliaSonera AB would have an impact on its security assessments. Parts of TeliaSonera AB's cable network for fixed telephony and broadband are vital from the perspective of secrecy: 'The part concerned is the last section of cable from the public cable network to the parts which are sensitive to the security of the Realm. TeliaSonera AB distributes cable all the way; if its ownership structure changes, a new security assessment must be made.' According to the Armed Forces, there are two main options in case such an assessment were to show that the planned new ownership structure of TeliaSonera AB means that the company no longer meets the applicable security requirements:

- the Armed Forces could take over the operation of the parts which are of vital interest to the security of the Realm; or
- the planned ownership structure could be changed in such a way that it meets the security requirements.

The Ministry of Finance, the Riksbank (Sweden's central bank) and Finansinspektionen (the Swedish financial supervisory authority) meet on a quarterly basis in the Stability Council. At the meeting on 16 March 2007, the Riksbank reported that it did not see any stability-related risks in connection with the sale of the State's shareholdings in Nordea Bank AB and SBAB, regardless of whether the buyer would be domestic or foreign. Finansinspektionen shared the view of the Riksbank regarding this issue.

3.3 Opinions given in connection with other reporting

Below are a few examples of reporting not specifically occasioned by the Government's announcement of its need for documentation to underpin its review.

The Swedish Competition Authority noted, in its report entitled 'Competition in Sweden 2006' which was published in December 2006, that special consideration should be given to the interests of consumers in connection with the sale of State-owned companies. The Authority refers specifically to the field of electronic communications and the dominant position occupied by TeliaSonera AB by reason of its ownership of the core network and the last-mile (or access) network. Separating the core and last-mile networks before the State's shareholding is reduced should be

considered, because it may be more difficult to bring about such a separation in a fully privately-owned company. As regards banking services, the Authority notes in its report that the four major banks account for 70–80 per cent of the market, which is a high degree of market concentration by international comparison.

The Swedish National Post and Telecom Agency published a report entitled 'Proposal for Swedish broadband strategy' on 15 February 2007. In its report, the Agency notes that there are at present obstacles which make it impossible or at least considerably more difficult to continue the roll-out of broadband networks. According to the Agency, the last-mile network – which is owned by TeliaSonera AB – is the key to stronger competition in the broadband sector. To improve the likelihood of effective competition and reduce the risk of distortion of competition, the Agency thinks there is a need for an effective model ensuring the equal treatment of operators as regards access to the last-mile network. Such a model would have to include some form of separation between TeliaSonera AB and the last-mile network which the company has been controlling since the time when it enjoyed a monopoly. According to the Agency, such a change would improve the ability of market players to make effective investments and to innovate. The Agency thinks that the State, in its role as a major owner of TeliaSonera AB, should strive to ensure that the company implements, by its own accord, a functional separation which guarantees the equal treatment of operators. In another report entitled 'Barrier to the establishment of broadband', which was published on 28 February 2007, the Agency further finds that the major problems encountered by operators wishing to have access to TeliaSonera AB's network prevent effective competition in the broadband market. At the level of end users, this translates into difficulties for, among others, those wishing to change operators or move their subscription to another address.

3.4 Tasks given to agencies by the Government

On 19 April 2007, the Government decided that the Swedish National Post and Telecom Agency should present, by mid-June 2007, a proposal for a new law relating to the vertical separation of telecom operators' last-mile networks – that is, the breaking-off of the network part of TeliaSonera AB. In its decision, the Government states that its aim in the field of electronic communications is to replace regulation which is sector-specific and intended to promote competition with regulation of a general kind. In order for general competitive law only to be applied in this field, with no need for special rules, effective action must be taken to ensure non-discrimination and transparency as regards conditions of access to the last-mile network.

The Government states that the task given to the Agency should be seen as part of the Government's work to simplify regulation. In its decision, the Government refers to the proposed broadband strategy submitted by the Agency to the Government on 15 February 2007.

The Government also decided on 26 April 2007 to refer proposals relating to measures intended to make the Electronic Communications Act more effective to the Council on Legislation (a body which issues opinions on important legislative proposals). A Government Bill will be submitted to the Riksdag in May 2007. The aim of the proposals is to achieve shorter turnaround times and a more efficient process in general administrative courts for cases falling under the Electronic Communications Act.¹⁶

¹⁶ Electronic Communications Act (SFS 2003:389).

4 Observations of the SNAO

The following account of the observations made by the SNAO is divided into four parts. The first part covers observations made during the collection of data at the Division for State-Owned Enterprises and the Legal Secretariat of the Ministry of Enterprise, Energy and Communications. The second part covers observations relating to the statements made by government agencies and the tasks given by ministries to agencies which are relevant to our audit. The third part covers observations made in relation to the description provided to us by Government representatives as to how the matter of the sale of State-owned companies has been prepared. The fourth part covers information relating to documentation intended to underpin decisions dating from the time before the present Government took office.

4.1 **Presentation made by the officials in charge at the Ministry of Enterprise, Energy and Communications**

The SNAO has been given access to the working materials developed by the Ministry of Enterprise, Energy and Communications in relation to the companies concerned and to the planning and implementation of the initial sale process.

On 19 October 2006, the Ministry produced a working material relating to individual companies and focusing on the need for action to be taken in connection with their sale, on methods for selling them and on the timing of the sale transactions. This documentation also includes short sections entitled 'Arguments for and against a sale'. These sections contain only brief comments on individual arguments.

For each of the companies managed by the Ministry, there are company presentations based on information from their day-to-day management. At the time, these company presentations did not deal with any specific issues relating to the financial or other effects of these companies' operations on society and on the markets in which they operate. In some cases, the material includes considerations which are relevant to the issue of the sale, in terms of the consequences for the development of the company concerned.

On 30 November, the Ministry produced another working material describing plans relating to issues of organisation and distribution of responsibility within the Government Offices for the review of all companies announced by the Government in the Budget Bill for 2007 as well as for the sale of State-owned companies. The planning carried out for the review was

to result in the submission of a Government Bill to the Riksdag requesting that the Government should be given a broad mandate to reduce shareholdings in State-owned companies.

In the working material dated 30 November 2006 to which the SNAO has had access, the Ministry finds that TeliaSonera AB, Nordea Bank AB and OMX AB should be ready for sale following a fairly quick analysis. To these companies could be added another three companies which also should be ready to be sold following a fairly quick analysis, namely SBAB, Vasakronan AB and V&S Vin & Sprit AB.

The Ministry officials told the SNAO that between 30 November and 14 December 2006, the Government continued its review of the six companies, weighing up arguments for and against continued participation by the State in their ownership. The SNAO requested access to documentation relating to this discussion and analysis, and was informed that no such documentation existed. According to the information provided by the Ministry, the continued review led to the Government's announcement, at a press conference on 14 December 2006, that it intended to reduce shareholdings in the six companies.

On 2 March 2007, the Government submitted Government Bill 2006/07:57 entitled '*Sale of certain State-owned companies*' to the Riksdag. According to the Ministry, the preparatory work carried out before the drafting of the Government Bill did not cause the Government to change its assessment presented on 14 December 2006.

The SNAO requested relevant information and documentation relating to this preparatory work from the Ministry officials. The SNAO was told that the work had been carried out at the political level, including in the form of conversations between ministers. As a consequence, according to the officials, any written material from this work which had been kept would give an incomplete picture of the work carried out.¹⁷

In this context, it can be noted that the Government states, in Government Bill 2006/07:57, that it has not considered it necessary, during the preparation of the matter, to obtain the opinions of government agencies, organisations or private persons.

¹⁷ Auditor General Lennart Grufberg sent a written request to the Government on 26 April 2007 to ensure that the SNAO would have access to all documentation and information relevant to the review.

4.2 Opinions given by government agencies and tasks given by ministries to agencies

Even though the Government stated in Government Bill 2006/07:57 that there was no need to obtain comments from government agencies, some information of importance to the review has been submitted, as is clear from Chapter 3 above. The examples show the following:

The government agencies and the Government have identified relevant issues within three of the six areas where there may, according to the statement made by the Government in the Budget Bill for 2007, be arguments for and against State ownership. The Swedish National Property Board and the Swedish Armed Forces have identified aspects of relevance to national interests. The Swedish Competition Authority and the Swedish National Post and Telecom Agency have identified aspects of relevance to the competitive situation and to the State's double role as owner and as responsible for the design of rules governing the operations of business and industry.

In three cases, government agencies had made comments of relevance to the issue of the review before the Government submitted the Government Bill on the sale of certain State-owned companies¹⁸: The Swedish National Property Board sent its letter to the Ministry of Finance on its own initiative. The Swedish Competition Authority and the Swedish National Post and Telecom Agency published reports by virtue of general tasks laid down in their respective instructions.

The report of the Swedish Armed Forces, which had been produced at the request of the Ministry of Defence, was presented after the Government had submitted its Bill.

The Swedish Competition Authority, the Riksbank, Finansinspektionen, the Swedish National Post and Telecom Agency, the Swedish Consumer Agency and the Swedish Institute for Growth Policy Studies all state, following inquiries made by the SNAO, that they were not requested to comment on the preparatory work on Government Bill 2006/07:57 and did not provide any documentation for the preparatory work.

As is clear from Chapter 3, the Government decided on 19 April 2007 to entrust the Swedish National Post and Telecom Agency with the task of investigating the possibility of legislating on the vertical separation of telecom operators which have a dominant position in the field of last-mile networks, and of drawing up a proposal for such legislation. On 26 April 2007, the Government also decided to request an opinion from the Council on Legislation regarding proposals relating to measures intended to make the Electronic Communications Act more effective.

¹⁸ Government Bill 2006/07:57.

The background to these two initiatives is to be found in the large number of protracted legal processes between TeliaSonera AB and its competitors, which are also its wholesale customers, and in the public debate on these disputes and the problems connected with them. As is clear from Chapter 3, both the Swedish National Post and Telecom Agency and the Swedish Competition Authority have found that the problems caused by the numerous and protracted disputes have a detrimental effect on the willingness to invest in the telecom and IT markets.

The task given to the Swedish National Post and Telecom Agency shows that the Government considers there to be a need to ensure a satisfactory level of competition in the telecom and IT markets. These initiatives were taken one and a half month after the Government's submission of Government Bill 2006/07:57 to the Riksdag.

4.3 Presentation made by Government representatives

The two Ministers Maud Olofsson and Mats Odell have described to the SNAO how the Government prepared the matter of the review of State-owned companies.

When the Government took office, there was little time to draw up a Budget Bill which could be submitted in time under the provisions of the Riksdag Act (SFS 1974:153). It was considered at this early stage that it might be mentioned already in the Budget Bill which companies were suitable to be sold. However, this was not done. The wording of the Budget Bill was misleading in one respect, according to the Ministers: the review announced did not refer to the companies which had been mentioned before the general election as potential subjects of sale by the four parties represented in the present Government, but only to the other State-owned companies. For the companies already mentioned, a check was to be made that conditions had not changed since the four parties made their analysis before the election.

For the analysis of the seven companies, which were later reduced to six, the Government representatives referred to work carried out before the election. The analysis made can be found, according to the Government representatives, in the documentation published ahead of the election by the Alliance for Sweden (that is, the four parties represented in the present Government) and in Private Member's Motions submitted by these parties before the election – especially in the joint multi-party Private Member's

Motion¹⁹ submitted following the then Government's Spring Fiscal-Policy Bill for 2006.²⁰ For this reason, this material is briefly described below.

4.4 Information on documentation dating from before the present Government took office

At the SNAO's meeting with Government representatives, the Ministers referred to documents published before the 2006 general election, when the present Government parties were in opposition. These documents are not amenable to audit by the SNAO. However, the SNAO has been given access to them.

In the above-mentioned multi-party Private Member's Motion, one section – 9.14 'Privatisations' – describes the views of the authors of the Private Member's Motion on the State as owner of companies. In part, the description is identical to the one included in the Budget Bill for 2007. However, the authors also present certain reasons for selling which are not described in the same way in the Budget Bill:

- Privatisation can bolster creativity and competition, which may contribute to rapid employment growth. In recent years, deregulation and privatisation in the telecom, media and financial sectors have helped to create a better entrepreneurial climate;
- LKAB should not be sold because the future mining of ore may affect the town of Kiruna in a way which may lead to a need for considerable investments by society, requiring the owner to assume responsibility; and because the ore is a key natural resource which should be exploited for national Swedish interests;
- Vattenfall AB should retain the State as its principal owner during the next term of office as well, because it is a dominant player in a market which does not work well in certain respects and because it should be able to continue playing a part in the energy market and in energy policy.

In February 2006, the Alliance for Sweden published a report entitled "Rivstart för Sverige" ('A Flying Start for Sweden') which was the outcome of the work carried out by the Alliance working group "Tillväxtregion Sverige" ('Growth Region Sweden'). Chapter 8 of the report describes 'A new policy for State ownership'. The proposals presented include the following: a review should be made of all companies, with the same focus as that later stated in the Budget Bill; the Riksdag should give the Government a broad mandate to

¹⁹ Private Member's Motion 2005/06:Fi12.

²⁰ Government Bill 2005/06:100.

sell the companies which an analysis would find suitable for a sale; the revenue from the sale should be used to pay off the national debt; and transparency and accountability should improve. The chapter describes general reasons for reducing State shareholdings, to some extent similar to those later presented in the multi-party Private Member's Motion and in the Budget Bill for 2007. In this chapter, Alliance for Sweden announces its intention to 'carry out a methodical review of the entire portfolio of State-owned companies and to identify and list, for each company, the reasons which were once invoked for State ownership and the reasons which are still valid'. The seven companies later mentioned in the multi-party Private Member's Motion are referred to as 'examples of such companies' – that is, of companies for which there are no valid reasons for continued State ownership because they operate in fully commercial markets.

5 Overall conclusions of the SNAO

The Government announced in its Budget Bill that a review was to be carried out for each of the State-owned companies where arguments for and against a sale would be produced and weighed up against each other. A number of areas of analysis have been described, within which the Government conducts a general discussion in its Budget Bill to the effect that there may be arguments for and against State ownership. These areas of analysis, in brief, are the following: the development of the company, the competitive situation, employment, national interests, tasks to provide public goods, and the State's double role as owner and as responsible for the design of rules governing the operations of business and industry.

At the press conference on 14 December 2006, when Government representatives stated that the Government had decided to sell the six named companies, it was stated that the analysis of these six companies had been completed.

In Government Bill 2006/07:57 requesting authorisation to sell six companies, the Government initially states that a first review of the State-owned companies has been conducted and that it considers that a sale process should be initiated.

In her answer in the Riksdag on 10 April 2007 to an interpellation, the Minister for Enterprise, Energy and Communications stated that the Government had informed the Riksdag in its Budget Bill that it intended to carry out a review. In the subsequent debate, the Minister added that the Government had presented reasons for the sale of these six companies both in its Government Bill submitted on 2 March 2007 and before the general election. The analysis of the six companies for which the sale process had been initiated had been completed, according to the Minister. In addition, the analyses relating to Vattenfall AB and LKAB had also been completed, but the Government does not at present intend to sell these two companies.

5.1 The Government has failed to carry out a review

In the Government Bill relating to the sale of certain State-owned companies, the Government states that it has not been necessary, during the preparation of the matter, to obtain the opinions of government agencies, organisations or private persons. The Government has not presented any justification for this assessment. The SNAO considers that the content of the Government Bill is of such importance that there is no justification for not obtaining such opinions. The time from the submission

of the Budget Bill in October 2006 to the decision on 1 March 2007 on the Government Bill 2006/07:57 should have been sufficient for such opinions to be obtained.

The audit conducted by the SNAO shows that there is no information to show that a review as announced in the Budget Bill has been carried out or presented to the political level of Government.

The two Ministers confirm that the Government has not carried out the review announced relating to the six companies in which the Government intends to reduce State shareholdings.

The Government representatives state to the SNAO that the Government did not intend to carry out a review of the six companies in question and that the wording of the Budget Bill came to be misleading. By way of explanation, reference is made to the very short time available between the Government's coming into office and the decision relating to the Budget Bill for 2007.

The Government representatives refer to the fact that the review was carried out before the 2006 general election in analyses conducted by working groups consisting of representatives of the four parties now in power. The findings from these analyses were presented in a document common to the four parties before the 2006 election and in a multi-party Private Member's Motion.

The SNAO has had access to the four parties' common document and to the four party motion referred to by the Government representatives. The document and the motion do not present any analyses corresponding to a review of each of the six companies at the level of ambition announced in the Budget Bill.

The opinion of the SNAO is that the preparation of the matter does not meet the requirements as to preparatory work laid down in the Instrument of Government, in part because the Government has failed to obtain comments from government agencies in possession of relevant expertise. The SNAO's audit shows that the Government has failed to carry out, for the six companies in question, a review as announced in the Budget Bill. The Government has given the Riksdag and the general public an unclear picture of the character of the review underpinning the choice to sell these particular six companies.

5.2 The preparation has been inadequate

Government agencies and ministries have identified relevant issues within three of the six areas where there may, according to the statement made by the Government in the Budget Bill for 2007, be arguments for and against State ownership. The Swedish National Property Board and the Swedish

Armed Forces have identified aspects of relevance to national interests. The Swedish Competition Authority and the Swedish National Post and Telecom Agency have identified aspects of relevance to the competitive situation and the State's double role as owner and as responsible for the design of rules governing the operations of business and industry. In one of these cases – that of the Swedish Armed Forces – the reporting took place after the Government submitted Government Bill 2006/07:57 on the initiation of the process for the sale of six companies. In the other cases, the reporting took place before the Government's submission of that Bill, on the agencies' own initiative or for a reason other than the need for documentation to underpin the review announced by the Government. This is true of the Swedish National Property Board, the Swedish Competition Authority and the Swedish National Post and Telecom Agency. The Ministry of Defence and the Ministry of Finance are the ministries which, in relation to the intended sale, have requested comments from government agencies in possession of relevant expertise. In both cases, such requests were made after the submission of Government Bill 2006/07:57.

The task given by the Government to the Swedish National Post and Telecom Agency relating to the presentation of a proposal for a new law on the vertical separation of the last-mile networks of telecom operators shows that there is a need to conduct further investigations and take further measures in relation to the conditions of competition.

The SNAO notes that the limited analysis carried out by the Government has not been based on knowledge from bodies such as government agencies, and that it has not covered areas of relevance to the respective companies and the markets in which they operate. As a consequence, the SNAO finds that the documentation produced by the Government to underpin the proposal to the Riksdag is not sufficiently comprehensive for assessing whether it would be appropriate to sell the companies.

5.3 Shortage of documentation

The Committee on the Constitution of the Riksdag has stressed the importance of ensuring that the documents kept at the Government Offices are organised in a manner which enables the SNAO to form a correct idea of the information available and which does not unnecessarily make it more difficult for the SNAO to carry out audits. The Committee has also emphasised the importance of ensuring that the Government exercises direction over State-owned companies in a manner which enables the *ex post* scrutiny of the Government's action.

The shortage of documentation relating to the review carried out by the Government has made it difficult to make an *ex post* audit of the Government's action and of important chains of events in relation to its management of State-owned companies. In the SNAO's opinion, the shortage of documentation relating to the review in question also risks making the basis of the Government's and the Riksdag's decisions less solid. Moreover, the shortage of documentation has contributed to delaying the SNAO's audit.

The SNAO's conclusion is that the documentation at the Ministry of Enterprise, Energy and Communications fails to meet the requirements as to documentation stated by the Committee on the Constitution of the Riksdag.