

Rules of the game: Take-overs in the Energy Sector on Oslo Børs

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The energy sector on Oslo Børs has three main subsectors; Drilling, Oil service and Exploration & Production. The price of the energy companies has fallen steeply after the drop in oil price from USD 110 to 55 per barrel since July 2014. Investors now have access to world class companies and assets to low prices in a historical perspective. Consolidation, mergers and acquisitions is expected and Oslo Børs plays a key role.

Background: Companies move from private to public ownership through stock exchange listings when the owners can obtain a favorable pricing of their business in the market. A stock exchange listing allows the Company to raise capital to fund further business expansion and to make the shares of the company an acquisition currency for later deals. However the financial marketplace is dynamic and companies can become subject to takeovers from others with the same motivation for growth that initiated the Target's¹ stock exchange listing in the first place.

A takeover of a publicly traded company is a strictly regulated and concerns large amounts of money in exchange for transfers

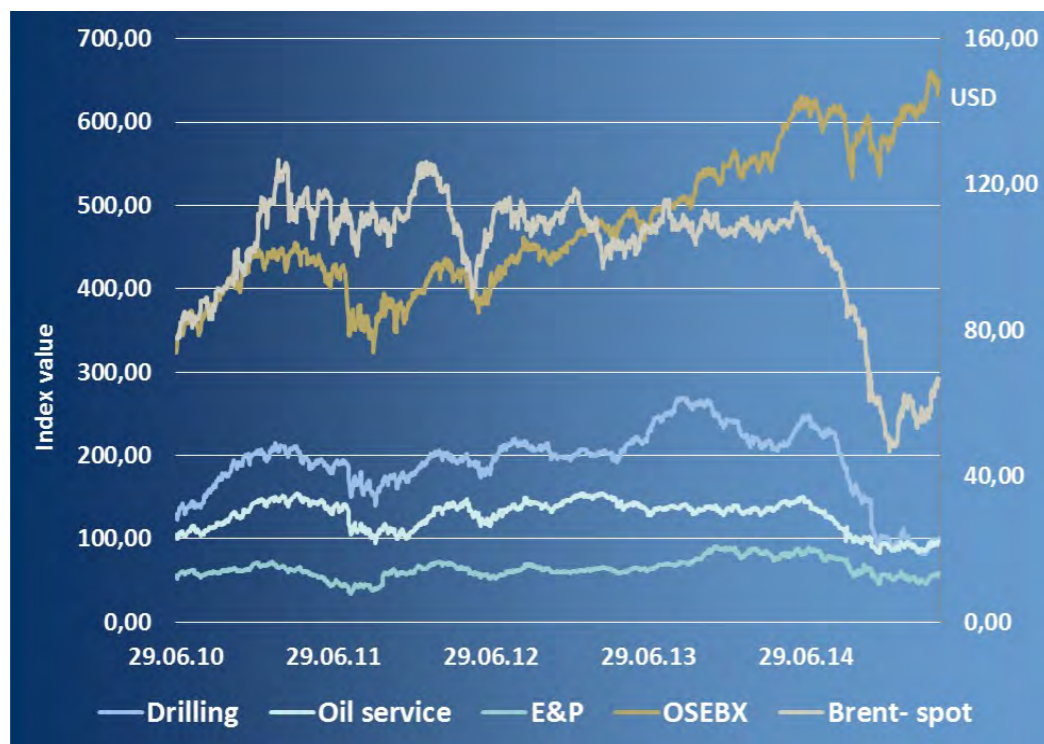
of ownership and control of valuable assets for many shareholders². Oslo Børs holds the role as the Norwegian supervisory authority on takeovers and plays a key role when any company listed in Oslo is attempted acquired by another party.

Oslo Børs energy sector: The energy sector on Oslo Børs consists of three main subsectors; Drilling, Oil service and Exploration & Production (E&P). The market value of these sectors is obviously strongly correlated with the development in the underlying oil price, as illustrated in Graph 1.

The group of E&P companies on Oslo Børs is internationally attractive with Statoil as the largest

company with exploration and production activities. In total 14 E&P companies are listed in Oslo with a total market capitalisation of NOK 535 bn and together the companies have exploration and/or production activities on five continents.

The energy sector is still the largest sector on Oslo Børs in terms of market capitalisation despite of the drop in oil price since July 2014 with correspondingly low share prices for energy companies. With oil prices of USD 110 per barrel the total market capitalisation of Oslo Børs, across all sectors, used to be approximately 50% energy related. Today, with an oil price of around USD 60 per barrel the total market capitalisation of Oslo Børs is only 1/3 relat-



Graph 1: OSEBX, Brent Oil and Oslo Energy Drilling, E&P and Oilservice indices 2010 – 2015. All data downloadable from www.oslobors.no free of charge. When using the images the source must be credited

¹ The company subject to a takeover is normally referred to as "Target".

² EU takeover directive implemented in the Norwegian Securities Trading Act and Securities Trading regulation

2015	2014	2013	2012	2011	2010
Interoil E&P	Rocksource	Bridge Energy	Fairstar	Aker Drilling	Scorpio Offshore
	Flex LNG	Sevan Drilling	Reach Subsea	Reservoir Exploration Technology	Interoil E&P
	Prospector Offshore Drilling	Fred Olsen Production	Asia Offshore Drilling		Prosafe Production
		Dockwise			
		Discovery Offshore			

Table 1: Selection of targeted energy companies on Oslo Børs and Oslo Axes

ed to the energy sector.

Also note the development of the Oslo Børs benchmark index (OSEBX) relative to the development in the oil price (Brent) and the three energy indices in graph 1. The drilling, oil service and E&P index appear at relatively low levels than the record levels of OSEBX index which consists of companies from all sectors in addition to energy.

Takeovers in the energy sector: Several commentators in the media have recently speculated in a period of consolidation and high level of M&A activity in the energy sector ahead. Based on relatively low share prices in a historical perspective this seems reasonable, however it should be noted that such transactions do take place throughout the entire business cycle. Attractive companies are acquired at attractive terms throughout the cycle and we have seen several examples on Oslo Børs over the years. A selection of targeted energy companies over the past five years is shown in Table 1.

We have seen attempted takeovers of companies in all subsectors over the past few years, which is an indication of the attractiveness of the companies in these sectors. The majority of the transactions have been initiated by the private equity sector or

other established industrial players.

Even when an offer is placed with the intention of acquiring the entire company, the necessary level of acceptances may not be reached. Sometimes an offer is successful, and the parties initiating the takeover end up as the sole owner of the Company. If so, the basis for the stock exchange listing is no longer in place and the company is delisted. Sometimes a mandatory offer is launched without the intention of acquiring the entire company, just a controlling stake. Some offers are just unsuccessful in receiving the desired level of acceptances from the shareholders of the Target. For the two latter scenarios, the stock exchange listing is maintained for the benefit of all shareholders.

The role of Oslo Børs in takeover bids are stipulated in the Norwegian Securities Trading Act (STA) and its regulation and implements the EU takeover directive in Norwegian legislation. Oslo Børs is the takeover supervisory authority for all companies subject to Norwegian takeover rules, i.e. both Norwegian ASA companies and most international companies listed in Oslo.

Corporate takeovers are strictly regulated in the STA and most

transactions trigger complex discussions e.g:

- Passing of ownership thresholds for bid obligations
- Consolidation of shareholdings
- Exemptions
- Minimum price requirement
- Amendments to ongoing offers
- Duties of the board of directors of the Target

This is not an exhaustive list, just a few examples of legal areas where high level of takeover competence is required among those involved.

The legal framework of corporate takeovers is too extensive for the scope and format of a brief article. The main rule says:

"Any person who through acquisition becomes the owner of shares representing more than 1/3 of the voting rights in a Norwegian company(...) quoted on a Norwegian regulated market is obliged to make a bid for the (...) the remaining shares in the company".

Extract from Securities Trading Act § 6-1

Besides the main rule, three out of many essential topics are:

- Mandatory vs voluntary offers

- Offer document
- Offer price

In principle anyone can make bilateral offers to shareholders for up until 1/3 of the voting rights of a publicly traded company without triggering the Norwegian takeover rules. Such offers can be referred to as unregulated offers. However, if a sufficient number of acceptances are received, disclosure of acquisitions of large shareholdings must be made in accordance with the STA, chapter 4.

Alternatively a multilateral offer can be made to a larger group or all shareholders of a company. Such offers are referred to as voluntary offers and are regulated differently than mandatory offers and appear as more flexible for the bidder in terms of deadlines. Voluntary offers also lack a relative minimum price requirement and a requirement for cash settlement. If a voluntary offer receives acceptances for more than 1/3 of the voting rights in the Target, the mandatory bid obligation is triggered with more detailed regulation.

The mandatory bid obligation on all outstanding shares in a company is triggered once anyone becomes the owner of shares representing more than 1/3 of the vot-

³ Securities Trading Act § 6-13 for an exhaustive list of all content requirements.

ing rights in the company. The same obligation is repeated on the 40% and 50% thresholds. The mandatory bid obligation ceases to apply if sale is undertaken from any of the thresholds within a certain timeframe. The regulation of mandatory bids is more detailed than on voluntary bids. Mandatory bids should always be presented on an unconditional basis, with at least optional settlement in cash and the entire takeover process has several milestones with strict deadlines in comparison to voluntary bids. Also, in a mandatory bid the offer price is subject to minimum requirements: The offer price should be at least as high as the highest payment made or agreed to by the Offeror or its consolidated parties in the

six months period prior to the point where the mandatory bid obligation was triggered. If it is clear that the market price at the point when the mandatory bid obligation is triggered the bid price should be as high as the market price.

All mandatory offers are documented in separate Offer documents which are subject to approval by Oslo Børs. The offer document is normally prepared by the legal advisors of the Offeror and should reproduce the bid and give correct and complete information about matters of significance for evaluating the bid. The offer document is distributed to all shareholders in the Target, and is very important in the sense that it serves as the formal basis for

the shareholders to accept or not accept the offer upon. Its content is subject to formal legislative requirements e.g. offer price, valuation, settlement and guarantees, conditions, financing of the offer and consequences for the employees.³

Conclusion: The market conditions have changed dramatically for the global energy sector over the past year. This is also seen clearly in the energy sector in Oslo. Consequently the center of attention has gravitated from high listing activity towards anticipated high level of activity within consolidation and mergers and acquisitions. It is difficult to predict if the anticipated high consolidation and M&A activity will be

realized. Regardless, takeovers are an integrated part of the financial market dynamic. This is also the case in Oslo where many attractive energy companies are listed. Oslo Børs plays a key role in this respect, both as the market place where the shares of the company are listed and as the Supervisory authority for takeovers for all companies subject to Norwegian takeover rules.



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Norwegian Industrial Property Office (NIPO)

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Short on what NIPO is?

NIPO (Norwegian Industrial Property Office) is the Norwegian National Authority for the handling, processing and granting of applications on intellectual property rights, which is normally abbreviated as (IPR). Intellectual property is an umbrella term for all values a company owns, which is not of physical substance. A prime example is patents, trademarks and designs. NIPO is a government authority organized under the Ministry of Trade, Industry and Fisheries, and was established in 1911. NIPO has approximately 260 employees working with technology and science, legal issues, marketing services, public information on IPR, support and administration. NIPO is a partner in Nordic Patent Institute, and as such, acts as International Searching Authority for patent applications within the international PCT (Patent Cooperation Treaty) system. Nordic Patent Institute also carries out various patent searches and analysis for foreign companies.

Functions of the Norwegian Industrial Property Office

The primary role of the Norwegian Industrial Property Office (NIPO) is to promote innovation and value creation, both as national intellectual property rights authority and as a guide and knowledge provider. NIPO contributes to competitiveness and helps to strengthen Norwegian trade and industry in various ways. We are a national centre for IPR. We provide knowledge and expertise concerning intellectual property rights. NIPOs value chain enables businesses to secure their investments, their competitive market position and as such generate economic growth in Norwegian society.

Products and services

As aforementioned, we process and grant applications on patent, design and trademarks. Nevertheless, what are these products?

Patent: In order for an invention to lead to a patent, it must constitute a practical solution to a technical problem. The invention must have a technical character. In order to be granted a patent, the invention must be novel, not obvious for a person skilled in the arts to anticipate, and it must be possible to mass-produce the product of your invention. A patent application must explicitly disclose the embodiment of the invention with examples describing or showing how the solution works in practice.

Trademarks: a trademark registration is an approved symbol, words or combination of words, letters, numbers, slogans, sound and even moving images that distinguishes your goods or services from others.

Design: design concerns the shape and appearance of an article or part of a product. A design that also serves a technical function should be protected by patent, for example an outer construction of a ship hull that has dynamic functions on sea.

Information services: We provide our customers with information on technological developments within a specific technical field, and we give prior assessments of ideas for patenting, trademarks and designs. Moreover, we do offer a wide variety of courses and seminars in both Norwegian and English.

Why should you bother?

A patent can give you an important competitive advantage because you will enjoy exclusive rights to use your invention commercially in a period of 20 years.

During this time, you can prevent others from manufacturing, importing or selling the invention you have patented. A patent protection gives a sound basis for entering into sales and licensing agreements, if you do not want to produce and market your product yourself. Patent, trademark and design protection can be used as a means of safeguarding your investments and the assets created in the development of your invention.

IPR resource heterogeneity

NIPOs knowledge base within IPR constitutes our greatest competitive advantage. The patent department in NIPO has four technical divisions comprising of 82 engineers within the fields of oil, gas, shipping engineering, fisheries, biotechnology, polymers organic- and non-organic chemistry, mechanical engineering, electronics, physics, electricity and computer science. We have extensive experience with this expertise from 1911. In addition to our legal practitioners. In order for example to process and grant a patent application, it requires at least a minimum of a master's degree in the technical field concerned. In addition to your technical qualification, a training of a period of 1.5 years in industrial property rights is required to acquire the necessary skills and experience to make decisions in patent cases (that is to say, process a patent application independently). In other words, not an expertise that a company can buy from the market.

patent voremerke design
Patentstyret

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Innholdet i denne meldingen og eventuelle vedlegg kan være konfidensielt og er kun ment for adressaten(e). Dersom du feilaktig har mottatt meldingen, ber vi deg vennligst om å slette den og straks underrette avsender.