

Akkadian suggests to Erytech an alternative strategy to its merger with Pherecydes

Review of the true value of Erytech's assets

Proposed strategy for Erytech

Audit report requested by Akkadian stating the undervaluation of Erytech
and the overvaluation of Pherecydes in the 1:1 parity adopted for the merger

Paris - 7 June 2023 – 7:30 am – Akkadian Partners SA (hereafter «Akkadian») wishes to inform the management of Erytech and its shareholders that Erytech has a real value not only owing to its cash reserves and know-how that it has accumulated over its years of growth, but also to its tangible and intangible assets which have been totally ignored to date.

The proposal to establish a 1:1 parity announced by Erytech led to an erroneous overvaluation of the corporate value of Pherecydes, which is in a state close to bankruptcy, and to an undervaluation of the value of Erytech, leading **not to an alliance between Erytech and Pherecydes but to the burial of Erytech by Pherecydes**, as Frédéric Gomez (Pharmium Securities), a financial analyst specialising in biotech, said in the *Journal des Biotechs*¹.

Akkadian therefore calls on Erytech's management to avoid burying Erytech and its shareholders for the sole benefit of Pherecydes and its shareholders. In this regard, Akkadian notes that the disproportionate compensations made to its management (approximately 600,000 Euros per year to Mr. Gil Beyen and 400,000 Euros per year to Mr. Eric Soyer) as well as the remuneration by Erytech of several consulting investment banks (in particular the American consulting investment bank Torreya Partners/Stifel whose role and purpose in a Franco-French merger are questionable) in the event of the merger with Pherecydes and the remuneration of several law firms to meet the legal requirements of the merger totaling over 3 million Euros – over 20% of the value of the transaction - increase the responsibility of the members of the Board of Directors of Erytech as well as its operational management towards the shareholders of Erytech, in the strategic choice to maintain or abandon the said merger.

1. On the true assets of Erytech

Under the announced merger, Erytech was valued at 0.61 Euros per share, giving it a market value of 18.9 million Euros, whereas:

In terms of CASH FLOW

On 31/12/2022, the company had cash reserves of 38,789 million Euros according to its own figures reported on «Form 20-F» (cf. page F-7 or page 151)².

In terms of TANGIBLE ASSETS

The company owns a small cell therapy production facility in Lyon which could potentially be sold to

¹ <https://www.boursorama.com/videos/actualites/le-journal-des-biotechs-sebastien-peltier-valbiotis-frederic-gomez-pharmium-securities-96fccd4a62e105c5ff9da081918e73ce> (6 mn 10 sec)

² <https://investors.erytech.com/static-files/a2716c96-23c7-44d9-a39f-01bea0de0553>

a third party, as with its production facility in the United States which was sold to Catalent last year for 44.5 million US\$³:

If this production facility is worthless, why would Erytech keep on 47 employees in Lyon, many of whom are clearly employed at this facility, with the aim of selling it?

In terms of INTANGIBLE ASSETS

The intellectual property of Erytech is worth far more than zero value, which it was inexplicably valued at. Indeed:

- in the press release accompanying the sale of its US facility to Catalent on 25 April 2022 it was explicitly stated that Erytech "*will retain its manufacturing site in Lyon, France and its expertise and capabilities in manufacturing process science to continue innovating in cell therapy manufacturing*" (sic). It was also stated in the same press release that a procurement agreement has been signed with Catalent, highlighting the possibility of further developments around the ERYCAPS platform: "*We are also continuing to evaluate further strategic options for the company, including additional partnerships and addition of complementary assets, through which we can leverage our ERYCAPS® platform and our development and manufacturing capabilities.*" (sic)⁴.
- in 2020, a Phase 2 study as part of the GRASPA programme sponsored by the Nordic Society of Paediatric Haematology and Oncology ("NOPHO") revealed positive results in the treatment of patients with hypersensitive acute lymphoblastic leukaemia ("ALL"); although ERYTECH considered these results sufficiently encouraging to the point of initiating discussions with the Food and Drug Administration ("FDA") with a view to approval of the GRASPA programme for the treatment of ALL patients who have developed hypersensitivity to pegylated asparaginase-based therapies. Conversely, no steps have been taken in Europe or on other markets (e.g. Japan and China) in this area⁵.

In terms of TAX LOSS CARRYFORWARDS

In its annual report ("Form 20-F", cf. page F 29 or page 173) filed with the Security Exchange Commission ("SEC"), the company reported tax loss carryforwards of 364.2 million Euros in France and of 12.2 million Euros in the United States as at 31/12/2022. As a reminder, given that the corporate tax rate in France is 25%, this asset, once booked into a company (belonging to the "big pharma" category), generating profits in France could be valued at 90.5 million Euros for France alone⁶.

It is very likely that these tax loss carryforwards - a major asset of Erytech - will disappear in the context of a merger with Pherecydes given the planned change of business activity, a risk underlined by Erytech's management on the said "Form 20-F";

As a reminder, the acquisition by Serono of Genset was finalised with a view to enabling Serono, which paid 107 million Euros for the deal, to acquire Genset's tax losses⁷.

2. What strategy should be adopted for Erytech?

We believe that the valuation chosen for Erytech significantly undervalues its potential, which exceeds the amount of its cash reserves and which could lead Erytech to:

- re-commence the registration procedures for the GRASPA programme in the field of ALL in Europe where the NOPHO study has already yielded results;
- weigh up certain partnership opportunities in the field of orphan diseases and cancer, which are Erytech's areas of expertise;

³ <https://investors.erytech.com/news-releases/news-release-details/erytech-sells-us-manufacturing-facility-and-enters-long-term>

⁴ <https://investors.erytech.com/news-releases/news-release-details/erytech-sells-us-manufacturing-facility-and-enters-long-term>

⁵ https://erytech.com/wp-content/uploads/201207_ERYTECH_PR_ASH_NOPHO_EN_vf.pdf

https://erytech.com/wp-content/uploads/220824_ERYTECH_Reg_Update_ALL.pdf

⁶ <https://investors.erytech.com/static-files/a2716c96-23c7-44d9-a39f-01bea0de0553>

⁷ <https://www.lesechos.fr/2005/07/serono-sonne-la-fin-de-la-societe-de-biotechnologies-francaise-genset-611602>

- seek a company generating EBITDA of 3 to 5 million Euros, valued at 8 to 12 times EBITDA. Such an acquisition would also have the advantage of allowing Erytech to use its tax loss carryforwards;
- these various transactions would be financed by available cash and/or by an issue of Erytech shares to the target company's shareholders and/or by a debt ratio arising from the acquired profits attached to the target company;

If such an acquisition strategy proves impossible to implement due to the reluctance of Erytech's board of directors to the idea of maintaining Erytech as a going concern, Akkadian would recommend seeking, instead of an unbalanced merger that clearly disadvantages Erytech's shareholders, a cash or equity buyer likely to be interested in the outright purchase of Erytech due to (i) its cash reserves in excess of 30 million Euros, (ii) the value of the intellectual property attached to its GRASPA programme in lymphoblastic leukaemia, (iii) the intrinsic value of its cell therapy facilities based in Lyon and (iv) its tax losses which are likely to be offset by the buyer's current or future revenues; We would also point out that, on the basis of the "Serono / Genset" precedent of 2002, and solely by including Erytech's cash reserves of 30 Million Euros and its significant tax loss carryforwards, valued at over 90 million Euros and even disregarding the value of the intellectual property developed at Erytech, its production facility and its know-how in oncology, Akkadian is convinced that Erytech can be valued at a price far higher than 18.9 million Euros which has been artificially fixed to justify a 1:1 parity with Pherecydes.

3. «Abergel and partners» audit report

The Akkadian analysis of the undervaluation of Erytech and the overvaluation of Pherecydes at the time of the 1:1 exchange ratio adopted for the purposes of the merger, has been fully supported, at the request of Akkadian, by Abergel et Associés, a firm of legal and financial auditors, which has issued an audit report ; this report is available on the www.sauvererytech.com website, as well as the memorandum drafted by the law firm, CMS Francis Lefebvre, at the request of Akkadian, relating to the existence and the way to use the tax loss carryforwards belonging to Erytech.

In the light of this audit report and of this memorandum, Akkadian is convinced that the merger of Erytech should be abandoned by Erytech's management in favour of an acquisition (or a sale) that would value Erytech at its fair value. On the above grounds, Akkadian has requested (i) the appointment of a legal expert by the courts of Lyon to assess the exchange ratio adopted by the management of Erytech and Pherecydes and (ii) the postponement of the vote of the resolutions that pertain to the merger and that were submitted to Erytech General Meeting on 23 June 2023 to a date after the legal expert has filed his report's report in the event that its findings are upheld.

About Akkadian Partners

Akkadian Partners manages a multi strategy investment fund, mostly in the health sector. The fund manages shareholdings in several pharmaceutical and biotechnology companies in the US and Europe. Akkadian invests the money of its managers and investors which include Family Offices and Ultra High NetWork Investors (UHNWIs).

For more information: <http://www.akkadianpartnersfund.com/>
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