

# WESTERMARK ANJOU

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## **Special examination of Axis AB**

Report of 29 March 2017

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## 1. SUMMARY CONCLUSIONS

In this examination report, we report on our investigation and conclusions from our special examination of Axis AB regarding the period 15 July 2013 up to and including 13 April 2016. We were primarily charged with examining the actions taken by the board of directors and management in conjunction with Canon Inc.'s public tender offer during the winter and spring of 2014/2015, and otherwise reviewing the management of Axis AB by the board of directors and management from that point in time with particular emphasis placed on the company's relationship with its primary owner, Canon Inc. Set forth below is a brief summary of our conclusions.

We conclude that Axis AB is a well-run company with properly functioning routines and procedures for decision-making, keeping minutes, and regulatory compliance, etc.

We conclude that the previous board of directors, in conjunction with Canon Inc.'s public takeover offer, complied with the applicable rules and regulations and acted in the interests of all of the shareholders. In this respect, we have concluded, among other things, that the board of directors' recommendation to the shareholders was well supported and that the board of directors took the measures necessary in order to ensure that Canon Inc. did not receive unpublished price-sensitive information. At the same time, we have pointed out that we were unable to fully understand the considerations made by the board of directors regarding the remuneration terms and conditions on which Axis AB's financial advisors were retained in the bid process. However, we have not been able to conclude that Axis AB suffered any damage as a consequence of this.

We conclude that our examination does not give rise to any criticism of the management of Axis AB by the board of directors or management, including the handling of the two corporate acquisitions which were carried out during the examination period.

We conclude that our examination has not demonstrated that the board of directors or management provided the primary shareholder, Canon Inc., with any treatment more favourable than that afforded to other contracting parties. Instead, we have concluded that Axis AB implemented special guidelines and procedures in order to handle the exchange of information and for cooperation projects with Canon Inc., and that these guidelines and procedures were complied with. Our investigation has shown that, in relation to Canon Inc., during the examination period, Axis AB largely functioned as an independent company and that Axis AB thus did not treat Canon Inc. more advantageously than any other supplier or any other contracting party.

In light of this background, our overall assessment is that the board of directors and management of Axis AB acted during the examination period in accordance with the

Swedish Companies Act and other applicable rules and regulations and based upon what is best for Axis AB and thus all of the company's shareholders.

## **2. THE THEME OF THE EXAMINATION**

### **2.1 Background**

On 10 February 2015, Canon Inc. ("**Canon**") published a public tender offer to the shareholders of Axis AB ("**Axis**") to sell all of their shares in Axis to Canon for SEK 340 per share (the "**Offer**"). The Offer was contingent, among other things, on acceptance of the Offer to such an extent that Canon would own more than 90 percent of the total number of shares in Axis. The acceptance period originally ran for the period commencing on 3 March 2015 up to and including 1 April 2015.

On 30 March 2015, the US hedge fund, Elliott, (defined in section 4.1) announced through a notice of disclosure of a substantial acquisition of shares that it had acquired shares corresponding to 10.01 percent of the shares in Axis. In light of this, Canon was not successful in achieving shareholdings of more than 90 percent of Axis' shares. Canon elected nonetheless to complete the bid and thereby withdrew the condition of acquiring 90 percent of the shares in Axis.

### **2.2 The appointments**

At the annual general meeting of Axis held on 15 June 2015, Elliott presented a proposal that a special examiner be appointed by the Swedish Companies Registration Office. Shareholders representing more than 10 percent of the shares in Axis vote in favour of such an examination. Pursuant to a decision by the Swedish Companies Registration Office of 23 December 2015, the undersigned, Urban Båvestam, was appointed as a special examiner of Axis.

According to the decision by the Swedish Companies Registration Office, the special examination shall cover the following:

"The examiner shall investigate whether (i) the board of directors of Axis Aktiebolag ("Company"), its management or individual directors or senior management personnel, in conjunction with Canon Inc's ("Canon") public takeover offer for all of the shares in the Company which was made public on 10 February 2015 ("Offer"), acted in the best interests of the Company and all of its shareholders, and thus whether the rights of the minority shareholders were fully respected; and (ii) whether the Company's board of directors, its management, or individual directors or senior management personnel, following Canon's completion of the Offer and up to and including 15 June 2015, acted in the best interests of the Company and all of its shareholders and whether the rights of the minority shareholders were fully respected, taking into consideration the fact that the Company is not a wholly-owned subsidiary of Canon and that measures taken by, or transactions or agreements entered into between, the Company or any company in the Axis

Group on the one part, and Canon or companies or persons closely-associated with Canon on the other part, must be carried out on market terms and conditions. As a consequence of this, the examiner shall take into consideration and evaluate, *inter alia*:

- a. All decisions taken or measures and acts taken (or the failure to take decisions or take acts or measures) by the board of directors or management, or by individual directors or senior management personnel, including discussions, telephone conversations, or other correspondence between the Company's directors and/or senior management personnel internally or with any third party prior to 15 June 2015 and two (2) years prior thereto, regarding any takeover offer by any third party of the shares in the Company or any of its subsidiaries, or a merger or other type of business amalgamation, joint venture, cooperation agreement or suchlike between the Company or any of its subsidiaries and third-party, including the board of directors' or management's discussions or decisions as a consequence of such;
- b. All decisions taken or measures and acts taken (or the failure to take decisions or take acts or measures) by the board of directors or management, or by individual directors or senior management persons, including discussions, telephone conversations or other correspondence including, but not limited to, discussions, telephone conversations or other correspondence regarding the board of directors' withdrawal of its proposal for a dividend, internally or with or regarding Canon or any company or individual closely-associated with Canon regarding the Offer prior to 15 June 2015 and two (2) years prior thereto;
- c. All of the Company's or any of its subsidiaries' agreements, arrangements, understandings, commitments, undertakings, discussions and/or decisions taken or measures and acts taken (or the failure to take decisions or take measures or acts) with Canon or any company or individual closely-associated with Canon which might result in a direct or indirect transfer of assets from the Company to Canon or to any company or individual closely-associated with Canon.

At the annual general meeting of Axis the subsequent year, 13 April 2016, Elliott presented a proposal that a special examiner be appointed by the Swedish Companies Registration Office. Shareholders representing more than 10 percent of the shares in Axis vote in favour of such an examination. According to the decision by the Swedish Companies Registration Office of 10 May 2016, the undersigned, Urban Båvestam, was appointed as special examiner for an additional examination period.

According to the decision of the Swedish Companies Registration Office, the special examination during this examination period shall cover the following:

“The special examiner shall perform the examination regarding the following (examination theme):

- a. The board of directors' management of the company regarding the 2015 financial year and the period until the date of the annual general meeting (13 April 2016).
- b. The Company's or its subsidiaries' agreements, arrangements, commitments, undertakings, discussions and/or decisions or measures (or the failure to take a decision or a measure) in relation to Canon or any company or person closely-associated with Canon for the purpose of investigating whether the board of directors, an individual director, the CEO and/or other senior management personnel acted in this respect in the best interests of the Company and all of its shareholders and in accordance with the Swedish Companies Act, the Swedish Corporate Governance Code, and other relevant rules and regulations.
- c. Decisions and other actions by the board of directors, individual directors, the CEO, and other senior management personnel in relation to the Company's acquisition of Citilog in January 2016 and otherwise during the 2015 financial year and for the period up to the date of the annual general meeting (13 April 2016) in relation to mergers, corporate acquisitions, financing, capitalization and/or restructuring which the Company and/or the Group (i.e. the company and its subsidiaries) carried out, planned or are planning, for the purpose of investigating whether the board of directors, an individual director, the CEO and/or other senior management personnel acted in this context i) with due consideration of the Company's and the Group's (i.e. the Company's and its subsidiaries') operations and financial position; and ii) the best interests of the Company and all of its shareholders and in accordance with the Swedish Companies Act and other relevant rules and regulations.

Advokatfirman Westermark Anjou has not previously performed services on behalf of Axis, any of the members of the board of directors of Axis, or any shareholder of Axis known to us. Nor have we ever performed services for either Canon or Elliot. During our examination work, we received regular payments of fees from Axis without the board of directors having seen our conclusions until the final report was submitted to the board of directors. Our client has been Axis – and thus indirectly all of the company's shareholders – and no other party. Consequently, in our work, we have not taken into consideration the interests of any party other than Axis and all of its shareholders. Even if we thus have received fees from Axis, we believe that we have fulfilled the role in our examination work of an independent examiner.

### **3. THE EXAMINATION WORK**

#### **3.1 The purpose of the examination**

A special examination may cover the company's management and accounts during a particular period of time in the past or certain specifically stated measures or circumstances in the company, or both of the above. In this case, the two themes of the examination which apply to the services are a combination of these two variations. In its appointment of a special examiner, the Swedish Companies Registration Office, in principle, only carries out a formal assessment of whether the conditions exist for the

appointment. Consequently, it is not the responsibility of the Swedish Companies Registration Office, as the appointing authority, to determine whether the relevant examination theme is permissible or if, to any extent, it would be impermissible. Instead, that assessment is the responsibility of the examiner appointed. To the extent an examination theme would not be permitted for any reason, the examiner must not examine such circumstances.

In a determination of whether an examination theme is permissible, the following must be taken into consideration.

Notwithstanding the comments set forth above regarding the permissible content of the examination theme, an examination must cover the type of matters about which a shareholder of the company typically has a legitimate interest in receiving information. Naturally, a shareholder has a legitimate interest in information which, in one way or another, might affect his or her financial position. Consequently, an examination theme is permissible to the extent it covers such matters which are of significance in assessing the financial position of the company. This includes, for example, transactions which may have been prejudicial to the company and possibly invalid or which give rise to liability in damages recoverable by the company from those parties who participated in such transactions. The aforementioned also entails that a shareholder has a legitimate interest in information regarding whether corporate management has taken measures which may give rise to liability in damages not only to the company, but also to the shareholders.

Even if a shareholder's legitimate interest in an examination focuses, as a rule, on such matters which are of a financial nature, the rules of the Swedish Companies Act do not contain any requirements that the circumstances examined must be of such a type. The examiner thus cannot refrain from examining a circumstance solely because it does not involve potential financial consequences. It is not possible to impose a stricter requirement than that there must be cause for an examination which, to some extent, can be deemed objectively relevant to a shareholder. The examination theme is also deemed to be permissible in cases where the intention of the minority shareholders is only to bring about a legal review of circumstances which are already *per se* known.

The aforementioned does not necessarily entail that the examiner must carry out an examination of all of the various circumstances which might be covered by an examination theme. On the contrary, it should be the responsibility of the examiner to carry out the examination in such a way that there is a reasonable balance between, on the one hand, the legitimate interests of the minority shareholders in obtaining information and, on the other hand, the costs for the company which the examination work entails. To some extent, as is the case with an audit, an examination should therefore also be characterized by the

principle of materiality and risk. However, when an examination theme specifically points to a particular measure or a particular circumstance as the object of the examination, the examiner normally has an obligation to examine this even if it would not otherwise have been considered a circumstance which entails a risk of a material impact on the company's financial position.

In summary, it is natural that an examination be primarily focused on circumstances which may have significance to the financial position of the company (including legal acts which may be deemed to be invalid or to give rise to liability in damages to the company on the part of the company's management) or otherwise to the financial position of the shareholders (liability in damages on the part of company management towards shareholders). When an examination theme specifically covers a circumstance which does not have significance either for the company's or the shareholders' financial position, such a circumstance may be the object of an examination if, in the opinion of the examiner, there is a legitimate interest in the examination taking place.

### **3.2 The focus of the examination and the interpretation of the examination theme of the investigation**

As reported above, our examination covers two different examination periods with two different examination themes. The examination theme for the later examination period is not identical to the examination theme for the earlier examination period. In order to make our examination more efficient, however, to the extent possible, we have carried out our examination as if it involved a contiguous examination period with the same examination theme, but naturally taking into consideration differences apparent from each examination theme. The report has also been drafted in such a way as to make it easier for the reader to absorb the information.

With respect to the content of each examination theme, and thus the conditions for our examination, the following should be considered.

It is not entirely clear from the first examination theme which period of time the examination should cover. The initial main paragraph of the examination theme states that the examination shall cover two different circumstances, namely: i) the actions of the board of directors, *et al.* in conjunction with the Offer; and ii) the actions of the board of directors, *et al.* after Canon's completion of the Offer and until the annual general meeting held on 15 June 2015. Consequently, the examination theme in this respect gives the impression that the examination period covers the period from when the offer was initiated until 15 June 2015 (approximately six months).

When it is stated in the following section of the first examination theme that the examiner, in conjunction with the examination of the two mentioned circumstances, must take into



consideration and specifically evaluate, among other things, a number of specific circumstances, a longer examination period is indicated instead. It is stated in sections a. and b. that the examination in these respects shall cover the period "15 June 2015 and two (2) years prior". In light of this background, we have understood that the examination period according to the first examination theme, in any event in respect of certain questions, is the period of time between 15 June 2013 and 15 June 2015. As used below, this period is thus referred to as the "**First Examination Period**".

The second examination theme contains, among other things, a request for an examination of the management of the company by the board of directors during the 2015 financial year and continuing until the 2016 annual general meeting. That portion of the examination which is referred to below as the "**Second Examination Period**" thus covers the period between 1 January 2015 and 13 April 2016. The Second Examination Period thus overlaps with the First Examination Period by just under six months.

It can be mentioned already here that a general management examination, which has thus been requested for the Second Examination Period, actually does not entail anything different or more than an investigation corresponding to the management audit which an auditor performs. It can also be mentioned here that the period of time in which we, according to the second examination theme, are to carry out a management examination, has been the subject of a management audit not only by Axis' ordinary auditors, Price Waterhouse Coopers, regarding 2015, and Ernst & Young, regarding 2016, but also by Grant Thornton, the minority auditor appointed by the Swedish Companies Registration Office. We will return to this subject below.

In addition to the management examination which is to be carried out regarding the Second Examination Period, the circumstances and facts which are to be examined according to both of the appointments are summarized according to the itemized list below, which also forms the basis and structure of our report. When the itemized list only states "the board of directors", this also covers individual directors, Axis' management, and senior management persons, and where only "Canon" is mentioned, this also means subsidiaries and other persons closely associated with Canon.

The specific questions which are to be examined and investigated are thus summarized as follows:

- (i) Were there other opportunities during the period prior to the Offer, in addition to Canon's buyout, for mergers of various types which Axis' board of directors at the time did not make use of? (first examination theme, item a.)

- 
- (ii) Did Axis' board of directors at the time act correctly in conjunction with the Offer? (first examination theme, first paragraph)
  - (iii) Did Axis' board of directors at the time act correctly in conjunction with the board's withdrawal of its dividend proposal in the spring of 2015? (first examination theme, item b.)
  - (iv) Did Axis' board of directors at the time and current board of directors, after Canon's completion of the Offer on 8 April 2015 and up to 13 April 2016, act correctly in relation to Canon and thus not take any legal act which entailed a transfer of assets to Canon? (first examination theme, first paragraph and item c. and second examination theme, item b.)

Item c. in the second examination theme regarding, among other things, the acquisition of Citilog SA in the beginning of 2016 and other acquisitions must be deemed to be covered by the management examination already set forth in item a. in the same examination theme and thus do not cover any examination measures beyond that.

Whether the board of directors acted correctly in various contexts must firstly be assessed based upon the rules set forth in the Swedish Companies Act (2005:551), the articles of association, and applicable legislation regarding annual accounts. According to the Swedish Companies Act, for example, the board of directors may not take measures which may entail undue advantages for one shareholder to the disadvantage of the company or another shareholder. The Swedish Companies Act also states that asset transfers may only be carried out in the manner specifically prescribed in the act. It can be noted in this context, however, that the board of directors of the company not only may, but also must, take commercial risks, within reasonable boundaries, whereupon an examination of the lawfulness assessments is primarily intended to investigate whether the board of directors, in conjunction with individual transactions, possessed sufficient information to take decisions and whether the decisions were taken without there being any conflict of interest.

Depending on the circumstances in the individual case, in an examination, other rules and regulations may also have significance to the assessment of whether a board of directors acted correctly. For example, the stock market rules and regulations may, of course, be of significance when the question involves a company whose shares are listed on a regulated market or other marketplace. In this case, the takeover rules of the stock exchange have a particular significance in the assessment of question ii) above.

With respect to the questions in items i)-ii) above, the following can also be noted.

One can question whether it would at all be possible to seek damages from the members of the board of directors in a case where the board of directors failed to actively endeavour to bring about a merger with another company or for a third party to make a tender offer or suchlike, and also in a case where the board of directors in a target company, in conjunction with a buyout offer, were to make a recommendation to the shareholders, for example, which, for one reason or another, may be criticized. The possibilities for a shareholder to recover direct damages for him or herself are probably almost non-existent. It is difficult in these cases to see how there is any damage to the company. If, however, the board of directors of the target company, in conjunction with a public tender offer, out of negligence has caused damage to the company, for example by the company incurring unnecessary costs, it should be possible to hold the members of the board of directors liable to the company. In such a situation, it may be of significance whether the general meeting of the shareholders granted a discharge of liability to the directors, whether minority shareholders with at least 10 percent of the shares in such case opposed the discharge from liability, and whether the general meeting, prior to its decision, received accurate and complete information regarding the circumstances which gave rise to the damage.

With respect to the issue in item iii) above, it is difficult to conceive how the withdrawal of a proposal by the board of directors might constitute a violation of the Swedish Companies Act which is why damages payable directly to a shareholder are probably out of the question on these grounds. It also does not appear to be even possible that the company might suffer damage from the board of directors withdrawing a proposal regarding the payment of a dividend. Even if the decision by the board directors to withdraw the proposal regarding the payment of the dividend was incorrect in some respect, a sanction in the form of damages should therefore not be possible.

As stated in section 3.1 above, it is, however, not a condition for an examination of a particular measure that a legal sanction can be invoked with reference to the results of the examination carried out of the measure. A minority shareholder may be deemed to have a legitimate interest in having the circumstance examined nonetheless. In our work, we have found that such a legitimate interest existed also regarding the questions mentioned above in items i) – iii) and we therefore set forth in this report the investigation in these respects as well.

### **3.3 The implementation of the examination**

The examination was largely carried out by the undersigned, *Advokat* Urban Båvestam and *Advokat* Lisa Gabrielsson, assisted in varying degrees by colleagues at the law firm.

In our examination work, we have reviewed publicly available information and a large amount of internal, written material to which we have received access in accordance with the questionnaires we sent to Axis during our examination work. The documentation was primarily provided to us through a data room prepared by Axis. The information in the data room consisted of minutes of meetings of the board of directors with appendices, agreements and undertakings, reports, internal logbooks, email correspondence and other written documents. In addition, we have also received access to the data room and the information which Canon received during the due diligence which preceded the Offer.

During our examination, we have also interviewed the following individuals:

Biörn Riese, chairman of the board of directors since 15 June 2015,  
Dick Lundqvist, *Advokat*, Gernandt & Danielsson,  
Johan Paulsson, Chief Technology Officer,  
Johan Thuresson, certified public accountant, Ernst & Young,  
Martin Gren, director,  
Per Hillström, Head of the Nordic region, Morgan Stanley,  
Ola Bjärehäll, certified public accountant, PricewaterhouseCoopers,  
Ray Mauritsson, CEO,  
Roland Vejdemo, chairman of the board of directors until 15 June 2015, and  
Stefan Hultstrand, certified public accountant, Grant Thornton.

We have not had any objections regarding how Axis chose to structure its collection of information or regarding the documentation which we have been provided.

Representatives of Axis have been accommodating throughout the process and our impression has been that the process involving the provision of information by Axis was characterized by openness towards us.

### **3.4 The examination report**

This report was submitted to the board of directors of Axis on 29 March 2017. The report will be presented to the annual general meeting of Axis to be held on 20 April 2017 in accordance with Chapter 10, section 23 of the Swedish Companies Act. Prior to the annual general meeting, our report was also translated into English and so will also be available in an English version. In the event of any discrepancy whatsoever between the two versions, the Swedish language version shall prevail.

It should also be mentioned in this context that, taking into consideration the duty of confidentiality which applies to us by law, we have omitted certain information which we have concluded might harm Axis were it to be released, such as the names of certain

companies. Our obligation not to disclose sensitive information, however, does not have any significance to the conclusions we draw in this report.

The examination report is organized below as follows. Chapter 4 lists the companies and individuals discussed in our report. In chapter 5, we report very briefly regarding Axis and Canon and their business operations. In Chapter 6, we report briefly the circumstances which were relevant prior to the Offer and answer the question in item i) in the itemized list in section 3.2 above. In Chapter 7, we report on the bid process and, primarily, the actions taken by the board of directors in conjunction with the Offer, in order to answer the question in item ii) in the list. The questions in items iii) and iv) in the list are answered by way of closing in chapter 8 where we also report the other conclusions we were able to make in our examination of the board of directors' management during the Second Examination Period, particularly with respect to activities between Axis and Canon and the acquisitions carried out.

#### **4. RELEVANT COMPANIES AND INDIVIDUALS**

Set forth below is a list of companies and individuals discussed in the report.

##### **4.1 Companies**

- (a) Axis AB ("**Axis**").
- (b) Axis Communications AB ("**Axis Communications**"): a wholly-owned subsidiary of Axis.
- (c) Axis Stockholmsledet 11 AB ("**Stockholmsledet 11**"): a company which Axis acquired in February 2016.
- (d) Canon Inc. ("**Canon**").
- (e) Citilog SA ("**Citilog**"): a company which Axis Communications acquired in January 2016.
- (f) Cognimatics AB ("**Cognimatics**"): a company which Axis acquired in June 2016, after the end of the Second Examination Period.
- (g) Deloitte AB ("**Deloitte**"): financial advisor retained by Axis in the bid process to prepare a "fairness opinion".
- (h) Elliott Capital Advisors L.P ("**Elliott**"): minority shareholder and, through the controlled companies Elliot Associates LP, Elliot International LP and The Liverpool Ltd Partnership, the holder of 6,954,551 shares in Axis (totalling 10.01 percent).
- (i) Ernst & Young AB ("**Ernst & Young**"): Axis' ordinary auditor for the 2016 financial year.
- (j) Gernandt & Danielsson Advokatbyrå KB ("**Gernandt & Danielsson**"): legal advisor in the bid process retained by Axis.

- (k) Grant Thornton Sweden AB (“**Grant Thornton**”): minority auditor appointed by the Swedish Companies Registration Office.
- (l) KPMG AB (“**KPMG**”): tax and accounting advisor retained by Canon in the bid process.
- (m) Lazard AB (“**Lazard**”): financial advisor retained by Canon in the bid process.
- (n) Advokatfirman Lindahl KB (“**Lindahl**”): Canon’s legal advisor in, *inter alia* the acquisition of Citilog.
- (o) Mannheimer Swartling Advokatbyrå AB (“**Mannheimer Swartling**”): legal advisor retained by Canon in the bid process.
- (p) Milestone Systems A/S (“**Milestone**”): a company acquired by Canon in June of 2014.
- (q) Morgan Stanley & Co. International plc (“**Morgan Stanley**”): financial advisor retained by Axis in the bid process.
- (r) Öhrlings PricewaterhouseCoopers AB (“**PwC**”): Axis’ ordinary auditor for the 2015 financial year.
- (s) 2N Telekomunikace a.s. (“**2N**”): a company acquired by Axis in May of 2016 after the end of the Second Examination Period.

## 4.2 Individuals

- (a) Adrienne Jacobsen: Corporate Governance Specialist at Axis.
- (b) Bert Nordberg: member of the board of directors of Axis during the Second Examination Period.
- (c) Biörn Riese: Senior advisor and attorney; during the entire examination period active at the law firm of Mannheimer Swartling. Chairman of the board of directors of Axis during the Second Examination Period.
- (d) Carl-Fredrik Bergdahl: member of the board of directors of Axis during the First Examination Period. Employee representative appointed by the IF Metall labor union.
- (e) Charlotta Falvin: member of the board of directors of Axis during the First Examination Period. One of the independent directors in relation to Canon and the Offer.
- (f) Christian Ionescu-Ildohm: member of the board of directors of Axis during the First Examination Period. Employee representative appointed by SACO.
- (g) Dick Lundqvist: partner and *Advokat* at the law firm of Gernandt & Danielsson.
- (h) Fredrik Sjöstrand: Senior Vice President and CFO (*Chief Financial Officer*) of Axis during the entire examination period.
- (i) Gustaf Brandberg: Member of the board of directors of Axis during the First Examination Period. Director of Inter Indu AB, one of Axis’ three largest shareholders prior to the offer.
- (j) Göran Jansson: Member of the board of directors of Axis during the First Examination Period. One of the independent directors in relation to Canon and the Offer.
- (k) Haris Mustafic: Member of the board of directors of Axis during the Second Examination Period. Employee representative appointed by the IF Metall labor union.

- (l) Håkan Kirstein: Member of the board of directors of Axis during the Second Examination Period.
- (m) Johan Paulsson: CTO (*Chief Technology Officer*) of Axis throughout the entire examination period.
- (n) Marie Nässlind: Member of the board of directors of Axis during the Second Examination Period. Employee representative appointed by the Unionen labor union.
- (o) Martin Gren: Founder of Axis and one of Axis' three largest shareholders prior to the Offer, through Aktiebolag Grenspecialisten. Member of the board of directors of Axis during the entire examination period.
- (p) Olle Isberg: directors of Axis during the First Examination Period. Employed by LMK Industri AB, one of Axis' three largest shareholders prior to the Offer.
- (q) Ray Mauritsson: CEO of Axis throughout the entire examination period.
- (r) Roland Vejdemo: Member of the board of directors of Axis during the First Examination Period. One of the independent directors in relation to Canon and the Offer.
- (s) Toshizo Tanaka: Member of the board of directors of Axis during the Second Examination Period. Toshizo Tanaka is also CFO and a director of Canon.

## **5. BACKGROUND**

### **5.1 About Axis**

Axis was founded in 1984 in Lund by Mikael Karlsson, Martin Gren and Keith Bloodworth. Initially, Axis focused on sales of printer servers. Since 1996, when Axis developed and launched the world's first network camera, Axis 200, however, the company has come to focus on the manufacturing of network cameras and is considered to be a driving force behind the transition from analog to digital video surveillance. Axis 200 was the first camera which could be connected to the Internet or an intranet, which was a development of Axis' original focus on connecting printers in networks. Axis currently has over 200 network camera models and is the global market leader for network cameras and surveillance cameras, and the company's products are installed in public venues such as retail chain stores, airports, trains, motorways, universities, prisons, casinos and banks throughout the world.

Axis' products and solutions are sold through distributors (partners) who resell to system integrators and retailers who, in turn, meet the end customers. Axis has over 80,000 partners in 179 countries.

On 31 December 2015, Axis employed 2,139 people, most of whom (1,323) are employed in Sweden.

In 2015, Axis invested SEK 986 million, corresponding to 16.7 percent of the group's sales, in research and development on both hardware and software. Axis conducts an active patent strategy in order to protect investments in core technology and intellectual capital. In 2015, 65 national patents and a number of design protections were granted. As of the spring of 2016, Axis holds 261 active patent and design protection families.

In 2015, Axis sales were SEK 6,635 billion, which was an increase of 22 percent as compared with the year before. Axis' long-term financial goal is a total average annual growth rate of at least 20 percent and a profit margin of at least 10 percent.

Axis has decided to construct a new headquarters in Lund adjacent to its current premises. The construction of the new headquarters, which will cover approximately 42,000 m<sup>2</sup>, is expected to be completed in the spring of 2019.

## **5.2 About Canon**

Canon is a public company founded in Japan in 1937 with its headquarters and registered office in Tokyo. Canon is a leader in imaging equipment and information systems for professional users and consumers. Canon operates a global business with approximately 192,000 employees and 261 consolidated subsidiaries. Canon's consolidated sales in 2014 were in excess of EUR 25 billion. Canon's ordinary shares are traded on the First Section of the Tokyo Stock Exchange and Canon's ADR's are traded on the New York Stock Exchange.

In recent years, it has been Canon's ambition to drive future growth through diversification, and surveillance via network video has been identified as a strategic and new business area. As an element in the realization of this ambition, Canada acquired the Danish company Milestone in June 2014, a world leading software supplier for managing video in an open platform.

## **6. THE PERIOD OF TIME BEFORE THE OFFER**

### **6.1 Facts**

Prior to the Offer, 39.5 percent of the shares in Axis were held by the company's three largest shareholders: Inter Indu AB, LMK Industri AB and Aktiebolag Grenspecialisten. The major shareholders of the three companies were Christer Brandberg (Inter Indu AB), Therese Karlsson, the widow of the founder Mikael Karlsson (LMK Industri AB), and the founder Martin Gren (Aktiebolag Grenspecialisten).

We have learned, within the scope of our examination, that, for a long period of time, it was the stated position of these major shareholders that Axis was not for sale; but rather the intention was that Axis, on its own, would move its business forward and expand through



acquisitions of other companies. In light of this, over the course of the years, the owners of Axis had rejected many approaches by potentially interested parties. Martin Gren has explained that the reason the largest shareholders took a different position regarding Canon's interest was that they could see clear advantages for Axis, as a company, from such a transaction.

The view of the major shareholders regarding the ownership of Axis was well known to the board of directors and management of the company over the years. The board of directors and management therefore never anticipated any future other than one in which Axis would continue to operate on its own. Consequently, they also did not take any initiatives on their own to seek out any third party for a merger or as a purchaser of the company's shares. Nor had the board of directors taken a position prior to the Offer regarding any external party's interest in making a public tender offer for the shares in Axis. Consequently, during our investigation, we were able to conclude that during the First Examination Period there were no plans of this nature for the board of directors or management to discuss or take a decision on.

Normally, it is also not deemed to be the responsibility of the board of directors or management of a company, on its own initiative, to spend its time and the company's resources on seeking out or endeavoring to bring about a change in the ownership of the company.

## **6.2 Conclusion**

In light of the above-stated background, we cannot see any cause for any critical views regarding the actions in this respect by the board of directors or management at that time.

## **7. THE ACTIONS BY THE BOARD OF DIRECTORS AND MANAGEMENT AS A CONSEQUENCE OF THE OFFER**

### **7.1 Introduction**

A public tender offer is primarily a matter between the party making the offer and the shareholders of the target company. The transfer of shares does not *per se* involve the target company, but is primarily a question for the buyer and seller. Nonetheless, for obvious reasons, the target company becomes highly involved in a public tender offer. The board of directors of the target company must, for example, express its opinion of the offer. Typically, the bidder also asks the board of directors of the target company for its consent to carry out a due diligence of the company before the offer is made. The board of directors must take a position at this time regarding whether such a procedure is to be permitted and, in such case, on what terms and conditions. In this context, the board of directors must take into consideration whether the offer appears to be serious, whether it can be considered attractive to the shareholders, what costs and disruptions to the business the

due diligence would entail for the company, and what information can be released to the bidder within the scope of the due diligence, etc.

In its actions as a consequence of a public takeover offer, the board of directors of the target company must comply not only with the Swedish Companies Act but also with the rules of the marketplace governing tender offers. The rules of Nasdaq Stockholm regarding public takeover offers on the stock market, which were applicable in this case (the "**Takeover Rules**") thus impose, *inter alia*, requirements on the actions of the board of directors of the target company.

The portal provision in the Takeover Rules, to the extent they relate to the board of directors of the target company, prescribes that the board of directors, on questions related to the offer, must act in the interests of the shareholders. In this part of the examination, in accordance with the examination theme, we have been charged with assessing whether Axis' board of directors considered the interests of all of the shareholders of the company in conjunction with the Offer.

## **7.2 The bid process as such**

On 10 February 2015, Canon published its public tender offer through a press release (the Offer). The Offer was a cash offer offering payment of SEK 340 per share in Axis<sup>1</sup>. Certain conditions were placed on the completion of the Offer, including that the Offer was accepted to the extent that Canon would become the owner of over 90 percent of the total number of shares in Axis. The acceptance period for the Offer originally ran from and including 3 March 2015 up to and including 1 April 2015.

Prior to the Offer, Canon retained Mannheimer Swartling as legal advisor, Lazard as financial advisor, and KPMG as its advisor on taxes and accounting.

As described in Axis' press release of 10 February 2015, in conjunction with the preparations prior to the Offer, Canon carried out a due diligence of Axis. The same press release also states that Canon, within the scope of the aforementioned due diligence, had not received any unpublished price-sensitive information. See further regarding this in section 7.5 below.

Through the press release of 10 February 2015, the board of directors of Axis published a statement that the independent directors of the board of directors recommended that the shareholders of Axis accept the offer. See more regarding this in section 7.6 below.

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<sup>1</sup> At the time of the Offer, the board of directors of Axis had proposed a dividend in the amount of SEK 6 per share for the 2014 financial year, which would be deducted from the payment of SEK 340 per share in the event the dividend were to be paid out before the proceeds under the Offer were reported.

On 2 March 2015, the Swedish Financial Supervisory Authority published an offer document regarding the Offer prepared by the board of directors of Canon (the "**Offer Document**"). On the same day, Canon gave notice through a press release that the Offer would begin the next day (3 March 2015) and that the acceptance period would run up to and including 1 April 2015.

As is apparent both from Canon's press release regarding the Offer and from the Offer Document, the payment under the Offer entails a premium of approximately 70.6 percent as compared with the volume-weighted average transaction price for a share in Axis during the last 90 trading days prior to the publication of the Offer, a premium of approximately 64.4 percent as compared with the volume-weighted average transaction price for a share in Axis during the last 30 trading days prior to publication of the Offer, and a premium of approximately 49.8 percent as compared with the closing price for a share in Axis on 9 February 2015, i.e. the last day of trading prior to the publication of the Offer.

On 26 March 2015, Elliott gave notice through a notice of disclosure of a substantial acquisition of shares that it had acquired 5,210,805 shares in Axis, corresponding to approximately 7.5 percent of the shares in the company. This notice was followed up by a further notice of disclosure of a substantial acquisition of shares on 30 March 2015 according to which Elliott had acquired a total of 6,954,551 shares in Axis, corresponding to just over 10 percent of the shares in the company.

Canon published the results of the Offer in a press release on 8 April 2015, from which it was apparent that Canon had received acceptances in respect of 52,415,897 shares in Axis under the Offer, corresponding to approximately 75.5 percent of the shares in the company. In addition, according to the press release, Canon had acquired a further 423,326 Axis shares outside of the Offer, which entailed that, after the acquisition of all of these shares, Canon owned a total of 52,839,223 shares in Axis, corresponding to approximately 76.1 percent of the shares in Axis. It was also stated in this press release that Canon had declared the Offer unconditional and that the acceptance period for the shareholders who had not yet accepted the Offer was extended from and including 8 April 2015 up to and including 21 April 2015.

On 24 April 2015, Canon announced through a press release that, after the expiration of the extended acceptance period, it owned a total of 58,362,081 shares, corresponding to approximately 84 percent of the shares in Axis. It was also apparent from the same press release that Canon had decided to extend the acceptance period one more time, now up to and including 5 May 2015.

In a press release dated 8 May 2015, Canon announced that, following the expiration of the extended acceptance period, it owned a total of 58,925,066 shares, corresponding to approximately 84.8 percent of the shares in Axis.

### **7.3 The initial contacts**

During the summer of 2014, Canon made an initial contact with representatives of the three largest shareholders— Inter Indu AB, LMK Industri AB and Aktiebolag Grenspecialisten – which resulted in the fact that these shareholders, the chairman of the board of directors Roland Vejdemo and CEO Ray Mauritsson had a meeting with representatives of Canon at the end of August 2014. We have understood that this was a meeting without any preconditions where the intention was that Canon would present itself and what they could offer even if a sale was still not of interest to the largest shareholders. Following the meeting, they also explained to Canon that they were not interested in selling the shares.

The next contact with Canon took place in November 2014, when Canon once again contacted the largest shareholders through Martin Gren. At this point in time, we understand that some interest in a sale had arisen on the part of the largest shareholders who had then begun to discuss whether Axis would be capable of taking the next step in its development alone or whether there were advantages in a merger with a larger supplier of technology such as Canon. Canon's interests and questions regarding Axis' future resulted in long discussions at the shareholder level and, as far as we have understood from our interviews, the group of major shareholders was initially not entirely in agreement regarding a sale of their shares in Axis. In December of 2014, this group of major shareholders decided nonetheless to continue with the negotiations with Canon.

On 10 December 2014, the board of directors of Axis, through its chairman Roland Vejdemo, received an indication from representatives of Canon that Canon wished to acquire Axis in its entirety. At this time, Roland Vejdemo informed at least some of the directors of the matter. He also saw to it that measures were taken in order to retain advisors who might be able to assist Axis, its board of directors, and management as a consequence of a possible offer. On 18 December 2014, at the initiative of Roland Vejdemo, an extraordinary meeting of the board of directors was held at which he informed the board of Canon's interest. It is apparent from the minutes of the meeting that Roland Vejdemo had held off on convening this extraordinary meeting of the board of directors since no formal offer letter had been received, but that the preparatory work prior to receipt of such a document at this point in time had reached a point where costs would be incurred by the company and it was therefore considered justified to hold the board meeting. It was also noted at the meeting that Nasdaq Stockholm had been informed and that Ray

Mauritsson had ordered the opening of the logbook and the drafting of a leak announcement.

At the meeting of the board of directors, Roland Vejdemo presented the work which had been carried out in order to produce proposals for the financial and legal advisors participating in the process. The board of directors resolved at the meeting to retain Gernandt & Danielsson as the legal advisor and Morgan Stanley as the financial advisor. We will discuss this more in a later section.

The board of directors of Axis received Canon's indicative offer letter on 31 December 2014, in which Canon reported its interest in an acquisition and the terms and conditions for a public takeover of the shares in Axis. The price in the indicative offer stated by Canon in the letter was SEK 340 per share, which was a result of Canon's negotiations with Axis' three largest shareholders. In its letter, Canon also emphasized that their intention is for Axis, even after a buyout, to continue to function as a separate independent legal entity within the Canon group and to be led by current management with the headquarters remaining in Lund.

It is also apparent from the indicative offer letter that a public tender offer by Canon is contingent, among other things, on Canon being able to carry out a due diligence with satisfactory results, on the board of directors of Axis unanimously recommending that the shareholders of Axis accept the Offer, and on Axis' three largest shareholders entering into an agreement to sell their shares to Canon (*irrevocable undertakings*).

During the first days of January 2015, the three largest shareholders of Axis – Inter Indu AB, LMK Industri AB och Aktiebolag Grenspecialisten – then executed irrevocable undertakings. According to the terms and conditions of these, the largest shareholders undertook to accept Canon's Offer of SEK 340 per share as long as no other party made public a competing bid for all of the shares in Axis at a price per share more than 3 percent greater than SEK 340 (and provided that Canon did not match the competing bid within five business days). In order for the three largest shareholders (with 39.5 percent of the shares in Axis) not to be bound by their undertaking to accept Canon's offer, it was thus required that a competing bidder offered to acquire all of the shares in Axis at a price in excess of SEK 350.20 per share.

#### **7.4 The board of directors' handling of conflicts of interest**

According to section II.18 of the Takeover Rules, a member of the board of directors of the target company may not participate in the handling of a matter which is related to the offer if the director, as a consequence of shared interests with the bidder or for any other reason, might have an interest in the matter which conflicts with the interests of the

shareholders. In other words, the rules not only prohibit such a director from participating in decisions on the matter, the relevant director may also not participate either in the preparation of the matter or at meetings of the board of directors where the matter is discussed by the board prior to a decision.

If a member of the board of directors of the target company, in conjunction with the offer, has entered into an agreement regarding a transfer of his/her shares to the bidder or an undertaking to accept the offer, he or she is deemed to have a conflict of interest of the type mentioned above.

The question of possible conflicts of interests was discussed at the extraordinary meeting of the board of directors of Axis which was held on 18 December 2014 as a consequence of the chairman informing the board of directors that an indication had been received from Canon that it wished to acquire Axis. It is apparent from the minutes that the chairman reported the conflict of interest rules and asked each director to report whether any conflict of interest might be deemed to exist. All of the members of the board of directors answered the question in the negative.

At this point in time, Axis had not yet received the indicative offer letter, much less had any of the largest shareholders entered into any agreement with Canon. Within the scope of our examination, we have also not found any other circumstance which indicates that there was any concrete shared interest between any member of the board of directors and Canon which might have entailed that any of the directors had an interest which conflicted with the interests of other shareholders of Axis. We therefore share the directors' own conclusions that no conflict of interest existed.

At the next meeting of the board of directors held on 8 January 2015, the chairman of the board of directors informed the other directors that the indicative offer letter from Canon had been received on 31 December 2014. The board of directors was also informed at this time that Axis' three largest shareholders, Inter Indu AB, LMK Industri AB and Aktiebolag Grenspecialisten had undertaken to accept the Offer. As a consequence of their connections to the largest shareholders, three of the board's directors stated that they were prevented from participating in the future in the board's handling of Canon's offer; Gustaf Brandberg in his capacity as a director of Inter Indu AB, Olle Isberg as an employee of LMK Industri AB and Martin Gren as the largest shareholder of Aktiebolag Grenspecialisten. With respect to the other directors, at the request of the chairman, they once again answered at the meeting the question of whether a conflict of interest existed in the negative. Within the scope of our examination, we have not received any information which gives us cause to question the positions taken by the members of the board of directors.

During the First Examination Period, Axis' board of directors consisted of eight members, two of whom were employee representatives. After it was concluded that three of the members of the board of directors, due to conflicts of interest, were not permitted to participate in the handling of questions related to Canon's offer, there remained five members to handle such questions. The remaining members – Roland Vejdemo, Charlotta Falvin and Göran Jansson (appointed by the shareholders meeting) and Carl-Fredrik Bergdahl and Christian Ionescu-Ildbohm (employee representative) – thus still constituted a quorate board of directors.<sup>2</sup>

Within the scope of our examination, we have reviewed all of the minutes of the board of directors which address the Offer. We can conclude through this review and our interviews that none of the members of the board of directors for whom it had been concluded that there was a conflict of interest were present at the board meetings when the Offer was discussed. They were either not participating at the meeting at all or, as in a few individual cases, they were not present at the times at which matters regarding the Offer were addressed. We have thus not noted anything worthy of rendering criticism against the board of directors' handling of the Offer based on the rules contained in the Takeover Rules regarding conflicts of interest.

When we state below that the board of directors has taken certain measures or taken a certain decision as a consequence of the Offer, we are thus referring to that part of the board of directors which consisted of the five directors who were handling these questions. We occasionally refer to these five directors below as "the independent directors" and when doing so mean that these directors were independent in relation to Canon and with respect to the Offer.

## **7.5 Canon's due diligence**

As mentioned above, in its indicative offer letter of 31 December 2014, Canon had made its public tender offer contingent, among other things, on the possibility of carrying out a due diligence. Canon had appended to the offer letter a list of questions containing the information which it requested within the scope of its due diligence. It can be noted that the list of questions covers the areas customary for a due diligence and that it is relatively comprehensive.

Section II.20 of the Takeover Rules states that, in such a situation, the board of directors of the target company must take a position as to whether the company can and should permit

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<sup>2</sup> We have noted in this context that one of the two employee directors did not participate at one of the meetings of the independent directors regarding the Offer, but that he subsequently, and without reservation, supported the decision by the board of directors.

a due diligence and, in such case, on what terms and conditions, and that the board of directors must ensure that it limits the due diligence to that which is necessary in order for it to be possible to make and complete an offer. In order for the target company's board of directors to be able to give its consent to a due diligence, the board must conclude that the contemplated offer is of sufficient interest to the shareholders to take a position and that the bidder has demanded in writing the opportunity to carry out such a due diligence.

It is apparent from the minutes of the meeting of the board of directors held on 8 January 2015 that Morgan Stanley presented at the meeting its valuation of Canon's indicative offer and that the bid price was above all of the midrange prices indicated by Morgan Stanley's various valuation efforts. It is further apparent from the minutes that Morgan Stanley, in light of this background, found the offer to be both serious as well as attractive. The independent members of the board of directors thoroughly discussed Canon's potential bid at the meeting and came to the overall conclusion that the bid was of sufficient interest to Axis' shareholders to take a position on. Since Canon also had made the bid conditional on being able to carry out a due diligence, the board of directors resolved at the meeting to allow Canon to carry out a limited due diligence.

The list of questions provided by Canon was also discussed at the meeting of the board of directors. The chairman of the board informed the board of the applicable regulatory requirements for publishing non-public information and how information which can be deemed to be price-sensitive or otherwise commercially sensitive must be treated. The board of directors concluded that the list of questions was far too extensive taking into consideration the fact that Axis, as a listed company, could not permit Canon to obtain access to price-sensitive information. It is apparent from email communications we have reviewed as well as our interviews that Canon's list of questions was reviewed by Ray Mauritsson and Fredrik Sjöstrand and that Axis' legal and financial advisors had commented on the list of questions before the board of directors decided which information would be provided to Canon. The board of directors subsequently tasked the chairman of the board of directors with entering into a mutual confidentiality agreement with Canon in accordance with a draft previously prepared and dated 7 January 2015.

Axis and Canon entered into the mutual confidentiality agreement on 12 January 2015. Among other things, it is apparent from the agreement that Canon undertook to treat the information provided as confidential and to only use it for the purpose of evaluating the offer. It can be mentioned in this context that we have been able to conclude that, other than this confidentiality agreement, Axis did not undertake any obligations *vis-à-vis* Canon, such as break fee arrangement or suchlike.



The data room containing the information provided was opened up to Canon immediately thereafter, on 12 January, and was available to Canon until 10 February 2015

With respect to the approach to the provision of information in the data room, this took place such that the collection of material was handled by Ray Mauritsson and Fredrik Sjöstrand, while Adrienne Jacobsen was responsible for uploading the documents. We have received and reviewed the internal email communications between Ray Mauritsson and Adrienne Jacobsen dated 8 January 2015, from which one can see the routines which were applied prior to uploading to the data room. The routines entailed that Adrienne Jacobsen uploaded the files into a folder which was then moved to another folder designated "Ok by Ray" after Ray Mauritsson had provided his written consent to the upload. This, together with the notes in the minutes of the board of directors and other information we have received in conjunction with our interviews, supports our view that Axis had a well-structured process for handling the dissemination of information to Canon.

Canon's advisors subsequently realized that the information which had initially been provided in the data room was insufficient. This was discussed on 14 January 2016 at one of the frequent meetings which was held between the independent directors, Ray Mauritsson, Fredrik Sjöstrand and the advisors retained by Axis. It is apparent from the meeting notes that Morgan Stanley prepared that Canon's advisors emphasized that they were aware of the restrictions with respect to Axis' possibilities of providing price-sensitive or commercially sensitive information, but that they wished to obtain further underlying information in addition to the published information in the data room, i.e. non-public information which was not price-sensitive. It was decided at the meeting that Axis, to the extent possible, would satisfy Canon's requests and provide further information in the data room regarding the items which Canon had marked as being high priority.

In our examination, we have had access to the data room which Canon ultimately had access to during its due diligence. In our review of the data room, we have been able to conclude that it contains a limited amount of information and that Axis, in response to many items on the list of questions through "Company Notes" only referred Canon to published information which had been provided through annual reports or via Axis' website. In addition, in several cases, the data room contains references to information which is to be provided via "management presentations". In other respects, we have not been able to see that the data room contains any information which appears to be sensitive or which might be of a price-sensitive nature.

The management presentations which are referred to in the answers to the list of questions were held in Copenhagen on 19 – 20 January 2015. During the first day, management presentations were held during the morning, and followed up later in the day with parallel

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expert sessions within Business and Legal. During the second day, further expert sessions were held, this time regarding Finance, HR and Intellectual Property. There was also a session where potential synergies between the parties were addressed. We will discuss this meeting in more detail below in section 8.4.3.

We have received the presentations which management presented to Canon's representatives in Copenhagen and concluded that this involves presentations where information regarding Axis was presented in an overarching manner. Prior to the meeting, Ray Mauritsson informed management in an email dated 8 January 2015, regarding the questions which Canon had presented within the scope of its due diligence and emphasized management's responsibility, in conjunction with the management presentations, to discuss and answer Canon's questions in a balanced way and without disclosing price-sensitive information or information which, from a competition perspective, might be sensitive.

Within the scope of our examination, we have understood that the management presentations were reviewed in advance by Ray Mauritsson and Axis' financial and legal advisors in order to ensure that Canon did not receive any price-sensitive information through these presentations. Towards the same end, representatives from Axis' advisors participated at all of the presentations held in Copenhagen. The presence of the advisors at the presentations is also confirmed by the agenda which Morgan Stanley prepared and distributed prior to the meeting. It can be noted that the advisors were also present at the dinner which was held after the meetings on the first day in order to ensure that, also in this context, there was no transfer of information which had not been approved in advance.

Roland Vejdemo, Ray Mauritsson and Dick Lundqvist all stated that they felt sure that Canon, through its due diligence, had not received any information it should not have received. Dick Lundqvist also stated that Canon did not receive nonpublic price-sensitive information through the data room or through the presentations which were held in Copenhagen. Within the scope of our examination, we have not received any information which indicates that this is not a correct description. On the contrary, all of the information which we have received supports the conclusion that the people at Axis were thorough in ensuring that Canon, through its due diligence, would not obtain any nonpublic, price-sensitive information.

We can thus confirm that, as far as we have been able to determine within the scope of our examination, the information which Canon provided regarding the due diligence in the offer document is correct, i.e. that it involved a customary limited due diligence of a confirming nature and that, through its due diligence, Canon did not receive any information which had

not previously been made public and which might reasonably be expected to affect the price of shares in Axis.

## **7.6 The board of directors' recommendation to the shareholders**

According to section II.19 of the Takeover Rules, no later than two weeks prior to the expiration of the acceptance period, the board of directors must publish its opinion of the offer and the reasons for this. The rule also states that the board of directors, in its statement, must report if any director, as a consequence of a conflict of interest or for any other reason, has not participated in the handling of the matter or if any director has opposed the decision taken by the board of directors.

As is apparent from the provision, it is not assumed that the board of directors will make its statements directly in conjunction with the publication of the offer, which may also not be possible taking into consideration the fact that the board of directors requires a certain amount of time in order to evaluate the offer and formulate its statement. If the board of directors is nonetheless able to make its statement in such time that it can be reproduced in the offer document, the statement must be reproduced there in its entirety.

It follows from the fact that the company is contractually obligated, through the board of directors, to make a statement regarding the offer and the fact that the board of directors must consequently evaluate the offer as such and the alternative or alternatives which may be available to the shareholders that the board of directors is entitled to cause the company to incur reasonable costs for advisors and others which may be required in order for the board of directors to be able to perform its obligations. We will address below in section 7.7 Axis' actual costs in conjunction with the Offer.

In the instant case, the statement by the board of directors of Axis was published through a press release on the same day as Canon published its Offer, 10 February 2015. The recommendation of the board of directors had been formulated in the press release as follows:

“The board of directors of Axis, based on a near-term and midterm financial perspective, has decided to unanimously recommend to the shareholders of Axis to accept Canon's public tender offer.”

It is not our task to reassess this decision by the board of directors or take a position regarding whether it can be said to have been correct or not. This is *per se* a question of opinion which, among other things, includes purely commercial aspects, market aspects, valuation questions and a series of other considerations, which requires entirely different information and other insight than our examination can contain. Instead, in this section of the examination, we must take a position as to whether the board of directors in the

process which led to the recommendation by the board of directors made sure that it had obtained the relevant and complete information needed to be able to take a well-founded decision. Our investigation and our conclusions regarding this are reported in this section.

It is apparent from our examination that some of the members of the board of directors had received information on or about 10 December 2014, to the effect that Canon had indicated an interest in acquiring Axis and that the entire board of directors was informed of Canon's interest at the extraordinary meeting of the board of directors held on 18 December 2014. It is apparent from the minutes of the board of directors that the chairman inquired at the meeting as to the board's position regarding the Offer and that the directors who lacked any connections to the three largest shareholders were neutral or opposed to a sale but that, were such a process to be commenced, they would work to bring about a sale at a price which was as advantageous as possible and in the interests of all of the shareholders. In addition, it is noted in the minutes the importance of carrying out an external valuation and studying the market in order to ensure that a possible sale would take place at the highest possible price.

As mentioned above, the board of directors resolved at the same meeting to appoint Morgan Stanley as financial advisor in the matter. The reasoning by the board of directors behind its decision to choose Morgan Stanley as financial advisor was that it wanted an international advisor with a broad network of contacts, primarily in Asia and the United States, where the chances of finding another bidder were believed to be the greatest. At the meeting of the board of directors held on 8 January 2015, the board then resolved to task Gernandt & Danielsson with obtaining bids for the work involved in preparing a fairness opinion as the basis for the board of directors' statement regarding the Offer. Shortly after Dick Lundqvist had obtained bids, Axis retained Deloitte for the job of providing a fairness opinion.

We can thus conclude that the board of directors throughout the process retained advisors who appear to be appropriate for assisting the board and management in the process of evaluating the Offer.

It is apparent from the minutes of the meeting of the board of directors held on 8 January 2015 and our interviews that the board of directors discussed at the meeting how it would ensure that any sale would take place at the highest possible price. Among other things, the board of directors discussed which other companies might be interested in acquiring Axis, how they would be contacted, and which point in time was the most appropriate for such contacts to take place. It was resolved at the board meeting, due to the large risk of leaks, to continue with the attempts to obtain a better offer by only contacting a few

presumptive interested parties prior to an announcement by Canon and not to contact a larger group of presumptive interested parties until after the announcement.

It can be noted in this context that it is expressly stated in Chapter 5, section 1 of the Public Takeovers on the Stock Market Act (SFS 2006:451) that the board of directors of the target company is not prevented from seeking alternative bids even without consulting the general meeting. Such an investigation can also constitute an important part of the basis for the board of directors' decision. This provision makes it possible for the board of directors to bring about competition between bidders which can result in the bid being increased and in the shareholders of the target company in this way receiving a higher return in a sale of their shares.

A telephone conference was held on 12 January 2015 between the independent board members, Ray Mauritsson, Fredrik Sjöstrand and the advisors who had been retained, Morgan Stanley and Gernandt & Danielsson. It is apparent from the timetable which was distributed by Morgan Stanley prior to the telephone conference that one of the main items was a discussion of how Axis would reach out to other potential purchasers.

Two days later (14 January 2015), a further telephone conference was held between the above-stated participants. Prior to the meeting, Morgan Stanley distributed documentation for discussion for the meeting consisting of a presentation entitled "Market Testing Process Considerations" containing information regarding Morgan Stanley's proposal for the process of contacting other possible interested parties. It is apparent from the presentation that Morgan Stanley had identified five presumptive interested parties which it proposed be contacted initially. We have received the presentation but refrain here from stating the names of these interested parties. It is also apparent from Morgan Stanley's presentation that they had identified yet another company which they proposed be contacted at a later stage before a publication of the Offer. It is apparent from the presentation that Morgan Stanley's proposal not to contact this company until a later stage was based on concern that the company would attempt to block the transaction if the company was not interested in an acquisition. It is also apparent from the presentation how Morgan Stanley proposed that contacts be initiated with the selected companies. In light of the sensitive nature of the matter and in order not to violate confidentiality, Morgan Stanley proposed that they not provide the selected companies with any information until the representatives of the selected companies had agreed to be insiders. Until this had been agreed, Morgan Stanley would not inform the selected companies that the acquisition involved Axis nor provide them with background information, according to the script which was reported in the presentation. If the selected companies subsequently expressed interest, confidentiality agreements would be entered into.

Over the course of the following days, there were meetings largely on a daily basis between the independent directors, Ray Mauritsson, Fredrik Sjöstrand and the advisors who had been retained, Morgan Stanley and Gernandt & Danielsson. It is apparent from the notes of the meetings which were taken by Morgan Stanley at a meeting held on 21 January 2015, that Morgan Stanley received the go-ahead from the independent directors to proceed with contacting the proposed interested parties. It is further apparent from the notes of the meeting that all five interested parties agreed to be insiders, but that there were only three companies with whom further discussions were subsequently carried out.

We have also received a presentation prepared by Morgan Stanley prior to the meeting on 2 February 2015 with the independent directors, Ray Mauritsson, Fredrik Sjöstrand and the advisors who had been retained. The presentation addresses tactical considerations to take into consideration in the negotiations with Canon regarding the potential offer. The presentation sets forth the advantages to Canon's offer which Morgan Stanley had identified such as the price, the fact that the largest shareholders had accepted the offer, and that Canon had demonstrated a strong commitment before the acquisition. In addition, Morgan Stanley listed the advantages and disadvantages in entering into negotiations with Canon regarding the offer. With respect to the negotiation possibilities, Morgan Stanley notes in its presentation that Canon probably still had some room for negotiation which would give the board of directors a possibility to get a higher bid price. It was also noted that the initial contacts with other presumptive interested parties indicated interest from at least two companies even if this has not yet been confirmed. However, Morgan Stanley emphasized the importance of the negotiations with Canon being carried out without any risk of losing the offer presented of SEK 340 per share. The presentation also shows that Morgan Stanley's proposed negotiating plan, according to which the intent was to not reject the Offer but to state that the independent directors, at this stage, are unable to recommend the Offer unanimously and without restrictions.

We have subsequently been able to conclude that the discussions which were carried out with the three presumptive interested parties never led to the next stage and that it thus never became relevant to enter into confidentiality agreements with these companies, and even less to commence a due diligence with any of them. The reason that the discussions with the presumptive interested parties ceased was that none of these companies was willing to make a bid anywhere near the bid indicated by Canon. It can be noted that Morgan Stanley also received the approval of the board of directors to contact the sixth company, mentioned above, but that this contact also did not lead to any continued activities.

Within the scope of our examination, we have understood that the independent directors and Axis' advisors carried out certain price negotiations with Canon, but that these never had any possibility of leading to any increase in the price per share of SEK 340 which Canon had indicated.

During our examination, it has also become apparent that the independent directors, for the purpose of evaluating the offer, did not limit themselves to causing contacts with other interested parties to be made regarding an acquisition of the shares in Axis but that they also asked Morgan Stanley to prepare alternative business plans, evaluations and appraisals based upon the assumption that Axis would continue as an independent company. These reports were subsequently subject to extensive discussions amongst the independent directors.

The independent directors subsequently also received Deloitte's conclusions which later would be apparent from their fairness opinion. As is apparent from Deloitte's opinion, which is incorporated in its entirety in the Offer Document, Deloitte's opinion was that the Offer on the day of the opinion (10 February 2015) was reasonable from a financial point of view for Axis' shareholders.

As is apparent from the statement of the board of directors of 10 February 2015, the independent directors were not in agreement in all respects in their recommendation to the shareholders. They were all in agreement that, on the basis of a near-term and midterm financial perspective, the Offer was advantageous to Axis' shareholders, which is why the board of directors was thus unanimous on those grounds in its recommendation that the shareholders accept the Offer. However, the opinion of the independent directors regarding the Offer for an investor with a long-term financial perspective was different. The majority of the independent directors were of the opinion that Axis had a potential for increased growth which could create a greater value than the Offer over the long term. The chairman of the board of directors, Roland Vejdemo, believed, however, that Axis current stand-alone plan would not lead to a greater value than the Offer and that it was therefore also of interest to investors with a long-term perspective. Roland Vejdemo justified his dissenting opinion, which thus entails that he recommended to the shareholders to accept the Offer regardless of the time perspective, by stating that the risks in a future scenario for Axis on its own were too many and too great.

The recommendation by the board of directors was the subject of many and long discussions among the independent directors and was formulated carefully. Roland Vejdemo has subsequently told us that it was important to the independent directors to be entirely transparent in relation to the shareholders even if this entailed reporting that they were not entirely in agreement.

In a press release published on 25 March 2015, the Swedish Shareholders' Association recommended that its members accept the Offer, citing the fact that the cash offer of SEK 340 per share was financially reasonable. In the same press release, the Association also levied criticism against the independent directors' recommendation regarding the Offer on the grounds that it was not unambiguous due to the dissenting opinion of the chairman of the board of directors. We cannot see how this criticism has any basis. It is in the interest of the shareholders to know that the board of directors was not entirely unanimous in all respects and the reasons for this. On the contrary, there would have been cause to criticize the board of directors' recommendation if only the majority's opinion had been allowed to control the drafting of the recommendation. Section II.19 of the Takeover Rules also states that the statement must report whether any director objected to the decision by the board of directors.

After Canon had published the Offer on 10 February 2015, Morgan Stanley sent over a presentation on the evening of the same day to the independent directors, Ray Mauritsson, Fredrik Sjöstrand and Gernandt & Danielsson's representatives. In accordance with earlier discussions in the board of directors, the presentation contained a proposal for a second round of contacts with presumptive interested parties who were interested in acquiring Axis. It is apparent from the presentation that Morgan Stanley had identified 11 additional companies as potential bidders.

We have received the list and have understood, within the scope of our examination, that these companies were also contacted. However, none of the companies could present a competing bid at the level of the price contained in the Offer.

In summary, we can conclude that the independent directors retained the services of appropriate advisors for the matter with a great deal of experience in these types of transactions. We also conclude that the independent directors acquired an extensive amount of information for the decision which, among other things, consisted of thorough evaluations of Axis' ability to continue acting on its own and which values might lie in this, of the interest of other potential interested parties in acquiring the company at a corresponding price level, and of Deloitte's opinion. The fact that Morgan Stanley, at the request of the independent directors, contacted more than 15 different companies of significant size in order to investigate the possibilities of achieving a higher price indicates a high level of ambition. Ray Mauritsson has stated that he believed that the list of potential interested parties was quite long and, in any event, not too short. In light of this, it is our opinion that the independent directors ensured that they had complete information on which to make a decision prior to their decision to recommend that Axis' shareholders accept the Offer. The fact that, in one respect, all of the directors did not draw the same conclusions from the information and from the board of directors' and management's



discussions – and that this also was clearly reported to the shareholders in the board of directors' opinion – in our opinion demonstrates great integrity on the part of the directors. This further strengthens our conclusion that there is no reason to question whether the independent directors in this respect acted in the best interest of Axis' shareholders.

## 7.7 The advisor costs

As mentioned above, in conjunction with a takeover offer, the target company's board of directors must have the right to incur reasonable costs on the part of the company in order to perform its obligations according, above all, to the Takeover Rules. Such costs naturally include fees for financial and legal advisors which the board of directors typically cannot do without. We have already concluded earlier in the report that the choice of advisors in this case by Axis board of directors led to consultancy firms with a vast amount of experience and appropriateness for services such as these. There is thus no cause to question these choices as such. In this respect, it only remains for us to examine the costs Axis incurred for the advisors. Axis' costs for the various advisors as a consequence of the Offer broke down as follows:

Morgan Stanley: SEK 50,797,490

Gernandt & Danielsson: SEK 3,142,072

Deloitte: SEK 500,000

Information regarding the costs is reported in Axis' 2015 annual accounts. In note 5 "Costs broken down by cost category" on page 53, there is a footnote to the item "Other external costs" that the item includes "Axis' costs for handling Canon Inc.'s bid process. The costs amounted to approximately 0.2 percent of the value of the offer".<sup>3</sup>

It is difficult to say anything definite regarding whether all of the advisory costs can be deemed to be on market terms and conditions and whether they, in any general sense, can be said to correspond to the value of the work performed. As opposed to a law firm, for example, an investment bank such as Morgan Stanley is almost entirely free to agree with its client regarding any fee or any fee structure whatsoever. In light of this, our examination of the advisor costs is focused on reviewing the advisors' consultancy agreements, the terms and conditions in these, and the conditions surrounding their execution as well as whether the fees paid corresponded to the agreements entered into.

As is apparent from *Deloitte's* fairness opinion, Deloitte's fee for the services was fixed and thus not dependent on the size of the consideration payable under the Offer, to what extent

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<sup>3</sup> Anyone reading the annual report who, guided by the information, calculated the costs would obtain the answer that the costs amounted to approximately SEK 47,000,000. The discrepancy is explained by the rounding off carried out (the above-mentioned costs amounted, less rounded off, to 0.23 percent of the value of the offer of SEK 23.6 billion).

the Offer was accepted, or whether the Offer would be completed or not. This is in line with customary practices for services of this type. It is also apparent from the services agreement with Deloitte that the fee is fixed and corresponded to what Axis subsequently paid out. We have no cause to question the size of the amount.

The fee paid to *Gernandt & Danielsson* does not appear to be remarkably high for a matter such as the instant one. The services began in December 2014 and were not concluded until the annual general meeting held on 15 June 2015. The work was at times very intensive and required the direct participation to a high degree of Dick Lundqvist himself. As is customary for law firms, the agreement with *Gernandt & Danielsson* states that the fee is primarily based on the number of hours worked, but is also based on certain other factors and that the fee must be reasonable. The agreement also states hourly rates for various categories of lawyers at the law firm. It is pointed out in the agreement that, in the early stage of the project when the agreement was entered into (December 2014) it was difficult to provide an exact estimate of the fee for the work, but if the process was uncomplicated and no additional interested parties were to appear, it was believed that the fee would not exceed SEK 400,000. The difference between the estimate and the final fee may naturally be regarded as large. However, we have obtained information from Dick Lundqvist that *Gernandt & Danielsson* was subsequently called on to play a much larger role than what is customary for services of this type, that the work became significantly more extensive than what could have been foreseen in December 2014, that the work performed and the fees billed on a regular basis were reported to Axis, and that the number of hours worked by *Gernandt & Danielsson*'s lawyers ultimately came to total 850. In light of this, we have no cause to question Axis' costs for *Gernandt & Danielsson*'s work on the matter.

The written retainer agreement with *Morgan Stanley* was not signed by the parties until 12 January 2015. The agreement describes in general wording that the investment bank will be Axis' financial advisor in conjunction with the evaluation of Canon's Offer and that the bank will assist Axis as financial advisor in order to complete the Offer or another transaction which the board of directors believes is in the interests of the shareholders, regardless of whether this would entail that a majority of the shares are acquired (for example through a public takeover), a merger, or that the company's assets would be sold. The parties' agreement regarding *Morgan Stanley*'s fees is also apparent from the agreement. If a transaction is completed, Axis will pay *Morgan Stanley* a Base Fee of EUR 2,000,000 plus an Incentive Fee calculated as a percentage of the compensation received by the company (in the event of an asset transfer) or the shareholders (in the event of a takeover offer), broken down per share in Axis, to the extent it exceeds SEK 320, multiplied by the number of shares in the company. The agreement also states that this Incentive Fee shall be reduced by EUR 1,000,000 million if it exceeds this amount.

In an appendix to the agreement, Morgan Stanley reports a calculation example of the size of the fee. The example is based on the compensation covered by the transaction amounting to SEK 340 per share. According to the example, the Incentive Fee would thus amount to SEK 41,676,750 less EUR 1,000,000 which, in the spring of 2015, together with the Base Fee, would have corresponded to just over SEK 50 million. In addition to the fee, according to the agreement, Morgan Stanley is also entitled to compensation for disbursements of various types.

The agreement is thus designed so that Morgan Stanley's right to compensation is dependent on a transaction actually being completed. If no transaction is completed within the period of the consultancy services, Morgan Stanley's services would thus not cost Axis more than Morgan Stanley's actual disbursements. The structure as such is not uncommon for services of this type, which has also been confirmed by Morgan Stanley's Per Hillström.

Taking into consideration the fact that the retainer agreement was entered into on 12 January 2015, i.e. at a point in time at which both the board of directors and Morgan Stanley were aware that Canon, through its indicative offer letter, had indicated an offer price of SEK 340 per share, the condition pursuant to which the investment bank would receive a significant incentive fee merely if the price ultimately came to exceed SEK 320, naturally raises questions.

We have obtained certain written information in this respect, but we have received the following description of the background primarily in interviews with Roland Vejdemo, Dick Lundqvist, Martin Gren and Per Hillström.

After 10 December 2014, a working group consisting of Roland Vejdemo, Charlotte Falvin, Göran Jansson and Olle Isberg began work on producing proposals for financial advisors and received two offers in this context: one from Morgan Stanley and one from another large international investment bank. We have reviewed Morgan Stanley's offer, which consisted of a draft retainer agreement. We have received the competitor's name (which is left out here), but it has not been possible to locate the offer. Roland Vejdemo has stated, however, that the board of directors chose the financial advisor in a competitive procedure which was deemed to be the "best and cheapest".

Morgan Stanley's draft to its services letter of 16 December 2014 states that an Incentive Fee shall be paid if the ultimate price in the transaction exceeds "the price of the first approach by the relevant Bidder (the "Indicative Offer")", where the Bidder is defined as "Canon Inc. or any other bidder". The condition perhaps need not be interpreted in this way but, in our opinion, it is most reasonable to understand it to mean that it covers the price which would be apparent from the anticipated indicative offer letter from Canon at the time.

The draft does not include the deduction of EUR 1,000,000 or any calculation example in any appendix.

As mentioned above, the board of directors resolved to appoint Morgan Stanley as a financial advisor at its meeting on 18 December 2014. The board of directors agreed at this time to the fee structure but had certain comments regarding choice of law, the provision regarding dispute resolution, etc. Morgan Stanley was immediately informed of the board's decision. At that time, Morgan Stanley had agreed to present a valuation opinion on 6 January 2015 if it received the contract (as is apparent above, Morgan Stanley's valuations were subsequently presented at the meeting of the board of directors held on 8 January 2015). We have subsequently understood that Morgan Stanley had already begun this work on 18 December 2014. Roland Vejdemo was asked to negotiate with Morgan Stanley regarding the terms and conditions which the board of directors had comments about and to get back to the board of directors (subsequently the independent directors) for decisions.

In December 2014, the negotiations between Canon and the three largest shareholders were in full swing regarding, above all, the share price. Martin Gren has stated that the three largest shareholders concluded that negotiations with Canon became interesting after Canon had indicated to them a price of SEK 320 per share but also that he personally believed that the offer was "a little on the low side". It was not until the end of December 2014 that Canon raised the price to SEK 340 and the parties could reach an agreement.

Sometime after the board of directors had, on 18 December 2014, approved in principle Morgan Stanley's draft consultancy letter of 16 December 2014, the board of directors (i.e. including those who did not participate in the negotiations with Canon in the capacity as representatives of the largest shareholders themselves) received the information that the price which Canon and the three largest shareholders were then discussing was SEK 320. We have not been able to determine definitively the exact date or in which way this information was presented. Nor do we have knowledge of who presented the information, but Roland Vejdemo has stated that it must have been one of the representatives of the largest shareholders. Roland Vejdemo has also stated that, at that point in time, it appeared as if the parties were in agreement in principle on the price. According to Roland Vejdemo and Dick Lundqvist, as well as Morgan Stanley's Per Hillström, as early as that time, i.e. before 31 December 2014, Axis' board of directors (which already at that time consisted only of the independent directors) and Morgan Stanley had therefore come to an agreement that the level from which a possible Incentive Fee would be payable to Morgan Stanley would be SEK 320. Dick Lundqvist has stated that the commercial terms and conditions in all respects were agreed prior to December 31, 2014. Per Hillström has stated that, in his opinion, there is no doubt that the parties, even before 31 December

2014, had orally agreed that the starting level for the calculation of the *Incentive Fee* would be SEK 320 and that, as early as December, Morgan Stanley was working on the matter based upon this condition. Roland Vejdemo has stated that, for his part, it was he who confirmed this to Morgan Stanley on behalf of Axis but that this had been agreed with the other independent directors on the board.

Per Hillström has also stated that it is not unlikely that it was the knowledge that Axis had retained Morgan Stanley as its financial advisor that made Canon raise its offer from SEK 320 to SEK 340 at the final stages of the negotiations with the largest shareholders.

When Canon had provided the board of directors with the indicative offer letter of 31 December 2014, it only remained for Axis and Morgan Stanley to complete the negotiations regarding the retainer agreement. Roland Vejdemo, Dick Lundqvist, and Per Hillström have all stated that the negotiations were relatively tough. Roland Vejdemo did not want to agree that the consultancy agreement would be governed by, and interpreted in accordance with, English law and that English courts would have exclusive jurisdiction, as the draft consultancy agreement prescribed. This was accepted by Per Hillström on the condition that the indemnification undertaking was formulated so that Morgan Stanley would be liable only where there was gross negligence. Roland Vejdemo and the other directors did not want to agree to this. It was not until Morgan Stanley offered a deduction on the Incentive Fee by EUR 1,000,000 that the parties were able to agree on such a limitation of liability and that the agreement would be governed by, and interpreted in accordance with, Swedish law with arbitration proceedings in Stockholm as the dispute resolution mechanism. It was the negotiations regarding these terms and conditions which meant that the parties' oral agreement in December 2014 could not be confirmed through a written consultancy agreement until 12 January 2015. As far as we have understood, no draft written consultancy agreement with the starting level of SEK 320 was drafted until January 2015.

Roland Vejdemo, Dick Lundqvist and Per Hillström have all stated that, after the offer price level of SEK 340 per share had become known to the board of directors on 31 December 2014, Roland Vejdemo made an attempt to get Morgan Stanley to agree on a change to the terms and conditions for the Incentive Fee so that the fee would only be payable in conjunction with a final transaction price in excess of SEK 340. All of them have stated that the attempt was doomed to failure. Per Hillström describes the matter such that Roland Vejdemo had "squeezed the last drop out of the stone" when Axis secured the deduction of EUR 1,000,000 and that no additional adjustment to the price had ever been agreed by Morgan Stanley. For his part, Roland Vejdemo has stated that it was never an alternative for Axis not to sign the written agreement in January 2015 and to discontinue the cooperation with Morgan Stanley, in part because the process was already in full swing

with a series of urgent measures pending which Morgan Stanley had already worked on and prepared and, above all, because the board of directors felt that it was bound by the oral agreement from December with the condition of SEK 320.

We draw the following conclusion. The compensation conditions in Morgan Stanley's draft consultancy agreement of 16 December 2014, which the board of directors used on 18 December 2014 as the basis for its decision to choose Morgan Stanley as the financial advisor, appear to be understandable and appropriate. If the transaction takes place, Morgan Stanley receives predetermined compensation for its work (the Base Fee) and if the price in the transaction exceeds the price in the Indicative Offer, Morgan Stanley receives further compensation calculated as a percentage of the excess portion of the price. The intention behind the fee structure can hardly be understood other than that it was intended to act as an incentive for Morgan Stanley to find a third-party willing to pay more than Canon or to negotiate Canon's offer price upwards.

In light of this, it is not all that easy to understand why the board of directors agreed, at some point during the last weeks of December 2014 before the indicative offer letter had arrived, to a fixed starting price of SEK 320 for the Incentive Fee instead of waiting for the actual offer letter. The information underlying the decision appears to be meager. Nonetheless, we can conclude that all of the individuals we have spoken with state that an oral agreement to this effect had been entered into prior to 31 December 2014 when the offer letter came and that everyone at that time assumed (erroneously as it would prove to be the case) that Canon and the three largest shareholders had agreed on a price of SEK 320 per share and that this was what the offer price would be. In light of this, it is our opinion nonetheless that Axis must be deemed to be bound by the oral agreement.

One could naturally claim that the board of directors' decision, to enter into the agreement and thus deviate from the draft agreement which the board of directors had previously received and approved, in crucial respects, may have constituted an act which might give rise to liability in damages to the company. However, the question cannot be answered this easily. For example, it may very well have been the case that it would not have been possible for the board of directors to enter into an agreement with Morgan Stanley or any other equivalent investment bank which was more advantageous to Axis than what actually was the case; that Morgan Stanley's services were of crucial significance to the final bid price in the Offer; and that it was therefore in the interests of all of the shareholders that the services be structured in the manner they were. A series of underlying questions would need to be answered and a large number of supplemental interviews would have to be carried out with both outside parties as well as individuals within Axis in order to be able to finally take a position on the question. In our opinion, it would be going too far to continue on with further investigation in this respect within the scope of this examination.

## **7.8 Miscellaneous**

Axis' press release of 10 February 2015, through which the statement of directors regarding the Offer was published, states regarding the five directors who addressed issues related to the Offer that, "all [...] are independent in relation to [Axis], company management and [Axis'] largest shareholders". With respect to Roland Vejdemo, Charlotta Falvin and Göran Jansson, we have no objections to that formulation. However, it would appear to be less accurate to claim that the two employee directors, Carl-Fredrik Bergdahl and Christian Ionescu-Ildohm, who were employed within the Axis group, were independent in relation to Axis and company management. However, since Carl-Fredrik Bergdahl and Christian Ionescu-Ildohm were independent in relation to Canon and the Offer as such – which was what was of interest – this fact is of no significance to our conclusions.

It can also be noted in the context that, as a consequence of the Offer, the board of directors resolved on 6 March 2015 to postpone the annual general meeting which according to a previous notice was to be held on 25 March 2015. According to minutes from the meeting of the board of directors held on 6 March 2015, the board of directors resolved instead to convene an annual general meeting "as soon as possible after the time at which Canon controls more than 90 percent of the shares in Axis". Following a proposal by Canon, the annual general meeting subsequently came to be held on 15 June 2015. The decision by the board of directors to postpone the meeting, so that it would not take place during an ongoing acceptance period for a public takeover offer, was logical and in accordance with customary practices. The Swedish Companies Act also does not impose any restriction on the board of directors, when the circumstances so justify, canceling a general meeting to which notice has been given in order to instead convene the meeting at a later date.

## **7.9 Conclusion**

We have found that, in conjunction with the Offer, Axis' board of directors and management acted in full compliance with the applicable Takeover Rules. We have also concluded that the board of directors and management acted in the best interests of all of the shareholders in conjunction with the Offer. However, we have not been able to fully understand the reasoning of the board of directors as to why, even before the board of directors received Canon's indicative offer letter, it entered into an oral agreement with Morgan Stanley regarding a fixed starting price of SEK 320 for the Incentive Fee instead of sticking to the wording calling for a starting price corresponding to the price which would be set forth in the "the Indicative Offer".

## **8. MANAGEMENT BY THE BOARD OF DIRECTORS AND MANAGEMENT**

### **8.1 Corporate formalities**

Within the scope of our examination, we have been provided minutes of meetings of the board of directors and the underlying documentation for decisions from all of the board meetings held by Axis during the period July 2014 up to and including April 2016 as well as the work procedures for the board of directors. Taken as a whole, this means that we have reviewed 21 sets of board minutes, of which 4 relate to 2014, 13 to 2015, and 4 to 2016. Following our review of all of the minutes and documents, we have made the following observations regarding Axis and its handling of corporate documentation.

The minutes with which we have been provided were all dated, attested and numbered by year. Based on this, it has been easy for us in our review to confirm that we have received all of the minutes. In addition, the minutes follow a clear structure and are detailed so as to make it possible for an external party to obtain a good understanding of the company and its management and decision-making. It can also be noted that all of the appendices which are referred to in the minutes have been provided to us and that the board of directors has applied good routines for following up outstanding questions. The work procedures for the board of directors contain the provisions one would expect to see in a listed company of Axis' size. In light of the above, it is our opinion that Axis applies properly functioning administration with respect to corporate documentation.

### **8.2 The dividend proposal which was withdrawn**

Our examination has covered the circumstances surrounding the proposal for a dividend for the 2014 financial year which was withdrawn by the board of directors. It follows from the annual accounts for the 2014 financial year, signed on 29 February 2015, that the board of directors was proposing that, of the profits available for allocation by the annual general meeting totaling SEK 422,704,806, SEK 6.0 per share, or a total of SEK 416,767,500, be paid as a dividend and that the remaining profits be carried forward. In its reasoning underlying the proposal, the board of directors states that it assumes continued positive performance during the 2015 financial year and that it is the opinion of the board of directors that the proposed dividend "does not prevent the company from performing its obligations over the short term or long term, nor from making the necessary investments".

After Canon had decided on 8 April 2015 to complete the Offer, Canon submitted a letter to the board of directors of Axis. It is apparent, among other things, from the letter, which is dated 11 May 2015, that Canon is requesting that the board of directors convene an annual general meeting to be held on 15 June 2015 and that the board of directors withdraw its proposal for a dividend since Canon intends to vote against such a dividend.



Canon's letter was discussed at an extraordinary general meeting of the board of directors held on 11 May 2015. It is apparent from the minutes of the aforementioned meeting that, in accordance with Canon's request, the board of directors resolved to withdraw its proposal for a dividend by Axis and to propose that the earnings available for allocation by the annual general meeting be carried forward. After Axis convened an annual general meeting and reported therein that the proposal for a dividend had been withdrawn, the board of directors received a proposal for a dividend from Elliott. The proposal stated that the dividend be paid in the same amount as had been stated in the proposal withdrawn by the board of directors and that the remaining earnings be carried forward. In addition, it is apparent from the reasoning of the proposal that the shareholders did not have any cause to believe that the conditions for a dividend had changed from the point in time at which the board of directors proposed a dividend until the day for the current proposal.

The minutes dated 24 May 2015 show that the board of directors resolved, *per capsulam*, that, in light of Elliott's proposal, the board would prepare and submit a statement pursuant to Chapter 18, section 4 of the Swedish Companies Act and would publish the proposal for a dividend and the board of directors' statement. The statement was prepared and made public the next day, i.e. 25 May 2015. The statement by the board of directors demonstrates that the board of directors' opinion, similar to when the board of directors presented its proposal, is that the dividend proposed by Elliott does not "prevent the company from performing its obligations over the short term or long term, or from making the necessary investments".

It is apparent from the minutes from the annual general meeting held on 15 June 2015 that, in addition to Elliott's proposal, Anders Persson, as a representative of the Swedish Shareholders' Association, also submitted a proposal regarding a minority dividend. The resolution regarding a dividend was adopted through a vote. It is apparent from the appendix entitled "Report of Results of Vote", which had been appended to the minutes, that Elliott's proposal for a dividend was voted down but that it was resolved to pay a minority dividend in the amount of SEK 0.31 per share (total of SEK 21,532,987.50) in accordance with the proposal by the Swedish Shareholders' Association.

At the time of Canon's letter to the board of directors in May 2015, Canon owned approximately 85 percent of the shares in Axis. In other words, since a resolution regarding an allocation of earnings is passed at a general meeting of the shareholders by a simple majority, Canon alone could determine the decision of the general meeting on this question. When the board of directors had learned of Canon's position on the question, it was thus meaningless to present any proposal other than that which the majority shareholder had stated it preferred. In light of this, there was in our opinion no chance of prevailing. In any event, we cannot see how the decision by the board of directors would

violate any minority interests or the Swedish Companies Act in general. On the contrary, the decision by the board of directors appears to be the most practical decision for the company. We have also been able to conclude that the board of directors, prior to its decision to withdraw the proposal for a dividend, consulted its legal advisors at Gernhardt & Danielsson and in this way made sure in advance that there were no legal impediments to withdrawing the proposal for a dividend.

In a similar manner, Canon obtained assurances that the board of directors would not propose any dividend prior to the 2016 annual general meeting. It follows from the minutes of the meeting of the board of directors held on 25 January 2016, that the board had received a letter from Canon which stated that Canon intended to vote at the annual general meeting against all forms of dividends. In light of Canon's letter, the board of directors resolved at the board meeting not to propose any dividend prior to the 2016 annual general meeting. For the reasons stated above, we also do not have any comments criticizing the actions of the board of directors in this case.

### **8.3 Conflict of interest situations**

Biörn Riese, Bert Nordberg, Håkan Kirstein, Martin Gren and Toshizo Tanaka were elected as directors of Axis at the annual general meeting of Axis held on 15 June 2015. Bert Nordberg and Håkan Kirstein are deemed to be independent in relation to Axis, company management, and major shareholders, as this relationship is defined in the Swedish Corporate Governance Code. In light of the fact that Martin Gren is employed by Axis' subsidiary, Axis Communications, for obvious reasons he is deemed not to be independent in relation to Axis and company management, but certainly in relation to Canon.

The chairman of the board of directors, Biörn Riese, and Toshizo Tanaka are deemed to be independent in relation to Axis and company management but not in relation to the company's largest shareholder, Canon. The reason that Toshizo Tanaka is not deemed to be independent in relation to Canon is obvious, since Toshizo Tanaka is both the CFO and a director of Canon. With respect to Biörn Riese, it can be noted that Mannheimer Swartling, where he worked throughout the entire examination period, was Canon's legal advisor and therefore Biörn Riese can also not be deemed to be independent in relation to Canon. The fact that Biörn Riese and Toshizo Tanaka are not deemed to be independent in relation to Canon is, however, not the same as their being prevented from handling various questions in the board of directors due to a conflict of interest.

It follows from Chapter 8, section 23 of the Swedish Companies Act that a director may not handle issues regarding agreements between him and the company. A member of the board of directors may also not handle questions regarding agreements between the company and the third party if the director in question has a material interest which may be

in conflict with the company's. According to the conflict of interest provisions, it is thus not required that the matter actually contravene the interests of the company in order for a conflict of interest to exist; it is fully sufficient that there is a risk. Nor may a director handle questions regarding agreements between the company and another legal entity which he alone, or together with any third party, is authorized to represent.

Consequently, according to the conflict of interest rules in the Swedish Companies Act, there is a prohibition against handling matters applicable to any person who, according to the rules, is deemed to have a conflict of interest. It is obvious that Toshizo Tanaka, in light of his position in Canon, must be deemed to have a conflict of interest on matters which relate to agreements between Axis and Canon. With respect to Biörn Riese, the conclusion is not equally obvious. He did, in fact, work during the examination period at the same law firm as, through other partners, acted as Canon's legal counsel, but the question is whether he can be said to have a material interest which may conflict with those of Axis. The concept "material interest" focuses primarily on a significant economic interest or an interest based on close relationships. One can certainly claim that, in his capacity as a partner in the law firm which acted as Canon's legal counsel, Biörn Riese had a certain, indirect, economic interest in Canon during the period of the examination. That, as a consequence of this, he would have had the type of interest which, within the meaning of the Swedish Companies Act, would be understood to be "material" is, however, in our opinion a step too far. In conclusion, it is thus our opinion that Toshizo Tanaka is to be deemed to have a conflict of interest on questions which relate to agreements with Canon but that Biörn Riese is not deemed to have one. Even if Biörn Riese was thus, in our opinion, not to be regarded as having a conflict of interest within the meaning set forth in the conflict of interest provisions of the Swedish Companies Act, there may be cause to consider whether it was appropriate for him to participate in the handling of certain questions regarding Canon. We will discuss such a case in section 8.4.5.

Within the scope of our examination, we have been charged with examining the board of directors' handling of matters regarding the execution of agreements with Canon in light of the relevant conflicts of interest.

As far as we have been able to discern, questions regarding the execution of agreements with Canon were only on the agenda of Axis' board of directors on one occasion, the meeting of the board of directors held on 8 September 2015. The minutes indicate that the board of directors resolved that Axis enter into a confidentiality agreement with Canon regarding four pending projects. Toshizo Tanaka was not present at this meeting. Without it being stated in the minutes, according to information we received, Biörn Riese is also said to have left the room before the agreements were addressed.

Other than that which is set forth above, in our review of board minutes, we have not noted that any question regarding execution of agreements with Canon was the subject of discussions by the board of directors on any further occasion. In one of our interviews with Biörn Riese, he stated that the board of directors is extremely aware of the conflict of interest problems and that it treats these with the utmost gravity. If any question involving Canon arises during the board meetings, he leaves the room and Toshizo Tanaka, who participates via a video link, turns off the connection. This has occurred on a few occasions to date. It can be also noted that Toshizo Tanaka is not present at Axis' strategy day in the autumn of each year where Axis' future strategies are discussed. According to Biörn Riese, this procedure has never been questioned by Toshizo Tanaka and he is aware and understands the importance of strict compliance with the rules.

## **8.4 The relationship between Axis and Canon**

### **8.4.1 History**

Axis and Canon began cooperating at the end of the 1990s. At this time, Axis was a supplier to Canon and provided Canon with external printer servers for Canon's printers. The companies also cooperated on the development of built-in printer servers for Canon's laser printers which led to Axis, in the beginning of the 2000s, being one of Canon's largest global suppliers of network solutions. However, as Axis shut down its printing operations (sales of printer servers) and instead focused on producing network cameras, the cooperation between the companies trailed off and was, for this time, discontinued entirely in 2003.

During the period of time between 2003 up to and including 2013, Axis and Canon's contacts were limited to a few of Axis' group companies renting office machinery from subsidiaries of Canon. These cases involved customary agreements regarding leasing involving limited amounts in the context.

We have not found any information within the scope of our examination which indicates that Axis and Canon had any other contacts or cooperation of significance during the period from 2003 up to and including the spring of 2013, when Project Zoo was initiated. Project Zoo and the companies' other projects which were commenced, or underway, during our examination period will be reported in the sections below.

### **8.4.2 Project Zoo**

At the time of the Offer, Axis and Canon had already begun cooperating through the cooperation project which the parties designated Project Zoo. The project was started up at the initiative of Canon in April 2013 when Ray Mauritsson was contacted to discuss a potential cooperation in which Canon would act as a supplier of Axis for certain products or

components. As a consequence of the discussions, representatives of Canon visited Axis on 11 June 2013.

It is apparent from our review of internal e-mail correspondence and Ray Mauritsson's information provided to management as a consequence of Canon's visit that the background to Canon's contact was an interest on the part of Canon to further develop its video surveillance operations. Ray Mauritsson also informed management that the next step would be an exchange of non-critical product and technical information and the companies entering into confidentiality undertakings if Axis, following such an exchange, was of the opinion that a cooperation with Canon would offer Axis interesting solutions. It is apparent from the e-mail correspondence that Ray Mauritsson was interested, above all, in a cooperation regarding Canon's components which are not available on the open market and which would make possible unique "features".

After Axis had reviewed the technical information provided by Canon and Canon's product range, Axis concluded that there were not any obvious products in Canon's current product portfolio which were of direct interest to Axis. However, when Axis informed Canon of this in August 2013, Axis emphasized that there was an interest if Canon had any new products which Axis had not received and in particular "a camera with a 1 sensor, really good optics and >10 MP resolution". It is apparent from the e-mail correspondence that Canon was positive to a cooperation and proposed that the parties enter into a letter of intent which would later be followed up by a confidentiality agreement.

Within the scope of our examination we have reviewed the letter of intent entered into between the parties on 3 September 2013 which addresses what the parties referred to as Project Zoo. It is apparent from the letter of intent, which was designed to reflect the parties' agreement at the meeting on 11 June 2013, that the parties were to discuss a cooperation which would result in one of two different alternatives. Either Canon would provide Axis with network cameras and technology, or Canon would develop network cameras and technology at the request of Axis and provide these to Axis and third parties. In addition, the agreement prescribes that, within the scope of the discussions, the parties shall provide each other with public information regarding each party's range of products and non-public information according to an appendix entitled "Special Information". According to the letter of intent, the parties intended to agree on the start-up of a project in December 2013. Prior to such a project, a confidentiality agreement would be entered into between the parties. The appendix to the letter of intent states that, at this time, it is only Canon which has provided Axis with non-public information regarding its network cameras and not the other way around.

In October 2013, Axis received access to two trial versions of Canon's cameras, one of which Axis judged to be of great interest. In an internal e-mail to Ray Mauritsson from Axis' head of development, the head of development informed him of his plans to contact Canon and to request information regarding price level in order to be able to determine whether the camera would be appropriate in Axis' portfolio. Ray Mauritsson concluded that this sounded like a good strategy but he informed the head of development that they must give the matter some thought when they approach a possible supplier relationship so that Axis does not become a channel for marketing and legitimizing Canon's products which results in Canon subsequently being able to take the market with the product under Canon's trademark.

Axis performed tests on Canon's cameras in October 2013. The internal e-mail communications to Ray Mauritsson indicate that the results of the tests did not demonstrate anything other than that the camera was a good product which, according to the engineers, is not sufficient in and of itself for Axis to go forward with Canon. The engineers stated that the only reason Axis would go forward with Canon would be if Canon were in possession of technology which they alone hold and which Axis could benefit from. One can thus conclude that, during the autumn of 2013, there was no interest on the part of Axis to cooperate on any of Canon's existing products. However, we have understood from our interviews with Ray Mauritsson and Johan Paulsson that Axis was always interested in cooperating with Canon regarding the optics and sensors which Canon does not sell to other companies and which are thus not available on the open market. Axis had previously presented its desire to cooperate with Canon within these areas but Canon was not interested at that time.

However, when Axis once again proposed in the spring of 2014 a cooperation regarding Canon's optics and sensors, Canon was positive. In light of this, Axis and Canon signed a confidentiality agreement on 10 September 2014, which, in a manner corresponding to the letter of intent executed in the autumn of 2013, involved Project Zoo. One can thus conclude that Project Zoo, which initially involved a potential retailer relationship, developed instead into a joint development project where the parties' respective technologies would be combined.

The confidentiality agreement states that it is intended to govern the parties' exchange of information for the purpose of developing the next generation network camera with Canon's EF lens. Confidentiality under the agreement applies for a period of five years from receipt of the information. In addition, the agreement prescribes that the party receiving the information is entitled to use what is defined in the agreement as "confidential information" (i.e. everything which the party providing the information provides to the party receiving the information) in patent applications for its own inventions or otherwise to

develop its own products. However, this expansive right does not apply to information which, according to the agreement, is enumerated in an appendix to the agreement and designated "Restricted Confidential Information". It can be noted that the information in this appendix only relates to information related to Axis and its ARTPEC-5 chip. According to the agreement, Axis thus enjoys broader protection for its information than does Canon.

When Ray Mauritsson informed the management of Axis of the ongoing discussions with Canon, views were presented to the effect that Axis must be restrictive with the information provided to Canon. It is apparent from internal correspondence between Ray Mauritsson and Johan Paulsson that management was well aware that Canon is not to receive too much information but at the same time that they believe that Axis has more to gain in cooperating with Canon as opposed to those companies that are Axis' actual major competitors.

On 2 February 2016, i.e. just over one year later and long after Canon had become Axis' largest shareholder, as a precondition for Project Zoo, Axis and Canon entered into a Product Development and Cooperation Agreement (the "**Cooperation Agreement**"). The agreement states that it is intended to govern the parties' cooperation regarding the development of a new high-resolution camera. The Cooperation Agreement further states that, following successfully completed development work, it is the intention of the parties that Canon manufacture and supply the product (the camera) to Axis which thereby undertakes to purchase this from Canon. With respect to the development of the camera, the Cooperation Agreement states that the parties shall perform their respective undertakings in accordance with the agreed timetable for the purpose of developing the product in accordance with the agreed specifications. Axis and Canon shall each bear their own respective development costs and the ownership rights in the product shall, according to the agreement, vest in the parties jointly. According to the timetable which is appended to the Cooperation Agreement, is the intention of the parties to launch the product during the fourth quarter of 2016. In addition, it can be noted that the Cooperation Agreement contains confidentiality provisions corresponding to the confidentiality agreement which had been previously entered into between the parties in September 2014. As with the confidentiality agreement, certain information is listed in the appendix to the Cooperation Agreement where Canon's right to use information is more limited than that which applies to other information exchanged between the parties. In the confidentiality agreement, it was information regarding Axis' ARTPEC-5 chip while the Cooperation Agreement covers corresponding information regarding Axis' ARTPEC-6 chip. As was the case with respect to the confidentiality agreement, Canon has not listed any information in this appendix.

In our interviews with Ray Mauritsson and Johan Paulsson, we have understood that it is Axis that manufactures and provides Canon with the relevant ARTPEC-6 chip and that

Canon thus does not receive any information through the cooperation regarding how the chip is actually manufactured. The background to this is, as far as we have understood, that Axis entered into confidentiality agreements with other suppliers of the technology which is included in the chip and that, as a consequence of this, the parties believed that it would be the easiest solution for Axis to produce the chip internally and to supply it to Canon for assembly in the camera.

The Cooperation Agreement also states that the terms and conditions for Axis' purchases of the camera, such as the price and thus the economic results of the parties' cooperation, are to be governed by a separate Business Agreement entered into between the parties. However, this agreement was not entered into during our examination period and is still today the subject of negotiations between the parties.

Through a press release published on 12 September 2016, i.e. at a point in time which lies beyond our examination, Axis presented the AXIS Q1659 network camera as the first camera which combines professional camera technology by Canon with Axis' proven solutions. Ray Mauritsson and Johan Paulsson have confirmed that the AXIS Q1659 is the result of Project Zoo. The intention is currently that the camera will be available for sale during the spring of 2017. Prior to this, Axis and Canon will agree in their Business Agreement on the commercial terms and conditions for the sale of the camera and how the revenues from this will be allocated between Axis and Canon.

#### **8.4.3 Discussions regarding potential synergies during the bid process**

As is apparent above, at the time of the Offer, Axis and Canon had already commenced a cooperation through Project Zoo. In conjunction with the management presentations in Copenhagen in January 2015, Axis and Canon also carried out discussions for the purpose of identifying other areas where they might be able to cooperate for the purpose of achieving synergy effects. We have understood from internal e-mail correspondence that the companies agreed at this time that there was a potential for cooperation in the following four areas: (i) Image technology, (ii) Manufacturing technology, (iii) Procurement power, and (iv) Patents.

In our interviews with Ray Mauritsson and Johan Paulsson, it became apparent that these areas were relatively simple to define and that they were the result of a brainstorming exercise rather than more advanced considerations. In light of the fact that Axis and Canon, already at this point in time, had commenced Project Zoo, it is simple to understand that image technology was an interesting area for the companies to cooperate on. In light of Canon's size, Axis also saw the possibilities of being able to benefit from Canon's broad knowledge of production and its purchasing agreements.



According to information received from Johan Paulsson, he was cautiously in favour of the Offer right from the beginning. The background to this was, as Johan Paulsson has explained to us, that patents become all the more important when a market matures and that he believed that this was about to happen with the market for network cameras where Axis was active. In light of the fact that Canon is one of the top three patent-holding companies in the world, he saw obvious advantages for Axis in a deeper cooperation with Canon regarding patent questions as well.

On 19 March 2015, i.e. during the ongoing bid process, Ray Mauritsson visited Canon's headquarters in Tokyo. The background to the visit was that Ray Mauritsson wanted to obtain more information regarding Canon's intentions behind the Offer and how independent Axis would be permitted to be. Internal correspondence shows that, after the visit in Tokyo, Ray Mauritsson provided Canon with contact information for various individuals in company management, including Johan Paulsson, and that certain follow-up contacts were established. Among other things, Johan Paulsson came to visit Canon in Tokyo in the summer of 2015. It is also apparent from the internal e-mail correspondence that, during the spring of 2015, Axis presented proposals regarding a coordination of the sales of network video products which subsequently came to result in Project Orwell, as reported below in section 8.4.6. Consequently, as early as during the bid process, it was discussed within which areas the companies might be able to benefit from each other. In response to a question as to what would have happened with these discussions if Canon had chosen not to complete the Offer, Ray Mauritsson has stated that he assumes that most of the discussions in such case would never have resulted in an initiated project or cooperation.

We have thus been able to conclude that certain contacts were established between Axis and Canon in the spring of 2015. However, we believe that the fact that there were discussions between Axis and Canon regarding how the parties would be able to achieve synergy effects through cooperation is a natural consequence of the fact that the parties were operating in the same industry and could benefit from each other. Discussions regarding potential synergy effects as such also benefit Axis as a company which ultimately benefits all of the shareholders.

It is also apparent from our examination that it was important to Axis that the strategy of independence expressed in conjunction with the Offer be followed. This is clearly demonstrated by the discussion which arose in March of 2015, i.e. during the bid process, as a consequence of the fact that Canon wanted Axis to join it at the group's exhibition, held every fifth year, where Canon presents the group's direction for the next five years. Ray Mauritsson wrote to Canon on 24 March 2015, questioning Axis' participation at the exhibition since the purpose of this, as far as he understood it, is to market and sell Canon

as a trademark. However, Canon stated that this concern was unfounded and that other companies acquired by Canon such as Milestone would also be exhibiting at the exhibition and that the purpose of this was to market the Canon group as a whole and not Canon as an individual company. It can be concluded from the follow-up e-mail correspondence that Axis rejected Canon's initial proposal that Axis have a joint exhibition stand with Milestone, among others, and that Axis made its participation conditional on the company being able to have a separate stand in light of the fact that it had been communicated to the market that Axis was functioning as an independent company. In our interview with Ray Mauritsson, it was confirmed to us that Canon agreed to Axis' request and Axis' presence at the trade fair with an exhibition stand devoted solely to Axis. Ray Mauritsson went on to emphasize that it is important for Axis, and also for Canon, that Axis retain its own identity and that Axis' presence at similar events is always conditional on Axis being able to define its presentation.

#### **8.4.4 General comments regarding Axis' cooperation projects**

Axis was thus cooperating with Canon even before the Offer. However, the fact that Axis had begun cooperating with another company which, to a certain extent, is a competitor is not uncommon in the industry in which Axis does business. Through our interviews with Ray Mauritsson and Johan Paulsson, we have understood that Axis regularly conducts projects together with other companies for the purpose of developing or combining interesting technology with Axis' products. In addition, it can be concluded that Axis continues today to cooperate with several companies, some of which are direct competitors of Canon. The fact that Canon has become the largest shareholder of Axis has thus not had any effect on the way in which Axis conducts its business and the companies Axis chooses to cooperate with. In our interviews with Ray Mauritsson and Johan Paulsson, they have both emphasized that the benefit derived by Axis is the crucial factor in deciding whether or not to commence a cooperation.

Confidentiality agreements are regularly entered into within the scope of a project. At Axis, it is Johan Paulsson and the head of development who are authorized to sign confidentiality agreements on behalf of Axis. According to information obtained from Johan Paulsson, he signs approximately 100 confidentiality agreements each year. Prior to executing a confidentiality agreement, the agreement is always reviewed by one of Axis' in-house lawyers and Axis attempts, to the extent possible, to use one of the templates for confidentiality agreements which Axis has prepared internally.

We have also understood from Ray Mauritsson and Johan Paulsson that, as is the case with other companies in the industry, Axis prefers to avoid entering into confidentiality agreements. This reluctance is based on the fact that it does not want Axis to become

”infected” by the other party’s technology. This would impede Axis in its business since there would be a risk that the other party might be able to argue that technology developed by Axis is based on information which Axis was provided under the confidentiality agreement. In such a situation, Axis must prove that the relevant technology was developed independently of the information which was exchanged under the confidentiality agreement in order to avoid damages, which can be very difficult to do. It can be noted that it is primarily Axis’ counterparties and suppliers of technology that request that a confidentiality agreement be entered into. For Axis, which sells products rather than technology, a confidentiality agreement is not as important. According to information received from Johan Paulsson, Axis refuses to enter into confidentiality agreements in approximately 90 percent of the cases with reference to the ”risk of infection”.

#### **8.4.5 Comments regarding Axis’ cooperation with Canon**

One of the first measures the newly installed board of directors took after the 2015 annual general meeting was, in light of the ownership structure with one large shareholder in Canon and several minority shareholders, to implement special rules and procedures to be applied in conjunction with contacts between Axis and Canon.

At the request of the board of directors and for the purpose of governing communications between Axis and Canon, the chairman of the board of directors, Biörn Riese gave instructions to have guidelines to be applied to communications between Axis and Canon drafted. These guidelines were presented to the board of directors by Ray Mauritsson at the board meeting held on 8 September 2015. It was emphasized at the board meeting that it was of utmost importance that these rules be complied with and that the chairman of the board of directors, Biörn Riese, must be consulted in the event of any doubt on the part of management as to what information can be disclosed to Canon.

With respect to the drafting of the guidelines, we have understood from Biörn Riese that this was a question of priority for the board directors and that all of the directors understood the importance of contacts between Axis and Canon being handled correctly. The serious nature of this was emphasized by the fact that the departing board of directors had not been granted a discharge from liability, and by the examination initiated by the minority. According to Biörn Riese, Canon also realized the importance of this and agreed to sign the guidelines without any objection.

The guidelines state that Axis may not provide Canon with price-sensitive information unless i) Canon requires such information in order to fulfill its obligation to regularly publish financial information (including quarterly reports), or ii) the board of directors of Axis decides that it is in the interest of Axis in an individual case to provide Canon with price-sensitive information provided that it does not contravene any law or applicable rules and

regulations. With respect to non-published information which is not price-sensitive, Axis may provide Canon with such information provided the board of directors of Axis, or management, following authorization by the board of directors, determines that it is in the interest of Axis to provide Canon with such information. In addition, the guidelines state how the parties must proceed if Canon requests financial or other information from Axis. If it involves non-financial information, at the request of Axis, Canon must inform Axis in writing regarding what information has been requested and the purpose and reason for the request. The board of directors of Axis, or company management on the authorization of the board of directors, shall subsequently determine if it is in Axis' interest to release the information to Canon. According to the guidelines, Canon undertakes to respect Axis' decisions whether or not to release the information. The guidelines were signed by Axis on 6 July 2015 and by Canon on 3 September 2015.

As is apparent above, it was Biörn Riese who would decide in ambiguous cases whether information would be disclosed to Canon. In light of Biörn Riese's position during the entire examination period as a partner at Mannheimer Swartling, the appropriateness of such a procedure can be called into question. However, we have understood from our interviews that the application of the guidelines during the examination period was undramatic and that it was only on isolated occasions that Biörn Riese was even contacted regarding the release of information to Canon. According to Biörn Riese, he was contacted by Fredrik Sjöstrand due to the fact that Canon, in conjunction with its year-end accounting work regarding the 2015 financial year, requested access to financial information regarding Axis. The answer to Canon was then "no" with regard to information Axis did not make public itself. As far as Biörn Riese understood, in those cases in which Canon was denied access to information it had requested, Canon accepted this without any objections. In light of the fact that the guidelines were hardly applied in practice, Biörn Riese argues that one can question whether the guidelines were actually needed at all.

It follows from the minutes of the meeting of the board of directors held on 21 October 2015, that the board once again emphasized the importance of compliance with the guidelines and that Ray Mauritsson was charged with implementing the procedures for ensuring this. In order to comply with the board's request, Ray Mauritsson introduced requirements that all projects and activities between Axis and Canon be specifically logged by management. We have received this log which exists electronically in a folder to which only management has access. From our interview with Johan Paulsson, we have understood that he is responsible for updating the log with respect to pending research and development projects. Only projects and agreements in which Axis participates together with Canon are logged in this way. Other agreements and other contracting parties are registered and searchable in Axis' internal contract database.

The log lists ongoing projects between Axis and Canon with a description of the project, its business model, status, contact persons at Axis and Canon, and information regarding when the agreement was entered into. From our review of this list, it can be concluded that during the First and Second Examination Periods a total of 16 projects were reported between Axis and Canon. In addition to Project Zoo (as reported in section 8.4.2), these projects will be reported below in sections 8.4.6 to 8.4.11.

The board of directors followed up the measures taken by Ray Mauritsson and the projects pending between Axis and Canon. The minutes of the meeting of the board of directors held on 13 April 2016 state that Ray Mauritsson informed the board of directors of the status of the pending projects. It is initially apparent under the heading "Canon/Axis projects process reminder" in the presentation appended to the minutes under this item on the agenda which is designated "Ongoing Canon projects – status report" that i) Axis has a general policy which was adopted by the board of directors; ii) that management logs projects and activities; iii) that confidentiality agreements were entered into where it was considered necessary; iv) that the log of projects and confidentiality agreements was reviewed by the auditors; and v) the board of directors is to be kept updated regarding specific areas.

We have received the confidentiality agreements which were entered into between Axis and Canon within the scope of the projects which will be reported below. It can be concluded from our review of these confidentiality agreements that the parties have applied two variations of confidentiality agreements. In most of the cases, the more far-reaching variation of the confidentiality agreement was used. The second variation of confidentiality agreement, which was used in two cases, project WG0 and Project WG, was specifically produced in order to govern the exchange of information between Axis and Canon. This is apparent from the fact that the confidentiality agreement contains a provision to the effect that the guidelines drafted which we reported above have precedence over the confidentiality agreement in the event of any conflict.

Ray Mauritsson, Johan Paulsson and Biörn Riese have stated that Axis treated Canon as any ordinary supplier or contracting party. All agreements entered into between Axis and Canon are the subject of customary negotiations and whatever Canon is offering is compared with the terms and conditions of Axis' other suppliers. Consequently, the negotiations take place at arm's length and it is the benefit to Axis which is decisive. In cases where Axis believes a project with Canon would not be profitable, Axis shuts the project down. Correspondingly, Axis does not provide information to any party without there being a benefit for Axis in doing so. Johan Paulsson has described for us the position of the engineer employees regarding the sharing of information constituting corporate trade

secrets as characterized by unwillingness, which applies to the relationship with Canon just as much as to any other cooperating partner.

It is apparent from our review of the internal e-mail correspondence and our interviews that the management of Axis was vigilant regarding the distribution of information to Canon. This can be illustrated, for example, by the fact that Ray Mauritsson was contacted by Johan Paulsson in April of 2015 due to the fact that engineers at Canon had been “very inquisitive” in relation to Axis’ engineers and that the engineers were uncertain as to whether they could provide to Canon and, if so, which information. Following consultation with Ray Mauritsson, Johan Paulsson sent out an internal e-mail to the research and development department in which he emphasized that the answer to the question of which information can be provided to Canon is that “Canon and its employees, from this perspective, continue to be regarded as an external party to which no confidential information may be released without an express decision to this effect”. In addition, it was emphasized in the e-mail that Axis’ engineers must also be aware that, from a purely legal perspective, it is not permitted in many cases to release confidential information to Canon which Axis received pursuant to confidentiality agreements with third parties. We have understood from Johan Paulsson that he spoke early on with Canon’s chief legal officer regarding the questions which had been posed to Axis’ engineers. Johan Paulsson is not aware of which measures were taken as a consequence of this, but could thereafter note a clear improvement in this respect.

#### **8.4.6 Project WG1 Future Alignment**

On 23 October 2015, Axis and Canon entered into a confidentiality agreement regarding Project WG1 Future Alignment. It is apparent from the confidentiality agreement that the purpose of the project is to find future areas of cooperation in the market for network cameras and to create synergy effects by utilizing each party’s business strengths. This might take place, for example, through joint research and development, coordination of suppliers, and joint marketing.

The log states that, during our examination period, Project WG1 resulted in an independent project, Project Orwell, which is a proposal by Axis that Canon discontinue its marketing and sales of network video products in order to avoid conflicts with Axis regarding how the companies communicate on the market. From our interviews with Ray Mauritsson, we have understood that the project is a result of the problems which Axis initially experienced with Canon’s salespeople contacting Axis’ distributors and, referring to Canon which would become the majority shareholder in Axis, attempting to sell Canon’s products and initially creating confusion on the part of Axis’ distributors.

Through a press release published on 1 September 2016, i.e. after the close of our examination period, Axis announced that Axis and Canon had entered into an agreement entailing that Axis would take over the sales and marketing of Canon's entire portfolio of products in the area of network video in North America and EMEA (Europe, Middle East and Africa). Consequently, the relevant project entailed Axis expanding its sales operations to also include Canon's network video products, which must be deemed to be an advantage to Axis and the shareholders. However, as mentioned, the agreement was entered into after the close of the Second Examination Period and therefore we cannot report on the contents of this agreement in more detail.

#### **8.4.7 Project WG0 Sourcing Possibilities**

As mentioned above and in section 8.4.3, as early as at the initial meeting with Canon in January 2015, Axis identified the possibility, by using Canon's size and purchasing capacity, for Axis to purchase components in conjunction with its purchases of electronic components at a lower cost to Axis.

This resulted in the project referred to in the log as Project WG0 Sourcing Possibilities. The log states that Axis and Canon entered into a confidentiality agreement regarding the project on 23 October 2015.

From our interviews with Ray Mauritsson, Johan Paulsson and Martin Gren we have understood that, by being able to refer to the terms and conditions in Canon's purchasing agreements in negotiations with suppliers of standard electronic components, Axis was able to realize substantial cost savings as early as 2016.

In this respect, Axis and Canon have no contractual relationship other than the confidentiality agreement mentioned above. However, within the scope of the project, Axis received information from Canon regarding the purchase prices which Canon obtains and was thereby in a better negotiating position *vis-à-vis* the suppliers. The advantages in the project for Axis did not stop at cost savings. We have understood through our interviews with Ray Mauritsson and Johan Paulsson that, through the cooperation with Canon, Axis even improved its bargaining position in relation to the suppliers, something which proved to be important when one of Axis' largest suppliers ran into difficulties in supplying products. In that situation, Axis, backed up by Canon, was prioritized in an entirely different way than what would have been the case if Axis had been acting on its own.

#### **8.4.8 Projects in technology components development**

The log states that confidentiality agreements were entered into in September 2015 regarding three projects involving the development of technology and components,

designated i) Next Generation Image Sensor, ii) Soc (Silicon on Chip), and iii) Lenses. It is further apparent from the log that the business model to be applied regarding these projects is to treat Canon as any ordinary supplier on a market exposed to competition.

We have learned from Johan Paulsson that these projects involved discussions concerning possible cooperation where Canon would act as a supplier. Projects with external suppliers are normal for Axis. The procedure for such projects is always that Axis sends a request for the desired technology to a number of suppliers and, following this, on the basis of the responses by the suppliers regarding technology and price, Axis takes a decision regarding which supplier it wishes to proceed with.

Johan Paulsson told us in our interview that, in the three relevant projects in which Canon was invited to participate, Axis elected to choose other suppliers. According to Johan Paulsson, the background to this was that Canon's products within the scope of the relevant projects did not correspond to Axis' requirements, neither from a commercial nor a technical perspective. Johan Paulsson emphasized that Canon does not have any advantage over other suppliers when Axis takes decisions regarding the technology or components which are to be used in Axis' products. Canon is well aware of this and Axis' decision to cooperate with other suppliers has thus far not resulted in any comments by Canon. In this context, Johan Paulsson has also stated that if anyone were to attempt to provide Canon with special treatment due to its ownership in Axis it would result in "an uprising by the engineers".

#### **8.4.9 Research and development projects**

The log further indicates that Axis and Canon entered into a confidentiality agreement on 22 January 2016 regarding four separate projects designated i) Unity Gaming Engine, ii) Autonomous Systems, iii) IP Audio, and iv) Media/Coding.

Johan Paulsson has informed us that this involves four research projects in which Axis, in exchange for payment, would obtain some of the results of Canon's research regarding the various areas covered by the projects. However, Axis and Canon were unable to reach agreement on the compensation which Axis would pay to Canon for the services, since Axis was of the opinion that the compensation which Canon was requesting was too high and not competitive. In light of this, three of the four projects came to be shut down. However, with respect to the fourth project designated above as Media/Coding, which involved a potential cooperation between Axis and a French subsidiary of Canon, Canon's Japanese operations were of the opinion that it was important that Axis obtain the relevant research and therefore paid the difference between the price Axis was willing to pay and the price which Canon's French subsidiary was requesting. Consequently, in this case, Axis received an advantage due to Canon's interest in the company.



#### **8.4.10 Cooperation on intellectual property rights**

Axis and Canon have also begun cooperating in the area of intellectual property rights. It is apparent from the log that Axis and Canon entered into an agreement on 1 April 2016, pursuant to which Canon retained Axis to provide Canon with consultancy services in the form of patent applications. According to the agreement, Canon paid Axis for its services a fixed fee of EUR 30,000. This is an insignificant amount in this context but it can nonetheless be noted that we have received confirmation from both the auditors and Ray Mauritsson that this involved compensation for the services on market terms.

The log also states that Axis entered into an agreement with Canon and its subsidiary, Milestone, on 20 April 2016 regarding cooperation as a consequence of a threatened intellectual property rights dispute with an American company. According to information obtained from Ray Mauritsson, however, there is no formal dispute between the parties and therefore no further actions were taken in the cooperation.

The log also contains a notation that, other than the above-stated agreements in the area of intellectual property rights, Axis did not believe that it was necessary to enter into confidentiality agreements regarding Axis' and Canon's cooperation concerning intellectual property rights and patents due to the fact that a possible exchange of confidential information between the parties falls under the adopted guidelines for communications between the parties and taking into consideration the protection which intellectual property rights already enjoy. In one of our interviews with Ray Mauritsson, he clarified that, in light of the fact that registered patents are public information, Axis did not believe it was necessary to enter into confidentiality agreements for the exchange of information regarding these. If discussions are conducted regarding future patents, however, confidentiality agreements will be entered into in order to govern the exchange of such information. We have no objections to the structure reported.

#### **8.4.11 Other cooperation**

In addition to the projects reported above, the log also contains information about four other projects for which no confidentiality agreements were entered into.

With respect to two of these projects, which involve product development, at the end of our examination period only draft confidentiality agreements had been produced. In our interviews with Ray Mauritsson and Johan Paulsson, we have understood that Axis and Canon signed the confidentiality agreements in June of 2016 and that the companies are currently cooperating within the scope of these projects. In light of the fact that this took place outside of the period of time covered by our examination, however, we do not report on these projects in any more detail.

The two other projects recorded in the log have, for various reasons, not been commenced. In one case, due to the “risk of infection” reported above, Axis and Canon were unable to even agree on the wording of the confidentiality agreement and the project therefore ceased. The second case involved an attempt at a customer initiative which never resulted in any cooperation.

#### **8.4.12 Summary comments**

We have obtained a clear impression during our examination that, in its contacts with Canon, Axis endeavoured to act based upon what was in the best interests of Axis. This is confirmed by how Axis acted in the projects initiated with Canon during our examination period. In the projects involving technology and components development, Axis elected to proceed with suppliers other than Canon since they could offer better alternatives, both from a commercial as well as a technical perspective. In the research and development projects, Axis concluded that the compensation which Canon was requesting for its research was too high and not competitive and therefore elected not to proceed with the projects, even if Canon “sponsored” one of the projects and this came to be implemented nonetheless. In addition, there was a research project which was not commenced since Axis and Canon could not agree on the wording of the confidentiality agreement. This is a clear sign that the companies negotiate and enter into their agreements at arm’s length and that Axis does not agree to Canon’s proposals merely on the basis of its position as a majority shareholder in Axis.

As mentioned above, it can be called into question whether it was appropriate to permit Biörn Riese to be the person who was consulted by Axis’ management and personnel in the event of any uncertainty regarding what information could be disclosed to Canon. However, since we have been able to conclude that such consultations were rare during the examination period and that Canon was denied information which Axis did not itself make public, we cannot see how this procedure would have entailed any problems in practice, and even less damage to Axis.<sup>4</sup>

It can also be added that in response to the direct question as to which of the companies (Axis or Canon), in their opinion, had benefited the most thus far from the fact that Canon had become a majority shareholder of Axis, Biörn Riese, Ray Mauritsson and Johan Paulsson all answered “Axis” without any hesitation.

Martin Gren, who has also confirmed the above-stated, also emphasized the following about Axis’ relationship with Canon. Prior to, and during, the bid process, Canon provided

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<sup>4</sup> It can also be noted here that, since 28 February 2017, Biörn Riese is no longer active at Mannheimer Swartling which is why his handling of questions of the type mentioned here would appear to be uncontroversial from that point in time.

assurances that Axis would be able to continue to operate as an independent company within the group. Martin Gren even received a letter personally signed by the CEO of Canon in which he confirmed this. Even if the letter hardly has any legal significance, Martin Gren states today that Canon has kept that promise. Martin Gren does not rule out the fact that Elliott's role as a large minority shareholder and the fact that Axis still has a large number of minority shareholders may also have significance to the relationship between Canon and Axis after the completion of the Offer. Canon has been well aware the entire time that the interests of the minority must be taken into consideration in everything the board of directors and Axis do. According to Martin Gren, this has, in turn, entailed that all projects, all steps, and all meetings which in any way involve Canon must be documented with particular thoroughness and that everyone is diligent in ensuring that Canon does not gain any advantages to the disadvantage of Axis. This does entail that the management of the company has become costlier, but Martin Gren is of the opinion that Elliott's ownership position *per se* may also have had a positive effect on Axis' independent position in relation to Canon.

#### **8.5 Transactions and acquisitions during the Second Examination Period**

Within the scope of our examination, we have also been charged with reviewing the actions of the board of directors and management in conjunction with acquisitions, restructuring and similar measures during the Second Examination Period.

Axis acquired Citilog and Stockholmsledet 11 during the Second Examination Period. In addition, there were discussions regarding five other acquisitions, two of which were carried out and made public in 2016, but after the close of the Second Examination Period. These acquisitions involved 2N and Cognimatics. Discussions were thus otherwise carried out in the board of directors regarding acquisitions of three other companies which, for various reasons, were not implemented. We have not found any circumstance which indicates that Canon influenced the board of directors or management in their decisions not to acquire the three relevant companies. Since it is possible that Axis is continuing its consideration of whether to purchase the companies, we have chosen not to report the discussions by the board of directors or why the acquisitions were not carried out.

Axis thus acquired a total of four companies in 2016. As a company, Axis did not have any major transactional experience at the time of its first acquisition that year, and the fact that Axis acquired four companies in 2016 can largely be traced to the new composition of the board of directors. It is apparent from the minutes of the first regular meeting of the new board of directors held on 8 July 2015, that management presented the board of directors with a list of potential investments which it wanted to implement in order to drive growth. It is also apparent from the minutes that Toshizo Tanaka expressed a strong desire to have Axis investing aggressively in areas which support and contribute to future growth in sales.

The wording of the minutes can be understood to mean that it was Toshizo Tanaka who was the driving force in the process of acquiring the relevant companies. In one of our interviews with Biörn Riese, however, we learned that this is not an entirely accurate impression of how the discussions were carried out in the board of directors. According to Biörn Riese, there was agreement both within management as well as the board of directors that Axis' possibility of fending off the competition of its main competitors was dependent on Axis being able to broaden and further develop its range of products through strategic acquisitions.

The notes in the minutes and the report of Toshizo Tanaka's position must therefore, according to Biörn Riese, be understood more as a notation that Toshizo Tanaka was also positive regarding the focus of acquisition by the rest of the board. In addition, Biörn Riese stated that there was a great deal of transactional experience in the new board of directors, primarily through Bert Nordberg, Håkan Kirstein and himself, which probably made it easier to discuss acquisitions than had been the case in the previous board of directors. The acquisitions which came to be carried out, however, took place at the proposal of management and some of the acquisitions had also been discussed in meetings of the earlier board of directors.

We report below the actions by the board of directors and management in conjunction with the acquisitions of Citilog and Stockholmsledet 11. Within the scope of our examination, we cannot, and should not, provide an opinion as to whether or not the decisions by the board of directors to acquire these companies were commercially correct, but, rather, only whether the board of directors and management, prior to the decisions, ensured that it had obtained complete information on which to make a decision.

#### **8.5.1 The acquisition of Citilog**

On 31 January 2016, Axis acquired all of the shares in the French software company, Citilog, a leading supplier of surveillance solutions for the transportation sector. The acquisition has been described by Axis as a natural part of Axis' strategy of being able to offer adapted solutions focused on various customer segments.

We have reviewed all of the minutes of the board of directors which address the acquisition of Citilog and, based upon this review, we have concluded that it involves a customary acquisition process. Axis retained the law firm of Lindahl in Malmö as the legal advisor and PwC as the financial advisor, which carried out a due diligence of Citilog prior to the acquisition. It can be noted that, in light of the fact that Citilog is based in France, the legal advisors retained, in turn, the services of local advisors to assist in the due diligence. In addition, we have understood that Axis also utilized internal resources which reviewed Citilog regarding, among other things, personnel and operational questions. Ray

Mauritsson has stated that he orally presented the conclusions from the due diligence to the board of directors prior to the board's decision regarding an acquisition of Citilog.

In our review of the minutes of the board of directors' meetings, we have not found any written report of Ray Mauritsson's presentation. Nor has the presentation or any report from the various advisors' due diligence been appended to any minutes. We have understood that the written information presented to the board of directors was very limited. In light of this, it is difficult for us, as examiners, to form an opinion of the information and conclusions which the board of directors received prior to its deliberations regarding the purchase price and the decision to acquire Citilog.

Both Ray Mauritsson and Biörn Riese emphasized in their interviews with us that, at this point in time, Axis did not have any significant experience in acquiring companies. Biörn Riese stated that this was also apparent from the board of directors' materials which were provided prior to the decision to acquire Citilog, and it was also the background as to why he, in his capacity as the chairman of the board of directors, initiated internal discussions after the acquisition for the purpose of agreeing on a more structured approach for providing the board of directors with information prior to an acquisition decision.

In our review of the subsequent minutes of the board of directors regarding the future acquisition of 2N, it is apparent that the internal discussions resulted in new routines. It is stated in the minutes of the meeting of the board of directors held on 9 December 2015 that, prior to its commercial decision to acquire 2N, the board of directors tasked Ray Mauritsson with briefly summarizing 2N's business in a memorandum and distributing this to the board of directors prior to the next board meeting. We have received and read the 14-page memorandum which Ray Mauritsson presented at the meeting of the board of directors held on 2 January 2016, and which is appended to the minutes of the board. The memorandum contains a description of the company, 2N, its business and products, its business plan, financial information, valuation documentation, and information regarding the acquisition process including the due diligence performed and the strategy for the integration of the company into the Axis group. It follows from the minutes of the relevant board meeting that the board resolved that the structure and information which had been provided to the board of directors prior to the acquisition decision in the form of the memorandum would continue to be used in the future in other acquisitions.

One can thus conclude that there were deficiencies in the written documentation for decision-making which the board of directors was provided prior to the acquisition of Citilog. In our interview with Biörn Riese, he maintained, however, that even if the written documentation for decision-making could have been better, in his opinion there were no

grounds for criticism regarding the oral presentation which Ray Mauritsson gave to the board of directors or the acquisition process as a whole.

The mere fact that the written documentation for decision-making which was provided to the board of directors prior to the decision to acquire Citilog was deficient naturally does not mean that the board of directors did not have sufficient decision-making information or that the board in any way acted in contravention of the Swedish Companies Act. As reported above, Axis retained the services of reputable advisors who assisted in the acquisition process and who carried out due diligence on Citilog and the board of directors was informed of their conclusions through an oral presentation. In addition, this was a relatively minor acquisition. Within the scope of our examination, we have also been in contact with the minority auditors, Grant Thornton, who have reviewed the acquisitions and underlying figures in detail. From our conversations with Grant Thornton, it can be noted that they have not found anything worthy of criticism, thus confirming our conclusion that the board of directors and management acted in accordance with the Swedish Companies Act in the acquisition of Citilog.

One can see from the executed share transfer agreement regarding the shares in Citilog between the French sellers and Axis Communications as the buyer that the purchase price for the company was SEK 91.1 million. The costs for the acquisition, primarily costs for advisors, amounted to SEK 3.9 million. We believe that the costs are reasonable.

#### **8.5.2 The acquisition by Axis of Stockholmsledet 11**

On 3 February 2016, Axis acquired all of the shares in the property company Stockholmsledet 11, previously Sagax Stockholm 11 AB. The reason for the acquisition was to acquire land for the construction of the new headquarters in Lund. As reported above in section 5.1, the new headquarters will be adjacent to Axis' current premises. The purchase price was SEK 38.6 million. The costs for the acquisition totalled approximately SEK 300,000, which does not give cause for any comments.

It is apparent from the minutes of the meeting of the board of directors held on 3 February 2016 that, following a presentation by Ray Mauritsson and Fredrik Sjöstrand regarding the construction of the new headquarters, the board of directors concluded that, from a financial perspective, it is significantly more advantageous for Axis to own the building than to rent it. We have no cause to question this analysis.

The decision to cause a new headquarters to be constructed was taken by the board of directors as early as during the First Examination Period and this decision was not affected by the fact that Canon became a majority shareholder of Axis. According to information received from Biörn Riese, Canon was in favour of the new headquarters and viewed this

as an important symbolic act in order to demonstrate that Axis would continue to function as an independent company and that Canon did not have any intention of relocating the operations from Lund.

### **8.5.3 Other acquisitions and transactions**

As mentioned above, after the close of the Second Examination Period, Axis acquired the companies 2N and Cognimatics. In light of the fact that the acquisitions took place at times outside of our examination, we will not report these acquisitions in more detail. However, it can be noted that, as was the case with the acquisition of Citilog, Axis retained the services of Lindahl and PwC as advisors and they performed a due diligence of the companies prior to the acquisitions.

## **8.6 Conclusion**

As is apparent above in this chapter, we have only had a few minor comments regarding the management by the board of directors and management. Our examination has demonstrated that the members of the board of directors and management performed their duties well. We have found no cause to believe that the board of directors or management acted, in any respect, for the purpose of attempting to benefit Canon as the major shareholder. Nor have we been able to conclude that Canon in any way was *de facto* unduly favoured by any transaction, agreement or other measure.

It can be noted that, within the scope of our examination, we have not been provided with any agreements which govern economic transactions of significance between the parties. As we pointed out in this section above, it was not until after the close of the Second Examination Period, and thus at a point in time beyond our mandate, that Axis and Canon negotiated the agreement which is to govern the terms and conditions of the parties' jointly developed camera, the AXIS Q1659, and agreed on the terms and conditions for Project Orwell and Axis' takeover of Canon's sales and marketing of network video products. Consequently, we cannot express an opinion regarding the financial terms and conditions for this cooperation.

During our examination work, both with respect to the First as well as the Second Examination Periods, we have verified information through representatives of Axis' primary auditors and minority auditors and seen their work and conclusions. In this context, we have concluded that they made the same observations as we did regarding the company's handling of transactions with closely-related parties and generally with respect to the management of the company.

Taking into consideration the fact that two different auditors have each carried out a general management audit of the Second Examination Period in its entirety, we have

elected not to carry out measures which are customary for a management audit such as random samples of the day-to-day accounts, verifications of bank accounts, etc. Instead, we have relied on the auditors' audits in these respects and are of the opinion that it would not be reasonable to disrupt the business operations and encumber the company with costs for yet another full-scale management audit.

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Stockholm, 29 March 2017

ADVOKATFIRMAN WESTERMARK ANJOU

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