

# Swedish Securities Council

Statement 2017:27

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UNOFFICIAL TRANSLATION

SWEDISH VERSION PREVAILS

[...]

The Swedish Takeovers Act<sup>1</sup> contains provisions regarding takeover bids. According to Chapter 2, section 1 of the Takeovers Act, a takeover bid may only be made by offerors which, vis-a-vis the exchange which operates the regulated market on which the target company's shares are admitted to trading, have undertaken, among other things, to comply with the takeover rules established by the exchange for such offers. Prior to the relevant offer for shares in Haldex, Knorr-Bremse has made such an undertaking and is thereby obliged to comply with the Nasdaq Stockholm Takeover Rules (also known as the Takeover Code). It is incumbent upon the Swedish Securities Council (the Swedish Takeover Panel) to interpret and examine issues involving exemptions from the Takeover Rules (Rule I.2).

The Council makes the following assessment.

According to Rule II.7 of the Takeover Rules, the acceptance period for an offer may not exceed three months. However, if the offer is conditional upon official authorisations/regulatory clearances, the acceptance period pending such authorisation or clearance may not exceed nine months. The notes on the aforementioned provision point out that, pursuant to Rule I.2, the Securities Council may, where there is special cause, grant an exemption from the time limits at the request of the offeror.

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<sup>1</sup> Swedish: *lagen om offentliga uppköpserbjudanden på aktiemarknaden* (Swedish Code of Statutes 2006:451)

The offer by Knorr-Bremse to the shareholders of Haldex was made on 5 September 2016, and the initial acceptance period in the offer commenced 27 September 2016. Pending word from the competition authorities, Knorr-Bremse extended the acceptance period on two occasions such that it was ultimately extended to 26 June 2017. The aggregate acceptance period was thus nine months less 10 days. Pending the expiry of that time period, Knorr-Bremse submitted a request to the Council to extend the acceptance period by an additional period of three months up to and including 26 September 2017. The board of directors of Haldex approved the request without reservation and the request was subsequently granted by the Council. Accordingly, the acceptance period for the offer is up to and including 26 September 2017.

In light of the fact that the EU competition authorities initiated a so-called Phase II examination, Knorr-Bremse now requests an extension of the acceptance period by an additional period of four months and two weeks up to and including 9 February 2018. According to the request, Knorr-Bremse would thereby have the possibility to satisfy the conditions of the offer regarding competition approval and complete the offer. In response to an inquiry by the Council, Knorr-Bremse has stated that the aforementioned applies also to the competition approval proceeding pending in the US.

By virtue of the extension of the acceptance period currently requested by Knorr-Bremse, the acceptance period would be nearly twice as long as the longest acceptance period allowed by the Rules, which alone may generally be said to give rise to doubts. In addition, the Takeover Rules rest on certain principles derived from the EU Takeover Directive which, among other things, entails that a takeover bid may not prevent the target company from conducting business for a period that is longer than reasonable.

The Swedish Takeover Rules are largely modelled after the UK City Code on Takeovers and Mergers. Briefly put, the UK regime entails in relevant respects that, when a takeover bid is subjected to a Phase II examination, the offer lapses. If the competition approval process proceeds, and the competition authority subsequently grants clearance for the acquisition, the offeror has three weeks from the date of the decision to submit a new offer. The latter entails an exemption from the general rule that, unless the board of directors of the target company recommends the offer, an offeror who does not complete an offer must wait a minimum of

one year to submit a new offer. Other countries employ a regime similar to that applied in the UK.

The experience in Sweden regarding takeover bids which are subject to so-called Phase II examinations is very limited. Thus, the Council has been informed, there has been no identified need to implement in the Swedish Takeover Rules any rules of the sort currently present in the UK Code. However, this does not prevent the UK regime from affording guidance as to the manner in which the relevant situation is to be assessed.

Accordingly, in keeping with *inter alia* the UK regime, it is the position of the Securities Council that Knorr-Bremse not be granted any additional extension of the acceptance period now that the Phase II examination has been initiated. The offer thus lapses at the expiry of the acceptance period. If the competition approval process continues thereafter, Knorr-Bremse may, following the decision of the competition authority, make a new offer within a period of time of less than one year after the offer has lapsed provided that the board of directors of Haldex recommends the offer or Knorr-Bremse has received the consent of the Council therefore (cf. Rule II.24 of the Takeover Rules). In keeping with the UK regime and based on the circumstances known to date, the Council is prepared to grant an application for such an exemption provided that the offer is made within three weeks of the decision of the competition authority. The Council assumes that the offer will then also not be conditional upon the competition approval process in the US or elsewhere.

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