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Opportunities In Sweden & Norway For U.S. Strategic Buyers: Part II – Norway

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As discussed in Part I of this series, similar trends currently characterize the private equity (“PE”) and mergers and acquisitions (M&A) environments in the U.S., Sweden and Norway:

- increasing M&A buyout activity by PE firms,
- sales of companies through competitive controlled auctions,
- less negotiation of purchase agreements, with fewer representations and warranties, almost no conditions to closing, and weaker indemnities from sellers,
- a shifting of risk to buyers, as more PE capital chases acquisition opportunities, and
- a consequent upward tendency in price; basically a seller's market.

On a recent business trip, I discussed this subject with partners at seven major law firms in Stockholm and four major law firms in Oslo, with whom we work. My Swedish and Norwegian colleagues acknowledged developments like those

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above, but pointed out important differences in their markets. These differences present opportunities in Scandinavia for U.S. strategic or PE buyers, looking to acquire new technology or make negotiated strategic acquisitions.

Part I of this series described the interviews conducted in Sweden. This Part II covers the interviews in Norway. All four of the Norwegian law firms noted that the PE industry in Norway is smaller and less well developed than in Sweden, and substantially less so than in the U.S.¹ Consequently, the above trends exist in Norway less than in Sweden and substantially less than in the U.S. This creates comparatively greater opportunities for strategic acquirers in Norway, as discussed by the Norwegian firms.

Wiersholm, one of Norway's four principal law firms, has strong corporate and M&A practices, and also represents a number of PE firms. Partners Nicolay Vold, Ståle Gjengset and Jarle Kvam concentrate their practices respectively in tax law/M&A; M&A; and PE transactions. They identified trends and opportunities for strategic acquirers in Norway:

- Norway is a smaller market, with fewer and smaller PE firms than Sweden or the U.S. Controlled auctions are less pervasive, and prices are lower. Norwegian PE firms increased activity in 2005-2006. Their approach toward company management is highly cooperative. Some Swedish PE firms, but few U.S. funds, are active in Norway. Industrial companies still find good opportunities for negotiated



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strategic acquisitions in Norway.

- M&A activity is robust in the oil & gas, real estate, and technology industries. Unlike proposed laws in Denmark, Germany and other European countries, Norwegian tax law allows full deductibility of interest on acquisition debt, encouraging leveraged acquisitions.

- The Norwegian oil & gas market is hot. Oil prices are up. Drilling rigs and oil services are in demand. Opportunities exist for industrial companies with the experience to qualify for State approval as operators. The requirement for such State approval has kept PE firms away from bidding for companies in this sector (other than services).

- One of the largest announced M&A deals in Europe is the negotiated merger of conglomerate Norsk Hydro ASA (NYSE: NHY), Norway's largest industrial company, with Statoil ASA (NYSE: STO), an oil company majority owned by the Norwegian State. In this transaction, Wiersholm represents Norsk Hydro, which will spin off a number of its businesses before merging its oil & gas and wind power operations into Statoil. These spin offs will create interesting acquisition opportunities.

- Off-shore wind energy projects are proliferating. Many involve foreign investors and turbine suppliers.

- IPO's are booming in Norway. The public market has sustained high price levels, with yields averaging 20% annually, over the last three years (with some recent correction). Norway's Corporate Governance Code, similar to the Swedish Code, is based on the principle “comply or explain.” Flexible and voluntary, it minimizes compliance costs and avoids discouraging companies from going public. IPO's are prevalent in the oil & gas, fish-

Please e-mail the author at crbarnhart.hklaw@gmail.com with questions about this article or Part I on Sweden, which appeared in the May issue.

ing, and information technology industries, including some by foreign companies. These many IPO's may fuel "public to private" transactions in future years.

Bugge, Arentz-Hansen & Rasmussen (BA-HR), one of Norway's four principal law firms, has active and expanding corporate, M&A, real estate, retail, technology, shipping and oil services practices, together with a strong PE practice advising Norwegian and other PE firms both on structuring/establishing funds and on acquisitions/sales. Partners Rolf Johan Ringdal and Robin Bakken concentrate respectively in shipping and oil services/M&A, and corporate/M&A. They listed some of the major trends they see in their practice:

- The M&A environment has been active in Norway over the last two years, with much consolidation occurring in the shipping, fisheries, and technology industries.

- Some larger deals are occurring with PE firms and debt capital supplied from London and New York, with an increasingly stronger bond market being developed in Norway.

- Norwegian and other companies are still actively listing their stock in Norway, but PE deals are attractive alternatives for family and other business owners seeking liquidity for their holdings, or looking to cash out after years of developing privately owned businesses.

- Norway's strict Financial Assistance Rules impede the ability to upstream funds or use target assets as collateral for acquisition debt, discouraging some of the types of large LBO deals that PE firms are doing in the U.S.

- Private equity M&A has been less active in Norway than in Sweden or the U.S., with few syndicated "club deals." Acquisition prices and multiples are generally lower in Norway than in Sweden or the U.S., and opportunities still do exist for negotiated, strategic acquisitions by industrial companies.

- U.S. companies are increasingly making acquisitions in Norway. Norwegian laws are open to foreign capital and investment. Knowledge of Norwegian culture is helpful to operate in the local market.

Advokatfirma Selmer DA, has one of the most active and growing M&A and transactional practices among Norwegian law firms. Partners Thomas Michelet and Anette Mellbye and Associate Line Søvik concentrate in M&A and other corporate transactions. Partner Are Herrem repre-

sents a number of PE firms, on a regular basis. They identified trends and opportunities in Norway for U.S. strategic buyers:

- The large U.S. PE funds are not currently active in Norway. Transactions in Norway are generally smaller than the \$500 Million size typically targeted by these funds. But, U.S. PE and VC funds are active in the mid-cap market, particularly in the oil & gas services sector.

- The PE industry is still relatively young in Norway, with only four or five larger funds of longer duration, and approximately 15 mid market funds with less than 10 years of PE activity. See www.nvca.no for information on the Norwegian PE industry.

- With less competition from PE firms, significant negotiated deals between industrial companies are still occurring in Norway. For example, the announced merger of Norsk Hydro ASA into Statoil is the largest pending transaction in Europe. Selmer represents the Government of Norway (majority owner of Statoil and Hydro) in this transaction, with the help of Holland & Knight as to U.S. matters.

- Incentives fueling PE's funding of "going private" transactions in the U.S. – high compliance costs of the Sarbanes Oxley Act, weakened public markets, and excess cash in PE funds – have not been present in Norway. The public market in Norway has been strong, IPO's have abounded, and public to private deals have been few.

- Norway presents numerous acquisition opportunities for American companies. Over the last three years U.S. companies have completed 27 acquisitions in Norway, 57% of which were by industrial companies (see opposite page).

- Norwegian companies have traditionally been efficient producers of goods and Norwegian R&D is excellent and inexpensive, but Norwegian companies lag in international marketing and distribution of their goods. This presents good opportunities for U.S. industrial companies, which can supply the needed international marketing and distribution capabilities.

- Nearly all business and M&A contracts in Norway are done in English. This gives U.S. and UK acquirers a native language advantage over European competitors for the same deals.

Kluge Advokatfirma DA, another of Norway's highly regarded law firms, has strong practices in the areas of energy, construction, corporate and M&A. Partners Egil Willumsen, Viggo Lange,

Torstein Arendt and Espen Nyland focus their practices in these areas. They described some current developments they are seeing in Norway:

- The Norwegian oil & gas industry is currently ripe for consolidation, with a plethora of new, smaller companies having been formed within the last several years.

- There may be some public disfavor of PE in Norway, providing opportunities for industrial companies which are strategic buyers. In a recent controlled auction, rather strong public sentiment was expressed against the PE bidder, arising out of a fear that jobs may be eliminated by a short-term financial buyer. The selling shareholders elected to sell to an industrial company bidder, over the PE firm.

- Norwegian law, unlike the U.S., does not require a public target company's board of directors to conduct an auction process to maximize shareholder value, when presented with a bid for corporate control. The board is only required to recommend for or against the bid to the company's shareholders. The Norwegian board thus has greater flexibility to enter privately negotiated transactions with strategic buyers, than does its counterpart U.S. board.

- The public market has been strong in Norway, with a recent slight correction.

- Norway is rich in advanced technologies. Many small technology start-ups are available for acquisition – particularly in the energy, oil services, computer software, and telecommunications fields. Commentators and telecom experts have characterized the Norwegian telecommunications industry as being at least five years ahead of the U.S. in terms of technology.

- Opportunities for negotiated strategic acquisitions by industrial companies still do exist in Norway, probably to a greater extent than in Sweden or the U.S.

¹ A number of factors have restrained the growth of the Norwegian and Swedish PE industries, as compared to the U.S. and the UK. A December, 2006 study by the European Private Equity & Venture Capital Association, entitled, "Benchmarking European Tax and Legal Environments," compared the tax, legal and regulatory environments in 25 European countries, by metrics designed to evaluate how favorable is each country's environment to the development and growth of the PE industry. The study concluded that, in terms of being promotive of PE formation, the tax and legal environments of Sweden and Norway have ranked in the lowest third of the European countries studied, for each of the last three years. The UK has consistently ranked among the top two European countries, by this measure.

U.S. Acquisitions In Norway

*27 acquisitions with a US. company as purchaser/bidder
and a Norwegian company as seller over the last three years*

Target Company	Bidder Company	Deal Value USD(m)	Deal Dom.Industry
TANDBERG Television ASA	Arris Group Inc	1079,5	Telecom; hardware
Reslink AS	Schlumberger Limited	Not Available	Energy
Scanship Environmental AS	Aqua International Partners	Not Available	Industrial products/services
Lyng Drilling AS	Schlumberger Limited	16,3	Energy
Tech Data Coropraption	Global Knowledge, Inc	Not Available	Computer services
Epcon Offshore AS	M-I LLC	51,8	Industrial products/services
PolarMed Holding AS	ResMed Inc	7,6	Medical
Chipcon AS	Texas Instruments Incorporated (TI)	189,6	Computer: Semiconductors
SmedVig ASA	Noble Corp.	627,4	Energy
Ibas Holding ASA	Kroll Inc (formerly Kroll O'Gara)	44,1	Computer services
Kenmore International	Parker Hannifin Corporation	Not Available	Industrial products/services
Easywell Solutions AS	Halliburton Energy Services Group	Not Available	Energy
Plugging Specialists International ASA	T.D. Willlamson Inc	65,7	Industrial products/services
Algeta ASA	Advent Venture Partners; HealthCaaap; SR One Limited	Not Available	Medical: Pharmaceuticals
Advanced Roughneck Technology	Lime Rock Partners	7	Energy
Revolt Technology AS	TVM Techno Ventrues Management; Viking Venture AS; Sofinnova Partners; Northzone Ventures A/S	8,4	Industrial products/services
Nordisk Kartro A/S	Illinois Tool Works Inc	Not Available	Manufacturing (other)
EuroProcessing International AS	First Data Corporation	122,3	Services (other)
Dynal Biotech ASA	Invitrogen Corporation	434,4	Biotechnology
Inovio As	Genetronics Biomedical Corporation	9,2	Medical: Pharmaceuticals
Petrotech ASA	PowerWell Services Holdings LLC	22,7	Energy
Computas Technology	Troux Technologies	Not Available	Computer software
Marine Harvest International B.V.	Nutreco Holding NV; Stolt-Nielsen SA	Not Available	Consumer: Foods
Euroline Norge	NOVA Information Systems, Inc.	21,6	Financial Services
Electromagnetic GeoServices AS	Warburg Pincus LLC	Not Available	Energy
Orkla Exolon KS	Washington Mills Eletro Minerals Company, Inc.	Not Available	Chemicals and materials
Baron Oil	Sonoran Energy Inc	11,7	Energy

Data supplied by Advokatfirma Selmer DA, which acted as counsel in three of the above transactions representing, respectively, Epcon Offshore, ResLab and ResMed.