Former Swedbank CEO convicted of gross swindling by the Svea Court of Appeal

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On 10 September 2024, the Swedish appeals court, Svea Court of Appeal, delivered a judgement in the case B 2457-23, in which the former Swedbank CEO, Birgitte Bonnesen, was charged with, firstly, gross swindling and, secondly, gross market manipulation and unlawful disclosure of inside information. The Svea Court of Appeal made a different assessment than the District Court and sentenced the former CEO of Swedbank for gross swindling to one year and three months imprisonment. The verdict is unique and has important implications on how listed companies disclose information to the market as well as on the criminal liability of corporate executives when making public statements.

Background

The cause of action is the statements made by the former CEO to the Swedish media in 2018 regarding anti-money laundering measures taken by Swedbank in Estonia. The Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*) previously issued a warning and a fine of SEK 4 billion to Swedbank for deficiencies in its anti-money laundering measures. Swedbank had also been found guilty by the Disciplinary Committee of Nasdaq Stockholm for deficiencies in the handling of inside information in connection with the incident, and was obliged to pay a fine of twelve annual fees. The District Court acquitted the CEO of the criminal charges, but the Svea Court of Appeal now makes a different assessment.

Swindling

The Svea Court of Appeal found that the CEO had provided misleading information about Swedbank's anti-money laundering measures in Estonia. The statements wrongly conveyed the impression that Swedbank had no issues with its anti-money laundering procedures and that there were no suspected money laundering connections to operations of Danske Bank in Estonia during the years 2007-2015. At the time, the statements were subject to great interest by the media and the public. In connection with the statements, the Swedbank share price plunged, which, according to the Svea Court of Appeal, indicated the sensitivity and importance of the anti-money laundering issue in relation to the valuation of the Swedbank share. The Svea Court of Appeal therefore found that the information was likely to have affected the valuation of the Swedbank share and therefore to have caused damage, and that the CEO had acted with intent (Sw. *insiktsuppsåt*). Furthermore, the Svea Court of Appeal declared that a statement can be of a particularly dangerous nature if it affects, or risks affecting, the credit market with consequent risks for the national economy at large. These particular statements were made by a representative of one of the largest banks in Sweden that conducts socially important activities and could have caused major socio-economic consequences. Moreover, it is crucial for the functioning of the stock market and the supply of capital that investors can rely on the information provided by listed companies. The overall assessment of the Svea Court of Appeal thus was that the statements, which could have caused considerable damage and were of a particularly dangerous nature, constituted *gross* swindling.

Market manipulation and unlawful disclosure of inside information

Regarding the indictment for gross market manipulation, the Svea Court of Appeal stated that an action does not need to involve stock exchange trading in order to constitute market manipulation. However, the Svea Court of Appeal ruled that the statements did not entail that the CEO had given misleading signals regarding the price of the Swedbank share in the manner referred to in the law. The Svea Court of Appeal therefore, like the District Court, dismissed the charge of gross market manipulation.

The prosecution for unlawful disclosure of inside information concerned information that the CEO disclosed at a meeting with certain shareholders, two days ahead of the broadcast of a national TV show where the information was intended to be disclosed. The Court of Appeal agreed with the conclusion of the District Court that the limited information that the CEO conveyed to shareholder representatives at the meeting was not of such a specific nature that it was possible to draw conclusions about its potential effect on the Swedbank share price. The provision of information to the shareholder representatives thus did not constitute an unlawful disclosure of inside information.

Analysis

The verdict is principally important as it can be interpreted as enhancing the personal responsibility of corporate executives in relation to information disclosure. The court considers, derived from the Companies Act and the Act on Banking and Financing Operations, among other things, the duty of loyalty of management and employees towards the bank and the shareholder community, e.g. by not exposing the bank to regulatory risks unnecessarily or weakening the bank's competitiveness. It is also clearly stated in the court's reasoning that information disclosure and room for communication becomes more complex and narrow in these types of financial business operations. This is exemplified by the fact that overly open communication may conflict with, for example, prohibition against disclosure and banking secrecy or lead to unwarranted reputational risk, while overly sparse communication may conflict with market abuse rules or stock exchange rules. Although high requirements are placed on information disclosure in listed companies, the line can often be unclear between

what should be disclosed, what can be omitted or what is in a gray area. The reasoning behind the verdict reveals that a CEO is only criminally responsible for statements where it is clear that the line has been crossed, they are not responsible for statements of a generally reassuring nature or statements which lack more precise information. The failure to mention certain circumstances may be questionable, but several of the messages conveyed has not reached a level of misleading, to be criminally punishable.

At the time of writing, the verdict of the Svea Court of Appeal has not yet been appealed, although it is likely to be. It remains to be seen whether the Supreme Court will grant leave to appeal.

Takeaways

To reduce the risk of this type of liability, it is crucial that there are clear and well-established procedures and processes concerning disclosure of sensitive information. CEOs and other senior executives are required to be familiar with the applicable rules and regulations, to keep up to date with the changes made to internal policy documents and similar documents, as well as the actual circumstances of the information provided. Education in applicable rules and regulations, continuous dialogue with the IR function and the marketing department regarding all updates to policy documents and documentation are active measures that can be taken.

The Capital Markets team at DLA Piper continuously advises a large number of Swedish listed companies on information disclosure and corporate governance issues, and regularly conducts regulatory compliance training for board members and executives, as well as assists in establishing internal information- and communication policies, including inside information policies and routines, to ensure the proper handling and communication of sensitive information. We are available if you have any questions or want further details.

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