Minutes from a meeting of the Board of Directors of Oslo Børs ASA on 30 January 2013

Intex Resources ASA - Breach of the duty to publicly disclose information

1 Introduction

The case concerns the question of whether Intex Resources ASA ("Intex" or the "Company") breached the provisions of Section 5-2 (1) of the Securities Trading Act ("STA"), cf. Oslo Børs Continuing Obligations, Section 3.1.1, by its failure to publicly disclose in a timely manner information relating to a memorandum of understanding ("MoU") with the Chinese company MCC8 Group Co. Ltd. ("MCC8") on matters including the development of the Mindoro project.

The Company disclosed that it had entered into the MoU by issuing a stock exchange announcement on 5 January 2012. The announcement caused the Company's share price to rise by 67.8%.

2 Brief information on the Company and the Mindoro project in the Philippines

The Intex group conducts exploration and development of minerals and metals. The Company's head office is in Oslo. The Company's strategy is to explore and develop mineral resources for commercial exploitation by mining companies.

The Company was listed on Oslo Børs as Mindex ASA in 1996. The Company's most important asset is the Mindoro Nickel project which is located on the island of Mindoro in the Philippines. The Company also has exploration projects for molybdenum in Hurdal (Norway). The chairman of the Company's board is Jan Vestrum and the chief executive officer is Jon Steen Petersen.

Intex is listed on Oslo Børs with ticker code ITX, and the Company's listing fee for 2012 was NOK 140,000.

3 Background to the case

Prior to the start of stock exchange trading on 5 January 2012, Intex issued a stock exchange announcement stating that it had signed a MoU with MCC8 for the development of its nickel project in Mindoro. This agreement could grant MCC8 a "project management contract" ("PMC") which would mean that MCC8 would take on most of the responsibility for the project finance and development of the field. As consideration for this, MCC8 and its strategic partners would have an option to purchase up to 90% of Mindoro Nickel, in a staged process, for a total of USD 296 million. Intex would retain 10% and would have an option to buy back a further 10% for up to USD 60 million following completion of the project[1].

[1] Stock exchange announcement 05 January 2012

The stock exchange announcement resulted in the Intex share price rising by 67.8% over the course of the day[2]. The Company's announcement stated:

> *"Intex Resources ASA is pleased to announce that a Memorandum of Understanding (MoU) to develop the Mindoro Nickel project was signed during a ceremony in Shenzhen, China on January-4 2012 with MCC8 Group Co Ltd."*

Prior to the start of stock exchange trading on 4 May 2012, the Company disclosed by issuing a stock exchange announcement[3] that a PCM between the parties had been signed at a ceremony in Beijing the day before. The share price rose 5.1% on the day as a result of the announcement [4]. The Company's announcement stated[5]:

> *"Intex Resources ASA (Intex) is very pleased to announce that the MOU signed with MCC8 Group Co Ltd (MCC8) on January 4th 2012 was converted to a Project Management Contract (PMC) during a ceremony in Beijing on May 3rd 2012."*

3.1 Investigations by Oslo Børs

Oslo Børs carried out routine investigations of the circumstances surrounding the price movement seen in connection with the Company's announcement of the signing of the MoU with MCC8 Group Co Ltd that was published prior to the start of stock exchange trading on 5 January 2012.

The Company had not advised Oslo Børs in confidence of the negotiations that led to the agreement, and Oslo Børs therefore sent a request to Intex and asked for an explanation of the process and the Company's lists of those with access to inside information. Oslo Børs also asked the Company to explain at what time the Company believed that the information was judged to be inside information[6].

The reply by Intex stated that the Company had been in a process with MCC8 from 22 November 2011 and Intex believed that the process was to be considered as inside information from 13 December 2011[7]. On the basis of this initial response, the period for which Oslo Børs was not aware of the inside information situation was 16 trading days. The lists of persons with access to the inside information that the Company forwarded to Oslo Børs did not appear to comply with the requirements for such lists as stipulated by STA Section 3-5[8]. Oslo Børs accordingly considered that there were grounds to investigate further.

Økokrim (the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime) started its own investigations in relation to trading in connection with the Company's announcement of the MoU, in parallel with the Oslo Børs investigations in respect of the duty of disclosure, at the start of 2012. At the request of Økokrim, Oslo Børs put its investigations on hold until early June 2012. On 6 June 2012 Oslo Børs sent a new request to the Company, asking for information including a more detailed explanation of why the Company had not notified Oslo Børs of the process given

[2] Smarts price chart 4 and 5 January 2012
[3] Stock exchange announcement by ITX dated 4 May 2012 "Project Management Contract to develop Mindoro Nickel signed with MCC8"
[4] Print-out from SMARTS surveillance system, 3 and 4 May 2012
[5] http://www.intexresources.net/news-and-media/news/project-management-contract-to-develop-mindoro-nickel-signed-with-mcc81.html
[6] Request sent to ITX, 10 January 2012
[7] Reply by ITX, 12 January 2012
[8] ITX lists of access to inside information

that it had itself stated that inside information was in existence in the Company from 13 December 2011[9].

During the summer of 2012 it became known that Økokrim had charged three people in connection with suspected market abuse in the Intex share. One of the people charged was the chairman of the Company's board of directors, Jan Vestrum. The Company's premises were raided by the police and documents were confiscated. This meant that it was difficult for the Company to provide immediately the information requested by Oslo Børs. Some of the documents requested by Oslo Børs had been confiscated by the police. This meant that the Company did not provide any documents until 13 July 2012[10].

Intex's response to the enquiries made by Oslo Børs, which was provided by the law firm Thommessen, was also provided to Økokrim as part of the police investigation.

The Company's response through its attorney included a claim that Intex's previous admission of when inside information came into existence was a misunderstanding, and that there was in overall terms considerable uncertainty over whether the transaction described in the MoU would be carried out[11].

In order evaluate the process up to the signing in detail, Oslo Børs requested further clarifications from the Company and a detailed chronological description of its conversations with various parties in connection with the sale/development of Mindoro Nickel. Oslo Børs also requested copies of the relevant board minutes and other documentation that might cast light on the case[12]. Oslo Børs has proceeded on the assumption that the material it received is relevant and complete in relation to its investigations.

The management of Oslo Børs sent its preliminary view on the matter to the Company for comment on 9 November 2012, including advance notice of possible sanctions. The Company pointed out certain factual errors in its reply to Oslo Børs dated 26 November 2012, and to the extent that Oslo Børs was in agreement with these comments the factual errors have been rectified. The Company did not present any new arguments. The same letter also questioned the decision by Oslo Børs to send a report of suspected market abuse to Finanstilsynet, noting that this report might be assumed to form the basis for Finanstilsynet to bring charges against persons including Jan Vestrum, the chairman of the board of Intex.

As will be seen, this report and contacts between the Market Surveillance Department of Oslo Børs and Finanstilsynet and the Norwegian prosecuting authorities in this connection are a separate matter, in which the duties of Oslo Børs are governed by Section 27 of the Stock Exchange Act.

In connection with this, the Company sought access to the Market Surveillance Department's communications with the police pursuant to the provisions of administrative law. This request was considered not to be relevant to the Company's duty

[9] Request sent to ITX by Oslo Børs dated 6 June 2012
[10] Extract from ITX letter to Oslo Børs dated 13 July 2012: "The following presentation is comprehensive, and provides a level of detail which is possibly more than is needed in relation to the request by Oslo Børs. The information presented includes presentations and contacts with companies that cannot be classified as specific conversations or discussions on the development of the Mindoro project. The background for deciding to include this material is that a copy of this report will also be sent to Økokrim, and the company wishes to use its best endeavours to also provide information on the matters that Økokrim is investigating."
[11] Reply by ITX to Oslo Børs provided by law firm Thommessen dated 14 June 2012
[12] E-mail from Oslo Børs to law firm Thommessen dated 22 June 2012

of disclosure to the market, and was therefore dealt with in separate correspondence with the Company[13].

4 Legal background

4.1 Listed companies' duty to provide information to the market

STA Section 5-2 (1), cf. Continuing Obligations Section 3.1.1, stipulates that listed companies must without delay and on their own initiative publicly disclose inside information which concerns the issuer directly, cf. STA Section 3-2 (1) to (3).

Inside information is defined at STA 3-2 (1):

> *"'Inside information' means any information of a precise nature relating to financial instruments, the issuers thereof or other circumstances which has not been made public and is not commonly known in the market and which is likely to have a significant effect on the price of those financial instruments or of related financial instruments."*

The definition imposes three main conditions for information to be deemed to be inside information. Firstly, the information must be information of a precise nature relating to the financial instruments in question. Secondly, the information must be likely to have a significant effect on the price of the financial instruments. Finally, the definition relates to information which has not been made public and is not commonly known in the market.

The first and second main conditions for information to be deemed to be inside information (i.e. the requirements for information to be of a precise nature and likely to have a significant effect on the share price) are explained in greater detail in STA Section 3-2 (2) and (3):

> *"(2) 'Information of a precise nature' means information which indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur and which is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of the financial instruments or related financial instruments.*
>
> *(3) 'Information likely to have a significant effect on the price of financial instruments or of related financial instruments' means information of the kind which a reasonable investor would be likely to use as part of the basis of his investment decisions."*

According to the first main condition, the information must at a minimum indicate that circumstances exist or may reasonably be expected to come into existence or an event has occurred or may reasonably be expected to occur. Neither the wording of the legislation, the preparatory work on the legislation nor established practice impose any restrictions on what can actually constitute 'information', subject to the other conditions being satisfied.

Moreover, pursuant to STA Section 3-2 (2), the information must be sufficiently precise for it to be possible to draw a conclusion on the possible effect of the information on the

[13] Letter from law firm Thommessen to Oslo Børs dated 26 November 2012

price of the financial instruments in question. According to the preparatory work on the legislation, the requirement stipulated by the wording for information to be of a precise nature is intended to exclude rumour and speculation, cf. Ot. prp. Section 4.5. In connection with the implementation of the EU Market Abuse Directive, Finanstilsynet (at that time Kredittilsynet) took the view that information can be of a precise nature even if it is not complete, unambiguous, final or unconditional, so long as it is sufficiently specific, cf. Consultation document dated 1 March 2004, page 15 .

The second main condition for the definition of inside information, namely that the information must be likely to have a significant effect on the price of the financial instruments, is further clarified in the STA by the *'reasonable investor test'*, cf. Section 3-2 (3). The preparatory work for the STA set out the criteria in this connection as *"information of the type that a reasonable investor would be likely to use as part of the basis of his investment decisions"*, cf. Ot. prp. Section 4.5. The wording of the legislation does not include any condition that the information must actually affect the price of the financial instruments in question. Accordingly this test applies 'ex ante', i.e. in advance of the event or circumstance in question (which may for example be a purchase or the public disclosure of information).

In order for information to be subject to the definition of inside information, the information must not have been made public or be commonly known in the market.

Evaluating whether particular information must be deemed to be inside information requires a case-by-case approach. The evaluation is relative, and may reach different conclusions for different companies and markets. Responsibility for supervision and imposing sanctions in respect of the rules for the public disclosure of inside information is delegated to Oslo Børs, cf. STA Section 17-4 (3) third sentence and STA Section 15-2 (2), cf. Securities Trading Regulations, Section 13-1.

4.2 Delayed public disclosure

Public disclosure of inside information can be deferred subject to certain conditions, cf. STA Section 5-3 (1) and (2) items 1 and 2:

> *"(1) An issuer may delay the public disclosure of information as mentioned in section 5–2 subsection (1) such as not to prejudice his legitimate interests, provided that such omission does not mislead the public and provided that the issuer ensures the confidentiality of that information, cf. section 3–4.*
>
> *(2) Legitimate interests as mentioned in subsection (1) may typically relate to:*
>
> 1. *Negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer.*
>
> 2. *Decisions taken or contracts made which need the approval of another body of*

> *the issuer in order to become effective due to the organisation of the issuer, provided that public disclosure of the pending decision or contract together with the simultaneous announcement that final approval is still pending would jeopardise the correct assessment of the information by the public.*

Where the public disclosure of inside information is delayed, the information must be kept confidential, cf. STA Section 5-3 (1) and Section 3-4. Oslo Børs imposes rules in Continuing Obligations at Sections 3.1.1 to 3.1.3 which are equivalent to STA Sections 5-2, 5-3 and 3-4 and the Securities Trading Regulations § 5-1.

4.3 Duty to disclose information to Oslo Børs

The duty of an issuer to provide information to Oslo Børs is stipulated by the Stock Exchange Act, Section 24 (7) first sentence, which reads as follows:

> *"(7) A regulated market may require that issuers of financial instruments that are listed or are the subject of an application for admission to listing, as well as the officers and employees of the issuer, shall, notwithstanding any duty of confidentiality, furnish the regulated market with any information necessary for the market to be able to comply with its legal duties."*

5 The Company's submissions

Intex claims that the negotiations between the Company and MCC8 in relation to a MoU in connection with the development of the Mindoro project did not represent inside information until the MoU was signed on 4 January 2012.

Once the MoU had been signed, the information was published by the Company on its own initiative without delay.

The Company was therefore not in breach of its duty of disclosure pursuant to STA Section 5-2 first paragraph.

6 The Company's description of the process

The Company's description of the process leading up to the stock exchange announcement is comprehensive, and Oslo Børs has received extensive documentation: see the company's comments in footnote 10. For the sake of good order, it is appropriate to introduce the persons and companies involved.

- Jan Vestrum is the executive chairman of Intex. Vestrum plays an active role in the Company's ongoing projects.
- Steen Pettersen is the CEO of Intex.
- MCC8 is a Chinese state-controlled engineering company, and was previously part of Jinchuan Group, which is China's largest nickel company. MCC8 participates in consortium ventures with a view to financing, developing and implementing mining projects. MCC8's CEO is William He.
- Jinchuan Group (Jinchuan) is a Chinese state-owned mining company that produces metals. The company is Asia's largest nickel producer and controls

around 90% of China's total nickel production.

- Emerging Asia Capital (EAC) is an Asia-based investment arranger focused on arranging Chinese investment in small and medium-sized mining companies. The Company has assisted Intex in connection with investment interest in the Mindoro project.

Strategic process in connection with the sale of the Mindoro field - period from 2010 to November 2012

- Starting in 2010, the Company carried out a strategic process with the aim of selling the Mindoro field.

"The board decided to market/sell the project with a staged development programme, and commissioned a technical/financial feasibility study for this. This study suggested that the first phase of the project could be carried out for an investment of approximately USD 800 million, or approximately USD 981 million including metal production. The company resolved in March 2011 to continue to continue its work with a view to realising this board decision" [14].

- It is apparent from the Company's report that it worked on a broad range of possible divestment plans from 2010 and into 2011, but little in the way of concrete alternatives materialised. The Company's Q2 2011 interim report communicated this directly.

"Discussions with potential Philippine and SE Asian Partners have continued over the quarter, including several presentations to technical advisors and top management. Beijing- and Hong Kong-based advisors have been mandated on non-exclusive agreements to arrange contacts with Chinese and other Asian industry majors and metal traders, and such meetings are being pursued." [15]

- The Company continued soundings in the market over the course of autumn 2011, and this included a series of meetings in Asia and in Norway with potential business partners. Samsung emerged over time as the most likely candidate.

Quoting from the Company's letter to Oslo Børs:

"Following the first meeting between the company and Samsung on 21 September (see Appendix 29 above), Jon S. Petersen sent an e-mail to Samsung on 10 October 2011 in which Samsung was invited to consider becoming involved in the project. Samsung responded positively on 14 October, and put forward the idea that Samsung could arrange debt financing of up to 80 percent of Phase 1, in return for being the EPC provider for the project. This email was answered by Jon Steen Petersen on 4 November 2011. Petersen was in favor of the proposal, and suggested that the parties should formalize the proposal in a "strategic plan or relationship, e.g. through a LOI/MOU between our companies". Samsung replied to this invitation from Intex on 17 November, stating that Samsung "is pleased with your suggestion to formalize strategic MOU/LOI between companies". Samsung went on to set out various conditions for this."

- On 22 November 2011, Jan Vestrum represented the Company at meetings in Beijing. At one of these meetings, Intex met the Chinese company MCC8 for the

[14] Company's letter to Oslo Børs dated 13 July 2012 section 3.2
[15] Interim report Q2 2011

first time. At this time the Company was talking to several interested parties, as it communicated in its Q3 report which was published on 29 November 2011.

"During the quarter the company has received interest about partnership from a range of companies and with different expressions of interests. Management is currently investigating solutions, which may involve a consortium of parties that complement each other in the most critical elements for the realization. These include EPCM contractors, operators, off-take/trading and end use parties. Preliminary contacts have been positive to this approach."

"...We are encouraged by the fact that three independent partnership scenarios have emerged in the quarter and that these are beginning to take form, in the sense that positive coordination and planning talks are being held on an ongoing basis."[16]

Initial dialogue with MCC8 – 5 December 2011 to 13 December 2011

- On 5 December 2011, the Company receives a message that MCC8 wants to introduce the Mindoro project to Jinchuan. A solution is suggested whereby Jinchuan would participate as the operator and MCC8 as the contractual party. On 10 December, Intex asks how long it would take and what wishes/requirements the MCC8 consortium would have before it would be ready to sign a MOU. MCCC8 replies on 13 December 2011 that it is happy to start the dialogue on the MoU and that this would have to be negotiated no later than the second week of January 2012[17].

Following this, the Company communicated with interested parties, both MCC8 and Samsung, in which it discussed various roles it might play in a consortium[18]. However, the Company sought to slow down the process with Samsung to give it time to develop a better platform with the MCC8 constellation that it considered to be the preferred solution. The intention was to sign a MoU with MCC8 before the Chinese New Year, and work towards a signing in the first week in January 2012[19].

Preparation and submission of the MoU - 17 December to 22 December 2011

- Around 17 December 2011, the investment arranger Emerging Asia Capital (EAC) starts work on a draft MoU with MCC8. In an e-mail from EAC to Jan Vestrum dated 17 December 2011, EAC states that it will "*revise the MoU draft for business terms we discussed.*" In two e-mails from EAC dated 18 December 2011, EAC states that there have been positive signals from a meeting between the chairmen of MCC8 and Jinchuan, and EAC will send a draft MoU to Jan Vestrum later that evening. EAC sends a draft MoU to Jan Vestrum the same evening, but because there is something wrong with the e-mail system the draft is sent in plain text. In a reply to the EAC the same day, Vestrum expresses his scepticism on a proposal for a MOU without Jinchuan. On 20 December, the Company takes up the questions both of the need for an experienced operator, and of financing, and what MCC8 can offer in this respect. Jan Vestrum receives a reply the following day, with more information on how MCC8 envisages that Jinchuan, whose involvement is important for the Company, can be included in the collaboration between the parties.

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[16] Interim report Q3 2011
[17] *"happy to start the dialogue on the MOU when you are ready"*. E-mail to Vestrum dated 13 December 2011
[18] Often with involvement and assistance from Emerging Asia Capital (EAC)
[19] E-mail from EAC to Jan Vestrum 13 December 2011

MCC8 wanted to participate in a consortium with Jinchuan as the PMC contractor (FEL + EPC), with MCC8 as head of the consortium and Jinchuan as the supplier of technology and nickel solutions. MCC8 would contribute as arranger of the project financing, with CITIC-GEM Natural Resources Fund as a potential investor for the project. On the same day, Intex asks EAC to continue to work on the MOU on the basis of these assumptions.

- EAC sends a draft MoU to Intex on 22 December 2011. The MoU is sent to MCC8 for review on the same day.

Completion of the MoU - 23 December to 30 December 2011

- On 23 December William He of MCC8 also sends an e-mail directly to Jan Vestrum and Jon Steen Pettersen. He refers to the discussions with the team from EAC on the previous day, and says that they now have a unified understanding. The e-mail states that one should sign a *"Project Management Contractor (PMC) MoU in order for MCC8 to build a consortium of Chinese companies to arrange financing for the Mindoro mine and implement the project. To be included in this consortium will be Jinchuan"*. He also suggests a meeting in Hong Kong in the first or second week of January to sign the MoU. Vestrum confirms that he might be able to attend a meeting in Hong Kong 2 or 3 January 2012, but this requires that one "*can finish the MoU over the next few days*". Based on this, MCC8 proposes a program for the visit.

- On 26 December 2011, a press strategy for the MCC8 agreement is prepared.

- On 29 December 2011, Jan Vestrum sends a report to the Company's board on the negotiations and the MoU with MCC8, enclosing the final draft at that time and describing the points that still need to be clarified.

- On 30 December 2011, Andreas Qvale at Intex sends an e-mail to Jon Steen Petersen. In the e-mail, Qvale asks whether Petersen will go to Hong Kong to sign the MoU.

Completion of the MoU - 2 January to 5 January 2012

- Jan Vestrum travels to Hong Kong on 2 January 2012. In Hong Kong on 3 January, Jan Vestrum receives a revised draft of the MoU, which had been sent from EAC to MCC8 on 2 January.

- On 4 January 2012, the final MoU is signed at 20.00 local time (Hong Kong time).

- On 5 January 2012 before the start of stock exchange trading (07.30 Norwegian time) the Company issues an announcement with the following heading "Memorandum of Understanding to develop Mindoro Nickel signed". The announcement stated that the company had signed a MoU on 4 January 2012 at a ceremony in Shenzhen China with MCC8 Group Co. Ltd.

7 Further details of the Company's submissions

The Company argues that, in terms of the legal requirements, there was no precise information until the contract was signed on 4 January 2012. Quoting from the Company's account:

"It is therefore relevant to this case to consider the question of whether there was a "realistic possibility" that a MOU with MCC8 would be signed in the time before the MOU was actually signed, based in part on past experience with similar processes. We consider below the various stages leading up to the signing of the MOU."

(i) It must be obvious that there was no "realistic possibility" of signing a MOU with MCC8 prior to 13 December 2011. The Company held its first presentation for MCC8 on 22 November 2011, and until MCC8 stated in its e-mail of 13 December 2011 that it was "happy to start the dialogue on the MOU", MCC8 was only one of many potential participants and partners to which Company had presented the project.

(ii) The period from 13 December to 23 December involved various basic clarifications about what might be regulated by a MOU, and this did not involve the Company sending a draft MOU to MCC8. Discussions during this period covered such basic issues as who would be party to any agreement, whether the agreement would regulate future financing and Jinchuan's role in the MOU. The Company's internal correspondence continued to express considerable scepticism over the overall question of whether there was any point in entering into a MOU with MCC8.

(iii) On 23 December the Company sent its first draft of a MOU to MCC8, but sending a draft of a MOU cannot reasonably be deemed to create a "realistic possibility" that the agreement will actually be entered into.

(iv) Over the period from 23 December 2011 to 29 December 2011, the parties continued to discuss fundamental issues in relation to the MOU, and there were also differences of opinion within the Company on the structure and level of detail of the MOU. It is also worth noting that the Company's external legal advisers were first asked to review the draft on 26 December 2011. The board was informed about the process and asked to comment on the draft MOU on 29 December 2011. Accordingly it cannot be asserted that there was a "realistic possibility" that MOU would be signed before the referral to the board on 29 December 2011.

(v) The report to the Board on 29 December 2011 also expressed considerable uncertainty over whether the MoU would be entered into and whether it would be sufficient to meet the Company's need for partners, and the report also stated that the Company would continue to keep Samsung "warm until something different is signed". This shows very clearly that there was not yet a "realistic possibility" of entering into the MOU. As is well known, the Company had long experience that apparent interest and willingness could quickly disappear. In addition, there was still the possibility that the members of the board could have objections to the MOU. A more important factor was that negotiations between the parties on the main commercial terms of the MOU had not been completed at this time.

(vi) Over the period 29 December 2011 to 4 January 2012, negotiations continued over major aspects of the relationship between the Company and MCC8. As mentioned above, Jan Vestrum received a draft MOU in Hong Kong on 3 January 2012 which EAC had sent to MCC8 on 2 January. The draft included a change which would mean that Intex would be responsible for financing the updated DFS (see the section titled "Definitive Feasibility Study"), but this was not acceptable to the Company. The Company proposed a different wording, which specified that financing should be carried out by Intex "through the consortium members". This change was significant for the Company, which otherwise would have had to finance the DFS itself.

(vii) Accordingly, there were intensive and substantive negotiations between the parties right up to the signing of the MOU on 4 January 2012, and prior to that time there was no "realistic possibility" that the MOU would actually be signed. This assessment is based in part on the Company's extensive experience of negotiations with other parties in the region (including SMC and Samsung). Such experience is directly relevant when considering whether there was a "realistic possibility" of signing.

On an overall evaluation, the Company believes that there were no "reasonable grounds" to expect that the MOU would be signed before this actually happened on 4 January 2012. The requirement in legislation for "precise information" at Section 3.2, second paragraph of the Securities Trading - in the way this was interpreted by the EU court in the Daimler case - was therefore not satisfied, and accordingly there was no "inside information" in the legal sense prior to this time.

In general terms, the Company submits that negotiations on a memorandum of agreement cannot in itself constitute inside information.

The fact that Intex and MCC8 negotiated about a memorandum of understanding in relation to the development of the Mindoro mine did not constitute inside information before the MoU was actually signed. It is noted that that when the MoU was signed, this information was made public on the Company's initiative and without delay. The Company was accordingly not in breach of its continuing duty of disclosure pursuant to the Securities Trading Act Section 5-2 first paragraph[20].

[20] Letter from law firm Thommessen to Oslo Børs dated 14 June.

8 Evaluation by Oslo Børs

In order to reach a conclusion on the question of whether Intex has breached its duty of disclosure, cf. STA Section 5-2, it is necessary to consider whether the process related to the Company entering into a MoU with MCC8 constituted inside information as defined in STA Section 3-2 prior to the time at which the MoU was disclosed by the stock exchange announcement on 5 January 2012. The question is accordingly whether, and if so, at what time, information about the negotiations amounted to information of a precise nature that was likely to have a significant effect on the share price. It is not in dispute that the information that was announced to the market was inside information.

8.1 Information of a precise nature

The question is at what time there was first a realistic chance that the process with the MoU would result in the signing of a memorandum of agreement. This requires an assessment of the facts of the case.

In connection with the implementation of the Market Abuse Directive, the Financial Supervisory Authority of Norway (now Finanstilsynet, at that time Kredittilsynet), expressed the view that information can be of a precise nature even if it is not complete, unambiguous, final or unconditional. Moreover, the information does not necessarily have to be correct. Indicative factors are to be taken into account assuming that they are sufficiently precise, and Kredittilsynet expressed the view that in the course of a *"stepwise process (for example negotiations or an increase in share capital), inside information may come into existence at an early stage".*[21].

This illustrates that inside information can occur at a very early stage of a process, even where many unresolved issues are outstanding.

In the current case, the status of, and developments in, the negotiations with MCC8 were clearly information that concerns the Company. When this information became precise in the legal sense will depend on when there was a realistic chance of reaching agreement. Information about this developed in stages, and the crucial questions for determining when the Company should have treated the developing process as inside information are when it was apparent that entering into an agreement was a realistic possibility, and when it became likely that a reasonable investor would use the information as part of the basis for his investment decisions. At such time, this information would routinely become information of a precise nature that must be treated as notifiable insider information with the duties and responsibilities[22] this entails for the Company.

The Company refers to the Oslo Børs Circular No. 03/2005, which includes the following wording: *"The fact that a company is in negotiations may be of interest to market players, but this in itself is unlikely to create a duty to disclose this information until such time as it is more likely than not that the negotiations will lead to a result"*. It is noted that this section of the Circular was cancelled in 2008[23].

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[21] Kredittilsynet Consultation Document of 1 March 2004, Section 3.2.1.1

[22] Delayed publication, STA Section 5-3

[23] Oslo Børs Circular 6/2008 (published 3 October 2008) states that "The publication of this Circular has the effect of cancelling: Circular 3/2005 Sections 3.4.2 and 3.4.3, Circular 9/2005 Section 4 and Section 15 of the Appendix, the Appendix to Circular 4/2007 Section 2.3 and Chapter 4, Circular 7/2007, and the Appendix to Circular 14/2007 Chapter 3." In addition, Oslo Børs published a Circular on 3 October 2008 that provided a complete list of which circulars continue to be in effect and which had been cancelled in whole or part. It is clear

The Company also refers to a ruling by the EU Court of Justice (the Daimler case) which provides clarification in terms of step processes. This ruling would appear to be consistent with the current practice of Oslo Børs and previous rulings of the Stock Exchange Appeals Committee in relation to the interpretation of "information of a precise nature".

The following quotations are taken from the judgement on a preliminary ruling[24]:

> *"Point 1 of Article 1 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) and Article 1(1) of Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6 as regards the definition and public disclosure of inside information and the definition of market manipulation must be interpreted as meaning that, in the case of a protracted process intended to bring about a particular circumstance or to generate a particular event, not only may that future circumstance or future event be regarded as precise information within the meaning of those provisions, but also the intermediate steps of that process which are connected with bringing about that future circumstance or event.*
>
> *Article 1(1) of Directive 2003/124 must be interpreted as meaning that the notion of 'a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so' refers to future circumstances or events from which it appears, on the basis of an overall assessment of the factors existing at the relevant time, that there is a realistic prospect that they will come into existence or occur. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration".*

Oslo Børs does not believe that this ruling justifies any change in its current practice, and reiterates its view that notifiable inside information can emerge over time and in stages, and that at a stage in the process can become precise information if the company has a realistic expectation that its objective will be achieved. Such an interpretation is consistent with previous rulings made by Oslo Børs, legal precedent, and European law. The norm is applied strictly, particularly where a company has already clearly expressed its ambitions in communications to the market (guiding).

The Company has described a number of simultaneous and to some extent overlapping processes between 2010 and January 2012 with various other parties, where its intention was to dispose of or in some other way capitalise on the Mindoro project.

In the case in question, the relevant matter is the Company's relationship with MCC8 and its partners. The Company's documentation also describes other interested parties, and particularly negotiations with Samsung, but Oslo Børs has not investigated the Company's duty of disclosure in relation to such parties, and the following commentary addresses the time at which notifiable inside information came into existence in connection with the relationship to MCC8.

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from this Circular that Sections 3.4.2 and 3.4.3 of Circular 3/2005 are no longer in effect (with reference to Circular 6/2008).

[24] http://curia.europa.eu/juris/document/document.jsf?text=&docid=124466&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=4802218

Oslo Børs notes that the Company's own statement of the time when notifiable inside information about the negotiations with MCC8 came into existence in the Company, as stated by the Company's chairman Jan Vestrum, was made in error. Nevertheless, Intex did maintain lists of persons with access to inside information from this time.

However, the response to the initial enquiry by Oslo Børs does provide an indication of how specific the negotiations with MCC8 were considered to be by the chairman of the Company as early as 13 December 2011.

> *"I refer to the mail of 10 January and send a chronological summary of the process, together with insider lists for Intex Resources ASA and Emerging Asia Capital (Beijing).*
> *13 December 2011 is deemed to be the date on which information became so specific that it could be considered to be inside information[25]".*

It appears to Oslo Børs that the time between Christmas 2011 and the New Year was a period over which the various steps in the process towards signing became increasingly definite. By this time, the main features of the agreement had been drawn up, including the Company contacting MCC8 directly and drawing attention to its understanding. The parties confirmed the date of signing and MCC8 proposed a program for the visit to China.

On 23 December the President of MCC8, William He, sent an e-mail to Intex from which it appears that MCC8 and its adviser EAC had a common understanding and now wanted the MoU translated into Chinese for approval by the chairmen of MCC8 and Jinchuan[26].

> *"Dear Jan,*
> *After discussion with Jamon and the EAC team yesterday we now have a mutual understanding. It makes sense to sign a Project Management Contractor (PMC) MOU in order for MCC8 to build a consortium of Chinese companies to arrange financing for the Mindoro mine and implement the project. To be included in this consortium will be Jinchuan.*
> *I suggest we meet the first week or the second week of January, 2012 to sign the MOU in Hong Kong. Afterwards we can fly to Gansu and meet with MCC8 Chairman and Jinchuan executives.*
> *Please have EAC translate the MOU into Chinese for approval by the MCC8 and Jinchuan Chairmans.*
> *Here is wishing you all a merry Christmas and a new year bright with joy and success.*
> *Best Regards,*
> *William He*
> *President of MCC8 Group Company Limited"*

It is apparent from a further e-mail exchange between Vestrum and He on the same day[27] that Vestrum confirms that he will travel to China and He presents a detailed plan for the visit, including a proposal that the MoU should be finalised on 4 January in Shenzhen.

> *"....We will finalize the MOU in Shenzhen on January 4 (Wednesday)..."*

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[25] E-mail to Oslo Børs from Jan A. Vestrum dated 12 January 2012
[26] E-mail to addressees including Vestrum from MCC8 dated 23 December 2012
[27] E-mails between Vestrum and He dated 23 December 2011

> *"Dear william*
> *Assuming we can finish he MOU over the next few days, I am happy to book a flight to HK on January the 2nd. or 3rd.what ever is most convenient for you*
> *Best regards*
> *Jan"*

After this, the material content of the MoU was only subject to minor changes. The Company received some amendments to the MoU on 26 December 2011 from EAC, its Chinese advisor.

> *"Below find William,s comments. His comments are shown as thinkcentre. I believe they are all manageable and the MOU looks strong for the market. We need to tighten some language up but I am sure the lawers can help with this."*

Vestrum sends the draft MoU to the Company's attorney the same day, and the attorney proposes some changes to details without changing anything substantial. It is noted in this connection that a few days later a press strategy was prepared in connection with the agreement[28].

Oslo Børs is of the view that it is incorrect to say that negotiations about a memorandum of agreement will not in themselves trigger a duty of disclosure. The assessment of whether or not information about the negotiations is inside information must be carried out on a case-by-case basis in relation to the company's situation and the facts.

Oslo Børs is of the opinion that it must have been the case that by no later than 23 December 2011 it would have been apparent to the Company that there was a realistic possibility that the agreement would be signed. The main structure of the agreement was known, the counterparty had expressed its agreement, travel plans had been made and a preliminary program for the visit had been outlined.

The view expressed by Oslo Børs must be seen in light of a situation in which the Company had for several years regularly communicated its intention to capitalise this project, and by doing so had built up and given the market a natural expectation that this would take place. The Company had clearly communicated its ambition and efforts to realize its plans in its quarterly interim reports. By 23 December 2011, at which time the Company knew the counterparty's position, some of the risk involved for the Company had reduced.

The fact that the parties wished to enter into collaboration is a crucial factor. The wish to collaborate can represent the expression of a strategic position. Intention and goodwill can, on a case-by-case basis, represent inside information, and this is not solely dependent on the direct and specific consequences of entering into a written agreement.

Central to the assessment is that by this time it was no longer possible to speculate about an agreement involving one or more partners that are only described in general terms. Simply put, though somewhat theoretically, the assessment of the Company's breach of the duty to report to the market in the present case would be the same even if it had not subsequently reached agreement with MCC8 and signed the agreement on 4 January 2012.

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[28] E-mail from Jamon A Rahn to Jan Vestrum dated 26 December 2011 and comments by Attorney Kai Thøgersen dated 27 December 2011

Oslo Børs does not believe that the fact that the Company also had other interested parties is of significance for its assessment in relation to the specific contract negotiations with MCC8, and it did not mean that signing an agreement with MCC8 was not a realistic possibility for Intex. In conjunction with this, the Company had itself decided at this time that MCC8 was now its preferred partner.

8.2 Potential effect on the share price

The question of whether, and if so at what time, information about the process had the potential for a significant effect on the share price can also be formulated as a question of whether, and if so at what time, it was likely that a reasonable investor would use the information as part of the basis for his investment decisions.

The development of the negotiations and news related to this, positive or negative, direct or indirect, are generally very price sensitive for the Company. Reference is made to the Company's own description of the project on its website and in quarterly reports.

> *"Our main asset is the world class Mindoro Nickel project, located on the island of Mindoro in the Philippines. Our exploration projects include the advanced Hurdal Molybdenum project in Norway and the promising Maniitsoq diamond province in Greenland as well as a number of grassroots exploration opportunities and other projects under consideration[29]".*
> *"In 2011, the company concentrated on preparations for the realization of Mindoro Nickel, the Company's largest and most advanced asset[30]".*
>
> *"The board and management remain confident that Mindoro Nickel represents a rare opportunity for our company and shareholders, while at the same offering the local communities of Mindoro Island and the Philippine nation a unique industrial development opportunity with a long life and exceptional environmental and economic benefits. The board will continue to encourage management to seek all paths for its early realisation, while keeping our shareholders and stakeholders informed about progress.[31]".*

The importance of the project to the Company is also demonstrated by investment research prepared by First Securities in January 2012 following entry into the MoU:

> *"Mindoro MoU – A major milestone*
> *Intex announced on 5.January 2012 that a MoU had been signed with the Chinese stateowned MCC8 to farm down the Mindoro Nickel project in the Philippines. MCC8 has with this agreement an option to acquire a 90% stake in the project for USD 296m. Additionally, Intex will keep a 10% interest in Mindoro, on a free carry basis. Finally, Intex is given an option to purchase another 10% of the project for USD 60m.*
> *The MoU marks a significant milestone in the further development of and value extraction on the Mindoro project for Intex and its shareholders[32]".*

[29] http://www.intexresources.com/index.cfm?path=8
[30] http://www.intexresources.com/_upl/intex_2011rapport_engelsk_enkeltsider-_endelig.pdf
[31] http://www.intexresources.com/_upl/itx_aarsrapport_20101.pdf
[32] http://www.intexresources.com/_upl/intex_resources_-_initiation_of_coverage_(report).pdf

The importance that the market attached to the news about entry into the MoU with the Chinese company is demonstrated by the 67.8% increase in the Company's share price following its announcement of the agreement on 5 January 2012.

The Company had been seeking a partner for its most important project for some considerable time, and Oslo Børs takes the view that the Company's success in this respect in the form of a letter of intent or MoU with a recognized international partner was, in the sense used in the Securities Trading Act, likely to have a significant effect on the share price.

The reasonable investor test plays a central role in assessing whether a significant effect on the share price was likely, and Oslo Børs is of the clear opinion that information about this agreement would form part of a reasonable investor's investment decision.

Reference is also made to the Supreme Court's judgment of 23 April 2012 (Guldbrandsen case) that seems to reflect this. The Supreme Court judgment addresses the Appeal Court's interpretation of the criteria for "significant effect": [33]

«The definition is an objectified legal standard, where the sufficient test is 'more likely than not'. The definition should be applied independently of the effect the information might actually have when the inside information becomes public knowledge, although this may be a factor in an overall assessment. This assessment must be based on the content of the information that the court has found to be proven in the individual case. The information will of necessity only represent part of the information forming the basis for the investment decision. This means that the court should evaluate whether a particular item of precise inside information is sufficiently price-sensitive or important for the reasonable investor to react to it. As the prosecutor has argued, it is sufficient to demonstrate that the investor would be likely to use the information as part of the basis for his investment decisions, if he sees that it is likely to trigger a gain. In accordance with this, the criterion for information to be significant does not have an independent content and does not represent any additional terms in relation to the definition.»

In other words, it is therefore sufficient that it is more likely than not that a reasonable investor would be likely to use the information as part of the basis for his investment decisions.

In the current case, where the MoU related to the Company's most important project and the Company had clearly communicated to the market that it wished to capitalise this project, Oslo Børs is in no doubt that a memorandum of understanding for collaboration on the development of Mindoro project with a willing Chinese state-controlled company was inside information, even if the practical consequences had not been finalised. Oslo Børs is also of the opinion that this would have been the case even if the MoU fell away and did not result in an actual agreement. The situation must be assessed as it affected the Company at the time, and not with the benefit of hindsight.

Based on the information the Company has provided about negotiations with various parties, Oslo Børs has found it difficult to determine the earliest time at which the Company was in possession of notifiable inside information. Nonetheless, in relation to assessing whether the Company breached the duty to publicly disclose inside information without delay, cf. STA Section 5-2, Oslo Børs is of the opinion that there is sufficient basis to determine the time at which it believes that notifiable inside information came into existence.

[33] HR-2012-00812-A

Oslo Børs takes the view that 23 December 2011 represents one of a number of possible cut-off points in evaluating whether the status of the negotiations represented inside information in terms of the Securities Trading Act.

In making this assessment, Oslo Børs attaches particular importance to the fact that on 23 December 2011 the level of detail involved in the negotiations was such that;

- The Company could reasonably expect the agreement to be entered into, and it is likely that a reasonable investor would have used this information as part of his investment decisions.

- If such an investor had known of the status of negotiations on 23 December 2011, he would clearly have had an information advantage relative to other participants in the market.

On an overall evaluation, Oslo Børs is of the opinion that by 23 December 2011 at the latest the Company had a sufficiently clear understanding of the parties' intentions to expect that the MoU would be signed, and that this information predated the actual signing date of 4 January 2012. The Company was in possession of notifiable inside information no later than 23 December 2011, and the Company was therefore in breach of Section 5-2 of the Securities Trading Act by failing to disclose this inside information without delay.

8.3 Delayed public disclosure

The Company has maintained that it was not in a situation where delayed public disclosure could be relevant since it was not able to disclose anything to the market until the MoU had been signed.

Oslo Børs is of the opinion that in assessing whether the Company has breached the duty of disclosure pursuant to STA Section 5-2, there is no need to consider whether the conditions for delayed disclosure were satisfied, cf. STA Section 5-3.

However, it is of interest to note that Oslo Børs considers that the final phase of negotiations with MCC8 would have qualified for this exemption if the Company had, prior to the signing, followed the relevant procedures for delayed publication, cf. STA Section 5-3.

When a company decides to delay public disclosure, it must notify this to Oslo Børs in confidence. One of the reasons for the duty to notify Oslo Børs is that this allows the marketplace to pay particular attention to monitoring price quotation in the company's shares so that it is able to act quickly to halt trading in the event of a suspected leak of information.

In cases of delayed publication, Oslo Børs makes use of systems involving intense monitoring of trading when the issuer is involved in a price-sensitive process that has not been publicly disclosed and when, in the interests of the progress or outcome of the negotiations, the issuer is not yet in a position to disclose this information to the market.

As mentioned elsewhere in these minutes, trading in the Company's shares in relation to this case has attracted the interest of the police and the prosecuting authorities, involving investigation of whether trading in the shares amounted to market abuse. It is

noted that the preventative aspects of the regime for delayed publication are accordingly relevant to this case, and such preventative monitoring was not possible since the circumstances were not notified in confidence to the marketplace's Market Surveillance Department.

9 Sanctions

Oslo Børs is entitled to impose a violation charge for a breach of a company's ongoing duty to disclose information pursuant to STA Sections 5-2 and 5-3, cf. STA Section 17-4 (3) third sentence and Section 15-1 (2), cf. Securities Trading Regulations Section 13-1. Violation charges accrue to the Norwegian Treasury, cf. STA Section 17-4 (4), second sentence.

In its consideration of the sanctions to apply and the scale of such sanctions in this case, Oslo Børs has taken into consideration decisions in similar cases.

The Board of Directors of Oslo Børs resolved on 23 April 2008 to impose a violation charge on Fast Search & Transfer ASA equivalent to four times the company's annual listing fee for breaches of the Issuer Rules, including a failure to notify Oslo Børs of delayed publication of inside information. The decision on the size of the violation charge in this case attached considerable importance to the fact that the breach of the duty to give notice in confidence of delayed publication continued over an extended period of two months.

The Board of Directors of Oslo Børs resolved on 16 June 2010 to impose a violation charge on PA Resources ASA equivalent to the company's annual listing fee for a breach of the same duty. The decision on the size of the violation charge in this case attached importance to the fact that there was a significant time lapse between the breach and the imposition of the sanction, and the breach itself was short-lived.

While the cases involving Fast Search and Transfer ASA and PA Resources ASA involved sanctions for failure to give notice to Oslo Børs in confidence of the delayed publication of inside information, the scale of the sanctions imposed in these cases provides guidance in respect of the size of the violation charge for the current case.

The Board of Directors of Oslo Børs resolved on 16 April 2011 to impose a violation charge on Sevan Marine ASA equivalent to twice the company's annual listing fee for a breach of the company's ongoing duty to publicly disclose information. The delay in publicly disclosing information in the Sevan Marine case was similar to the current case, but the effect on share price when the announcement was eventually issued was markedly less significant.

The Board of Directors of Oslo Børs resolved on 24 August 2011 to impose a violation charge on Bionor Pharma ASA equivalent to twice the company's annual listing fee for breaching the ongoing duty to publicly disclose information. The company failed to notify the market in a timely manner of information that one of its products had been found to be effective. In determining the scale of sanctions, the Board of Oslo Børs took into account the significant effect on the share price when the announcement was finally published. The latest date at which Oslo Børs considered inside information to be in existence meant that the company was in breach of the duty of disclosure for a relatively short period.

In considering the appropriate sanctions for the current case, the Board of Oslo Børs pays particular attention to what must be seen as a sizeable impact on share price when

the announcement was disclosed and the fact that the period for which the market was without information must be characterised as relatively long.

Oslo Børs has not taken into account the fact that the Company would have had grounds to delay public disclosure. While this might in isolation be seen as a mitigating factor, it is also an aggravating factor since because the circumstances were not notified in confidence to the marketplace's Market Surveillance Department, intensified surveillance of trading in the Company' shares did not take place.

A mitigating factor that was taken into account is that the facts of the case are relatively extensive.

Based on an overall assessment, Oslo Børs has decided that the appropriate violation charge should be 3 times the Company's annual listing fee (2012) equivalent to NOK 420,000.

Against the background set out above, the Board of Oslo Børs passed the following resolution:

A violation charge is hereby imposed on Intex Resources ASA for a breach of the duty to disclose inside information to the market pursuant to Section 5-2 (1) of the Securities Trading Act in an amount equivalent to 3 times the annual listing fee, i.e. NOK 420,000, cf. Securities Trading Act Section 17-4 third paragraph and Section 15-1, cf. Securities Trading Regulations Section 13-1.