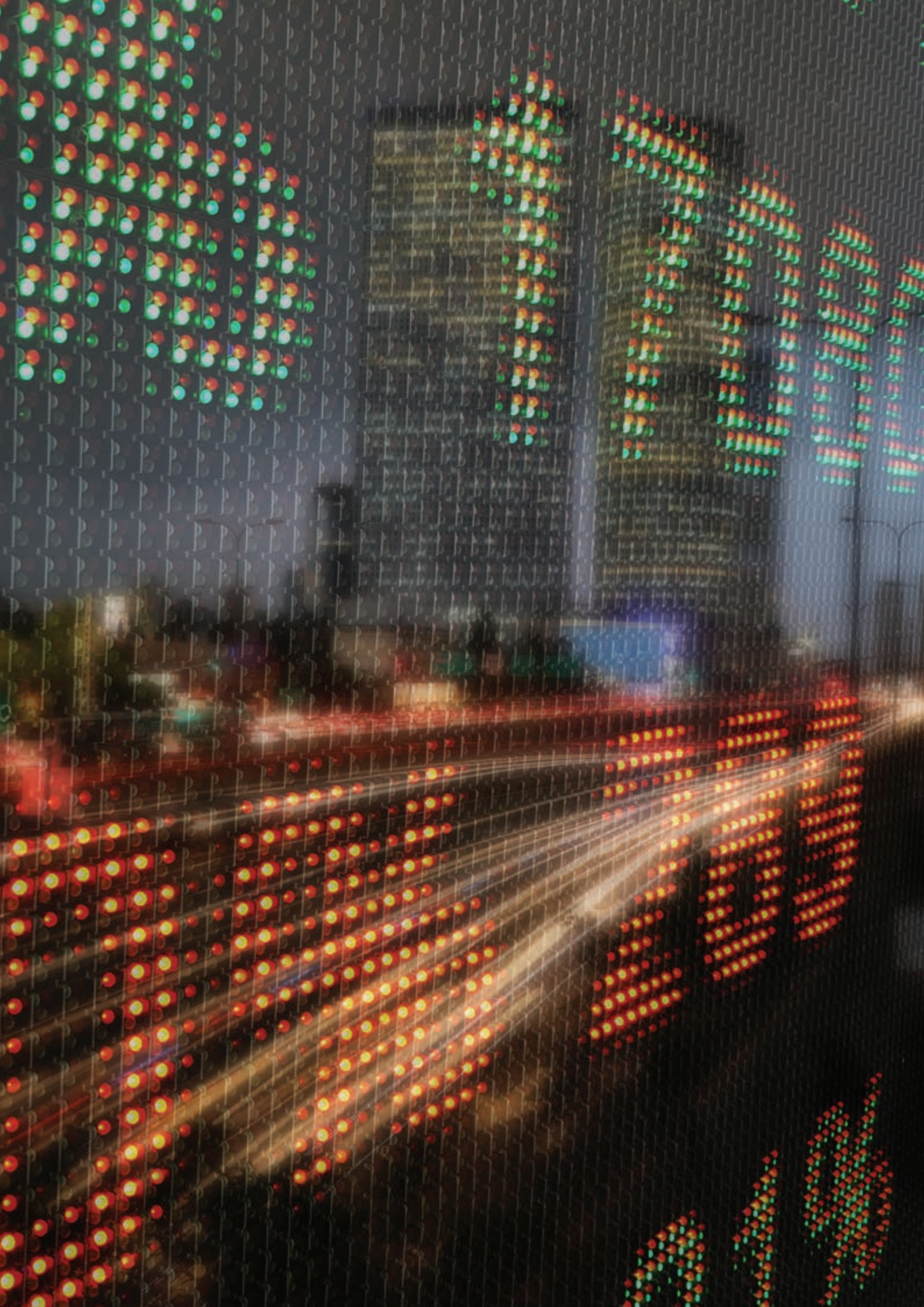
Hogan Lovells

Public Takeovers in Germany

Newsletter

2020



Contents

1. Introduction

Welcome to the third edition of our "Public Takeovers in Germany" newsletter. It provides an overview of public takeovers carried out in Germany in 2019 under the German Securities Acquisition and Takeover Act (WpÜG) and of recent developments in German public takeover law.

As a global law firm, we are constantly observing the M&A markets in Germany and abroad. We would like to share our insights with you in this newsletter.

The main part of this newsletter presents a statistical overview of the public takeovers executed in Germany in 2019 under the WpÜG. This overview is based on the database of German takeover bids published by the German Federal Financial Supervisory Authority (BaFin). In addition, we have analyzed the management statements published by the management boards and supervisory boards of the target companies. Wherever a public offer was amended, our analysis reflects only the data from the final version of the offer, unless indicated otherwise.

In the "Profile" section we showcase in more detail what we consider the most noteworthy public takeover bid of the past calendar year in Germany. In 2019, this undoubtedly was the takeover battle over OSRAM Licht AG.

Finally, we discuss the recent legal developments which are relevant for the German takeover market.

In this edition, we will first discuss the revision of sec. 26 WpÜG which was caused by the OSRAM takeover and came into force on 1 January 2020.

We will then discuss the judgment issued by the District Court (Landgericht) of Frankfurt in connection with the STADA AG takeover, which addresses potential rectification claims arising from subsequent acquisitions within the meaning of sec. 31 paras. 5 and 6 WpÜG.

Lastly, we will analyze the judgment of the District Court Munich I which, against the background of the merger of Linde AG and Praxair Inc., assessed the question of whether the conclusion of a business combination agreement is subject to the unwritten competence of the general meeting.

2. Statistics

2.1 Overview – market trends

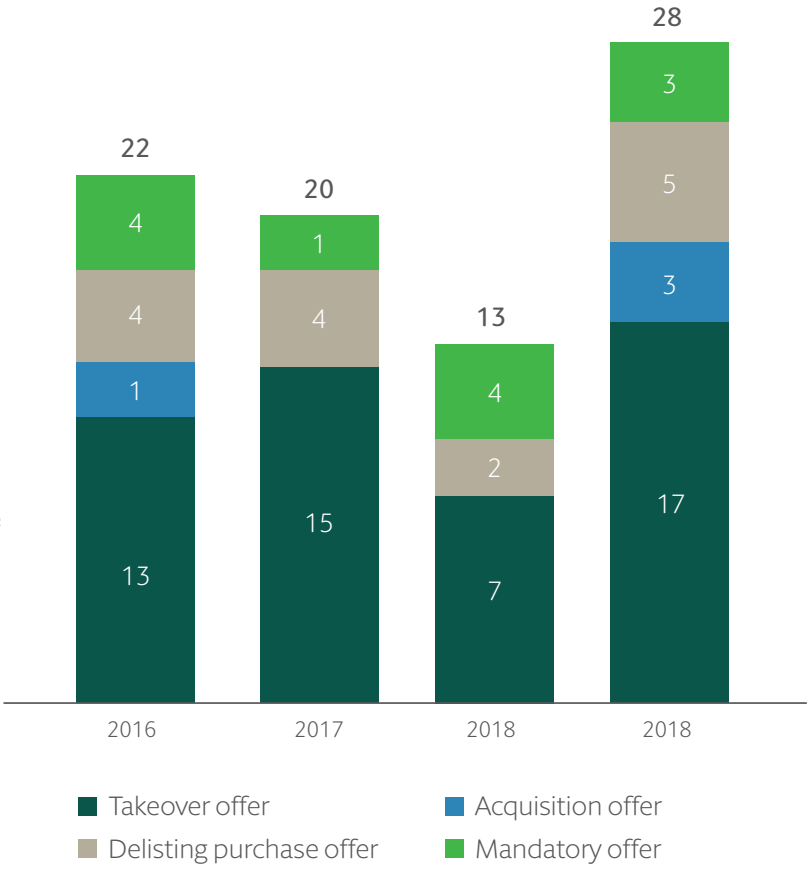
In 2019, the public takeover market in Germany showed the following trends in particular:

- The level of activity in the German takeover market increased significantly in 2019 and, with 28 public offers, was at its highest compared with the preceding three years.
- The high level of activity also resulted in a record figure for the offer volume of EUR 31.34 billion compared with the preceding three years.
- The average offer premium of 17.47 % in relation to the weighted three-month average price prior to the offer shows a considerable increase over the previous year (7.76 %) and is slightly above the level of 2017 (14.10 %).
- In the real estate sector, the takeover activities stabilized at a normal level in 2019. By contrast, similar to 2016 and 2017, the TMT sector recorded the highest level of activity in the German takeover market.
- In the past year, a significant proportion of the statements issued by management boards and supervisory boards took a neutral stance towards takeover offers (39 %).
- Foreign investors accounted for 72 % of public takeovers, either submitting bids directly or via German acquisition vehicles.

2.2 Public offers and offer types

By the end of 2019, there were a total of 28 public offers in Germany. This represents a marked increase of activity in the takeover market compared with 2016 (22 public offers) and 2017 (20 public offers). In fact, compared with 2018 (13 public offers), the number of public takeover offers more than doubled in 2019.

Once again, most of the offers made in 2019 were takeover offers. While there were three mandatory offers and three acquisition offers, the number of delisting offers increased to five.

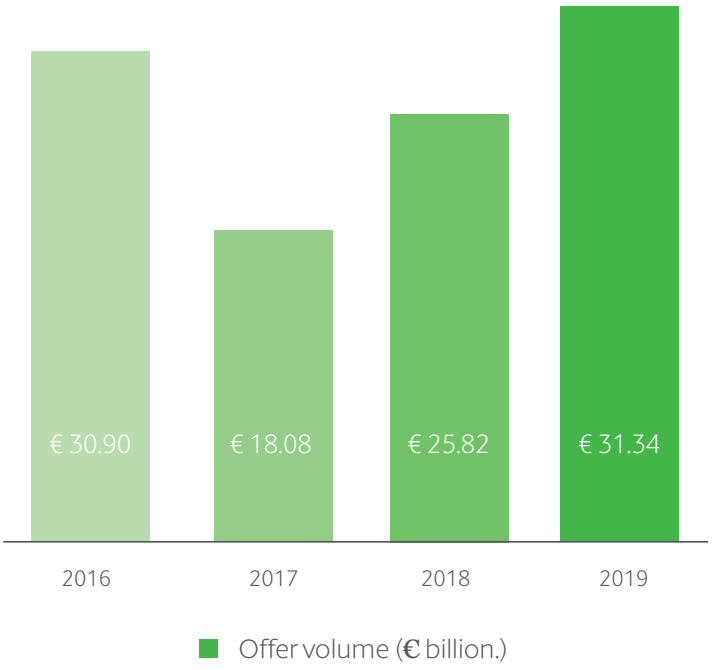


2.3 Offer volume

The total volume of offers in 2019 amounted to EUR 31.34 billion. The general upward trend to be observed since 2018 has continued and, in 2019, even surpassed the record level observed in 2016.

Nevertheless, it must be remembered that this figure for 2019 includes a total of three offers for OSRAM Licht AG (the most recent one amounting to EUR 3.97 billion). Initially, the financial investors Bain Capital and Carlyle Group on the one hand and the Austrian chip and sensor manufacturer ams AG on the other competed in a takeover bid for OSRAM Licht AG, each of them submitting bids via German acquisition vehicles. After both bids failed, ams Offer GmbH – a wholly owned subsidiary of ams AG – submitted another takeover bid.

Further takeover bids worth mentioning are the bids for Scout24 AG (EUR 4.67 billion) and METRO AG (EUR 5.80 billion) – which both failed because the minimum threshold for acceptance was not met in either case. At EUR 6.80 billion, the takeover of Axel Springer SE accounts for the largest share of the total offer volume in 2019.



2.4 Developments in market segments

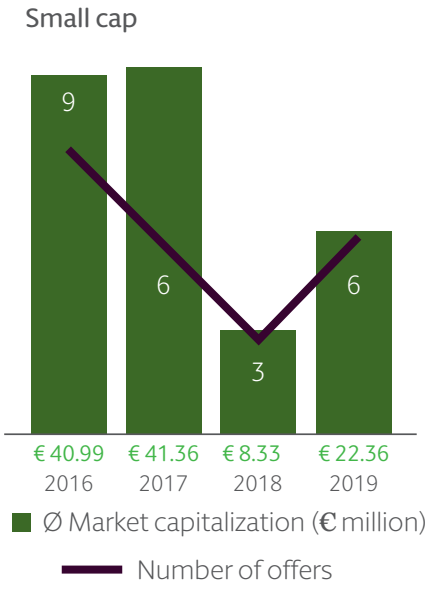
The market segments are defined as follows according to the respective market capitalization of the target company (EUR million):

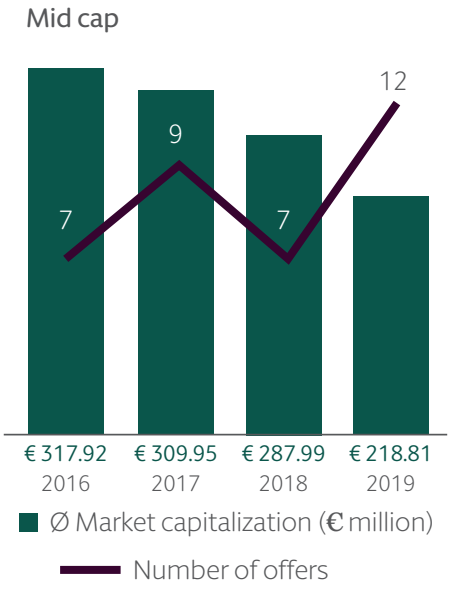
- small cap: under EUR 100 million;
- mid cap: EUR 100 million to under EUR 1 billion;
- large cap: EUR 1 billion or higher.

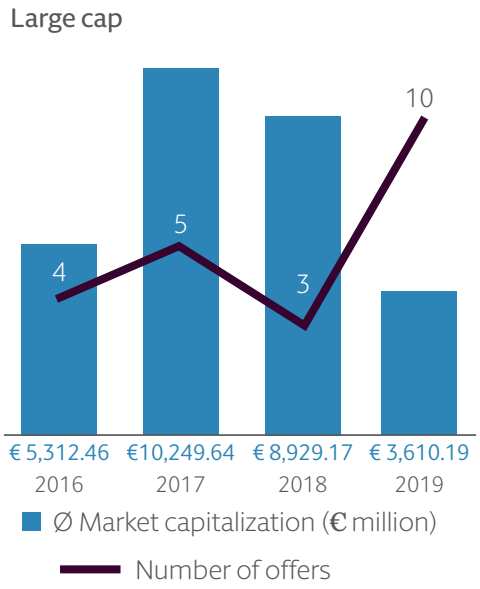
The figures observed in the large-cap sector are the clearest indication of the overall very high level of takeover activity in 2019. With 10 bids submitted in this sector, the number of bids is at least twice as high as in 2017, when the previous record level was achieved. Even though this is by far the highest number, at EUR 3.61 billion, the average market capitalization in the large-cap sector is at its lowest level compared with the previous years.

While the number of takeover bids in the mid-cap segment also recorded another increase, the average market capitalization in this segment also showed a significant decline to EUR 218.81 million.

At EUR 22.36 billion, the average market capitalization in the small-cap segment showed a significant increase compared with the figure for 2018, but was still well below the figures for 2016 and 2017.





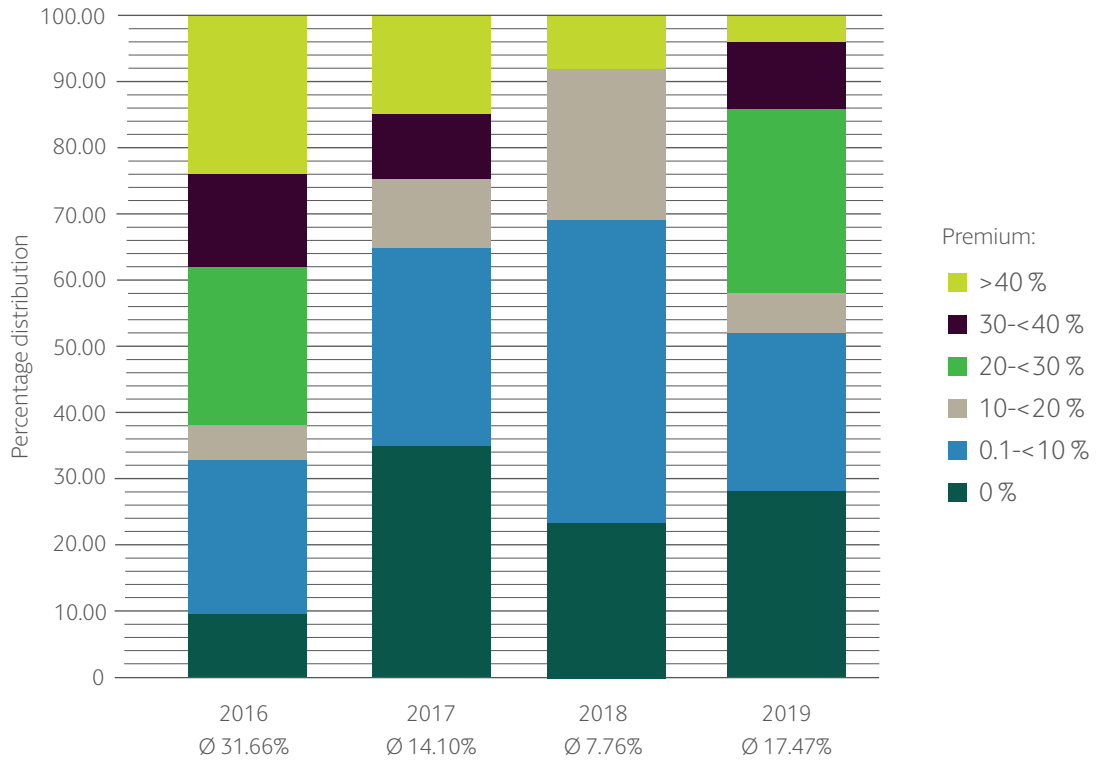


2.5 Offer premium

The following chart shows the offer premium in relation to the weighted three-month average German stock market price prior to the bid (for delisting offers, the legally relevant six-month average stock price was taken into account).

The average (unweighted) offer premium in 2019 amounted to 17.47 %. This represents a significant increase compared with the previous year (7.76 %), and the figure is also slightly above the figure for 2017 (14.10 %).

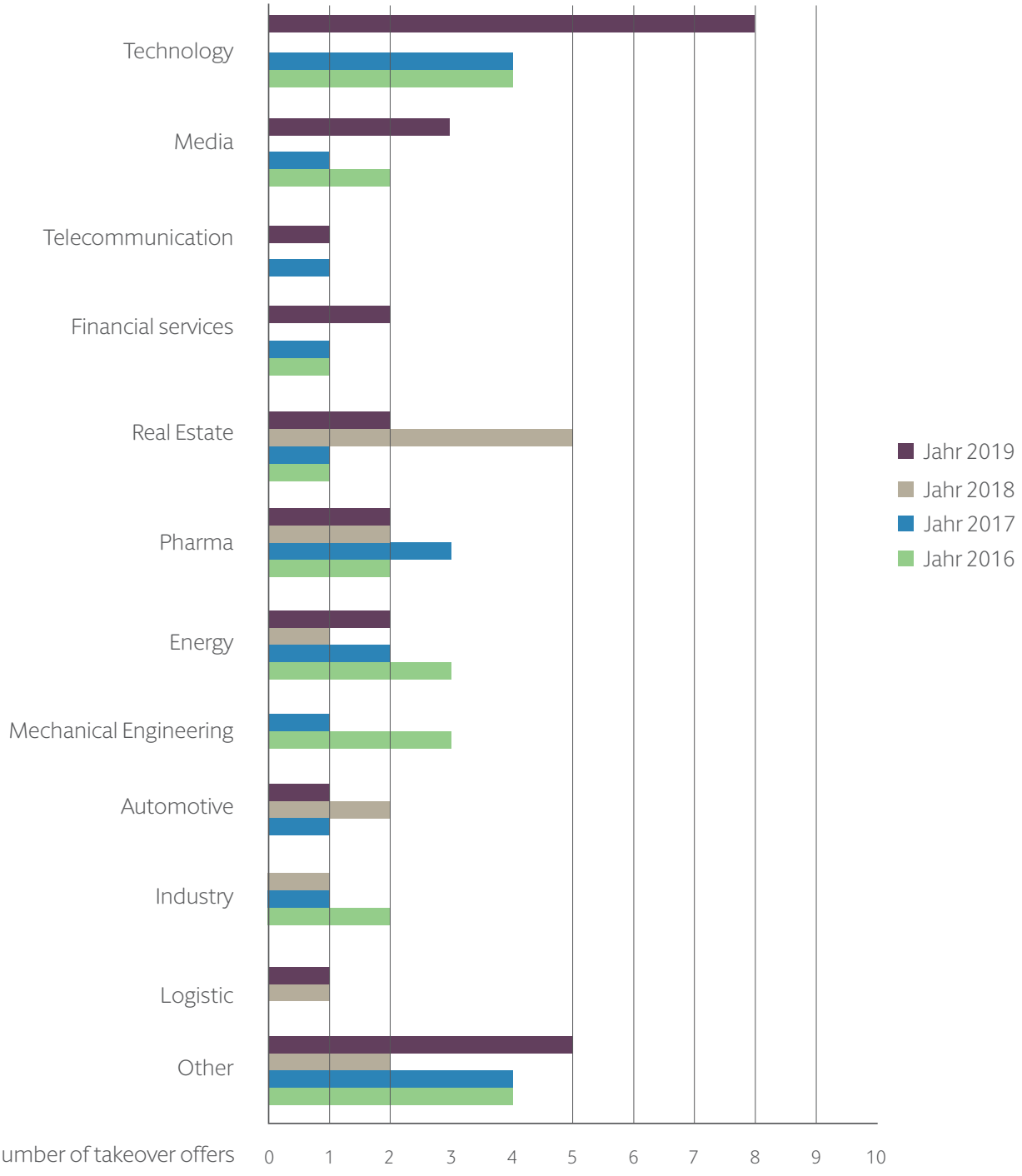
In 2019, half of the offers provided a maximum premium of 10 %. However, it is noteworthy that, compared with the previous two years, the percentage of offers where a premium of more than 20 % was provided increased significantly. By contrast, premiums of more than 40 % have been showing a significant downward trend since 2016.



2.6 Takeovers by sector

2019 saw a continuation of the 2016 and 2017 trend that the TMT sector (technology, media and telecommunications) recorded the highest level of activity in the German takeover market. In 2019, the TMT sector accounted for almost half of all takeovers.

Despite the fact that two public offers were submitted in the real estate sector in 2019, too, the clear upward trend of the previous year did not continue. A homogenous distribution – similar to that observed in 2016 and 2017 – can be seen in the financial services, pharma, energy, industry, automotive and logistics sectors.

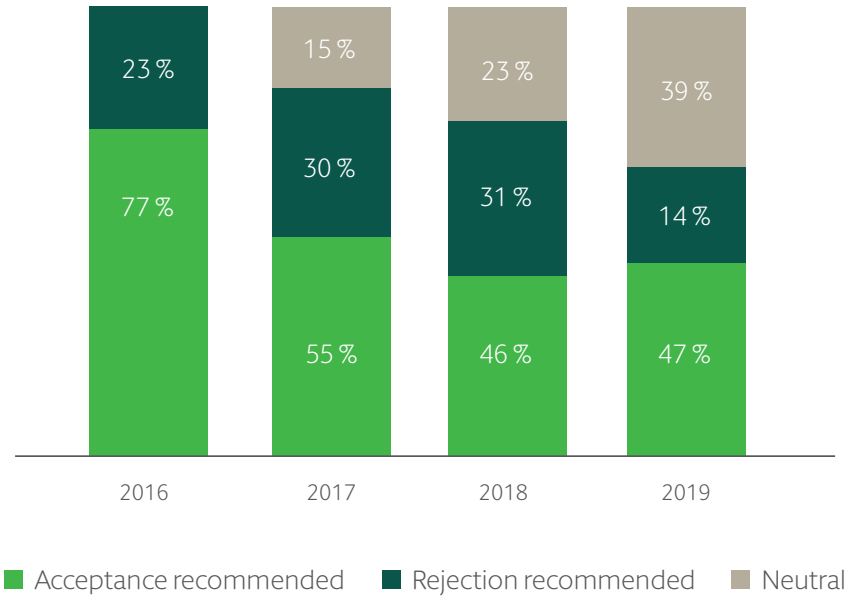


2.7 Management board and supervisory board statements

In accordance with sec. 27 WpÜG, both the management board and the supervisory board must issue a reasoned statement on the public offer.

In 2019, 47 % of the statements recommended accepting the public offer, whereas 14 % recommended rejecting it.

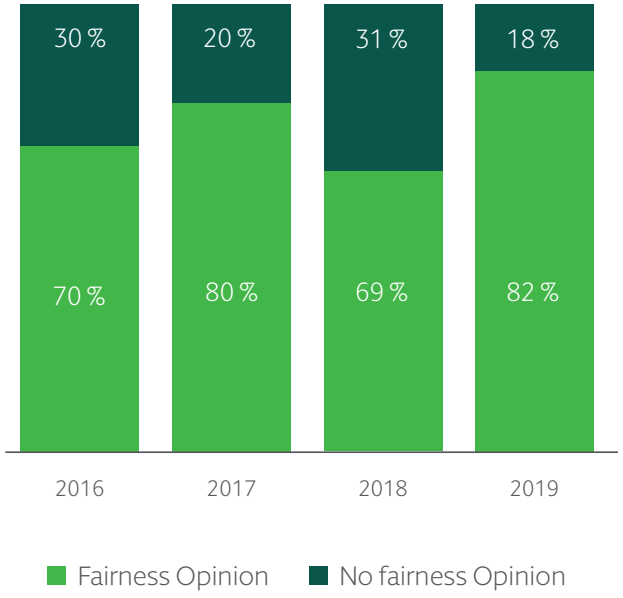
A remarkable 39 % of the statements expressed a neutral opinion on the offer. A common reason given in the event of a neutral statement being expressed is that, while the consideration may seem appropriate, the management board and the supervisory board are not able to conclusively assess the investor's strategic aims. It seems that, over the last years, the strategic background to a bid has become increasingly significant and, as a consequence, the management board and the supervisory board frequently avoid issuing a clear recommendation.



2.8 Fairness opinions

Fairness opinions are statements by external experts on the appropriateness of the public offer. These expert opinions are often obtained by the management board and the supervisory board as a basis for their statement.

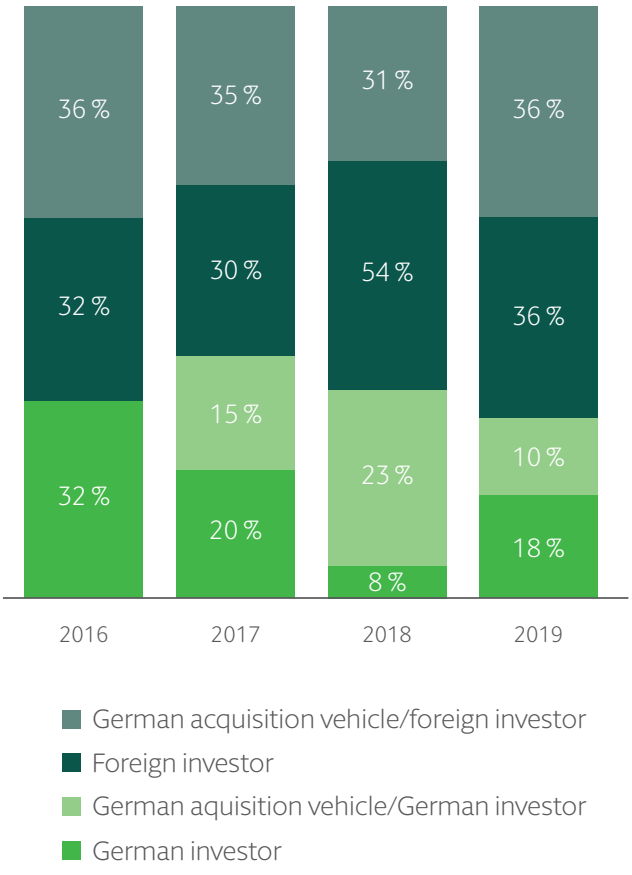
In 2019, management boards and supervisory boards obtained an external fairness opinion for 82 % of the offers. This roughly corresponds to the figure for 2017, after a slight decrease was recorded in 2018 compared with the previous year.



2.9 Origin of bidders

In 2019, 72 % of the offers came from foreign investors who published an offer either directly or via German acquisition vehicles. This is a further increase and also record level compared with 2018.

In contrast, 28 % of takeover bids were submitted by domestic companies directly or via a German acquisition vehicle.



3. Profile

The “takeover battle” over OSRAM Licht AG

Initially, the financial investors Bain Capital and Carlyle Group submitted a takeover offer on 22 July 2019 via Luz (C-BC) Bidco GmbH for OSRAM Licht AG at a price of EUR 35 per share with a minimum acceptance threshold of 70 %. On 4 September 2019, shortly before expiry of the acceptance period, the Austrian chip and sensor manufacturer ams submitted a competing offer via Opal BidCo GmbH at a price of ER 38.50 per share, again with a minimum acceptance threshold of 70 %. As a result of this offer, the acceptance period for the Bain/Carlyle offer was extended until expiry of the acceptance period for the ams offer (sec. 22 para. 2 WpÜG). Although ams meanwhile amended its offer by reducing the minimum acceptance threshold to 62.5 %, both takeover offers failed on 1 October 2019 because the respective minimum acceptance thresholds were not met. It was also worth noting that ams – without formally amending its takeover offer – increased the offer price to EUR 41 per share by way of parallel acquisitions (sec. 31 para. 4 WpÜG).

On 18 October 2019, ams announced a second takeover offer via its wholly owned subsidiary ams Offer GmbH. The offer document was submitted to BaFin on 25 October 2019. BaFin did not explicitly approve the offer; instead, it allowed the period of 10 work days stipulated for prohibiting an offer (sec. 14 para. 2 sentence 1 alt. 2 WpÜG) to pass. The legal consequence of this was the legal fiction that BaFin had granted its approval as a result of expiry of the deadline. The offer document was subsequently published on 7 November 2019. This second takeover offer achieved the minimum acceptance rate and was thus successful.

The submission of this second takeover offer via another offer vehicle affiliated with ams raised the question of whether this approach must be deemed an evasion of the blocking period of sec. 26 para. 1 WpÜG (old version). It is true that BaFin implicitly approved this approach by not prohibiting the second takeover offer. However, these events led to a quick response by the legislator that amended sec. 26 WpÜG to prevent a repetition of such cases in the future. For further details see section 4.1 below.

Overview	
Bidder	ams Offer GmbH
Target company	OSRAM Licht AG
Sector	Technology
Status	Successful
Minimum acceptance threshold	55 %
Acceptance rate	59.9 %
Offer volume (max.)	Approx. EUR 3.97 billion
Type of offer	Voluntary cash takeover offer
Offer price	EUR 41.00 per share of OSRAM Licht AG
Acceptance period	7 November 2019 to 5 December 2019, 24:00 (local time Frankfurt am Main), additional acceptance period 11 December to 24 December 2019, 24:00 (local time Frankfurt am Main)
Structure of participation	ams Offer GmbH is a wholly owned subsidiary of ams AG which already held 19.99 % of the shares in OSRAM Licht AG.
Business Combination Agreement	ams, Opal BidCo GmbH (wholly owned subsidiary of ams) and OSRAM entered into a cooperation agreement on 21 August 2019. The parties could have terminated this agreement after the first bid was unsuccessful; however, it remained in force, in particular with regard to the organization of the joint activities in the future. Moreover, the bidder, ams and OSRAM entered into a business combination agreement on 11 November 2019 in which the strategic arrangements between the parties were further supplemented and set out in more detail. It also provided for a neutral person monitoring compliance with key arrangements under the business combination agreement.
Competing takeover offer	Originally, there were competing offers from financial investors Bain Capital and Carlyle Group (via Luz (C-B) Bidco GmbH) and from Opal BidCo GmbH (ams).
Statement by the management board and supervisory board	Although the management board and the supervisory board considered the business concept of the competing offer by Bain Capital/Carlyle to be more sustainable, they still recommended accepting the first ams offer due to its more attractive offer price. In the context of the second offer, they confirmed their assessment and also referred to the closer cooperation that had been agreed. However, with regard to both statements, the employee representative in the supervisory board expressed a dissenting opinion, objecting to the approach taken by ams, which was allegedly inadmissible pursuant to sec. 26 para. 1 WpÜG, and raising numerous concerns regarding the offer's content.
Financing	Equity and debt capital
Friendly/hostile	Friendly
Closing conditions	• various approvals under merger control law by 30 November 2020 • minimum acceptance threshold of 55 % • no material capital or similar measure by OSRAM • no insolvency of OSRAM
Links	Offer document dated 7 November 2019 Statement by the management board and the supervisory board dated 27 November 2019

4. Recent legal developments in takeover law

4.1 Revision of sec. 26 WpÜG in the wake of the OSRAM takeover battle

The takeover battle over OSRAM Licht AG resulted in a surprisingly swift response by the legislator that closed a legal loophole in sec. 26 WpÜG. The German Federal Parliament (Bundestag) followed the Finance Committee's recommendation – "hidden" in the Act on the Implementation of the Amendment Directive to the Fourth EU Money Laundering Directive (Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten EU-Geldwäscherichtlinie) (Bundestag printed matter 19/15163, p. 90 ff.) – according to which persons acting jointly with an unsuccessful bidder will also be prevented in the future from publishing a new takeover offer for one year after the initial takeover offer failed. The change in law came into effect on 1 January 2020.

a) Second offer by ams AG – attempt to evade the blocking period under sec. 26 para. 1 WpÜG (old version)?

The purpose of sec. 26 WpÜG is to protect the target company against being prevented from carrying out its business activities for an unreasonably long period after a takeover offer was either prohibited by BaFin or failed because the minimum acceptance rate could not be reached. Thus, the "bidder" (according to the previous wording of the provision) is prevented from submitting another offer until a one-year blocking period has expired.

The resulting legal loophole came to light in the course of the takeover battle over OSRAM Licht AG, where ams submitted a second takeover offer via a wholly owned subsidiary, although the first offer failed because the minimum acceptance rate was not reached (see section 3 above).

The wording of sec. 26 para. 1 WpÜG (old version) only covered the bidder itself. An interpretation based on the wording would inevitably lead to the conclusion that it is solely the bidder that is prohibited from submitting another acquisition or takeover offer for the target company during the blocking period. By contrast, persons acting jointly with the original bidder were not subject to the blocking period. The fact that the WpÜG made a clear distinction in numerous other passages between the bidder itself and persons acting jointly with the bidder within the meaning of sec. 2 para. 5 WpÜG also supported this interpretation.

This interpretation based strictly on the wording of the law was in line with BaFin's previous approach: as early as 2018, BaFin granted its approval for Deutsche Balaton AG to publish a second takeover offer for Biofrontera AG at short notice via a wholly owned subsidiary after the original takeover offer of Deutsche Balaton AG was prohibited by BaFin for reasons of prospectus law.

However, the approach pursued by ams led to controversial discussions regarding the scope of application of sec. 26 WpÜG. For example, the group works council of OSRAM Licht AG demanded that BaFin prohibit the takeover offer as the one-year blocking period for the submission of a new offer had not yet expired. When BaFin did not grant this request, the group works council of OSRAM Licht AG filed an appeal (case ref. WpÜG 3/19) with the Frankfurt Court of Appeals (Oberlandesgericht) by way of interlocutory relief. However, the Frankfurt Court of Appeals dismissed the appeal for lack of standing to sue on 18 November 2019 on the grounds that the provisions of the WpÜG do not have a protective effect for third parties and, accordingly, the group works council is not entitled to demand an intervention by BaFin.

b) Legal loophole closed by revision of sec. 26 WpÜG

However, the German Federal Ministry of Finance felt compelled to close the legal loophole identified. To this end, an amendment to sec. 26 WpÜG was proposed via the finance committee of the Bundestag in the context of the Act on the Implementation of the Amendment Directive to the Fourth EU Money Laundering Directive which was passed by the Bundestag on 14 November 2019 and came into force on 1 January 2020.

From now on, pursuant to sec. 26 paras. 1 and 2 WpÜG (new version), not only the bidder, but also any persons acting jointly with the bidder are prevented from submitting another offer within one year of a bid being rejected or unsuccessful. If an offer is rejected, the decisive factor is whether the person intending to submit the new offer was acting jointly with the bidder submitting the original offer at the time the original offer was rejected or the decision to submit the new offer was published (sec. 26 para. 1 WpÜG (new version)). If an offer failed because the minimum acceptance rate could not be reached, the decisive factor is whether the person intending to submit the new offer was acting jointly with the original bidder either during the period between the announcement of the intention to submit an offer and the end of the offer period of the original offer or at the time the decision to submit the new offer was published (sec. 26 para. 2 WpÜG (new version)).

This means that, in both cases (original offer is rejected or is unsuccessful), persons acting jointly with the bidder can now publish another offer within one year of the original offer being rejected or unsuccessful only if the target company expressly consented to this and BaFin grants its approval (sec. 26 para. 5 WpÜG (new version)). However, even pursuant to the new version of sec. 26 WpÜG, the legal situation remains that this one-year period does not apply if the bidder in question exceeds the control threshold of 30 % through an acquisition of shares on the market and is thus obliged to submit a mandatory offer (see sec. 26 para. 4 WpÜG (new version).

c) Practical implications

With the revision of sec. 26 WpÜG, the legislator thus closed a legal loophole of which the public and the legislator were not aware until recently when the takeover process regarding OSRAM Licht AG was commented on in detail in the media.

However, it is not expected that this will have major practical implications for the takeover practice in Germany, because to date – as far as is known – this legal loophole was merely made use of by bidders in the context of the recent takeover offers regarding Biofrontera AG and OSRAM Licht AG. With the change in law, the legislator wanted to prevent a risk of future abuse.

4.2 Compensation agreements prior to takeover under a profit transfer agreement - STADA takeover, judgment of the District Court of Frankfurt of 21 March 2019 (3-05 O 138/18)

a) Facts

The background to the judgment of the District Court of Frankfurt was the STADA AG takeover. In April 2017, financial investors Bain Capital and Cinven submitted a takeover offer for STADA AG via the acquisition vehicle "Nidda Healthcare Holding AG". However, this takeover offer was unsuccessful because the minimum acceptance threshold was not reached. One of the reasons was that the hedge fund Elliott acquired approximately 12 % of the shares of STADA AG during the first takeover offer. In July 2017, Nidda Healthcare Holding AG submitted a new offer with the consent of STADA AG and the approval of BaFin. In this new offer, the acceptance threshold was lowered to 63 % and the offer price was increased slightly to EUR 66.25 per share. With an acceptance rate of 63.87 %, the offer was just about successful. In the second offer document, the bidder stated that it intended to conclude a controlling and profit transfer agreement with STADA AG.

On 30 August 2017, i.e. after expiry of the acceptance period for the second takeover offer (17 August 2017), but before expiry of the additional acceptance period, the bidder (or rather a person acting jointly with the bidder) entered into an agreement with Elliott in which Elliott undertook to vote in favor of the conclusion of a domination and profit transfer agreement, including compensation within the meaning of sec. 305 para. 1 of the German Stock Corporation Act (AktG) in the amount of EUR 74.40 per share, at the general meeting. However, this agreement explicitly did not contain any obligation on the part of Elliott to accept the compensation offer once the domination and profit transfer agreement took effect. On 19 December 2017, the buyer concluded such a domination and profit transfer agreement with STADA AG which was approved by the general meeting on 2 February 2018.

The plaintiff had submitted its shares in the context of the second takeover offer on 9 August 2017 for an offer price of EUR 66.25. With its complaint, it wanted to recover the difference between this amount and the minimum compensation of EUR 74.40 agreed in the domination and profit transfer agreement. It asserted this claim under sec. 31 para. 5 and sec. 31 para. 6 WpÜG.

b) Legal considerations

Accordingly, the District Court of Frankfurt had to assess the question of whether a relevant subsequent acquisition within the meaning of sec. 31 para. 5 or sec. 31 para. 6 WpÜG had taken place. The court denied this and dismissed the complaint.

It held that there was no claim to an additional payment within the meaning of sec. 31 para. 5 sentence 1 WpÜG, and that the exception under sec. 31 para. 5 sentence 2 WpÜG applied, according to which there is no subsequent acquisition if shares are acquired in connection with a statutory obligation to grant compensation to shareholders of the target company. This is the case for the statutory compensation obligation pursuant to sec. 305 para. 1 AktG.

The District Court also ruled out a claim under sec. 31 para. 6 WpÜG because there was no obligation at any point in time to transfer the shares to the buyer. Under sec. 305 para. 1 AktG, only the shareholder has a claim to a share transfer, but not the controlling company. Moreover, sec. 31 para. 6 WpÜG refers to sec. 31 para. 5 WpÜG, which means that the exemption pursuant to sec. 31 para. 5 sentence 2 WpÜG is also applicable in the context of sec. 31 para. 6 WpÜG.

According to the District Court, there is no causality for a damages claim due to fraud asserted in the alternative pursuant to sec. 823 para. 2 of the German Civil Code (BGB) in conjunction with sec. 263 of the German Criminal Code (StGB), because the plaintiff had already submitted its shares prior to the conclusion of the agreement between STADA AG and Elliott.

What was not mentioned, however, was a potential claim under sec. 12 WpÜG. A possible ground for such a claim would be that the negotiations between the bidder and Elliott regarding the conclusion of a domination and profit transfer agreement and the delivery price presumably started during the acceptance period already, but at the latest during the additional acceptance period. The existence of a duty to subsequently update the information provided in the offer document is, however, not stipulated by law and is highly controversial in legal literature.

c) Practical consequences

The statements made by the District Court of Frankfurt regarding sec. 31 para. 5 and sec. 31 para. 6 WpÜG are plausible and not surprising as regards their content. Unfortunately, the District Court did not address a claim under sec. 12 WpÜG and the question of an unwritten duty to update information in the offer document.

4.3 Participation of general meeting not required - Linde/Praxair, judgment of the District Court Munich I of 20 December 2018 (5 HK O 15236/17)

a) Facts

Linde AG (the defendant) intended to merge with Praxair Inc. under a holding company to be newly established, namely the Dublin-based Linde plc. Prior to the transaction, the parties concluded a business combination agreement ("BCA"), according to which the supervisory board was to consist of an equal number of members of the defendant and of Praxair Inc. In order to implement the merger, the shareholders of Linde AG were to become shareholders of Linde plc by way of an exchange of shares in the context of a public takeover offer, and the defendant was to become a company controlled by Linde plc. Praxair Inc. was to be merged with Linde plc. The engineering business of Linde AG, which generated approximately 14 % of the defendant's overall turnover, was to be spun off.

As part of the takeover offer, the shareholders of Linde AG were given shares in the future group parent company, Linde plc. The Praxair shareholders were given shares in Linde plc when Praxair Inc. was merged with Linde plc.

Despite a corresponding request that the agenda for the general meeting of Linde AG be supplemented accordingly, no vote was cast on the BCA at the general meeting of Linde AG. In the complaint, the shareholders (the plaintiffs) moved for the court to find that the BCA should not have been entered into without the approval of the general meeting.

The plaintiffs' main argument was that the merger would have an adverse effect on the shareholders' legal position. They argued that there was an unwritten competence of the general meeting within the meaning of the Holzmüller/Gelatine doctrine, and that the BCA constitutes a hidden domination agreement. They also argued that the merger would furthermore require a change to the articles of association pursuant to sec. 179 para. 1 AktG.

b) Legal considerations

The District Court Munich I dismissed the complaint as unfounded and denied that there was an unwritten competence of the general meeting. The court stated that, in line with the Holzmüller/Gelatine doctrine issued by the German Federal Court of Justice (Bundesgerichtshof (BGH)), such an unwritten competence of the general meeting required serious interference with the shareholders' participation rights and their financial interests embodied by their share ownership. For this criterion to be met, measures would have to affect the core competence of the general meeting to decide on the company's constitution and the effects of such measures would have to correspond to a state that could only be brought about by an amendment of the articles of association.

The District Court Munich I did not find a shifting of power to the shareholders' detriment, because it was up to each shareholder to accept or to decline the public takeover offer. The court considered this to be a stronger position of power and participation right than a decision of the general meeting. Accordingly, the shareholders were able to decide directly on the failure or success of the structural measure. By contrast, any decision of the general meeting would not have any external effect. It was merely the shareholder structure that was changed, not the shareholders' participation or property right. The shareholders are granted compensation through access to the former Praxair assets, so to speak. The court stated that the spin-off of the engineering business did not result in a shifting of power to the shareholders' detriment, because its share in the overall turnover was limited. Pursuant to the Holzmüller/Gelatine doctrine, such a shifting of power to the shareholders' detriment would require that the business in question would account for a share in the company's assets of at least 70 to 80 %.

In the view of the District Court Munich I, a hidden domination agreement could be ruled out for the reason alone that the defendant did not contractually agree to a subordination of key areas to the controlling company. What was introduced was a system of equal participation in which the supervisory board of a joint parent company was intended to consist of an equal number of members of the defendant and of Praxair. As a result, the court stated, Praxair could not enforce measures unilaterally against the defendant's wishes. Moreover, the District Court Munich I held that it was doubtful whether the legal concept of a hidden domination agreement had to be recognized at all.

Moreover, it stated that there was no need for an amendment of the articles of association pursuant to sec. 179 para. 1 AktG for which the approval of the general meeting would have been required. The BCA does not run counter to the articles of association. Both the object and the purpose of the company remained the same.

c) Practical implications

With its statements regarding the lack of an unwritten competence of the general meeting, the District Court Munich I is in line with the prevailing opinion. Its cautious statements regarding the legal concept of the hidden domination agreement are remarkable and somewhat surprising, given that the same court, in a judgment issued in 2012 in the W.E.T. case, confirmed the concept of such a hidden domination agreement. This decision was heavily criticized in the legal literature. It seems that this criticism has not failed to leave its mark on the District Court of Munich I.

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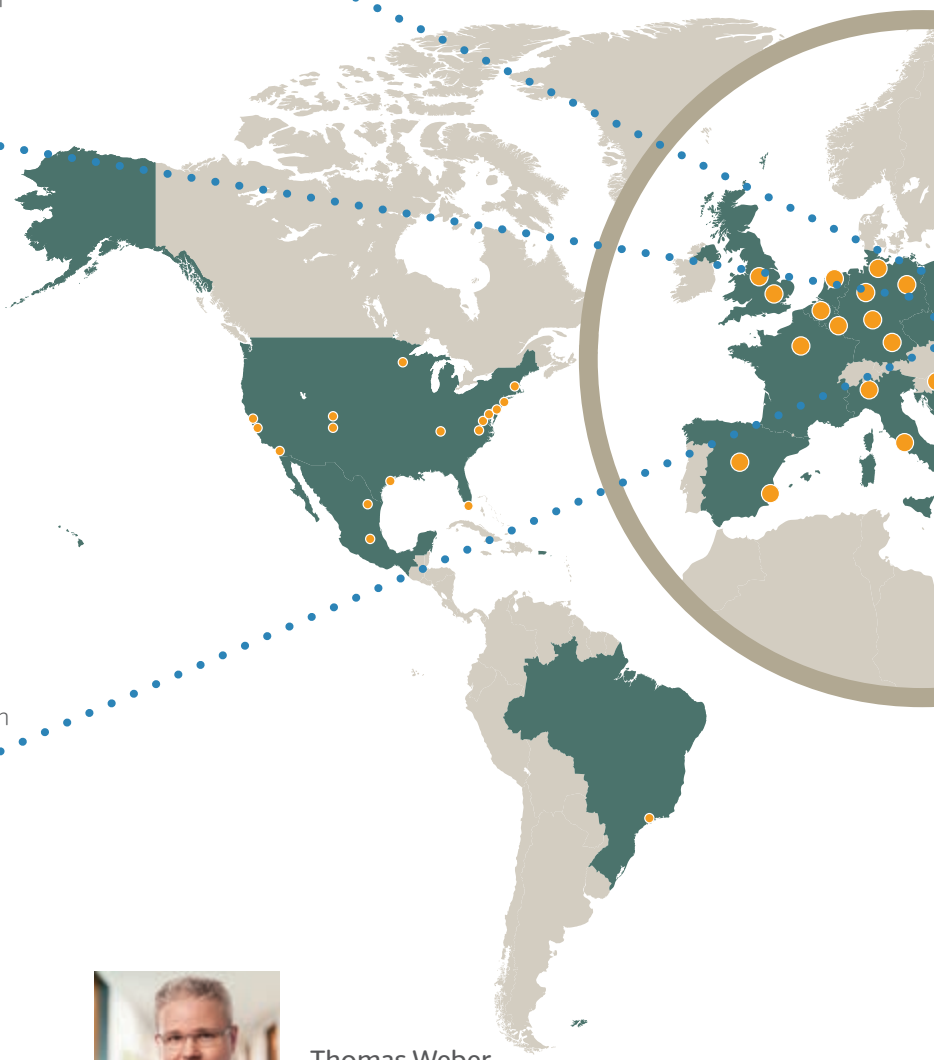

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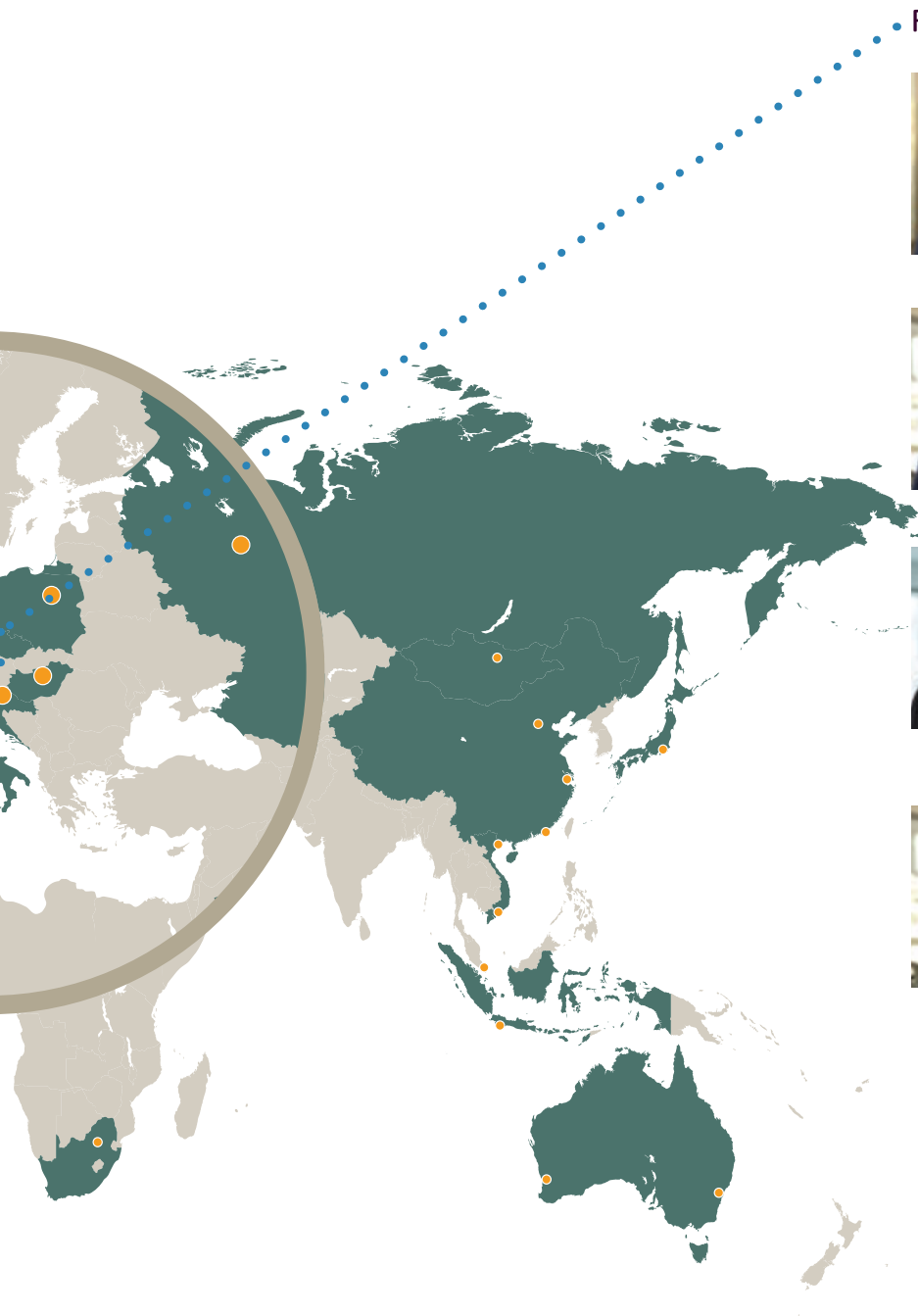

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