

**IMPORTANT NOTICE: This version is a translation of the original Swedish decision and is only made available for information purposes.**

**NASDAQ STOCKHOLM'S  
DISCIPLINARY COMMITTEE**

**DECISION  
2017-05**

July 7, 2017

Nasdaq Stockholm

CybAero AB

### **Decision**

The Disciplinary Committee orders CybAero AB to pay a fine to Nasdaq Stockholm corresponding to annual fees for three years.

### **Motion**

The shares in CybAero AB (publ) ("CybAero" or the "Company") are admitted on the Nasdaq First North multilateral trading facility of Nasdaq Stockholm AB (the "Exchange"). The Company has signed an undertaking to comply with the Exchange's rulebook for Nasdaq First North as applicable from time to time (the "Rulebook").

A hearing in the matter was held before the Disciplinary Committee on June 21, 2017, at which the Exchange was represented by Karin Ydén (Head of Issuer Surveillance), Andreas Blomquist (Senior Legal Counsel) and Niklas Ramstedt (Legal Counsel). CybAero was represented by Rolf Schytt, CEO, Mikael Smith, CFO, Andreas Nyander, COO, and Daniel Fröberg, head of IT.

The Exchange has argued that CybAero violated item 4.2 (a) of the Rulebook applicable prior to July 3, 2016 by providing confusing and misleading information in a press release on January 17, 2014 regarding the order from the Chinese Customs Authority and also violated item 4.2 (g) of the Rulebook by failing to disclose changes compared with the information previously disclosed regarding the same order and delivery pursuant to the order, as soon as possible after the occurrence of such changes. The Exchange has also argued that CybAero violated item 4.1 of the Exchange's rulebook for Nasdaq First North applicable as from July 3, 2016 (the "July Rulebook") by including inside information in a prospectus without simultaneously disclosing the inside information in a non-discriminatory manner through a press release.

The Exchange has further argued that CybAero violated item 4.2 (a) of the Rulebook by providing confusing and misleading information regarding the guarantee order from AVIC, in a press release on July 2, 2014 and in the following disclosure of information, and also violated item 4.2 (g) of the Rulebook by failing to disclose, as soon as possible, changes to previously disclosed information regarding the same guarantee order. The Exchange has also argued that CybAero violated item 4.1 of the July Rulebook by failing to disclose, as soon as possible, information regarding the refusal by the Inspectorate of Strategic Products (ISP) to grant a permit for the export of demonstration systems to AVIC and by failing to include, in a press release on February 20, 2017 regarding the decision from ISP, a reference to the fact that the communicated information constituted inside information.

The Exchange has also argued that, in light of the violations and the protracted period during which they took place, CybAero has failed to fulfill the requirement in item 2.2.4 of the Rulebook and item 2.2.4 of the July Rulebook to possess the organization and staff required in order to comply with the requirements regarding disclosure of information.

With reference to item 7.3 of the Rulebook and Supplement B thereto, the Exchange has moved that the Disciplinary Committee adjudicate the stated violations and impose a reasonable sanction.

CybAero has stipulated to the facts invoked by the Exchange.

## **The Disciplinary Committee's assessment**

### Background

#### *The order from the Chinese Customs Authority*

**The Exchange** has, in summary, stated: The press release of January 17, 2014 described the order from the Chinese Customs Authority as the Company's largest order to date but failed to state that the order was subject to various conditions, such as factory tests and that the customer had substantial leeway to adjust the specifications for the products. This came to light in the subsequent press releases on February 25, 2014, March 20, 2014, February 2, 2015, March 31, 2015, June 3, 2015, December 30, 2015, May 4, 2016, May 11, 2016, June 27, 2016, November 29, 2016 and January 24, 2017, in which CybAero disclosed delays regarding factory tests, deliveries of components, and so forth. In addition, in a prospectus which was published on October 17, 2016, the Company stated that the three systems which were included in the Chinese Customs Authority's order had finally been delivered, notwithstanding that this was not the case. This information, which also was *per se* erroneous, had not been disclosed in a non-discriminatory manner through a press release.

**CybAero** has stated: At the time of execution of the agreement, the conditions which the Exchange alleges were absent from the January 17, 2014 press release would have been difficult to state in anything other than general terms. CybAero has informed the market, on repeated occasions, regarding the risks which are associated with the business conducted by the Company. A number of specifications regarding the three systems which were to be delivered were not fully developed. The protracted time span from order to delivery was challenging. In hindsight, the agreement was favourable to the buyer.

#### *The guarantee order from AVIC*

**The Exchange** has stated: A press release on June 2, 2014, which had a significant positive effect on the price of the Company's shares, stated that CybAero had received a guarantee order valued at between SEK 700 million and SEK 800 million from a company belonging to the Chinese corporate group AVIC. The order was linked to a framework agreement in which AVIC had undertaken to purchase at least 20 systems during the first three years, followed by at least 50 systems during the following five years. According to the press release, the guarantee order was conditional on the ISP granting an export permit but no additional significant conditions were stated.

**CybAero** has stated: AVIC's initial thought was to purchase systems in stock and then sell them on. One condition for obtaining an export permit is that the end customer and the end user be identified and that they can be approved by the ISP. CybAero's application for an export permit was denied due to the failure to identify an end customer. In addition, a permit could be obtained for no more than two years, and not for the contemplated eight years. The guarantee agreement with AVIC has now been terminated, which was disclosed in a press release on May 12, 2017.

### *Application denial from the ISP*

**The Exchange** has stated: On February 20, 2017, CybAero published a press release with information that the ISP had denied an application for export of a system for demonstration flights in China directed to the Administration of Fishery and Fishing Supervision. According to the press release, the recipient was AVIC but it did not state whether the system was part of the guarantee order from AVIC.

The press release of February 20, 2017 did not contain any reference to the fact that the information was such that the Company was obligated to disclose pursuant to the EU Market Abuse Regulation ("MAR"). However, the press release had a significant negative effect on the price of the Company's shares.

In light of the fact that the February 20, 2017 press release lacked any reference to MAR notwithstanding the significant downward price effect, on February 21, 2017 the Exchange contacted the Company's Certified Adviser and asked the Company to explain whether it regarded the ISP's decision as inside information and when the Company learned of the decision. The Exchange also requested CybAero – in the event CybAero regarded the decision as constituting inside information – to explain whether the disclosure of information had been handled within the scope of a delayed disclosure pursuant to MAR. The information regarding the ISP's decision constituted inside information with reference to the significant negative effect on the price of the Company's shares following the press release and the fact that the decision must be seen in the light of the, at that time, substantial uncertainty regarding the Company's possibilities to actually deliver disclosed orders to Chinese customers and to receive payments for the same. By first disclosing the information regarding the decision on February 20, 2017, i.e. almost two weeks after the Company learned by email that the decision was available and one week after the Company reviewed the decision, CybAero violated item 4.1 of the July Rulebook. The Company also violated the same item of the July Rulebook by failing, in the February 20, 2017 press release, to make reference to the fact that the communicated information constituted inside information.

**CybAero** has stated: Decisions from ISP are, for the most part, public documents but they are normally severely redacted in respect of information regarding the sought export permit. The February 20, 2017 press release referred to a demonstration system to AVIC and a potential end customer, which would be delivered to China and subsequently returned to Sweden. The ISP's denial of the application came as a surprise to the Company, since the Company already held an export permit for a demonstration system for the Chinese market and the decision in question would not affect the Company's plans. The Company's understanding was that this was just another ISP decision and no extraordinary measure was taken. When the ISP contacted the Company on

February 17, 2017 and stated that ISP had received a large number of enquiries from the market regarding the decision and wondered whether the Company would inform the market of the decision, the Company decided to issue a press release in order to forestall speculations in the media and among the shareholders. Since the reasons behind the ISP's decision is classified as confidential, the press release was worded as instructed by the ISP, where it is stated that the decision pertains to a specific end user and not AVIC as a company. The decision was not such a specific and significant event as to constitute inside information.

### *Capacity for disclosure of information*

**The Exchange** has stated: In light of the violations and their protracted duration, CybAero cannot be deemed to have satisfied the requirement in item 2.2.4 of the Rulebook and item 2.2.4 of the July Rulebook. Both the order from the Chinese Customs Authority and the order from AVIC were significant to the assessment of the value of CybAero's shares. In the Company's communication with the market, both of these orders were characterized as breakthrough orders. As early as in 2013, the Exchange's Disciplinary Committee concluded that CybAero had violated the provisions of the Rulebook regarding disclosure obligations.

**CybAero** has stated: Since 2014, many individuals on the Board of Directors and in company management have been replaced and there is a great difference between the Company today and the Company previously. The Company's growth has been rapid and communication has suffered. The uncertainty of the Chinese market has affected the disclosure of information and minor issues have become price sensitive. There have been significant shortcomings. The Company has strengthened its organizational ability in respect of market information. The communication process has been specifically addressed and the Company has retained a new communication manager. A new investor relations manager has been employed. In the past, external consultants have been retained in respect of investor relations. The procedures regarding the relationship to the ISP have also been improved and the Company is actively working on quality control issues in accordance with the ISO regulatory framework.

## **Considerations**

Item 2.2.4 of the Rulebook requires, among other things, that the Company possess the organization and staff required in order to comply with the requirements regarding disclosure of information. Item 4.1 (a) provides that the Company must as soon as possible publish any decisions taken by it as well as any facts and circumstances pertaining to the Company that are likely to have a significant effect on the price of its financial instruments.

Item 4.2 (a) prescribes [...] that the information must be correct, relevant, and reliable, and must not omit any fact which is likely to affect the assessment of such information.

Item 4.2 (g) states that the Company must publish material changes in information that has been published as soon as possible after the occurrence of the change.

Item 2.2.4 of the July Rulebook requires that the Company possess the organization and staff required in order to comply with the requirements regarding disclosure of information.

Item 4.1 prescribes that the issuer must disclose inside information in accordance with Article 17 of the Market Abuse Regulation as soon as possible.

Article 17 of MAR and legal acts which supplement MAR provide that a publication of inside information must take place such that the information becomes available to the public promptly and in a non-discriminatory manner.

.....

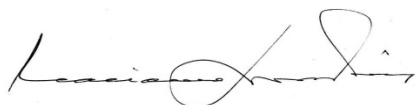
The Disciplinary Committee concludes that the evidence of the matter shows that the chain of events is undisputed. CybAero has stipulated that the communication with the market has suffered due to the Company's rapid growth. The Disciplinary Committee finds that the information which was provided in the January 17, 2014 press release and which described the order from the Chinese Customs Authority as the Company's largest order to date, without stating that the order was subject to various conditions such as factory tests and export permits, and that the customer had significant leeway to adjust the specifications for the systems, was unequivocally misleading as the press release failed to report the specific risks associated with the order. This also applies to the press release of June 2, 2014, which had a significant positive effect on the price of the Company's shares, and which stated that CybAero had received a guarantee order valued at between SEK 700 million and SEK 800 million. The press release stated that the only condition for the order was the granting of an export permit, which could not be obtained due to the duration of the framework agreement with AVIC as the contracting party. This order, like the order from the Chinese Customs Authority, was conditional on the execution of factory tests and on specifications from the buyer. The market did not know that the IPS's decision denying the application was irrelevant to the Company insofar as pertained to the AVIC order, since that order involved delivery of a demonstration system and the Company already had a permit for a demonstration system to the Chinese market. Accordingly, it was incumbent upon the Company to disclose the decision in a press release as soon as possible and to clarify its impact on the AVIC order. The fact that the information was price sensitive and thus inside information is supported by the effect on price of the Company's shares which occurred after the press release had been published.

From the evidence regarding the initial press releases about the order from the Chinese Customs Authority and AVIC, respectively, and the subsequent disclosures of information as a result of these orders with long gaps in the disclosure of information, the Disciplinary Committee concludes, and CybAero has stipulated, that the Company did

not possess the organization and staff necessary for disclosure of information. The fact that the Company has now prioritized the disclosure of information and has taken various measures to strengthen the organization in this respect is positive, but does not absolve the Company from liability for the shortcomings which have occurred.

The Disciplinary Committee concludes that CybAero has violated items 2.2.4, 4.2 (a) and 4.2 (g) of the Rulebook as well as items 2.2.4 and 4.1 of the July Rulebook and that the market ought to have suffered damage as a result of these violations. The Disciplinary Committee takes a very serious view of the Company's violations, and orders the Company to pay a fine corresponding to annual fees for three years.

On behalf of the Disciplinary Committee,

A handwritten signature in black ink, appearing to read 'Marianne Lundius', with a stylized flourish at the end.

Marianne Lundius

Former Justice of the Supreme Court Marianne Lundius, Justice of the Supreme Court Anne-Christine Lindeblad, company director Carl Johan Högbom, company director Jack Junel and authorised accountant Svante Forsberg participated in the Committee's decision.