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**NASDAQ STOCKHOLM'S**                      **DECISION**                      2022-07-21  
**DISCIPLINARY COMMITTEE**              2022:05

Nasdaq Stockholm  
Telia Company AB (publ)

## **DECISION**

The Disciplinary Committee orders Telia Company AB (publ) to pay Nasdaq Stockholm a fine equivalent to two times the annual fee.

## **Motion**

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

The Exchange has alleged that Telia has breached section 3.1 of the Rule Book by failing to properly handle inside information regarding the recruitment of a new Chief Executive Officer (CEO). With reference to section 33 of Supplement D to the Rule Book, the Exchange has moved that the Disciplinary Committee examine the alleged violation of the Rule Book and determine the appropriate sanction.

Telia has contested the breach of the Rule Book alleged by the Exchange.

None of the parties has requested an oral hearing. The Disciplinary Committee has reviewed the documents in the case.

## **Reasons for the decision**

### The Rule Book

Pursuant to section 3.1 of the Rule Book in force at the time, an issuer must inform the public of inside information as soon as possible in accordance with Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 ("MAR").

The concept of inside information is defined in Article 7(1) of 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.

According to Article 7(2) of MAR, information is considered 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 it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments [...]. In the case of a process that takes place over time and is intended to bring about, or results in, a particular event or circumstance, the future event or circumstance and also the intermediate steps in that process that are linked to the bringing about of the future event or circumstance may be considered to be precise information for this purpose.

According to Article 7(3) of MAR, an intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

According to Article 7(4) of MAR, information which would be likely to have a significant effect on the prices of financial instruments shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

Article 17 of MAR requires an issuer to inform the public as soon as possible of inside information which directly concerns the issuer.

According to Article 17(4) of MAR, the issuer may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

- (a) immediate disclosure is likely to prejudice the legitimate interests of the issuer.
- (b) delay of disclosure is not likely to mislead the public.
- (c) the issuer is able to ensure the confidentiality of that information.

According to Article 17(7) of MAR, an issuer that has delayed the public disclosure of inside information, when the confidentiality of the inside information can no longer be ensured, shall disclose the inside information to the public as soon as possible. This includes situations where a rumour explicitly relates to inside information the disclosure of which has been delayed, where that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.

### Considerations

On 23 October 2019, Svenska Dagbladet published an article in which it was claimed that Allison Kirkby, according to sources with good insight into the recruitment process, was the final candidate for the position of new CEO of Telia and that a decision on the matter was expected shortly. Around 7:30 p.m. on 24 October 2019, Dagens Industri (Di) reported that Allison Kirkby, according to sources to the newspaper, would be appointed CEO of Telia. The same evening at 10:10 p.m., the Company issued a press release announcing that it had appointed Allison Kirkby as CEO of Telia. The press release contained a reference to the fact that the information was such that the Company was obliged to make public under MAR.

*Telia has argued:* The recruitment process of Allison Kirkby can be described very briefly as follows: a recruitment agency, following instructions and specifications from the Company, identified a number of potential candidates in a so-called long-list. After evaluation and discussion of the potential candidates during September 2019, a short-list of candidates was compiled. These were contacted, through the recruitment firm, directly for a more in-depth evaluation and to explore employment opportunities in greater detail. Allison Kirkby was one of the short-listed candidates. On 5 October, the Board reviewed the short-list of candidates and decided that Allison Kirkby was the Board's lead candidate and that it would go ahead and discuss details of the terms of employment with her. There were still other candidates left at that time. Not until around 20 October 2019 were contract proposals exchanged with Allison Kirkby for final negotiations on terms.

The Exchange considers that the information about Telia's negotiations with Allison Kirkby was of a sufficiently precise nature to constitute inside information on 20 October. Furthermore, the Exchange considers that if Telia's negotiations with Allison Kirkby were not considered to have constituted inside information until 23 October 2019, Telia would have had to publish a press release due to leakage one or a few hours earlier than it did on 24 October 2019. Telia does not share the Exchange's view. Even if a lead candidate is identified in the process of hiring a new CEO, there are many factors to fall into place and agreement on terms is necessary for a hire to be made. Consideration must also be given to a potential candidate's previous employer. Incorrect or preliminary information can compromise the process and make employment impossible. In close connection to Telia's announcement that CEO Johan Dennelind was leaving and that the process of finding a successor had begun, speculation began in the market and in the media. Several possible candidates for the post seemed easy to identify, with Allison Kirkby being one of several candidates mentioned. There were also circumstances that could affect or delay the chances of reaching an agreement.

At the end of October, additional circumstances arose that affected the process. Telia's largest shareholders requested an extraordinary general meeting to elect a new chairperson. One consequence of the change of chairperson was that it was no longer certain that the proposed chairperson would share the assessment of who was the main candidate for the post. Since the then chairperson of the board had been instrumental in the discussion of candidates for the post of CEO and even for a new chairperson, it could be assumed that the issue was of paramount importance. It was thus unclear whether Allison Kirkby was still the main candidate for the CEO position. Even for the CEO candidates, not least Allison Kirkby, the change in the board could be assumed to be of great significance. The issue was deemed to be of such importance that around 20 October 2019 it was being considered to postpone the entire CEO recruitment process. Only after 20 October 2019 did a meeting take place between Lars-Johan Jarnheimer and Allison Kirkby, after which it could be concluded that Allison Kirkby was the main candidate.

In addition, Allison Kirkby was at the relevant time bound by two non-compete obligations - firstly under an employment contract with Tele2, where she was CEO until December 2018, and secondly under the existing employment contract with TDC. These non-compete clauses created considerable uncertainty as to whether it was at all possible to employ her on terms acceptable to Telia. Telia had no direct contact with either Tele2 or TDC on this matter, and instead Allison Kirkby and her representatives handled the discussions with these two parties. These discussions were taking place in parallel with the exchange of contract proposals between Telia and Allison Kirkby. Telia did not get any clarity on whether the discussions with Tele2 and TDC would turn out well until Telia decided on 23 October 2019 to delay the

disclosure of inside information. Although Telia sent a draft agreement to Allison Kirkby on 20 October 2019, the Company only received Allison's comments and response to the draft agreement on 23 October 2019. In addition, on 20 October 2019, Telia had no final decision on how Tele2 and TDC would approach a recruitment and it was in any event in the hands of the latter to make a recruitment practically impossible.

In addition, the Company's largest shareholder had at that time requested that the Company call an extraordinary general meeting to elect a new chairperson. To the Company's knowledge, no contact had yet taken place between the proposed chairperson and Allison Kirkby. It was unclear whether the proposed chairperson shared the assessment that Allison Kirkby was the lead candidate. How Allison Kirkby approached a candidacy under these circumstances was equally unclear. Consideration was even given to postponing the entire CEO recruitment process, inter alia, to allow for reconsideration by both the Company and Allison Kirkby. In the Company's judgment, these external circumstances meant that the level of specificity of the information that the Exchange alleges constituted inside information on 20 October 2019 was no higher than it was much earlier in the CEO recruitment process. The Company notes that the Exchange has not alleged that the information would have constituted inside information at such an early stage. The Company had also announced that it was in a recruitment process.

On 23 October 2019, the Company received notice that Allison had no further comments or questions regarding material terms of the agreement. Allison accepted the proposed agreement provided that the relationships with TDC and Tele2 could be resolved in a manner acceptable to all parties. The Company was also informed that the incoming chairperson and Allison Kirkby had met and that the process could go ahead. As a result of this information, which removed material and significant uncertainties in the recruitment process, the Company determined that it was a reasonable outcome that Allison Kirkby would be the Company's next CEO and that there was therefore precise information that met the requirements to constitute inside information. The Company therefore decided to delay disclosure.

The Exchange has further argued that even if the Company's negotiations with Allison Kirkby would be considered to have constituted inside information only on 23 October 2019, the article in Di at around 7:00 p.m. on 24 October 2019 in combination with Svenska Dagbladet's previous information shows that the confidentiality of the inside information at the time of the DI article was not ensured, which is why the Company was obliged to immediately disclose the information to the market.

On the evening of 24 October 2019, the Company and Allison Kirkby met to finalize the agreement. Allison Kirkby received confirmation from her employer at 9:50 p.m. that they accepted her resignation and her taking up employment with Telia on terms and at a time acceptable to Telia and Allison Kirkby.

The article in Svenska Dagbladet on 23 October 2019 was perceived by the Company as continued speculation based on information that had been made public by the Company. The article in Di on 24 October at around 7:00 p.m. was, viewed objectively, more likely to indicate a leak. As far as the Company understands, the Exchange does not believe that the speculation in the media up to and including 23 October 2019 alone precluded a deferred disclosure, but that it was the article in Di that, together with earlier speculation, indicated that the confidentiality of the inside information was no longer ensured.

At the time of the article in Di on 24 October, Telia was focusing on finalising the agreement and obtaining the confirmations required to make public complete and relevant information.

Telia then announced information about the agreement reached with Allison Kirkby at 10:10 p.m. Telia considers that the time delay from around 7 p.m. to around 10 p.m., in the particular situation the Company found itself in and at a time when the Stock Exchange was closed, was justifiable. The Company provided complete and reliable information to the market about three hours after the indicative leak in DI, instead of, as would have been the consequence of the Exchange's position, publishing preliminary and incomplete information through a leak press release one or two hours earlier in the evening.

In conclusion, it is Telia's assessment that it cannot be considered to have breached Article 17 of MAR, either with respect to the timing of the assessment of the negotiations with Allison Kirkby as inside information or with respect to the timing of the disclosure.

*The Exchange has argued:* The requirement for inside information under MAR to relate to "an event that [...] may reasonably be expected to come into existence" does not imply a requirement for a high probability of the event occurring. In the Exchange's view, this must mean that - in the case of an employment process which, like many other negotiations, may contain significant uncertainties - the process in question may constitute inside information even before these uncertainties have been removed. The fact that parallel to the employment process there were also discussions between Allison Kirkby and her then employer on how to terminate her employment cannot be taken to mean that the information did not constitute inside information at that time. On the contrary, the fact that such discussions were initiated between Allison Kirkby and her employer must be taken as further evidence that the negotiations with Telia were well advanced at that time. In any event, it is noted that the discussions between Allison Kirkby and her employer were still ongoing when the Company deemed the plans to be inside information three days later, and that this circumstance was therefore clearly not a factor in the Company's assessment of the matter either.

Similarly, the meeting established between Allison Kirkby and the proposed new chairperson of the Board of Directors of the Company may be considered to indicate, and not to contradict, that the negotiations at that time were sufficiently advanced to constitute inside information. The fact that, when the proposal for a new chairperson was made, the Company considered discontinuing the recruitment process is of course irrelevant when the Company ultimately chose to continue the process. Nor has there been any indication at all that the meeting was prompted by any particular scepticism about Allison Kirkby as a prospective CEO.

In light of the above, it is the Exchange's assessment that the information regarding the Company's negotiations with Allison Kirkby was of a sufficiently precise nature to constitute inside information at least as of 20 October 2019. The Company had an obligation to make this information public as soon as possible, or to decide on a delayed disclosure of the information.

Even if the Company's negotiations with Allison Kirkby would not have been considered inside information until 23 October 2019, it can be noted that Di published information that this would occur hours before the Company's announcement of the CEO change. These media reports, together with Svenska Dagbladet's previous information that Allison Kirkby was the Company's final candidate, clearly show, according to the Exchange, that the confidentiality of the inside information was no longer ensured at that time. As the conditions for the Company's delayed disclosure of the inside information were thus no longer met, the Company had instead an obligation to immediately disclose it to the market.

With reference to the above, in summary, the Exchange considers that the Company breached Article 17 of MAR by not treating the negotiations with Allison Kirkby as inside information until 23 October 2019, and by not disclosing this inside information immediately when its confidentiality was no longer ensured. Consequently, the Company has also breached section 3.1 of the Rule Book in two different respects.

*The Disciplinary Committee concludes* that it is undisputed that the information on the recruitment of Allison Kirkby came to constitute inside information by 23 October 2019 at the latest. However, the question is whether the information about the recruitment of Allison Kirkby, as alleged by the Exchange, came to constitute inside information at an earlier stage.

The Exchange has alleged that the information was of a sufficiently precise nature to constitute inside information on 20 October 2019, because the Company exchanged contract proposals with Allison Kirkby for "final negotiations" regarding her employment terms. For its part, the Company claims that the information was of a sufficiently precise nature only on 23 October 2019, when the Company was informed that Allison Kirkby had no further comments or questions on the material terms of the agreement and accepted the proposed agreement subject to the relations with TDC and Tele2 being resolved in a manner acceptable to all parties, and that the incoming chairperson of the Company and Allison Kirkby had met.

In the Disciplinary Committee's view, it is not possible to say with certainty, on the basis of the information provided in the matter, exactly when the information became sufficiently precise in nature to constitute inside information. The mere fact that the Company's Board of Directors found that Allison Kirkby was the Board's main candidate cannot, in the opinion of the Disciplinary Committee, be sufficient, since the appointment of a new CEO requires an agreement between two parties and, in this case, also required certain positions to be taken by a third party, namely Allison Kirkby's former employer. However, it is also not the meaning of the Rule Book that the moment of preciseness in a case such as the present one - which concerns a process that is ongoing over time as referred to in Article 7(2) of MAR - only occurs once final clarity has been reached on the prospective CEO's acceptance of the proposed terms of employment.

In the present case, it is clear that the Company had already contacted Allison Kirkby before 23 October 2019 with proposals or requests for her to become CEO of the Company, that Allison Kirkby had engaged counsel for this purpose, that draft agreements had been transmitted, that discussions were ongoing and that these were relatively advanced before 23 October 2019 (albeit that Allison Kirkby had not yet given final acceptance and that the TDC and Tele2 issues were still to be resolved). In the opinion of the Disciplinary Committee, there was a real prospect that Allison Kirkby would be appointed as CEO earlier than the Company had estimated. The fact that the incoming chairperson of the board might, contrary to the position of the other board members and the outgoing chairperson, have a different opinion as to which candidate should be the main alternative does not, in the view of the Disciplinary Committee, entail a sufficient degree of additional real uncertainty to mean that such a prospect did not exist.

The information on the recruitment of Allison Kirkby must therefore, in the opinion of the Disciplinary Committee, have already constituted inside information at some time prior to 23 October 2019.

The Company therefore neither made public nor decided on the delayed disclosure of the inside information in question in due time. Consequently, the Company has acted in breach of Article 17 of MAR, and thus also in breach of section 3.1 of the Rule Book.

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The Disciplinary Committee finds that the Company has violated section 3.1 of the Rule Book. The Disciplinary Committee considers the violation to be serious, which is why a fine should be imposed as a penalty. In view of the complexity of the situation in which the Company found itself and the time that has elapsed since the events in question, through no fault of the Company, the Disciplinary Committee imposes a sanction of two times the annual fees.

On behalf of the Disciplinary Committee

A handwritten signature in blue ink, appearing to read 'Marianne Lundius', is centered on a light gray rectangular background.

Marianne Lundius

The Committee's decision was taken by former Supreme Court Justice Marianne Lundius, Justice of the Supreme Court Petter Asp, Justice of the Supreme Court Johan Danelius, Director Jack Junel and *Advokat* Erik Sjöman.

Secretary: associate professor Erik Lidman