

We invest in winners. This means we invest in strong companies that create value for their shareholders with sustainable business models, solid balance sheets and high margins. We keep the risks low and invest when our position is fuelled by a positive event. We refer to that as the combination of value and event.

McKesson Europe AG

We included McKesson Europe AG in our investment report for the first time in September 2019. The Stuttgart-based pharmaceutical wholesaler has operations in 13 European countries with 38,000 employees. 100,000 different medicines and health products are delivered daily to more than 55,000 pharmacies and hospitals from more than 100 distribution centres. The majority shareholder is McKesson Corporation, USA. A control and profit and loss transfer agreement obliges it, at the request of any shareholder of McKesson Europe AG, to acquire the latter's shares in return for a settlement in the amount of EUR 22.99 plus 5% above the base interest rate. The annual settlement payment is EUR 0.83 per share. Shareholders had taken legal action against this before the Stuttgart Regional Court (31 O 1/15 KfH), as EUR 23.50 per share had been paid in a preceding takeover bid and the hedge fund Elliott even received the equivalent of EUR 30.95 per share for its convertible bonds. The Stuttgart Regional Court only increased the cash settlement to EUR 23.50. The big surprise then followed in the court of appeal. In its decision of 30 March 2021 (20 W 8/19), the Stuttgart Higher Regional Court set the cash settlement at EUR 22.99 and made the decision final, as it refused to forward the appeal to the German Federal Court of Justice (BGH). This is a scandal, as the BGH strengthened shareholder rights in its ruling of 7 November 2017 (II ZR

37/16) by confirming a decision of the Frankfurt Higher Regional Court and ruling that the former shareholders who had accepted the takeover offer were also entitled to EUR 30.95 per share. They then received a further EUR 7.45 per share. The BGH stated that when determining the consideration for a takeover bid, the prices paid by the bidder for the derivative acquisition of convertible bonds would have to be taken into account. The provision in Section 31 (6) WpÜG on the consideration of prior acquisitions was to be understood as a general protection against circumvention. The intention of the Act is to ensure that the bidder is held to the price it itself considered reasonable in the temporal context of the takeover offer. This temporal context is indisputably the period from the conclusion of the takeover offer (6 February 2014) to the passing of the resolution on the intercompany agreement (22 May 2014). The value-setting offer has a close temporal connection with the structural measure. Unfortunately, the Stuttgart Higher Regional Court prevented an important decision by the BGH. The only remaining remedy is a constitutional complaint.

The annual settlement payment currently yields 3.3%. In order to preserve this, McKesson is likely to seek a squeeze-out. At the same time, the tender option from the inter-company agreement expires on 15 June 2021 with a compounded consideration of approximately EUR 24.75 per share. We will weigh our options and then decide wisely.

Sincerely yours



J. Henrik Muhle



Dr. Uwe Rathausky

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