

A FOREIGN BUYER'S GUIDE TO
**ACQUISITIONS
IN GERMANY**

How to Address
Local Stakeholders to
Get the Deal Done

MARCH 2018



Leading M&A Communications Advisor Around the World

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ABOUT HERING SCHUPPENER

Hering Schuppener Consulting is one of the leading communications consultancies in Continental Europe and the clear market leader in Germany, with offices in Berlin, Düsseldorf, Frankfurt and Brussels. Hering Schuppener has specialized in strategic communications solutions for companies in mission-critical situations such as M&A transactions, IPOs, restructuring and change processes as well as crises. Moreover, the company advises its clients on a continuous basis in reinforcing their reputation and managing their brand, in management and controlling of international communications activities, in issues related to corporate campaigning and corporate affairs, CEO positioning, digital corporate communication and transformation as well as in long-term media and investor relations activities.

Hering Schuppener Consulting, Finsbury and The Glover Park Group (GPG) have formed a strategic partnership. With 15 offices and more than 500 consultants, the companies have created one of the very few global platforms for integrated strategic communications advice, providing clients with sophisticated counsel and seamless execution, regardless of geography. The firms have advised on nearly 1,500 transactions with a total value of more than USD 2 trillion in the past 10 years alone.

PREFACE

In 2017, Germany saw a significant increase in inbound M&A. Inbound deal value in Europe's most important M&A market almost doubled compared to the previous year. What makes the country so attractive: Germany is Europe's largest economy and home to globally active, technologically innovative companies. Despite increasing protectionist sentiment, this environment offers compelling deal rationales for international companies in many sectors.

However, most foreign acquirers have only limited experience in the German market and do not fully appreciate its unique characteristics. Successfully conducting M&A transactions in Germany requires an understanding of the local particularities, corporate structures, legal and regulatory processes and culture. Therefore, knowing the various stakeholder groups involved in the German M&A process is crucial before stepping into negotiations with a potential German target.

Hering Schuppener Consulting, Germany's leading strategic communications consultancy, has been the country's No.1 advisor in M&A communication for 14 years in a row. In 2017, the consultancy advised on 37 mergers and acquisitions involving German companies with an overall volume of more than USD 94 bn (around EUR 79 bn). And around the globe, the team together with its strategic partners Finsbury and GPG advised clients on nearly 1,500 transactions with a total value of more than USD 2 trillion in the past 10 years alone.

In this paper, Hering Schuppener Consulting intends to provide an all-round view on relevant stakeholder groups in the German M&A process, key issues and specifics a foreign investor faces, as well as practical advice for investing in Germany. We have compressed our experiences with the largest, most complex and challenging German M&A transactions and provide our takeaways and relevant strategic implications for the success of M&A transactions in Germany.

- **Firstly, we provide an overview of Germany's own specific Supervisory Board and corporate governance structures and its longstanding, deep-rooted history with employee co-determination on the highest level.**
- **Secondly, we take a brief look at the regulatory landscape and the regulators' overhauled, strengthened veto rights on a federal and EU level.**
- **Thirdly, we put a spotlight on German shareholders, who tend to have a stakeholder like approach, and the impact of shareholder representatives – who like to speak up in M&A situations.**
- **Lastly, we outline the influence of customers and suppliers on the outcome of a transaction.**

In addition, as we experience a significant increase in Chinese investments into Germany, we provide guidance on how to encounter common reservations Chinese investors face.

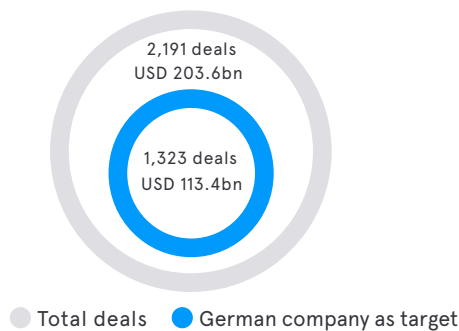
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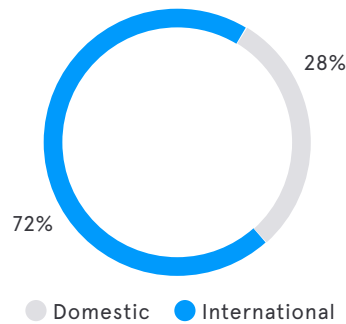
I. GERMANY – AN INCREASINGLY ACTIVE M&A MARKET WITH FOREIGN BUYERS PLAYING A DOMINANT ROLE

Deals with German involvement in 2017 in a nutshell.²

TOTAL GERMAN DEALS VS. DEALS WITH A GERMAN COMPANY AS TARGET IN 2017.



SHARE OF GERMAN DOMESTIC DEALS VS. INTERNATIONAL DEALS WITH A GERMAN COMPANY AS TARGET.



Announced M&A with German involvement totaled USD 204 bn during 2017, 3% more than the value recorded in 2016, driven by an increase in inbound M&A.

In 2017, German companies were involved in 2,191 deals. Over 60% of these involved a German target (1,323 deals). Compared with the year before, deals with German companies as the target decreased by 13% in 2017. The number of German inbound M&A deals reduced by 18%.

The value of M&A deals involving a German target was USD 113 bn in 2017, up 92% from the previous year and the highest level since 2007. 28% of these deals (by value) were domestic deals between German companies, while the remaining 72% involved a foreign company or investor buying German companies. The value of domestic M&A increased 80 % to USD 31 bn, an 8-year high, while inbound M&A increased 97% in value from 2016 to USD 81 bn to reach a 10-year high. In addition, the average deal value more than doubled year-on-year. This underlines the increasingly dominant role that foreign buyers are playing in the German market.

TOP5 GERMAN INBOUND DEALS IN 2017

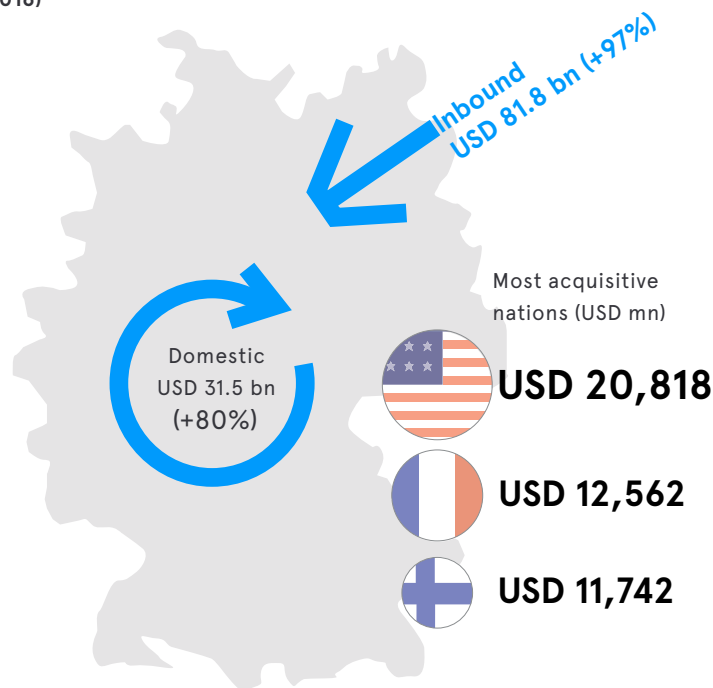
TARGET	SECTOR	ACQUIROR	VALUE (USD mn)
Uniper SE	Energy and Power	Fortum Oyj	11.742
Siemens AG–Mobility Business	Industrials	Alstom SA	9.743
STADA Arzneimittel AG	Healthcare	Nidda Healthcare Holding AG (vehicle formed by Bain and Cinven consortium)	6.777
ista Luxemburg GmbH	High Technology	Lamarillo Sarl	6.724
WIRTGEN GROUP Holding GmbH	Mechanical Engineering	Deere & Co	5.174

2. Source: for all data: Thomson Reuters, Preliminary M&A & Capital Markets Review – Germany, Full Year 2017 as of 18 Dec 2017 (YTD)

Most money invested in 2017 into German acquisitions came from the U.S. (one fourth of the inbound value), followed by France.

The most active sectors for deals were industrials and healthcare, which together account for more than 40% of the overall deal value involving a German company as target.

GERMAN DEAL FLOW IN 2017
2017 ANNOUNCED M&A DEAL VALUE
 (% CHANGE VS. 2016)



→ **REGULATORY DEVELOPMENTS**

Along with other industrialized countries, Germany has seen a rise in protectionist sentiment in recent years which has led to heightened political scrutiny of transactions involving foreign bidders. Increasingly, the protection of established industries and individual companies from foreign takeovers is being prioritized above the promotion of competition or industrial rationalization.

In 2017, the German government strengthened political oversight of inbound M&A transactions with the revision of its Foreign Trade Regulation (AWV) – a regime comparable to CFIUS in the United States – allowing the government to block transactions in

specific industries. These developments on the national level are accompanied by similar movements on the European level (for more details see Hering Schuppener's paper: *New Frontiers? The emerging regulatory landscape for FDI ... and what Investors can do about it.*)

While activity may be slightly dampened by increased scrutiny, macroeconomic fundamentals including continued low interest rates, resurgent economic growth and equity market sentiment in the Eurozone, lead us to believe that Germany will likely continue to see robust M&A activity.

II. GERMAN M&A TRANSACTIONS INVOLVE A UNIQUE RANGE OF STAKEHOLDERS

Governance: Strict division of power in the two-tier

Board system

Although the German Supervisory Board is compared to the Board of Directors in the Anglo-Saxon governance model, it has a number of distinct differences. A unique characteristic of German companies is the two-tier Board system. On the one hand, the system divides the decision making power between the Supervisory and Management Board. On the other hand, members of the Management Board are appointed by the Supervisory Board.

Members of the Management Board are not only appointed but also monitored by the Supervisory Board. In addition, significant decisions which affect the whole organization, such as a merger or a strategic overhaul, have to be approved by the Supervisory Board. In sum, the Supervisory Board has two major areas of power relevant to M&A: 1) management composition and 2) strategic direction.

→ In the U.S. and UK, management executives have the right to sit on or even head a Board of Directors. Although they have the right in the UK, a non-executive Chairman is generally preferred. In Germany, however, the strict division of the two bodies is regulated by law. The primary function of the Supervisory Board is to govern the management of a corporation.

Co-determination: Employees at the source of power

→ HISTORY LESSON: CO-DETERMINATION IN GERMANY

By tradition, Germany is a stakeholder-oriented country. German co-determination and Germany's affinity towards unions are just as old as the country itself. The principle of co-determination commenced in 1848, the year of the German democratic revolution. While the revolution gave birth to the nation's first democratic political system, the social changes that were unleashed also led to the formation of the country's first professional association, a then unknown

form of workers' organization. Ever since, the role of co-determination and the representation of unions have, despite temporary setbacks, increased over time and have vastly influenced the business landscape found in Germany today. The most notable co-determination law, which is considered to be a cornerstone of today's co-determination, was issued in 1951: the "coal and steel co-determination law."

Foreign investors, in particular those from the U.S., are often not familiar with the German concept of employees' co-determination on Supervisory Boards. Consequently, they are often unaware that due to the two-tier-Board system unions and employees have an immediate influence on the constitution of the Management Board and, thus, broader direction of the company, if they sit on the Supervisory Board. According to the co-determination laws in Germany, employee representatives constitute up to half of the Supervisory Board members – depending on the target's total number of employees (see table below). Moreover, Germany's rather extensive labour law regulations restrict post-merger restructurings more than in many other countries, in particular the U.S.

TODAY, THREE MAJOR PIECES OF LEGISLATION ARE IN PLACE:

NAME	EFFECT	APPLICABLE TO
One-third co-determination (<i>Drittelbeteiligung</i>)	1/3 of the Supervisory Board has to be represented by employee representatives	Smaller companies with 500 to 2000 employees
Co-determination Act (<i>Mitbestimmungsgesetz</i>)	1/2 of the Supervisory has to be represented Board by employee representatives	Companies with more than 2000 employees
Coal and steel co-determination law (<i>Montan-Mitbestimmung</i>)	1/2 of the Supervisory Board has to be represented by employee representatives plus one neutral member	Coal and steel companies with more than 1000 employees

Depending on the size and nature of the company, the size of the Supervisory Board varies between 3 and 21 members (Art. 95 AktG).

As per usual, shareholder representatives are appointed by shareholders at the Annual General Meeting. Employee representatives – a mix of external union and internal worker representatives

– are elected by the employees. As a result, employee representatives have significant representation on the highest level of a company and are obliged to serve in the employees' best interest.

→ In many cases, the Supervisory Board is the last resort in a company as its members represent the owners (shareholders) and the people who constitute the entire organization (employees). Consequently, such a division of power puts the Management Board members in a unique and tough position: While they are responsible for managing the company in the most shareholder-oriented way possible, they are also obliged to serve the interests of the company's employees and other stakeholders.

Therefore, effective labor relations engagement is essentially a prerequisite for any successful transaction. This can be particularly challenging in a cross-border deal, as employees and unions are each likely to fear the loss of influence that often comes with a foreign takeover. Often this fear is taken up by politicians and other stakeholders, thus increasing pressure on acquirers. Getting employees on board is a critical component of getting a deal done, and to making it successful over the long term. Vague, lofty promises don't work, and acquirers need to be sure that any promises made to employees can be kept.

Chairman of the Supervisory Board: Ability to tip the scale

Unfortunately, some situations require unpopular decisions to safeguard a company's prosperous future, which could lead to a stalemate in a Supervisory Board divided equally between worker representatives and executives. In order to avoid a deadlock paralyzing the company, the Chairman of the Supervisory Board has a double voting right. This may be limited by company statutes to some decisions – often on management appointments or large divestments/ acquisitions – where a qualified majority may be needed. For this reason, the Chairman is usually a shareholder representative ensuring that the shareholders are technically able to maintain absolute control over the Board. However, the desire to reach decisions by consensus on the Supervisory Board has a longstanding tradition in Germany. Therefore, in reality this power has hardly ever been used for a crucial decision.

→ Employees and their trade unions are a critical stakeholder group in any transaction situation, but particularly in a cross-border deal for two main reasons: 1) They will ultimately be the ones responsible for delivering on any promises made at the time of the announcement. And 2) they can also act as an acquirer's advocate, which is rare, or biggest detractor, between the announcement of a deal, and its closing. Typical situations in which employees take sides with a certain acquirer would be auction processes in which one option is considered less threatening.

→ **CASE STUDY:** The USD 65 bn merger of German industrial gas giant Linde and U.S. competitor Praxair provides an example of the principle of co-determination working in practice. While the financial rationale of the deal was broadly convincing, the Linde-Praxair merger faced significant resistance from Linde's German employees as they feared losing out in the merger. Labour representatives, who also gained support at a European Union level, fiercely opposed the planned merger, mainly because moving the headquarters outside Germany would dilute their influence as they would no longer have the ability under German law to have an effective veto over strategic decisions. A letter from the European works council expressing their concerns found its way into the media, increasing the pressure on Linde's Supervisory Board members. As a consequence, Linde's Chairman Wolfgang Reitzle's threatened to

make use of his casting vote to overrule labour representatives and push through the merger, disregarding a tradition of co-operation in Germany between employees and management. His threat was heavily criticized by various stakeholder groups. Matthias Machnig, State Secretary at the Federal Ministry of Economic Affairs and Energy said in an e-mailed statement: "I can only appeal to management to do everything it can to protect jobs in Germany for an extended time". He added that Linde's Board had "missed the opportunity" to win over worker representatives. Ultimately, Linde and Praxair pledged to keep certain operations in Munich and guaranteed no forced layoffs of workers in Germany until 2022. After receiving those guarantees, the majority of the Supervisory Board members backed the deal and Linde's Supervisory Board gave its go-ahead to the merger.

The veto right: Governments' opportunity for intervention

The key legislation that governs M&A activity in Germany is the German corporate law with its specific codes. The main regulatory bodies are the Federal Cartel Office (or the European Commission with regard to transactions including bigger companies), the Federal Financial Supervisory Authority (BaFin) and the Federal Ministry of the Economy.

Regulatory peculiarities

Antitrust approval: All transactions must be checked regarding the need for anti-trust approval under the European and German antitrust regulations. Smaller transactions involving two companies with a combined turnover of EUR +500mn have to be notified to the Federal Cartel Office, bigger transactions meeting EU turnover thresholds will be assessed by the European Commission's Competition Directorate, which will cooperate with the national cartel office regarding the impact on local markets. In both cases, the competition authority will critically assess the potential impact of the transaction on competition, with special considerations given to prices for consumers, customer choice, innovation, and the competitive structure of the market. The process is highly formalized and involves customers, competitors, market experts, as well as policy-makers and other third parties. The authority can clear the merger, prohibit it or clear it subject to remedies (i.e. divestments) that help address the anticompetitive effects.

German Foreign Trade Regulation: In 2017, the German Federal Government revised and amended the German Federal Regulation on Foreign Trade (Außenwirtschaftsverordnung – AWW). The amendment enhanced scrutiny of transactions in cases when a non-EU and non-EFTA company seeks to acquire a minimum of a 25% stake in a German company that is considered to be of strategic importance, part of critical infrastructure or handling sensitive technology. With this step, German authorities have expanded their toolbox for keeping unwelcome investments in check (see box on page 7). It indicates that the German government will not idly stand by and accept what it considers to be an uneven playing field while German companies, particularly in China (for more specifics for Chinese investors see Chapter V), have to face an array of different investment restrictions. The move followed increasing concerns following a surge in inbound Chinese M&A activity into Germany which came to a head in the high profile EUR 4.6 bn takeover of German robot manufacturer Kuka by China-based Midea in 2016. The German government and media have expressed fear of Germany's more sensitive sectors being targeted by foreign, and in particular Chinese, acquirers.

In addition, key EU Member States – spearheaded by Germany, France, and Italy – have urged the European Commission to cement their ability to sharpen FDI screening mechanisms under EU law. Although the Member States are split into two camps on the matter – notably the Nordic countries, Portugal, Spain, and Ireland are wary not to lose beneficial FDI because of EU meddling – the European Commission pre-

sented a draft regulation in mid-September 2017 intending to complement national FDI frameworks with a FDI review framework at the European level. Even before becoming law, the Commission's proposal is a signal to Member State governments of increased support at the EU level for intervention by national governments in critical transactions and creates peer pressure towards stronger controls.

→ COMPONENTS OF THE NEWLY TIGHTENED AWV:

- Extends scope by specifying what can constitute a "threat to the public order": businesses operating critical infrastructure (energy grids, power plants, water supply systems, certain software developers) as well as financial institutions, telecommunication networks, hospitals, airports and train stations
- Tightens definition of what constitutes non-EU/non-EFTA: company needs to pursue significant independent economic activity or have permanent presence within EU or EFTA
- Acquiring companies have duty to notify a transaction falling under the scope of the regulation to the Ministry of Economics
- Timeline for a customary review is extended from two to four months; overall timeline to open an investigation is now three months upon notification to the Ministry of Economics

Sector-specific approval: The Bundesnetzagentur has a consultative role to play with regards to transactions in regulated sectors, i.e. telecoms, energy, postal services, and train services. Transactions in the media sector are also subject to an assessment on the by a commission of media regulators, the Commission to Assess Concentration in the Media Sector (KEK). The commission has to assess the impact of a transaction on media plurality and can prohibit a transaction or make it subject to remedies that address concerns. In financial services, even minority investments can be a sensitive regulatory matter. The German financial authority (BaFin) conducts an Ownership Control Procedure ("Inhaberkontrollverfahren") for each investor looking to acquire more than ten percent of a financial services institution. Part of this test is the assessment of the trustworthiness and reliability of the acquiring institution (and its management). The European Central Bank (ECB) will conduct its own regulatory review as well. In fact, after China's HNA became the largest shareholder of Deutsche Bank with 9.9% in March 2017, the ECB considered investigating the company's financing despite HNA falling short of the ten percent threshold – mostly because the ECB found HNA's financing of the transaction and its governance structures largely incomprehensible. Finally, stock exchanges are subject to specific approval by the local stock exchange supervisory authorities, which are in practice the regional state governments.

CFIUS review: To further complicate things, international buyers need to keep an eye on the United States, too. The Committee on Foreign Investments in the United States (CFIUS) – a federal agency with representatives from different ministries – has

the de-facto power to prevent transactions between two non-U.S. companies. A CFIUS investigation may be triggered when U.S.-based subsidiaries are involved and when the change of ownership poses a potential threat to U.S. national security. This was the case when Chinese Grand Chip Investment wanted to acquire German semiconductor firm Aixtron in 2016. CFIUS rejected the transaction, arguing that Aixtron chips could potentially be used in sensitive military technology. Another example is the ongoing³ takeover of plasma firm Biotest by Chinese Creat. The Chinese investor had to rework its application for U.S. approval of the planned USD 1.51 bn takeover amid concerns over national security. CFIUS raised concerns about the transaction that could not be eased under the planned deal structure. In the end, Biotest sold its U.S. operations to allay those concerns. CFIUS is partially influenced by politics – under the Obama Administration, CFIUS began to take a more restrictive approach, which has been reinforced by the Trump Administration. However, with proper preparation and a timely outreach to relevant authorities, companies have successfully navigated through the CFIUS process and avoided U.S. government actions detrimental to their interests.

Implications for communications

What cross-border acquirers are left with, is a situation in which they not only face new and more complex regulatory hurdles for their transactions, but also the need to deal with significant uncertainty. Predictability is diminished and costly delays will have to be taken into account.

That said, investors need to rethink their communication processes and early on in the transaction reach out to key government officials, regulators and other political stakeholders to educate them on the rationale and benefits of the transaction in a wider political and societal context.

It is necessary to analyse the political, industrial and societal context of any transaction and to anticipate potential critical issues. Of critical importance is building up political goodwill for a period significantly in advance of the transaction in order to have people listen when it counts. The longer and more uncertain the approval process for a transaction potentially becomes, the longer in advance and the wider the communication net needs to be cast.

→ **The societal value of a transaction is an indispensable element of the narrative that needs to be communicated. Well-prepared companies tell a convincing story from day one, placing the transaction in the context of jobs, welfare, competitiveness and society as a whole.**

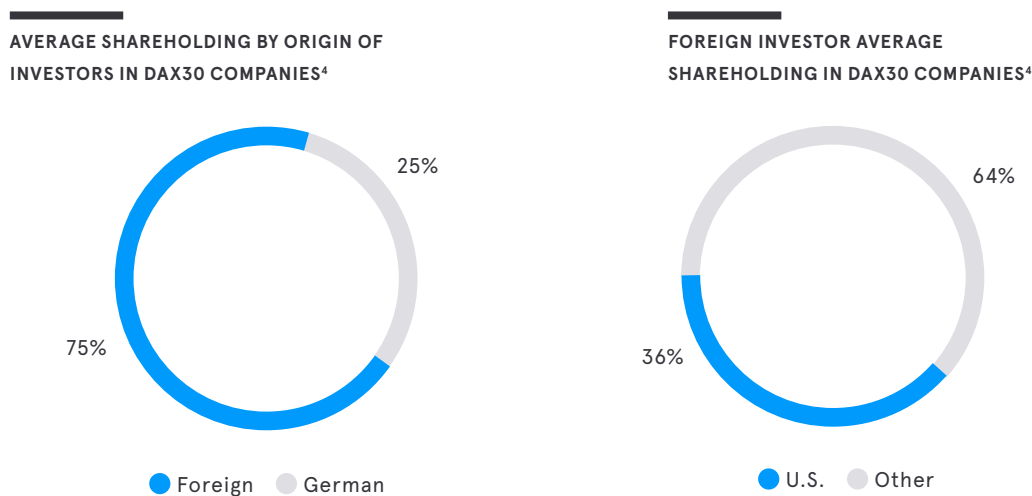
Against the background of rising protectionist sentiment, any cross-border deal communications strategy must account for local 'red flags'. For example, the term 'merger of equals' still has lingering negative connotations in Germany from the failed merger between Daimler-Benz and U.S. rival Chrysler.

3. Source: As of 20 March 2018

Shareholder groups: Key in public M&A

While stakeholders play a very important role in German M&A, at the end of the day what matters most is securing the majority of votes at the shareholders' meeting. The German Takeover Code rests on the assumption that a shareholder owning 30% or more of the voting rights has obtained a controlling stake, and is thus obliged to submit a mandatory public takeover offer to all outstanding shareholders. This low effective control threshold results from the fact that participation levels in shareholders' meetings of listed companies in Germany is often low. Hence, a shareholder with a 30% stake might indeed have control of the company. However, public takeover offers regularly contain a requirement relating to the acquisition of at least 75% of the shares. This majority allows a bidder to vote for a domination and profit transfer agreement. This essentially gives the majority owner the right to treat the company like a subsidiary.

Another interesting fact when evaluating the shareholder structure in Germany: The largest listed German companies are by no means German owned. On average, three quarters of the shares in a DAX30 company are held by foreign investors – and with an average of 36% held by investors in the U.S. Blackrock and Vanguard alone account for about 8% in ownership of all DAX30 companies.⁴



Large domestic and foreign institutional investors have long tended to manage their assets in a relatively passive way, relying on the recommendations from proxy advisors for their voting decisions. International proxy advisors such as ISS and Glass Lewis therefore play an important role in M&A situations, where they can become powerful allies both as interlocutors with the investor community and the media. This needs to be taken into account in any communications strategy involving shareholder votes.

Another group worth mentioning are German shareholder associations representing retail investors, most prominently DSW (German Security Holders Protection Association) and SdK (Capital Investors Protection Association).

4. Source: Reuters Eikon data, 06 Feb 2018.

Although they usually only represent a very small percentage of retail shareholders, their impact on perception and media coverage can be significant. DSW and SdK speak at virtually every major general meeting, often as first and second speakers.

They are widely quoted in the media – no matter whether they have a positive or negative stance. In contested situations they will also issue statements outside of shareholder meetings via the media. Therefore, it is important to try to make them your friends by offering them a dialogue as soon as the bid has been announced. You should outline your deal rationale and explain the attractiveness of the price, the synergies or whatever might be of interest for the target company's shareholders.

Economic heavyweights: Customers and suppliers

Thinking globally of the main players in the industrial sector, particularly the automotive industry, Germany comes almost instantly into one's mind. The strong industry is represented by internationally well-known companies such as Daimler and Volkswagen. When it comes to transactions involving smaller companies in the sector, these heavyweights are often affected either because the company involved in the M&A process is a supplier to them or because the transaction has an impact on the whole industry. In the first case, questions about the future reliability of the partner and the impact on existing contracts can arise. Therefore other companies in the target sector can be important entities to engage with in the wider stakeholder universe.

Moreover, the European Commission might question customers and suppliers in the merger control process. During the so-called "market testing" it can send questionnaires aimed at clarifying the conditions for competition in a given market or the role of the merged companies in that market. Hence, these two stakeholder groups can affect the Commission's opinion-forming on a specific transaction to a varying degree.

The influence of this stakeholder group may be similar to other countries, though it should be considered specifically when it comes to an M&A transaction in the field of Germany's industrial sector. The positive impact becomes visible when big customers and suppliers publicly support the planned project. The acquisition of Kuka by Midea received helpful encouragement by Dieter Zetsche, CEO of Daimler, who stated while the deal was ongoing that "there are no negative experiences with Chinese investors being involved in German or European Suppliers". The same happened during the ZF Friedrichshafen and TRW transaction, when an Audi executive publicly signaled that he appreciated the deal. Such statements can be particularly helpful in case of transactions that receive significant criticism from other stakeholders.

III. GERMAN MEDIA IN DEAL SITUATIONS

Like almost anywhere in the world, newswires such as Bloomberg and Reuters will drive a lot of the capital market related coverage in Germany, along with the joint venture dpa-AFX. All of these have teams on the ground that are closely connected with the financial community. Reuters also has a German-language team and is therefore widely picked up by other media outlets. Unlike in Anglo-Saxon countries, there is hardly any M&A trade press.

In Germany, deal-related reporting is still very much dominated by the daily national newspapers such as Handelsblatt or Frankfurter Allgemeine Zeitung (FAZ), including their respective online editions. The national newspapers are usually organized by sector teams or regional responsibilities. If you do a deal in the automotive sector, for example, chances are you will have to do with a Stuttgart-based correspondent who will know a lot about cars, but will not necessarily be an expert when it comes to takeover procedures.

This is even truer for the regional newspapers that are often highly influential with employees or politicians at key sites of the company. You will find regional newspapers that have a far higher circulation than national papers. As a foreign buyer, it often makes sense to engage with these, although one should expect a certain bias against the "intruder".

The main business magazines such as Manager Magazin or WirtschaftsWoche often find it difficult to cover a fast-evolving M&A situation in their weekly or monthly print editions, but will nonetheless be open to specific angles or formats, e.g. an exclusive CEO interview. However, they will cover the deal on their online platforms.

Radio and TV will play a minor role in most transactions, but can be important in large deals involving household name companies, thousands of employees or political controversy.

Social media is still less important in most deal situations than it is in the U.S., for example. In a friendly, average-size transaction, social media engagement will typically be limited to shared online articles with little or no proprietary content. However, once a deal becomes controversial, this will change completely. Politicians and unions have become real Twitter professionals over the past few years and can give unprepared companies a hard time. Unions like IG Metall can virtually become campaign machines when they try to block a transaction or negotiate guarantees for employees. Likewise, some NGOs will be tough adversaries on social media when they decide to fight a transaction. Companies are well advised to assess the potential of such controversy before and prepare for the storm before it hits them.

IV. STRATEGIC IMPLICATIONS

→ THE BEST APPROACH IS A PROACTIVE ONE.

Get your message to the key stakeholders before your critics do, and ensure that any promises you make are specific and credible. The power of politicians has increased with recent regulatory and legislator changes. The earlier they are involved, the better the chances are to secure their support, or at least neutrality. However, this has to be decided on a case-by-case basis, depending on disclosure obligations and leak risk.

→ TAKE A MULTI-STAKEHOLDER APPROACH.

The importance of both co-determination principles and mindset cannot be understated. German companies operate in a much more stakeholder-focused environment than Anglo-Saxon companies, and unions, with their strong political ties, are important players. An engagement strategy purely focused on shareholders is less likely to succeed.

→ ESTABLISH PUBLIC FIGUREHEADS AND ENTER INTO DIALOGUE.

Change causes fear. Stakeholders in an M&A process want to be heard and considered in the process. By providing one or more figureheads, who show up personally and give the bidding company an approachable face, you will improve your chance of overcoming barriers. Moreover, listening and taking each and every one of your stakeholders seriously will also increase your chances to dispel skepticism.

→ INCLUDE ALL CHANNELS IN YOUR COMMUNICATION.

Traditional media is losing its importance as a gatekeeper while individuals such as politicians and other influencers can garner large amounts of attention and publicize their opinions and views through social media. To avoid the narrative around a transaction from being hijacked, communication must be based on a multi-channel strategy.

→ DO NOT UNDERESTIMATE THE POWER OF PUBLIC PERCEPTION.

Decision-making is increasingly informed by the public's perception of issues, which is collectively formed much quicker through new media channels. Policy-makers in particular are under heightened public scrutiny and the resulting pressure can play a substantial role in the way they approach issues that resound in public.

→ FIND ALLIES.

Depending on the transaction, almost any stakeholder group has the potential influence to make or break a deal. You will always have opponents – make sure you secure allies as well – and ideally have them speak up in favor of your transaction.

V. APPENDIX: SPECIFICS FOR CHINESE INVESTORS/CORPORATES IN GERMANY

With increasing frequency and deal size, Chinese investors in Germany have received a large amount of public attention within the past few years. Political players, the media and internal stakeholders care about where a new owner comes from, particularly when the target is seen as a showcase of Germany's economic strength, like many technologically advanced, innovative firms from Germany's celebrated Mittelstand.

When competing with European and U.S. investors, Chinese acquirers can have major disadvantages: Chinese companies and managers are less well-known, if at all; ownership and corporate governance structures may seem opaque; and motivations are not always self-evident. This creates specific hurdles for stakeholder management and requirements in navigating through an increasingly complex regulatory environment. To safeguard transactions, Chinese investors need to establish a reputation of trustworthiness, transparency and integrity – ideally well in advance of any transaction. In the following, we describe the critical challenges and lay out strategies to successfully address them.

A challenging political and regulatory environment

As outlined in Chapter II, the surge in Chinese deal activity has been met with a general unease. Frequently, potential Chinese buyers have had to cope with severe allegations such as “unconditional” financing of their buying spree by Chinese state banks, or initiating illicit intellectual property transfer from their target companies. This, in turn, has been a factor behind the general tightening of German FDI scrutiny.

Fosun's acquisition of private bank Hauck & Aufhäuser is an example of how a Chinese investor faced a prolonged and particularly intense Ownership Control Procedure by BaFin. This was due to doubts about their ability to lead a German bank – partly owing to domestic Chinese issues Fosun faced at the time.

U.S. FDI regulation has a major influence on Sino-German transactions, too. The blocked takeover of Aixtron by Grand Chip Investment due to U.S. safety concerns dramatically illustrate this. Even though no FDI provisions explicitly aim to impede Chinese investors, Chinese inbound transactions can be expected to trigger increased attention in the future. We therefore recommend that Chinese bidder are prepared for greater levels of scrutiny by German politicians, regulators and the public.

→ **Between 2006 and 2017, the number of Chinese investments in Germany grew by 24% annually on average; deal value increased with a staggering CAGR of 51%. In those twelve years, 305 transactions were closed in total, with a combined deal value of more than USD 32bn. While 2017 was a new record year in terms of deal values, which amounted to USD 14bn, the number of deals closed declined by about 20% compared to 2016. Never the less, Germany remains the number one Chinese investment location in Europe.⁵**

5. Source: EY (2018), Chinesische Unternehmenskäufe in Europa. Eine Analyse von M&A-Deals 2006-2017
Note: EY figures also include all announced transactions that had not yet been closed by 16th January 2018. Furthermore, estimates were provided for transactions where no deal value was communicated.

Fears of a hidden agenda

The German public regularly challenges Chinese overseas investments against the background of the political and economic agenda of the Chinese Communist Party. While many German companies have come to appreciate their Chinese owners or investors, there are still reservations. A popular narrative by the German media is that private Chinese investors are linked to powerful political players who pull strings in the background and receive orders to acquire firms abroad. An alternative variant claims that they voluntarily conduct overseas acquisitions in order to win the government's favor. Either way, a narrative has been established in Germany that Chinese foreign investments are not strictly governed by an underlying economic rationale, but by the Communist Party's policy agenda.

Reservations against opaque ownership structure and corporate governance

Despite their growing experience, many Chinese investors fail to be sufficiently transparent about their ultimate ownership and governance structures. The German media is quick to scrutinize and reveal those shortcomings.

When Shanghai Yiqian Trading announced to acquire Frankfurt-Hahn Airport, the German media was suspicious of its highly obscure ownership structures and raised questions about its financial integrity.

Also, as a major shareholder in Deutsche Bank the Chinese company HNA has come under close scrutiny by media in Germany after the Financial Times and New York Times provided detailed accounts of HNA's corporate structures that were considered largely incomprehensible.

If stakeholders cannot understand Chinese investors' underlying power structures and accountability, they will often doubt their trustworthiness and reliability. These doubts will overshadow even the most compelling deal narrative.

Strategic implications

Despite all this, the German attitude towards Chinese investors is far from outright negative. There are well-known arguments in their favor, too. To name but a few, Chinese owners have a reputation for trusting local management, keeping promises and opening up new markets. Here is how to shield against reputational damage and prepare to play out your strengths.

Build a positive reputation and tell a convincing deal narrative. Chinese acquirers need to clearly articulate their own entrepreneurial vision for the target company. This is the safest way to oppose fears of a hidden agenda. Their investments will be better received if the potential owners clearly illustrate how the target company, or even better, the German economy, will benefit in the long term. Having committed to a legally binding investor agreement in which the future of sites, governance issues and the likes are laid down is a strong signal that increases trust. In order to underline such commitments, it is advisable to integrate them in the external communications agenda. Public support by third parties like works councils is also convincing.

Vigorous political and media monitoring in Germany and the EU. Being up to date about relevant local regulator and political initiatives as well as current media sentiment as early as possible is paramount. The earlier potential challenges can be identified, the easier it is to find an approach that is acceptable for all parties. The political process in particular needs to be monitored both at the EU and national levels. This requires local expertise and an extensive personal network to key influencers.

As in China, relationship building is key. Having built trustful relationships with key journalists and policymakers prior to any transaction is a long-term advantage. They are the basis for an open dialogue, a source of goodwill. Early established stakeholder relationships help to clear potential doubts and explain the investor's interest in Germany – well before potential misunderstandings might impede deal making. Our consulting experience shows that when journalists and policymakers have personally met potential foreign buyers, they are far less receptive for negative stories about them.

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