



## ETISK RÅD

### DECISION – CASE NO. 2011/7

**Complainant:** X

**Defendant:** DnB NOR Markets

**The case concerns:** Complaint in connection with incorrect price information streamed from an electronic trading platform

**The Ethics Council is set with the following members:**

Geir Woxholth (Prof. dr. juris) (chairman)  
Asbjørn Wangerud  
Tom Kristoffersen  
Randi Nordstrøm

The complaint relates to a loss in connection with orders and/or transactions which were made based on alleged incorrect price information streamed from DnB NOR Markets' electronic trading platform.

## II

### **Complainant's allegations**

The complainant alleges he suffered a loss in connection with orders and/or transactions in Renewable Energy Corporation ASA (REC) on 1 February 2011, as the price information from DnB NOR Markets' electronic trading platform was incorrect.

The complainant explains the following:

In the morning of 1 February 2011 the trading price for REC was around NOK 18.50. I tried to sell 26 000 shares, as the price suddenly went up to NOK 19.09, so I replaced the order to sell at a price of NOK 19.06, and the deal was done. After a few minutes the price went down again to around 18.55, so I replaced an order to buy 26 000 shares in REC to a price of NOK 18.59. This order was not executed even the price I put was more than the ask price. And the order depth covered the 26 0000 shares which I tried to buy. After a while the stream of information was ok again, and I realized that the price never traded near the price of NOK 18.50. *"This was not a delay error it was wrong information in which I take a decision to sell."*

The complainant alleges that the mistake made, selling shares on 1 February 2011, was a loss of good opportunity: The share price went up to NOK 22.17 on 2 February, and up again on 3 February to NOK 22.30.

According to the complainant, problems with incorrect information have happened before. The complainant claims that the bank is responsible for the mistake. At least the bank should inform the customers about any technical failure or problem on the web-site, so that the customers could wait, or do the order by phone.

Furthermore, he claims that his transaction should be cancelled and resettled at a price of NOK 22.05, which was the closing price at the day of his complaint to DnB NOR Markets.

The complainant wants to have the same treatment as all bank customers, as he refers to a similar case regarding his wife. Her transaction was resettled.

The complainant asks the Ethics Council to "*check*" two points for him. The first request concerns if DnB NOR Markets has liability for the accuracy of information, and if so, if "*any transaction could be rejected according to this rule*" and if such a rule is in consistency with financial law (by "this rule" the Ethics Council understands the terms and conditions of DnB). Furthermore, the complainant wants to know who has the responsibility and liability for misinformation and inaccurate information.

The second point refers to information on how many complaints DnB NOR Markets has treated in similar cases, and what decisions were taken.

### III

#### **DnB NOR Markets' allegations:**

DnB NOR Markets states that it is correct that the price information service the complainant subscribed to, suffered technical problems on 1 February 2011 between 0900 and 0920. The problems were resolved before DnB NOR Markets managed to find out the nature/extent of the problems, thus, no information was posted on the website. Subsequently it has been determined that the probable cause of the error with the streaming of information was insufficient memory, at that point of time, at a server operated by a third party.

DnB NOR Markets refers to that pursuant to the agreements the complainant has accepted, DnB NOR Markets does not have any liability for loss the investor may have suffered due to the technical problems on 1 February 2011. Reference is made to "Avtale om handel mv. av finansielle instrumenter på dnbnor.no for Privatkunder" (accepted in Norwegian wording by the complainant). Clause 6.5 states specifically in relation to the streaming of price information that:

- DnB NOR Markets has no liability for the accuracy of the information the complainant subscribes to.
- (*"...DnB NOR Markets påtar seg intet ansvar for at informasjonen er korrekt..."*)

Reference is also made to the General Business Terms and Conditions 19, subsection 5:

- *DnB NOR Markets is not liable for loss or damage due to impediments or other factors outside DnB NOR Markets' control, including power cuts, error in or interruption to electronic data processing systems or telecommunications networks, etc...*

DnB NOR Markets claims that the capacity issues on a server owned and operated by a third party was a factor outside DnB Nor Markets' control, for which DnB NOR Markets has no liability.

Finally, DnB NOR Markets refers to "Generelle vilkår for nettbank – forbruker." (also accepted by the complainant in Norwegian text, Clause 7 subsection 2, that states that DnB NOR has no liability for:

- faults, problems – including problems with capacity or other circumstances in communication network (*"...feil, problemer – herunder kapasitetsproblemer eller øvrige forhold i kommunikasjonsnett..."*)

DnB NOR Markets claims that the third party's server that conveyed the price information received from Oslo Børs, must be deemed to be part of the communication network which covered by the above disclaimers of liability. Furthermore, DnB NOR Markets refers to that any loss the complainant may have suffered as a result of the technical problems, due to lack of memory in third party's server, is covered by the above disclaimers of liability. DnB NOR Markets states that the claim on these grounds should be disallowed.

DnB NOR Markets points out that it is correct that the company, without being legally obliged to do so, in 2007 compensated the complainant's wife, after she suffered a minor loss in a somewhat similar situation. The decision to compensate the complainant's wife was not

in line with DnB NOR Market's internal policies, and it was an error in judgement by the employee who handled the matter.

Furthermore, DnB NOR Markets informs that the company does not compile any statistics relating to how customer complaints, following technical faults, have been dealt with. DnB NOR Markets assesses each complaint individually. As a main rule, DnB NOR Markets does not award any compensation due to technical faults. In some cases, DnB NOR has compensated customers by offering free or lower brokerage fees for a limited number of transactions or free subscription to price information from Oslo Stock Exchange for a short period of time, as a courtesy gesture. In some extraordinary cases, to avoid time and cost consuming trial, DnB NOR has also compensated a few customers further.

#### IV

##### **The Ethics Council remarks:**

The complainant lodged the complaint by e-mail 4 February 2011 and DnB NOR Markets gave comments 2 March 2011. In addition, the parties have had the opportunity to present further written remarks on each other's submissions, in accordance with the rules for the Ethics Council article 3-3 third paragraph.

In its comments 2 March 2011, DnB NOR Markets asked the complainant to elaborate the factual and the legal basis for his claim, as the company finds certain parts of the claim difficult to understand. As the Council had not received any remarks from the complainant to DnB NOR Markets' letter 2 March 2011, the complainant was contacted by phone 17 June 2011. To the question of DnB NOR Markets to elaborate the claim, the complainant informed the Council, that all information needed was in his complaint of 4 February 2011. However, he had sent an e-mail and an identical fax at the beginning/middle of March to the Council. This e-mail and the fax had not been received by the Council, thus, the complainant forwarded the mentioned-mail on 17 June 2011.

Based on the documents in this case, the Council finds it has sufficient information to decide whether DnB NOR Markets is to be held responsible for any loss the complainant might have suffered due to incorrect price information streamed from DnB NOR Markets electronic trading platform. However, the Council has no power to decide whether damages or compensation is to be paid to the complainant, cf. the rules for the Ethics Council article 4-1 first paragraph.

DnB NOR Markets has stated that it is correct that the price information service the complainant subscribed to suffered technical problems on 1 February between 0900 and 0920. DnB NOR Markets has not questioned the trading history of the complainant in the morning of 1 February 2011, and the Council therefore sees this as a fact.

The Council finds that the complainant has been made aware of and/ or has accepted the agreements and conditions DnB NOR Markets refers to. This includes "Avtale om handel mv. av finansielle instrumenter på dnbnor.no for Privatkunder", after which "...*DnB NOR Markets has no liability for the accuracy of the information the complainant subscribes to...*", cf. clause 6.5. It follows from the mentioned clause that the information referred to concerns "real time market data". DnB NOR Markets has thus waived liability for the accuracy of the real time data, and has also stated that the technical problem is caused by a third party. The

Council has no reason to believe that the technical problem is due to negligence of DnB NOR Markets. In addition, the Council notes that it is common for companies offering online trading, that they disclaim responsibility for the accuracy of price information, when entering into customer agreements.

The Council agrees with the complainant, that, when a technical problem with the price information occurs, DnB NOR Markets should inform about this on their web-site. However, DnB NOR Markets has explained that the problem was solved before they managed to get an overview of the scope and the reason for the problems, and subsequently did not put any information on the web-site. The Council notes that the problems lasted for about 20 minutes; a rather short time, and the Council has no reason to assume that DnB NOR Markets acted negligently in this respect.

As comes to the complainant's claim to be treated in the same way as the case with his wife, which was cancelled and compensated, DnB NOR Markets has given account for that it was made a mistake when giving compensation, and that this was not in line with DnB NOR Markets' internal policies. Furthermore, DnB NOR has informed that as a main rule, DnB NOR Markets does not award any compensation, due to technical faults. On this background the Council does not find that the complainant has been treated differently than other customers of DnB NOR Markets.

In addition the Council notes that DnB NOR Markets in its letter to the Council 22 June 2011, suggests an amicable settlement as DnB NOR Markets is willing to offer the complainant free price information, including order depth, from Oslo Stock Exchange throughout 2011, to a value of NOK 125 per month, if the complainant withdraws his complaint, and waives any claim he alleges to have. The complainant has informed the Council that he does not accept the offer.

According to the above, the Council does not find that DnB NOR Markets is responsible for any loss the complainant might have suffered on the basis of incorrect price information in the morning of 1 February 2011.

**The Ethics Council** has accordingly adopted the following decision:

The complaint is not sustained.

Oslo, 16 August 2011