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NASDAQ STOCKHOLM'S

DECISION

30 April 2020

DISCIPLINARY COMMITTEE

2020:04

Nasdaq Stockholm

Saab AB (publ)

DECISION

The Disciplinary Committee does not order any sanctions against Saab AB.

Motion

The shares in Saab AB (publ) ("Saab" or the "Company") are admitted for trading on Nasdaq Stockholm AB (the "Exchange"). The Company has signed an undertaking to comply with the Exchange's rules for issuers applicable from time to time (the "Rule Book").

The Exchange has argued that Saab violated section 3.1 of the Rule Book by not disclosing inside information in a timely fashion and by not preparing necessary documentation regarding decisions to delay public disclosure in accordance with Commission Implementing Regulation (EU) No. 2016/1055.

With reference to section 5 of the Rule Book, the Exchange has moved that the Disciplinary Committee evaluate the violations of the Rule Book and impose suitable sanctions.

Saab has denied that the Company is guilty of the alleged violations of the Rule Book.

A hearing in the matter was held before the Disciplinary Committee on 23 May 2020, at which the Exchange was represented by Andreas Blomquist (Senior Legal Counsel), Elias Skog (Head of Enforcement & Investigations), and Karin Ydén. Saab was represented by Marcus Wallenberg (Chairman of the Board of Directors), Annika Bärems (Head of Group Legal Affairs), Teresia Nygård (Legal Counsel), and *Advokat* Eva Hägg.

Reasons for the decision

The Rule Book

Pursuant to section 3.1 of the Rule Book, an issuer shall disclose inside information in accordance with Article 17 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council (“MAR”).

The term “inside information” is defined in Article 7(1) of the MAR as information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments.

Pursuant to Article 7(2) of the MAR, information is deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where this information is specific enough to enable conclusions to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments.

Pursuant to article 17(1) of the MAR, an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer. The issuer shall also ensure that the inside information is made public in a manner which enables fast access and an opportunity to make a complete, correct, and timely assessment of the information by the public.

Pursuant to Article 17(4) of the MAR, an issuer may, on its own responsibility, delay disclosure to the public of inside information provided that immediate disclosure would likely prejudice legitimate interests of the issuer, it is not likely that delayed disclosure would mislead the public and that the issuer is able to ensure the confidentiality of the information.

Pursuant to Article 4(1) of the Commission Implementing Regulation (EU) No. 2016/1055 of 29 June 2016 (the "Implementation Regulation") an issuer, in connection with delaying the public disclosure of inside information, shall use technical means that, *inter alia*, ensure that evidence of the initial fulfilment of the conditions referred to in article 17(4) of MAR and of any change of this fulfilment during the delay period, are accessible, readable, and maintained in a durable medium.

Considerations

On Sunday, 11 August 2019, Saab published a press release containing information that their CEO had decided to leave his position with the Company. The press release contained a reference that the information was of the type that the Company was obligated to make public pursuant to the MAR. In connection with the publication, the Exchange was contacted by the Company which, in that context, informed the Exchange that two days earlier, on Friday, 9 August 2019 at 5:40 pm, the Company’s CEO had given notice of termination in a meeting with the Chairman of the Board of Directors, but that the Company had, at that time, taken the decision to delay the public disclosure of the information.

The Exchange has argued: The Company's CEO gave notice of termination on 9 August 2019 and the Company decided to delay the public disclosure of this inside information until 11 August 2019. As grounds for this decision the Company has argued that its Board needed to discuss the prerequisites and terms governing notice of termination by the CEO, including, among other things, alternative scenarios such as the Company's CEO leaving his position immediately and the Board therefore immediately appointing a new (acting) CEO during a transitional period, or the Board allowing the CEO to remain in his position, in whole or in part, during the notice period, and that the Company could not provide complete and relevant information prior to this as to what the notice of termination entailed for the Company. The Exchange observes, however, that the notice of termination by the Company's CEO was an unilateral and clear legal act over which the Company had no control. According to the Exchange, it is only in exceptional cases that legitimate interests can be deemed to exist for an issuer to decide, or to adhere to a decision that has already been taken, to delay public disclosure when the event to which the inside information relates is not only may occur, but has in fact already occurred. According to the Exchange, under the circumstances at issue here, the Company did not have a legitimate interest in delaying the public disclosure of this inside information with reference to the Company's Board taking a decision regarding whether the CEO should remain at the Company during his notice of termination period. Consequently, the Company has had an obligation to disclose this information as soon as possible in order to subsequently provide, if necessary, more detailed information regarding the consequences of the notice of termination when this has been made clear. Since the Company did not publicly disclose the information regarding the CEO's notice of termination until 11 August 2019, the disclosure was not made as soon as possible. Furthermore, in its documentation regarding the delayed public disclosure and with regards to the question of whether an immediate public disclosure would be likely to prejudice the Company's legitimate interests, the Company has only stated, in summary terms, that the Company's Board needed to be given an opportunity to deal with the matter and to take a position regarding the way forward. According to the Exchange, the Company's documentation in this respect cannot be deemed to fulfil the requirements of the Implementing Regulation regarding evidence of how the conditions for the delayed public disclosure were fulfilled. In light of the above, the Company has violated Article 17(1) of MAR and, therewith, section 3.1 of the Rule Book.

Saab has argued: On the evening of 9 August 2019, the Company made the assessment that the conditions for delayed public disclosure in accordance with the MAR were fulfilled with regards to information regarding the CEO's notice of termination. The event to which the inside information referred consisted not only of the notice of termination by the CEO, but also the reasons for, and the circumstances surrounding, the notice of termination, the Company's standpoint regarding the employment and its termination, and the immediate management of the Company. Saab has an obligation to disclose correct, relevant, and clear information, which may not be misleading. Information concerning decisions and circumstances must be sufficiently detailed to allow for an assessment of the significance of the information for the Company and its financial instruments. Disclosing only parts of inside information would have meant both that Saab would not have fulfilled its obligations in this respect, and the market would not have been able to assess the significance of the notice of termination for Saab.

As a consequence of the notice of termination, the Company also needed to take a number of decisions which were of significance with regards to the notice of termination. In connection with a CEO's termination, the Board must take decisions on a number of questions. The Companies Act stipulates that it is incumbent upon the Board to decide who will be the CEO and that this duty cannot be delegated. Notwithstanding that a company has established routines regarding who is to be responsible for the company's day-to-day administration in the event of the CEO's termination, the Board must nevertheless take a position regarding whether the CEO is to remain in their position during the notice of termination period. This depends, of course, on a number of circumstances, including the reason for the termination. Accordingly, in connection with a CEO's termination, the Board must take a position on many questions of utmost importance to the Company, and a public disclosure of this without information regarding the Board's handling of these questions is highly likely to result in prejudicial uncertainty for a company. Accordingly, a public disclosure of the CEO's notice of termination on the evening of 9 August would have created a risk of prejudice to Saab's legitimate interests. After the CEO's notice of termination had been received, Saab immediately convened a board meeting which was held within 48 hours and, therefore, the decisions the Board was compelled to take in order to provide correct, relevant and clear information to the market regarding the termination could therewith, be taken promptly. Saab then publicly disclosed the inside information now at issue immediately after the board meeting. The information has, therefore, been made public in accordance with Article 17 of the MAR.

Finally, Saab is of the opinion that the Company's documentation regarding the delayed public disclosure, with an explanation of the legitimate interest and information that it would be prejudiced by premature public disclosure, fulfils the requirements of the Implementing Regulation. The purpose of the documentation is that the Company must be able to demonstrate that the assessment has been made and the manner in which it was made. There is no requirement that the text must be particularly comprehensive.

The Disciplinary Committee observes that the facts in the matter are not in dispute and that the Exchange has neither argued that the company's delayed public disclosure has risked misleading the general public nor that the Company could not ensure that the inside information in question would remain confidential. The question is, therefore, whether the requirement of prejudice contained in Article 17(4)(a) of the MAR was fulfilled with regards to the information regarding the CEO's notice of termination, i.e. whether an immediate public disclosure would likely prejudice Saab's legitimate interests.

Information regarding the termination of the CEO of a listed company constitutes, in most cases, inside information and, accordingly, must be publicly disclosed. Appointing a CEO and being responsible for the CEO's performance of their mandate are among the most important duties of the Board, and this cannot be delegated. The CEO of a public company is responsible for the day-to-day administration of the company and is, in most cases, the face of the company, and when the CEO gives notice of termination, the Board thus has to address the questions regarding the company's day-to-day administration and management which are raised by the notice of termination. In the opinion of the Disciplinary Committee, in connection with a CEO's notice of termination an issuer should, therefore, be afforded a very short-term opportunity, by means of taking a decision regarding delay of public

disclosure, to create time for reflection in order to take the decisions necessary in the situation before the company needs to publicly disclose the termination, provided that the conditions as per the MAR are fulfilled.

In the instant case, Saab decided to delay the public disclosure of the CEO's notice of termination so that the Board could take a position regarding how the Company would handle, and provide information regarding, the notice of termination, so as not to damage confidence in the Company or create uncertainty with regards to Saab's management. The information regarding the CEO's notice of termination was publicly disclosed immediately after the board meeting was held, which took place within a defensible period of time, given the circumstances, after the Chairman of the Board received the notice of termination. In the opinion of the Disciplinary Committee, it was justifiable for the Company to delay the public disclosure in order to create time for reflection in order to take necessary decisions and, thereby protect the Company's legitimate interests. The Disciplinary Committee's assessment is, accordingly, that the conditions for the delayed public disclosure pursuant to Article 17(4)(a) of MAR have been met.

With regards to the Company's documentation of the delayed public disclosure, the Disciplinary Committee's assessment is that this is, *per se*, terse with regards to which legitimate interest was at risk of being prejudiced by an immediate public disclosure, but that the wording cannot be deemed to constitute a direct violation of the Rule Book.

The Disciplinary Committee therefore finds that Saab has acted in compliance with the Rule Book.

On behalf of the Disciplinary Committee

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

Marianne Lundius

Former Justice Marianne Lundius, Justice Ann-Christine Lindeblad, company director Jack Junel, *Advokat* Wilhelm Lüning and company director Joakim Strid participated in the committee's decision.

Secretary: *Jur. kand.* Erik Lidman