STOCK EXCHANGE APPEALS COMMITTEE - CASE 4/2009

Ruling issued on 17 September 2009 on an appeal by DNO International ASA against a decision of 17 June 2009 by Oslo Børs ASA to impose violation charges for breaches of respectively Section 5-2, first paragraph, of the Securities Trading Act on the duty to publicly disclose information and of the provisions of Section 24, seventh paragraph, of the Stock Exchange Act on the duty to provide information to a regulated market.

1. *The subject of the appeal and the composition of the Stock Exchange Committee for the consideration of the appeal*

The case concerns the question of whether DNO International ASA ("DNO", the "appellant", or the "company") has acted in breach of its duty to publicly disclose, without delay and on its own initiative, inside information which concerns the company directly pursuant to Section 5-2 of the Securities Trading Act. In addition, the case concerns the question of whether the company has acted in breach of the provisions on the duty to provide information to a regulated market pursuant to Section 24, seventh paragraph, of the Stock Exchange Act.

The Board of Directors of Oslo Børs approved its decision on the case on 17 June 2009 with the following conclusion:

> *"The Board of Directors of Oslo Børs hereby resolves to impose a violation charge on DNO International ASA of five times the company's annual listing fee, i.e. NOK 1,177,785, for a breach of the duty to publicly disclose inside information as required by Section 5-2 (1) of the Securities Trading Act, cf. Section 17-4 (3) and Section 15-1 of the Securities Trading Act, cf. Section 13-1 of the Securities Trading Regulations.*
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> *The Board also resolves to impose a violation charge on DNO International ASA of five times the company's annual listing fee, i.e. NOK 1,177,785, for a breach of the duty to provide information pursuant to Section 24 (7) of the Stock Exchange Act, cf. Section 31 of the Stock Exchange Act.*
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> *The decision can be appealed to the Stock Exchange Appeals Committee. Any appeal must be submitted within two weeks."*

An appeal against the decision was lodged on 1 July 2009 by Attorney-at-Law Leif Tore Rønning of the law firm Simonsen acting for DNO. Further details of the appeal are provided below at section 6.

Following receipt of the appeal, Oslo Børs was granted an extension to the deadline for referring the matter to the Stock Exchange Appeals Committee to 27 August 2009, cf. Stock Exchange Regulations, Section 37, eighth paragraph.

The Board of Directors of Oslo Børs (the "Oslo Børs Board") has considered the appeal, but did not find sufficient grounds to change its earlier resolution. The case was therefore referred to the Stock Exchange Appeals Committee for consideration by letter dated 27 August 2009, cf. Stock Exchange Regulations, Section 37, sixth paragraph, and the Public Administration Act, Section 33, fourth paragraph.

The Stock Exchange Appeals Committee considered the case at its meeting on 17 September 2009. The members of the committee present at the meeting to consider the case were Bjørg Ven, Filip Truyen, John Giverholt, Trygve Bergsaker and Jøril Mæland.

2. *Brief description of the company*

The decision by the Oslo Børs Board on 17 June 2009 includes the following description of DNO International ASA at section 2:

> *"The company is engaged in exploration and production of oil and gas. In 2007, the company spun-off its activities in the North Sea. DNO currently has interests in England, Yemen, Iraq, Guinea, Mozambique and Syria. The company's headcount in 2008 was 496 employees, of which 46 are employed in Norway.*
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> *The company's operations in the Yemen accounted for 60% of its production in 2008. In Iraq, and more specifically in the Kurdistan region, the company has for some considerable time been waiting for the necessary export licences to ship oil from the field there to the market. The company stated in its 2008 Annual Report that it expected its activities in Iraq to make a significant contribution to its earnings in the future since the company expected to start full production in this area in 2009.*
>
> *The company's exposure in Iraq measured in relation to the company's other activities were estimated by Norwegian analysts at the end of February 2009 to be a dominant factor in the company:*

NAV (NOK/share)	***SEB Enskilda***	***ABGSC***	***First Securities***
	26.02.2009	20.02.2009	*25.02.2009*
Kurdistan	*5.1*	*6.9*	*11.3*
Yemen	*0.8*	*2. 7*	*2.2*
Other	*0.7*	*1.0*	*1.0*
Enterprise Value	***6.5***	***10.6***	***14.4***
Net liabilities	*-2.*0	*-2.1*	*-2.1*
Capital value per share	***4.5***	***8.4***	***12.3***
Kurdistan as a percentage of Enterprise Value	*78 %*	*65 %*	*78 %*

> *DNO was the first international oil company to start exploration activities in the Kurdistan region of Iraq in 2005. The company is collaborating with the Kurdistan Regional Government on infrastructure in the area, and considers its involvement and investment in Iraq to be important for the company, including for its cash flow. It is apparent from page 13 et seq. of the company's 2008 Annual Report that DNO is positioned to increase production from the Tawke field in Kurdistan without incurring further investment spending, and that this will improve the company's cash flow and hence allow DNO to strengthen its financial position.*
>
> *DNO also comments on page 74 of its 2008 Annual Report on the political risks associated with the company's interests in Iraq, which it describes as being at an acceptable level.*
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> *DNO has been listed on Oslo Børs since 1972.*
>
> *The Managing Director of the company is Helge Eide."*

3. The background to the case

On 10 October 2008, DNO sold 43,873,960 shares in the company from its holding of own shares (hereinafter referred to as the "transaction"), which represented 4.8% of the company's share capital. The transaction was carried out at a price of NOK 4.0 per share, which was NOK 0.50 higher than the market price of its shares at the time.

Oslo Børs carried out a routine investigation of the transaction. As part of this, Oslo Børs contacted the company by letter dated 21 November 2008 to ask a number of questions. This included asking the company to identify the purchaser of the parcel of shares, whether the company considered the sale of the shares to be inside information and whether the company had been in contact with other interested parties in connection with the sale.

In a letter dated 5 December 2008, DNO stated that the company had used its normal broker, ABG Sunndal Collier ASA, for the transaction. It also stated that the transaction was carried out broker to broker, and that the company was not aware of who was the owner of the shares held on the nominee purchaser account, but that the company had no reason to believe that any close associate was behind the account.

Oslo Børs obtained information from the purchaser's broker in connection with the transaction. This information showed that the purchaser of the shares was the Kurdistan Regional Government ("KRG") - the Ministry of Natural Resources. The order was placed by Dr. Ashti Hawrami ("Hawrami"), who is the Minister of Natural Resources in Kurdistan. The shares were registered on a nominee account belonging to KRG.

In a letter to DNO dated 22 December 2008, Oslo Børs repeated and expanded some of the questions asked in its previous letter. Among other questions, Oslo Børs asked to what extent DNO's Managing Director, Helge Eide, was involved in the transaction, and whether he was aware of the identity of the purchaser of the parcel of shares. Oslo Børs also asked whether the purchaser was a party with whom the company had entered into or wished to enter into business arrangements, contracts or collaboration.

DNO advised Oslo Børs in a letter dated 8 January 2009 that Helge Eide and the chairman of DNO's board of directors had been involved in the transaction. In addition, the letter stated that the company did not have any documentation on the identity of the final purchaser of the shares, and that there was no agreement of any kind associated with the transaction.

In a letter dated 19 January 2009, Oslo Børs referred to the statement by DNO that the company did not have any documentation on the identity of the final purchaser of the shares. The letter went on to say:

> *"However, Oslo Børs has received a copy of an e-mail sent by Helge Eide to Dr. Ashti at 10.10 on 10 October providing contact information for DNO's broker (ABGSC). This e-mail was subsequently forwarded to HSBC in London at 10.37 on the same day. It is apparent from the e-mail to HSBC that agreement had been reached on a transaction involving 43,873,960 shares at a price "agreed to in principal" of NOK 4 per share. The e-mail also notes that the DNO share was trading in the market at a price lower than this."*

The e-mail correspondence between the purchaser's broker, Hawrami and Helge Eide in respect of the transaction is quoted at section 5.1 below in connection with the account of the decision reached by Oslo Børs.

In the letter to DNO dated 19 January 2009 mentioned above, Oslo Børs asked DNO to provide an account of the process that led to the e-mail sent by Helge Eide on 10 October 2008. In addition, Oslo Børs repeated a number of the questions asked in its previous letters.

In a letter dated 29 January 2009, DNO stated that the process prior to the sale of the shares involved the company contacting several potential purchasers. The letter also stated as follows:

> *"One of these contacts was Dr. Ashti, and Helge Eide had a conversation with him. Dr. Ashti was a contact person for a purchaser. As we assume Oslo Børs is aware, Dr. Ashti is the Minister of Natural Resources in the Kurdistan Regional Government (KRG). The e-mail mentioned was a confirmation of the number of shares and price that Dr. Ashti was to notify to the purchaser and the purchaser's broker. As we have previously explained, DNO has no documentation on the identity of the final purchaser/purchasers of the shares."*

In a letter to DNO dated 11 February 2009, Oslo Børs stated that it had become aware from other sources that the purchaser of the parcel of shares in question was KRG represented by the Ministry of Natural Resources, and that the order to buy the shares was placed by Dr. Hawrami, Minister of Natural Resources, KRG. In addition, Oslo Børs stated that it did not have any indication that Hawrami had placed the order on behalf of any party other than KRG. Oslo Børs asked DNO for documentary evidence that might confirm the information the company had given that Hawrami was only a middleman and was not acting as the final purchaser's representative.

DNO stated in a letter dated 23 February 2009 that, in its communication with Hawrami, the company understood that he did not have authority to carry out the possible transaction, and that it therefore understood that he was acting as a middleman, but that it did not have any documentation of this. In the same letter DNO stated that it did not consider dialogue on a possible sale to KRG of a parcel of shares representing less than 5% of the company' share capital to be inside information, and that it considered that any speculation on the identity of the purchaser could have had the effect of misleading the market.

In a letter dated 11 March 2009, Oslo Børs stated that it now required DNO to identify the recipient of the shares, cf. Section 16 of the Stock Exchange Regulations and Section 2.8 of Continuing Obligations. In the same letter, Oslo Børs gave DNO prior warning of its intention to instruct the public disclosure of the information in question.

In a letter dated 13 March 2009, DNO stated that the company could not understand the view expressed by Oslo Børs that there was "precise information" that KRG was the purchaser of the parcel of shares, cf. Section 5-2 of the Securities Trading Act, and that identifying KRG as the purchaser could serve to mislead the market. The company also asked Oslo Børs to state which factual evidence Oslo Børs believed indicated that KRG could with certainty be identified as the purchaser of the shares. DNO also said that the company would consider providing notification to Oslo Børs in confidence, cf. Section 5-3 of the Securities Trading Act.

In a letter dated 23 March 2009, Oslo Børs stated that it considered that DNO's knowledge of the transaction/counterparty was inside information subject to the duty of disclosure, and instructed DNO to publicly disclose this information. The letter went on to state as follows:

> *"... The announcement must state the date of the transaction, the number of shares and the price. In addition the announcement must make it clear that the shares were sold from the company's holding of its own shares, and that the sale was negotiated directly with the purchaser, as well as stating the identity of the purchaser of the shares."*

The deadline for public disclosure was specified as 12.00 on 25 March 2009. The letter also informed DNO that failure to comply with the instruction might lead to the imposition of a violation charge.

DNO wrote in a letter dated 25 March 2009 that in the company's opinion there was no basis to identify Hawrami as a "known counterparty". The company also stated that in its opinion it could not be correct that it made no difference whether Hawrami had traded for his own account, acted as a middleman, or acted on behalf of KRG or other interested parties. Moreover, DNO did not accept that the facts of the matter unambiguously supported the conclusion reached by Oslo Børs in respect of the transaction affecting the share price. At the end of the letter, DNO asked Oslo Børs to send it the documentation showing the identity of the purchaser of the shares. DNO also stated that the company would again contact Hawrami to see if it was possible to clarify the identity of the beneficial purchaser of the shares. In addition, the company asked for an extension to the deadline for public disclosure.

On 26 March 2009, a meeting was held between DNO and Oslo Børs at the suggestion of DNO, at which the matters discussed included what must be included in a stock exchange announcement were such an announcement to be issued.

In an e-mail dated 26 March 2009, Oslo Børs repeated its view that there was inside information that was subject to the duty of disclosure. In addition, the e-mail stated that Oslo Børs would not agree to any extension of the deadline for public disclosure, but Oslo Børs appreciated that the company needed time to reflect on the matter and therefore did not intend to start work on possible sanctions until the following Thursday.

On 30 March 2009, DNO sent a draft of a stock exchange announcement to Oslo Børs. In the draft text, the company reported that it had been in contact with a number of potential purchasers, direct or indirectly, including a representative of KRG, and that the company did not have any documentation of the identity of the purchaser.

Oslo Børs advised DNO in an e-mail dated 30 March 2009 that it did not consider the draft text sufficient to meet the instruction it had given, and stated that the following two items must be included in the announcement:

- Name and/or position (Dr.)
- The fact that the negotiations resulted in the transaction.

In a letter to Oslo Børs dated 2 April 2009, DNO stated that the company had been in contact with Hawrami, who had told them that the purchaser was an as yet unidentified non-Kurdish industrial company. The letter also stated that in DNO's opinion, Hawrami's role in the transaction had been as an arranger, and that he therefore had not acted in his capacity as the Minister of Natural Resources in Kurdistan. In the company's view, there was no need to inform the market of Hawrami's role as the arranger or of the identity of the purchaser, and the company asked Oslo Børs to withdraw its instruction for public disclosure.

In an e-mail dated 2 April 2009, Oslo Børs stated that Oslo Børs reaffirmed its instruction for the public disclosure of DNO's knowledge of Hawrami's role in connection with the sale of the parcel of shares.

In a second e-mail on the same day, Oslo Børs proposed a minimum-content announcement in order to bring the matter to a close, whereby Hawrami's name would be mentioned and it would be stated that negotiations with potential purchasers resulted in a transaction on 10 October 2008.

DNO issued a stock exchange announcement on 6 April 2009. The final paragraph of the press release stated:

> *"Genel Enerji has also advised DNO that it has a beneficiary ownership of around 4.8% of the DNO International ASA shares, which were bought in the last quarter of 2008."*

In a letter to Oslo Børs on the same day, DNO stated that the company had found out that the purchaser of the parcel of DNO shares from the company's own holding in the fourth quarter of 2008 was the Turkish company Genel Enerji. The letter went on to state that DNO believed that it had now identified the facts relating to the shares, and had therefore been in a position to issue a stock exchange announcement that satisfied all the requirements. DNO asked Oslo Børs to confirm that its instruction had been satisfied.

On 6 April 2009, Oslo Børs sent the following e-mail to DNO:

> *"We have noted the announcement issued earlier today, and the shares have been taken off intensive surveillance. In view of the holiday situation, I would like to get back to you after the public holiday in respect of the formal cancellation of the instruction."*

In an e-mail dated 8 May 2009 and a letter dated 7 May 2009 to the company, Oslo Børs stated that it had considered the content of the company's announcement, and that Oslo Børs could not see that the company had complied with the instruction issued by Oslo Børs. The letter also notified the company that Oslo Børs had commenced work on the case for sanctions in response to the breach by the company.

In a letter dated 8 June 2009, DNO rejected the prior notice by Oslo Børs of steps to impose sanctions on the company.

The Oslo Børs Board reached a decision on 17 June 2009 on the imposition of violation charges on DNO, with the conclusion reported in section 1 above. Section 1 also provides further information on the appeal, and reference is made to the information there presented.

4. Legal basis

4.1. Duty to disclose information to the market

Section 5-2, first paragraph, of the Act of 29 June 2007 No. 75 on securities trading (the Securities Trading Act) reads as follows[1]:

> *"An issuer shall without delay and on his own initiative publicly disclose inside information which concerns the issuer directly, cf. section 3-2 subsections (1) to (3)."*

Section 3-2, first paragraph, of the Securities Trading Act provides the following definition of inside information:

> *"Inside information means any information of a precise nature relating to financial instruments, the issuers thereof or other circumstances which has not been made public and is not commonly known in the market and which is likely to have a significant effect on the price of those financial instruments or of related financial instruments."*

Section 3-2, second and third paragraphs, of the Securities Trading Act provides definitions of "information of a precise nature" and "information likely to have a significant effect on the price of financial instruments or of related financial instruments" as follows:

> *"Information of a precise nature means information which indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur and which is specific enough*

[1] The English text of the extracts from the Securities Trading Act is taken from the translation published by Kredittilsynet dated September 2007.

to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of the financial instruments or related financial instruments."

"Information likely to have a significant effect on the price of financial instruments or of related financial instruments means information of the kind which a reasonable investor would be likely to use as part of the basis of his investment decisions."

4.2. Delayed publication

Section 5-3, first paragraph, of the Securities Trading Act sets out provisions on the delayed publication etc. of inside information:

"An issuer may delay the public disclosure of information as mentioned in section 5-2 subsection (1) such as not to prejudice his legitimate interests, provided that such omission does not mislead the public and provided that the issuer ensures the confidentiality of that information, cf. section 3-4."

Section 5-3, second paragraph, provides greater detail on the nature of the "legitimate interests" mentioned in the first paragraph.

4.3. Duty to provide information to the regulated market

Section 24, seventh paragraph, first sentence, of the Stock Exchange Act sets out rules for the duty of an issuer to provide information to the regulated market. The provision reads as follows [2]:

"A regulated market may require that issuers of financial instruments that are listed or are the subject of an application for admission to listing, as well as the officers and employees of the issuer, shall, notwithstanding any duty of confidentiality, furnish the regulated market with any information necessary for the market to be able to comply with its legal duties."

4.4. Sanctions

Kredittilsynet (the Financial Supervisory Authority of Norway) has the legal capacity to impose sanctions in the form of violation charges for breaches of the rules on the duty of disclosure at Section 5-2 of the Securities Trading Act, cf. Section 17-4, third paragraph, of the Securities Trading Act. Kredittilsynet's legal capacity to impose violation charges for breaches of the rules on the duty of disclosure is delegated to the regulated market, cf. Section 17-4, third paragraph, third sentence, of the Securities Trading Act, cf. Section 15-1, second paragraph, second sentence, and the Securities Trading Regulations, Section 13-1.

A regulated market has legal capacity pursuant to Section 31 of the Stock Exchange Act to impose violation charges for breaches of the provisions of the Stock Exchange Act.

Section 31, second paragraph (a), of the Stock Exchange Regulations stipulates that violation charges imposed on issuers for breaches of the provisions of the Stock Exchange Act shall not exceed 10 times the annual listing fee for each breach that is liable for sanctions in the form of violation charges.

[2] The English text of the extracts from the Stock Exchange Act is taken from the translation published by Oslo Børs as updated August 2008.

5. Decision by Oslo Børs

The decision approved by the Oslo Børs Board on 17 June 2009 provides an account of the company, the background to the case, the legal basis and DNO's representations. The Board of Directors then proceeds to evaluate the facts of the matter against the rules and regulations in respect of the duty of disclosure and the duty to provide information to Oslo Børs respectively, and the sanctions available: See sections 5.1, 5.2 and 5.3 below for further information.

In the decision approved on 27 August 2009, the Oslo Børs Board makes comments on some of the arguments set out in the appeal, cf. section 5.4 below.

5.1 Duty of disclosure

At section 6.1 of its decision of 17 June 2009, the Oslo Børs Board takes the view that the company has significant exposure to its activities in Iraq. The decision states:

> *"As a result of the uncertain outlook, and the absence at that time of an export licence for oil, which was dependent in part on negotiations between KRG and the central government in Baghdad, DNO's share price was very sensitive to news from Iraq in general and from Kurdistan in particular in respect of oil exports from the region. Investment research on the company published by a random selection of investment firms in February 2009 shows a consensus view that the question of Iraqi export licences for oil is extremely important for the pricing of the company's shares."*

The Oslo Børs Board further states:

> *"... By way of example, the company's share price rose from its opening level by approximately 20% on Thursday 19 March 2009 following publication by REUTERS and Dagens Næringsliv of news on negotiations between KRG and the central government in Baghdad, before falling back to some extent later in the day.*
>
> *Oslo Børs notes that the parties involved in the Iraqi negotiations seem to be aware of the scale of the effect that their statements have on the pricing of the DNO share. The Iraqi oil minister commented to REUTERS on 11 March 2009 in respect of Eide's statements to the press on his expectations for exports: "These are media statements which aim to affect the share prices of the company."*

The decision also stated:

> *"Dr. Hawrami is a minister in the independent regional government for the Kurdistan region of Iraq. As noted below, Oslo Børs is of the view that the Minister of Natural Resources of KRG, Dr. Ashti A. Hawrami, carried out the purchase of the shares. The role of KRG and Hawrami in negotiations with the authorities in Baghdad mean that information on share transactions carried out by Hawrami or a party on whose behalf he acts must be likely to have a significant effect on the price of the DNO share, cf. Section 3-2, first paragraph, of the Securities Trading Act. This is particularly the case when the seller of the shares is the company itself.*
>
> *Oslo Børs takes the view that it is likely that a reasonable investor would use the information that the Minister of Natural Resources in Kurdistan has purchased just under 5% of the company's share capital as part of the basis of his investment decisions, cf. Section 3-2, third paragraph, of the Securities Trading Act. Whether he has traded for his own account, as a middleman, on behalf of KRG or on behalf of other interested parties in Iraqi/Baghdad is of lesser importance in forming this view. The key issue is that an individual who, as the Minister of Natural Resources, plays a central role in negotiations on the question of an export licence from this area of Iraqi has purchased shares in DNO by agreement with the executive management of DNO."*

The Oslo Børs Board goes on to express the view that the Minister, or someone who is so closely associated with him that he carries out transactions for their account, will have a significant personal interest in DNO's success in Kurdistan following the transaction, as well as an additional incentive in the success of KRG's negotiations with the central government in Baghdad over the export of oil and other DNO-related issues.

Oslo Børs also points to the fact that HSBC, in response to a request by Oslo Børs, has provided information that their client in the transaction was KRG represented by the Minister of Natural Resources, and that the order was placed with them by Hawrami. The instruction to purchase the shares came from KRG's e-mail address. HSBC has provided information that the shares that are registered on a nominee account belong to KRG.

In terms of the question of who was responsible for carrying out the purchase, Oslo Børs refers to the e-mail of 10 October 2008 from Helge Eide, Managing Director of DNO, to Hawrami, as follows:

> *"From: Helge Eide [mailto:Helge.Eide@dno.no] Sent: 10 October 2008 10:10*
> *To: krgoil.com_aaa*
> *Subject: Share Purchase*
>
> *Dear Dr. Ashti,*
>
> *Our broker in* Norway is *ABG Sundal. The contact person is Per Ivar Hagestuen. His E-Mail is*
> *per. hagestuen@abgsc.no*
> *and his mobile telephone is +47 9060 4783.*
> *HSBC need to communicate with him on the transaction.*
> *Kind regards,*
>
> *Helge Eide."*

This e-mail was forwarded by Hawrami to the purchaser's broker at HSBC with the following text:

> *"Dear Phil,*
> *Details of the broker for DNO have been provided to me by DNO (see email below).*
>
> *The total number of the treasury shares involved are 43,873,960. The price we have agreed to in principal is NOK 4.00 per share, thus a total price of NOK 175,495,840.*
>
> *Phil before proceeding I will call you just to clear one other matter with you because the shares are trading at much lower price today!*
>
> *Ashti"*

Based on the above e-mails, the Oslo Børs Board took the view that the KRG's Minister of Natural Resources was directly responsible for carrying out the purchase following conversations with DNO. The Board of Directors noted that Helge Eide personally contacted Hawrami with instructions on how to proceed with the purchase, the contact persons involved and the brokers involved. This contact resulted in the sale of 43,873,960 DNO shares at NOK 4 per share.

The Oslo Børs Board also expresses the view in its decision that knowledge of the counterparty to a sale of the company's own shares does not normally in itself represent inside information, but may be inside information depending on the circumstances. This is followed by a quotation from Section 3.2 of Oslo Børs Circular No. 2/2008:

> *"Purchases and sales of own shares, as well as the circumstances related to such transactions, may be relevant in respect of the issuer's duty of disclosure pursuant to Chapter 5 of the Securities Trading Act and the "Continuing obligations" of the Stock Exchange Rules. The requirements for good business practice in accordance with Section 14 of the Stock Exchange Regulations and Section 2.2 of "Continuing obligations" may also be relevant to purchases and sales of own shares."*

The decision also notes that it is unusual for shares from a company's holding of own shares to be sold to an individual investor. Such an action may have some similarity to a private placement of shares. A board of directors' resolution on a private placement must state the identity of the party subscribing for the new shares, cf. Section 10-1 of the Public Limited Liability Companies Act, cf. Section 10-17. According to Section 3.2, item 3-d, of the Continuing Obligations of the Stock Exchange Rules, such a decision must be publicly disclosed by the company. Since the case relates in formal terms to a sale of shares and not an issue, the duty pursuant to this provision does not apply, but the above comments serve to demonstrate that information on the company's counterparty may be assumed to be of interest to the market.

The decision also states:

> *"The transaction was carried out with own shares held by the company and with a known counterparty. The person, timing and number of shares were negotiated, the shares were transferred and the money was received, and this must be assumed to represent specific and precise information, cf. Section 3-2, paragraph 2, of the Securities Trading Act.*
>
> *Oslo Børs is of the view that given this background there was a risk of a leak of price sensitive information, and this risk could have been eliminated by public disclosure.*
>
> *In respect of the question of delayed publication, it is noted that the transaction had already been carried out and in its correspondence with Oslo Børs, DNO maintained that the company did not have any other agreements with the Minister in connection with the transaction. The conditions for delayed publication pursuant to Section 5-3 of the Securities Trading Act were therefore not satisfied."*

The Oslo Børs Board went on to note that Oslo Børs had repeatedly asked DNO to publicly disclose details of the transaction. Section 3 above provides a more detailed summary of the correspondence between Oslo Børs and the appellant.

In the view of Oslo Børs, DNO did not satisfy the terms of the instruction given. At the meeting held on 26 March 2009, DNO and Oslo Børs discussed what such a stock exchange announcement should contain. The draft announcement submitted by DNO on 30 March 2009 was not accepted by Oslo Børs since it did not identify Hawrami as playing an instrumental role in the transaction. On 2 April 2009, Oslo Børs proposed a minimum-content announcement to take into account the company's assertion that Hawrami had acted as the middleman for an un-identified purchaser. The text proposed by Oslo Børs read as follows:

> *"With reference to the Mandatory Notice of Trade released on 10 October 2008, DNO International ASA ("DNO') sold 43,873,960 treasury shares at NOK 4 per share. This was approximately NOK 0.5 above the level at which the shares were trading at the day of the transaction. The shares are held in a nominee account in the UK.*

During the process leading to the sale of treasury shares DNO had contacts with several potential purchasers (directly or indirectly), including Dr. Ashti A. Hawrami ("Dr. Hawrami'). The negotiations with Dr. Hawrami resulted in the trade. As a result of the contact with Dr. Hawrami during the process prior to the sale of shares, Oslo Stock Exchange has requested DNO to disclose Dr. Hawrami as instrumental in the transaction. As these shares are held under a nominee account DNO has no documentation which can confirm the identity of the purchaser of the shares."

On 6 April 2009, DNO published a stock exchange announcement on the assignment by KRG to the Turkish-registered company Genel Enerji of a 25% third party interest in the Tawke production-sharing contract, and the last paragraph of this announcement stated as follows:

"Genel Enerji has also advised DNO that it has a beneficiary ownership of around 4.8% of the DNO International ASA shares, which were bought in the last quarter of 2008."

According to the decision by Oslo Børs, since this stock exchange announcement did not address the role of the Minister/KRG, Oslo Børs cannot see that the company has satisfied the instruction issued by Oslo Børs by means of this announcement or otherwise. Moreover, the wording in this announcement need not necessarily relate to the transaction in question.

The decision states that the shares were held on KRG's account throughout the period, but were sold in the market at some time in spring 2009, hence the circumstances that represented inside information no longer apply.

5.2 Duty to provide information to Oslo Børs

Section 6.2 of the decision details the facts that Oslo Børs believes evidence a breach of the rules on an issuer's duty to provide information to Oslo Børs, cf. Section 24, seventh paragraph, of the Stock Exchange Act. As part of this, Oslo Børs provided an account of correspondence between Oslo Børs and the company. In this ruling, the correspondence is reviewed as part of section 3, and reference is made to the account provided in this section.

Oslo Børs summarises its view at section 6.2 of the decision has follows:

"In its communication with Oslo Børs on the question of inside information, the company was very reluctant to provide information, and only disclosed its contacts with Hawrami when it became aware that Oslo Børs was already in possession of information in this respect. The company's incomplete response made it significantly more difficult for Oslo Børs to carry out its statutory duties as a supervisory body.

The company refrained from providing information about its contacts with Hawrami, and described the transaction as a routine broker-to-broker transaction even though it was aware of Hawrami's role and position, and must have been aware that Oslo Børs needed this information in order to evaluate the question of whether the company was under a duty to publicly disclose information about the transaction. Oslo Børs has a duty to supervise compliance with the duty of disclosure, cf. Section 13-1 of the Securities Trading Regulations. DNO has therefore breached its duty to provide information to Oslo Børs, cf. Section 24 (7) of the Stock Exchange Act."

5.3 Sanctions

In terms of the question of sanctions, the Oslo Børs Board refers at section 7 of its decision to the legal basis for violation charges.

Oslo Børs comments further as follows:

> *"Breach of the duty to publicly disclose inside information pursuant to Section 5-2 (1) of the Securities Trading Act represents a serious breach of the company's duties, and means that the market did not receive information to which it was entitled that was important for the pricing of the company's shares."*

It is apparent from the decision that in considering the question of appropriate sanctions the Oslo Børs Board took into account decisions on similar cases. It also reviewed relevant practice by Oslo Børs and the Stock Exchange Appeals Committee in respect of breaches of the duty to publicly disclose inside information.

In terms of the breach of the duty to publicly disclose information, Oslo Børs was influenced in taking a stricter approach by the fact that the breach continued over an extended period and that the scale of the potential damage was sizeable, as well as the fact that the information withheld logically formed part of the matters that the general body of investment analysts consider relevant to pricing this company. Further factors taken into account by Oslo Børs that encouraged a stricter approach are the fact that the company initially defied the suggestion by Oslo Børs that it needed to publish a stock exchange announcement, and subsequently failed to comply with an explicit instruction in this respect.

In terms of the violation charge for the breach of the duty to provide information to Oslo Børs, the Oslo Børs Board pointed out that the company has, over a protracted period, sought to delay the progress of the case and hamper investigations carried out by Oslo Børs. In addition, the company's breach appears to be wilful in nature. Oslo Børs also notes the importance of taking a strict approach in view of the statutory supervisory function for which Oslo Børs is responsible and the importance of the preventative measures it carries out in respect of price quotation.

The decision goes on to refer to relevant previous practice by Oslo Børs and the Stock Exchange Appeals Committee in connection with breaches of the duty to provide information to Oslo Børs.

In establishing the size of the violation charge, Oslo Børs took into account the fact that the company had breached the rules in two separate areas.

While there is no established tariff of 10 times the annual listing fee for breaches of the provisions on the duty of disclosure, the normal practice applied by Oslo Børs has been to apply this tariff.

The company's annual listing fee for 2009 is NOK 235,557.

The Oslo Børs Board concluded its decision with the resolution set out in section 1 above.

5.4 Comments by Oslo Børs on the appeal

The Oslo Børs Board commented on certain of the arguments put forward in the appeal as part of its 27 August 2009 decision.

In terms of the allegations that Oslo Børs made a procedural error in that it compromised its authority to reach a decision, Oslo Børs does not agree with the appellant's claim that the e-mail of 6 April 2009 supports its case that some form of agreement was reached on a stock exchange announcement. In the e-mail in question, Oslo Børs states that it will revert to the company with a decision after the Easter 2009 holiday. Moreover, The Oslo Børs Board is of the view that a single response by the officer handling the case cannot

act to compromise the ability of the Oslo Børs Board to impose sanctions. The Oslo Børs Board goes on to state:

> *"Oslo Børs wishes to point out in this connection the fundamental point that Oslo Børs cannot exempt the company from its duty of disclosure in a situation where the conditions for delayed publication are not satisfied and the responsibility for publishing an announcement rests solely with the company in possession of the inside information that is subject to the duty of disclosure. The duty of disclosure imposed by Section 5-2 of the Securities Trading Act is a duty of the company, and of the company alone."*

The Oslo Børs Board does not agree that Oslo Børs made a procedural error, and is in any case of the view that if there was such an error it could not affect the outcome of the case or the company's duty of disclosure, and Oslo Børs is of the view that this duty arose at the latest at the time of the sale of shares in October 2008.

In terms of the appellant's arguments in respect of the way in which Oslo Børs has applied the law, the Oslo Børs Board points out that the basis for the duty of disclosure is information of any type that may represent inside information, cf. Paragraph 16 of the preamble to the Market Abuse Directive. There is nothing in the Directive or in the Norwegian provisions to the effect that information that may be subject to other duties of notification or disclosure is excluded from the duty to disclose inside information. The purpose served by the rules on flagging large shareholdings cannot be interpreted to mean that if an acquisition of shares does not trigger the flagging rules, it cannot be subject to the rules on duty of disclosure.

In addition, Oslo Børs considers it quite natural that Article 6 of the Transparency Directive clarifies that the duty of disclosure in this article of the Transparency Directive applies in addition to the duty of disclosure in the Market Abuse Directive, since the duty of disclosure in Article 6 of the Transparency Directive applies to the issuer's duty to publicly disclose information, whereas the flagging rules in Article 9 and Article 10 principally relate to investors who are not subject to an issuer's duty of disclosure. There is therefore no need for an equivalent clarification. Moreover, since there is no conflict between the duty of disclosure and the flagging rules, the principles of lex specialis and lex posterior do not apply.

In respect of the Appellant's argument that the authority of Oslo Børs to impose sanctions pursuant to Section 17-4, third paragraph, of the Securities Trading Act conflicts with the provisions of EU law, Oslo Børs comments as follows:

> *"... The duty of disclosure implements Article 6 of the Market Abuse Directive, cf. for example the views of the Ministry of Finance on the implementation of the Market Abuse Directive at Section 9.5 of Ot.prp. No. 12 (2004-2005) and the Ministry's comments at Section 13.2.5 of Ot.prp. No. 34 (2006-2007). As the appellant notes, Article 12 of the Market Abuse Directive envisages the delegation of the authority to impose sanctions, and the Norwegian legislators have followed this precedent in that Section 17-4, third paragraph, third sentence, of the Securities Trading Act envisages the delegation of the authority to impose sanctions to the regulated market. In the absence of any clear indications to the contrary, we are of the view that the legislation adopted by the Norwegian Parliament is consistent with EU law. Against this background, Oslo Børs cannot accept that there is any conflict with EU legislation in the fact that the authority to impose sanctions is delegated to Oslo Børs by Norwegian legislation."*

In respect of the appellant's arguments that the fine is excessive, Oslo Børs comments as follows:

> *"Oslo Børs wishes to point out that linking the level of violation charges to the listing fee, which is in turn determined on the basis of the company's market capitalisation, does represent a practical implementation of reasonableness and proportionality. Moreover, the link to the annual listing fee was considered by the Ministry of Finance through the process of determining Section 31 (2) of the Stock Exchange Regulations, and is consistent with long-standing practice of both Oslo Børs and the Stock Exchange Appeals Committee …*
>
> *… The appellant argues that the violation charge applied pursuant to Section 5-2 of the Securities Trading Act serves to repeat the violation charge applied pursuant to Section 31 of the Exchange Act for the same legal case. By their nature, violation charges are punitive in character, and by analogy to criminal law provisions of the law that address different purposes can as a general rule be prosecuted separately.*
>
> *The decision by the Board of Directors of Oslo Børs addresses actions and failure to act that are subject to two different sets of provisions with different purposes. In the first case, the company provided incorrect information in response to an enquiry by Oslo Børs. The second case was the failure to publicly disclose inside information. Accordingly, the ruling in this case does not repeat, mitigate or truncate the legal consequences of the events. It is noted that one consequence of DNO's argument on one violation charge repeating the other is that it would make it risk-free to give incorrect replies to the supervisory authority."*

6. The appellant's main arguments

The appeal addresses both the way in which the legislation has been applied, the identification of the facts of the case relative to the legal provisions, and the procedures applied, including errors of fact. In addition, the appellant alleges that the fine applied is excessive.

6.1 Procedural error

DNO is of the view that Oslo Børs made a procedural error since Oslo Børs must be assumed to have compromised its ability to reach a decision on the imposition of violation charges.

According to the instruction issued by Oslo Børs on 23 March 2009, DNO was required to publicly disclose the identity of the purchaser of the shares. The problem faced by DNO was that the company did not know the identity of the purchaser, and DNO therefore consistently maintained that there was no basis to instruct the company to identify the purchaser. The matter was discussed at a meeting with Oslo Børs on 26 March 2009. DNO emphasised at the meeting that the market would be best informed if it was possible to identify the purchaser instead of saying something vague about an agent who had played some kind of role in the transaction. DNO is of the opinion that Oslo Børs gave its support to these views at the meeting. DNO believes that it was agreed that the company would contact the agent to see if it was possible to obtain from him information on the beneficial purchaser of the shares, and the company understood that it was given one week to 2 April 2009 in which to do this, and that this was confirmed in the 26 March 2009 e-mail from Oslo Børs. During the course of the weekend 3-5 April, DNO obtained information to the effect that the shares had been purchased by Genel Enerji. This was announced to the market on 6 April 2009. In an e-mail of the same date from the law firm Simonsen the company expressed the view that it now considered the matter to be closed, and included the text of the stock exchange announcement dated 6 April 2009. Oslo Børs replied on the same day with the following e-mail:

"We have noted the announcement issued earlier today, and the shares have been taken off intensive surveillance. In view of the holiday situation, I would like to get back to you after the public holiday in respect of the formal cancellation of the instruction."

It appears that this correspondence was deliberately withheld from the supporting papers considered by the Oslo Børs Board when reaching its decision on the case.

DNO did not hear from Oslo Børs until 8 May 2009. The company then received, curiously enough, an e-mail to the effect that Oslo Børs was of the view that the company had not carried out the instruction given.

DNO is of the opinion that the above events indicate that there was an understanding or agreement between DNO and Oslo Børs, and that DNO complied with the agreement. The company's understanding is that Oslo Børs therefore compromised its authority to impose sanctions, and the resolutions to impose sanctions must therefore be invalid.

DNO also argues that Oslo Børs made factual errors in the basis it used for its conclusions on the question of a breach of Section 5-2 of the Securities Trading Act, cf. below. Different legal facts in this respect can lead to different legal conclusions. This implies that the decision reached in respect of Section 5-2 of the Securities Trading Act is invalid as a result of errors in the consideration of the case.

6.2 Section 5-2 of the Securities Trading Act – legal errors and errors in the application of the law to the facts of the case

6.2.1 To what extent is the information that is assumed to have been known by DNO supported by evidence?

Standard of proof
The comments on Section 17-4 of the Securities Trading Act in Ot.prp. No. 34 (2006-2007) make it clear that the standard of proof for a resolution to impose violation charges is the prescribed balance of probabilities.

Facts relevant to the Oslo Børs decision
It appears from the documentation of the decision by Oslo Børs that it did not fully decide on which facts its decision should be based. It appears that Oslo Børs mixed together information that was clearly obtained by Oslo Børs itself with information that was held by DNO without providing a proper account of the evidential issues related to the information in question. For example, it is stated in section 1 of the decision that:

"… by failing to publicly disclose that the company had sold a significant parcel of shares in DNO to the Kurdistan Regional Government ("KRG')... "

However, at section 3, second paragraph, of the decision, Oslo Børs appears to assume that the agent (Hawrami) purchased the shares on his own account:

"...Oslo Børs carried out a routine investigation of the transactions and found that the negotiations for the sale were carried out by the managing director of DNO directly with the Minister of Natural Resources of KRG."

It is not possible from the decision to determine whether Oslo Børs has assumed that (i) the shares were purchased by (and subsequently sold by) KRG, (ii) the shares were purchased by (and subsequently sold by) the agent for his own account, or (iii) the agent was no more than a middleman for the purchase of the shares by a third party (presumed to be Genel Enerji), or variants thereof. DNO is of the opinion that in the absence of a clear understanding of the facts, it is difficult to see how Oslo Børs can have arrived at a correct legal conclusion.

The facts that the opponent believes are supported by evidence
The basis for DNO's sale of its own shares in October 2008 was the problems the company was experiencing in finding continuing financing to hold the shares. The financial crisis played a contributory role in this respect. The appellant stresses that the objective of the sale was not that of placing a strategic shareholding with a business partner. DNO was in contact with a number of potential purchasers. Oslo Børs seems to presume that the contact with the agent (Hawrami) was principally with him as a representative of KRG, but this is not correct. The company was in contact with the agent in his capacity as a person with a wide range of contacts, including investors with interest in 'oil exploration', and as someone who offered the opportunity to lead the company to a purchaser for it shares.

DNO is of the opinion that it is incorrect to identify the agent as the "counterparty" to the transaction. The most that one can probably say is that the agent appears to have played a role in connection with bringing the transaction to fruition, but there is no further information on what role the agent played. DNO does not believe that Oslo Børs has provided documentary evidence to support any other interpretation.

The information that Oslo Børs has gathered in connection with the case was gathered through the supervisory duties of Oslo Børs, and there is no indication that DNO was in possession of the same information.

6.2.2 Principal argument: The information in question is not inside information in terms of EU law

Directive 2003/6/EC (the Market Abuse Directive) sets out rules on market manipulation and the prohibition of insider trading, and is implemented in Norwegian law in Chapter 3 of the Securities Trading Act. Directive 2004/109/EC (the Transparency Directive) sets out rules on flagging large shareholdings that are implemented in Norwegian law in Section 4-2 and Section 4-3 of the Securities Trading Act.

Oslo Børs has taken the view that DNO's knowledge of the counterparty to the transaction may represent inside information, and must therefore be publicly disclosed. DNO is of the opinion that as a matter of European law, the Transparency Directive governs which information on parties to transactions must be disclosed, and the Market Abuse directive cannot impose further grounds for the public disclosure of such information.

Paragraph 26 of the preamble to the Market Abuse Directive explicitly addresses the problem associated with the share transactions where the identity of a party to the transaction is in itself the information. The comments in this paragraph relate principally to primary insiders, and whether the identity of other types of parties to transactions might be seen as a category of information that could and should also be regulated.

The purpose of the rules on flagging large shareholdings is to ensure that relevant information on parties to transactions is made available to the market. It must be assumed that the Transparency Directive represents the exhaustive regulation of the duty to publicly disclose information on parties to transactions, and such information cannot be publicly disclosed in respect of shareholdings of less than 5%. Holdings under this limit are deemed not to be of interest to the market, and are not subject to a duty of notification. The Transparency Directive is both lex posterior and lex specialis in relation to the Market Abuse Directive in this context.

Article 6 (1) of the Transparency Directive explicitly explains the relationship with Article 6 of the Market Abuse Directive in respect of "interim management statements". No similar exemption in respect of the Market Abuse Directive is included in respect of the flagging provisions at Article 9 or Article 10. This serves to demonstrate that there is no scope for the public disclosure of parties to transactions pursuant to the Market Abuse Directive.

There is no basis in the preparatory work on the Securities Trading Act to indicate that the Norwegian authorities, to the extent that they had sufficient authority, wished to do anything other than implement the directives in accordance with the above.

Oslo Børs claims that the agent and/or KRG were/was a party to the transaction. Since such a party would have acquired a shareholding of less than 5% of the share capital of DNO, there is no basis in EU law for the public disclosure of information on the counterparty, and it is therefore not possible to impose a duty on DNO to disclose this information pursuant to Section 5-2 of the Securities Trading Act.

6.2.3 Principal argument: The information in question cannot in any case be deemed to be inside information according to Norwegian legislation

In order for information to be inside information pursuant to Section 3-2 of the Securities Trading Act, the information must be of a sufficiently precise nature to be likely to have an effect on the price of the financial instruments. The appellant argues that these conditions of the legislation are not satisfied in this case, and that the matter was therefore not subject to a duty of disclosure pursuant to Section 5-2 of the Securities Trading Act, cf. Section 3-2.

There is no information that is sufficiently specific to draw any conclusion on the question of an effect on the share price. The fact that the agent had some kind of role in connection with the transaction is not sufficient for this purpose. In order to establish in any way that the situation would have an effect on the share price, it would be necessary at a minimum to demonstrate that the agent had an "interest" in respect of the shareholding. Moreover, this depends at a minimum on the identity of the beneficial, but in this case unknown, purchaser.

Oslo Børs argues that any information on the situation in Iraq was likely to affect the share price. However, Oslo Børs has not clarified what conclusions can be drawn in respect of the share price in a situation where the agent and/or KRG was/were the owner. The fact is that this relationship does not, in overall terms, affect DNO's legal position in respect of the party in question. Moreover, the question of oil exports has depended on approval by the central government in Baghdad. In addition, it should be noted that Oslo Børs appears to have information to the effect that the shares were sold on by the original purchaser.

6.2.4 Alternative argument: DNO would have been entitled to an exemption from public disclosure pursuant to Section 5-3 of the Securities Trading Act until the matter became of no import

The appellant is of the view that the circumstances that Oslo Børs alleges (shares held by the agent and/or KRG), as well as the subsequent sale of the shareholding, should have been dealt with by means of a confidential notification to Oslo Børs, cf. Section 5-3 of the Securities Trading Act. Oslo Børs was incorrect in opposing such a notification in its letter of 23 March 2009. A confidential notification would have brought an end to the question of information subject to the duty of public disclosure. There would therefore have been no grounds to allege a breach of Section 5-2 of the Securities Trading Act.

The basis of the argument is that DNO must be allowed a certain degree of discretion to make its own assessment of its legitimate interests, subject to the conditions for delayed publication being satisfied (information kept confidential, delay does not mislead). The appellant does not believe that Section 5-3 of the Securities Trading Act gives Oslo Børs the authority to overrule the appellant's judgement of its legitimate interests where DNO's argumentation is relevant.

In addition, the appellant cannot agree that the fact that Oslo Børs argues that the transaction was completed provides any basis to argue against a confidential notification. Subsequent developments have demonstrated that the transaction was not fully

completed in the sense that whoever owned the shares after the transaction appears to have been only a temporary owner.

It also seems to be financially incomprehensible that the alleged beneficial owner should sell the shares in DNO just before DNO looked likely to resolve the export licence question. This indicates that it is far from certain that any change of shareholder following the transaction was anything more than a formality.

If Oslo Børs had accepted a confidential notification from DNO, the matter would proceed with the onward sale of the shares. This sale would have caused the information on the transaction to lose its relevance. There would therefore have been no basis to allege a breach of Section 5-2 of the Securities Trading Act.

6.2.5 Further alternative argument: The legal capacity of Oslo Børs to impose violation charges pursuant to Section 17-4, fourth paragraph, of the Securities Trading Act conflicts with the provisions of EU legislation

The appellant believes that the legal capacity of Oslo Børs to impose violation charges pursuant to Section 17-4, third paragraph, of the Securities Trading cf. Section 15-1, second paragraph, conflicts with the provisions of EU legislation.

The Ministry of Finance expresses the view at Section 22.1.5 of Ot.prp. No. 34 (2006-2007) that Article 24, paragraph 2(h), of the Transparency Directive allows supervision by the competent authority of "information referred to in this Directive" can be delegated to a regulated market. DNO is of the view that the Ministry's proposal for delegation to Oslo Børs is based on an incorrect interpretation of the directive, and that Norway does not have authority under the relevant provisions of the legislation to carry out such delegation.

The appellant is of the view that the correct legal basis for delegation probably cannot be found in the Transparency Directive, and that one should instead look in either the Market Abuse Directive or the MiFID Directive (2004/39/EC).

The Market Abuse Directive includes provisions for the imposition of sanctions in Article 14, and Article 12 appears to offer scope for some degree of delegation "under the competent authority's responsibility".

MiFID imposes clear restrictions on the scope to delegate the power of the competent authority, cf. Paragraph 58 of the preamble and Article 48 (2) of the Directive, see also Article 41 and Article 43.

DNO also refers to Kredittilsynet's consultation response at Section 22.2.4 of Ot.prp. No. 34 (2006-2007) which includes the following:

> *"Regardless of which arrangements are put in place to satisfy Norway's obligations pursuant to the Market Abuse Directive and the Transparency Directive, such a self-regulating regime "on top of" the official supervisory regime may have an unfortunate effect."…*
>
> *"Since Kredittilsynet is the competent authority in respect of the continuing duty of disclosure following the implementation of the Market Abuse Directive, and the provisions in this respect must be included in the new Securities Trading Act, it would seem natural for Kredittilsynet to be given the authority to impose violation charges for less serious breaches of the continuing duty of disclosure …"*

In the "subsequent" work on the legislation, Kredittilsynet once again proposed that Kredittilsynet should be the body with the authority to impose sanctions, cf. Section 6.3 of a separate, subsequent consultation memorandum by Kredittilsynet dated 28 November 2008 and titled "Report on changes to the supervision of Norwegian marketplaces as a result of the EU regulatory framework".

The appellant is of the view that these comments by Kredittilsynet support its view that that there is not sufficient basis in EU law for Oslo Børs to exercise the authority to impose sanctions.

6.2.6 Further alternative argument - the level of the fines is excessive

When assessing the size of a violation charge, the wording of Section 17-4 of the Securities Trading Act stipulates that importance shall in particular be attached to the scale and effects of the violation as well as the degree of guilt found. The preparatory work for the legislation states that violation charges shall be assessed individually

Both the Market Abuse Directive (Paragraph 38 of the preamble and Article 14 (1)) and MiFID (Article 51 (1)) state that sanctions imposed by the authorities shall be dissuasive, proportionate and consistently applied.

DNO is of the view that it must be questionable whether a practice by which the level of fines is linked to the annual listing fee satisfies the requirements for proportionality and consistency. In the final evaluation of the level of violation charge, this should be taken into account in favour of DNO.

The appellant is of the view that the assessment of the violation charges in the current case was excessive by comparison to previous practice.

DNO does not accept that Case 2/2006 of the Stock Exchange Appeal Committee provides relevant reference points for the current case.

Oslo Børs maintains in its decision that the breach continued for an extended period. The appellant believes that Oslo Børs must take its part of the blame for this. Oslo Børs initially claimed that DNO was in possession of information that it later accepted was not the case. When the appellant published a stock exchange announcement on 6 April 2009, Oslo Børs stated in an e-mail on the same date that it would revert to the company about the matter, but it took a month before Oslo Børs advised the company that it still believed that it had not complied with its instruction. In addition, DNO sought to provide information to Oslo Børs in confidence, but Oslo Børs was opposed to this.

DNO disagrees very strongly that the company has defied Oslo Børs.

DNO does not accept that it is relevant to seek to 'grade' the matter based on the relevance of the information withheld.

Furthermore, it is apparent that the information in question did not reach the market, and must subsequently be assumed to have lost its significance. This should also be taken into account in favour of DNO.

6.3 Section 24, seventh paragraph, of the Stock Exchange Act, cf. Section 31 - legal errors and errors in the application of the law to the facts of the case

In terms of the question of violation charges levied pursuant to Section 31 of the Stock Exchange Act, cf. Section 24, seventh paragraph, the appellant argues that Oslo Børs assumes in its decision that the company is actually in breach of Section 5-2 of the Securities Trading Act, cf. Penultimate page of the decision, penultimate paragraph. If the Stock Exchange Appeals Committee decides that there was no breach of Section 5-2 of the Securities Trading Act, it is difficult to see how the decision by Oslo Børs can be satisfactorily based on this assumption.

Moreover, the appellant argues that a violation charge pursuant to Section 5-2 of the Securities Trading Act repeats a violation charge pursuant to Section 31 of the Stock Exchange Act for the same legal facts. If this were not the case, the result would be imposition of two violation charges for the same cause. This must be the conclusion of general principles of legal harmonisation such as lex specialis.

The appellant continues as follows:

> *"DNO is of the opinion that this is also supported by the relevant EU legal sources. Reference is made in this connection to the arguments we put forward in section 6 above, where we maintain that the legal capacity of Oslo Børs to impose fines pursuant to Section 17-4 of the Securities Trading Act, cf. Section 15-1, second paragraph, conflicts with EU legislation. To the extent that a violation charge is imposed pursuant to Section 31 of the Stock Exchange Act in respect of the same legal facts, the arguments put forward at section 3.6 must apply with similar weight to such a ruling."*

In the alternative, in the case where Oslo Børs does have the capacity to impose violation charges, it is argued that the level of charge imposed was excessive. The charge of 10 times the annual listing fee cannot be justified in the light of previous practice.

DNO is of the opinion that the mitigating circumstances put forward by the appellant at section 6.2 above should be equally relevant.

7. The views of the Stock Exchange Appeals Committee

7.1 The facts of the case

The Stock Exchange Appeals Committee wishes to first set out the facts that it believes are evidenced by the documentation provided and that will provide the basis for the Committee's ruling on this case.

In October 2008, DNO wished, for financial reasons, to sell its holding of own shares, and in this connection DNO contacted a number of potential purchasers, including Dr. Ashti Hawrami, the Minister of Natural Resources in the Kurdistan Regional Government (KRG) who according to the information available was thought to have a broad range of contacts among investors interested in this type of share. The Managing Director of DNO, Helge Eide, was the person at DNO in contact with Hawrami, and this contact resulted in agreement on a price of NOK 4.00 per share for the sale of DNO's holding. To DNO's understanding, Hawrami was acting as a middleman, and the company was not told the identity of the purchaser. The sale was carried out on 10 October 2008 through ABG Sundal Collier as DNO's broker and HSBC as the purchaser's broker, and was immediately reported to Oslo Børs, providing information on the number of shares, the price, and the fact that the parcel of shares represented DNO's entire holding of its own shares.

As a result of the investigations into the transaction carried out by Oslo Børs, DNO was asked to provide further details of the process that led to the sale, the identity of the advisers acting for both sides of the transaction, the involvement of Helge Eide in the process and the involvement of any other persons. Reference is made to the extracts set out in section 3 above from letters sent by Oslo Børs to the company dated 21 November and 22 December 2008. In its replies dated 5 December 2008 and 8 January 2009 respectively, DNO replied to the enquiries about the process that resulted in the sale in very general terms.

DNO claimed that Dr. Ashti Hawrami was only a contact person for a potential purchaser, and the company had no knowledge of the identity of the final purchaser. In a letter to DNO dated 11 February 2009, Oslo Børs stated that it had become aware through other

sources that the purchaser was KRG. This was based on information received from HSBC that KRG was the owner of shares held on a nominee account with HSBC. DNO did not readily accept this, and asked Oslo Børs for evidence. This was followed by discussions in March between Oslo Børs and the company on what to do to avoid misleading the market rather than giving guidance. In a letter to Oslo Børs dated 25 March 2009, DNO states that *"the only thing that can be said with a certain degree of reliability is that Hawrami has (or appears to have) played a role in bringing about the transaction (although his role cannot be clearly identified)".*

The result of this discussion was that DNO contacted Hawrami at the start of April 2009 to see whether it was possible to obtain the name of the purchaser. The company was then told that the purchaser was an industrial company that was not Kurdish, and some days later, on 6 April, the company was given the name of the Turkish company Genel Enerji. DNO issued a stock exchange announcement on the same day to the effect that this company held a shareholding in DNO of the same size as the parcel of shares sold on 10 October 2008.

It is not entirely clear when Genel Enerji acquired the shares. The stock exchange announcement of 6 April stated that Genel Enerji had held *"a beneficiary ownership of around 4.8% of the DNO International ASA shares"* since the fourth quarter of 2008. The case papers include e-mails and contract notes that show that HSBC sold DNO shares from a nominee account into the market on various dates starting on 8 May 2009.

On this basis, the Stock Exchange Appeals Committee has to assume that DNO was aware of Hawrami's role as a middleman/arranger of the transaction, but that it did not know the identity of the beneficial purchaser until some time in 2009.

7.2. The question of whether there was inside information

Based on the fact that DNO did not know the name of the purchaser, the question that arises is whether DNO neglected its duty to publicly disclose inside information by notifying the market of Hawrami's role as a middleman in the sale of shares that took place on 10 October 2008.

The Stock Exchange Appeals Committee refers to the definition of inside information provided at section 4.1 above. The question for the Committee is therefore whether Hawrami's role as a middleman in the transaction that took place on 10 October 2008 was precise information that was likely to affect the price of DNO's shares. In general terms, it is not usual to provide the market with information on the identity of an arranger or middleman in a share transaction. This is the case even where the sale is from the company's holding of its own shares.

In this case, the middleman in question is the Minister of Natural Resources in the Kurdistan Regional Government, and both DNO and the market were waiting for the company to be granted a licence to export oil from the Tawke field in Kurdistan. It is therefore obvious that precise information on such an export licence would have been inside information.

The question is whether, against this background, Dr. Ashti Hawrami's role in the transaction should be deemed to be inside information. Export licences are issued by the central Iraqi authorities in Baghdad, and KRG represented by Hawrami is a party to the negotiations with the central government on such licences. Oslo Børs has attached importance to the view that if KRG/Hawrami was the purchaser of the shares, which were equivalent to 4.8% of the company's share capital, KRG/Hawrami would have an interest of their own in achieving a successful outcome for the negotiations.

The Stock Exchange Appeals Committee has found reason to doubt whether the information on Hawrami's role was inside information. The Committee takes the view that DNO has never had positive knowledge that KRG or Hawrami owned the shares.

Hawrami's role as a middleman would also have been relevant if it had been possible to establish that this would have been of significance for the outcome of DNO's export licence. However, the information that Hawrami played a role is not in itself sufficient in relation to the circumstances that might be assumed to be price sensitive. For information to be subject to the definition of inside information it must, pursuant to Section 3-2, second paragraph, of the Securities Trading Act be *"specific enough …".* In this respect, it must be assumed that there is considerable uncertainty over whether such a position, extending even to the ownership position to which Oslo Børs has referred, would have had an effect on the outcome of the licence negotiations where the decision is made by the central government authorities. In other words, the issue here appears to be one of circumstances or events of an indirect nature.

In drawing a line on what is seen as inside information, the Stock Exchange Appeals Committee has decided that DNO's knowledge of Hawrami's role as a middleman cannot be deemed to be *"precise information"* in the sense that it relates to *"information which indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur and which is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price …".*

The Stock Exchange Appeals Committee therefore concludes that the information that was in DNO's possession until such time as it became aware of the identity of the purchaser of the shares at the beginning of April 2009 did not represent inside information in the legal sense.

The Stock Exchange Appeals Committee therefore does not need to take a view on the question of delayed publication, nor on the arguments put forward by DNO on whether a procedural error by Oslo Børs compromised its authority to impose violation charges in relation to the duty of disclosure. Moreover, there is no need for the Stock Exchange Appeals Committee to express a view on the company's arguments in respect of EU/EEA law in this connection.

7.3. Breach of the duty to provide information to the regulated market

The question here is whether DNO neglected its duty pursuant to Section 24, seventh paragraph, of the Stock Exchange Act by failing to reply to certain of the questions put to it during the investigations launched by Oslo Børs in November 2008.

Pursuant to Section 24, seventh paragraph, of the Stock Exchange Act, Oslo Børs has the right to demand any information necessary for Oslo Børs "*to be able to comply with its legal duties*", and the information must be provided notwithstanding any duty of confidentiality. Oslo Børs is responsible for supervising the market, and for this purpose it must be able to obtain information from the companies that are listed on Oslo Børs.

In order to carry out its legal duties as a supervisory body, Oslo Børs must have relatively free scope to exercise its own judgement on the information it needs to obtain, so long as it restricts its requests to information that is factual and relevant to the purpose for which it is intended. Even though the Stock Exchange Appeals Committee concluded in section 7.2 above that DNO was not in possession of inside information that should have been notified to the market, it remains the case that it was for Oslo Børs to decide which information it considered necessary to obtain in order to give it a sufficient basis on which to carry out its own evaluation of this question. When a company is asked to provide information, it cannot exercise any form of censorship in terms of which questions it considers relevant and is willing to answer. If this were to be the case, the supervisory role of Oslo Børs would be easily undermined.

It is clearly apparent that DNO failed to provide satisfactory answers to the enquiries made by Oslo Børs in November and December. It is particularly serious that the company failed to disclose its contacts with Dr. Ashti Hawrami in advance of the

transaction, despite being asked such specific questions in this respect as in the letter of the 22 December 2008. Throughout the entire correspondence between Oslo Børs and DNO, the latter party was extremely reticent in providing information. Even if DNO considered the questions to be unreasonable, it did have a duty pursuant to Section 24 of the Stock Exchange Act to provide the information requested to Oslo Børs. As noted above, Oslo Børs must be given a certain degree of freedom in respect of which information it may deem to be necessary. The Stock Exchange Appeals Committee does not consider that Oslo Børs went beyond what must be seen as acceptable in this respect.

The Stock Exchange Appeals Committee therefore finds that DNO was in breach of its duty pursuant to Section 24, seventh paragraph, of the Stock Exchange Act to give Oslo Børs the information that Oslo Børs requested.

7.4. Sanction

The Stock Exchange Appeals Committee finds that it does not agree that there was a breach of Section 5-2 of the Securities Trading Act. On the other hand, there was a breach of the duty to provide information pursuant to Section 24, seventh paragraph, of the Stock Exchange Act. It is very important that issuers of financial instruments that are traded on Oslo Børs comply with their duty to provide information to Oslo Børs, since it is entirely necessary for Oslo Børs to be able to demand information and receive satisfactory replies from the companies in respect of which Oslo Børs is required to carry out its supervisory duties. The Stock Exchange Appeals Committee therefore finds that breach of this duty, even as the only breach of duty in this case, should be sanctioned by the imposition of a violation charge in accordance with Section 31 of the Stock Exchange Act with a view to discouraging such breaches.

In respect of this breach, Oslo Børs imposed a violation charge of 5 times the company's annual listing fee. The Stock Exchange Appeals Committee takes a somewhat different view of the seriousness of this breach since the Committee, unlike Oslo Børs, has not found that the transaction involved inside information that should have been disclosed to the market. However, as mentioned in section 7.3 above, this is still a serious breach by the company of its duty to provide information to Oslo Børs. The Stock Exchange Appeals Committee therefore considers an appropriate violation charge to be 4 times the annual listing fee, i.e. NOK 942,228.

The Committee accordingly passed the following unanimous resolution**:**

The resolution passed by Oslo Børs on 17 June 2009 is set aside.

For the breach of the duty to provide information pursuant to Section 24 (7) of the Stock Exchange Act a violation charge of 4 times the company's annual listing fee, i.e. NOK 942,228, is imposed on DNO International ASA, cf. Stock Exchange Act Section 31.

Bjørg Ven

Filip Truyen John Giverholt

Jøril Mæland Trygve Bergsaker