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Investor Update

A nighttime photograph of a grand, multi-story building with a prominent, ornate tower. The building is illuminated with warm yellow lights, and its reflection is visible in the water in the foreground. A bridge spans across the water in front of the building. The sky is a clear, deep blue.

2018 Q4

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Market highlights – Q4/FY 2018

- M&A targeting the Nordics remained robust in 2018 as private equity investment and high-profile deals in the Industrials & Chemicals and Telecoms sectors drove activity.¹
- 2018 saw a total of 1,153 deals across the Nordic countries with a total deal value of EUR 85bn across, hence activity hit its second highest value since the financial crisis in 2007-2009.¹
- Private equity reached its highest number of buyouts on record with 224 deals in 2018 worth EUR 21.2bn in total, hence driving Nordic dealmaking.¹
- The Tech sector registered its highest number of deals on record in 2018 (166 deals, EUR 6.3bn), hence it remains key to Nordic activity.¹
- Three high-profile deals in 2018 pushed the Telecoms sector to reach its highest value since the crisis with a total of EUR 15.3bn, accounting for nearly 18 % of deals within Nordic M&A.¹
- In Q4 2018, a total of 272 deals were completed across the Nordic region, Denmark accounting for nearly 30 % of the deals (70 deals, EUR 3.876m).¹

¹ Mergermarket (Klonowski, Jonathan): Trend Summary: Nordics FY18, 2019

Public takeovers – key considerations

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In 2018, the leading Danish stock index (C25) experienced an overall drop of more than 10 %, which has fueled discussions as to whether public takeovers will become more attractive in Denmark. In this article we bring you some of the key considerations an investor should be aware of before considering a public takeover of a Danish listed company.

Mandatory and voluntary takeovers

Danish law distinguishes between two takeover situations:

- i) where an investor has already obtained a certain control over the target company, or
- ii) where an investor wants to obtain control over a company but has not yet achieved such control.

In the first scenario, the investor is required to present an offer to the remaining shareholders of the target company to acquire their shares. In general, control is deemed to exist when a shareholder, directly or indirectly, holds at least one third of the voting rights (unless the shareholder can prove that such holding does not constitute control) or otherwise has control over the target company.

The second scenario arises when an acquirer wants to obtain control over a company and as a result presents an offer to the shareholders to acquire their shares. Some of the key distinctions between a mandatory and a voluntary offer are that in a mandatory scenario the offeror must offer a fixed price, which under normal circumstances must be equal to the highest price paid by the investor for shares in the target company in the last 6 months. Additionally, the consideration can only consist of cash or shares, and the investor is not allowed to attach any conditions to the offer.

A voluntary offeror, on the other hand, can set the offer price freely and pay in whatever way the offeror chooses (except that all shareholders must be treated equally) and decide to make the offer subject to certain conditions (typically minimum acceptance threshold, anti-trust approval and MAC).

Irrespective of the type of takeover situation, the offeror must before presenting the offer to the shareholders be certain to have the consideration ready, which normally implies that cash must be ready/drawable and that offer shares have already been issued or can be issued immediately; typically the board of directors of the offeror will need to have a standing authorisation to issue any shares to be used in the offer.

Offer document

In either scenario the offeror must present to the shareholders an offer document, which has to be approved by the Danish Financial Supervisory Authority (FSA) prior to the release. The offer document must include a series of information and is usually prepared by the legal counsel of the offeror in cooperation with the offeror. In case shares are used as consideration, the offeror may have to prepare a prospectus.

Typical agreements between the target company and an offeror

Hostile takeovers are rare in Denmark and as such the voluntary takeover process is normally coordinated with the target's board of directors in the form of a corporation and announcement agreement. Such agreement could include stand-still and exclusivity provisions and further set out the launch procedure.

It should be noted that the board of directors of the target company will have to prepare a statement in which they decide whether or not to recommend the offer. In their assessment the board of directors must take all of the shareholders' interests into consideration as well as certain other interests, such as the interests of the employees.

Timing

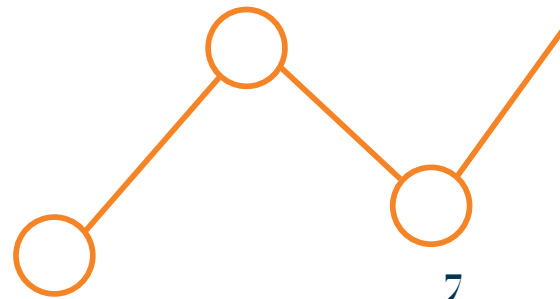
An offer must be open for acceptance for a period of not less than 4 weeks and not more than 10 weeks from the date of the publication of the offer document, unless it is necessary to obtain a public approval that cannot be obtained within the said time period (typically antitrust approval). Additionally, an offeror needs to consider that the offer document and any improvement/amendments will have to be approved by the Danish FSA.

Compulsory acquisition, squeeze-out and delisting

The offeror will usually wish to delist the target company following completion of a takeover offer, and to squeeze out the remaining shareholders. The Danish Companies Act provides that a (single) shareholder holding more than 9/10 of the shares in a limited liability company and a corresponding share of the votes may demand that the other shareholders offer

their shares to be redeemed by that majority shareholder by way of a compulsory acquisition or a 'squeeze-out'.

Where the offeror has received acceptance by at least 90% of the voting share capital (excluding treasury shares), Nasdaq Copenhagen's issuer rules provide that a target company may be granted a delisting from Nasdaq Copenhagen following the initiation of a compulsory acquisition. On the other hand, if the offeror has received acceptance by less than 90% of the voting capital and completes the offer, delisting will not be granted if it is likely to prejudice the interests of the shareholders or the proper functioning of the market. In such a scenario, delistings must be assessed on a case-by-case basis, but based on the limited practice available, relevant factors will include for example minority shareholders' ability to rely on the minority protection rights afforded by Danish law, minority shareholders' ability to sell their shares prior to delisting, the information on the consequences of delisting provided to shareholders, etc.



Recent deals

Eniig sells its street light activities to Verdo

Kromann Reumert advised the Danish energy and telecom group Eniig on the sale of its street light activities in Eniig City Solutions A/S to Verdo A/S.

Eniig City Solutions A/S is an experienced street lighting company with activities covering operation and maintenance, renovation and related advisory tasks. The Eniig-group's divestment of its street light division is part of a more overall strategic decision to focus on its business areas within electricity supply, broadband and renewable energy. As for Verdo A/S, the acquisition will lead to a doubling of its street light business.

The transaction technically involves a demerger of Eniig City Solutions A/S, whereby the majority street light activities are transferred to a newly set up company, followed by a share transfer in the newly demerged company.

Closing of the transaction, which awaits merger approval by the Danish Competition and Consumer Authority, is expected to take place during the first quarter of 2019.

Novo Holdings A/S acquires a minority shareholding in Envirotainer International AB

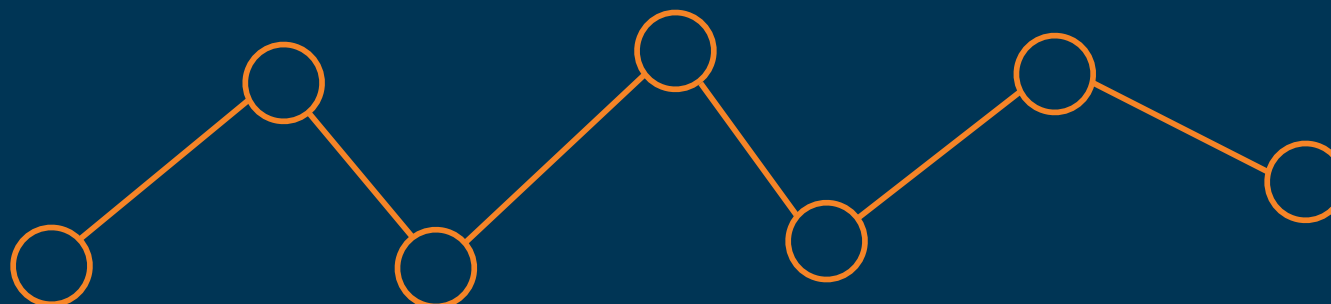
Kromann Reumert has assisted Novo Holdings A/S in investing in Envirotainer International AB, a Swedish based group that develops and sells temperature controlled containers used for air freighting biopharma products. Novo Holdings A/S has ac-

quired a minority shareholding in Envirotainer International AB's parent company. Cinven is the lead investor. The transaction is yet another example of Kromann Reumert assisting Danish clients in international transactions.

Via Equity Invests in Frida Forsikring Agentur and Domus Forsikring

Kromann Reumert advised VIA Equity in connection with an investment in Frida Insurance Agency (which distributes building damage and property change insurance) and at the same time establishing and investing in Domus Forsikring A/S.

Frida Insurance Agency, which has about 40 employees, since 2011, have evolved into the leading Danish player in property and property damage insurance. Domus is founded by the owners of the Frida Insurance Agency for the purpose of signing property damage and property insurance policies distributed through Frida. Our assistance in the process has primarily consisted of conducting a limited legal due diligence investigation, drafting and negotiating a share transfer agreement, shareholders agreements, financing agreement and other transaction documents.



Portfolio transactions in the Danish life sciences industry

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Kromann Reumert's life sciences transaction team has in recent years been involved in a number of transactions concerning Danish pharmaceutical companies' purchase or sale of a portfolio of pharmaceutical and cosmetic products. In this article, we brief you on the structure of a portfolio transaction, the challenges arising when selling or purchasing a portfolio, and offer our recommendations on how to navigate in this.

Introduction

Portfolio transactions concerning pharmaceutical and cosmetic products are often complex, international deals that involve not only the purchase and sale of assets and rights but also certain interim arrangements between the parties to facilitate the purchaser's takeover of the portfolio and

the related supply chain. Portfolio transactions are complicated by the fact that the pharmaceutical industry is highly regulated and that the products and related assets in the portfolio are often sold in multiple jurisdictions in different regions across the world.

How is a portfolio transaction structured?

A portfolio transaction is usually structured as an asset deal, where the purchaser purchases certain assets and rights relating to the products in the portfolio, such as intellectual property rights (patents, trademarks, know-how, domain names, etc.), marketing authorisations and registrations etc., commercial agreements (manufacturing, supply, distribution, in- and out-licensing, promotion etc.), study authorisations and agreements, data, inventory, and sometimes also fixed assets, manufacturing facilities, and employees. The transactions can also include a sale of shares, where the seller as part of the deal is selling a subsidiary dedicated to the product portfolio, e.g. as a manufacturer of pharmaceutical products.

A portfolio transaction is a carve-out of part of the seller's existing business. In addition to the purchase of assets, the purchaser will therefore require certain transitional and separation services from the seller, including regulatory support, in order to take over the portfolio. As part of the separation, the parties will usually

agree on a plan for the transfer of manufacturing capabilities, marketing authorisations and registrations in the various jurisdictions where the products are sold, as well as a plan for the transfer of the responsibility for pharma-covigilance.

Challenges in portfolio transactions

As part of the carve-out from the seller's existing business, the purchaser will be taking over the supply chain for the products. This can be a complicated exercise, as the supply chain for pharmaceutical products involves a number of steps, including sourcing of API (active pharmaceutical ingredient) and other raw materials, manufacturing of finished products, packaging, storage, distribution etc., which can be different for each product in the portfolio and for each jurisdiction where the products are sold.

Further, some of the steps in the supply chain such as manufacturing of finished products may be carried out by the seller itself, meaning that the parties will have to enter into an interim manufacturing and supply agreement providing for the seller's manufacturing and supply of finished products to the purchaser for an interim period until the purchaser is ready to take over manufacturing itself or through a CMO, which will require a transfer of technical know-how from the seller to the buyer or a CMO. The seller may also need to retain contractual relationships

with CMOs, suppliers, distributors etc. where such agreements also cover other products than those within the transaction perimeter. This may necessitate a “split” assignment or novation of the relevant agreements to the purchaser.

Changes to the supply chain, e.g. the manufacturer of a product, will often require approval from relevant regulatory authorities, e.g. as a variation of the relevant marketing authorisations. Change of a manufacturing site will often also entail a transfer of manufacturing know-how from the seller to the purchaser or a designated CMO, which can be a time-consuming exercise. Accordingly, interim arrangements between the parties may need to be in place for up to several years.

Our recommendations

Given the regulatory complexities of portfolio transactions and the need for interim arrangements between the parties for up to several years, pharmaceutical companies looking to purchase or sell a portfolio of products should make sure to involve subject-matter experts from all relevant workstreams, including supply chain and regulatory, in the transaction process. Further, a prospective seller should, when selecting the purchaser, pay special attention to whether the purchaser has the capabilities, resources, licenses etc. required to take over the portfolio. It takes time and considerable resources to properly prepare a sale of a portfolio of pharmaceutical and cosmetic products, and the best advice therefore is to prepare the transaction in good time.

For the purchaser, it is essential to properly diligence and mitigate the risks associated with the supply chain and the sale and distribution of products. This is complicated and something that requires industry expertise to handle properly.

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Mixed signals for leverage finance

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The M&A market in Denmark showed high activity levels during 2017 and 2018. Will it continue in 2019?

Strong investor appetite

Nordic PE funds have been raising new capital and there is still a lot of dry powder among investors. Combined with a keen interest from banks and other financial institutions to lend to M&A transactions, there is a strong potential for continued activity in the leverage finance market in 2019.

In 2018 we saw an increased focus from the Danish FSA (Finanstilsynet) on the risk of leveraged financing – both on alternative investments by pension funds and on the risk profiles of bank lending.

The Danish market also saw covenant breaches and even some full-blown restructurings and bankruptcies towards the end of 2018.

The event which received the most media attention in the Danish market was the in-court restructuring and subsequent bankruptcy of TOP-TOY, which traded under the brands Toys R Us and BR in the Nordic countries and Germany. Kromann Reumert has been heavily involved in that transaction.

Like other companies in the retail industry TOP-TOY came under pressure and a failed Christmas sale led to the unfortunate bankruptcy.

Market challenges

It has been predicted that retail companies with a large network of physical stores will be facing challenges adjusting to shifting consumer behavior and from the competition of the omnipresent internet giants. Toy companies all over the world have been faced by these challenges and the bankruptcy of TOP-TOY was the latest casualty in a chain of such insolvencies around the world.

It remains to be seen how other retail companies will be affected by the challenges in this sector and how their banks and other financiers will react in the longer term.

Certain other industries have also seen challenges. Swings in fuel prices and fierce competition have been a challenge in certain sectors and the Icelandic/Danish based airline company Primera went into bankruptcy in October 2018.

Certain manufacturing and industrial companies in the Danish market are also experiencing a lack of orders, perhaps due to uncertainties in the global market.

Some of these struggles may have been predictable, but others have come as a surprise to the owners and their financiers.

It remains to be seen whether these challenges will be limited to certain sectors and certain businesses or whether it is a symptom of more serious problems to come.

Developments in the financial markets

Since 2010 the number of leveraged finance transactions has increased each year and have continuously been subject to lighter and lighter covenant provisions in the larger syndicated deals in the European market.

But it seems that this development is slowly taking another turn.

The records from 2018 for the syndicated European market show that the number of

deals completed over the year of 2018 has decreased for the first time in ten years. At the same time, financial institutions are becoming increasingly risk adverse and covenants are being tightened somewhat (though the situation is still far from what was seen previously).

The terms of the smaller and more local leverage finance transactions in the Danish market have generally been more conservative and the covenant lite and covenant loose structures seen in the European market have not been adopted into the local Danish market although a softening of terms has been identified.

It will be interesting to see whether the softening of terms continues or whether we are at a turning point. Will the cautious approach addressed by the Danish FSA together with the challenges in certain sectors turn the tides or will the banks' and other financial institutions' appetite for returns overshadow such concerns?

Planning ahead

Investors and financiers are still competing for new deals in the market and the latest structured processes in the Danish market show great interest both from local and international players.

However, PE funds and other sponsors will probably be wise to have an increased focus on any challenges under their existing loans. Planning ahead to deal with emerging problems is generally recommendable as the banks could be hardening their stands and waivers may not be as easily obtainable as in previous years.

Similarly, banks may also want to initiate negotiations at an earlier stage bearing in mind that it often become increasingly difficult for PE funds to inject further equity as problems grow – at least not without substantial concessions (including potentially write-offs) from the banks.

Kromann Reumert has Denmark's largest team of financing lawyers with both local and international experience. The financing team works closely together with our restructuring team and we have been involved in most major workouts in the Danish market as well as a number of international restructurings.

Data centres in Denmark – welcome to the boom

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Apple, Google, Facebook and other major tech corporations are choosing Denmark as the site of their new European data centres. In this article, we briefly describe what makes Denmark the place for setting up data centres, and what are the obstacles to overcome before, during and after the construction of a Danish data centre.

Denmark's population is roughly the size of Wisconsin's and its area less than half the size of Maine.

Its small proportions notwithstanding, Denmark is currently the scene of a data centre spree. Major tech corporations such as Apple, Google, Facebook and others are constructing or planning the construction of mega data centres around the country, and more are underway.

The reasons for this cluster effect are numerous, and the most important are emphasized below together with certain caveats.

Reliable and green infrastructure

Security of energy supply in Denmark is excellent. The electricity power grid is modern and developed and never subject to blackouts. Further, Denmark is among the leading countries when it comes to green transition. Today, more than 30 % of the country's energy consumption comes from sustainable sources such as wind and solar power, and the figure is growing.

Similarly, the Danish broadband connectivity is greatly developed, up to date and well connected to the rest of Europe.

Like the infrastructure, the level of security is excellent. The country practically never suffers major natural disasters, the economy is solid and the political situation stable.

On top of that, Denmark is consistently acclaimed by The World Bank as one of the absolute best countries in the world for doing business. Corporations don't encounter much red tape and hardly any corruption here.

Lastly, the country is seeing somewhat of a hub effect in the digital field, attracting more and more specialized businesses and professionals.

What's the catch?

So, what's the catch? What are the obstacles to overcome before, during and after the construction of a Danish data centre?

First off, finding the right location and buying the necessary property should be handled carefully. Buyers risk grievances with property owners, neighbors and local politicians over depreciation and effect on local agriculture – and in a small country such as Denmark, local news stories easily reach the national press.

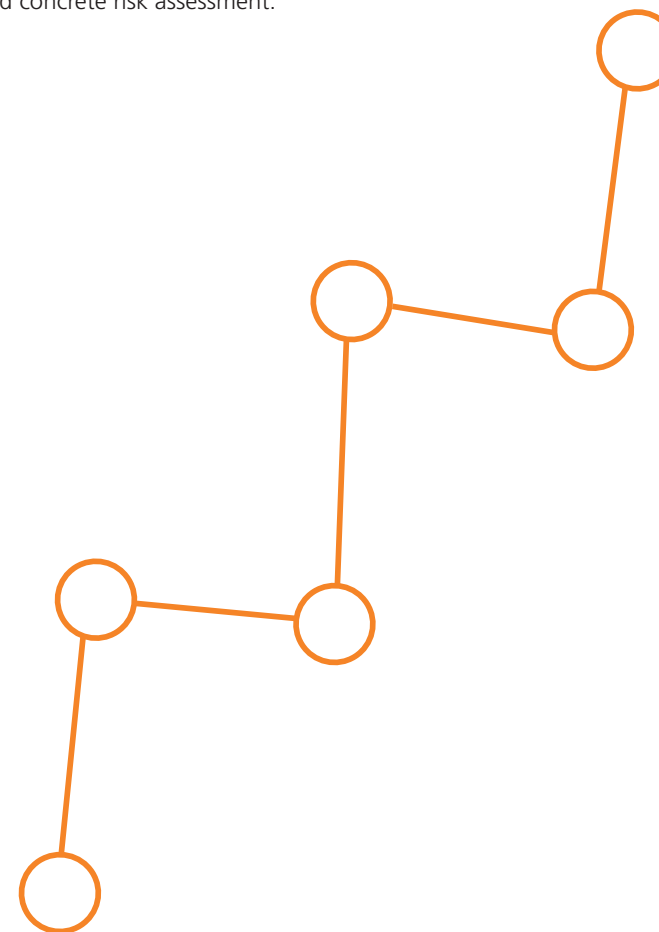
Although the new mega data centre facilities are generally met with good vibrations – especially from city councils and local businesses – the excitement that followed the announcement of the country's first mega data center is cooling off somewhat.

Concerns have been voiced over the impact on society and in particular on power consumption, security of supply, and energy tariffs and prices.

Another important thing to consider is the comprehensive Access to Public Information Act (*Offentlighedsloven*) that was put into effect a few years ago. It should be read carefully, as it affects all communication with the public sector.

Finally, the legal and contract cultures should be taken into account. By way of example, Danish contractors are generally reluctant to submit to comprehensive US-style construction contracts, as Danes

come out of a tradition for simpler and shorter contracts where much faith is put into general terms, case law and a "reasonability test". This system works by and large, and the legal culture gap can be bridged by a willingness of both parties to accept a reasonable degree of submission to the other party's culture, compliance requirements and concrete risk assessment.





KROMANN REUMERT

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