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Tender offer premium on the capital market in Poland

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Summary: Recent years on the Polish capital market has been difficult for investors. More companies are subject to the delisting procedure than new ones appear under the IPO. Delisting often takes place in conjunction with a takeover of a company and an announcement of a tender offer for all its shares. The aim of the article is to characterise the processes of tender offers for the shares of companies listed on the Warsaw Stock Exchange and to examine the level of price premiums offered to shareholders. This aim will be achieved by analysing the secondary data for tender offer transactions on the Warsaw Stock Exchange in the years 2016-2018. The article presents the main hypothesis: the control premium paid by the inviting entity during the examined period was over 25% of the average share price for the last six months preceding the tender offer. After the analysis, it turned out that the hypothesis was verified negatively, because in one third of the examined cases the premium was below one percent in relation to the examined average preceding the tender offer. The lack of premium may be caused by the weakness of the domestic market, visible in the absence of capital inflow, which makes tender offers an opportunity to remodel the investment portfolio.

Keywords: tender offer, capital market, IPO, delisting

Premia w wezwaniach na akcje na rynku kapitałowym w Polsce

Streszczenie: Ostatnie lata na polskim rynku kapitałowym to trudny czas dla inwestorów. Więcej spółek podlega procedurze delistingu, niż pojawia się nowych w ramach prowadzonych IPO. Często delisting odbywa się w związku z przejęciem przedsiębiorstwa i ogłoszeniem wezwania na wszystkie jego akcje. Celem artykułu jest charakterystyka procesów wezwań na akcje spółek notowanych na GPW w Warszawie oraz zbadanie poziomu premii cenowych oferowanych akcjonariuszom. Cel ten zostanie zrealizowany poprzez analizę danych wtórnych przy transakcjach wezwań na akcje w latach 2016-2018 na GPW. W artykule postawiono hipotezę główną: premia za kontrolę płacona przez podmiot wzywający w badanym okresie wynosiła ponad 25 proc. średniej ceny z sześciomiesięcznych notowań akcji poprzedzających ogłoszenie wezwania. Po przeprowadzeniu analizy okazuje się, że postawiona hipoteza została zweryfikowana negatywnie, ponieważ w jednej trzeciej badanych przypadków premia wyniosła poniżej jednego procenta w stosunku do badanej średniej poprzedzającej wezwania. Za brak premii może odpowiadać

słabość rodzimego rynku, widoczna w braku napływu kapitału, przez co wezwania są szansą na przemodelowanie portfela inwestycyjnego.

Słowa kluczowe: wezwania spółek na GPW, rynek kapitałowy, ipo, delisting

JEL: G10

The condition of the Polish capital market has been deteriorating for some years. Not only the turnover and thus the market liquidity is dropping, but above all, the number of companies that want to make their debut on the Warsaw Stock Exchange. There are several reasons for this situation.

These that can certainly be mentioned include the dismantling of open-end pension funds which had a strong impact on the institutional demand side, the strengthening of information obligations and the responsibility of company authorities, and finally the lack of trust following numerous scandals and controversial transactions. For 3 years now, more companies have been leaving the stock exchange than going public. In many cases, delisting takes place following the announcements of tender offers for shares by existing dominant shareholders or new strategic investors. Such processes involve an important issue of determining the price and possible premium for shareholders who sell shares in a tender offer. The final stage of such a transaction is the so-called squeeze-out of minority shareholders. In Poland, there are legal regulations concerning minimum prices announced in tender offers, which is designed to protect minority shareholders. At the same time, the regulatory changes which have been observed since 2019 in Poland increase the difficulty of processes aimed at delisting of companies.

The aim of the article is to characterise the processes of tender offers for the shares of companies listed on the Warsaw Stock Exchange and to examine the level of price premiums offered to shareholders. This aim will be achieved by analysing the secondary data for tender offer transactions on the Warsaw Stock Exchange in the years 2016-2018. The article presents the main hypothesis: the control premium paid by the requesting entity during the examined period was more than 25% of the average price of six months' share prices preceding the tender offer.

Essence of tender offers and squeeze-outs

The development of global financial markets has changed the global landscape of merger and acquisition transactions. They became an integral part of it, motivated by the pursuit of even greater business benefits. Some M&A transactions take place on the public market. Thus, a question always arises of an appropriate valuation of the company being acquired. This is particularly important with regard to minority shareholders, whose rights must be protected in connection with transactions involving the purchase of all shares of a given company. Unfortunately, there are often various disputes in this respect (Krishnan et al., 2012, pp. 1248-1268).

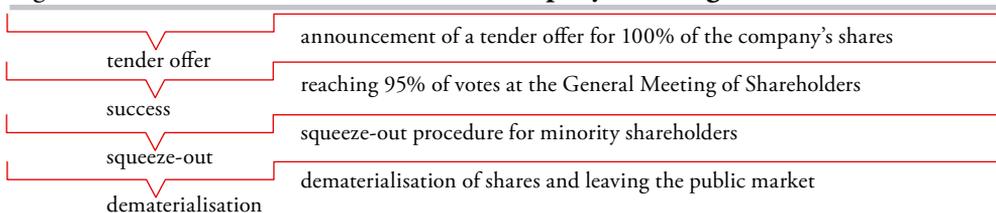
Since the US and the UK introduced their first national takeover regulations in the late 1960s, policymakers and regulators have aimed to provide a takeover law that protects shareholders in a takeover bid while facilitating the market for corporate control (Wang, Lahr, p. 288-315). The price protection mechanisms for minority shareholders vary from country to country. However, their essence is to protect minority shareholders when buying 100% of the company's shares (Bruslerie, Deffains-Crapsky, 2005,

p. 103-122). A public tender offer for the sale of shares itself consists in the announcement of an intention to purchase a certain number of shares by a given entity (Asyngier, 2017, p. 7).

When we look at the possibilities of M&A transactions on the capital market, the following types should be distinguished. Firstly, the current shareholder may exceed subsequent thresholds in the shareholding and thus increase their involvement in the company, which in turn leads to increased corporate power in the entity. In accordance with the regulations in force in Poland, as soon as relevant thresholds for votes at the general meeting of shareholders are exceeded, the shareholder must inform about it. Detailed regulations on the capital market in Poland are described later in this article. The same can happen to an entity that has not previously been a shareholder in a given company. Here also the provisions on information obligations resulting from exceeding relevant thresholds apply. Both types of transactions are characterised by the fact that the company remains listed on the public capital market. A separate issue are the transactions in which all the shares of a company, including those of minority shareholders, are redeemed, and the result is the removal of the company from the public market that is delisting. In practice, there are two types of such transactions. Firstly, where a majority shareholder, after reaching a certain percentage of the share capital or the total number of votes, may request that minority shareholders sell their shares to him. This procedure is usually referred to using the English term *squeeze-out* which is the compulsory sale of the shares of minority shareholders. The second possibility is a forced buyout of shares, where it is the minority shareholders who have the right to demand that the majority shareholder repurchases the shares from them at a certain price. This procedure is also referred to as the *squeeze-out right* or other English terms are used: *reverse squeeze-out*, *buy-out right*, or *sell-out right* (Królik-Kołtunik, 2015, p. 295).

It is worth noting that the majority shareholders decide on a squeeze-out, to free themselves from the costs resulting from the operation of small shareholders in the company (Rusek, Hajdecki, 2008, p. 75). Buying out shares from minority shareholders accelerates decision-making processes and improves the management of the company. It is then possible to take strategic decisions characterised by an increased risk, which could result in opposition from minority shareholders. Literature indicates, which is also in line with practice, that for a company with no small shareholders it is also easier to attract a strategic investor (Piniór, Wyrzykowski, 2009, p. 9). The following chart presents the transaction of acquisition and delisting of a company from trading.

Figure 1 **Chart of the transaction of the company delisting from the WSE**



Source: own work.

Legal regulations

The withdrawal of the company from the stock exchange may take place as a result of a tender offer for shares and reaching an appropriate threshold in the shareholding structure. As mentioned earlier, the holder of a large block of shares, who acquired

Table 1 Group of reviewed companies for which tender offers were announced in 2016-2018

company	intermediary entity	requesting entity	date of tender offer announcement
MAGELLAN SA	TRIGON DM SA	Mediona Sp. z o.o.	08.01.2016
DUON SA	Pekao Investment Banking SA	Fortum Holding BV, Netherlands	08.01.2016
MIDAS SA	TRIGON DM	Polkomtel Sp. z o.o.	29.02.2016
DTP SA	Brokerage House of Bank Handlowy	PRA Group Polska Sp z o.o.	29.02.2016
EMPIK MEDIA & FASHION SA	TRIGON DM	Penta Investments	03.03.2016
TRAVELPLANET.PL SA	Brokerage House of mBank SA	Rockaway Travel SE, Czech Republic	14.03.2016
ROVESE SA	Brokerage House of PKO BP	FTF Galleon SA	31.03.2016
TELFORCEONE SA	TRIGON DM	Kaps Investment sp. z o.o.; S. Sawicki	17.05.2016
Bank BPH SA	Brokerage House of ALIOR BANK	ALIOR BANK SA	11.07.2016
PEKAES SA	Pekao Investment Bankng	KH Logistyka Sp. z o.o. Sp. komandytowa; PEK II SCSp – Luksemburg	19.08.2016
GRAAL SA	HAITONG BANK SA	Greenwich Investments Sp. z o.o.; GRWC Holdings Ltd – Nikozja; B. Kowalski	26.08.2016
FARMACOL SA	Brokerage House of BZ WBK	A. Olszewski	23.09.2016
NETMEDIA SA	Brokerage House of BOŚ SA	SO SPV 56 Sp. z o.o. Sp. komandytowo-akcyjna	03.10.2016
PEGAS NONWOVENS SA	Millennium Dom Maklerski SA	Pegas Nonwovens SA	05.01.2017
POLCOLORIT SA	Pekao Investment Bankng	Unilin Poland sp. z o.o.	13.02.2017
INTEGER.PL SA	Brokerage House of BZ WBK	AI Prime (Luxembourg) Bidco S.a r.l., R. Brzoska	24.02.2017
INPOST SA	Brokerage House of BZ WBK	AI Prime (Luxembourg) Bidco S.a r.l., R. Brzoska	24.02.2017
PELION SA	mBank SA, Brokerage House of BZ WBK	Korporacja Inwestycyjna Polskiej Farmacji sp. z o.o.	13.03.2017
MACROLOGIC SA	Brokerage House of PKO BP	Asseco Business Solutions SA	11.04.2017
FAM SA	Trigon DM SA	FULCRUM FIZ, NAPOLEON FIZ, THC SPV10, Maumee Bay LLC	16.05.2017
POLNA SA	Trigon DM SA	Z. Jakubas	23.05.2017
PAGED SA	Brokerage House of BZ WBK	Mespila Investments Limited (Cypr)	07.07.2017
SYNTHOS SA	Brokerage House of PKO BP	FTF Galeon S.A. (M. Sołowow)	26.10.2017
EMPERIA HOLDING SA	mBank SA	Maxima Grupe UAB, Viluns, (Lithuania)	24.11.2017
GEKOPLAST SA	Trigon DM SA	Sacellum sp. z o.o. (Italy)	30.11.2017
ROBYG SA	Pekao Investment Banking	Bricks Acquisitions Ltd (London)	01.12.2017
WDX SA	Pekao Investment Banking	WOHO Holdings (Cyprus)	08.12.2017
POLMED	Trigon DM SA	POLMED SA and 6 shareholders (companies and natural persons)	25.05.2018
Prime Car Management	Brokerage House of PKO BP	PKO Leasing SA	07.11.2018
ABC DATA	Santander Brokerage Office	MCI Venture Projects VI sp. z o.o., Roseville Investments sp. z o.o.	21.12.2018

Źródło: own research.

them, decides about the withdrawal of shares from the stock exchange. According to the Act on Public Offering and Conditions of Financial Instruments Introduction into an Organized Trading System, and on Public Companies of July 29, 2005, a shareholder is obliged to inform the Polish Financial Supervision Authority (KNF) of the number of shares held after exceeding the threshold, whether this shareholder reached or exceeded a threshold of 5, 10, 15, 20, 25, 33, 33 $\frac{1}{3}$, 50, 75 or 90% of the total number of votes in a public company, or held at least 5, 10, 15, 20, 25, 33, 33 $\frac{1}{3}$, 50, 75 or 90% of the total number of votes in this company, as a result of reduction of such share reached respectively 5, 10, 15, 20, 25, 33, 33 $\frac{1}{3}$, 50, 75 or 90% or less of the total number of votes. While in a situation where a given investor holds more than 33% of the total number of votes, the purchase of each 1% of the total number of votes is subject to this obligation (Act, 2019). Still, the procedure of the tender offer for the subscription for the sale of shares itself is conducted in accordance with the regulations governing tender offers related to exceeding certain shareholding thresholds. Prior to the announcement of the tender offer, a shareholder demanding the withdrawal of the company from the market is obliged to establish security in the amount of the value of the shares which are to be the subject of the tender offer for the subscription for the sale of shares, in connection with the intention to abolish the dematerialisation of shares (in agreement with the brokerage house handling the transaction). Although the amount of the security should be 100% of the value of the shares subject to the tender offer, in practice the security is usually established in the form of funds blocked in an appropriate amount on the brokerage account of the requesting party or in the form of a bank guarantee.

A shareholder should notify the Polish Financial Supervision Authority and the Management Board of the WSE of its intention to announce a tender offer for sale through an entity conducting brokerage activities. This should take place no later than 14 working days before the date of accepting subscriptions by the brokerage house.

Then, the brokerage house provides the information agency with a notice of its intention to announce a tender offer for the sale of shares. It also publishes its content in a nationwide journal within 24 hours of the notification (the Act defines this deadline as immediate). The brokerage house then accepts subscriptions for the sale of shares. This may take place not earlier than on the 14th working day and not later than on the 37th working day after the date of notification, but not earlier than on the first working day after the publication of the content of the tender offer in the nationwide journal. The deadline for accepting subscriptions cannot be less than 30 working days and not more than 70 working days. Subscriptions for sale are submitted to the brokerage house through which the tender offer is held. The brokerage house keeps a register confirming the acceptance of subscriptions.

Upon completion of this activity, the entity announcing the tender offer notifies of its completion, the number of shares purchased, and the percentage share in the total number of votes (Act, 2019). It should be noted that, according to the regulations applicable in Poland, exceeding 66% of the total number of votes in a public company may occur only as a result of a tender offer for the sale or exchange of all other shares in that company. These regulations do not apply to companies listed on NewConnect. The management board of a public company whose shares are covered by a tender offer is obliged to communicate to the Polish Financial Supervision Authority (KNF) and to the public its position concerning the announced tender offer, together with the grounds for that position, not later than 2 working days before the date of commencement of

Table 2 Changes in prices in the tender offer

company	tender offer price	final tender offer price	price increase in the tender offer	3-months average preceding tender offer	6-months average preceding tender offer
Prime Car Management	11.38	23.75	108.70%	8.62	11.38
GRAAL SA	26	32	23.08%	23.98	25.91
INTEGER.PL SA	41.1	49	19.22%	38.81	33.92
INPOST SA	9.5	11	15.79%	9.43	8.56
PELION SA	52.33	59.04	12.82%	51.78	52.32
ROBYG SA	3.55	4	12.68%	3.23	3.26
ABC DATA	1.3	1.44	10.77%	0.95	1.26
POLMED	2.7	2.92	8.15%	2.67	2.6
PEKAES SA	14.15	15.1	6.71%	13.94	13.66
MAGELLAN SA	64	68	6.25%	55.91	54.49
SYNTHOS SA	4.78	4.93	3.14%	4.71	4.78
PAGED SA	57.63	59	2.38%	57.63	55.82
DUON SA	3.85	3.85	0.00%	3.23	3.31
MIDAS SA	0.81	0.81	0.00%	0.66	0.63
DTP SA	4.9	4.9	0.00%	4.21	4.35
EMPIK MEDIA & FASHION SA	3.49	3.49	0.00%	3.49	3.34
TRAVELPLANET.PL SA	3.73	3.73	0.00%	3.56	3.73
ROVESE SA	2.61	2.61	0.00%	1.58	1.45
TELFORCEONE SA	3.1	3.1	0.00%	2.75	2.94
Bank BPH SA	31.19	31.19	0.00%	31.07	31.18
FARMACOL SA	47.5	47.5	0.00%	45.84	44.66
NETMEDIA SA	6.5	6.5	0.00%	6.46	6.45
PEGAS NONWOVENS SA	127	127	0.00%	125.73	126.77
POLCOLORIT SA	5.8	5.8	0.00%	1.87	2
MACROLOGIC SA	59	59	0.00%	40.12	39.13
FAM SA	4.2	4.2	0.00%	4.14	4.2
POLNA SA	19.92	19.92	0.00%	19.88	19.91
EMPERIA HOLDING SA	100	100	0.00%	91.37	87.41
GEKOPLAST SA	15.31	15.31	0.00%	15.31	14.19
WDX SA	14.88	14.88	0.00%	7.93	7.91

Source: own research.

the subscription period. At the same time, the position of the company's management board is presented to the representatives of the company's employee organisations or, if there is no such organisation, directly to the employees.

As regards the price at which shares covered by the tender offer are purchased in connection with the abolition of the status of a public company, it is determined by reference to Article 79 of the Act on Public Offering regulating the price of shares proposed in the tender offer. Its value cannot be lower than the average market price from the period of 6 months preceding the announcement of the tender offer, during which the shares were traded on the main market. In addition, the price may not be

lower than the average market price during the 3 months of trading in those shares preceding the announcement of the tender offer. If the company's shares have been traded on the main market for less than 6 or 3 months, the share price is calculated based on the average market price of the shorter period.

A special kind of tender offers are those that are intended to lead to the company being taken off the stock exchange. A shareholder of a public company, who alone or jointly with its subsidiaries or parent companies and parties to the agreement, has reached or exceeded 95% of the total number of votes in that company, has the right, within three months of reaching or exceeding that threshold, to demand that the remaining shareholders sell all shares held by them. If the said threshold is reached or exceeded as a result of a tender offer for the sale or exchange of all remaining shares of the company, the squeeze-out price may not be lower than the price proposed in that tender offer. Moreover, the acquisition of shares as a result of a squeeze-out takes place without the consent of the shareholder to whom the request for redemption is addressed. It is worth noting here that the threshold of 95% of shares has been in force since April 2019 with the amendment of the Act. Previously, this threshold was 90%, so now it is more difficult to carry out a tender offer that results in a company leaving the public market.

A company can only be delisted from the stock exchange if the dematerialisation of the shares is abolished. This is possible if, after the acquisition of shares, the general meeting, by a majority of 4/5 of the votes cast in the presence of shareholders representing at least half of the share capital, passes a resolution to abolish dematerialisation. It should be noted that as of January 1, 2021 new regulations come into force, which increase this threshold to 9/10 of the shares. This is another regulation that makes it more difficult to carry out tender offers.

Analysis of transaction-s conducted in 2016-2018

In accordance with legal regulations, a requesting entity may announce tender offers for the shares of a company listed on the WSE as part of exceeding the relevant thresholds in the shareholding structure. In the analysis presented later in this article, we focused on tender offers for shares, the aim of which was to withdraw the entity for which the tender offer was announced. Data was collected on the tender offers conducted on the Polish capital market in 2016-2018. The data analysed are all tender offers during this period for Polish companies that were ultimately successful, which in this case means that these companies were delisted from trading on the Warsaw Stock Exchange.

The selected group consists of 30 transactions. Table 2 presents data on the original price of the tender offer and the final price of the tender offer, followed by a squeeze-out of all shareholders, including minority shareholders.

The analysis of the data in Table 2 shows that in 12 cases (40%) there was a change in the final price in the tender offer in relation to the originally offered value. The highest change was 108% in the case of Prime Car Management, where 3 entities were bidding for the company. Certainly, the price change in the tender offer is one of the strategies for this type of transactions. However, it turns out that in 18 cases out of 30 reviewed companies, tender offers were held according to the original price and were ultimately successful.

Still, interesting information is provided by the analysis of prices in the tender offer in relation to the 3-month and 6-month average.

May we remind that according to legal regulations the proposed price must be higher than these values. If the price in the tender offer is higher than the average share price in the periods mentioned, we are dealing with a premium. Its amount depends on many factors, but it may be influenced, for example, by the phenomenon of the premium for control over the company which must be paid by the requesting entity for 100% of the

Table 3 Premium compared to the average 3- and 6-month share prices

company	original tender offer price	premium compared to the 3-month average	premium compared to the 6-month average
POLCOLORIT SA	5.80	210.16%	190.00%
WDX SA	14.88	87.64%	88.12%
ROVESE SA	2.61	65.19%	80.00%
MACROLOGIC SA	59.00	47.06%	50.78%
MIDAS SA	0.81	22.73%	28.57%
INTEGER.PL SA	41.10	5.90%	21.17%
MAGELLAN SA	64.00	14.47%	17.45%
DUON SA	3.85	19.20%	16.31%
EMPERIA HOLDING SA	100.00	9.45%	14.40%
DTP SA	4.90	16.39%	12.64%
INPOST SA	9.50	0.74%	10.98%
ROBYG SA	3.55	9.91%	8.90%
GEKOPLAST SA	15.31	0.00%	7.89%
FARMACOL SA	47.50	3.62%	6.36%
TELFORCEONE SA	3.10	12.73%	5.44%
EMPIK MEDIA & FASHION SA	3.49	0.00%	4.49%
POLMED	2.70	1.12%	3.85%
PEKAES SA	14.15	1.51%	3.59%
PAGED SA	57.63	0.00%	3.24%
ABC DATA	1.30	36.84%	3.17%
NETMEDIA SA	6.50	0.62%	0.78%
GRAAL SA	26.00	8.42%	0.35%
PEGAS NONWOVENS SA	127.00	1.01%	0.18%
POLNA SA	19.92	0.20%	0.05%
Bank BPH SA	31.19	0.39%	0.03%
PELION SA	52.33	1.06%	0.02%
TRAVELPLANET.PL SA	3.73	4.78%	0.00%
FAM SA	4.20	1.45%	0.00%
SYNTHOS SA	4.78	1.49%	0.00%
Prime Car Management	11.38	32.02%	0.00%

Source: own research.

shares. In Table 3 we analysed the premiums resulting from the first price in the tender offer in relation to the 3- and 6-month averages.

In relation to the 6-month average, only one company had a premium of over 100%. In three cases the premium was 50%. In four cases there was no premium, and in six cases the premium was less than 1%. It is therefore difficult to speak of any general regularity concerning the whole of the reviewed group.

Finally, in the last stage of the analysis, we compared the value of the premium to the average 6-month share price and the increase of the final price in the tender offer to the original price announced in the tender offer. These data are included in Table 4.

In 12 cases there was a price change in the tender offer. The case of Prime Car Management is particularly outstanding, where three entities fought for the acquisition of this company, hence the high price change.

Table 4 Comparison of premiums in relation to the average share prices and price changes in the tender offer

company	premium of the original price in relation to the 6-month average	increase in the price of the tender offer
Prime Car Management	0.00%	108.70%
GRAAL SA	0.35%	23.08%
INTEGER.PL SA	21.17%	19.22%
INPOST SA	10.98%	15.79%
PELION SA	0.02%	12.82%
ROBYG SA	8.90%	12.68%
ABC DATA	3.17%	10.77%
POLMED	3.85%	8.15%
PEKAES SA	3.59%	6.71%
MAGELLAN SA	17.45%	6.25%
SYNTHOS SA	0.00%	3.14%
PAGED SA	3.24%	2.38%
POLCOLORIT SA	190.00%	0.00%
WDX SA	88.12%	0.00%
ROVESE SA	80.00%	0.00%
MACROLOGIC SA	50.78%	0.00%
MIDAS SA	28.57%	0.00%
DUON SA	16.31%	0.00%
EMPERIA HOLDING SA	14.40%	0.00%
DTP SA	12.64%	0.00%
GEKOPLAST SA	7.89%	0.00%
FARMACOL SA	6.36%	0.00%
TELFORCEONE SA	5.44%	0.00%
EMPIK MEDIA & FASHION SA	4.49%	0.00%
NETMEDIA SA	0.78%	0.00%
PEGAS NONWOVENS SA	0.18%	0.00%
POLNA SA	0.05%	0.00%
Bank BPH SA	0.03%	0.00%
TRAVELPLANET.PL SA	0.00%	0.00%
FAM SA	0.00%	0.00%

Source: own research.

Summary

On the capital market in Poland, the phenomenon of delisting of companies is intensified as a result of the announcement of tender offers for shares. According to legal regulations, the price in such a tender offer must be higher than the average price of share prices over a 3-month and 6-month period. In the analysed group of 30 cases, only one premium was over 100%. In three cases the premium was 50%. In four cases there was no premium, and in six cases the premium was less than 1%. It turns out, therefore, that in one-third of the cases, delisting actually took place at the prices close to the mentioned average prices. Therefore, it is difficult to talk about a premium. In nine cases, the premium was between 1 and 9 percent. Given the above, we verify the hypothesis made negatively. We can consider a small inflow of new capital as the reason for the lack of premiums in the tender offers. Tenders are an opportunity to remodel investment portfolios of institutional investors. In addition, a weak position of minority investors means that they are not interested in fighting for premiums.

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