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

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*Editor's Note: Part II: Norway, will appear in the June, 2007 issue.*

The international business world is shrinking and converging. But, trends still differ across borders, and out of the differences come opportunities. On a recent business trip, I discussed the subject of this article with partners at seven major law firms in Stockholm and four major law firms in Oslo, with whom we work. We compared current trends in private equity ("PE"), mergers & acquisitions ("M&A"), and public market activity in our countries.

We found similar trends in our three markets:

- 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.

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These trends predominate in the U.S., which is presently engaged in a "love affair" with private equity. After corporate scandals led to the Sarbanes-Oxley Act of 2002 (the "SOX Act"), with its high compliance costs, both companies and investors have been exiting the U.S. public markets. Money is attracted to higher returns expected in PE. Cash-rich PE funds, pressured to invest, prowl for acquisition targets. Industrial companies complain they are being crammed out of strategic acquisitions by multitudes of competitive, risk tolerant PE buyers, with short-term exit strategies, who join forces in "club deals" and bid up prices.

My Swedish and Norwegian colleagues acknowledged similar developments, but pointed out important differences in their markets. These differences present opportunities for U.S. strategic or PE buyers.

This article presents highlights of the interviews conducted in Sweden. The sequel, regarding Norway, will appear in the June issue.

### **I. The Public Securities Markets And M&A Environment In Sweden**

*Mannheimer Swartling*, one of the two largest law firms of Sweden, represents many of the principal players in the Swedish PE market, and has a very active securities and M&A practice, representing major public and private companies from many countries. Partners Eva Hägg and Adam Green concentrate their practices in M&A, securities, and PE transactions – Eva on the public company side, and Adam on the private company side. They affirmed that the above trends are present in Sweden, but discussed developments seen in their practices, which



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contrast with U.S. trends:

- Active IPO activity prevails in Sweden. While U.S. companies have been "going private," Swedish companies are "going public."

- Public company takeovers are numerous – some hostile, but many board-recommended. Unlike Delaware law under *Revlon* and progeny, Swedish law does not obligate a public company board, faced with a bid for control, to conduct an auction process to maximize shareholder value. The Swedish board has greater flexibility.

- Sweden's Corporate Governance Code for public companies is essentially voluntary, and compliance is substantially less costly than complying with the U.S. SOX Act.<sup>1</sup>

- A *Manual for Applying the Swedish Code of Corporate Governance*, Third Edition, was prepared by Mannheimer Swartling at the request of and in cooperation with several of its public company clients. The *Manual* explains that Sweden's Code of Corporate Governance "is intended to form a part of *self-regulation* in the Swedish business sector. It is based on the principle 'comply or explain.'...[A] company following the Code may depart from individual rules; however, in that event, it must provide an explanation stating the reasons for each departure reported. ...[D]eparting from one or more individual rules does not constitute a breach of the Code." The explanation for any departure from the Code must be included in a "Corporate Governance Report" accompanying the company's annual report and on the company's web site.

- Sweden's more flexible Corporate Governance Code is one factor thought to make going public more attractive in Sweden than in the U.S.

At *Cederquist*, one of the principal law firms of Sweden, Partners Lennart Kanter

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and Olof Fältman represent Swedish PE firms, as well as Swedish and U.S. public and private industrial companies.<sup>2</sup> They noted the following current developments in Sweden:

- Many Nordic publicly listed companies are ripe targets for acquisition, generating strong public company takeover activity. These companies typically are acquired with little due diligence (limited to public information) and relatively simple agreements (along with prospectus and bid documents).

- PE activity increased in Sweden last year. PE firms exiting their portfolio companies have spawned some of the recent IPO activity.

- U.S. industrial companies are actively buying portfolio companies from divesting Swedish PE firms. Many good portfolio companies are now on the market for sale.

## II. Private Equity In Sweden

*Advokatfirman Vinge*, one of Sweden's two largest law firms, represents many of the principal players in the Swedish PE M&A arena, as well as foreign investors in Sweden from many countries. Bertil Hult, the firm's non-lawyer CEO – a former officer of a major Swedish investment bank – affirms all the trends listed at the beginning of this article. Partners Karin Ulberstad and Malin Leffler handle PE transactions, including M&A. They provided information on the Swedish PE sector:

- The Swedish PE industry is well established. See [www.svca.se](http://www.svca.se) for more information on the industry. Capital committed to PE funds in Sweden currently totals about U.S. \$40 billion.<sup>3</sup>

- PE firms increasingly have engaged in buyout activity in Sweden. Of the capital invested by PE firms, about 80% has been used for buyouts and 20% for venture capital financing (for less than 100% control).

- With increasing buyout activity, competitive controlled auctions of companies have become more prevalent. However, Swedish PE funds have so far tended to act alone, with very few combining forces in the “club deals” that are common in the U.S.

- PE funds have divested an average of 43.5 portfolio companies per quarter since 2002. Most of these divestitures were made to industrial players, as opposed to financial buyers or IPO's.

- Foreign buyers are completing an increasing number of acquisitions in Sweden. Benefits of doing business in Sweden: the business environment is transparent, business is conducted in English, and Stockholm is the financial hub of the Nordic region.

At *Roschier*, a major Finnish law firm

that recently opened a Stockholm office, Partner Axel Calissendorff observed that while Sweden has several large PE firms that are significant M&A players (such as Industri Kapital, EQT, Nordic Capital, and Altor, among others), still the amount of PE capital available for buyouts is much smaller in Sweden than in the U.S. Swedish taxes tend to discourage U.S. investors from investing directly in Swedish PE firms. The primary capital source for Swedish PE is Swedish pension funds. Pension funds are legally prohibited from investing more than 10% of their assets in PE or venture capital. And, due to public and media pressure, they sometimes restrict their funds to investments in approved socially responsible companies. These factors restrain the U.S. trends identified above, creating in Sweden a somewhat less competitive environment which may still present good opportunities for negotiated strategic acquisitions by industrial company buyers.

## III. Other Opportunities In Sweden

*Advokatfirman Delphi & Co.*, one of the principal law firms of Sweden, handled 19 of the major M&A transactions in Sweden in 2006, including acquisitions by both industrial companies and PE firms. Partners Per Berglöf (managing partner and head of Corporate Finance & M&A), Agne Lindberg (head of IT), Peter Utterstrom (head of Tax), and Clas Romander (head of Banking and Finance) noted the following opportunities (plus others described further below) for foreign companies in Sweden:

While major PE houses seek larger and larger buyout deals, seed capital firms investing minority stakes in start-up businesses have virtually disappeared in Sweden. With vibrant technology start-ups, Sweden presents opportunities for foreign venture capital players and angel investors, as well as strategic acquirers.

Under Sweden's favorable holding company tax regime, many foreign companies, including some major U.S. PE funds, find it advantageous to form Swedish holding companies as vehicles for investments in other countries.<sup>4</sup>

Foreign companies show increasing interest in going public on the Stockholm stock exchange.<sup>5</sup>

Acquisition debt financing is a young industry in Sweden, and mezzanine financing for acquisitions has previously been difficult to obtain there, presenting opportunities for lenders.<sup>6</sup>

At *Advokatfirman Lindahl KB*, one of the principal law firms of Sweden, Partner Carl-Olof Bouveng represents several foreign PE firms and foreign buyers in acquisitions of Swedish companies, while Partner Staffan

Eklöv represents companies in the telecom, media and technology industries in M&A and outsourcing of technology. Developments and opportunities they mentioned (in addition to others described further below):

- Increasing numbers of U.S. companies are making acquisitions in Sweden. In deals with U.S. parties, documents often resemble U.S. style documentation, while Swedish documents are much simpler.

- PE's influence has streamlined the acquisition process, with controlled auctions predominating. Stock purchase agreements receive only limited negotiation, and vendors' due diligence reports often accompany materials provided to bidders.

At *Magnusson Law Firm*, sixty percent of the firm's revenues come from international clients. Partner Anders Bäckman (head of the firm's M&A/Corporate Group) and Attorney Carl-Fredrik Hedenström (leading the firm's China Practice) specialize in mergers and acquisitions, including PE deals. In recent experience, they have observed the following trends (plus others described further below):

- Foreign investment in Sweden rose sharply in 2006, including especially investments by Chinese and Indian companies. Sweden presents a favorable investment climate for foreign companies: It has generally less company regulation than the U.S., a stable political climate, and an educated workforce. Its new Companies Act, effective January 1, 2006, has simplified requirements in some areas of corporate governance.

- The flexibility of Sweden's Corporate Governance Code is drawing interest to the Swedish public market. However, foreign companies listed in Sweden are expected to follow the corporate governance codes of their countries of incorporation, if deemed comparable to or stronger than Sweden's Code.<sup>7</sup> Opportunities for structuring around this may exist.

Each of the firms above emphasized that Sweden has been named IT Capital of the World, and many attractive technologies and technology companies are available for acquisition in Sweden.<sup>8</sup> Technology outsourcing and software distribution also present opportunities.

Each of the firms interviewed mentioned that the Swedish Government has recently announced plans to privatize several State-owned companies. Some 50 Swedish companies have been targeted for eventual privatization, with six companies identified for immediate divestiture of the State's interest. (*See Text Box, next page.*) Foreign companies are invited to bid.

## Planned Privatizations Of Major State-Owned Companies Announced By Swedish Government

The Swedish Government has announced the intention to privatize several State-owned companies. (See, Article, "Opportunities In Sweden & Norway For U.S. Strategic Buyers: Part I – Sweden," by Constance R. Barnhart, previous page). U.S. and other foreign companies are invited to bid in the coming privatizations, and many have started actively preparing to do so. Some 50 Swedish companies have been targeted for eventual privatization, with six companies identified for immediate divestiture of the State's interest.

The six companies targeted for immediate privatization of the State's interest are: (i) Civitas Holding AB, which is wholly owned by the Swedish State, and in turn owns 100% of Vasakronan AB ([www.vasakronan.se](http://www.vasakronan.se)), a commercial real estate company that owns 164 commercial properties including office and retail premises in Sweden, complemented by a large offering of services; (ii) Nordea Bank AB ([www.nordea.se](http://www.nordea.se)), a leading bank and financial group in the Nordic countries and Baltic Sea region, which is publicly listed on the Stockholm, Helsinki and Copenhagen Stock Exchanges, and in which the Swedish State owns 19.9 percent of the shares; (iii) OMX AB ([www.omxgroup.com](http://www.omxgroup.com)), a company listed on the Stockholm, Helsinki and Copenhagen Stock Exchanges, which owns and operates the stock exchanges in Copenhagen, Stockholm, Helsinki, Reykjavik, Tallinn, Riga and Vilnius, and in which the Swedish State owns 6.6 percent of the shares; (iv) Sveriges Bostadsfinansieringsaktiebolag, SBAB ([www.sbab.se](http://www.sbab.se)), a residential mortgage institution with 9% of the retail market and 14% of the corporate market for mortgages in Sweden, which is wholly owned by the Swedish State; (v) TeliaSonera AB ([www.teliasonera.se](http://www.teliasonera.se)), the largest telecom operator in the Nordic countries and Baltic area, with operations including fixed and mobile telephony and Internet and data communications, which is listed on the Stockholm and Helsinki Stock Exchanges, and in which the Swedish State owns 45.3 percent of the shares; and (vi) V&S Vin & Spirit AB ([www.vsgroup.se](http://www.vsgroup.se)), one of the world's ten largest international alcohol beverage companies, engaged in the purchasing, production, packaging, distribution and marketing of alcoholic beverages (including Absolut Spirits, and others), in which the State owns 100% of the shares and in addition varying percentages of the shares of certain distributors for the company outside of Sweden.

This information derives from an English translation of the Swedish government's privatization bill provided to Constance Barnhart by Carl-Olof Bouveng, Partner at Lindahl. The Bill, Government Bill 2006/07:57, "Sale of certain state-owned companies," (the "Privatization Bill"), was presented by the Swedish Ministry of Enterprise, Energy and Communications to the Swedish Parliament on March 1, 2007. It includes an annex describing in some detail all the companies targeted for privatization and a detailed explanation of the Government's objectives and processes.

<sup>1</sup> At present, Sweden's Corporate Governance Code applies to all public companies registered on the Stockholm Stock Exchange, and those companies quoted on the Stockholm Stock Exchange with market capitalization exceeding SEK 3 billion (about U.S. \$443 Million, at today's exchange rate).

<sup>2</sup> One of Lennart Kanter's largest clients is the Swedish PE firm, AB Segulah, which has been very active in buyouts of Nordic companies.

<sup>3</sup> Karin Ulberstad and Malin Leffler, along with other Vinge lawyers, are co-authors of the chapter regarding PE in Sweden in each of the last three annual editions of the PLC Cross-border Private Equity Handbook, published by Practical Law Company. All data included here regarding Swedish PE is based upon the latest edition published in 2006, at pp. 251-258.

<sup>4</sup> More details on Sweden's holding company tax regime are available on Delphi's website (and on the websites of many of the other firms mentioned in this article).

<sup>5</sup> Peter Utterstrom has available a PowerPoint presentation with statistics on Sweden's active IPO market. Among cited advantages: (i) the Nordic List gives access to real time trading in all five Nordic countries, (ii) listing in Stockholm is cheaper and less regulated than in the U.S., and (iii) mid-sized companies listed in Stockholm are more likely to be followed by journalists than those listed on the more crowded AIM Market in London.

<sup>6</sup> Delphi is one of very few Swedish law firms to have a developing acquisition finance practice.

<sup>7</sup> See, "Corporate Governance in Sweden – Recent Developments," by Anders Bäckman, available on the Magnusson Law website.

<sup>8</sup> Lindahl mentioned that its TMT (Telecom, Media & Technology) Practice Group has been recognized as one of the most active in Sweden, and Delphi indicated that its Intellectual Property & IT Practice Group is the largest in Sweden.

<sup>9</sup> All of the law firms interviewed seek to represent foreign bidders in these privatizations. The Swedish government has appointed a panel of five Swedish law firms to represent it in connection with the privatizations (Cederquist, Delphi, Mannheimer Swartling, Vinge, and Linklaters). Each of these firms will be assigned the representation of certain of the government companies being privatized, and will be free to represent private bidders in the privatizations of the other government companies.