

Convenience Translation

This document is a translation of the report "Bericht über die Prüfung des Beherrschungs- und Gewinnabführungsvertrags zwischen der Dragonfly GmbH & Co. KGaA, Frankfurt am Main, und der Celesio AG, Stuttgart" which was written in German. The translation was performed by a professional translator. Ebner Stolz GmbH & Co. KG does not assume any responsibility for the correctness of the translation. The German version is authoritative for decision-making purposes.

Report
on the Audit
of the Domination and
Profit and Loss Transfer Agreement

between

**Dragonfly GmbH & Co. KGaA,
Frankfurt am Main,**

and

Celesio AG, Stuttgart

List of abbreviations

Abbreviation	Full term
adj.	adjusted
AktG	<i>Aktiengesetz</i> : German Stock Corporation Act
BB	<i>Betriebs-Berater</i> : a German journal for commercial law
BewP	<i>BewertungsPraktiker</i> : a German business administration journal
BGH	<i>Bundesgerichtshof</i> : Federal Court of Justice
Bloomberg	Bloomberg Finance L.P., New York, USA
BVerfG	<i>Bundesverfassungsgericht</i> : German Federal Constitutional Court
CAGR	Compounded Annual Growth Rate
CAPM	Capital Asset Pricing Model
CFbiz	Corporate Finance Biz
CS	Consumer Solutions
DB	<i>Der Betrieb</i> : a German business administration journal
Celesio AG	Celesio AG, Stuttgart
Dragonfly KGaA	Dragonfly GmbH & Co. KGaA, Frankfurt am Main
EBIT	Earnings Before Interest and Taxes
EBITDA	Earnings Before Interest, Taxes, Depreciation and Amortization

Abbreviation**Full term**

Ebner Stolz

Ebner Stolz GmbH & Co. KG,
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft, Stuttgart

EBT

Earnings Before Taxes

Ernst & Young

Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft,
Stuttgart

ECJ

European Court of Justice

EURIBOR

European Interbank Offered Rate

FAUB

Technical committee for business valuations and
commerce of the Institute of Public Auditors in Germany

FB

Finanz Betrieb: a German journal for finances

HGB

Handelsgesetzbuch: German Commercial Code

IDW

*Institut der Wirtschaftsprüfer in Deutschland e.V.,
Düsseldorf*:
Institute of Public Auditors in Germany

IDW-FN

IDW Fachnachrichten: Newsletters from the IDW

IFRS

International Financial Reporting Standards

IMS Health

IMS Health Inc., London, United Kingdom

IMF

International Monetary Fund

KG

Kammergericht: Court of appeal

KPMG

KPMG AG Wirtschaftsprüfungsgesellschaft, Munich

LG

Landgericht: Regional Court

McKesson Corp.

McKesson Corporation, San Francisco, USA

Abbreviation

Full term

NZG

Neue Zeitschrift für Gesellschaftsrecht: a German journal for company law

OLG

Oberlandesgericht: Higher regional court

OTC

Over-The-Counter (pharmaceuticals)

PS

Pharmacy Solutions

SpruchG

Gesetz über das gesellschaftsrechtliche Spruchverfahren: Law on appeals and arbitration under company law

unadj.

unadjusted

WM

WM Zeitschrift für Wirtschafts- und Bankrecht: a German trade journal for commercial and banking law

WPg

Die Wirtschaftsprüfung: a German journal on public audits

WpÜG

Wertpapiererwerbs- und Übernahmegesetz: Securities Acquisition and Takeover Act

ZIP

Zeitschrift für Wirtschaftsrecht: a German journal for commercial law

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Final draft of the domination and profit and loss transfer agreement	Annex 1
Court order of the Higher Regional Court of Stuttgart dated 6 February 2014	Annex 2
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<p>For technical reasons the following tables might include rounding differences of ± one unit (EUR, percentage point, etc.)</p>
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A. Engagement and Performance of the Engagement

Dragonfly GmbH & Co. KGaA, Frankfurt am Main,

(hereinafter also referred to as "Dragonfly KGaA")

and

Celesio AG, Stuttgart,

(hereinafter also referred to as "Celesio AG")

intend to enter into a domination and profit and loss transfer agreement. According to Sec. 293b AktG, the agreement must be audited by one or more independent auditors. The Higher Regional Court of Stuttgart has appointed us at the joint instigation of both contractual partners to audit the agreement pursuant to Sec. 293b AktG by court order dated 6 February 2014 (see annex 2). Pursuant to Sec. 321 (4 a) HGB, we confirm that we observed the applicable laws regarding our independence during our audit of the fairness of the compensation.

In the course of our review, we observed the "Principles for the Performance of Business Valuations" issued by the Institute of Public Auditors in Germany [Institut der Wirtschaftsprüfer in Deutschland e.V.: "IDW"] released on 2 April 2008 (IDW S1 2008).

In order to determine the business value and derive, on this basis, a fair cash compensation, guaranteed dividend and annual compensation payment for non-controlling interests, the management of Dragonfly KGaA and the management board of Celesio AG jointly relied on the professional support of KPMG, which has issued a report on the business valuation. We audited the valuation documentation in the course of our review activities.

The management board of Celesio AG and the contact people they named to us willingly provided us with all the explanations and supporting documentation we requested. The completeness of the explanations and documentation provided was confirmed to us in a written declaration by the management of Dragonfly KGaA and the management board of Celesio AG.

We conducted our review intermittently in the period from 10 February to 16 May 2014 in the offices of Celesio AG in Stuttgart, the offices of KPMG in Stuttgart and in our own offices in Stuttgart. In the process we performed our review contemporaneously with the work by the neutral

valuer, KPMG, reviewing the interim results of the valuation and the work done to prepare the jointly issued report. We came to our assessment independently and at our own initiative.

The following meetings were held with the neutral valuer and the representatives of Ceesio AG:

Date	Participants	Topic	Location
25 February 2014	KPMG, Ebner Stolz, Ceesio	Overview about the business, valuation concepts, planning process	Premises of Ceesio AG
25/26 February 2014	KPMG, Ebner Stolz, Ceesio	Various conferences about the past and the planning of individual subsidiaries	Premises of Ceesio AG
6/7/10 March 2014	KPMG, Ebner Stolz, Ceesio	Various conferences about the past and the planning of individual subsidiaries and strategic initiatives	Premises of Ceesio AG and by conference call
29 April 2014	KPMG, Ebner Stolz, Ceesio	Adjustments in the planning of various subsidiaries	Premises of KPMG
7 May 2014	KPMG, Ebner Stolz, Ceesio	Review of the valuation model	Premises of KPMG
8 May 2014	KPMG, Ebner Stolz, Ceesio	Acquisitions/Divestments	Conference call
13 May 2014	KPMG, Ebner Stolz, Ceesio	Interview with the Executive Board	Premises of Ceesio AG

In addition there were numerous meetings and telephone conversations at a working level on various issues and aspects related to the valuation.

The review of the agreement was managed and conducted primarily by the auditors signing this report. They were supported in this task by one further auditor, two further senior managers, a project manager, as well as three experienced audit assistants who supported the work on planning and valuation issues.

Should there be any material changes in the net worth, financial position, or results of operations, or any other basis used for the valuation of Ceesio AG in the period between conclusion of our review and the prospective date of 15 July 2014 on which the general shareholders' meeting of Ceesio AG passes a resolution on the domination and profit and loss transfer agreement, then

these must still be considered in the measurement of the guaranteed dividend or annual compensation payment and the cash compensation.

We make express reference to the fact that our review activities did not include a review of the accounting, financial statements, management reports or management of Celesio AG. Pursuant to Sec. 293b AktG, a review of this nature is not included in the scope of our activities. The compliance of the financial statements of Celesio AG (pursuant to HGB) and the consolidated financial statements (pursuant to IFRS) with the legal requirements was confirmed by the independent auditors appointed to perform this task, Ernst & Young.

Execution of the assignment and the extent of our responsibility and liability is governed by the "General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften" dated January 1, 2002 attached to this report as Annex 3. In addition to the statutory limitation of liability Sec. 293d (2) AktG and Sec. 323 HGB, the General Engagement Terms also govern our responsibilities to third parties.

This audit report solely serves as an informative basis to be used by the companies involved to make a decision on whether to enter the domination and profit and loss transfer agreement or not, as well as their consultants and legal advisors and the court which engaged us to conduct the audit. In addition, a copy of this report may be provided to the non-controlling interests of Celesio AG. It may not be used for any other purposes.

The following documents were made available for our review:

- Draft of the joint report of the management of Dragonfly KGaA and the management board of Celesio AG on the domination and profit and loss transfer agreement between Dragonfly KGaA and Celesio AG (as of 14 May 2014, including any prior drafts)
- Final draft of the domination and profit and loss transfer agreement (Annex 1)
- Report from KPMG on the calculation of the business value of Celesio AG dated 14 May 2014 (including the preceding draft versions) attached to the joint report and Annex 4
- Reports from Ernst & Young on the audit of the financial statements and management report of Celesio AG for fiscal years 2011 to 2013
- Reports from Ernst & Young on the audit of the consolidated financial statements and group management report of Celesio AG for fiscal years 2011 to 2013
- Annual reports of Celesio AG for fiscal years 2011 to 2013
- Planning calculations of Celesio AG for fiscal years 2014 to 2018 and the underlying planning assumptions

- Internal analyses from the controlling department of Celesio AG
- Articles of association of Celesio AG, dated 16 May 2013
- Minutes of the meetings of the supervisory board of Celesio AG between 15 February 2012 and 20 February 2014 and minutes of the meetings of the management board of Celesio AG between 16 January 2012 and 1 April 2014
- Excerpt from the commercial register for Celesio AG dated 10 February 2014
- Excerpt from the commercial register for Dragonfly KGaA dated 10 February 2014
- Various market and industry publications
- Valuation documents from KPMG
- Publicly available information, capital market data in particular

B. Purpose, Nature and Scope of the Review pursuant to Sec. 293b AktG

I. Contract of domination and profit and loss transfer

The subject of this audit, performed in accordance with Sec. 293b AktG, is the domination and profit and loss transfer agreement or its draft version. This agreement or its draft version must be reviewed to determine the completeness and accuracy of the information it contains and, in particular, whether the proposed guaranteed dividend or compensation and proposed settlement of non-controlling interests are fair. The terms guaranteed dividend, annual compensation payment and compensation will be used synonymously in this report where this accurately reflects the substance of the matter in order to simplify the language.

II. Joint report on the corporate agreement

According to Sec. 293a AktG, the legal representatives of all companies that are party to the domination and profit and loss transfer agreement must submit a detailed written report describing the legal and economic reasons for entering the company agreement, the details of the agreement itself, and, in particular, the nature and amount of the guaranteed dividend or annual compensation payment pursuant to Sec. 304 AktG and cash compensation pursuant to Sec. 305 AktG. For this reason, the management board of Celesio AG and the management of Dragonfly KGaA have issued a report on the domination and profit and loss transfer agreement between Celesio AG and Dragonfly KGaA. The report must make special mention of any particular difficulties in valuing the companies entering the agreement and the consequences for the equity interests of the shareholders.

In the course of our work, we audited the information contained in the joint report and the valuation report attached to it (as well as the preceding drafts of the joint report and valuation report), the methodological and arithmetic explanations of how the business value of the dependent company was determined, and the proposed guaranteed dividend or annual compensation payment and cash compensation derived on this basis. An audit of the completeness and accuracy of the joint report and the suitability of the domination and profit and loss transfer agreement for the underlying purpose were not within the scope of our engagement.

III. Audit report

As auditors, we report in writing pursuant to Sec. 293e AktG on the findings of our audit and in accordance with our professional standards.

The focus of the audit of the agreement is an assessment of the proposed guaranteed dividend or annual compensation payment and the proposed cash compensation. The auditor must review whether the methods applied by the legal representatives to determine the annual compensation payment and cash compensation are appropriate. If the valuation is based on a future-related analytical valuation of the business, the auditor must examine whether the business valuation used to calculate the annual compensation payment and cash compensation complies with the Principles for the Performance of Business Valuations, and whether the underlying data has been properly derived and that the estimates of future development are plausible. If the cash compensation is based on share prices, the way the share price has been derived must be assessed.

Point 2 of the court order from 6 February 2014 engaging us to perform the audit clarifies that we should not perform our own independent business valuation. Sec. 293e (1) Sent. 3 AktG makes it clear that an auditor of a corporate contract is not obliged to carry out another independent business valuation. Rather, the auditor can restrict his activities to reviewing the plausibility of the business valuation on which the proposed cash compensation is based, including the report on the business valuation (see Emmerich/Habersack, Aktien- und GmbH-Konzernrecht, 7th edition 2013, Sec. 293 b, No. 17 et seq.; Veil in Spindler/Stilz, Kommentar zum AktG, 2nd edition., Vol. 2, 2010, Sec. 293b No. 5; OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 232; OLG Stuttgart, 28 January 2004, AG 2004, p. 271, 275; OLG Düsseldorf, 14 April 2000, AG 2001, p. 189, 190; LG Munich, 28 August 2008, AG 2008, S. 904, 908).

Moreover, the court order contains a number of points on which we should explicitly report in this audit report.

According to Sec. 293e Sent. 2 AktG, the report on the review must conclude with a declaration of whether the proposed guaranteed dividend and proposed cash compensation are appropriate. These include:

- which methods were used to determine the guaranteed dividend and cash compensation
- the reasons why application of these methods is appropriate

- if more than one method has been applied, the respective guaranteed dividend and cash compensation that would result from the various methods at the same time, the report must illustrate which weighting has been given to the various methods when determining the proposed annual compensation payment or proposed cash compensation and the underlying values and indicate any particular difficulties arising in the valuation

C. Audit Findings on the Contents of the Agreement and the Valuation Methods Applied

I. Preamble

In terms of timing it can be stated that – assuming entry of Celesio AG in the current fiscal year – that the agreement qualifies as a mere domination agreement (management contract) for fiscal 2014 commencing on the date it is entered in the commercial register. The domination agreement only becomes a profit and loss transfer agreement from 1 January 2015. In the case of a standalone domination agreement, Sec. 304 (1) Sentence 2 AktG requires that the minority interests are guaranteed a certain share of the profits (“guaranteed dividend”) that is measured on the annual compensation payment. For this reason, the corporate agreement makes a distinction between the guaranteed dividend (for the (potential) period of domination without profit and loss transfer) on the one hand and the annual compensation payment (for the period of domination with profit and loss transfer) on the other.

II. Completeness of the contract

The minimum requirements of a domination and profit and loss transfer agreement are defined in Secs. 291 et seq. AktG. The audit of the completeness and accuracy of the domination and profit and loss transfer agreement is therefore based on the general disclosures of the contractual parties, the findings regarding the substance of the agreement, the beginning and duration of the agreement, and the agreements on the guaranteed dividend, annual compensation payment and cash compensation.

1. Registered names and offices of the entities involved

The registered names and offices of the entities involved are stated in the domination and profit and loss transfer agreement and correspond to the entries in the respective commercial registers.

2. Management

According to § 1 of the agreement, Celesio AG has placed the management of its company under the direction of Dragonfly KGaA. Dragonfly KGaA is entitled to issue instructions to the management board of Celesio AG with regard to the management of the company. Dragonfly KGaA cannot issue instructions to Celesio AG to amend, maintain or terminate the agreement. These contractual arrangements comply with the requirements of Secs. 291 (1) Sentence 1, 299 AktG.

3. Profit transfer

The duty to transfer profit commences in the fiscal year beginning on 1 January 2015 provided that the agreement has become effective upon being entered in the commercial register responsible for Celesio AG by the end of the fiscal year. If the entry is not made until a following fiscal year, the duty to transfer profit only comes into force in this later fiscal year (see Sec. 2 (3) of the agreement).

Celesio AG has agreed in § 2 of the agreement, to transfer all its profit to Dragonfly KGaA. Pursuant to § 2 of the agreement and in accordance with the statutory provisions of Sec. 301 AktG, in the applicable version, any net income generated for the year (prior to the transfer of profits) is to be transferred as profit after deducting any losses carried forward from the prior year, the amount to be added to statutory reserves pursuant to Sec. 300 AktG, and the amount barred from distribution in accordance with Sec. 268 (8) HGB. With the approval of Dragonfly KGaA, Celesio AG can transfer amounts from the net profit of the year to other revenue reserves provided this is permitted under the Commercial Code and makes sense upon exercise of due commercial prudence. Revenue reserves created over the term of the agreement must be released and used to offset any net loss for the year or transferred as profit upon the written request of Dragonfly KGaA.

The obligation to transfer profit becomes due at the end of each fiscal year of Celesio AG, and bears interest of 5 % p.a. from that date. These provisions satisfy the statutory requirements of Sec. 291 (1) Sentence 1, and Sec. 301 in conjunction with Sec. 300 no. 1 AktG.

With regard to the timing differences between the origination of the right to receive the profit transfer and the right of non-controlling interests to receive compensation, the Federal Court of Justice found that equal treatment of minority interests whose right to a settlement falls due pursuant to § 4 (3) of the agreement, is not possible vis à vis the controlling company, nor necessary (see BGH, 19 April 2011, II ZR 237/09 No. 14 (juris)).

4. Assumption of losses (Sec. 302 AktG)

According to § 3 (1) of the agreement, Dragonfly KGaA is obliged to assume losses in accordance with the applicable version of Sec. 302 AktG.

The dynamic aspect of this clause corresponds in full to the requirements of Sec. 302 AktG.

According to § 3 (2) and § 2 (3) of the agreement, Celesio has a right to compensation of its net loss for the year upon the closing date of the fiscal year of Celesio AG. This right bears interest from this date at 5 % p.a. This arrangement complies with the legal requirements and the court rulings.

5. Fair guaranteed dividend and annual cash compensation (Sec. 304 AktG)

According to §4 (1) of the agreement, Dragonfly KGaA guarantees every minority shareholder of Celesio AG payment of a certain share of the profit for fiscal 2014 (guaranteed dividend) if the agreement becomes effective upon being entered in the commercial register in 2014 (§4 (4)).

If the dividend distributed by Celesio AG for fiscal 2014 corresponds to the amount guaranteed in the corporate agreement or exceeds it, no further payment is required. Dragonfly KGaA is only obliged to make a payment to minority interests if and to the extent that the dividends distributed by Celesio AG for fiscal 2014 are below the amount of the guaranteed dividend.

Moreover, Dragonfly KGaA is obliged from the fiscal year in which the right to a profit transfer arises, i.e. most likely from 1 January 2015, to pay an annual compensation payment for the duration of the corporate agreement.

The guaranteed dividend and the annual compensation payment amounts to EUR 0.83 before tax for each share in Celesio AG, less corporate income tax and solidarity surcharge on the basis of the tax rate for the respective fiscal year, whereby these taxes are only deducted from the profit burdened by German corporate income tax contained in the share of the before tax annual compensation payment of EUR 0.00 per no-par share.

The guaranteed dividend and the annual compensation payment is due on the first bank-day following the general shareholders' meeting of Celesio AG for the preceding fiscal year. Moreover, the annual compensation payment is due within eight months of the close of the fiscal year at the latest.

In its benchmark decision on 19 April 2011 (II ZR 237/09, No. 8 (juris)), the Federal Court of Justice ruled that the right to an annual compensation payment arises every year upon the end of the ordinary general shareholders' meeting following the close of the fiscal year, provided that the contractual agreement does not make some other arrangement, as in this case (see OLG Stuttgart, 3 April 2012, 20 W 6/09, No. 90 (juris)).

The extension of a guaranteed dividend or fixed annual compensation payment corresponds to the legal requirements of Sec. 304 (1) Sentences 1 and 2 AktG.

Please see Section F.II for information on how the guaranteed dividend/compensation payment was derived.

The compensation payment is extended for the first time in the fiscal year in which the right to a profit transfer arises. Pursuant to §2 (3) of the agreement, this will not be before 2015, assuming the agreement becomes effective upon being entered in the commercial register in 2014.

The guaranteed dividend or compensation payment is reduced on a *pro rata* basis in the event that the agreement is terminated during a fiscal year of Celesio AG or Celesio AG creates an abbreviated fiscal period for the period in which it is obliged to transfer its profits (§ 4 (4) of the agreement).

The agreement does not contain any ruling on the possibility of a *pro rata temporis* guaranteed dividend if, for example, the non-controlling interests are squeezed out during any one fiscal year. With regard to the appeal brought against the squeeze-out under the German Stock Corporation Act, the Federal Court of Justice found that there is no right to payment of a guaranteed dividend/compensation on a *pro rata temporis* basis (see BGH, 19 April 2011, II ZR 237/09, benchmark decision and No. 8 (juris)). The domination and profit and loss transfer agreement does not terminate upon the forced transfer of shares (see OLG Stuttgart, 3 April 2012, 20 W 6/09, No. 95 (juris)). Due to the lack of a contractual provision or corresponding requirement in the law, non-controlling interests have no right to a guaranteed dividend on a *pro rata temporis* basis in the event they are squeezed out.

§ 4 (5) of the agreement stipulates that the guaranteed dividend or annual compensation payment will be reduced in the event that the issued capital of Celesio AG is increased from company funds by the issue of new shares. In this case, the guaranteed dividend/annual compensation payment is reduced in such a way that the sum total of all guaranteed dividends/compensation payments remains unchanged. In the prevailing opinion, such a reduction is based on existing law even without the need for a separate arrangement in the contract.

In the event of a capital increase from a cash or non-cash contribution then the new shares are also entitled to an annual compensation. This too corresponds to the prevailing opinion in the professional law literature.

§ 4 (6) of the agreement corresponds to the requirement found in Sec. 13 SpruchG by which a court ruling under the SpruchG is binding for all parties, including those shareholders who have already left the company on account of the original cash compensation from the domination and profit and loss transfer agreement or other compensation offered in return for a corporate restructuring measure. Likewise, all other minority shareholders shall be treated equally if Dragonfly KGaA agrees to pay a higher guaranteed dividend and/or annual compensation payment to one particular shareholder as part of a settlement to avert or conclude proceedings concerning the adequacy of the guaranteed dividend or compensation payment (*Spruchverfahren*).

6. Cash compensation (Sec. 305 AktG)

According to § 5 (1) of the domination and profit and loss transfer agreement, Dragonfly KGaA agrees to purchase the no-par value shares of any minority shareholder of Celesio AG upon payment of a settlement of EUR 22.99.

The choice of compensation is based on Sec. 305 (2) No. 3 AktG and is therefore in agreement with Sec. 305 AktG.

Please see Section F.I for information on how the price of the settlement was derived.

According to Sec. 5 (2) of the agreement, the obligation to purchase such shares is only for a limited term, ending two months after the day on which a public announcement pursuant to Sec. 10 HGB is made that the contract has been filed with the commercial register of Celesio AG. This contractual arrangement complies with the requirements of Sec. 305 (4) Sentence 2 AktG. Due to the law and a corresponding contractual arrangement, the public announcement of the court ruling in the electronic Federal Gazette substitutes the public announcement of the filing in the commercial register if the terms of the guaranteed dividend or annual compensation payment and/or cash compensation have been applied for under a case brought under the terms of SpruchG (Sec. 305 (4) Sentence 3 AktG).

If, by upon expiry of the period defined in § 5 (2) of the agreement, the share capital of Celesio AG is increased from company funds by issue of new shares, the compensation paid per share shall decrease in such a way that the total amount of all compensation paid remains the same. If the issued capital of Celesio AG is increased by cash or non-cash contribution, then the rights under

§ 5 of the agreement also apply to the new shares subscribed to by the minority shareholders from the new share issue (§ 5 (3) of the agreement).

The contract does not govern the issue of interest. In this case the law requires interest to be paid on the compensation beginning on the day on which the domination and profit and loss transfer agreement takes effect at 5 percentage points above the respective base rate as defined by Sec. 247 BGB, without thereby affecting any claims for further damages (Sec. 305 (3) sentence 3 AktG).

§ 5 (4) of the agreement governs the terms of payment for the cash compensation. There are no requirements in the law in this regard.

If a case is brought under SpruchG and a court rules for a higher compensation, the other shareholders who have already accepted a compensation can demand a corresponding increase to the compensation they were paid. Likewise, all other minority shareholders shall be treated equally if Dragonfly KGaA agrees to pay a higher compensation to one particular minority shareholder of Celesio AG as part of a court settlement to avert or conclude proceedings concerning the adequacy of the compensation paid (§ 5 (5) of the agreement).

7. Revival of the offer for a compensation (§5 (6))

If the agreement is terminated by Dragonfly KGaA or Celesio AG upon expiry of the deadline for the acceptance of the offer of compensation, each minority shareholder will be granted once again a right at this time to sell its Celesio AG shares in return for payment of the compensation for a limited period. Dragonfly KGaA is then obliged to purchase these shares. With regard to the amount of the purchase price, it is further agreed that the price will be the higher of the agreed compensation or settlement arranged during arbitration (SpruchG) or at court.

According to §5 (6) of the agreement, the corporate agreement will revive upon termination of the contractually agreed right to compensation of the minority shareholders for a limited term. There are no apparent doubts regarding the permissibility of this clause.

8. Duration and termination of the contract

In agreement with the legal requirements, §6 (1) and (2) of the agreement stipulate that the agreement requires the approval of the general shareholders' meeting of Celesio AG and the

shareholders' meeting of Dragonfly KGaA and must be entered in the commercial register of Celesio AG before it can take effect.

§ 3, § 4 and §5 of the agreement govern the duration and termination of the domination and profit and loss transfer agreement. There are no special legal requirements with regard to the duration and termination of a domination and profit and loss transfer agreement.

9. Comfort letter

In § 7 of the agreement, a reference is made to the comfort letter issued by McKesson Corp., the sole shareholder of Dragonfly KGaA. Without actually entering the agreement itself, McKesson Corp has taken on the obligation to ensure that Dragonfly KGaA is suitably financed to meet its obligations to pay a guaranteed dividend, an annual compensation payment and cash compensation in full and by the due dates.

The letter of comfort is attached as an annex to the domination and profit and loss transfer agreement.

In contrast to a squeeze-out, in which the cash compensation is secured by a bank guarantee pursuant to Sec. 327b (3) AktG, the law governing corporate agreements does not consider any guarantees.

In the case at hand, the credit rating of McKesson Corp. extends to the other party to the agreement, i.e. Dragonfly KGaA, and therefore offers additional security to the minority shareholders.

10. Conclusion

As the result of our review, we have found that the domination and profit and loss transfer agreement contains the full and proper terms and provisions as required by Sec. 291 et seq. AktG, and therefore complies with statutory requirements.

III. Appropriateness of the Valuation Methods Used

In light of the rulings handed down by the highest courts, the guaranteed dividend, annual compensation payment and cash compensation are based on the results of a business valuation unless a higher listed price is relevant for the consideration. In Section E, the report on the contract contains comments on how the fair compensation and guaranteed dividend were arrived at and justified.

The valuation report, which is integrated in the joint report from the management of the two entities, states that the valuation standards which have been applied comply with the standards of business valuation now generally accepted in both theory and practice as reflected in the statements issued by the IDW, in particular, the IDW Standard, "Principles for the Performance of Business Valuations" (IDW S 1, 2008).

According to prevailing court rulings and generally accepted valuation practice, which this business valuation is based on, the guaranteed dividend and cash compensation should be derived from an objectified measure of the business value. The objectified business value represents the "inter-subjective" value of verifiable future earnings from the subjective perspective of the various shareholders which would result upon the company continuing to operate under the existing business concept. Should the business valuation be required under company law or for contractual reasons, the valuation is performed from the perspective of the shareholder as a natural domestic tax-payer subject to unrestricted tax in Germany (IDW S 1, 2008 No. 31).

As explained in more detail below, we are of the opinion that the representations and comments made in the joint report relating to the valuation method used and the decision on the guaranteed dividend, annual compensation payment and cash compensation are accurate.

1. Equity value

Assuming the exclusive pursuit of financial objectives, a company's value is determined exclusively by the present value of the net inflows related to ownership in the company to the owners (shareholders or partners). The future net earnings value is basically the result of the free cash flow which can be generated from continuing the company's operations. In addition, the liquidation value of any non-operating assets is also considered. The net present value of these surpluses is derived by applying a discount rate that equates with the return of an investment that can be reasonably taken as an adequate alternative investment to an investment in the company being valued.

The present value of future earnings is thus the theoretically correct value of an enterprise. According to IDW S1 rev. 2008 No. 7, the business value can be determined using the discounted earnings method or the discounted cash flow method. In this case the business value of Celesio AG has been determined by KPMG using the discounted earnings method which is most commonly used in Germany, both in practice and recognized by the courts. Considering the fact that both methods lead to the same business value if the underlying assumptions are identical, particularly as regards financing (see IDW S1, 2008, No. 101), the discounted cash flow method has not been used as an additional method of deriving the business value, as permitted under the law.

In spite of the generally wide acceptance of the discounted earnings method, it should be noted that this method is associated with numerous estimates and individual methodical decisions that are not sufficient to justify a ruling on the correctness of the consideration, merely its fairness (see OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 179 (juris)).

The neutral valuer has valued the business of Celesio AG on a **stand-alone basis** in accordance with the prevailing opinion in case law and valuation practice (see: Werner, "Die Behandlung von Verbundeffekten bei Abfindungen nach §§ 305 und 320 AktG", in: Festschrift Steindorf, 1990, p. 303 ff., on the differentiation between genuine and non-genuine synergies and Popp, WPg 2008, p. 23, 29 ff., on the distinction between synergies prior to and subsequent to the contract). Consequently, businesses should be valued on the basis of the existing business model and exclude any expected (future) synergies from the transaction. Thus they should be valued assuming their continued dependence from the buyer (see OLG Frankfurt, 28 March 2014, 21 W 15/11, No. 146 (juris); OLG Stuttgart, 5 June 2013, 20 W 6/10, No. 169 (juris); Mertens, AG 1992, p. 321; WP-Handbuch 2014, Vol. II, Sec. A No. 90; Busse von Colbe, ZGR 1994, p. 595 (600); Bilda, in: Münchener Komm. zum AktG, 2000, § 305 No. 82; Koppensteiner, in: Kölner Komm. zum AktG, 3rd edition., 2004, § 305 No. 65; Krieger, in: Münch. Hdb. AG, 3rd Edition, 2007, § 70 No. 132; Emmerich, in: Emmerich/Habersack, Aktien- und GmbH-Konzernrecht, 5th Edition, 2013, § 305 No. 70a; Matschke/Brösel, Unternehmensbewertung, 2005, p. 157). According to IDW S 1, 2008, No. 33 f., real synergy effects should not play any role within the scope of an objectified business valuation (see OLG Stuttgart, 19 January 2011, AG 2011, p. 420, 421; OLG Düsseldorf, 9 September 2009, ZIP 2009, p. 2055, 2058; OLG Düsseldorf, 27 February 2004, AG 2004, p. 324,327; OLG Stuttgart, 4 February 2000, DB 2000, p. 709,710). Thus a distinction should be made between synergies in place before the corporate agreement and those following it. **Pre-contractual synergies** are those which exist constructively by virtue solely of the entity's group affiliations (Sec. 311 ff. AktG), even without any corporate agreement being made. By contrast, **contractual synergies** require additional action to be taken before they can be realized, whereby such measures can only be effected upon conclusion of a domination and profit and loss transfer agreement.

An analysis has been conducted by McKesson Corp. in coordination with Celesio AG on the associated measures. All suggested integration projects currently were examined to determine to what extent they were realizable within the parameters of the existing legal structure and without the existence of the corporate agreement. Moreover the analysis reviewed which economic benefits were expected to arise from the measures for the respective entities concerned.

The Higher Regional Court of Munich has stressed, justifiably so, that hypothetical future developments do not provide a sufficiently sound basis for forecasting the future earnings of the business being valued (31 March 2008, 31 Wx 88/06, No. 22 (juris)). Likewise, synergies that could have been realized with a number of other companies should not be considered (see OLG Frankfurt, 28 March 2014, 21 W 15/11, No. 145 (juris)).

Pursuant to IDW S1, 2008, No. 35, an assumption is made when determining objectified business values that all distributable cash flows, after considering the documented business model and legal restrictions, are distributed to the owners. In the continuation phase (known as the terminal phase) a standardized assumption is made that the distribution patterns of the valuation object are equivalent to the distribution patterns of an alternative investment. According to IDW S1 2008 the assumption of an adequate alternative investment within the framework of a business valuation could also take the form that any retained earnings are fictitiously allocated directly to the shareholders as, alternatively, the shareholders could realize these eventually by means of a higher share price reflecting the rise in retained earnings. From the perspective of the standardized shareholder subject to a lower personal income tax rate there is a certain value-added in retaining the earnings.

Due to the fact that the business value is determined from the perspective of the shareholders, the shareholders' tax burdens incurred on the dividends from the company and any gains realized from rises in the share price must also be considered.

2. Liquidation value

According to the Principles for Performing Business Valuations, the liquidation value of the Company must be determined alternatively to the discounted earnings value if the net present value of financial surpluses resulting from a liquidation of the company exceeds the discounted earnings value, assuming the company is a going concern (see Paulsen, Münchener Kommentar zum Aktiengesetz, 3rd edition, 2010, Sec. 305, No. 140; OLG Düsseldorf, 13 March 2008, AG 2008, p. 498, 500).

According to the court rulings, the liquidation value should be applied if there is an intention to actually liquidate the company and the earnings forecasts of the company are negative for a sustained period (see BGH ruling dated 18 September 2006, p. 887, 889; OLG Düsseldorf, 10 June 2009, 26 W 1/07, No. 96 f.; OLG Düsseldorf, 29 July 2009, 26 W 1/08, No. 37). Neither can be stated for Celesio AG without doubt. The earnings forecasts of Celesio AG are not negative for a sustained period. Consequently, the liquidation value of Celesio AG does not represent a minimum business value of the enterprise.

Due to the fact that in this case the entity should continue in business indefinitely and, further, it can be assumed that its equity value lies above the liquidation value on account of the costs incurred in a liquidation (e.g. social plan for lay-offs, severance payments, etc.), the independent valuer has opted not to derive or present the liquidation value in the report.

Alternatively, as a fall-back, reference can be made to the carrying value of equity in the most recent audited set of consolidated financial statements of Celesio AG as of 31 December 2013, which is approximately EUR 1,825.6 million. Even without considering the costs of liquidation, this corresponds to only roughly 39 % of the imputed business value of EUR 4,672.0 million used to assess a fair cash compensation of EUR 22.99 per share.

We are of the opinion that the decision not to derive the liquidation value is reasonable in this case.

3. Net asset value

In contrast to the liquidation value, the net asset value is without any informative value when determining the overall value of a going concern, even if there are plans to liquidate the business (see IDW S 1 2008, No. 6. OLG Stuttgart, 14 September 2011, 20 W 6/08, No. 202 (juris); OLG Düsseldorf, 28 January 2009, AG 2009, p. 667, 668; Großfeld, *Recht der Unternehmensbewertung*, 7th edition., 2012, p. 363; 14 February 2014, 5 HK O 16505/08, *ratio decidendi* p. 64; LG Munich, 30 December 2009, 5 HK 15746/02 *Der Konzern* 2010, pp. 188, 194). Even in the case where a liquidation is planned, the liquidation value should be used, not the net asset value. It was not therefore necessary to determine this value.

4. Market value

Due to the fact that, at the end of our audit, the shares of Celesio AG are listed on the regulated markets of the stock exchanges of Frankfurt, Berlin, Düsseldorf, Munich and Stuttgart, and for free trade on the stock exchanges of Hamburg and Hanover, the share price on the exchange (market capitalization) could be considered as a basis for determining a fair cash compensation.

In its DAT/ALTANA ruling dated 27 April 1999 (AG 1999 p. 566 ff.), the Federal Constitutional Court emphasized the relevance of market value for establishing the lower limit to the measurement base used for the cash compensation for cases where a profit transfer agreement had been concluded, and also for corporate integrations.

However, the duty to consider the market price when setting a fair cash compensation does not apply without restriction. It may be possible to set a cash consideration below the market price if the listed share price, in exceptional cases, does not represent the fair value of the shares. This is primarily the case when there has been no trading of the shares over a long period of time owing to a tight market and the individual shareholder has not been able to sell its shares at the listed price or when the listed share price has been manipulated (see OLG Düsseldorf, 4 October 2006, DB 2006, p. 2391, 2395, LG Frankenthal, 13 August 2013, 2 HK O 120/10; ratio decidendi p. 13 f.).

In addition, it is doubtful whether the fair value can lie above the price on the stock exchange. Although the Federal Court of Justice adopted the ruling of the Federal Constitutional Court in its "DAT/Altana" ruling on the fairness of a cash compensation pursuant to Sec. 305 AktG, giving the minority shareholders the right to the higher of the two values when the market capitalization differs from the value calculated in the business valuation (see BGH, 12 March 2001, AG 2001, pp. 417, 418 f.) However, in the opinion of the higher regional court of Stuttgart, there is no duty under the constitution to grant the minority shareholders the greater benefit when the market price differs from their share in the future earnings value of the enterprise (see OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 219 (juris), OLG Stuttgart, 5 May 2009, 20 W 13/08, No. 214 f. (juris); LG Frankfurt, 27 January 2012, 3-5 O 102/05, ratio decidendi p. 16; see also Stilz, Unternehmensbewertung und angemessene Abfindung, in: Habersack/Hommelhoff (Hrsg.), FS Goette, 2011, p. 529 ff.). The Federal Constitutional Court has confirmed the rejection of the higher benefit in relation to a number of different valuation methods (see BVerfG, 16 May 2012, 1 BvR 96/09, No. 18). The further development remains to be seen.

In keeping with professional practice, the neutral valuer has determined the value of the Company in a business valuation in parallel to the determination of the share price.

In its ruling dated 19 July 2010 (AG 2010, p. 629 ff., "Stollwerk") the Federal Court of Justice ruled that the market price of the share used to derive a fair cash compensation paid to squeeze-out minority shareholders must be measured on the average share price over a three-month period prior to announcement of the structural measures. With this ruling the Federal Court of Justice partially overturned its earlier rulings and has now accepted the prevailing opinion in the technical literature (see, for example, Adolff, Unternehmensbewertung im Recht der börsennotierten Aktiengesellschaft, 2007, p. 335 f.) and valuation practice.

The neutral valuer properly determined the average market price to delineate a lower limit for the cash compensation pursuant to Sec. 305 AktG. According to the prevailing opinion and numerous court rulings, a fair annual compensation payment pursuant to Sec. 304 AktG should be derived, by contrast, from the business value. The average market price does not have any relevance in this regard (see BGH, 13 February 2006, AG 2006, p. 331, 332; OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 481; OLG Stuttgart, 18 December 2009, 20 W 2/08, No. 309; OLG Hamburg, 7 August 2002, AG 2003, p. 583, 585).

5. Comparative valuation

In addition to the discounted earnings value, valuation practice also uses so-called multiple methods to estimate a preliminary business value, ranges of business values, or to assess plausibility. Like the discounted earnings method, this valuation concept is also based on earnings. However, business value in this case is determined by multiplying earnings by a profit indicator. The multiples method is based on a comparative business valuation in the sense that suitable multiples are derived from the capital market data of publicly listed companies or transactions and transferred to the company being valued.

Such multiple-based valuations only represent a simplified valuation, but in some cases they can provide an indication of the plausibility of other methods (see IDW S 1, 2008, No. 143. For critical opinions on their informative value see: OLG Frankfurt 2 May 2011, 21 W 3/11, No. 83 (juris); OLG Frankfurt, 15 February 2010, 5 W 52/09; No. 105 (juris)). In addition to the analytical valuations conducted using the discounted earnings method, the independent valuer must make a comparative valuation using estimates made by analysts.

We have verified the calculations made by the independent valuer. In sum, it can be stated that this plausibility check reveals that the fundamental business value determined using the principles of IDW S 1, 2008, lies above the range of multiplier-based market valuations of comparable companies. In conclusion, the plausibility check does not reveal any indication that the calculated equity value is too low in comparison to the current situation on the capital markets.

6. Prior acquisitions by Dragonfly KGaA

By far the greatest portion of the shares in Celesio AG held by Dragonfly KGaA was acquired from Franz Haniel & Cie. GmbH in January 2014 for a price of EUR 23.50 per share or via conversion of convertible bonds that fall due in either October 2014 or April 2018 (contingent capital 2009 and 2010, also referred to as “2014 bond” and “2018 bond”).

In its ruling on 27 April 1999, the BGH ruled that the price actually paid by a majority shareholder for shares in an entity it controlled could be ignored in the valuation of net equity when calculating a fair cash compensation pursuant to Sec. 305 AktG because they have no relationship to the “true” value of net equity held by the majority shareholder nor to the fair market value of the shares (see BVerfG, 27 April 1999, AG 1999, p. 566, 568). The deliberations of a majority shareholder prior to taking or preparing any measure to alter the legal structure of the entity, such as making a takeover bid, with the concomitant willingness to pay a higher price, only apply to the situation of the majority shareholder and have no relevance for third parties. From the view of the minority shareholder, the (elevated) price paid by the majority shareholder for individual shares can only be realized if it managed to sell its shares to the majority shareholder. However, the minority shareholder has no constitutional right to force such a sale. This ruling agrees with the prevailing opinion in the technical literature and the rulings from the highest court (see, for example, Paulsen, in: Münchener Kommentar zum AktG, 3rd Edition, 2010, § 305, No. 82, BGH, 19 July 2010, AG 2010, pp. 629, 632).

The European Court of Justice came to a similar conclusion in its ruling dated 15 October 2009 (AG 2009, p. 821 ff). In the opinion of the ECJ, European law does not contain any legal principle which would protect minority interests to the extent that the majority shareholder is duty-bound to buy shares at the same terms and conditions as those it accepted when it acquired its majority holding to obtain control or reinforce its control of the entity. The irrelevance of prices paid by the majority shareholder was once again expressly confirmed in a ruling handed down by the Federal Court of Justice (19 July 2010, AG 2010, p. 629, 629) and the OLG Stuttgart (4 May 2011, AG 2011, p. 560, 562) as well as the OLG Frankfurt (24 November 2011, 21 W 7/11, No. 30 (juris)) (for a contrary view see also LG München, 21 June 2013, 5 HK O 19183/09, No. 322 f. etc.; also LG Hanover, 22 August 2012, 23 AktE 149/10 that diverge from the ruling of the BGH). The most important point in this regard being that the prices were not market prices.

7. Methods used to determine the cash compensation

According to Sec. 305 AktG, a domination and profit and loss transfer agreement must include a clause obliging the other party in the contract to acquire the shares of a minority shareholder in consideration for an appropriate compensation if the minority shareholder so requires.

Pursuant to Sec. 305 (3) Sentence 2 AktG, the fairness of the cash compensation must reflect the circumstances of the company at the time when the shareholders' meeting passes the resolution on the transfer of the shares. Compensation of the full value of the share in the company is deemed fair. The departing shareholder should receive the value of his participation in the inherent value of the company in its entirety (BVerG dated 7 August 1962, and BVerfG dated 27 April 1999).

In this case, the cash compensation is not based on the business value derived from the discounted earnings plus the non-operating assets but from the average market price, which lies above this.

8. Method used to determine the guaranteed dividend and annual compensation payment

In the case of a standalone domination agreement, Sec. 304 (1) Sentence 2 AktG requires that the minority interests are guaranteed a certain share of the profits ("guaranteed dividend") that is measured on the annual compensation payment.

The amount of the guaranteed dividend is determined by Sec. 304 (2) Sent. 1 AktG which requires that a settlement must assure an annual payment of the amount that would likely be available as the average profit distribution per share based on the profit performance of the company to date and its profits projections for the future taking account of appropriate depreciation and impairments, without, however, creating other revenue reserves. The minority shareholders are therefore fundamentally entitled to the share in average future profits which they could expect to receive when the domination and profit and loss transfer agreement had not been entered into. The decisive factor in this regard is what the Company could distribute as a dividend on a sustained basis.

In the prevailing opinion found in the technical literature, the average amount required by the law should be derived by annuitizing the business value determined in the valuation. Due to the generally unlimited term of the corporate agreements, this can be represented mathematically by converting the general formula for the equity value into a perpetual annuity:

$$UW = \frac{E}{i} \quad \text{resp.} \quad E = UW * i$$

The formula for the guaranteed dividend (E) has been correctly translated into a perpetual annuity from the equity value (UW) by multiplying the latter with the interest rate of the annuity.

9. Conclusion

In sum, we believe that use of the discounted earnings method and the market value approach to value the company concerned and to derive the cash compensation and the guaranteed dividend is a fair approach in terms of Sec. 293e (1) sentence 3 No. 2 AktG.

On the basis of our audit, no other method should have been applied and was not in fact used.

There is no need to weight the various methods pursuant to Sec. 293e (1) sentence 3 No. 3 AktG, due to the sole use of the (higher) market value to derive the cash compensation and the sole use of the discounted earnings value (including the value of non-operating assets) to determine the annual compensation payment.

D. Methods Used to Audit the Fairness of the Annual Compensation Payment and the Cash Compensation

A fair cash compensation must consider the circumstances of the company on the date the main shareholders' meeting passes the resolution approving the contract. The compensation is fair if it corresponds to the full value of the shares to be acquired upon request of the minority shareholder. This corresponds to the *pro rata* share held in the objectified total value of the business (see IDW S 1, 2008, No. 13).

The business valuation is based on the planning calculations of Celesio AG for fiscal years 2014 to 2018. In the course of our review, we examined the plausibility of the planning calculations. We based our examinations on analyses of past performance, explanations on the planning calculations, working papers of the neutral valuer and published market data with an informative value. The management board of Celesio AG and the persons named by the board as information sources provided us with detailed explanations of the business and background to the planning calculations. Moreover, to review the plausibility of the planning we calculated a number of indicators and trends in the planning and compared these to the available market data. For more details please see the comments below on the business planning of the company.

The audit reports of the financial statements and audit reports of the consolidated financial statements of Celesio AG were provided to us for the years 2011 to 2013 to analyze historical performance. The most significant factors were explained to us in discussions with the people named to us as sources of information.

To review the business valuation, we examined the print-outs of the valuation models provided to us by the neutral valuer, in electronic form in some cases, as well as the valuation report itself. Responses to individual questions were provided to us orally or in writing. We examined whether the principles of IDW S 1, 2008, were observed in order to assess the methods used in the business valuation. We examined the discount rate using the working papers of the auditor of the valuation report and publicly available capital market data. We examined whether non-essential operating assets needed to be recognized separately based on the audit reports on the financial statements and interviews with the information sources named to us.

We put our audit focus on the following items when reviewing the application of the discounted earnings method:

- Complete recognition of the valuation object in the consolidated planning calculations
- Plausibility of the planning statements and how up to date they were
- Correct application of IDW S 1 2008
- Determination of terminal value
- Derivation of the discount rate
- Relevance of the market share price in deriving the cash compensation
- Calculation of the annual compensation payment

The differences in opinion that arose for isolated issues were discussed by Ebner Stolz and KPMG, the neutral valuer, during the course of the review.

In order to derive the terminal value, the neutral valuer set an EBIT margin for the terminal phase based on analyses of the historical performance of national markets and the expected development of inflation and prices for pharmaceutical products. We discussed the calculation of this margin and its amount intensively with the valuer, also with the involvement of the management board of Celesio.

We also discussed with the neutral valuer the issue of to what extent unused tax losses in Germany could be considered from a tax perspective and for valuation purposes after the harmful takeover.

Intensive discussions were also held with the neutral valuer with regard to the derivation of the beta factor, the different cut-off dates used for the reference periods and the intervals used to calculate returns.

In addition to addressing the basic principles behind the calculation of the annuity factor, we also performed extensive analyses of the selection and suitability of various McKesson Corp. bonds and US treasury bonds for this purpose and examined the liquidity of the bonds separately.

There were no other differences of opinion between Ebner Stolz and KPMG on our assessment of the fairness of the compensation by the time the valuation work was finalized. Correspondingly, our review report is not qualified in any regard and confirms in full the appropriateness of the cash compensation and the annual compensation payment.

E. Audit Findings of the Valuation in Detail

The generally accepted standards for the valuation of business enterprises explained in Section C represent abstract parameters which require specification in individual cases. We verified to our satisfaction that the general principles for the performance of business valuations have been appropriately applied in the specific methods used to value Celesio AG, as explained below.

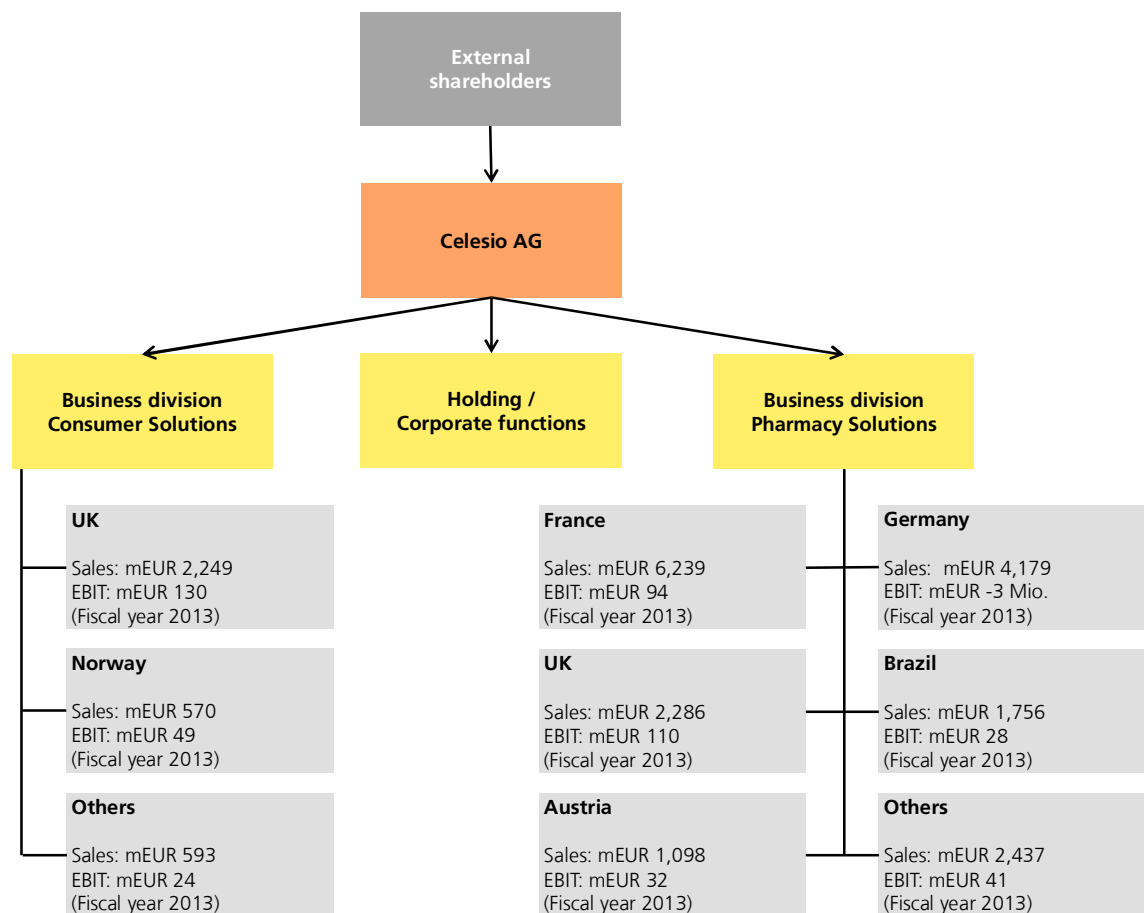
The business value of Celesio AG was derived by the neutral valuer from the equity value calculated using the discounted earnings method based on the operating business of the company. Based on our findings we are of the opinion that this method is professional and suitably reflects the business value of Celesio AG in a valuation model.

We verified all aspects of the valuation, including but not limited to, the derivation of future cash surpluses available for dividend distributions, the derivation of the discount rate and the discounting of future surpluses to the date of the valuation.

I. Valuation object

The subject of the valuation is accurately presented in the report on the contract. The subject company is therefore Celesio AG and all its holdings in Germany and abroad.

The distribution of sales and profits from the various divisions of Celesio AG is presented in the following chart:



Basically, there are a number of methods which can be considered for valuing a group of companies, like Celesio AG. Using the sum of the parts approach, each group company is valued separately, and in isolation, with the value of the group being determined by addition of the individual values. Alternatively, the value of the group can be derived directly on the basis of the consolidated earnings. A third form is the dividend distribution model by which the expected investment income in the form of dividend distributions are collated at the level of the parent company, in this case Celesio AG.

In this case, the neutral valuer has properly derived the equity value from the consolidated planning.

II. Valuation date

The valuation date for the fair cash compensation has been set at 15 July 2014. Pursuant to Sec. 305 (3) sentence 2 AktG, this treatment is correct because this is the day on which the general shareholders' meeting of Celesio AG will pass a resolution on the domination and profit and loss transfer agreement.

The neutral valuer has set the technical valuation date at 1 January 2014 and discounted the future cash flows available for distribution to this date. The equity value determined on 1 January 2014 was then compounded geometrically to 15 July 2014 using the discount rate for the first year of the business planning.

Using a discount rate of 6.06 % and taking the 196 days until the general shareholders' meeting in 2014 results in the following interest factor for the first year of the planning:

$$\text{Interest factor: } 1.0321 = (1 + 0.0606)^{196/365}$$

We consider this approach to be appropriate. We verified the arithmetic accuracy of the compounding.

As an aside, it should be noted that a linear equation to unwind the discounted future cash flows would not be correct. A linear equation would multiply the interest rate of the first year in the business plan with the quotient resulting from dividing the number of days to the valuation date with the number of days in the year (365) and would therefore ignore the effect of compounding during the year. Moreover, the result on the technical valuation date compounded to the true date of the valuation must lead to exactly the same result as if the dividends had been discounted directly to the valuation date.

The fixed annual compensation payment must be calculated from the equity value at the beginning of the fiscal year in which the domination and profit and loss transfer agreement becomes or should become effective (see Popp, Unternehmensbewertung nach HFA 2/1983, Ausländische Einkünfte, steuerliches Anrechnungsverfahren, Ausschüttungspolitik, working paper 2011-3 University of Erlangen-Nuremberg, p. 23; Popp, WPg 2008, p. 29; Popp, WPg 2008, P. 29;

LG München, 14. Februar 2014, 5 HKO 16505/08, Beschlusstext, P. 67; OLG Frankfurt, 28 March 2014; 21 W 15/11, ratio decidendi p. 92; OLG Stuttgart, 14 September 2011, 20 W 6/08, No. 220 (juris); OLG Karlsruhe, 29 June 2010, 12 W 87/07, ratio decidendi p. 41; OLG Stuttgart, 14 February 2008, 20 W 9/06, AG 2008, pp. 783, 789). The value per share at the beginning of the fiscal year 2014 is therefore the relevant base for calculating the rights to an annual compensation payment by compounding. In contrast, the neutral valuer has determined the annual compensation payment on the basis of the value per share compounded to the date of the general shareholders' meeting.

III. Equity value

1. Analysis of historical performance

In order to estimate the earnings power of the Company and assess the plausibility of the planning statements, the historical results of the Company reported in the consolidated financial statements of Celesio AG and its subgroups for fiscal years 2011 to 2013 were analyzed and broken down into income and expenses, with extraordinary items being eliminated and explained, in order to reveal the main profit drivers in the past. We were provided with the audited consolidated financial statements of Celesio AG for fiscal years 2011 to 2013. Moreover, we also took the controlling figures of Celesio AG used for internal purposes into consideration. We verified the plausibility of the analyses made by the neutral valuer on this basis.

On page 49 ff. as well as annex 2 the valuation report from KPMG contains explanations of the eliminations made at the levels of the reporting segments, CS and PS, the Holding and also at the group level of Celesio AG. We verified the eliminations on the basis of the documents provided to us. The eliminations relate to issues that are not representative for the business planning due to their non-recurring or aperiodic nature (see WP-Handbuch 2014, Vol. 2, Sec. A, No. 256 ff.). In addition, KPMG eliminated any discontinued operations in order to allow comparison between the planning projections and the historical results. Generally, the eliminations relate to the following issues:

- Profits from selling off stocks, branches or pharmacies
- Income from the reversal of provisions
- Severance payments related to restructuring

- Extraordinary amortization of intangible assets and depreciation of property, plant and equipment
- Expenses from terminating contracts
- Burdens from the revaluation of continuing operations
- Income and expenses from discontinued operations incurred since 1 January 2014

We reconciled the historical results with the corresponding figures in the consolidated financial statements. Moreover, we reviewed the eliminations in terms of the materiality and accuracy and verified the reasons for the developments in revenue and earnings in the past. We believe that the eliminations performed were correct.

2. Business planning

a) Planning process

The business planning covers the years 2014 to 2018 and is prepared by the corporate planning department of Celesio AG. The planning process was explained to us by the financial department of Celesio AG. The planning process commences with the strategic planning that is discussed with the management of the local business units and corporate departments. Corporate management then sets the central planning targets for the individual parts of the group. Taking these targets into account, the planning is then elaborated at the level of individual operating units (or entities). The plausibility of the planning is then checked against the targets set by corporate management. The planning underlying the valuation was developed by Celesio AG within the framework of the regular strategy discussion held in April 2014 based on the corporate planning prepared in the autumn of 2013 and the latest information on earnings. The neutral valuer supported the company in terms of methodical aspects. This planning was used as the basis for the valuation (see OLG Stuttgart, 24 July 2013, 20 W 2/12, No. 129 (juris)). The latest planning of Celesio AG, on the basis of which KPMG derived the cash compensation for the minority shareholders of Celesio AG was finally discussed and ratified by the management board of Celesio AG on 14 May 2014.

b) Operative planning**aa) General review of the plausibility of the planning**

The business of Celesio AG comprises the segments, Consumer Solutions and Pharmacy Solutions. Both segments are then organized internally into countries and managed accordingly. The holding is managed separately.

Consumer Solutions is aligned towards patients and consumers and consists primarily of pharmacy business. Celesio is one of the largest pharmacy operators in Europe and had 2,175 retail pharmacies at the end of 2013 spread over various European countries (such as Lloyds Pharmacy in the United Kingdom, or Vitusapotek in Norway). Pharmacy chains are not permitted in all European countries.

The focus of the Pharmacy Solutions segment is on the wholesale activities of the Celesio Group serving pharmacies. In addition, Celesio supplies hospitals. Celesio sees itself as a link between pharmacy manufacturers and pharmacies which market medicines and other pharmacy products. In addition, the various Celesio country companies operate their own branches which keep products in stock. These branches then supply the customers. At the end of 2013, Celesio had 133 branches in ten European countries as well as Brazil. Celesio is the market leader in various countries or occupies one of the top positions in the market. In addition to purely trading business, Celesio also offers services (such as in organization and managing pharmacy cooperations). In this context, it maintains a network of independent pharmacies in Germany, France, and Belgium which are bound to the company to varying degrees.

In addition to managing the group, the holding performs the necessary reporting, operates the central IT department and bundles certain marketing and procurement activities.

In terms of sales, the wholesale segment, Pharmacy Solutions, accounts for over 80 % of the group's revenues. At the level of earnings (EBIT), the relative contribution of Consumer Solutions is significantly larger, although here too, Pharmacy Solutions accounts for the majority, with roughly EUR 316 million to EUR 424 million over the planning period. The Holding places a burden on EBIT with net costs of EUR 107 million to EUR 137 million. A shift in sales is expected over the planning period in favour of pharmacy business (Consumer Solutions). The following summary presents the planning of both segments and the Holding.

	2012 Act. mEUR	2013 Act mEUR	2014 Bud mEUR	2015 LTP mEUR	2016 LTP mEUR	2017 LTP mEUR	2018 LTP mEUR
Pharmacy Solutions	18,205	17,896	17,966	17,129	17,349	17,629	18,066
Consumer Solutions	3,416	3,412	3,640	3,671	3,850	4,025	4,176
Holding/consolidation	0	0	-25	-25	-25	-26	-26
Sales (adj.)	21,620	21,308	21,581	20,774	21,174	21,628	22,216
Pharmacy Solutions	315	307	316	332	370	394	424
Consumer Solutions	207	208	220	205	210	218	226
Holding/consolidation	-91	-90	-137	-121	-107	-111	-114
EBIT (adj.)	432	424	399	416	473	501	536
EBIT margin (adj.):							
Pharmacy Solutions	1.7%	1.7%	1.8%	1.9%	2.1%	2.2%	2.3%
Consumer Solutions	6.1%	6.1%	6.1%	5.6%	5.4%	5.4%	5.4%
Holding/Konsolidierung	-0.4%	-0.4%	-0.6%	-0.6%	-0.5%	-0.5%	-0.5%
Celesio Group (adj.)	2.0%	2.0%	1.8%	2.0%	2.2%	2.3%	2.4%

The decrease in the planned EBIT margin at group level in 2014 compared to the adjusted EBIT margin in the prior year is primarily due to the rise in expenses at the Holding. This can be attributed to the costs associated with the takeover by the McKesson Corp. In the following years, EBIT margin is projected to rise continuously to 2.4 %, which is significantly above the historical figures.

The sales revenue of the **Pharmacy Solutions** segment is expected to decrease by approximately 4.7 % in 2015 after a slight rise in the current year. The main factors in this regard are the wholesale activities in Germany (planned restructuring of the rebate system), France (market contraction due to drastic state intervention and savings targets) and Norway (loss of the hospital business). In the following years, the Company assumes that sales will grow constantly once again, driven not least by activities in the growth market of Brazil, whereby growth will be nevertheless be dampened by further contraction that is expected in the French market which accounts for a significant share of total revenue. A continuous improvement in the EBIT margin is expected in the Pharmacy Solutions segment over the entire course of the planning period. This is mainly due to the expected improvement in gross profit in important markets like Germany, France, and the United Kingdom as well as measures to improve efficiency in all countries.

In the Consumer Solutions segment the Company expects to see a higher than average increase in sales revenue. Correspondingly, the share in total revenue accounted for by the segment will rise continuously from 16.0 % in 2013 to 18.8 % in 2018. Sales growth will be driven primarily from implementing the strategic initiatives such as the European Pharmacy Network (EPN). In the process, the group's own pharmacies and cooperating pharmacies will market themselves under one brand image and focus on growth products, mainly OTC and para-pharmaceutical products to

generate additional sales potential. Moreover, Celesio expects to see increasing income from services to the pharmacies arising from the cooperation with the pharmacies connected to the network. Although significant growth is planned for the Consumer Solutions segment, the planning also projects a slight fall in EBIT margin. The main factors in this development are the expected price reductions due to state intervention and the planned expansion of relatively low-margin services for hospitals in the United Kingdom.

The **Holding/consolidation** items presented in the planning do not present a segment in the true sense, but rather reflect the consolidation effects from intercompany transfers, most of which are the typical costs incurred by a holding company for the corporate management and finances as well as expenses for providing the IT and marketing and procurement. The majority of the costs arising in the holding are allocated to the regional entities in the form of charges for shared services. Owing to the rising wage costs and expenses for introducing new IT systems, it is assumed that these will place a greater burden on earnings. In addition, the expenses related to the takeover by the McKesson Corp. are also reflected in costs for 2014 and 2015. These include, for example, measures to unify the reporting and IT infrastructure as well as the shared projects to optimize central functions.

In discussions with the financial department of Celesio AG we asked for explanations of the business model, the past development of the group and the current year 2014 as well as the planning premises for the individual sub-groups, following up the responses with critical questions. The company derived its planning premises regarding the market development essentially from market predictions of IMS Health, a specialized information service provider in the health care sector. We are of the opinion that the opportunities and risks are appropriately presented on the basis of the market assessments made to us and the sales targets of the company. The planned operating expenses are consistent with the other planning assumptions and past developments.

The McKesson Group identified synergies in advance of the corporate agreement of a volume of approximately EUR 275 million to EUR 325 million p.a. that relate to tax benefits and more favorable terms of purchase. Experience has shown that there are no detailed calculations of potential synergies published shortly before a takeover (see. OLG Frankfurt, 28 March 2014, 21 W 15/11, No. 139 (juris)). Rather, these should be seen as estimates. Based on an analysis from McKesson, it became apparent that a number of the synergies expected by McKesson depend on the conclusion of a domination and profit and loss transfer agreement. These synergies (post-contract) were not considered, in keeping with the court rulings (see C. III.1.). The conceivable synergies from pooling purchases even without conclusion of a corporate agreement are fully considered in the planning. In the course of our audit we discussed the results of this analysis intensively with the neutral valuer and Celesio AG. The results were confirmed by the management board of Celesio AG.

We are satisfied that the synergies have been properly considered in the calculation of the equity value.

bb) Market and competitive environment

In order to analyze the market and competitive environment of Celesio AG, we referred to both market studies of the markets served by Celesio AG as well as the expected development of the peer group companies.

The IMF is forecasting slight growth in gross domestic product in Europe up until 2019¹. However, the development of various health sectors in these countries is of much more significance for Celesio AG. The European pharmacy market will be impacted in coming years by new regulations imposed by policymakers who are seeking to cut health costs. France is targeting savings of EUR 10.0 billion in the health sector in the coming years, of which EUR 3.5 billion should be achieved by falling prices for medicaments. In the United Kingdom, state restrictions will limit the profits attainable on branded drugs. According to IMS Health Study, these developments will lead to low growth or even a contraction for the years 2014 to 2018 in most European countries. The Brazilian market is expected to grow, according to the IMS study, due to rising demand and an improvement of the health sector in the period from 2014 to 2018

¹ IMF - World Economic Outlook April 2014

Based on the estimates made by analysts filed in the database of Bloomberg, the **growth rates** of the revenues of peer group companies ²are shown in the following tables. We have allocated the analyst estimates of the sales of the peer group companies to the fiscal years of Celesio for 2014 to 2016.

	Growth rate of sales				
	2012	2013	2014	2015	2016
McKesson	-0.2%	0.1%	4.5%	10.6%	2.9%
Oriola	15.3%	5.0%	1.9%	1.7%	4.9%
Galenica	3.7%	1.6%	0.4%	4.2%	4.7%
UDG Healthcare	4.8%	11.1%	2.5%	1.9%	0.9%
Cardinal Health	-6.0%	3.2%	-5.5%	1.3%	2.0%
AmerisourceBergen	-2.4%	12.7%	24.0%	4.1%	3.4%
Profarma	15.1%	7.3%	22.1%	20.5%	7.7%
Minimum	-6.0%	0.1%	-5.5%	1.3%	0.9%
Average	4.3%	5.8%	7.1%	6.3%	3.8%
Maximum	15.3%	12.7%	24.0%	20.5%	7.7%
Celesio AG	1.1%	-1.4%	1.4%	-3.7%	2.0%

In all of the year of the planning period, the peer group companies display a very wide range of expected growth in sales revenue. The growth rates assumed for the sales revenue of Celesio AG lie within the range of growth rates forecast for the peer group except for fiscal 2013. We eliminated the rise forecast for the McKesson Corp. in 2014, which is due to the conclusion of the domination and profit and loss agreement with Celesio AG, taking the planning of Celesio AG as the basis. However, the growth rates of individual peer group companies are also distorted by acquisitions. AmerisourceBergen acquired World Courier in 2012 which led to a substantial rise in its sales revenue in 2013. At the beginning of 2014 the company acquired shares in Profarma, which also led to a rise in its forecast growth rate in 2014. The higher growth rates at Profarma that have been realized to date and also those forecast for the future can be attributed to acquisitions between 2012 to 2015 and also a joint venture with AmerisourceBergen planned for the years 2014 and 2015. As a result of this, the informative nature of the above comparison with the peer group is somewhat restricted with regard to sales growth.

The historical income statements of the peer group companies and the analyst estimates filed with Bloomberg reveal the following EBITDA and EBIT margins for the peer group companies, as presented in the following two tables. We have matched the actual EBIT and EBITDA margins and the corresponding analyst forecasts to the respective fiscal years of Celesio AG.

² See page 59 for a description of the peer group companies.

	EBITDA margin				
	2012	2013	2014	2015	2016
McKesson	2.4%	2.6%	2.8%	2.9%	3.2%
Oriola	1.9%	2.1%	2.5%	3.1%	3.2%
Galenica	12.0%	12.8%	12.7%	13.1%	14.6%
UDG Healthcare	5.1%	4.5%	6.2%	6.7%	7.1%
Cardinal Health	2.4%	2.6%	2.9%	3.1%	3.3%
AmerisourceBergen	1.9%	1.4%	1.4%	1.5%	1.6%
Profarma	2.9%	2.3%	3.1%	3.6%	3.8%
Minimum	1.9%	1.4%	1.4%	1.5%	1.6%
Average	4.1%	4.0%	4.5%	4.9%	5.2%
Maximum	12.0%	12.8%	12.7%	13.1%	14.6%
EBITDA margin (adj.) Celesio AG	2.6%	2.6%	2.4%	2.7%	2.9%

	EBIT margin				
	2012	2013	2014	2015	2016
McKesson	1.9%	2.3%	2.7%	2.8%	2.8%
Oriola	1.1%	1.1%	1.6%	2.0%	2.2%
Galenica	9.9%	10.7%	10.6%	11.1%	12.6%
UDG Healthcare	3.5%	2.9%	4.7%	5.1%	5.5%
Cardinal Health	2.0%	2.2%	2.4%	2.7%	3.0%
AmerisourceBergen	1.7%	1.2%	1.3%	1.4%	1.5%
Profarma	2.6%	2.1%	2.8%	3.2%	2.9%
Minimum	1.1%	1.1%	1.3%	1.4%	1.5%
Average	3.3%	3.2%	3.7%	4.0%	4.3%
Maximum	9.9%	10.7%	10.6%	11.1%	12.6%
EBIT-Marge (adj.) Celesio AG	1.5%	1.4%	1.8%	2.0%	2.3%

The EBITDA and EBIT margins of the peer group companies over the planning period result from the arithmetic mean of the profitability indicators expected by the analysts for the peer group.

With regard to the EBIT margin and the EBITDA margin (both related to sales revenue), Celesio AG lies below the corresponding mean of the peer group, both in the past and in the planning period. This is primarily due to the distortion posed in the peer group by Galenica. This company can generate much higher margins as it also produces pharmaceuticals in addition to merely trading in them.

Due to the fact that Celesio AG already generated significantly lower EBITDA and EBIT margins in the past than most companies in the peer group, we are of the opinion that rolling forward this trend is plausible.

cc) Findings of our audit procedures

We examined the planning on the basis of past figures after eliminating non-recurring or extraordinary effects. In the process we examined the development of sales revenue, gross margin and EBIT margin more closely. The statements made in the valuation report (Section 2.5) on the development of the industry in the markets that are relevant for the Celesio Group were confirmed in the discussions we had with the management of the Celesio Group. We compared the assumptions in the planning with the available market data and interviewed the management about the market conditions, competitors and the business strategy of the Celesio Group.

We are of the opinion that the planning is plausible and has been derived in a verifiable way from the existing business model and the market environment.

c) Net interest result

The net interest result was calculated by Celesio AG on the basis of the balance sheet projections based on the cash flow projections and taking account of the planned distribution rate over the detailed planning period.

The financial planning used to determine the net financial result begins with the interest-bearing and receivables and liabilities as of 31 December 2013.

In the course of our audit, we verified the net interest result using our own valuation model. This model integrates the income statement, balance sheet and cash flow projections, based on the existing financing structure, future capital requirements and any earnings or distributions assumed by the management board of Celesio AG.

In accordance with the cut-off-date principle any financial surpluses that have already passed to the owners of the business by payment or a resolution on the appropriation of profit are no longer available for deriving the business value. Dividend distributions that have been passed by resolution and dividend payments reduce the net result and therefore the earnings potential of the entity (see OLG Hamburg, 11 April 2003, AG 2003, p. 441 ff; LG Frankfurt, 4 July 2006, 3-5 O 52/05, ratio decidendi p. 10). Conversely, all potential dividends on which no resolution has been passed are

available to the shareholders and are therefore considered in the calculation of the business value using the dividend discount method. Due to the fact that the annual general meeting had passed a resolution on the dividend for fiscal year 2013 by the date of the valuation, the pending dividend payment of EUR 0.30 per no-par share was recognized under cash and cash equivalents in the opening balance sheet and the profit carried forward was deducted accordingly.

The financial result includes the interest earned on cash and cash equivalents. The interest rate on deposits was determined at 1.0 % in the detailed planning phase and at 2.5 % in the terminal phase. Interest expenses comprise all interest expenses on pension obligations and interest due on the remaining corporate bonds as well as any interest-bearing debt instruments. The interest on these instruments ranges between 4.6 % and 6.0 % in the detailed planning phase and lies at approximately 4.1 % in the terminal phase. It was derived from the existing terms and conditions that can be verified.

The net interest result was properly determined.

d) Corporate taxes

Celesio AG is subject to tax on the basis of the currently applicable corporate tax legislation.

The income taxes of Celesio AG consider trade tax and corporate income tax as well as the solidarity surcharge on corporate income tax, which is incurred on taxable domestic income. The Company is subject to an effective trade tax burden of approximately 14.87 %. As a result of the reform of corporate income tax in 2008, the corporate income tax rate is set at 15.0 % (plus a 5.5 % solidarity surcharge). The local tax rates applying to the income expected in other countries were applied. The existing unused tax losses were considered in each case.

The differences between the IFRS results and the tax base were considered by deriving them directly when analyzing the applicable tax measurement base. We verified these changes to the tax bases in the course of spot-tests. The resulting effective tax rate, based on the results reported in the IFRS financial statements, generally lies slightly above the nominal tax rate.

The unused tax losses that can be used within a limited period amounted to approximately EUR 552 million as the end of the 2013 tax assessment period. The resulting tax savings were considered when calculating income taxes.

However the change in the ownership of Celesio AG, first by Haniel and then by Dragonfly KGaA, resulted in a harmful acquisition of shares. The German unused tax losses (and interest carried

forward) is therefore only deductible to the extent that the “backwards exemption” pursuant to Sec. 8c (1) Sentence 6 and 7 KStG applies to the consolidated tax group. From a substantive perspective, these tax issues, which have not apparently been finally decided on by the fiscal courts, can remain as they are as the unused German tax losses have been considered in the planning where they are utilizable.

The integrated capture of unused tax losses in the business value using the discounted earnings method prevents recognition of a separate item to avoid double-counting in the valuation of future earnings (see Peemöller/Popp, BB 1997, p. 303 ff.; Popp, BB 1999, p. 1154 ff.).

In the course of our review activities, we examined the calculations of the income tax liability in terms of any need to consider changes to tax legislation, the tax rates applied in the calculation and the arithmetical accuracy of the calculation. The tax expense reported in the individual years of the planning has been derived in an appropriate manner.

e) Minority shares in net profit or loss

Generally, the projected profits of the entities in which, from the perspective of Celesio AG, third parties hold minority interests are fully consolidated in the consolidated income statement projections. In order to derive the minority shareholders’ right to future distributable cash flows within the framework of the valuation, the projected profit or loss of the respective entity was corrected by the amount allocable to the non-controlling interests of the entity. We verified the profits allocable to minority interests. These have been properly considered.

f) Terminal value

A terminal value is set for the period from fiscal year 2019 onwards. The neutral valuer derived the terminal value as follows:

Revenue in the terminal phase is based on the revenue in the last year of the detailed planning phase, 2018. Taking account of the market environment and the position of the Celesio Group among the competition, the neutral valuer has set sales revenue in the terminal phase at 1 % above the final year of the planning, 2018. Thus sales revenue in the terminal phase commencing in 2019 has been set at EUR 22,438.2 million.

The neutral valuer has set the gross margin in the terminal phase at 11.9 %, which is slightly above the mean in the detailed planning phase. The neutral valuer justifies the slight decrease in the gross

margin compared to 2018 on the grounds of the fierce competition in the pharmaceuticals market and the impact of government regulations related to the tight state budgets in many of the countries relevant for Celesio AG. In this regard, we consider the gross margin in the terminal phase, which is also significantly above the historical gross margin, to be plausible.

When deriving the EBITDA margin in the terminal phase, the neutral valuer has considered equally both the expected efficiency gains and the expected fall in margin due to inflation. In conclusion, the neutral valuer comes to the conclusion that the EBITDA margin will lie at 2.9 %, which is also significantly above both the historical values and the values in the detailed planning phase from 2014 to 2018. The same applies to the EBIT margin of 2.2 % applied by the neutral valuer. EBIT in the terminal phase beginning in 2019 was quantified by the neutral valuer at EUR 493.6 million.

We would like to point out that it is not essential to roll forward the last year of the planning to arrive at the terminal value. Alternatively, it could be proper treatment to take the average results of the detailed planning phase as the terminal value (see OLG Munich, 31 March 2008, 31 Wx 88/086, reasoning No. 23 and OLG Frankfurt, 20 December 2010, 5 W 51/09, reasoning p. 14, with a reference to the economic cycle; Ernst/Schneider/Thielen, Unternehmensbewertungen erstellen und verstehen, 3rd edition., 2008, p. 44, who warn against rolling forward unrealistic results into the future; Peemöller/Kunowski, Ertragswertverfahren nach IDW, in: Peemöller (Hrsg.), Praxishandbuch der Unternehmensbewertung, 5th edition., 2012, p. 275, 309).

Due to the fact that sales revenue and the EBIT margin, which is slightly above the mean in the planning period, have been rolled forward on a percentage basis, we do not see any reason to replace this approach with a different one, which itself needs to be justified by similar arguments (see OLG Frankfurt, 20 December 2010, 5 W 51/09, *ratio decidendi* p. 13).

Moreover, the neutral valuer substituted depreciation and amortization with a reinvestment rate. After calculating the amount needed for replacement investments we are satisfied that the reinvestment rate is appropriate.

The assumed sustainable growth in net revenues also leads to a need to extrapolate the items of the projected balance sheet and projected income statement in the terminal period. To finance growth in the terminal phase, we have retained earnings in the terminal value at the same rate as the assumed growth rate, based on available economic equity at the end of the last year in the detailed planning phase (31. December 2018) (see OLG Frankfurt, 5 March 2012, 21 W 11/11, AG 2012, pp. 417, 419; OLG Karlsruhe, 15 November 2012, 12 W 66/06, No. 126 ff.; OLG Karlsruhe, 12 April 2012 12 W 57/10 *ratio decidendi* p. 49; OLG Stuttgart, 4 May 2011, 20 W 11/08, *ratio decidendi* No.152; OLG Stuttgart, 22 September 2009, 20 W 20/06, *ratio decidendi* No. 105; OLG Karlsruhe, 16 July 2008, 12 W 16/02, *ratio decidendi* p. 22; OLG Frankfurt, 26 August 2009, 5 W

35/09, *ratio decidendi* p. 19 f.; Saur et. al, WPg 2011, pp. 1017, 1024; Großfeld, Recht der Unternehmensbewertung, 7th edition, 2012, No. 297 f.; Stellbrink, Der Restwert in der Unternehmensbewertung, 2005, p. 230). These funds will remain in the business and serve to generate the growth and the associated rise in the business value after the last year of the detailed planning phase.

We are of the opinion that the distributable dividends in the terminal phase have been appropriately derived.

3. Discount rate

The equity value is determined by discounting future distributable earnings to the valuation date. The discount rate represents the return on an alternative investment that is equivalent in terms of maturity, risk and taxation to the cash flows originating from an investment in the company being valued (IDW S 1, 2008, No. 114).

When identifying the return obtainable on an alternative investment, reference is generally first made to the returns available on the capital markets for equity investments (in the form of a stock portfolio). These returns can be split into a risk-free rate and a risk premium expected by the shareholders for their assumption of entrepreneurial risk.

a) Risk-free rate

The risk-free rate used in the calculation of the objectified business value must be based on the customary national interest rate for a (virtually) risk-free investment in the capital markets. Due to their practically risk-free nature, German government bonds generally fulfil this criterion.

The point of departure for calculating the risk-free rate used in determining an objectified business value is the interest curve for government bonds. The development of interest rates on the market for bonds shows the relationship between interest rates and maturities of zero bonds not exposed to any risk of default. By choosing zero-bond factors derived from the interest curves for instruments of similar maturities it can be ensured that there is a correlation between the maturities involved (see OLG Munich, 30 November 2006, AG 2007, p. 411, 412).

The interest rate developments published by the German Central Bank (Deutsche Bundesbank) were chosen as reference data, i.e. estimated returns were calculated on the basis of the current yield observed for interest-bearing public bonds (treasury bonds, government bonds and federal

savings bonds). The required parameters for the time series, "wt3201" to "wt3206" have been taken from the homepage of the Deutsche Bundesbank.

In light of the fact that a business is regularly assumed to have an indefinite life for the purposes of a business valuation, the returns on instruments of a similar term must be included in the derivation of the risk-free rate, for which there is no available market data. This is possible by referring to the interest curves issued by the German Central Bank for the estimated returns on bonds with terms longer than 30 years. To offset any fluctuations, not only the interest curves on balance sheet date are taken into account but also the average values for the three months prior to the valuation date (see OLG Düsseldorf, 29 February 2012, 26 W 2/10, No. 38; OLG Karlsruhe, 17 July 2008, AG 2009, p. 47, 49 f.; OLG Stuttgart, 19 March 2008, AG 2008, p. 510, 514; OLG Stuttgart, 26 October 2006, NZG 2007, pp. 112, 115).

When applying the interest rate curves directly, the financial surplus for each year is discounted using the respective interest rate for an investment with the same maturity. A uniform risk-free rate resulting in the same net present value can be applied for practical reasons to a series of numbers that does not vary too widely provided it leads to the same result (see OLG Frankfurt, 17 June 2010, 5 W 39/09, *ratio decidendi* p. 13; OLG Frankfurt, 2 May 2011, 21 W 3/11, *ratio decidendi* p. 18). In a simulation, we tested and verified whether the same rounded uniform interest rate arises using the planned net income as when using a standardized series. To this extent, the criticism made by *Bassemir/Gebhardt/Ruffing* (Wpg 2012, p. 882, 884) becomes redundant.

The neutral valuer calculated the risk-free rate for a three-month period ending 9 May 2014. Taking the interest curves published by the German Central Bank and assuming a growth rate of 1.0 % results in a risk-free rate of approximately 2.55 %.

Corresponding to the recommendation of the FAUB (see IDW-FN 2005, pp. 555 et seq.) the uniform risk-free rate was rounded using the standard commercial method to an interval of 0.25 %. This corresponds to the latest court rulings (see OLG Karlsruhe, 15 November 2012, Az. 12 W 66/06, No. 149 (juris); OLG Frankfurt, 20 February 2012, 21 W 17/11, No. 50 (juris); OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 47). The OLG Stuttgart has left the question open as to whether the rate should be rounded using the standard commercial procedure or the method recommended by the FAUB or the method that provides the greatest benefit (see 3 April 2012, 20 W 6/09, No. 155 (juris)). In the opinion of the OLG Frankfurt, there is no legal necessity to round down (see 17 June 2010, 5 W 39/09, *ratio decidendi*, p. 14). This risk-free interest rate was adjusted to reflect a standardized income tax rate (25.0 % plus 5.5 % solidarity surcharge). The tax-adjusted risk free rate thus comes to 1.84 %.

We have verified the calculations and came to the conclusion that a risk-free rate of 2.50 % applies to the three month period ending upon conclusion of our audit work.

We are of the opinion that a pre-tax risk-free rate of 2.50 %, or 1.84 % after tax respectively, is appropriate. Please see the next section on the risk premium for a discussion of the consequences of the historically low interest rates for the required return on equity.

b) Risk premium

The risk premium used to determine an objectified business value is not calculated on the basis of the risk behaviour of individual shareholders but on the general pattern of the market. It may be assumed that investors accept a particular risk when investing in companies (investor risk). The risk premium can be derived empirically from equity yields obtainable on the capital markets by using capital asset pricing models (CAPM, tax-CAPM). In spite of some reservations, the capital asset pricing model enjoys extraordinarily high acceptance in both national and international valuation practice and creates a high degree of comparability and legal assurance (see Paulsen, Münchener Kommentar zum Aktiengesetz, 3rd edition, 2010, Sec. 305 Nos. 126 and 131).

The use of the CAPM or the Tax-CAPM is viewed by the majority of courts and the general opinion found in the professional literature as the prevailing method for deriving an objectified risk premium (see OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 51 (juris); OLG Stuttgart, 19 January 2011, AG 2011, p. 205, 209; OLG Frankfurt, 2 May 2011, 21 W 3/11; OLG Stuttgart, 17 March 2010, AG 2010, p. 510, 512; KG Berlin, 23 January 2009, AG 2009, p. 199, 200; OLG Karlsruhe, 16 July 2008, AG 2009, 47, 50; OLG Düsseldorf, 27 May 2009, WM 2009, p. 2220, 2226; OLG Stuttgart, 19 March 2008, AG 2008, p. 510, 514; OLG Stuttgart, 26 October 2006, NZG 2007, p. 112, 116 f; OLG Celle, 19 April 2007, ZIP 2007, p. 2025, 2027; IDW S 1 2008, No. 92; OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 51 (juris); WP-Handbuch 2014, Vol. II, Sec. A No. 327, 293 ff; Dörschell et al, Der Kapitalisierungszinssatz in der Unternehmensbewertung, 2nd edition, 2012, p. 27 f.)

Because equity yields and risk premiums are fundamentally affected by income taxes, tax-CAPM offers a more real explanation of empirically observed equity yields as it extends CAPM to consider the explicit effect of personal income taxes. In particular, the model considers the different taxation treatment of interest income, dividends and capital gains.

According to tax-CAPM, the discount rate is composed of a risk-free rate that has been reduced to reflect a standard income tax rate and the after-tax risk premium identified using tax-CAPM. The

complex character of a company's specific risk premium is split into two empirically observable factors: the market risk premium and the beta factor.

aa) Market risk premium

Depending on the tax system it may be necessary to reconcile the relationship between the market risk premium before and after taxes. In other words, the market risk premium after tax using the half-income method (from 2000 to 2008) is different to a system based on a capital gains tax (from 2009). In addition, the issue of whether the stubbornly low interest rates since the financial crisis have had any impact on the risk premium has to be addressed, and if so, what effect this has had.

Market risk premium using the half-income method

The past recommendations of the IDW to apply a pre-tax market risk premium of 4.0 % to 5.0 % and an after-tax market risk premium of 5.0 % to 6.0 % (see IDW-FN 2005, p. 71) can be illustrated more concretely as follows:

	before tax	after tax	tax	tax rate
Market risk premium	4.50%	5.50%		
Risk-free rate	5.00%	3.25%	-1.75%	35.0%
Return on shares	9.50%	8.75%	-0.75%	
Dividend yield	4.29%	3.54%	-0.75%	17.5%
Price yield	5.21%	5.21%		
Total return on shares	9.50%	8.75%	-0.75%	
Implied distribution ratio	45.11%			

As it appears, the rulings in the meantime on the after-tax market risk premium applying tax-CAPM and the half-income method lie at around 5.5 % (see OLG Frankfurt, 5 March 2012, 21 W 11/11, No. 61 (juris); OLG Karlsruhe, 12 April 2012, 12 W 57/10, *ratio decidendi* p. 37f; OLG Stuttgart, 3 April 2012, 20 W 6/09, *ratio decidendi* No. 157 (juris), OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 313; OLG Frankfurt, 29 March 2011, 21 W 11/12, No. 23; OLG Stuttgart, 19 January 2011, 20 W 3/09, *ratio decidendi* No. 193; OLG Stuttgart, 19 January 2011, 20 W 2/07, *ratio decidendi* No. 284; OLG Stuttgart, 18 December 2009, 20 W 2/08, *ratio decidendi* No. 208; LG Düsseldorf, 5 June 2011, 31 O 32/08, *ratio decidendi* p. 8; LG Stuttgart, 30 January 2009,

32 AktE 2/06, *ratio decidendi* p. 23; LG Stuttgart, 21 April 2008, 34 AktE 5/05, *ratio decidendi* p. 12).

As a purely precautionary measure, we would like to refer to the frequently cited statements of Prof. Stehle dated 20 July 2010 in his article, "Stellungnahme zur optimalen Kapitalanlage bei einem Anlagehorizont von 30 Jahren: Deutsche Aktien oder sehr lange (um die 30 Jahre) laufende Bundesanleihen?" [Statement on optimal capital investments assuming an investment horizon of 30 years: German stocks or very long (30 year) German government bonds?] and address the issue of whether Prof. Stehle has revoked his earlier statements on the market risk premium.

In our opinion there is no indication of him having done so. The background to engaging Prof. Stehle with the task of issuing the above statement was the issue of whether stocks or long-term government bonds were the optimal capital investment. This was then taken as the basis for a recommendation on an investment for a limited period. For this reason only the pre-tax returns are considered in this statement on the basis of the geometric mean. This variation of the calculation is not relevant for the issue of which discount factor is suitable for business valuations where an infinite planning horizon is assumed (see Stehle, WPg 2004, pp. 906, 910).

There is nothing in the new statement from Prof. Stehle that indicates that the arithmetic mean should be taken as the point of departure for calculating the market risk premium during business valuations. On the contrary, the new statement could be interpreted to mean that the market risk premium should even be increased from the value of 5.5 % calculated using the arithmetic method. The geometric mean calculated in parallel in the study in 2004 to assess the market risk premium for income tax for the CDAX was found to be 2.21 %. However the corresponding value in the new statement is 3.07 %.

In this regard we make reference to the comments of the OLG Stuttgart in its ruling handed down on 5 April 2011, 20 W 11/08 No. 244: To the extent that the suppliant claims, as stated in points 42 to 45 of its petition dated 14 March 2011, that Stehle has since specified the findings of his study published in WPg 2004, pp. 906 ff. and issued a new study dated 20 July 2010 in which he comes (in absolute figures) to a market premium of just 3.07 percentage points (GA V 1008 ff), we raise the objection that Stehle has communicated in a letter dated 15 April 2011 (GA V 1048) in response to a written request from the senate dated 13 April 2011 (GA V 1046) that the comments he made in WPg 2004, pp. 906 ff would still apply today without restriction..."

In conclusion, it can be safely stated that Prof. Stehle has in no way revised or relativized his previous findings on the market risk premium for business valuations in his new statement and that the study from 2010 does not make any suggestion that the market risk premium should be reduced (see OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 57 (juris)).

Market risk premium and withholding tax

Due to the fact that there are not as yet any capital market studies of the impact of the 2008 reform of corporate income taxation on the market risk premium before and after income tax, the technical committee of the IDW for business valuations (FAUB) has developed a concept that is based on the following reasoning:

1st effect: Increase of income tax on the return from shares

The transition to withholding tax leads firstly to an increase in the tax burden on dividends. Withholding tax of 26.4 % (including the solidarity surcharge) replaces (half) of the standardized tax rate of 35 %, i.e. 17.5 %. Moreover, the tax exemption of capital gains (on the sale of the shares) comes to an end and is replaced by a lower tax rate, which is effectively a tax on the capital gains from the sale (see Wiese, WPg 2007, p. 370 f; Hachmeister/Wiese, WPg 2009, p. 61 f.) of 13.2 % (including the solidarity surcharge). This results in a significant fall in the after-tax return on shares from 8.75 % to 7.69 %.

Increase of CIT on equity yields	before tax	after tax	tax	tax rate
Half-income method				
Dividend yield	4.29%	3.54%	-0.75%	17.5%
Price performance	5.21%	5.21%		
Total return on shares	9.50%	8.75%	-0.75%	
Capital gains tax				
Dividend yield	4.29%	3.16%	-1.13%	26.4%
Price performance	5.21%	4.53%	-0.69%	13.2%
Total return on shares	9.50%	7.69%	-1.82%	

2nd effect: Increase in required pre-tax return

Starting from the assumption that shareholders will seek to keep the after-tax return on their shares stable (see Zeidler/Schöniger/Tschöpel, FB 2008, p. 283), the transition to a withholding tax regime will lead to a rise in the required rate of return before tax. This can also be expected in light of the fact that the corporate income tax burden has been lowered (e.g. by a reduction in the CIT rate to 15 %).

As a point of reference, the relative share in the return on shares accounted for by a rise in the market price and dividend yields is assumed to remain unchanged and the pre-tax return is increased until the after-tax return on shares returns to 8.75 %. From a purely arithmetical perspective, the required pre-tax return on shares rises by approximately 1.32 % to approximately 10.8 %.

Increase in expected pre-tax returns	before tax	after tax	tax	tax rate
Half-income method				
Dividend yield	4.29%	3.54%	-0.75%	17.5%
Price performance	5.21%	5.21%		
Total return on shares	9.50%	8.75%	-0.75%	
Capital gains tax				
Dividend yield	4.88%	3.59%	-1.29%	26.4%
Price performance	5.94%	5.15%	-0.79%	13.2%
Total return on shares	10.82%	8.75%	-2.07%	

3rd effect: Price changes on the capital market

The basic desire of shareholders to keep their personal after-tax return constant will lead to an expectation on companies to return a higher profit. This will not apply to foreign shareholders, as there is no discernible increase in their private tax burden from the 2008 corporate tax reform. Due to the fact that these market players exercise a significant influence on the price levels on the capital markets, it can be assumed that those shareholders which are affected by the capital gains tax will not entirely succeed at finding the pre-tax returns on the market that they need to compensate the rise in their income tax burden (see Zeidler/Schöniger/Tschöpel, FB 2008, p. 285). In other words, it cannot be assumed that the expectation of higher returns will be **fully translated** into the market (see Dörschel/Franken/Schulte, Der Kapitalisierungszinssatz in der Unternehmensbewertung, 2nd ed., Düsseldorf, 2012, p. 126).

Measured on the conditions on the capital markets upon **introduction of the capital gains tax**, the pre-tax return on shares of approximately 10 % and a corresponding after-tax return on shares of approximately 8 % appear realistic.

A comparison with the recommendations in the Stehle study from 2004 with regard to the return on shares reveals the following:

Prices on the capital markets	before tax	after tax	tax	tax rate
Stehle 2004 (half-income method)				
Risk-free rate	6.94%	4.50%	-2.44%	35.5%
Market risk premium	4.50%	5.50%		
Return on shares	11.44%	10.00%		
Introduction of capital gains tax				
Risk-free rate	4.75%	3.50%	-1.25%	26.4%
Market risk premium	5.00%	4.50%		
Return on shares	9.75%	8.00%		

Based on a CDAX pre-tax return on shares of 12.4 % and 11.16 % after tax, Prof. Stehle recommends a deduction of 1.0 to 1.5 percentage points (see Stehle, WPg 2004, pp. 906, 921). Related to the risk-free interest rates of 6.94 % and 4.5 %, on which Prof. Stehle based his study, this results in an expected return on shares of 11.44 % before tax and 10.00 % after tax.

The FAUB concept considers the fact that, in comparison to when Prof. Stehle released his study, the risk-free interest rate has since dropped to 4.75 % upon introduction of the capital gains tax (see Wagner/Saur/Willershausen, WPg 2008, pp. 731, 746).

To consider the effects associated with the **introduction of the capital gains tax**, the pricing seen on the capital markets in particular, the assumed fall in the return on shares can be inferred from the other side of the coin, i.e. from a combination of the risk-free rate and the market risk premium. This results in a pre-tax market risk premium ranging between 4.5 % and 5.5 % or a **market risk premium after tax ranging between 4.0 % and 5.0 %** (for more information on the transition from the half-income method to a capital gains tax regime, see: OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 52 (juris); OLG Munich, 26 July 2012, 31 Wx 250/11, No. 34 (juris); OLG Frankfurt, 30 August 2012, 21 W 14/11, No. 68 (juris)).

The market risk premium since the financial market crisis

The risk-free rates included in the model discussed above corresponded to the market circumstances at the time. However, in our opinion, the short-term change in risk-free rates is no reason during stable economic times to discard the reasoning underlying the return on shares or

the long-term market risk premium. In light of the fact that interest rates have been very low for a sustained period in the wake of the financial and sovereign debt crisis, it may appear that the above range for the market risk premium can no longer be adopted without critical reflection. Without taking account of any corresponding effects in the risk premium, a fall in the base rate would, all other things being equal imply a sustained decrease in the yields expected by participants on the capital markets. However, at present there is no indication that the generally stable returns expected by market participants in the past have fallen for a sustained period. In any case, the **current situation on the capital markets** does not correspond to the average constellation observed in the past. For this reason, the customary methods of measuring the discount rate should be critically viewed.

With regard to the trading of German government bonds, it cannot be claimed that the markets have failed, nor is any other less risky form of investment apparent. Thus, despite the lower returns observed on the market for German government bonds, we are still of the opinion that German government bonds are the best estimate of a risk-free return. However, with regard to the obvious shift in demand in favour of low-risk German government bonds it must be assumed that the price for assuming risk, and thus the market risk premium, has risen since the capital gains tax was introduced.

With regard to the impact of the crisis on the financial markets and the wider economy on business valuations, FAUB released a statement in 2009 that the accepted range for a pre-tax market risk premium of between 4.5 % and 5.5 % and the accepted range of the after-tax risk premium of between 4.0 % and 5.0 % had been derived from long-term studies and that there was therefore no need to adjust the market risk premium at the time (see IDW-FN 2009, pp. 696, 697).

As an aside, it should be noted that the historical pre-tax market risk premium calculated for the German market by Dimson/Marsh/Staunton (equity premia around the world, 2011, p. 18) of between 5.4 % (geometric mean) and 8.8 % (arithmetic mean) lies above the values derived by the FAUB.

In its 104th meeting on 22 March 2011, the FAUB recommended that the market risk premium should remain unchanged from its statement in 2009, despite a drop in the risk-free rate to 3.0 % in December 2010. The recommendation explicitly referred to the fact that the interest levels had revived in the meantime and that it could not be assumed that such low interest levels would remain for the long-term (see Ergebnisbericht-Online on the 104th meeting of the FAUB, TOP 3).

The suspicion that interest rates would not continue to decline, expressed at the 104th meeting of the FAUB, was not born out by later events. On the contrary, the risk-free rate currently stands at 2.50 %, below the historic low at the time of the meeting. In a statement issued on 10 January

2012 (IDW-FN 2012, p. 122) the FAUB proposed testing whether the upper end of the range of justifiable market risk premiums should be used in light of the current situation on the capital markets. The recommendation is to orient the market risk premium at the upper end of the scale and therefore a market risk premium of 5.0 % (after personal income tax) is recommended.

At its 108th meeting, the FAUB found that the increase in the spreads between German and other European government bonds, as well as the greater spreads between interbank interest and government bonds are good indications that the price for assuming risk has risen. In this context, Zimmermann/Meser speak of a crisis-related correction of the costs of capital (see CFbiz 2013, p. 1, 9, and in support Wagner et al., WPg 2013, p. 948 ff.). A historical analysis of capital market data on the real returns from company shares comes to the same conclusion, as do ex-ante analyses of the market risk premium (see Bassemir/Gebhardt/Ruffing, WPg 2012, p. 882, 889). Measured on the fall of approximately 50 % in the risk-free rate since the introduction of the capital gains tax to 2.50 % before tax and 1.84 % after tax, the continuing fall in yields from company shares has been partially compensated by an increase, albeit at a lower rate, in the market risk premium. In this regard, the FAUB expressed the opinion in its proclamation dated 19 September 2012 (see IDW-FN 2012, p. 568 et seq.) that **a range of between 5.0 % and 6.0 % (after personal income tax)** would be appropriate when measuring the **market risk premium**.

If the markets return to normal, expressed in positive returns in both nominal and real terms for German government bonds and only marginal differences between the EURIBOR interest on instruments and German government bonds of equal maturities, then it can be assumed that the average risk premium will also return to the normal level.

In conclusion, we are of the opinion that the **market risk premium after tax should be set at 5.5 %**.

We therefore believe that the after-tax market risk premium of 5.5 % set by the independent valuer is accurate.

As a purely precautionary measure, we would like to refer to the discussion on a study issued by the Deutsche Bank on 12 September 2011 titled "Long Term Asset Return Study" in which it is questioned that the risk premium for Germany can be justified if the results of the last 50 years are considered (see Locher/Scholz, AG 2011, R 372, R 373). The authors of the study come to the conclusion that the return on shares of 6.35 % for the period 1962 to 2011 lies below the return on government bonds (7.19 %) (see p. 32 of the study). The study does not contain any explanations of the data on which it is based, the cut-off dates or the way averages are calculated (for more details on the restricted informative value of the study, see Locher/Scholz, AG 2011, R 372, R 373). If one considers the relatively short comparative period from 2009 to 2011, the

return on shares of 7.91 % is significantly higher than German government bonds (3.74 %). Consequently, there are suspicions that the averages were calculated using the geometric mean which is very sensitive to statistical skews. In this regard, the share price at the beginning of the comparative period plays a critical role for long-term studies, particularly in combination with the relatively low share prices observed in 2011, which was chosen as the end point. In their work, which is primarily founded on the variations of the financial mathematics of the Stehle data, the authors, Knoll/Wenger/Tartler (ZSteu 2011, p. 47 ff.) are also of the opinion that there was a negative market risk premium on average by the end of 2010.

With regard to the return on shares lying below the return on government bonds, Dimson/Marsh/Staunton (The worldwide equity premium: A smaller puzzle, 2006, p. 11) correctly point out that investors cannot demand a negative return to compensate the risk, nor can they expect this. The OLG Düsseldorf also objects to use of negative market risk premiums that contradict the findings of all former studies and the general experience made in the past. Although it cannot be ruled out that a negative yield may be observable for equity investments for certain periods, this does not in any way counter the general principle that equity investments generally display significantly higher returns than fixed interest instruments, such as government bonds. Moreover, it is not plausible that market players would invest in unsecured shares that are subject to a high degree of volatility if they did not return a higher yield in the long term than government-secured fixed-interest bonds (see OLG Düsseldorf, 29 September 2010, 26 W 4/09, *ratio decidendi*, p. 20. f; OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 56 (juris); OLG Munich, 7 February 2013, 31 Wx 122/12, p. 11).

As a purely precautionary measure, we would like to point out that the arguments presented by Prof. Großfeld in the SpruchG case brought before the Higher Regional Court of Hannover (Spruchverfahren 23 AktE 191/09) did not relate to an original market study. Although there is a statement on page 40, making reference to the Stehle data from 1995 to 2008, that Prof. Großfeld “[tends] towards applying a risk premium of around 3 % for an investment horizon of approximately three years”, it is not clear what particular constellation of data this statement refers to as the related summary of yields for various observation periods (see p. 31 of the report) does not contain a column for a three year investment horizon. Moreover, Prof. Großfeld lists three factors, namely, the change in the tax system [capital gains tax], the sustained period of low interest rates, and the financial crisis beginning in 2008, which should lead to an adjustment of the starting figures in the Stehle data (see p. 42 ff). However, as the issue of which market risk premium after tax should be used with relation to the cut-off date in the case of 24 February 2009 was unresolved, the valuation report from Prof. Großfeld cannot apply beyond the scope of the actual arbitration proceedings it was designed for and therefore has no general application to the conclusion of a corporate agreement as in this case.

bb) Beta factor

The average risk premium has to be adjusted to reflect the specific risk structure of the respective company being valued. This specific company risk finds its expression in the beta factor used in the CAPM and tax-CAPM models. Any deviation in the actual future cash flows from the expected cash flows represents a risk for the owners (see Franken/Schulte, BewP 2012, p. 92, 93).

CAPM is a capital market model that is based on portfolio theory. Correspondingly, it is assumed that the investors are able to spread their risks by acquiring investments in a number of different companies ("**diversification**"). For this reason, a distinction is made between the "**systemic risk**" which all companies are equally subject to, and the "**non-systemic risk**" which is always only related to a specific entity. In the CAPM model, the individual investor is only remunerated for that portion of the total risk, i.e. the systematic risk, which cannot be further diversified. Only the systemic portion of the entrepreneurial risk should be considered in the costs of capital using the beta factor, i.e. only those factors over which the management has no control. Thus non-systemic risks may not be equated with risks specific to the company and systemic risks may not be equated with general economic risks (see Zeidler et al. BewP 2012, p. 134). Rather, companies react differently to macroeconomic risk drivers and in possibly different directions. Sometimes the reaction of the individual company to risk factors can be totally disparate (see Franken/Schulte, BewP 2012, p. 92, 97) and therefore different systemic risks need to be reflected in the beta.

The systematic risk of an entity that is relevant for a business valuation can be further broken down into the **operative risk**, i.e. the risk inherent to its operations, and the **financial risk**. The latter is founded on the fact that the volatility of the cash flows paid to the owners increases as leverage rises.

The beta factor is derived from capital market data using regression analysis. This is computed as the slope of trend lines derived from a "data cloud", i.e. the trend line is set through the data coordinates expressing the return on equities and market returns in such a way as to ensure that the gaps from these points to the trend line are as small as possible (best fit). The beta factor is determined on the basis of a linear regression of the company's specific rate of return on share prices (the dependent variable) based on the return of a stock market index (independent variable).

The beta factor expresses the relationship between the risk of the specific company to the overall market risk. If beta is 1 then the specific company risk is the same as the market average. A beta of less than 1 indicates that the valued company is exposed to less risk than the overall market. If the beta is higher than 1, the company is correspondingly exposed to a risk that is higher than the market average.

It is not disputed that discretionary judgments are involved in calculating the beta factor. There is, unfortunately, no business valuation method available that is free of such discretionary judgment.

In addition to a purely arithmetical derivation of the slope, the issue of the informative power of the regression analysis also needs to be addressed. For this reason, in recent years, audit firms involved in business valuations have taken to using statistical quality analysis to filter the quality of the analysis first. Put graphically, a wide spread of points on the chart makes it difficult to determine the exact slope of the regression as a slight change in the slope can provide a solution that is almost as accurate. In order to measure the quality of the regression, a number of statistical measures are applied which provide an indication of how "good", in the sense of statistically informative, the results of the regression analysis are. In addition to the liquidity of the share markets, the coefficient of determination (r^2) and the T-test are applied to do this.

Coefficient of determination (r^2)

The **coefficient of determination** (r^2) is an indicator of the informative power of the regression equation. It indicates what percentage of the rate of return on share prices can be explained by the return on a stock market index. In CAPM, the return on the shares being valued can be fully explained by the development of the market portfolio as it only looks at the systemic risk. Correspondingly, the beta factor measures the fluctuation in the rate of return on share prices relative to fluctuations in the return for the market as a whole. In an ideal case where $r^2 = 1$, all observed points lie on the slope of the regression. The question is how to interpret cases where r^2 is less than one. When r^2 is less than one, this means that the proportion (often a very high proportion) of the observed returns on share prices in the sample cannot be explained by the development of the market but by other factors (see Dörschell et al., WPg 2008, p. 1158, 1160); Dörschell et al., *Der Kapitalisierungszinssatz in der Unternehmensbewertung*, 2nd edition, 2012, p. 177).

Coefficients of determination determined for calculations of the beta factor from empirical data generally lie in a range from single digit percentages up to approximately 50 % (corresponding to 0.50). With regard to the coefficient of determination, the OLG Stuttgart has found that this lies close to zero for values between 0.051 and 0.054 and therefore is not suitably significant (see OLG Stuttgart, 18 December 2009, 20 W 2/08, *ratio decidendi* No. 247 (juris); see also: OLG Frankfurt, 29 April 2011, 21 W 13/11, No. 77 (juris) for an r^2 of 0.02)). Even the statistical significance of values between 0.07 and 0.11 is considered too low to be used to calculate a company's beta (see OLG Stuttgart, 22 September 2009, AG 2010, pp. 42, 45). Generally, there is no unambiguous lower limit at which a coefficient of determination becomes statistically informative.

T-test

In addition to the coefficient of determination, the t-test is another method for testing statistical significance. The t-test is a statistical method for reviewing hypotheses. Very simply put, the test examines whether a beta that has been determined for a sample over a number of years (usually two or five) displays a statistically significant correlation between the return on the share and the return on a market-based index. However, using this test, the statistical correlation between the development of the share price and the development of the market index can only be presumed to a certain degree of probability (known as the confidence interval, typically 95 % or 99 %).

Depending on the required confidence interval and the number of combinations between the index and the share price, a table is generated that contains the required t-values. If, in an individual case, the t-value is higher than the tabular value of the t-distribution (t-critical), then it can be assumed with a high degree of confidence that there is a statistical correlation. In other words, this means that the probability of obtaining the observed spread of points without the market return having a determining influence on the return on the share price is 5 % or below 1 % respectively, depending on the confidence level chosen (see Dörschell et al., WPg 2008, pp. 1152, 1160).

Raw and adjusted beta

The beta derived directly from the returns (on share prices) is frequently referred to as the “raw” beta. If this is related to the beta of the market as a whole using a weighting formula, it is referred to as the “adjusted beta”. The modification of the beta is based on the fact that the average beta of all companies on the market is 1.0 by definition. The raw beta is adjusted accordingly. There are two possible reasons for doing this: firstly, there is an inherent uncertainty in all statistical estimates. Adjusting the beta towards the market reference (1.0) can offset such uncertainties. Secondly, the beta factors derived empirically from past data are used to forecast the future (see Timmreck, FB 2002, pp. 300, 304). In this case the adjustment should help to anticipate future trends. The most commonly observed technique used for the modification, and applied in this case, is to multiply raw beta by 0.667 and add 0.333 of the result to the product. Conceptionally, this adjustment is based on the empirically observed trend that a company will spread its risks due to growth and diversification of its portfolio and therefore its beta will trend towards the market average of 1.0. Adjusted beta therefore anticipates this trend (more explanation can be found in Sharpe/Alexander/Bailey, *Investments*, 6th Ed., 1999, 503 ff.; Pratt/Grabowski, *Cost of Capital*, 3. Ed., 2008, 130 ff.).

The neutral valuer has applied adjusted betas. In the technical literature and customary valuation practice, there is no clear preference for either the adjusted beta or the raw beta. An analysis of court rulings reveals that the issue of whether a raw or an adjusted beta should be applied is rarely addressed. According to a ruling from the OLG Frankfurt handed down on 20 December 2010 (5 W 51/09, No. 70 (juris); gl. A. OLG Stuttgart, 15. Oktober 2013, 20 W 3/13, Tz. 139 (juris); OLG Stuttgart, 8. Juli 2011, 20 W 14/08, Tz. 267 (juris)) there are no objections to using adjusted betas. In its ruling from 31 March 2008, the OLG Munich, 31 Wx 88/06, No. 35, and its ruling from 2 April 2008, 31 Wx 85/06, No. 35, the court found that in these cases the neutral valuer had applied adjusted betas and the auditor of the contract had applied raw betas. In its ruling handed down on 14 July 2009, the OLG Munich, (31 Wx 121/06, No. 23) discussed the material impact of the adjustment. In the opinion of the OLG Stuttgart, 17 March 2010, 20 W 9/08, No. 178 (not printed in the AG 2010, p. 510 ff), the issue of whether the beta factors were derived solely from share prices of the peer group in relation to the index (raw beta) or whether the risk of the market portfolio was considered on a pro rata basis (adjusted beta) besides the share price data of the peer group company was left unanswered.

To this extent, the use of adjusted beta by the independent appraiser is not objected to.

Period used in the calculation of beta

When assessing the currency and statistical significance of the beta it is necessary to set the period in which the beta is calculated. A larger sample increases the accuracy of the result from a statistical perspective. In practice, a period of five years with monthly intervals and a period of two years with weekly intervals between returns are applied (see OLG Frankfurt, 30 August 2012, 21 W 14/11, No. 80 (juris); OLG Frankfurt, 20 December 2010, 5 W 51/09, No. 63 (juris)).

Generally, a shorter period, such as two years, will be more up-to-date (see OLG Stuttgart, 5 June 2013, 20 W 6/10, No. 214 (juris); OLG Frankfurt, 30 August 2012, 21 W 14/11, No. 80 (juris); LG Frankfurt, 2 September 2010, 3-5 O 279/08, *ratio decidendi* p. 27). Longer periods in which abnormal fluctuations in shares prices occurred due to structural changes, such as an IPO or a squeeze-out, are not suitable for determining the beta (see OLG Stuttgart, 4 May 2011, 20 W 11/08, No. 204 (juris)). Corresponding to the time limits set for the share price, the OLG Stuttgart is of the opinion (see the ruling dated 18 December 2009, W 2/08, 4. introduction and *ratio decidendi* No. 239; BGH, 19 July 2010, AG 2010, S. 629 ff.) that the company's inherent beta should not be calculated using data from the period after such structural measures have been announced. On the contrary, the period used to measure the **company's own beta** must end on the **day on which the measures are announced** (see OLG Karlsruhe, 13 May 2013, 12 W 77/07 (13), No. 36 (juris); OLG Frankfurt, 30 August 2012, 21 W 14/11, No. 80 (juris)).

Original beta of Celesio AG

For publicly listed companies like Celesio AG, a historic beta factor can be derived directly from capital market data. The shares of Celesio AG are listed for trading on the regulated markets in Berlin, Düsseldorf, Frankfurt, Munich and Stuttgart and are traded on the open market in Hamburg and Hanover.

Generally it can be stated that the beta factor to be applied for the CAPM is not an empirical value based on past experience but is also an estimated future value (see OLG Frankfurt, 30 August 2012, 21 W 14/11, No. 72 (juris)).

Based on our experience with court cases lodged under the SpruchG, minority interests often demand use of the company's own beta factor. It cannot be ruled out that this demand will be pursued mainly on the height of the company's own beta, nor is there any reason to object to this. For example, a study performed by Brühle/Erhardt/Nowak (ZfB 2008, pp. 455, 472) describes a fall in a company's own beta as the degree of control increases, even though the OLG Stuttgart does not see any explanatory cause for this (3 April 2012, 20 W 6/09, No. 173; and for a more restrictive view: OLG Frankfurt, 5 March 2012, 21 W 11/11, No. 75; in support OLG Hamburg, 27 March 2012, 13 W 20/09, *ratio decidendi* p. 13).

The neutral valuer calculated the historical beta of Celesio AG based on its analyses of four one-year tranches (on a weekly basis) from 1 April to 31 March of the following year, ending on 31 March 2013. Moreover, the beta factor was also calculated for one four-and-a-half-year period (on a monthly basis) from 1 April 2009 to 30 September 2013. The unlevered, average beta for the one-year periods comes to 0.67 for the years 2010 to 2013. The unlevered, average beta for the four-and-a-half year period comes to 0.77. KPMG applied the mean of these two values and derived an original beta of 0.72.

Within the framework of our audit work, we derived the company's own beta as follows: For Celesio AG the weekly returns for the two-year period prior to 23 January 2014 reveal a statistically significant unlevered beta of 0.63 (adjusted) with a coefficient of determination (r^2) of 0.14. Based on the monthly returns for the five year period ending 31 December 2013, there is also a statistically significant unlevered beta of 0.72 (adjusted) and a coefficient of determination (r^2) of 0.27. The statistical significance of the coefficient of determination can be examined using a statistical hypothesis test (T-test) for a given confidence level (95 %, 99 %). For the shares of Celesio AG there was a statistical significance for the 95 % and 99 % confidence intervals for both periods (two years using weekly returns and five years using monthly returns). The applicability of the original beta factor can therefore not be ruled out immediately from a statistical perspective. The following table shows the results of our analysis of Celesio AG's historical beta for the relevant

period in advance of the public announcement of the intention to enter into the domination and profit and loss transfer agreement.

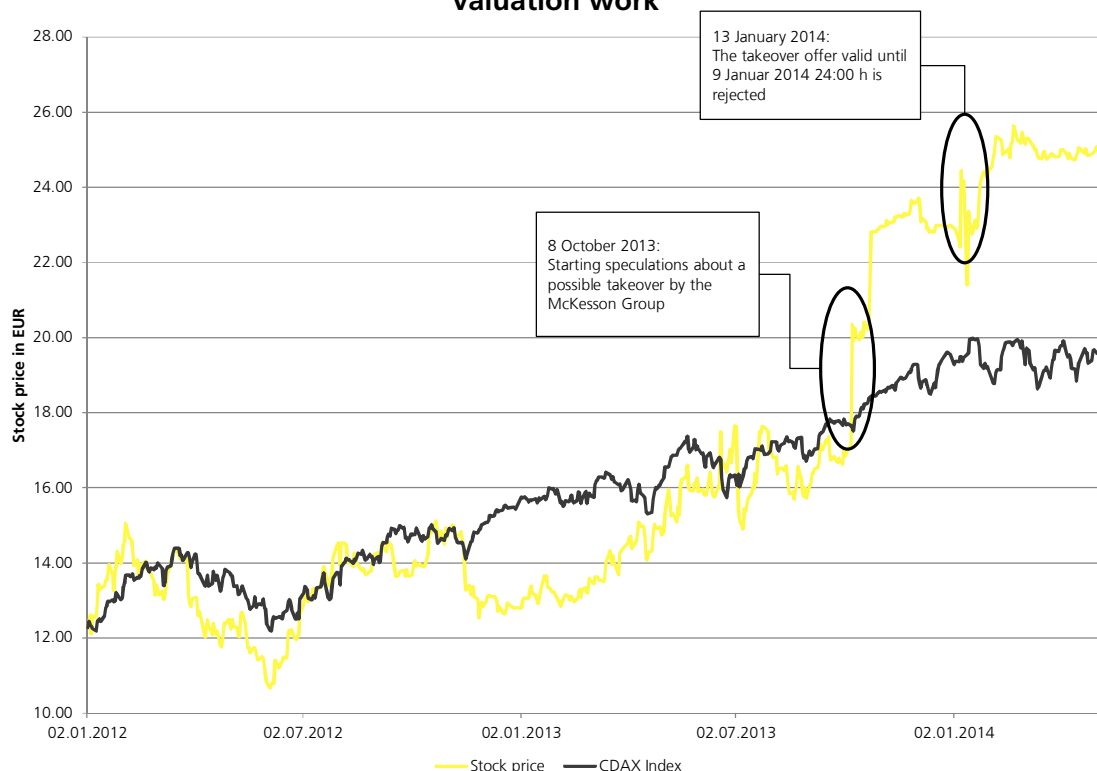
Name	Index	Period / Return interval	R ²	Levered Beta (raw)	Levered Beta (adj.)	Unlevered Beta
Celesio AG	CDAX Index	2 years / weekly	0.14	0.76	0.84	0.63
Celesio AG	CDAX Index	5 years / monthly	0.27	0.98	0.98	0.72

In addition to the statistical measure of quality, there is also the issue of whether the development of the share price appropriately reflects the risk profile of Celesio AG. Regression analysis can be used in some circumstances to determine whether there are any statistically significant correlations between two fully independent variables.

As can be seen in the development of the share price of Celesio AG in comparison to the CDAX in the chart below, the share price generally developed in harmony with the CDAX for long periods.

A significant rise in the share price of 18.9 % on the prior day's trading was recorded on 8 October 2013 when the price rose to EUR 20.36. On this date the first speculation of a possible takeover by McKesson Corp affected the share price of Celesio AG. Another leap in the share price of Celesio AG of 4.8 % was recorded on 23 October 2013 when the first takeover bid by McKesson Corp. was announced. Subsequent to announcement of the rejection of the first takeover bid by Dragonfly KGaA on 13 January 2014 there was a sudden slump in the share price of 11.5 %. This drop in the share price was followed by a rise in the share price once the second takeover bid was announced on 23 January 2014 and McKesson Corp. announced on the same day its intention to enter into a domination and profit and loss transfer agreement. Due to the share price becoming decoupled from the general market trends from 8 October 2013 onwards, on account of speculation about the takeover, the ensuing two takeover bids, and the decreasing number of shares in free float, the beta factor, derived from the regression of the share price of Celesio AG to the CDAX, does not reflect the operating risks of Celesio AG. Rather, the development of the share price is more or less determined for the duration of the two takeover bids by the price of EUR 23.00 offered and EUR 23.50, after it was raised. Subsequent to the public announcement of the intention to enter into a domination and profit and loss transfer agreement, the share price was heavily dominated by speculation on the potential compensation.

Changes in the stock price of the Celesio AG in comparison with the CDAX Index starting on 1 January 2012 until the end of the valuation work



Source: Bloomberg, own calculation

Due to the above factors, it can be stated that the company's own beta over the two year period up until the announcement of the intention to enter into a corporate agreement was influenced over a sustained period by factors external to the company, which, at least from an economic perspective, distort the informative value of the beta factor actually measured. For this reason, the beta measured over a longer observation period of five years can generally be expected to be more informative.

Beta factor of the peer group

In this regard, the neutral valuer has followed customary practice and relied on a peer group of publicly-listed companies to check the plausibility of the operational risk of the valuation objects. This approach corresponds with customary practice and is recognized by the courts (see OLG Celle, 19 April 2007, AG 2007, p. 867; OLG Karlsruhe, 17 July 2008, AG 2009, p. 47, 51; OLG

Düsseldorf, 27 May 2009, 26 W 5/07, *ratio decidendi* p. 43 (where not printed in AG 2009, p. 907 ff.), OLG Stuttgart, 18 December 2009, 20 W 2/08, No. 235, 254) (juris, where not printed in AG 2010, pp. 513 ff.); OLG Frankfurt, 21 December 2010, 5 W 15/10, *ratio decidendi* p. 81; OLG Stuttgart, 19 January 2011, 20 W 3/09, *ratio decidendi* p. 50). This also applies with regard to the inclusion of foreign entities (see OLG Düsseldorf, 27 May 2009, 26 W 5/07, *ratio decidendi* S. 43; OLG Stuttgart, 19 January 2011, 20 W 2/07, No. 224; OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 64 (juris)).

The neutral valuer, KPMG examined the main fields of activity and major influences on the business activities of Celesio AG. Using these criteria, a group of potential peers was identified for each business segment who are active in comparable fields.

The calculation of the beta factors by the neutral valuer are based on market-wide regional stock indices. The beta factors of the peer group were calculated using five one-year tranches (using weekly returns) beginning on 1 April and ending on 31 March of the following year. Moreover, the valuer identified the beta factors of the peer group for a five-year period ending on 31 March 2014 using monthly intervals.

To eliminate the effects from the financing structure of the companies in the peer group from the specific beta factors of each company, the historical beta factors of indebted (levered) companies were initially converted into beta factors for unlevered companies (a process known as "unlevering") to obtain comparative figures for the valuation object (see OLG Stuttgart, 18 December 2009, 20 W 2/09, *ratio decidendi* No. 86; OLG Frankfurt, 20 December 2010, 5 W 51/09, *ratio decidendi* p. 22; OLG Stuttgart, 19 January 2011, AG 2011, p. 205, 209, OLG Düsseldorf, 4 July 2012, 26 W 8/10, No. 63 (juris)). Foreign currency effects do not need to be eliminated as the neutral valuer compared each share with a country-specific stock index.

This involves applying a formula based on the ratio of the company's debt to the fair value of its equity. Assuming that the carrying amount of debt corresponds to its fair value, the neutral valuer relied on the market value of debt in the adjustment formula for each respective one-year tranche. The market value of equity was derived from the respective market capitalizations of the peer group companies over the respective one-year period. The value added by the tax shield of peer group companies was deemed to be uncertain by the neutral valuer.

We spot-tested the system and arithmetical accuracy of the calculations performed by KPMG. No qualifications were made by the neutral valuer.

In conclusion, KPMG comes to the conclusion that an **unlevered beta of 0.72** is appropriate for estimating the future operating risks of Celesio AG.

In the course of our audit of the contract, we examined comparable companies in the course of our own research. This did not lead to any other peer group companies. For this reason, we included the following peer group companies in our analysis, similarly to KPMG:

McKesson Corporation, San Francisco/USA ("McKesson Corp.")

The McKesson Corp., the sole shareholder of Dragonfly KGaA, is a US pharmaceuticals trading company and markets prescription drugs and its own medicines via its Distribution Solutions segment, as well as other medical supplies. Technology Solutions is the second segment of the company. This segment primarily offers software to the health sector. McKesson Corp. claims to be the fourteenth largest company in the USA. In fiscal year 2013/14 it generated revenues of USD 137.6 billion.

Oriola-KD Corporation, Espo/Finnland („Oriola“)

Oriola is a pharmaceuticals wholesaler and pharmacy operator which is primarily active in Northern European countries and Russia. In Sweden and Russia, the company operates pharmacies and in Finland and other Baltic nations the focus is on the segment of pharmaceutical wholesale. The largest sales market for Oriola is Sweden, where it generated sales revenue of EUR 1.2 billion in fiscal year 2013. In Russia, the company generated sales revenue of EUR 1.0 billion in fiscal year 2013 and in Finland and the Baltic countries it generated revenue of EUR 0.4 billion.

Galenica Ltd., Bern/Schweiz („Galenica“)

Galenica is an international participant in the healthcare industry and develops, produces and markets pharmaceuticals worldwide as well as operating pharmacies and logistics services providers. Galenica concentrates on its two divisions, Specialty Pharma and Swiss HealthCare Services. The Specialty Pharma division comprises the pharmaceuticals group, Vifor Pharma, which researches, develops, products and markets both its own and licensed drugs, mainly aimed at treatments for iron deficiency and anaemia. The second division, Swiss Health-Care Services provides services for the Swiss healthcare market, including a number of pharmacy formats, but also pharmaceutical logistics and information management services. In fiscal year 2013, the company generated sales of CHF 3.4 billion.

UDG Healthcare plc., Dublin/Ireland („UDG Healthcare“)

UDG is an Irish healthcare company. The company primarily generates revenues from trading in pharmaceuticals in Ireland and the United Kingdom. Moreover, the company offers services related to sales, distribution and marketing to participants in the healthcare sector. A third segment is packaging services for producers of pharmaceuticals. The company generated sales of roughly EUR 2.0 billion in fiscal year 2013.

Cardinal Health Inc., Dublin/USA („Cardinal Health“)

Cardinal Health is an American company that operates on the one hand as a pharmaceuticals wholesaler (Pharmaceutical Segment) and on the other hand produces medical technology products (Medical Segment). In the Pharmaceutical Segment, the company distributes branded pharmaceuticals and generics as well as healthcare products, mainly to drugstores, hospitals and the pharmaceuticals sections of supermarkets. In the Medical Segment, the company mainly distributes and produces medical and laboratory products such as surgical drapes and gowns and surgical gloves. Its main sales market is the USA which accounts for 97 % of its sales. The sales revenue of approximately USD 91 billion generated by the Pharmaceuticals Segment compares to approximately USD 10 billion generated by the Medical Segment in fiscal year 2013. Trading in pharmaceuticals is therefore by far the more important segment.

AmerisourceBergen Corporation, Chesterbrook/USA („AmerisourceBergen“)

AmerisourceBergen is a wholesaler on the US market for pharmaceuticals. In addition to branded pharmaceuticals, the Company markets generics, non-prescription drugs as well as healthcare products for home use. The main customers of the company are retail chains, independent pharmacies, mail-order pharmacies and hospitals. In fiscal year 2012/13 the company generated revenues of USD 88 billion.

Profarma SA., Barra da Tijuca/Brasilien („Profarma“)

Profarma is a Brazilian wholesaler of pharmaceuticals. Thanks to acquisitions of retailers and wholesalers in the Brazilian pharmaceuticals market, the company was able to significantly increase its sales revenue over recent years. In fiscal year 2013, the company generated sales of BRL 3.1 billion.

We calculated the unlevered beta factors for the peer group on the basis of the yields measured in weekly intervals over a period of two years and taking account of the average gearing of the companies, as shown in the following table.

Name	Index	R ²	Levered Beta (adj.)	Unlevered Beta
McKesson	DWCFT Index	0.18	0.79	0.76
Oriola	HEX Index	0.05	0.54	0.52
Galenica	SSIRT Index	0.23	0.92	0.84
Cardinal Health	DWCFT Index	0.17	0.79	0.76
AmerisourceBergen	DWCFT Index	0.15	0.67	0.67
Minimum				0.52
Average				0.71
Maximum				0.84

The observation period for determining the above beta factors ended on 2 May 2014.

Using a five year period and monthly intervals results in the following betas:

Name	Index	R ²	Levered Beta (adj.)	Unlevered Beta
McKesson	DWCFT Index	0.29	0.87	0.85
Oriola	HEX Index	0.08	0.71	0.69
Galenica	SSIRT Index	0.14	0.77	0.69
UDG Healthcare	ASXTR Index	0.11	0.85	0.76
Cardinal Health	DWCFT Index	0.21	0.74	0.72
AmerisourceBergen	DWCFT Index	0.32	0.83	0.83
Profarma	IBX Index	0.17	1.01	0.74
Minimum				0.69
Average				0.75
Maximum				0.85

The observation period for determining the above beta factors ended on 30 April 2014.

While the difference of 0.04 between the two observation periods for the peer group (0.71 compared to 0.75) is relatively low, the difference for the company's own beta factor of 0.09 is significantly higher (0.63 compared to 0.72). This could also be construed as an argument for placing less weight on the two year observation period for the company's own beta factor.

In conclusion, our alternative calculations of the average beta factor for the peer group do not provide any indication that the beta factor determined by the neutral valuer is inappropriate.

Celesio AG carries net financial liabilities. For this reason, the unlevered beta factor needs to be relevered using the specific gearing of the period to arrive at a levered beta factor.

c) Growth factor

Within the framework of calculating the equity value using the discounted earnings method, a growth factor has to be set for the terminal phase. The neutral valuer has calculated the growth factor taking account of the current demographic, regulatory and industry parameters as well as the revenue streams and cost structures at Celesio AG and their development. On this basis, increasing cost pressure on the health sector and related state intervention is expected in future. As a consequence of the price competition, the neutral valuer has assumed that inflation-related cost increases will be possible at most only marginal in future. This development is expected to be only partly compensated by efficiency gains from restructuring. In light of the above, the neutral valuer has set a growth factor of 1.0 % after rounding.

We examined the growth factor chosen by the neutral valuer on the basis of price indices issued by the Federal Office of Statistics and forecasts of the consumer price index in Germany made by bank analysts as well as the International Monetary Fund. The inflation rate in Germany based on the consumer price index (2010 = 100) is as follows:

German Federal Statistical Office - Level of the German consumer price index (Basis 2010 =100)		Average change
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April 2011	101.9	
April 2014	106.5	1.48%

Estimations from bank analysts - Changes of the German consumer price index		Average change
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2014

Lower level of estimations	1.00%	
Upper level of estimations	2.10%	1.32%

2015

Lower level of estimations	1.00%	
Upper level of estimations	2.50%	1.77%

2016

Lower level of estimations	1.00%	
Upper level of estimations	2.90%	2.06%

Estimations from the International Monetary Foundation - Changes of the German consumer price index		Average change
--	--	---------------------------

2014		1.36%
2015		1.36%
2016		1.60%
2017		1.70%
2018		1.70%
2019		1.70%

Taking the development in the consumer price index over the past three years reveals an annual average rise in consumer prices of approximately 1.48 %. According to a summary prepared by Bloomberg of the estimated change in the consumer price index made by bank analysts for the years 2014 to 2016, the inflation rate ranges between 1.00 % and 2.90 %. For 2014 and 2015,

the International Monetary Fund is forecasting an increase in consumer prices of approximately 1.36 %. Expectations for the following years from 2016 onwards are at a slightly higher level.

However, when measuring the growth factor, the circumstances of the particular company must also be considered. For this reason, the rates of growth in the future earnings of different companies can, and in fact will, deviate from one another by nature. According to research by Widmann/Schieszl/Jeromin (FB 2003, pp. 800 ff.) the average growth in the profits of west German industrial companies is approximately 45 % to 50 % of the average inflation rate, independent of the economic cycle. This lower growth in profits has been confirmed in research by Stellbrink ("Der Restwert in der Unternehmensbewertung", 2005, pp. 125 f.). The opinion that the growth factor should be generally lower than the inflation rate is mirrored in the prevailing opinion in the technical literature (see Großfeld, Unternehmens- und Anteilsbewertung, 7th edition, 2012, p. 292; WP-Handbuch 2014, Vol. II, Section A, No. 489 and in particular the analysis of the ruling cited in footnote 793). This is also partly due to the fact that an investment in a company is not totally immune from the effect of inflation (see OLG Düsseldorf, 11 April 1988, WM 1988, p. 1052, 1059; OLG Düsseldorf, 12 February 1992, AG 1992, pp. 200, 204). The purpose of the growth factor is not to offset inflation at all costs (see OLG Stuttgart, 19 March 2008, AG 2008, pp. 510, 515).

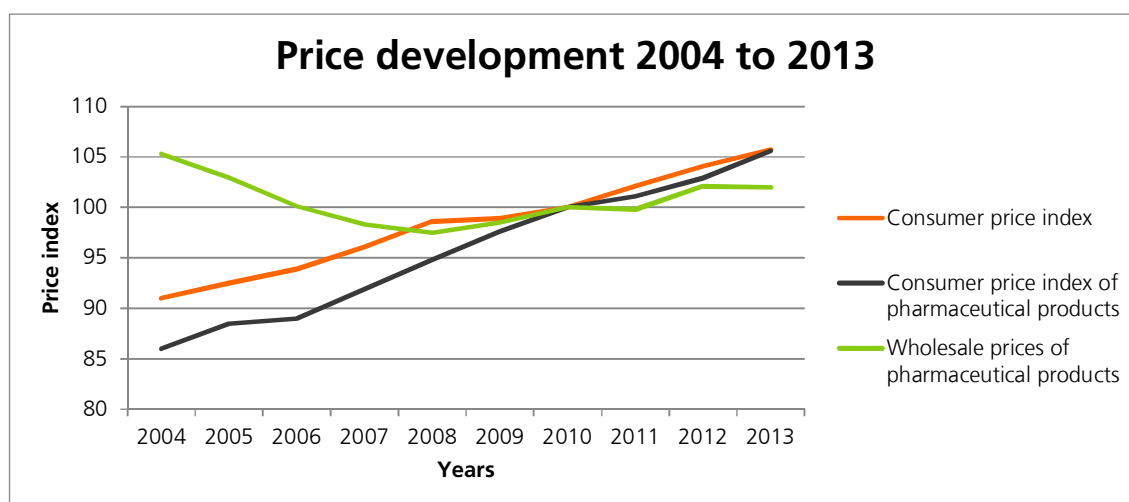
Thus, given an annual rise in the consumer price index of approximately 1.48 % in the three year period from April 2011 to April 2014 and other estimates and assuming a related growth in profits of between 45 % and 50 % of the inflation rate, the resulting sustained growth rate is likely to be below 1 %.

Basically, in addition to the general development of the pharmaceutical trading sector, the competitive position of Celesio AG within this sector is relevant to measuring its growth prospects. Due to the fact that the growth factor shows the expected average increase in the future profits of all companies, the expected growth of operating results within the detailed planning phase cannot be simply transferred over to the discount rate of the specific company. Moreover, it should be considered that Celesio AG is active on a market subject to great pressure on prices. Thus future market growth is likely to be driven by unit volume.

Given the competition in the pharmaceutical sector, we verified the plausibility of the growth factor set by the neutral valuer of 1.00 % using Germany as an example, in the course of our audit as follows.

As observed in the years 2004 to 2013, price increases for pharmaceutical products rose slightly faster than the consumer price index at roughly 2.3 % p.a. compared to the German CPI of roughly 1.7 % p.a. By contrast, 2008 saw falling wholesale prices and only slight growth ever since

(approximately 0.9 % p.a. until 2013). In the entire period from 2004 to 2013 wholesale prices fell by approximately 0.4 % on average.



Source: German Federal Statistical Office; always 2010 = 100

Given the long-term trend in wholesale prices for pharmaceutical products in Germany, it can be expected that they will remain below the expected rise in consumer prices, mentioned above, in future as well. In light of the aggressive discounting and price war and the regulatory intervention in pricing, this assessment appears plausible for pharmaceuticals trading. Quite apart from the long-term sales trends, it should also be noted that the key driver in retail and wholesale pharmaceutical is not simply sales revenue but the gross margin that can be attained from these sales. In our opinion, based on the findings of our audit and the assessment by the management board of Celesio AG, it is plausible that the intended improvement in the gross margin over the detailed planning phase will fall to a low level in the long-term. In conclusion, it can be assumed that Celesio AG will only be partially successful at passing on inflation-related cost increases to its customers.

A comparison to the results of an empirical study in which the average growth rate in squeeze-outs lies in a range between 0.5 % and 1.0 % (Hachmeister et al., WPg 2009, pp. 1234, 1245) also confirms that at the upper edge of this range growth has been assumed in this case. In the revised version of their survey, Hachmeister et al. recorded a slight decrease in the growth factor to 0.94 % on average (see Hachmeister et al., WPG 2012, p. 762, 773).

d) Derivation of the discount rate

The discount rate used in the detailed planning phase and the terminal value has been correctly derived. We are satisfied that the financial mathematical calculations are accurate.

As a purely precautionary measure we would like to point out that a change in individual values for the risk-free rate, the market risk premium, the beta factor or the growth rate, any of which might be reasonable in isolation, can in aggregate lead to an unrealistic figure for the discount rate and therefore an unrealistic value for the cash compensation (see OLG Frankfurt, 24 November 2011, 21 W 7/11, No. 40 (juris)). Moreover, there is no need under the constitution to grant the highest benefit for individual inputs of the discounted earnings method, as described by the Higher Regional Court of Stuttgart (see 17 October 2011, 20 W 7/11, No. 188 (juris)).

4. Calculation of the equity value using the discounted earnings method

Based on the financial planning explained in the valuation report, the equity value has been derived as follows:

a) Distribution rate and taxation of dividends

In order to determine the tax on the distributions made to the shareholders of Celesio AG it is first necessary to determine the distribution ratio. The distribution ratio set by Celesio AG itself has been applied for the detailed planning phase. It will be necessary to retain earnings to finance the planned growth in the detailed planning phase and reduce the current level of debt. Given that there are no legal restrictions to this distribution policy, no objection can be made to adopting the distribution ratio for the purposes of the valuation. This opinion is shared by the OLG Frankfurt, which refuses to examine whether the specific decisions of an entity, such as its distribution policy, maximises returns to the owners (see OLG Frankfurt, 9 February 2010, ZIP 2010, pp. 279, 731; OLG Frankfurt, 29 April 2011, 21 W 13/11, *ratio decendi* S. 28). In the terminal phase, the sustainable distribution ratio of 40 % of the net profit of the year matches the market average (see Wagner/Saur/Willershausen, WPg 2008, p. 733, which refers to average distribution rates of between 40 % and 60 %). In this approach, the distribution patterns of the company being valued are reflected in a way that is equivalent to the distributions of an alternative investment (see Gorny/Rosenbaum, WPg 2004, p. 861, 863; OLG Frankfurt, 29 April 2011, 21 W 13/11, *ratio decendi* S. 29). The amounts that are not distributed are considered as added value from retained earnings with the exception of the retained earnings needed to fund growth.

In conclusion, the distribution amounts and rates assumed by KPMG, the neutral valuer, are plausible, justified and verifiable. The planned distributions were then reduced to deduct personal income tax of 25 % plus the 5.5 % solidarity surcharge.

b) Capital tax gains upon disposal

From the year 2009 the impact of the tax on capital gains upon disposal needs to be considered. Representing the amount of the effective capital gains tax depends both on the assumed duration of the holding, the development of the business value due to the retention of earnings by the company, as well as the alternative investment (see Wiese, WPg 2007, pp. 368, 375). The figures need to be standardized in order to account for the timing of the sales that trigger capital gains tax and the resulting average capital gains tax.

Although it is initially intended to only tax all realized gains on sales of assets if the assets were acquired after 31 December 2008, at the same time, the taxation of capital gains must be reflected in the prices observed on the capital markets, at least from 1 January 2009, because, since this date, any sale of shares to realize price gains, which is still tax-free, at least temporarily due to the sale of "old" holdings acquired prior to 1 January 2009 is counterbalanced by the fact that, for the buyer, the acquired assets will be subject to capital gains tax upon a later sale. More importantly, the primary factor here is not the rate of capital gains tax due on the cash compensation once the resolution on the domination and profit and loss transfer agreement has been registered, but the - prior - calculation of the equity value assuming an indefinite life for the company when using the discounted earnings method.

On the basis of the discussion in the profession, it can be assumed that a standardized **effective capital gains tax** of **12.5 %** plus solidarity surcharge (13.1875 %) is appropriate (see Zeidler/Schöniger/Tschöpel, FB 2008, p. 281; Wagner/Saur/Willershausen, WPg 2008, p. 736; OLG Stuttgart, 15 October 2013, 20 W 3/13 No. 116 (juris); OLG Stuttgart, 5 June 2013, 20 W6/10; No. 186 (juris); OLG Munich, 7 February 2013, 31 Wx 122/12, *ratio decidendi* p. 10). The retained earnings leading to an increase in the business value in the terminal phase and the growth rate to allow for inflation were burdened with the effective tax rate instead of the nominal tax rate of 25 % plus the solidarity surcharge.

We believe that this is the correct approach.

c) Discounting net cash inflows

We examined the discounting of net cash inflows, on the one hand, and the fictitious assumption that the value added by retained earnings will be directly allocated to the owners, on the other.

When discounting the annual distributions, the neutral valuer has assumed that profits are distributed at the end of the year. The distribution amounts were therefore initially discounted from the end of the respective year to the technical valuation date (1 January 2014) and subsequently compounded to the formal valuation date. This approach is in line with the ruling handed down by the OLG Stuttgart, which states that the business valuation may not be based solely on actual cash flows but must also take account of the value contributed by retained earnings (see OLG Stuttgart, 19 March 2008, AG 2008, p. 515). Discounting the value added by retaining earnings in the terminal phase follows the same procedure.

The forecast distributions for the first plan year must therefore be discounted to the beginning of the year 2014. The profits in later years of the planning period are treated correspondingly so that the net earnings value represents the value on the technical valuation date, i.e. the beginning of the first year of the planning period, 2014. In a second step, the discounted earnings value must be compounded (unwound) to the valuation date later in the year (see BGH, 19 July 2010, AG 2010, p. 631).

For technical reasons it is necessary to add in retained earnings of an amount equal to the growth rate multiplied by equity until the end of the detailed planning period to secure the economic equity in the second planning phase, i.e. the terminal phase. These funds will remain in the business and serve to generate the growth and the associated rise in the business value after the last year of the detailed planning phase. Considering the retained component of growth in this way is proper treatment by the neutral valuer.

We are of the opinion that the two phase model has been applied correctly. After checking the accuracy of the financial mathematical calculation of the equity value using the discounted earnings, we are satisfied that the results are correct.

IV. Separately-valued assets

Non-operating investment holdings / shares in other entities

Celesio AG also has holdings in various subsidiaries that are not included in the consolidated financial statements and which have not been considered in the planning statements via investment income. These primarily relate to immaterial equity investments which contribute either nothing or only a marginal amount to earnings. The neutral valuer has recognized these special assets at their share in equity.

Other separate assets

According to the management board and based on the findings of our audit, we are of the opinion that there are no indications of other non-operating assets.

The neutral valuer has properly calculated and recognized separately-valued assets.

V. Equity value

Based on the presentations made in the valuation report, the business value of Celesio AG as of the valuation date of 15 July 2014, derived primarily from its equity value, amounts to approximately EUR 4,556.0 million. This corresponds to a value per share of EUR 22.42.

We verified the per share calculation. It has been derived correctly.

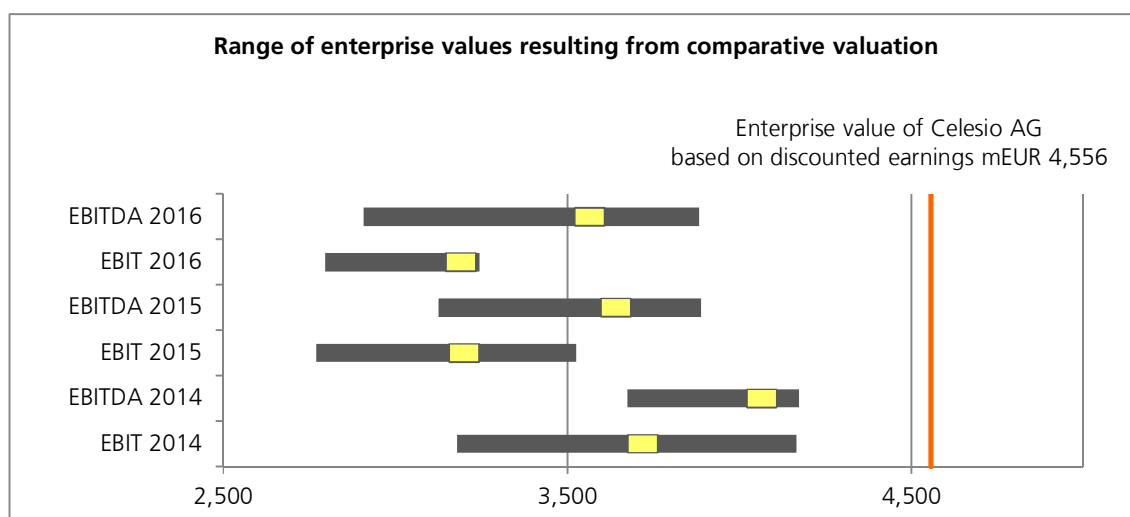
VI. Comparative valuation

In addition to the discounted earnings value, valuation practice also uses so-called multiplier methods to estimate a preliminary business value, ranges of business values, or to assess plausibility. Like the discounted earnings method, this valuation concept is also based on earnings. However, business value in this case is determined by multiplying earnings by a profit indicator. The

multiplier method is based on a comparative business valuation in the sense that suitable multipliers are derived from the capital market data of publicly listed companies or transactions and transferred to the company being valued.

Such multiple-based valuations only represent a simplified valuation, but in some cases they can provide an indication of the plausibility of other methods (see IDW S 1, 2008, No. 143).

We have reviewed the derivation of the comparative valuation performed by the neutral valuer and performed our own comparative valuation on the basis of information sourced from Bloomberg. The relative values can be presented graphically as follows:



The slight deviation to the values determined by KPMG can be attributed to a deviation to the companies used in the sample.

In sum, it can be stated that this plausibility check reveals that the fundamental business value determined using the principles of IDW S 1, 2008, lies above the range of multiplier-based market valuations of comparable companies. The comparative valuation has been properly performed by the neutral valuer. In conclusion, the plausibility check does not reveal any indication that the calculated business value is too low in comparison to the current situation on the capital markets (for a critical comment on the informative power of multiplier-based valuations in general, see: OLG Frankfurt, 2 May 2011, 21 W 3/11, No. 83 juris (where not already printed in AG 2011, p. 828 ff.); OLG Frankfurt, 15 February 2010, 5 W 52/09 No. 105 (juris)).

VII. Market price

1. Determining the three-month average share price

Relevance of the share price, beginning and end of the reference period

The requirements arising from court rulings on the relevance of a market price (in this case of Celesio AG) for determining a fair cash compensation were examined using a range of criteria and are discussed below. We referred to information from Bloomberg in order to determine the share prices.

In its ruling dated 19 July 2010 (AG 2010, p. 629 ff., “Stollwerk”) the Federal Court of Justice ruled that the market price of the share used to derive a fair cash compensation paid to squeeze-out minority shareholders must be measured on the average market value over a three-month period **prior to announcement of the structural measures**. With this ruling the Federal Court of Justice partially overturned its earlier rulings and has now accepted the prevailing opinion in the technical literature (see, for example, Adolff, Unternehmensbewertung im Recht der börsennotierten Aktiengesellschaft, 2007, p. 335 f.) and valuation practice.

In its deliberations, the BGH states that if the share price is taken from the period after the structural measures are announced and this “... is included in the reference period, the share price no longer reflects, as required, the price which the shareholder could have expected without the intervention of the majority shareholder, who is duty bound to pay compensation, or without the structural measure having occurred. Thus the share price does not reflect the business value expected by the market on the basis of the supply and demand mechanism but the price which can be obtained precisely because of the structural measure. ... However, such market demand has nothing to do with the fair value of the share which the minority shareholder should receive as compensation for losing his status as a shareholder, in other words to recompense him for the position he would be in had the structural measure not occurred (BVerfGE 100, 289, 305; BVerfG, ZIP 2007, 175 Rn. 16).” The selection of a reference period also serves to prevent any conscious manipulation. Abuse by either side should be ruled out. In the opinion of the BGH, the minority shareholders are protected from manipulation by the majority shareholder, in the form of choosing a particularly favorable date, by stating that the cash compensation may never be lower than the share of the minority shareholder in the business value.

This interpretation is also reflected in Sec. 5 (1) of the bidding regulations for the WpÜG [‘Wertpapiererwerbs- und Übernahmegesetz’: German Securities Acquisition and Takeover Act] which determines that counter-performance in the case of a takeover bid must at least correspond to the average market price of the shares in the target for the three months prior to the decision to make a bid.

In an announcement of a second takeover bid by Dragonfly KGaA on Thursday, 23 January 2014, and a press release issued by the McKesson Corporation, San Francisco, USA, of the same date, both companies announced the intention of Dragonfly KGaA to enter into a domination and profit and loss transfer agreement with Celesio AG.

In accordance with the approach described on the internet site of BaFin the neutral valuer based the calculation on a three month period **prior** to the public announcement to enter into a domination and profit and loss transfer agreement. Thus, the three-month period ends on Wednesday, 22 January 2014. We believe that this approach is appropriate.

Averaging

In accordance with the requirements of the BGH, (19 July 2010, AG 2010, pp. 629, 632), the volume-weighted average share price should be determined for the three month reference period. This approach corresponds to the prevailing opinion of the court rulings (see OLG Frankfurt, 3 September 2010, AG 2010, p. 751, 757; OLG Stuttgart, 18 December 2009, AG 2010, p. 513, 515; OLG Düsseldorf, 9 September 2009, AG 2010, p. 35, 39; OLG Stuttgart, 16 February 2007, AG 2007, p. 209).

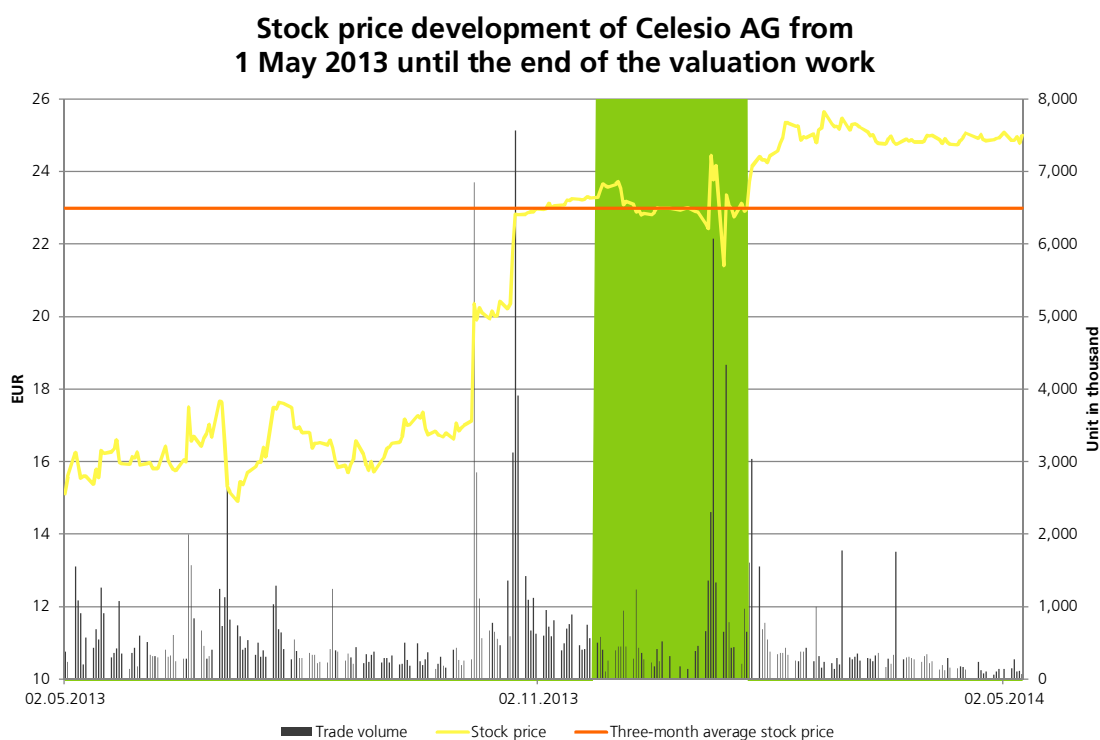
In the clearly prevailing professional opinion, the volume-weighted average share price should be calculated on the basis of the share prices calculated by BaFin pursuant to Sec. 5 (1) of the regulation on public bids to the WpÜG (see OLG Frankfurt, 30 August 2012, 21 W 14/11, No. 24; OLG Stuttgart, 4 May 2011, AG 2011, pp. 560, 561; OLG Frankfurt, 3 September 2010, AG 2010, pp. 751, 756 f.). According to the letter issued by BaFin dated 13 February 2014, the average share price as defined by Sec. 5 (1) and (3) Angebotsverordnung zum WpÜG [regulation on public bids with regard to the WpÜG] (BaFin share price) on the cut-off date of 22 January 2014 was

EUR 22.99.

For comparative purposes we determined the trading volume-weighted share price using market data from Bloomberg. The resulting value of EUR 23.05 is approximately 0.26 % above the value measured by BaFin. This marginal difference in comparison to the share price measured by BaFin is within the range of normal deviations in our experience and is negligible in our opinion.

The value of EUR 22.99 per share resulting from the three-month observation period is therefore above the value of EUR 22.42 per share determined using the business value of Celesio AG derived from its discounted earnings.

The following chart shows the development of the share price and the trading volume of Celesio AG shares until the date on which we concluded our audit. The three month period prior to date on which the intention to enter into the domination and profit and loss transfer agreement was announced on 23 January 2014, is highlighted. Moreover the three-month average as of 22 January 2014 of EUR 22.99 has been presented in orange:



Source: Bloomberg and our own internal calculations

2. Adjusting the listed share price

In the ruling mentioned above, the BGH restricted the scope of its statement to the effect that the share price should be extrapolated in line with the general market or sector trends, taking account of historic movements in the share price, if there is a longer period between the announcement of the structural measure and the date on which the general meeting passes the corresponding resolution and developments on the stock exchange suggest that such an adjustment would be appropriate.

Approximately less than six months lie between the public announcement to enter into a domination and profit and loss transfer agreement and the date of the general shareholders' meeting passing the associated resolution of 15 July 2014.

In light of the number of steps to be taken and the invitation requirements, which are mandatory and must be observed at all costs, this period would be almost impossible to reduce in the case of Celesio AG. In general, a period of less than six months cannot be regarded as „longer period“ according to the Stollwerk ruling (see OLG Stuttgart, 19 January 2011, AG 2011, p. 420, 422; Bungert, BB 2010, pp. 2227, 2229; Bücker, NZG 2010, pp. 967, 970). In the decisive case, the BGH assumed that a “longer period” refers to a period of seven and a half months or more (see AG 2010, pp. 629, 632). For this reason, we do not believe that a “longer period” in the sense of the ruling handed down by the BGH applies in this case, which would require an adjustment to the share price.

As a purely precautionary measure we nevertheless analyzed the development of the three-month average of the peer group for the period from 23 January 2014 to the end of our audit work. However, we do not believe that an analysis of the development of the overall market will lead to the desired result, namely, the development of the share price of Celesio AG without considering the structural measure. Thus, the development of share prices in the relevant sector, or even better, the peer group, is preferable to the development of the market as a whole (see OLG Frankfurt, 21 December 2010, 5 W 15/10, No. 53 (juris)).

Peer Group	Change
McKesson	8.22%
Oriola	-4.27%
Galenica	-0.92%
Cardinal Health	8.76%
AmerisourceBergen	-4.46%
Average	1.47%

This reveals that the three-month average share price of the peer group only rose insignificantly over the corresponding period. Moreover, there is no “longer” period in the sense of the ruling handed down by the Federal Court of Justice. This implies that the share price of Celesio AG does **not** need to be adjusted.

VIII.Sensitivity statement

In order to review the fairness of the compensation pursuant to Sec. 305 AktG, we have verified the calculations performed by the neutral valuer using our own valuation model. For the purposes of the sensitivity analysis we initially derived a simplified model in order to review the impact that changing certain parameters would have on the business value. The parameters we selected for the sensitivity analysis were the risk-free rate, the risk premium, the beta factor and the growth rate because these valuation parameters have a high impact on the business value.

As a precautionary measure, we would like to point out that the following sensitivity analyses and their arithmetically derived results are provided solely for information purposes for the benefit of the minority interests and the regional court which engaged us to perform the audit. Moreover, the resulting values should not be interpreted as appropriate compensation and do not therefore contradict our fairness opinion.

Basically, combinations of higher growth rates and lower risk premiums result in higher business values. However, this combination is not very plausible as higher growth typically implies higher risks.

Risk free rate/growth factor

We varied the risk-free rate (before tax) within a range from 2.00 % to 3.00 %. We varied the growth factor within a range from 0.50 % to 1.50 %.

Value per share in EUR		Risk free interest rate				
		2.00%	2.25%	2.50%	2.75%	3.00%
growth discount	1.50%	26.77	25.38	24.11	22.94	21.86
	1.25%	25.68	24.41	23.23	22.14	21.13
	1.00%	24.70	23.52	22.42	21.41	20.46
	0.75%	23.81	22.71	21.69	20.73	19.85
	0.50%	23.00	21.97	21.01	20.11	19.28
Change of value per share with change of risk free interest rate (Growth discount = 1,00%)		10.2%	4.9%	0.0%	-4.5%	-8.7%

Related to the growth rate of 1.0 % used in the valuation, a fall in the risk-free rate to 2.00 %, for example, leads to an imputed increase of approximately 10.2 % in the value per share. An increase in the risk-free rate to 2.75 % leads to a reduction in the value per share of roughly 4.50 %.

Risk-free rate/market risk premium matrix

We have varied the risk premium (after tax) within a range from 4.50 % to 6.50 %.

Value per share in EUR		Market risk premium				
		4.50%	5.00%	5.50%	6.00%	6.50%
Risk free interest rate	2.00%	30.30	27.24	24.66	22.46	20.56
	2.25%	28.67	25.87	23.50	21.46	19.69
	2.50%	27.18	24.61	22.42	20.52	18.87
	2.75%	25.81	23.45	21.42	19.65	18.10
	3.00%	24.56	22.37	20.48	18.84	17.39
Change of value per share with change of market risk premium (Risk free interest rate = 2.50 %)		21.2%	9.8%	0.0%	-8.4%	-15.8%

Related to the risk-free rate of 2.50 %, a fall in the market premium to 5.00 %, for example, leads to an imputed increase of approximately 9.8 % in the value per share. An increase in the market risk premium to 6.00 % leads to a reduction in the value per share of roughly 8.4 %.

Beta/market risk premium matrix

We varied the unlevered beta factor within a range from 0.65 to 0.8. The following table shows the respective value per share.

Value per share in EUR		Beta factor				
		0.65	0.70	0.72	0.75	0.80
	4.50%	29.81	27.89	27.18	26.16	24.61
	5.00%	27.10	25.28	24.61	23.66	22.19
Market risk premium	5.50%	24.78	23.05	22.42	21.52	20.14
	6.00%	22.76	21.13	20.52	19.67	18.37
	6.50%	21.00	19.44	18.87	18.06	16.82
Change of value per share with change of beta factor (Market risk premium = 5.50%)		10.5%	2.8%	0.0%	-4.0%	-10.2%

Related to the market risk premium of 5.50 %, an increase in the beta factor to 0.80, for example, leads to an imputed reduction of approximately 10.2 % in the value per share. A decrease in the beta factor to 0.65 leads to an increase in the value per share of roughly 10.5 %.

IX. Particular difficulties in the valuation

On the basis of our knowledge of the relevant parts of the joint report, the information provided to us and our meetings with the management board of Celesio AG, our meetings with representatives of the audit firm engaged by the two parties to the contract to assist with determining the business value, as well as our review of the planning projections underlying the calculation of the business value, and other documents, we have come to the conclusion that no special difficulties arose during the determination of the business value of Celesio AG in the sense of Sec. 293e (1) sentence 3, No. 3 AktG.

F. Calculation of a Fair Cash Compensation and Annual Compensation Payment

I. Calculation of a fair cash compensation pursuant to Sec. 305 AktG

The figures on which the proposed cash compensation is based are explained in detail in the joint report attached as an annex to the valuation report.

Taking a business value of approximately EUR 4,556.0 million as the point of departure, the neutral valuer has derived a value of EUR 22.42 per share after rounding.

The fair cash compensation must be derived from the average share price on the stock exchange as the mean three-monthly share price for the period ending 22 January 2014 (EUR 22.99) lies above the per share business value.

The contractual parties have therefore set the compensation at

EUR 22.99

per share.

In our opinion, the cash compensation is fair.

II. Calculation of a fair guaranteed dividend and annual compensation payment pursuant to Sec. 304 AktG

According to Sec. 304 (1) Sentence 2 AktG, the guaranteed dividend for fiscal 2014 is based on the amount determined for a fair annual compensation payment. To keep the language simple, the following comments are restricted to a fixed payment of a fair annual compensation payment.

According to Sec. 304 (2) Sentence 1 AktG a fair annual compensation payment must assure an annual payment of the amount that would likely be available as the average profit distribution per share based on the profit performance of the company to date and its profits projections for the

future taking account of appropriate depreciation and impairments, however without creating other revenue reserves. This legal requirement ensures that minority shareholders receive an annual compensation payment that corresponds to the dividends that they would have received without the corporate agreement.

In contrast to the exact wording of Sec. 304 AktG, the neutral valuer derived the annual compensation payment by expressing the business value as a perpetual annuity in keeping with the clearly prevailing opinion in the literature (see Großfeld, *Recht der Unternehmensbewertung*, 7th Ed., 2012, No. 76; Popp, WPg 2008, p. 23, 31; Wüstemann, BB 2008, p. 1499, 1503; OLG Frankfurt, 28 March 2014, 21 W 15/11, *ratio decidendi* p. 91; OLG Stuttgart, 5 November 2013, 20 W 4/12, No. 130 (juris); OLG Frankfurt, 20 February 2012, 21 W 17/11, No. 78 (juris); OLG Frankfurt, 24 November 2011, 21 W 7/11, No. 188 (juris); OLG Stuttgart, 14 September 2011, 20 W 6/08, Tz. 216 (juris); OLG Munich, 31 March 2008, 31 Wx 88/06, No. 55 (juris)).

Irrelevance of the share price

The relevant business value for annual compensation payment is not based on the share price but, in accordance with Sec. 304 (2) Sentence 1 AktG, must be derived from the business value of the company measured using a discounted future earnings approach (see LG Stuttgart, 5 November 2012, 31 O 55/08, *ratio decidendi* p. 61; OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 481; OLG Stuttgart, 18 December 2008, 20 W 2/08, No. 309; OLG Stuttgart, 14 February 2008, AG 2008, pp. 783, 789; BGH, 13 February 2006, AG 2006, p. 331, 332; OLG Hamburg, 7 August 2002, AG 2003, pp. 321, 585). The neutral valuer therefore did not consider the market price of the share, correctly so.

Annuity factor

Preamble

In order to derive the annuity factor, we present the mean value approach and the credit spread below. However, as in this case the offer of compensation can revive under the terms of the contract, only the credit spread will be applied. In contrast, the mean value approach is the customary approach taken for corporate agreements without a clause that allows the offer of compensation to revive.

Mean value approach to determine the annuity factor

When deriving the annual guaranteed dividend it is customary practice in Germany to annuitize the business value per share using the mean rate of the risk-free rate after standardized personal income taxes and the risk-adjusted discount rate (known in Germany as the *Mittelwertansatz* "mean value approach"), which is deemed fair (see OLG Frankfurt, 28 March 2014, 21 W 15/11, *ratio decidendi*, p. 93; OLG Stuttgart, 5 November 2013, 20 W 4/12, No. 134 (juris); LG Stuttgart, 5 November 2012, 31 O 55/08, *ratio decidendi* p. 62; OLG Stuttgart, 14 September 2011, 20 W 6/08, No. 225; OLG Frankfurt, 29 April 2011, 21 W 13/11, No. 104 (juris); OLG Frankfurt, 15 February 2010, 5 W 52/09, No. 115; OLG Munich, 31 March 2008, 31 Wx 88/06, No. 57 (juris); OLG Munich, 17 July 2007, AG 2008, p. 28, 32; OLG Stuttgart, 18 December 2009, 20 W 2/08, No. 320 ff. (juris); Popp, WPg 2008, p. 23, 32 f.).

This method considers the future position of minority interests remaining in the company from a risk perspective. On the one hand it can be stated that future payments of the guaranteed dividend are not secured payments, equivalent to distributions from a company that is not under control (see OLG Frankfurt, 24 November 2011, 21 W 7/11, No. 193 (juris)). Due to the fact that the annual compensation payment is exposed to higher risks than income from a fixed interest instrument, use of a risk-free rate without any risk premium would not be proper treatment (see Popp, WPg 2008, p. 23, 31). On the other hand, use of the fully risk-adjusted discount rate is likewise not proper treatment (see OLG Frankfurt, 28 March 2014, 21 W 15/11, *ratio decidendi* p. 94) as in this case the annual compensation payment would be exposed to the same risks as income from the company (see Popp, WPg 2008, p. 23, 32). Where reference is made to the Ytong decision from the Federal Court of Justice (see 21 July 2003, II ZR 17/01 WM 2003, pp. 1859, 1861), it can be stated that the FCJ did not address the issue of how high the annuity factor was owing to a lack of any objections (see OLG Frankfurt, 24 November 2011, 21 W 7/11, No. 199 (juris); OLG Stuttgart, 20 W 7/11, No. 496 (juris); OLG Stuttgart, 18 December 2009, 20 W 2/08, No. 330 (juris); OLG Munich, 17 July 2007, 31 Wx 60/06, No. 52 (juris)).

The following issues were named with regard to weighing up the risk structure.

Elements that reduce risk are deemed to be the obligation on the parent company to absorb losses for the duration of the agreement (see LG Munich, 14 February 2014, 5 HKO 16505/08; *ratio decidendi* p. 70; OLG Stuttgart, 5 June 2013, 20 W 6/10, No. 260 (juris); Maul, DB 2002, p. 1423, 1425) and the constant stream of payments without any fluctuation in profits that the annual compensation payment provides regardless of the actual profit generated (see LG Berlin, 23 April 2013, 102 O 134/06, *ratio decidendi* p. 121; OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 498 (juris); OLG Celle, 19 April 2007, 9 W 53/06, AG 2007, 865, 867; OLG Düsseldorf, 20 September 2006, 26 W 8/06, No. 64 (juris)). The risk of the annual compensation payment can

therefore not be compared to the entrepreneurial risk, which would revive once the agreement is terminated (see OLG Stuttgart, 5 November 2013, 20 W 4/12, No. 134 (juris)).

On the other hand, elements that would generally **increase risk** are the fact that the annual compensation payment does not protect the minority interest from the parent company exhausting the equity of the dependent company in the Agreement due to taking action that is disadvantageous to the dependent company (see OLG Stuttgart, 5 June 2013, 20 W 6/10, No. 263 (juris); OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 504 (juris); Lauber, Das Verhältnis des Ausgleichs gemäß § 304 AktG zu den Abfindung gemäß den §§ 305, 327a AktG, 2013, pp. 208 f.). In the event that the profitability of the company is weakened over the course of the agreement, the minority shareholder holds a stake in a company that has depreciated in value (see LG Berlin, 23 April 2013, 102 O 134/06, ratio decidendi p. 121).

With regard to the risk of insolvency of the parent company, which cannot be ruled out, the minority shareholder is exposed for the duration of the agreement to the risk that the parent company, as the ultimate debtor of the annual compensation payment, becomes insolvent (see LG Munich, 14 Februar 2014, 5 HKO 16505/08; ratio decidendi p. 69; OLG Frankfurt, 24 November 2011 21 W 7/11, No. 202 (juris); LG Berlin, 22 November 2011, 102 O 228/07, ratio decidendi p. 59).

Taking account of the above risk considerations, we are of the opinion that it is generally appropriate to apply an annuity factor that is below the full discount rate but above the base rate which is basically risk-free. This is often used when applying the mean of the risk-free base rate and the full risk-adjusted costs of capital. In our opinion, and with reference to corporate bonds (see OLG Stuttgart, 17 October 2011, 20 W 7/11, No. 503 (juris); Lauber, Das Verhältnis des Ausgleichs gemäß § 304 AktG zu den Abfindung gemäß den §§ 305, 327a AktG, 2013, p. 209), applying a factor within this range expresses nothing else than when, in an ideal situation, the returns are above those of fixed interest government bonds but below those of a share portfolio.

Credit spread of McKesson Corp. used in the annuity factor

According to §5 (6) of the agreement, the corporate agreement will revive upon termination of the contractually agreed right to compensation of the minority shareholders for a limited term. Such clauses have been used since the middle of the first decade of this century in a number of cases (without any claim to being exhaustive, a list of examples includes corporate agreements between Degussa/RAG, Eurohypo/Commerzbank, Schering/Bayer, TDS/Fujitsu, MAN/VW and KDH/Vodafone). There are no apparent doubts regarding the legality of such clauses.

If a corporate agreement, as an exception in this case, contains a clause under which the right to a cash compensation pursuant to Sec. 305 AktG revives upon termination of the agreement and therefore provides protection against the equity of the dependent company being exhausted due to disadvantageous acts of the parent, the credit risk attached to the counterparty remains as they are the debtor of the cash compensation (see LG Berlin, 23 April 2013, 102 O 134/06, *ratio decidendi* p. 122; OLG Frankfurt, 24 November 2011, 21 W 7/11, No. 203 (juris)).

The point of departure for measuring this risk of insolvency could be a comparison of the returns between government bonds and corporate bonds issued by the counterparty of credit default swaps for corporate bonds (see LG Berlin, 23 April 2013, 102 O 134/06, *ratio decidendi* p. 122 f.; OLG Frankfurt, 24 November 2011, 21 W 7/11, No. 206 ff. (juris)).

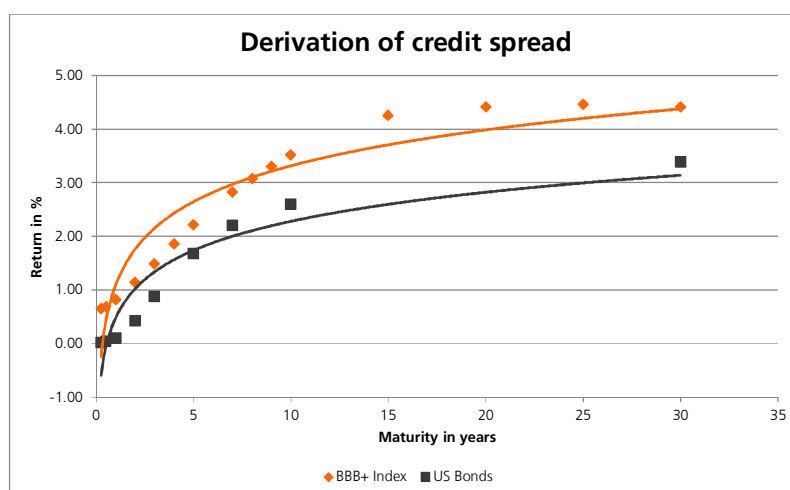
In order to determine an inter-subjective risk premium, the neutral valuer referred to the bonds issued by McKesson Corp. with a residual term of roughly 30 years (ISIN US581557BC84). Their credit spreads extend to the other party to the counterparty, Dragonfly KGaA, via the letter of comfort. These bonds were first issued on 5 March 2014 and therefore did not display any three month history by the time we concluded our audit. An analysis of trading volume revealed that the bonds maturing in 2044 displayed much higher liquidity than, for example, the bonds maturing in 2014 or 2027. The bonds are denominated in USD. In order to avoid the currency effects, the returns on McKesson Corp. bonds were indexed to treasury bonds of a comparable term (ISIN US912810RD28). Since this bond was issued, premiums of approximately 1.2 % have been paid. We made the following findings in the course of our audit work:

Under the current capital gains tax regime, dividends and annual compensation payments are subject to the same taxation as interest income (see L. Schmidt, EStG, 33rd Ed. 2014, § 20 No. 157). The different tax treatment under the half income method no longer applies (see Popp, WPg 2008, S. 23, 33). To this extent, the principle of equivalence is met with regard to their tax treatment and that of corporate bonds.

There is unanimous consent that the corporate agreement will be in place for at least the mid-term (see OLG Frankfurt, 24 November 2011, 21 W 7/11, No. 213 (juris)). For this reason, very long-term bonds should be used for comparative purposes in order to match terms (see Popp, WPg 2008, S. 23, 33). The choice of a McKesson Corp. bond with a residual term of approximately 30 years has been properly chosen with regard to matching terms.

In order to verify the plausibility of the credit spread, we referred to Standard & Poor's to find a corporate bond with a comparable rating to that of McKesson Corp. of BBB+ also with a term of up to 30 years. With a yield of 4.6 % on long-term US corporate bonds with a BBB+ rating, the credit spread over a three month period in comparison to treasury bonds of a comparable term comes to an average of 1.1 %.

The chart below illustrates the yields on US corporate bonds with a rating of BBB+ and treasury bonds in relation to their term. The curves show logarithmic trends:



The use of a three month period of the daily credit spreads ending on the cut-off date corresponds to the same method used to derive the weighted share price and the interest curves and is therefore considered proper treatment on grounds of practicality and to avoid accidental fluctuations.

In conclusion we can state that, due to the revival of the right to receive a cash compensation upon termination of the agreement, as granted under §5 (6) of the agreement, the proper treatment to assess the credit risk for the counterparty is to refer to the credit spread of a McKesson Corp. bond.

Growth factor

The annuity factor should not be reduced by a growth factor (see Großfeld, Recht der Unternehmensbewertung, 7th Ed., 2012, No. 85; OLG Karlsruhe, 13 May 2013, 12 W 77/08 (13), No. 106 (juris); OLG Munich, 17 July 2007, 31 Wx 60/06, No. 52 (juris)).

Impact of the new capital gains tax regime

When setting the annual compensation payment the neutral valuer properly considered that cash flows from the compensation payment are treated like dividends and therefore subject to the new capital gains tax of 25.0 % plus solidarity surcharge. For this purpose the after tax value is annuitized using an after-tax interest rate in order to determine the standardized tax burden payable on the amount of the fixed annual compensation payment and translate the after tax value into a before tax value (see OLG Stuttgart, 5 June 2013, 20 W 6/10, No. 258 (juris), LG Stuttgart, 5 November 2012, 31 O 55/08, *ratio decidendi* p. 62).

Determination of the annual compensation payment

The point of departure for deriving the annual compensation payment is the value per share of EUR 22.42 derived from the business value as of 15 July 2014.

The appropriate annual compensation payment was calculated as follows:

		Celesio AG		Market portfolio	
		EUR	Return	EUR	Return
Company value per share	15/07/2014	22.42		22.42	
Pre-tax risk free rate	2.500%				
Credit spread (pre-tax)	1.200%				
Sum	3.700%				
Typified income tax	-0.976%				
Interest rate after personal income tax	2.724%				
Annuitization rate (after income tax)				2.724%	
Annual cash compensation (before income tax)		0.83	3.702%		
Personal income tax (26.375%)		-0.22			
Annual cash compensation (after income tax)		<u>0.61</u>	2.724%	<u>0.61</u>	2.724%
Annual cash compensation (before income tax)		0.83			

This results in an annual compensation payment of EUR 0.83.

Modification of a guaranteed dividend in accordance with the ruling from the BGH

In its ruling dated 21 July 2003 (II ZR 17/01, WM 2003, p. 1859 ff) the Federal Court of Justice ruled that an annual compensation payment should equal the prospective distributable average pre-tax earnings per share of the company less any corporate income tax to be paid by the company (on distributions) at the applicable tax rate. Thus adjustments to the corporate income tax rate could result in adjustments to the annual compensation payment as, in the opinion of the Federal Supreme Court, the "corporate income tax rate is not influenced by the company itself but is merely one channel for the cash outflow of the profit generated by the company."

Fixing the taxable corporate income as the measurement base for the respective corporate income tax rate is not a consistent approach. The corporate income tax burden is not merely a cash outflow of tax but is actually determined by the height of the tax base. Thus, it is difficult to understand why structural manipulation and changes to the tax base, e.g. as a consequence of constant tax reforms, should continue to be left out of the equation. It would have been more consistent had the Federal Court of Justice not merely taken the profit before corporate income tax but additionally fixed the measurement base for periods after the cut-off date. Moreover, it is very doubtful whether consideration of corporate income tax alone is a suitable approach. Valued companies with profits originating in Germany are also subject to German trade tax and, in accordance with the growing globalization, also increasingly to foreign income taxes. With regard to the relevant precedent where corporate income tax could still be offset from personal income tax (up until 31 December 2000) we believe that the sole concentration on profit before corporate income tax is questionable both from an income tax perspective as well as from a commercial perspective (cases where the issue is left undecided: LG Stuttgart, 5 November 2012, 31 O 55/08, ratio decidendi p. 65; OLG Stuttgart, 14 September 2011, 20 W 6/08, No. 229 ff. (juris); for a critical appraisal: Popp, WPg 2008, p. 23, 26; Stephan in K.Schmidt/Lutter, AktG, § 304, No. 90 f.).

In spite of the conceivable criticism of the ruling handed down by the Federal Court of Justice, no objection can be made when the contract of control and profit and loss transfer provides for gross compensation in line with the applicable court rulings.

In order to consider the possible impact of changes in the corporate income tax burden on the annual compensation payment as required by the BGH ruling dated 21 July 2003 by which a fixed annual compensation payment pursuant to Sec. 304 (1) sent. 1 AktG should equal the prospective distributable average pre-tax earnings per share of the company less the corporate income tax payable (on the dividend) in line with the applicable tax rate, the measurement base for corporate income tax and the solidarity surcharge needs to be set (see BayObLG, 28 October 2005, AG 2006, p. 41, 45). As a consequence of the extremely small share in profits that is subject here to German corporate income tax, there is no need for a deduction. The calculation of the annual

compensation payment is made by deducting the current corporate income tax rate plus solidarity surcharge (EUR 0.00) from the annual (gross) compensation payment derived from the equity value (EUR 0.83).

Assuming that there is no change in the corporate income tax rate of 15.0 % and a solidarity surcharge of 5.5 % the annual compensation payment per no-par share amounts to EUR 0.83.

G. Concluding Declaration of the Fairness of the Guaranteed Dividend, Annual Compensation Payment and Cash Compensation

„Based on our findings and the reasons described above, the cash compensation to be paid to the minority interests of Celesio AG, Stuttgart, pursuant to Sec. 305 AktG for the conclusion of a domination and profit and loss transfer agreement with Dragonfly GmbH & Co. KGaA, Frankfurt am Main, of EUR 22.99 per no-par bearer share is fair.

The fair annual compensation payment per share pursuant to Sec. 304 AktG is EUR 0.83 (share in pre-tax earnings per share) less the amount of corporate income tax to be transferred by Celesio AG. This amount is determined from the profits of Celesio AG subject to corporate income tax contained in the pre-tax share in profits of EUR 0.83 per share taking account of the corporate income tax rate for the respective fiscal year. Taking the corporate income tax rate of 15.825 % (including solidarity surcharge) applying on the date on which the corporate agreement is entered into, the deduction comes to EUR 0.00 and therefore an annual compensation payment of EUR 0.83 per share.

The fair guaranteed dividend for the year 2014 which applies if the agreement becomes effective if entered into the commercial register in 2014 equates with the annual compensation payment.”

Stuttgart, 16 May 2014

Ebner Stolz GmbH & Co. KG
Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft

Dr. Matthias Popp	Alexander Sobanski
Wirtschaftsprüfer	Wirtschaftsprüfer
[German Public Auditor]	[German Public Auditor]

**Domination and
Profit and Loss Transfer Agreement**

between

Celesio AG, Neckartalstraße 155, 70376 Stuttgart
registered in the commercial register (*Handelsregister*) at the Local Court
(*Amtsgericht*) Stuttgart (HRB 9517)
(“*Celesio*”)

and

Dragonfly GmbH & Co. KGaA, Eschenheimer Anlage 1, 60316 Frankfurt am Main
registered in the commercial register (*Handelsregister*) at the Local Court
(*Amtsgericht*) Frankfurt am Main
(HRB 97726)
(“*Dragonfly*”)

§ 1 Management Control

- (1) Celesio submits the management control (*Leitung*) of its company to Dragonfly. Dragonfly is accordingly entitled to issue instructions (*Weisungen*) to the management board of Celesio with regard to the management control of the company.
- (2) The management board of Celesio is required to comply with the instructions of Dragonfly. Dragonfly is not entitled to issue the instruction to the management board of Celesio to amend, maintain or terminate this Agreement.
- (3) Any instructions require text form (*Textform*) or, if the instructions are issued orally, they shall be confirmed in text form without undue delay.

§ 2 Transfer of Profit

- (1) Celesio undertakes to transfer its entire annual profit (*Gewinnabführung*) to Dragonfly. Subject to establishing or dissolving reserves in accordance with Clause 2 para 2 of this Agreement below, the maximum amount permissible under section 301 German Stock Corporation Act (*Aktiengesetz* – "**AktG**"), as amended from time to time, shall be transferred.
- (2) Celesio may, with the written consent of Dragonfly, allocate parts of its annual profit to other profit reserves if and to the extent permissible under commercial law and as economically justified by reasonable commercial judgement. Upon the written request of Dragonfly, Celesio shall dissolve other profit reserves established during the course of this Agreement and use the proceeds to compensate for any annual loss or transfer the proceeds as profit. Other reserves or profits carried forward from the period prior to the term of this Agreement may neither be transferred as profit nor be used to compensate for any annual loss.
- (3) The obligation to transfer the annual profit applies for the first time to the entire profits generated in the fiscal year of Celesio beginning on 1 January 2015 or for whichever subsequent fiscal year in which this Agreement becomes effective according to Clause 6 para 2 of this Agreement. The obligation according to sentence 1 becomes due upon the end of the fiscal year of Celesio and shall bear interest from this point on at an interest rate of 5% p.a.

§ 3 Assumption of Losses

- (1) Dragonfly is obliged towards Celesio to assume any losses (*Verlustübernahme*) according to the provisions of section 302 AktG in its entirety as amended from time to time.
- (2) The obligation to assume any losses applies for the first time to the entire fiscal year in which this Agreement becomes effective according to Clause 6 para 2 of this Agreement. Clause 2 para 3 sentence 2 applies accordingly to the obligation to assume any losses.

§ 4 Guaranteed Dividend and Recurring Compensation Payment

- (1) Dragonfly guarantees that it will pay to the outside shareholders of Celesio in respect of the fiscal year 2014 of Celesio a certain portion of the profit pursuant to Clause 4 para 3 below as adequate cash compensation ("**Guaranteed Dividend**") (*Garantiedividende*). To the extent that the dividend (including any payments on account) paid in respect of the fiscal year 2014 by Celesio for each share of Celesio falls short of the Guaranteed Dividend, Dragonfly will pay to each outside shareholder of Celesio the corresponding difference per share. Payment of any such difference is due on the first banking day after the ordinary general shareholders' meeting of Celesio for Celesio's fiscal year 2014.
- (2) Dragonfly undertakes to pay to the outside shareholders of Celesio a recurring annual cash compensation ("**Recurring Compensation Payment**") (*Ausgleichszahlung*) from and including the fiscal year of Celesio in relation to which the claim of Dragonfly for the transfer of the annual profit under Clause 2 takes effect, and for the further duration of this Agreement.
- (3) The Guaranteed Dividend and the Recurring Compensation Payment (together "**Recurring Compensation**") amount for each full fiscal year of Celesio for each no-par value registered ordinary voting share (*Aktien ohne Nennbetrag*) in Celesio, representing a mathematical portion of EUR 1.28 in the share capital (each "**Celesio Share**" and when taken together "**Celesio Shares**") to a gross sum (*Bruttobetrag*) of EUR 0.83 minus the amount of any corporate income tax and the solidarity surcharge in accordance with the respective tax rate applicable for these taxes for the relevant fiscal year, whereby this deduction is to be effected only on any portion of the gross sum resulting from profits which are subject to German corporate income tax. When rounded to a full

Cent-amount in accordance with commercial practices, this portion of the gross sum amounts to EUR 0.00, meaning that no deduction is to be carried out in this respect. The Recurring Compensation Payment is due on the first banking day following the ordinary general shareholders' meeting of Celesio for any respective preceding fiscal year but in any event within eight months following expiration of the relevant fiscal year.

- (4) The Guaranteed Dividend is granted for the fiscal year 2014 of Celesio if this Agreement becomes effective in the year 2014. The Recurring Compensation Payment is granted for the first time for the full fiscal year of Celesio for which the claim of Dragonfly for transfer of profit under Clause 2 becomes effective. If this Agreement ends during a fiscal year of Celesio or if Celesio establishes an abbreviated fiscal year (*Rumpfgeschäftsjahr*) for a period during the course of this Agreement, the Recurring Compensation is reduced *pro rata temporis* for the relevant fiscal year.
- (5) If the share capital of Celesio is increased from the reserves in exchange for the issuance of new shares, the Recurring Compensation for each Celesio Share is reduced to such an extent that the total amount of the Recurring Compensation remains unchanged. If the share capital of Celesio is increased by cash contributions and/or contributions in kind, the rights under this Clause 4 also apply for the shares subscribed to by outside shareholders in such capital increase. The beginning of each entitlement of the new shares pursuant to this Clause 4 corresponds to the dividend entitlement set by Celesio when issuing the new shares.
- (6) If an appraisal proceeding (*Spruchverfahren*) according to the German Act on Appraisal Proceedings (*Spruchverfahrensgesetz*) is initiated and the court adjudicates a legally binding higher Guaranteed Dividend and/or Recurring Compensation Payment, the outside shareholders, even if they have already been compensated according to Clause 5, are entitled to demand a corresponding additional payment to the Guaranteed Dividend and/or Recurring Compensation Payment. Likewise all other outside shareholders will be treated in the same way if Dragonfly undertakes to pay a higher Guaranteed Dividend and/or Recurring Compensation Payment to an outside shareholder of Celesio in a court settlement (*gerichtlicher Vergleich*) for the purpose of avoiding or settling judicial appraisal proceedings (*Spruchverfahren*).

§ 5 Compensation

- (1) Dragonfly undertakes upon demand of each outside shareholder of Celesio to purchase such shareholder's Celesio Shares in exchange for a cash compensation ("**Compensation**") (*Abfindung*) in the amount of EUR 22.99 for each Celesio Share.
- (2) The obligation of Dragonfly to purchase Celesio Shares is for a limited period of time. The time limitation period ends two months after the date on which the registration of this Agreement in the commercial register at the registered seat of Celesio has been announced pursuant to section 10 German Commercial Code (*Handelsgesetzbuch* – "**HGB**"). An extension of the time limitation period pursuant to section 305 para. 4 sentence 3 AktG as a result of a motion for determining the Recurring Compensation or Compensation by the court determined according to section 2 of the German Act on Appraisal Proceedings remains unaffected. In this case, the time limitation period ends two months after the date on which the decision on the last motion ruled on has been announced in the Federal Gazette (*Bundesanzeiger*).
- (3) If the share capital of Celesio is increased from the reserves in exchange for the issuance of new shares prior to the expiration of the time limitation period set forth in Clause 5 para 2, the Compensation for each share is reduced to such an extent that the total amount of the Compensation remains unchanged. If the share capital of Celesio is increased prior to the expiration of the time limitation period set forth in Clause 5 para 2 by means of cash contributions and/or contributions in kind, the rights under this Clause 5 also apply for the shares subscribed to by the outside shareholders in such capital increase.
- (4) The transfer of the Celesio Shares for Compensation is free of costs for the outside shareholders of Celesio.
- (5) If an appraisal proceeding pursuant to the German Act on Appraisal Proceedings is initiated and the court adjudicates a legally binding higher Compensation, the outside shareholders, even if they have already been compensated, are entitled to demand a corresponding additional payment to the Compensation. Likewise all other outside shareholders will be treated in the same way if Dragonfly undertakes in a court settlement to pay a higher Compensation to an outside shareholder of Celesio for the purpose of avoiding or settling judicial appraisal proceedings.

- (6) If this Agreement is terminated by notice of termination by Dragonfly or Celesio at a point in time when the time limitation period set forth in Clause 5 para 2 for accepting the Compensation pursuant to Clause 5 para 1 has already expired, each outside shareholder of Celesio at that time is entitled to sell his Celesio Shares held at the time of the termination of this Agreement to Dragonfly in exchange for payment of the Compensation set forth in Clause 5 para 1 for each Celesio Share and Dragonfly is required to purchase the shares of each outside shareholder upon request of such outside shareholder. If the Compensation set forth in Clause 5 para 1 for each Celesio Share is increased by a legally binding decision in judicial appraisal proceedings or in a court settlement for the purpose of avoiding or settling judicial appraisal proceedings, Dragonfly will purchase the shares of the outside shareholders under the preconditions set forth in sentence 1 in exchange for payment of the amount established for each Celesio Share in the judicial appraisal proceedings or the court settlement. The right to sell pursuant to this Clause 5 para 6 is for a limited period of time. The time limitation period ends two months after the date on which the registration of the termination of this Agreement in the commercial register of Celesio is announced pursuant to section 10 HGB. Clause 5 para 3 and Clause 5 para 4 apply accordingly.

§ 6 Effectiveness and Term of this Agreement

- (1) This Agreement requires for its effectiveness each the consent of the general shareholders' meeting of Celesio as well as the consent of the general shareholders' meeting of Dragonfly.
- (2) This Agreement becomes effective upon registration of its existence in the commercial register at the registered seat of Celesio.
- (3) This Agreement is concluded for an indefinite period of time. It can be terminated in writing with a notice period of six month to the end of the fiscal year of Celesio. This Agreement can be terminated for the first time as of the end of the fiscal year that ends at least five years (*Zeitjahre*) (60 months) after the beginning of the fiscal year of Celesio for which the obligation of Celesio to transfer its entire annual profit (*Gewinnabführung*) pursuant to Clause 2 becomes effective.
- (4) Each party can terminate this Agreement for good cause (*wichtiger Grund*) without compliance with any notice period. Good cause exists in particular if

good cause for purposes of German tax law for the termination of this Agreement exists.

- (5) Any notice of termination must be in writing.

§ 7 Comfort Letter

McKesson Corporation with seat in San Francisco, California, USA (“**McKesson**”) indirectly holds 100% of the shares in Dragonfly and in this capacity as indirect shareholder, has without joining the Agreement as a party provided the comfort letter attached for information purposes to this Agreement as an Annex. In this comfort letter McKesson undertakes without limitation and irrevocably to ensure, that Dragonfly will be financially equipped in a way that Dragonfly is at all times able to fulfil all its obligations arising from or in connection with this Agreement completely and in time. This applies in particular to the obligation to compensate losses pursuant to section 302 AktG. McKesson undertakes towards the outside shareholders of Celesio irrevocably and in principle without limitation that Dragonfly fulfils all its obligations towards them arising from or in connection with this Agreement completely and in time, in particular with respect to the Guaranteed Dividend, the Recurring Compensation Payment and the Compensation. To that extent the outside shareholders of Celesio have an own claim according to section 328 para. 1 German Civil Code (*Bürgerliches Gesetzbuch* – “**BGB**”) directed at payment to Dragonfly. This claim and the corresponding liability of McKesson towards the outside shareholders however only apply if Dragonfly does not fulfil its obligations towards the outside shareholders of Celesio arising from or in connection with this Agreement completely and in time and McKesson does not comply with its obligation to equip Dragonfly.

§ 8 Miscellaneous

To the extent a provision of this Agreement is or becomes invalid or impracticable in full or in part, or if this Agreement does not contain a necessary provision, the validity of the remaining provisions of this Agreement shall not be affected. In place of the invalid or impracticable provision, or in order to remedy an omission in this Agreement, an appropriate provision shall apply which corresponds as far as legally permissible to what the Parties intended or would have intended in accordance with the intent and purpose of this Agreement if they had been aware of the provision.

Celesio AG

Stuttgart, 22 May 2014

Dr. Marion Helmes

Speaker of the Management
Board

Stephan Borchert

Member of the Management
Board

Dragonfly GmbH & Co. KGaA

Frankfurt am Main, 22 May 2014

Roger Wade Estey

as managing director of Dragonfly Verwaltungs GmbH with said entity acting in its capacity as general partner of Dragonfly GmbH & Co. KGaA

Willie C. Bogan

as managing director of Dragonfly Verwaltungs GmbH with said entity acting in its capacity as general partner of Dragonfly GmbH & Co. KGaA

Annex: Comfort Letter of McKesson Corporation

[Letterhead of McKesson]

McKesson Corporation, San Francisco, USA

San Francisco, 20 May 2014

Celesio AG
Neckartalstraße 155
70376 Stuttgart
Germany,

Comfort Letter (*Patronatserklärung*)

Dragonfly GmbH & Co. KGaA, Eschenheimer Anlage 1, 60316 Frankfurt am Main, Germany, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) Frankfurt am Main under company number HRB 97726 ("**Dragonfly**"), intends to enter into a domination and profit and loss transfer agreement ("**Agreement**") (*Beherrschungs- und Gewinnabführungsvertrag*) with Celesio AG, Neckartalstraße 155, 70376 Stuttgart, Germany, registered in the commercial register at the Local Court Stuttgart under company number HRB 9517 ("**Celesio**"), with Celesio as the controlled and profit transferring company. McKesson Corporation, a stock corporation incorporated and operating under the laws of Delaware, USA, with registered office in San Francisco / California, USA ("**McKesson**"), indirectly holds 100% of the shares in Dragonfly. McKesson hereby makes the following declarations without joining the Agreement as a party:

1. McKesson undertakes without limitation and irrevocably to ensure, that Dragonfly will be financially equipped in such a way that Dragonfly is at all times able to fulfil all its obligations arising from or in connection with the Agreement completely when they become due. This applies in particular to the obligation to compensate losses pursuant to section 302 German Stock Corporation Act (*Aktiengesetz – AktG*).
2. McKesson undertakes without limitation and irrevocably vis-à-vis the outside shareholders of Celesio that Dragonfly fulfils all its obligations towards them arising from or in connection with the Agreement completely and in time, in particular with respect to the guaranteed dividend (*Garantiedividende*), the recurring compensation payment (*Ausgleichszahlung*) and the cash compensation (*Abfindung*). To that extent the outside shareholders of Celesio have an own claim according to section 328 para. 1 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) directed at payment to Dragonfly. McKesson's liability pursuant to the two preceding sentences does, however, only apply if Dragonfly does not fulfil its obligations towards the outside shareholders of Celesio arising from or in connection with the Agreement completely and in time and McKesson does not comply with its obligation to equip Dragonfly pursuant to Section 1 of this Comfort Letter.
3. This Comfort Letter is subject to the law of the Federal Republic of Germany. McKesson hereby acknowledges German courts and the courts of Stuttgart to be competent with regard to any disputes and claims under or in connection with this Comfort Letter. In this

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regard, McKesson acknowledges the enforceability of final decisions of German courts. Dragonfly, Att. the Management, Eschenheimer Anlage 1, 60316 Frankfurt am Main, Germany shall be the agent for services of process (*Zustellungsbevollmächtigte*) in Germany for all proceedings under or in connection with this Comfort Letter

San Francisco, 20 May 2014

McKesson Corporation

[Name]

[Title]

[Name]

[Title]

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- Executed copy -

Reference number:
31 O 2/14 KfHAktG

6 February 2014

[Emblem of the state of Baden-Wuerttemberg]

Stuttgart Regional Court (*Landgericht*)

Commercial Division 31.

Order

In the proceedings concerning the application of

1. Celesio AG,

represented by its Management Board,
Neckartalstr. 155, 70376 Stuttgart

2. Dragonfly GmbH & Co. KGaA,

represented by its Management Board,
Eschenheimer Anlage 1, 60316 Frankfurt am Main
- Applicants -

Legal representatives for parties 1 and 2 above:

Law firm Freshfields Bruckhaus Deringer, Bockenheimer Anlage 44, 60322
Frankfurt/Main (internal ref. 104574-0125)

regarding the appointment of a joint expert auditor

the Commercial Division 31. of the Stuttgart Regional Court (*Landgericht*), acting through

Judge Wetzel, Presiding Judge of the Regional Court,

ordered:

I.

1.

In response to the joint application submitted by the stock corporations (*Aktiengesellschaften*) that are party to the enterprise agreement (the domination and profit and loss transfer agreement) dated 4 February 2014 (the Applicants),

the auditing firm

Ebner Stolz GmbH & Co. KG

Wirtschaftsprüfungsgesellschaft

Steuerberatungsgesellschaft

Kronenstr. 30, 70174 Stuttgart

(Contact person: *Wirtschaftsprüfer* and *Steuerberater* Dr. Matthias Popp, auditor and tax consultant)

is hereby appointed as the court-appointed expert auditor.

As per the declaration made to the Court of 3 February 2014, the above auditing firm fulfils the requirements under section 293 d German Stock Corporation Act (hereafter: **AktG**) and section 319 (1) German Commercial Code (hereafter: **HGB**) and, in particular, is not excluded from acting as an auditor pursuant to section 319 (2) to (4), section 319 a and section 319 b HGB.

2.

Both the appointed auditor and the Applicants are referred to the fact that the expert auditor bears an obligation to carry out the audit independently and in good conscience and that the auditor's responsibility to fulfil this obligation is owed to both of the relevant companies and the minority shareholders in equal measure (section 293 d (1) AktG). For this reason, the auditor holds extensive information rights and rights of inspection vis-à-vis the relevant company and the main shareholder (section 293 d (1) AktG), to which the Court makes specific reference.

On the one hand, the independent status of the court-appointed auditor is to be seen in relation to their task of issuing a declaration in the audit report on the adequacy of the compensation offered. On the other hand, this status is also of particular significance in the event of any potential appraisal proceedings (*Spruchverfahren*) being subsequently instituted, in which not only the audit report itself can be used, but – in line with the legislator's intentions – as a rule, it is also possible to call upon the independent expert auditor to provide evidence by way of explanations and clarifications as part of a hearing in accordance with section 8 (2) German

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Appraisal Proceedings Act (hereafter: *SpruchG*), in order to avoid, as far as possible, a new expert valuation having to be performed.

However, the expert auditor is not supposed to carry out an independent valuation of the relevant enterprise. Rather the plausibility of the relevant elements of the valuation are to be checked and the key valuation parameters are to be openly presented in the audit report (see the details directly below, under item 3.).

3.

Against this background and in the interests of improving the transparency and credibility of the audit, the expert auditor is ordered to make a statement and provide explanations on the following points in its audit report pursuant to section 293 e AktG (see also section 293 e (1) sentence 3, section 293 e (2) in conjunction with section 293 a (2) AktG) to the extent that the information in question is not already sufficiently clear and extensive in the main shareholder's transfer report:

- a) The audit report is to set out the location and time at which the audit was carried out, the manner in which the audit was carried out and the qualifications possessed by the staff used to carry out said audit. In the event a parallel audit is carried out, the auditing process is to be briefly outlined in terms of its substance, the time taken and the relevant location used.
- b) On what key points did the views of the expert auditor diverge from those of the author of the relevant report or of the valuation report (*Bewertungsgutachten*) with respect to the valuation presented in said valuation report? To the extent that the valuation expert was not in line with the view of the expert auditor, the reason(s) why the expert auditor's view is preferable is/are to be then stated.
- c) In the event that any information, either requested by the auditor or otherwise required (see 2. above) was not provided, this is to be disclosed in the report.
- d) A description is to be provided of the methods that were used as the basis for determining the enterprise value and on whether said methods are appropriate. What is required here is

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a presentation of the valuation procedure for the valuation of the enterprise's essential assets, its non-essential assets and any special values, where appropriate.

- e) If the discounted earnings method (*Ertragswertverfahren*) is used, an explanation is to be provided on the sources used to derive the parameters for the calculation of the discount rate under the discounted earnings method (*inter alia*, the risk free rate, the terminal growth rate, the positive excess return, the BETA factor, the composition of a “peer-group”), and a brief justification is to be given on why these specific indices and/or the time span applied are preferable over others that could also have come into consideration for use here. A presentation is to be provided on whether and how the values that were derived using capital market data were subjected to a plausibility check in the light of the specific situation of the relevant enterprise.
- f) In the event past results are adjusted for certain extraordinary expenses and income, these are also to be explicitly stated and justified.
- g) The following points are to be set out with respect to the underlying business planning that was used:
 - (1) Basic planning: Who prepared the basic plans? When were the plans adopted? Which executive bodies approved the plans? Were the plans prepared as part of the standard business planning and budgeting process or were they specifically developed for the enterprise valuation that was carried out?
 - (2) Modifications: Did the valuation expert (or the expert auditor) make any changes or additions to the basic business planning within the enterprise? What independent calculations (e.g. determination of the perpetuity) or special value calculations (e.g. plan for the payment of pension commitments) did the experts determine themselves?
 - (3) Planning assumptions: Presentation of the key planning parameters with an influence on value, with corresponding explanations and/or justifications with respect to their selection and pre-existing fluctuation margins. In particular, the assumptions with regard to the development of business operations are to be set out. A description of the market forecasts available at the time the plans were prepared is to be provided, as

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well as a description of the selection of market forecasts used as a basis here. Income planning is to be described separately in relation to volume and price trends.

- h) Explanations on any special features regarding the valuation set out in the report or the valuation report (*Bewertungsgutachten*), e.g.
- special values
 - non-essential assets
 - special business conditions
- i) In the event a stock price value is determined, the relevant sources of data and method of calculation used when determining the average stock prices is to be stated and/or described.

If the stock price value differs considerably from an enterprise value determined using other methods, then the expert auditor is to set out the reasons that are representative for this situation, in the auditor's view.

4.

The expert auditor is ordered to submit a copy of their audit report to the Court for its records under the reference number stated above.

In the event the auditor uses a computer program for calculating the enterprise value, then, where possible and in order to facilitate plausibility-related considerations, a simplified model of computation is to be provided to the Court in file format on a standard data storage device (preferably CD-ROM with an Excel file) which is to be provided when sending the report.

The same applies to capital market data (stock exchange prices, trading volumes etc.), if these have been ascertained from the perspective of taking a stock price value into account.

5.

To the extent that an application is not made for the Court to set the relevant remuneration for the expert auditor (section 293 c (1) sentence 5 AktG and section 318 (5) HGB), then the expert auditor is to disclose their remuneration to the Court.

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6.

In the interests of prudence and clarity, the Court expressly reminds the expert auditor of section 403 AktG. Under this provision, any person acting as auditor or assistant to an auditor who renders a false report on findings of an audit or fails to disclose material facts in such report shall be punished by imprisonment of up to three years or by fine. If the offender acted for remuneration or with the intent to enrich himself or another person or with the intent of causing damage to another person, the punishment shall be imprisonment of up to five years or a fine (sub-section 2).

II.

1.

The **value of the matter** is set at €100,000.

2.

The **Applicants** are ordered to pay the **court fees** incurred in the amount of **€2,025.00** (= 2 court fees from the value stated in item 1. pursuant to Table A, no. 13500 Fee Schedule to section 34 German Act on Court and Notary Fees in Non-Contentious Matters (*GNotKG*)) without undue delay.

A transfer form containing information on payment is enclosed with the executed copy of this order that is being sent to the Applicants; the relevant parties are thus requested to take note of said information.

Judge Wetzel

Presiding Judge of the Regional Court

Executed

Stuttgart, 7 February 2014

Acting Registrar

of the Regional Court

[*Signature and stamp*]

Klingenberger, Servant of the Court [*Just. Ang'e*]

[Translator's notes are in square brackets]

General Engagement Terms

for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

DokID:

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services - not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires - except for financial attestation engagements - an express written agreement.

(3) The engagement does not extend - to the extent it is not directed thereto - to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer - even without his special request - is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations - especially quantity and cost computations - prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected - and also be applicable versus third parties - by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw - also versus third parties - such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) *The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.*

(2) *Liability for negligence; An individual case of damages*

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind - except for damages resulting from injury to life, body or health - for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) *Preclusive deadlines*

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim - at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client - especially numerical disclosures - are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records - especially tax assessments - material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
- b) examination of tax assessments in relation to the taxes mentioned in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
- e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled - within the purposes stipulated by the client - to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for ten years, the supporting documents and records in connection with the completion of the engagement - that had been provided to him and that he has prepared himself - as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.