



# The Mandatory Bid Rule – the Swedish experience

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Nov 2024

# Background (I)

## Swedish listed companies

- ▶ Most large Swedish companies are listed (Atlas Copco, Ericsson, SKF, Volvo, H&M...)
- ▶ In total approx. 1,000 listed companies
- ▶ Sweden is the largest stock market in the European Union in terms of number of listed companies
- ▶ Several market places: Nasdaq Stockholm, NGM, Spotlight, with Nasdaq Stockholm being by far the largest

# Background (II)

## The structure of ownership

- ▶ Concentrated structure of ownership in the individual companies – many controlling shareholders with MVS
- ▶ High degree of institutional ownership (85 %)
- ▶ Active Swedish institutional investors

# Background (III)

## Takeover activity

- ▶ Takeovers are common
- ▶ Approx 20 – 30 bids/year
- ▶ Most bids are recommended
- ▶ Few “real” mandatory bids

# The Swedish Takeover Panel

Established 1986 as a pure self regulatory body (just like the London Panel)

As of 2006 acting on behalf of the FSA and the Stock Exchanges

The tasks include mainly:

- ▶ Issuing interpretative rulings
- ▶ Granting *ad hoc* exemptions

Approx. 60-70 rulings (statements) per year

# The Mandatory Bid Rule

The idea is to protect other shareholders upon a change in control. Hence, a party which acquires shares in a company to such an extent that control is achieved must offer also to acquire the remaining shares at a price determined in a certain way.

# The Swedish Mandatory Bid Rule

- The Trigger Event
- Acting in Concert
- The Bid (time, price, conditions, etc)
- Exemptions (including “white-wash procedure”)
- Sanctions
- Grandfathering

# The trigger event (I)

“A party who holds no shares or holds shares representing less than 30 per cent of the voting rights for all shares in a listed company... and who, through acquisition of shares, alone or together with another closely related party, reaches a shareholding representing at least 30 per cent of the voting rights for all shares in the company shall”... (make a Bid).



# Re: "Acquisition"

- The manner of acquisition is irrelevant. It may be by plain purchase but can also be, for example, through subscription or conversion or inheritance or similar.
- The number of shares acquired is irrelevant. The crucial factor is that the total holding reaches 30 per cent or more of the votes in the company.
- Only holdings of shares, not holdings of warrants or convertibles, etc count. Neither do CFD contracts or other contractual arrangements with only financial exposure.
- The acquisition must be definitive (not contingent on certain conditions).

## Re: "30 per cent"

- When calculating the total number of votes in the company, treasury shares held by the company are included. Thus, the company's buy-back of its own shares has no impact on the number of shares any outside party may acquire without triggering the MBR.
- When calculating the total number of votes in the company, convertible instrument or subscription warrants issued by the company are not included.

# ”Acting in concert”

A closely related party shall be deemed to be:

- ▶ The spouse or a child (<18) of the acquiring party
- ▶ A company in the same group as the acquiring party
- ▶ A party with whom an agreement has been reached to take a long term common position with the purpose of achieving a controlling influence over the management of the company through a coordinated exercise of voting rights
- ▶ A party who cooperates with the acquiring party for the purpose of achieving control over the company

## The trigger event (II)

The MBR is also triggered if certain “acting in concert” situations are established.

*Example:* Shareholder A (15 %) and shareholder B holding (15 %) enter into an agreement regarding coordinated exercise of their voting rights.

Triggers the MBR because a new 30 % controlling constellation is created.

## The trigger event (III)

The MBR is not triggered by measures taken by the company, e.g. redemption or cancellation of shares, even if this results in an increase of A's holding to 30 % or more. However, the MBR is triggered if A subsequently acquires one or more additional shares.

# The bid (I)

“A party who holds no shares or holds shares representing less than three-tenths of the voting rights for all shares ... and who, through acquisition of shares in the company, alone or together with another closely related party, reaches a shareholding representing at least three-tenths of the voting rights for all shares in the company shall:

- ▶ 1. immediately make public the extent of his shareholding in the company;
- ▶ 2. within four weeks thereafter launch a bid in respect of the remaining shares in the company.”

# "Stepping down"

A shareholder triggering the MBR may elect to decrease its shareholding within the four-week period.

Such shareholder may not vote any shares representing 30 per cent or more during the four-week period.

# The bid (II)

The rules relating to voluntary offers also apply to mandatory offers.

However:

- the mandatory offer must always apply to all of the shares in the target company;
- the offeror must offer all shareholders the option to receive payment in cash;
- the offeror may make the offer conditional only upon official authorisations/regulatory clearances being obtained;
- the acceptance period might be extended only if it doesn't delay payment of consideration to those who have already accepted.



# Re: The bid price

The bid price may not be lower than the highest price in any acquisition of shares in the target company by the offeror, or a closely related party, during six months prior to the mandatory bid (or during the offer period or six months after).

*Rationale:* Equal treatment of target company shareholders.

# Re: The bid price when there is no relevant prior acquisition

Suppose the prior acquisition is not a plain purchase from another shareholder but, for example, a subscription for *new* shares. Hence, no equal treatment problem. In such cases, the bid price may not be lower than VWAP during the 20 trading days preceding the date of reaching 30 per cent.

# Exemptions

## Sweden

Almost no exemptions in the Takeovers Act

*Ad hoc* exemptions may be granted by the Takeover Panel

# Exemptions in the Takeovers Act

## Sweden

The MBR is not triggered where a party reaches 30 per cent of the voting rights through a public offer for all shares in the company.

Lowballing? Yes, possible; no specific rules.

# Ad Hoc Exemptions by the Panel

Where special cause exists, the Panel may following an application grant an *ad hoc* exemption:

- ▶ Subscription for shares in pre-emptive rights issue
- ▶ Subscription for shares constituting consideration in conjunction with purchase of another company or property (“white-wash procedure”)
- ▶ Subscription for shares in the reorganisation of a company in dire economic straits (“white-wash procedure”)
- ▶ Acquisition but no *de facto* change in control
- ▶ Acquisition through inheritance or gift

# An *ad hoc* exemption – what does it mean?

Suppose A is given an exemption to hold 40 %.

- ▶ Can A later increase the holding? No.
- ▶ Can A sell down to 35 %? Yes, of course.
- ▶ Can A sell down to 35 % and later increase to 40 %? No.

# No rule, just exemptions?

Wrong!

The legal advisers know the preconditions for receiving an *ad hoc* exemption. Hence, most applications are approved.

# Sanctions


- ▶ Prohibition on representing the shares at the general meeting.
- ▶ FSA may issue an order to effect rectification.



# "Grandfathering"

"A party who holds no shares or holds shares representing less than three-tenths of the voting rights for all shares ... and who, through acquisition of shares in a listed company reaches a shareholding representing at least 30 per cent of the voting rights for all shares in the company shall..."

- A party who held shares representing three-tenths of the voting rights already when the MBR entered into force (in July 2006) may acquire additional shares.
- A party who held shares representing three-tenths of the voting rights already when the company was first listed may acquire additional shares.



The Panel is available every day of the week for consultations as well as formal cases. In cases dealt with by the Chair, the Panel generally announces its decision no later than the day after the final petition is submitted. Processing times for cases handled by a collegiate Panel vary from one day to a couple of weeks.



Read more:  
[www.aktiemarknadsnamnden.se](http://www.aktiemarknadsnamnden.se)

Thank you for your attention