

Oslo District Court's ruling of 10 January 2018 in the criminal case against Ola Rollèn

Background

On January 10, 2018 in Oslo District Court, Ola Rollèn was acquitted in a criminal case about insider trading brought against him by the National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (“Økokrim”). The Court’s concluded that it was highly likely that Rollèn did not have any insider information when he bought stocks in the Norwegian listed company Next Biometrics Group ASA on October 15. In the ruling, the Court expressed the view that the Financial Supervisory Authority of Norway was guilty of a misunderstanding when it reported the case to Økokrim, and that the subsequent strong price movement of this stock became a highly misleading factor, which affected the authorities’ handling of the case.

Økokrim appealed the ruling. After the case is transferred to the Court of Appeal, the Court of Appeal will decide whether the appeal is admissible. An appeal proceeding will likely not take place before the first half of 2019.

Summary of the ruling

In a bill of indictment of 15 March 2017, issued by **Økokrim**, Ola Rollèn was charged with breach of the Norwegian Securities Trading Act’s provisions prohibiting insider trading. The reason for the indictment was Ola Rollèn’s alleged misuse of insider information when buying stocks in the company NEXT Biometrics Group ASA (“Next”) listed on the Norwegian stock exchange on October 6 and 7, 2015. The official buyer was Rollèn’s own company, Iskossala Ltd (“Iskossala”); however, stocks were bought on behalf of Greenbridge Ltd, which is under establishment (“Greenbridge”).

The reason for the indictment was the negotiations, which took place from the end of August 2015 until October 8, 2015, regarding the issue of Next stock to Iskossala, on the sale of Next stocks to Iskossala, and on the agreement to terminate the royalty agreement entered into between Next and the founder of the company. The negotiations led to the conclusion of agreements on the above-mentioned issues on October 8, 2015. **Økokrim** stated that Rollèn obtained insider information through his participation in and knowledge of these negotiations.

The indictment was issued based on a notification from May 2015 issued by the Financial Supervisory Authority of Norway. The district court points out that that the Financial Supervisory Authority of Norway took the view that “*Rollèn used the knowledge he had acquired as a representative of Greenbridge when he traded stocks on the stock exchange for his private company Iskossala*”. Furthermore, the court states that it was due to a “*misunderstanding*” that Rollèn represented two parties. Thus, the Financial Supervisory Authority of Norway did not have an opportunity to examine the matter since Rollèn acted on

behalf of Greenbridge in this case when acquiring said stock. As the court itself points out: *“One’s own price sensitive investment plans do not constitute insider information for the investor him/herself even though these plans constitute insider information for others.”*

The court states: *“The parties have now come to the agreement that Rollèn acted on behalf of Greenbridge both when trading stocks at the stock exchange and when negotiating the participation in a private placement. Iskossala was used as a temporary party in both situations because Greenbridge was still under construction.”*

In conclusion, the court refers (as a supplementary comment) to the price increase of the Next stock of 83% on October 9, 2015, and states that the size of the gain, which was highlighted in the Financial Supervisory Authority of Norway’s notification, could be assumed to have contributed to Økokrim’s pursuit of the indictment. Next, the court explains that in its assessment it must be *“considered certain that there were circumstances other than those referred to in the indictment that caused the price increase of 83%”*, namely that it was Greenbridge (for which Ola Rollèn and Melker Schörling are responsible) that made the investment. Furthermore, the court made reference to the fact that nearly all of the new stockholders were Swedish. In this regard, the court stated as follows: *“The fact that the many new Swedish stockholders placed particular emphasis on the circumstances mentioned in Sections 5 and 6 of the indictment can be excluded.”*

This lead to the following conclusion drawn by the court: *“The strong price development, which normally signals the seriousness of an insider trading case, was therefore a highly misleading factor in our case, which affected the authorities’ examination of the case.”*

Next, the court examined Økokrim’s claim about the circumstances, which, in Økokrim’s opinion, constituted insider information.

The court clearly stated that the knowledge that Next’s management was willing to issue a substantial number of stock at the price of NOK 60 per stock does not constitute insider information. The court explained that it would be regarded as insider information *“if an investor with good knowledge of technology and the market would pay NOK 60 per stock”*, but with the important addition that this knowledge would not constitute insider information for the investor him/herself.

The court pointed out that the board of directors is the central body when it comes to the question of whether a company should carry out an issue. The court concluded that it was only during a board meeting held in the afternoon on October 7, 2015 that Next’s willingness to carry out an issue of a substantial amount of stocks at a premium of 33% *“became a fact”*. Meanwhile, this meeting took place after Rollèn’s broker had bought the last batch of the smallest allowed amount of stocks at approximately 1:15 p.m. on the same day. Rollèn received the information on the Board’s decision only after the board meeting was over at approximately 3:00 p.m. that day.

Økokrim also stated that the negotiations that Ecomnex (owned by the founder) had with Next on a potential sale of Next stocks to Iskossala/Greenbridge constituted insider information and that Rollèn knew about these negotiations. This claim was rejected by the court.

The same applied to Økokrim's claim that Rollèn knew that the founder had negotiated the termination of a royalty agreement that he had signed with the company. The court clearly concluded that there is "*no basis for this in the documentation*" and that Rollèn was informed that Idsøe was working on the royalty issue before October 2015, i.e. after the stock purchases had been made.

Økokrim also explained that in a presentation during a meeting held on September 3, 2015, the CEO of Next stated that the announcement of the first major client in October would result in a significant price increase, and that this appears to be a "*a typical tip from an "insider" who knew what would happen to the price.*"

As far as the presentation itself is concerned, the court is aware that it is a "*stringent interpretation*" when Økokrim claims that the entire value-increase potential (NOK 100) was intended to apply to the first of the three specified contracts, and that the interpretation will be "*even more stringent*" when the effect of the first contract is not linked to the price development from the date of the signing of the contract, but in its entirety to the remaining announcement of the tier-1 client. Økokrim's interpretation also contrasted with the explanations of the CEO and the other meeting participants who had seen the presentation. At the same time, the court referred to the CEO's explanation given during a police interrogation when he was asked – to use the court's wording – even "*leading questions*", and said that it was speculation on his part that when the name became known it could have a positive effect.

With regard to both Next's and the market's expectations of the price development after the announcement of the name of the tier-1 client, the court briefly stated that there is "*no basis*" for Rollèn having been tipped off by the CEO on price development.

The court concluded that "*there is no real basis*" for concluding that Rollèn was tipped off by Idsøe that the stock price would increase significantly after the name of the tier-1 client was announced. Thus, the court took exception to Økokrim's allegation, which could be described as being partly based on "*a stringent interpretation/even more stringent interpretation*" and "*leading questions*," partly based on allegations, which can "*be excluded*" or "*for which there is not real basis.*"

Økokrim maintained that the allegation was not limited to the circumstances described in the indictment, and that the court had to include all available information from and regarding the negotiations of the three contracts referenced in the indictment to properly assess whether insider information was available, i.e. in practice, this would mean the status of the negotiations.

In this respect, the court also disagreed with Økokrim and took the view that Rollèn could only be convicted if he was in possession of the specific information stated in the indictment.

Another interpretation would entail that Økokrim's statement on the indictment would be "*misleading*" when it emphasized that Sections 5 and 6 of the indictment included a "*detailed*" description of this insider information, which Rollèn "*is charged with having misused*". With reference to the fact that the evidence in the case shows the importance of a charge of insider trading including a precise description of the information, which was allegedly misused, the court concluded that in this case it can be established "*with a high degree of certainty that Rollèn did not possess the information in question*".

In conclusion, the court stated that even if it had to assess whether the status of the negotiations in this matter indeed constituted insider information, the outcome would have been acquittal.

The court concluded that it is "*highly likely*" that Rollèn did not possess any insider information when he bought Next stocks on behalf of Greenbridge, and a judgment of acquittal was entered.

Therefore, Rollèn was found not guilty on all counts.
