

Nyrstar NV: Ruling of the FSMA's Sanctions Committee

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Regulated Information

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Nyrstar NV acknowledges the decision issued last Friday by the Sanctions Committee of the Belgian Financial Services and Markets Authority (FSMA) in the context of the investigation initiated in September 2019 in relation to Nyrstar's information disclosure on 30 October 2018 (the Review Date).

Nyrstar NV has always stated that it complied with the rules under the Market Abuse Regulation (MAR) and that it communicated accurately and truthfully.

Findings relating to Nyrstar NV

Nyrstar NV is pleased that the FSMA's Sanctions Committee has confirmed that the Company's communication on the Review Date complied with MAR in several respects. These are:

- its relationship with Trafigura and the terms of the commercial agreements. The Sanctions Committee finds, among other things, that it has not been proven that the commercial agreements between Trafigura and the Nyrstar group would not be at arm's length or would be unbalanced, and, consequently, that Trafigura's stance would not be supportive. It notes that the market was sufficiently familiar with the nuanced meaning of Trafigura being described as a supportive shareholder and with its designation as a key investment highlight.
- Nyrstar NV's solvency position. The Sanctions Committee in particular does not consider it proven that Nyrstar NV would have failed to publicly disclose essential information regarding its level of indebtedness and financing sources. The market was sufficiently familiar with its structurally high level of indebtedness. The Sanctions Committee also sees "no reason why Nyrstar NV should have doubted the continuity of its accounts in relation to the 2018 financial year on the Review Date" (translated from Dutch).
- The expected EBITDA contribution of the Port Pirie redevelopment. The Sanctions Committee rules that it has not been sufficiently proven that the confirmation of the guidance regarding the profit expectations for the redevelopment of Port Pirie on the Review Date would reflect excessive optimism.

The Sanctions Committee determines that certain aspects of Nyrstar NV's communication on the Review Date regarding its liquidity position were incorrect and misleading. This was in particular the case because the liquidity "was described without qualification as "strong committed liquidity of EUR 631 million", while it had by then decreased to EUR 440 million, and the latest weekly liquidity forecast as at the end of December 2018 stabilised at a positive amount lower than EUR 200 million, and, in addition on its website, as "enhanced", while liquidity had declined compared to the previous quarter" (translated from Dutch). According to the Sanctions Committee, "this liquidity position or committed liquidity in the short term/up to the end of 2018 at that time (the Review Date […]) was no longer strong […], but merely sufficient or enough" (translated from Dutch). On this basis, the Sanctions Committee finds that Nyrstar NV infringed Article 15 in conjunction with Article 12(1)(c) of MAR relating to market manipulation.

The Sanctions Committee rejects the other allegations concerning the information disseminated about

Nyrstar's liquidity position. Among other things, it rules that as of the Review Date, there was not yet a liquidity crisis, that it is not convinced "that the liquidity position on the Review Date was under immediate pressure due to the imminent termination of the prepayment arrangements with Trafigura and Glencore and/or doubts about the availability of the TWCF " [Trafigura Working Capital Facility] (translated from Dutch), and that it is also not proven that Nyrstar NV would have concealed the urgent and significant nature of the capital restructuring in its communications.

Finally, the FSMA's Sanctions Committee also examined the delayed disclosures of inside information from 21 November and 6 December 2018. While Nyrstar NV had documented this delay via MAR logs, it had failed to immediately notify the FSMA after the disclosure. The Sanctions Committee finds that Nyrstar NV has thus committed a breach of the obligation as described in Article 17(4), third subparagraph of MAR and Article 4(2) of Implementing Regulation 2016/2055. This oversight is unrelated to the investigation into the communication about the relationship with Trafigura, the financial position and the redevelopment of Port Pirie.

The Sanctions Committee has decided to impose an administrative fine of EUR 80,000 on Nyrstar NV.

Nyrstar NV will further analyze the decision with its legal advisors and, based on this, determine what further steps are appropriate.

Directors acquitted

The Sanctions Committee acquits the directors of Nyrstar NV who were in office on the Review Date of the allegation that, as members of the board of directors of Nyrstar NV, they would have participated, within the meaning of Article 12(4) of MAR, in the decision to disseminate on behalf of Nyrstar NV the information about the liquidity position which the Sanctions Committee had qualified as inaccurate and misleading, while knowing or having ought to have known that this information was incorrect or misleading.

More information

For more information, the Company refers to the overview of current proceedings available on the Company website at <https://www.nyrstarnv.be/en/investors/restructuring/summary-of-ongoing-proceedings>.

About Nyrstar NV

The Company is incorporated in Belgium and listed on Euronext Brussels under the symbol NYR. For further information please visit the Nyrstar NV website: www.nyrstarnv.be

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Attachment

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