

# THOMAS BLIWIER

RECHTSANWALT  
Fachanwalt für Strafrecht

RA Thomas Bliwier Barmbeker Strasse 17 - 19 · 22303 Hamburg

Landgericht Hamburg  
- Große Strafkammer 20 -  
Kapstadtring 1

22297 Hamburg

22303 HAMBURG

BARMBEKER STRASSE 17-19  
TELEFON 040/270 22 17  
FAX 040/279 20 51

DI: 0171/6410 432

KONTEN:  
POSTGIRO HAMBURG 2479 69-201  
BLZ 200 100 20

Kreissparkasse Herzogtum Lauenburg  
109 111 007, BLZ: 230 527 50

ANDERKONTO:  
Kreissparkasse Herzogtum Lauenburg  
109 110 434, BLZ : 230 527 50

GERICHTSKASTEN 637  
e-mail:TBliwier@aol.com  
www.die-strafverteidiger.de

Ihr Zeichen, Ihre Nachricht vom  
**620 Kls 5/04**

Unser Zeichen, unsere Nachricht vom  
TB-04/1001904-sp

Sekretariat  
Frau Peters

Datum

In der Strafsache

gegen

Alexander Falk

wird beantragt,

die Verantwortlichen der folgenden Firmen zeugenschaftlich zu  
vernehmen:

1. KPN Qwest
2. Genuity
3. Cable & Wireless
4. Global Center/Global Crossing
5. Verio Inc.
6. COLT Telecom Group
7. Versatel Telecom BV

**Beweisthema:** Vertragsverhandlungen bzw. abgegebene Angebote zum Erwerb der Firma Ision Internet AG.

Ich überreiche als Anlage und beantrage die entsprechende Verlesung als Urkunde einer Aufstellung der ING Barrings über abgegebene Angebote bzw. unterzeichnete Vertraulichkeitsvereinbarungen im Zusammenhang mit dem Erwerb der Ision Internet AG. Hieraus ergibt sich, dass es zahlreiche Bewerber neben Energis gab. Es wird in diesem Zusammenhang insbesondere beantragt,

die Verantwortlichen der Firma Versatel Telecom BV, Holland, zeugenschaftlich zu vernehmen.

Die Verantwortlichen der Firma Versatel Telecom BV werden bekunden, dass sie bereit waren, pro Ision-Aktie den Gegenwert von € 70,00 zu zahlen. Es wird bewiesen werden, dass die Annahmen der Kammer aus dem Beschluss vom 09.02.2005 falsch sind.

Die Kammer hatte ausgeführt:

„An nachfolgende Untersuchungen der Due Dillegence schlossen sich eingehende Verhandlungen an. Energis war schließlich als offensichtlich zu diesem Zeitpunkt einziger Bieter im Dezember 2000 bereit, für das Aktienpaket eine Gegenleistung im Wert von 812 Mio € mit einem Baranteil von 210 Mio € zu erbringen. Dies ist der zum Zeitpunkt des Vertragsschlusses tatsächlich realisierbare (wenngleich manipulativ verfälschte) Marktwert des von Distefora veräußerten 75 %igen Unternehmensanteils an der Ision AG gewesen; mehr gab der Markt im Dezember 2000 nicht her.“ Beschluss vom 09.02.2005, Seite 24.

Die Verteidigung hatte schon darauf hingewiesen in ihrer Stellungnahme vom 16.02.2005, dass es das Geheimnis der Kammer bleibt, wie sie zu diesen Feststellungen kommt. Tatsächliche Ermittlungen hierzu gibt es nicht. Dem Antrag der Beweiserhebung wird ergeben, dass die Behauptungen der Kammer insofern falsch sind.

Die beantragte Beweiserhebung ist auch erheblich. Es wird bewiesen werden, dass die Kammer von falschen tatsächlichen Voraussetzungen ausgeht, wenn sie darüber spekuliert, dass wegen der besonderen „Markteng“ der Marktwert der Ison AG unmittelbar bestimmt sei durch den tatsächlich erzielbaren Preis. Es wird bewiesen werden, dass das DCF-Kalkül mit seiner objektivierten Betrachtungsweise der richtige Parameter ist für die Bewertung des Unternehmens und darüber hinaus es wegen der Vielzahl der Bieter durchaus möglich gewesen wäre, einen höheren Preis zu erzielen.

Rechtsanwalt

## Indicative Offers

Company name	Initial call/ meeting	CA sent	CA signed	Sum. Info sent	Financial Forecasts	Process Letter	Indic. Bid	Comments
KPN Qwest - Kenya The Transpolis Building Polarisavenue 77 Hoofddorp 2130 The Netherlands	02 Aug. 10 Aug. (call) 21 Aug. (call)	Yes 11 Aug.	Yes	11 Sept. 010, 011, 012 Received	21 Sept.	20 Sept.	02 Oct. Expect late 04 Oct.	Have met with CEO. Corporate Development staff were to meet internally 23 Aug to discuss relative level of interest before proceeding with list of questions. 28 Sept. JL spoke with JC, intend to submit bid next week. JC sort guidance on price. 29 Sept. JC called to day bid likely to be received by Wed. 4 Oct. as unable to get internal approvals for 2 Oct. 02 Oct. DB received 2 copies of the SI. 03 Oct. Call from DB to JCL requesting further information on India and process. DB was sent an email containing INGB research 09 Oct. Conversations held with CE regarding research. Holding fax sent to update on shortlist timetable. 10 Oct. Holding fax was copied to BM. JCL returned BM's call. No further comments made on process.
Genuity - Guinea Mergenthalerallee 79-81, - Topas 2 65760 Frankfurt/Eschborn	12 Sept. (meeting)	Yes 15 Sept.	Yes 15 Sept.	16 Sept. 018, 019, 020 Received	21 Sept.	20 Sept.	05 Oct	Interested in a majority stake, however, the whole pie may be to large for them. Matthias Funk received the CA on Friday, updated books were sent on Saturday 16 <sup>th</sup> Sept. Financial forecast PDF version was sent to Sofie Barratt, Philippe's assistant. Tel:1781 262 3337 sbarratt@genuity.com 21 Sept. 29 Sept. JL had Conf. call with PH, Larry Schwartz (M&A) and Bob Cosgrove (Int'l bus devpt); Gen. seeking guidance on mix of cash/ other and indicated timetable was too tight for them. Stage1 bid expected JL w/c 2 Oct. 09 Oct. Conversation regarding process - we would look more favourably upon a bid with numbers; will deliver in 48 hours. Have ability to deliver cash. 10 Oct. CE spoke to Larry Schwartz - confirmed advisers were being appointed and would send a bid with numbers within 2 days. Requested copy of INGB research - pdf version sent via email to L.S. 11 Oct. Call to say unable to deliver numbers for stage due to (i) new board and internal process; (ii) ethical commitment to dd. G keenly interested in moving to next phase.

Signed CA

Company name	Initial call/ meeting	CA sent	CA signed	Sum. info sent	Financial Forecasts	Process Letter	Comments
Cable & Wireless - Congo Lakeside House Bracknell Berkshire RG12 1XL Cable & Wireless plc 124 Theobalds Road London WC1X 8RX	10 Aug.	Yes 11 Aug.	Yes	11 Sept. 007, 008, 009 Received	21 Sept.	20 Sept. Init. Bid 02 Oct. No bid	List of questions forwarded from C&W to us on 23 Aug and sent to India for review. Need to co-ordinate responses to questions. Rick out of the office for a few days, 12/09/00. 28 Sept. J.L. called & left vmail with Heather 29 Sept. J.L. called RH's mob. & left message 02 Oct. Call from RH to JCL advising that they would not be submitting an offer based on (i) difficult reaching lower end of price range; (ii) their dislike for participation in competitive auction processes.
Global Center/Global Crossing 150 EJ Camino Drive Suite 204 Beverly Hills CA 90212 United States of America	07 Sept.	Yes 15 Sept.	Yes 15 Sept.	15 Sept. 01*, 016, 017 Received	21 Sept.	20 Sept. Init. Bid 05 Oct.	Spoke with Chris Nash 11/9. Sending NDA. Received public materials and requested meeting on Fri 15 Sept. CA was signed and passed over and 2 SF's were handed over in the meeting. Extra updated book sent to Chris Nash via Ines Galifaso, his assistant on Friday 15 <sup>th</sup> . Additional meeting Tuesday 19 <sup>th</sup> September in London Site visit scheduled for Monday 2 <sup>nd</sup> October 10:30 in the Docklands with AF and MF 28 Oct. J.L. called CN ad left message 29 Oct. J.L. had disc. With Stephanie Beard to understand interest post Exodus announcement. SB advised that Mancini still very interested and that deal would now be done by GlobalCenter/Exodus, not Global Crossing. Addition of Exodus people may lengthen their process. J.L/SB confirmed arrangements for site visit 2 Oct. 2 Oct. site visit at GC global operations centre, Docklands 3 Oct. Vmail from SB to JCL advising that they were working through the legality (standing) of making an offer and subject to resolution expect to submit stage one offer on Thursday 05 Oct. 09 Oct. CE spoke to Chris Nash: confirmed strong interest. 2 weeks before Exodus can be brought alongside: CN understands need for haste - response, if any, in 2 weeks
Global Crossing Ltd - Bermuda Wessex House 45 Reid Street Hamilton, HM12 Bermuda							

## Signed CA

Company name	Initial call/ meeting	CA sent	CA signed	Sum. Info sent	Financial Forecasts	Process Letter	Comments
Verio Inc - Nigeria 8005 S. Chester St. Suite 200 Englewood, CO 80112 United States	10 Aug (e-mail) 29 Aug. (call) 8 Sept. (sent e- mail) 18 Sept. (call) 28/29 Sept. (calls)	19 Sept.	21 Sept.	21 Sept. 023, 024, 025 Received	inc. in Sum. Info	25 Sept. Received	Company called to request a video conference call for week of Sept 19. Replied with e-mail saying that may be too late. Video conference scheduled on Monday 2 <sup>nd</sup> October 16.30 in London. 02 Oct. Video/tele conference. Moos Bulder to meet with AF and XM in Hamburg Monday 9 Oct. INGB to advise MB via email of meeting details. 09 Oct. At meeting, company advised they would make an expression of interest by 16 <sup>th</sup> Oct and could give a possible valuation by 23 <sup>rd</sup> .
COLT Telecom Group plc - 15 Marylebone Road London NW1 5JD	29 Sept. (call)	29 Sept.	10 Oct	10 Oct. 029, 030, 031 Received	inc. in Sum. Info		Call was made by MW. Public information was sent out on Friday to all three contacts, including broker reports, Investors' Day presentation, NDA and Offering circular/Financials 1H 2000
Versatel Telecom BV - Paalbergweg 36 Amsterdam-Zuidoost, 1105 BV The Netherlands Versatel Telecom International NV- Hullenbergweg 101 1101 CL Amsterdam Zuidoost The Netherlands	02 Oct. (Call)	02 Oct. Resent on 06 Oct.	9 Oct	9 Oct. 026, 027, 028 Received	inc. in Sum. Info		02 Oct. MW confirmed arrival of package and LI will discuss it with JM and others during the week. 03 Oct. Call from GH returned by CRE, left vmail. Call was made by MW. Public information was sent out on Monday via email to both RR and MH including broker reports, Investors' Day presentation, NDA and Offering circular/Financials 1H 2000 11 Oct. Called to check books had arrived - books traced and with bidder.