HENGELER MUELLER

NEWSLETTER | July 2019

M&A SNAPSHOT | LEGAL SPOTLIGHTS | COMPLIANCE DUE DILIGENCE SURVEY

Content

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Editorial

Dear friends,

Despite the complex political environment, the M&A market remained highly active in the first half of 2019. Mergermarket has again analysed the league table exclusively for us and we are pleased that, together with our European Best Friends, we have once again attained a leading position, having been involved in 103 deals representing a total volume of USD 152 billion (page 5). However, the climate for cross-border M&A transactions has become more challenging, for instance through the new provisions of the German Foreign Trade and Payments Regulation. Our partner Jan Bonhage has summarised (page 8) what non-EU investors need to brace themselves for when acquiring German companies. Matters of compliance are also continuing to increase in importance in the current M&A climate. Together with Katja Langenbucher, Professor for Private Law, Corporate and Financial Law at the University of Frankfurt's House of Finance, we conducted a survey about this very issue. The results serve to illustrate the importance of compliance due diligence (page 14).

Within our own organisation as well, we take compliance very seriously. We are therefore delighted that we have been able to strengthen our inhouse compliance team considerably with the appointment of our colleague Alla Drößler as the new Director of Compliance as of 1 May 2019 (more on this on page 18).

We hope you enjoy reading our newsletter and look forward to a thrilling second half of the year!

Rainer Krause
Co-Managing Partner

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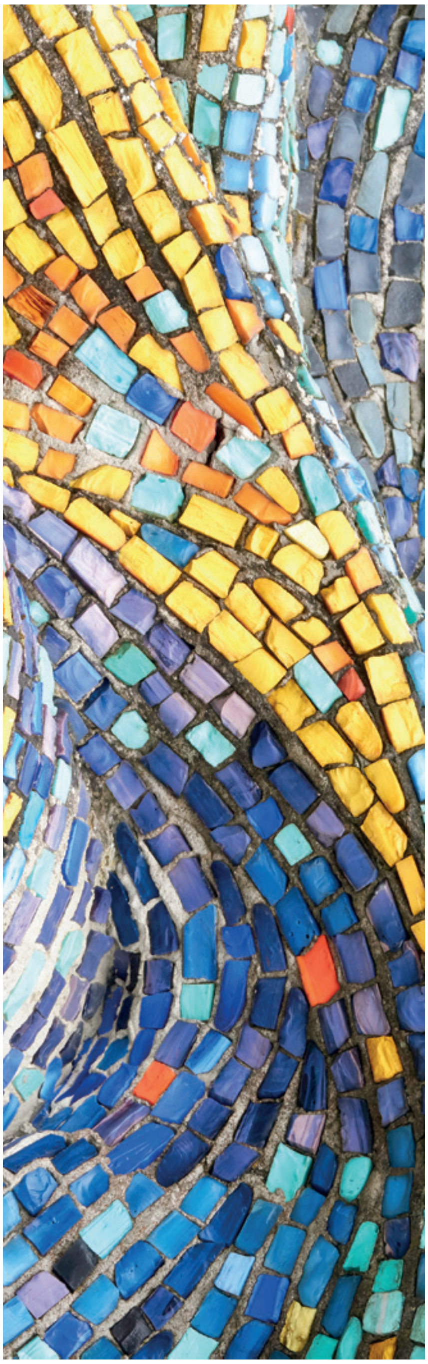
M&A SNAPSHOT

Growing uncertainty despite exceptional deals



Source: Mergermarket, Global & Regional M&A Report H1 2019

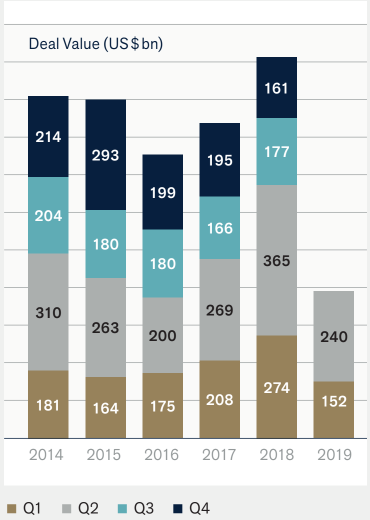
Despite a late flurry of deals, including AbbVie's USD 86.3 bn acquisition of Allergan, European M&A has been defined more so by the deals that failed this year, rather than those announced. Confidence among corporates to invest heavily across the continent has been replaced by political and economic uncertainty. USD 391 bn has been spent on European assets across 3,223 deals, down 38.8 % compared to the equivalent period last year (USD 638.9 bn).

A lack of progress on situations involving the banking sector and FIAT Chrysler/Renault, alongside the failure to complete deals between China Three Gorges/EDP and Sainsbury's/Asda are indicative of the lacklustre activity and subdued sentiment felt throughout H1. Subsequently, European M&A has been left with a 21.7 % share of global activity – around 10 percentage points lower than H1 18. Contending with a challenging political environment appears to be the "new norm" for European dealmakers, with government intervention and protectionism increasingly influencing activity.

Regulatory deal breakers

These situations, together with the European Commission's decision to block a tie-up between Siemens/Alstom earlier this year, reduce the likelihood of other such large-scale intraEuropean M&A taking place. Deals between European firms (USD 212.9 bn) dropped by 40.4 % compared to H1 18, failing to reach the heights when the takeovers of Innogy and Abertis were announced, following calls from leading politicians to create "European champions" able to battle with US and Asian giants.

Europe Quarterly Breakdown Trend



Thus, European corporates are turning elsewhere to find growth, with 2Q outbound activity reaching USD 74.1 bn (210 deals), its highest quarterly value since Q4 17 (USD 78.4 bn). The vast majority of European outbound M&A targeted the US, which received a 70.4 % share by value in the last three months. This was driven by deals such as Germany-based Infineon Technologies' USD 9.3 bn acquisition of Cypress Semiconductor and the USD 5.7 bn tie-up between Francebased Dassault Systemes and Medidata Solutions.

DACH: European top deal arena

Amid growing levels of political and economic uncertainty across Europe, M&A into DACH decreased slightly in H1 compared to the first half of 2018. The region did however receive four of the top five European deals announced so far this year, spurred by private equity firms deploying their dry powder on larger transactions.

DACH M&A reached EUR 88.6bn across 544 transactions in the first half of 2019, representing a 12.1% decrease from the EUR 100.8bn seen during the equivalent period last year. German M&A in Q2 (EUR 19.7bn, 190 deals), however, picked up in value following two quarters below the EUR 10bn mark.

Inbound M&A accounted for 52.3% of the region's activity in the first half, with EUR 46.3bn spent across 254 transactions. The four largest transactions announced during Q2 were conducted by foreign bidders and were all valued over EUR 4bn.

Q2 saw the two largest buyouts to target the region on Mergermarket record (since 2001), with Nestle's EUR 9bn divestment of its skin health division and KKR's EUR 5bn offer for Axel Springer. Despite fewer deals compared to previous quarters, the disclosed buyout value reached its highest half-yearly figure since H2 06 (EUR 24.4bn), at EUR 23.7bn across 93 transactions. Meanwhile, there were 56 exits worth a disclosed value of EUR 2.9bn, with trade sales accounting for 66.1% (37 deals) of those transactions, up from 64.8% seen throughout 2018.

Deals targeting Germany collapsed to EUR 29.6bn in the first half of this year, a mere third of last year's EUR 105bn total, in what was the country's biggest haul in five years. Only two acquisitions by buyers from outside Europe made the EUR 1bn mark, compared to six last year and eight in the previous year.

Call for EU completion law reforms

The European Commission's move to block the Siemens/Alstom tie-up reflects a growing protectionist sentiment. This resulted in a joint proposal from France and Germany calling for reforms to EU competition law and European industrial policy. The situation coincides with the German government introducing tighter foreign direct investment screening rules at the end of 2018 in response to the growing concern that China's state-backed companies would gain access to key technologies.

Ongoing influence of deal drivers

Increased competition among private equity continues to widen the gap between price expectations and propel buyout figures. Valuations are expected to rise further given the high level of dry powder, together with the scarcity of assets in the region and uncertainty surrounding Brexit.

European activist-driven divestments and a higher demand for such transactions experienced an uptick last year, according to ActivistMonitor. Spin-offs and divestitures following activist pressure are likely to continue to contribute a high share of M&A activity in the region.

Best Friends leading the pack in European M&A

European legal adviser league table ranked by value, H1 2019

Rank	House	Value (USD M)	Number of Deals
1	Best Friends Group	152.059	103
2	Kirkland & Ellis LLP	131.834	48
3	Davis Polk & Wardwell LLP	102.877	11
4	Arthur Cox	87.179	19
5	McCann FitzGerald	86.300	5
6	Debevoise & Plimpton LLP	86.270	6
7	Wachtell, Lipton, Rosen & Katz	86.270	1
8	Freshfields Bruckhaus Deringer LLP	60.452	70
9	Latham & Watkins LLP	44.908	41
10	Clifford Chance LLP	44.875	64

The League Table is based on announced deals with European targets between 01/01/2019 and 30/06/2019.

Mergermarket
An Acuris company

The **Best Friends** is a group of six international law firms headquartered in the major business centres of Europe. It comprises: BonelliErede in Italy, Bredin Prat in France, De Brauw Blackstone Westbroek in the Netherlands, Hengeler Mueller in Germany, Slaughter and May in the UK, as well as Uría Menéndez in Spain and Portugal. By delivering fully integrated teams, the group provides clients with a 'best in class' service internationally.

BONELLIEREDE
BREDIN PRAT
DE BRAUW
HENGELER MUELLER
SLAUGHTER AND MAY
URÍA MENÉNDEZ

DEAL HIGHLIGHTS

Hengeler Mueller & Best Friends

22/02-09/04/2019

Funds advised by KKR have formed an independent German film and media group. The KKR funds acquired four significant targets, which together cover the entire value chain from production across licensing to distribution of film and television content. They first purchased **Tele München Gruppe** (TMG), a leading rights purchaser of international feature films and series with a market-leading library, own production firms and stakes in the TV channels TELE 5 and RTL II, and **Universum Film GmbH**, a nationally and internationally operating provider of audiovisual media. They complemented the group with the acquisition of **i&u TV**, a German television production company delivering information as well as entertainment formats, and **W&B Film**, one of the leading film producers in Germany. Hengeler Mueller advised KKR on all the transactions.

25/02/2019

Ericsson expands its Ericsson Radio System portfolio with new products and strengthens its antenna in-house competences and capabilities through the acquisition of **Kathrein SE**'s antenna and filters business by way of an asset deal. Kathrein, based in Rosenheim, Germany, is a world leading provider of antenna and filter technologies. Hengeler Mueller advised Ericsson on the transaction. Best Friends law firm Bredin Prat (France) as well as JunHe (China), Schoenherr (Romania), Galicia Abogados (Mexico) and Wuersch & Gering (USA) acted as local counsel for Ericsson.

25/02/2019

innogy SE has sold its majority stake in innogy Grid Holding to another company of **RWE group**. The joint venture with Australian infrastructure investor

Macquarie operates the largest gas distribution network in the Czech Republic. Hengeler Mueller advised innogy on the transaction.

20/03/2019

Vitol has acquired a further 50% of VALT, the bitumen joint venture it established with Sargeant Marine in 2016. The integration of the business makes Vitol a leader in the trading, storage and marine transportation of asphalt products around the world, with a dedicated fleet of eleven specialised vessels and hubs in Asia, Europe and the USA. Hengeler Mueller advised Vitol on the acquisition as transaction counsel in an integrated team together with Best Friends law firm De Brauw Blackstone Westbroek (Dutch law) as well as Dykema (US law).

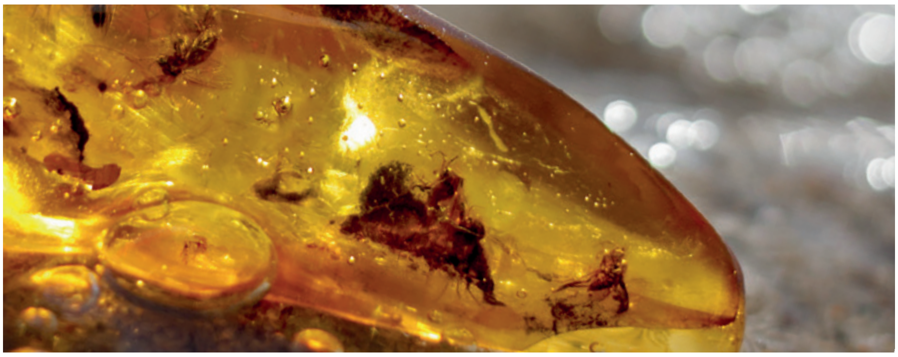
10/04/2019

Deutsche Börse AG has entered into binding agreements on the acquisition of **Axioma Inc.**, a leading provider of portfolio and risk management solutions. Axioma will be combined with Deutsche Börse's entire index business (STOXX and DAX) to create a new company. As part of the transaction, Deutsche Börse has entered into a partnership with General Atlantic. The transaction is based on a valuation of 2.6 billion Euro for the index business of Deutsche Börse and an Axioma acquisition value of 850 million US-Dollar, which will be financed by an investment of General Atlantic. The transaction is subject to customary conditions and is expected to close in the third quarter 2019. The combination will create a fully-integrated, leading buy-side intelligence player that will provide products and analytics to meet growing market demands. Hengeler Mueller is advising Deutsche Börse on the transaction. Hengeler Mueller is working on this transaction in an integrated team together with the New York law firm Cravath Swaine & Moore LLP.

12/06/2019

Axel Springer SE has signed an investor agreement with a holding company owned by funds advised by KKR and investment entities controlled by Friede Springer and CEO Mathias Döpfner to create a strategic partnership. In this context KKR has announced its intention to launch a voluntary public tender offer at an offer price of EUR 63.00 per share in cash for all outstanding shares of Axel Springer. Hengeler Mueller is advising Axel Springer SE on the transaction.

www.hengeler.com/deals



LEGISLATIVE OUTLOOK

Stop the naivety, but stay open for investment

EU closes ranks in screening foreign direct investments

We were too naive for too long. This self-critical and unofficial opinion, voiced from the political sphere, illuminates the background to recent changes to the legal basis and practical application of the reviews of corporate acquisitions pursued by non-EU/non-EFTA investors in Germany. Most recently, in December 2018, the German Federal Government lowered the threshold for screenings in several sectors from 25% to 10% of the voting rights in the company being acquired, and imposed the notification requirements under foreign trade law on additional sectors. In particular, Chinese acquisitions in line with the governmental industry strategy "Made in China 2025" are on the security radar in Europe and elsewhere.

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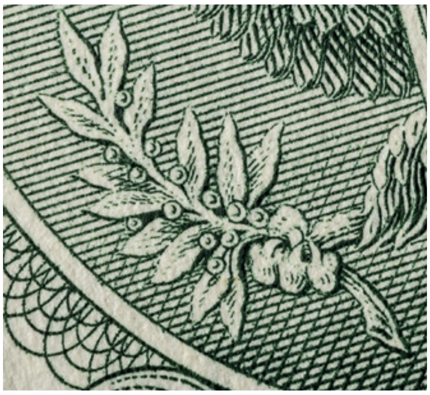
At the initiative of Germany, France and Italy, the EU is now closing ranks in investment screenings. With the Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union of March 2019, in force since April 2019, the EU has left the review procedure as a matter of national responsibility, set minimum standards for any national procedures, and converted the inter-State exchange of information regarding security interests into an official cooperation mechanism. Currently, half of the EU Member States have laws governing investment screenings. Encouraged by the EU-level discussions, the introduction of further screening procedures can be expected.

What changes can Germany expect? Initially, not much. The EU Regulation will not take full effect until 18 months after it enters into force, i.e. not until October 2020. After that, investment screenings will remain a matter of national sovereignty. Clearance decisions in Germany are taken solely by the Federal Ministry for Economic Affairs and Energy and any decision to prohibit the investment or impose conditions requires the approval of the Federal Government. Public order and security remain the central focus of any screening. The procedure continues to disallow any veto for reasons of policy or industrial strategy.

Expect to see Germany adopt into its Foreign Trade Regulation (AWV) the factors listed in the EU Regulation that may be taken into consideration. The EU Regulation focuses in particular on the potential effects on critical infrastructure, critical technologies, dual-use items, the supply of critical inputs, access to and the ability to control sensitive information and the freedom and pluralism of the media, and goes into further detail for each of these sectors. The AWV largely specifies overlapping aspects, but does differentiate in the details. In addition – and thus far not expressly stipulated in the AWV – under the EU Regulation, the direct or indirect control of a foreign investor by state bodies, a foreign investor's previous or existing security-relevant investments, as well as any serious risk that the foreign investor engages in any illegal or criminal activities, may be taken into account. All of these factors will presumably also find their way into the AWV.

To date, the EU Member States have mostly exchanged information relating to specific security concerns on a bilateral basis with respect to individual cases. A new cooperation mechanism is intended to strengthen the involvement of all EU Member States and the European Commission in future. The



decision period in AWV review procedures, i.e. four months from the time of receipt of the complete documentation, will also be sufficient for any comments to be made by other Member States and for opinions to be issued by the Commission. Member States and the Commission must notify their intention to offer remarks within 15 days; comments must be submitted by Member States within 35 days and the Commission must submit opinions within another five (or in case of investments not undergoing screening 15 days) after that deadline. If additional information is requested, however, a new 20-day period begins upon receipt of the information. This has the potential to considerably delay an investment.

Practical application will show whether the procedure (after the distinctly palpable prolongation following the Kuka, Aixtron and Leifeld takeovers) will be even further protracted through the involvement of other Member States and the EU. Legal uncertainty and longer procedures could dampen the investment climate. This applies all the more when the (non-discriminatory) application of the review procedure to corporate acquisitions originating from various regions outside of the European Economic Area can also hamper such acquisitions that are unproblematic under security aspects. The Member States and the EU would be well advised to coordinate in these procedures with a sense of proportion, a friendly inclination towards investment and in an expeditious and constructive manner. Developments in the global trade make it necessary not to confront state investment and intervention strategies from other parts of the world with naivety. At the same time, Germany and the EU have much to lose from too restrictive investment screenings.

"Germany and the EU have much to lose from too restrictive investment screenings."

Jan D Bonhage

LEGAL SPOTLIGHT

Germany strengthens protection of trade secrets

On 26 April 2019, a German bill implementing the European "Directive on the Protection of Trade Secrets against Illegal Acquisition and Use and Disclosure" came into force. At the bill's core lies the new German Trade Secrets Act which brings about some notable changes to the protection of trade secrets in Germany.

Under the new Trade Secrets Act, information will be protected as a trade secret if it: (i) is actually secret; (ii) has commercial value because it is secret; (iii) has been subject to reasonable measures for keeping it secret; and (iv) is subject to a legitimate secrecy interest.

The first three conditions originate from the EU Directive, with the requirement of reasonable secrecy measures being a genuine novelty from a German legal perspective. The fourth condition – the legitimate secrecy interest – is not required by the EU Directive and was only added by the German legislator shortly before the bill was passed.

The legal remedies of the new Trade Secrets Act against unauthorised acquisition, use or disclosure of trade secrets are very similar to those available against infringement of intellectual property rights such as patents. They include injunctive relief, information claims and damages – not only regarding the trade secret itself, but also with respect to goods that benefit substantially from a misappropriated trade secret.

The practical value of these remedies is likely to increase compared to the previous state of the law since the Trade Secrets Act improves the procedural tools for protecting the relevant trade secret(s) in court. For example, to maintain secrecy in trade secret infringement proceedings, the courts may now issue confidentiality orders at a very early stage and limit the number of individuals who can gain access to any trade secrets disclosed in the proceedings. Unfortunately, the German legislator has not taken the opportunity to make these improved procedural tools available in other court proceedings where trade secrets may be indirectly affected (e.g. patent infringement disputes).

Whilst the new Trade Secrets Act does improve the protection and enforceability of trade secrets in Germany, it also poses new questions that will be of great relevance in practice. Companies and trade secret law practitioners are already engaged in a lively discussion as a result.

Some obvious questions arise: What are reasonable secrecy measures and will companies have to change their security regimes? On the one hand, this entails a re-evaluation of how confidential information is categorised (e.g. "regular secrets", "vital company secrets") and how tightly access to this information must be controlled (e.g. "No personal phones near company secrets?"). On the other hand, the way non-disclosure agreements have been drafted to date comes under scrutiny, for example: does every NDA need to contain a non-use obligation in addition to a non-disclosure obligation? How detailed must the description of protected confidential information be in an NDA?

Technical points, such as the German legislator's addition of the legitimate secrecy interest to the definition of "trade secret", will require significant time and effort by legal experts and courts to resolve, even if they might not capture public attention as much as other issues around the new Trade Secret Act.

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LEGISLATIVE OUTLOOK

Rescue culture vs. insolvency stigma – The preventive restructuring framework of the EU

On 20 June 2019, the Directive on Restructuring and Insolvency was published in the Official Journal of the EU, thereby bringing to an end a long-standing discussion in Germany concerning the question of whether a statutory recovery procedure outside of insolvency proceedings should be introduced. Such procedures currently exist in different forms in other European jurisdictions. Supporters demonstrated the need for such a procedure by referring to several cases of German companies forum-shopping for foreign out-of-court recovery proceedings, in particular, the English scheme of arrangement. Critics, however, point to the extended recovery tools in the German Insolvency Code provided in early 2012 by the German Law on Further Facilitating the Restructuring of Companies dubbed "ESUG".

Greater leeway for creditors and companies

The core of the Directive consists of the key terms of a recovery procedure that must be transposed by the Member States into national law over the next two years. In this context, a light touch regulatory approach has been adopted: the design and implementation of a recovery plan will largely remain the prerogative of relevant creditors and the debtor company in crisis. Courts or other governmental authorities must be involved, however, to the extent that this is necessary in order to protect the rights of the parties concerned. This involvement is provided for, in particular, where protection against enforcement actions by creditors (moratorium) is required. A moratorium is permissible for a period of up to four months with an option of renewal and a maximum period of no more than twelve months under certain conditions, dependent on the relevant Member State's transposition of the Directive. During the moratorium, any obligation to file for insolvency is suspended, leaving it to the EU Member States to provide deviating rules in the event of an actual insolvency. During the recovery procedure, day-to-day business is conducted, as a rule, by the management of the debtor company.

The procedure eventually results in a restructuring plan. This plan must – similar to the insolvency plan of the German Insolvency Code – generally provide for the establishment of different creditor groups. In practice, exceptions may exist for SMEs that have a simple capital structure. The restructuring plan requires, inter alia, confirmation by a court in case it affects the rights of creditors who voted against the plan. Confirmation is also required for restructuring plans that provide for fresh money financing as they typically affect the former creditors' interests. The Directive furthermore contains provisions regarding the discharge of residual debt of companies after a maximum period of three years ("second chance") as well as certain measures to ensure efficiency and quality in recovery procedures.

Key challenge faced in a recovery is addressed

The EU Directive constitutes a positive step forward as it addresses one of the key issues of the restructuring practice, namely dealing with holdout situations: out-of-court financial restructurings generally require the agreement of all financial creditors affected, which may result in the failure of such processes notwithstanding that they were supported by a broad majority because a dissenting minority did not agree to the plan. The Directive comes into play at this point by providing a mechanism whereby a decision can be taken by a qualified majority that is binding for all affected creditors. This approach is not alien to German law, as the Bond Act also provides for majority decisions. However, these are limited to bonds so that comprehensive financial restructurings are not feasible on this basis.

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INSIGHTS

Compliance due diligence in M&A transactions becoming increasingly institutionalised

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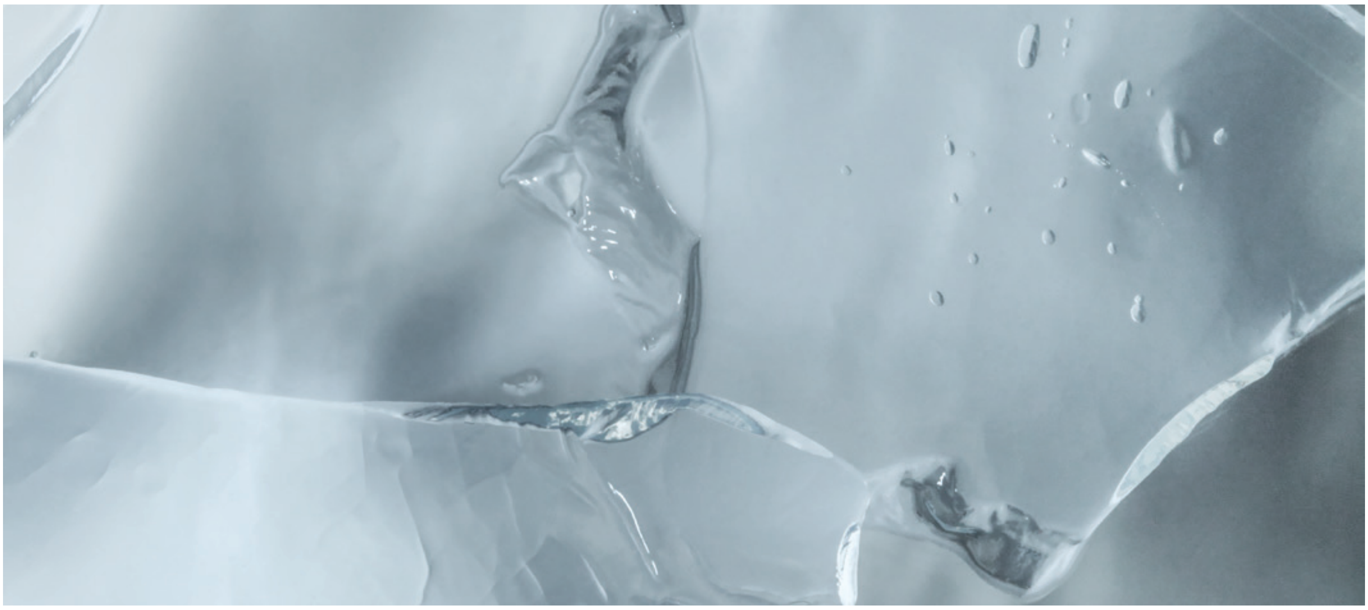
Whether it is corruption, cartel infringements, money laundering, data breaches, product liability, or violations of international sanctions: acquiring a company can occasionally present substantial liability risks for the acquirer. Such risks not only have the potential to render a deal potentially unprofitable, but they can also permanently impair the acquiring company. For example, many will recall the judgment of the General Court of the European Union (EGC) from July 2018 (T-419/14). According to that judgment, a private equity investor can be jointly and severally liable with a portfolio company for the latter's cartel infringements even if the former's interest in the portfolio company is far less than 50 %.

Market participants acknowledge such liability risks. Indeed, they have come to attach immense importance to them and, simultaneously, to compliance due diligence (CDD) for the acquirer in M&A transactions. This was the main finding of a recent survey conducted by Hengeler Mueller together with the chair for Private Law, Corporate and Financial Law at the University of Frankfurt's House of Finance. Executives and managers responsible for M&A and compliance at blue-chip companies and investors in the German market were surveyed. According to the survey findings, 84% of respondents confirm that compliance-related liability risks have increased in importance for acquirers over the last few years, while 11% of them say that there has been a significant increase. In parallel, the significance of CDD in M&A processes has also grown according to 85% of respondents. The main CDD topics relate to classic areas of compliance such as competition law, corruption and money laundering. But sanctions/embargoes, data protection and product compliance are also of significant importance. In addition, environmental protection and human rights are seen as relevant concerns.

Respect for US law enforcement: a driver of risk

Across various markets, US law enforcement commands particular respect among respondents. Any liability of a company, or even the assertion of claims against specific individuals acting in the US, is considered to be the biggest risk factor. This is perhaps best explained by the US having a deep understanding of its own sphere of influence. However, an increasingly standardised CDD conducted by acquirers in M&A processes is also driven by expanding regulatory requirements in Germany and in Europe overall. For example, three quarters of the respondents assume that the intended tightening of corporate criminal law in Germany (entailing intended measures such as increasing the maximum fine to 10 % of annual revenues) will further contribute to CDD becoming an established part of the M&A process.



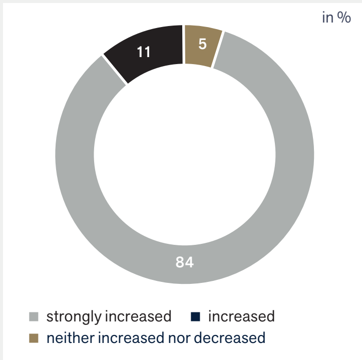
In this context, sellers do not generally stand in the way of acquirers when addressing their growing need for due diligence. They invariably regard the trend towards CDD in neutral terms: only one in ten of those surveyed note any disapproval, while more than three quarters see a growing acceptance. Aspects such as confidentiality or the protection of business secrets are hardly preventing the growing spread of CDD. The same applies to costs and expenditure for the acquirers.

Diverse motivations for a review and conventional methodology

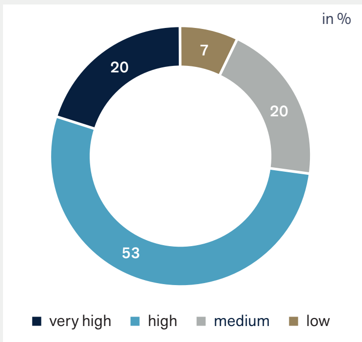
The factors determining how a CDD review is conducted, as well as its scope, are diverse. Knowledge of previous compliance violations or doing business in high-risk countries nearly always lead to particular CDD measures being undertaken in an M&A transaction. Business dealings in the US, activities in regulated industries and the number of clients from the public sector are also relevant. As progressive as developments are towards the increased institutionalisation of CDD, methods used in reviewing them remain conventional. Companies continue to use questionnaires most often, followed by interviews or expert sessions. The analysis of electronic data (e-discovery), or even the use of tools such as artificial intelligence, occur far less frequently. However, it is certainly conceivable that technological tools which have become standard in internal investigations, and are already used occasionally in other areas of M&A due diligence, will also be used to assist in CDD in the future.

So how do acquirers use the findings from a CDD review? They often respond to the discovery of compliance risks with specific contractual provisions (e.g. indemnities and warranties). Regardless of specifically identified risks, compliance warranties have become the norm in private acquisitions. Public takeovers are also increasingly conditional upon no substantial compliance incidents occurring by the time the acceptance period for the offer expires (compliance MAC out). But identified

Perception of buy side liability risks resulting from legal violations of target companies



The relevance of the compliance due diligence in M&A transactions



risks can result in additional due diligence reviews being conducted, or further compliance measures being taken after an M&A transaction is completed – e.g. as part of the integration. Although infrequent, the purchase price is occasionally reduced, the purchase object is limited or negotiations are even abandoned. Without a CDD review during the M&A process, the purchaser forgoes having these possible options for reducing risk and liability. At best, they can only take action in the aftermath of a transaction. This would be an obvious constraint for the purchaser, especially since the vast majority of respondents have experienced cases where, in retrospect, a satisfactory CDD would have been beneficial. Another reason why the importance of CDD could continue to increase.

Increasing institutionalisation to be expected also as a result of DoJ requirements

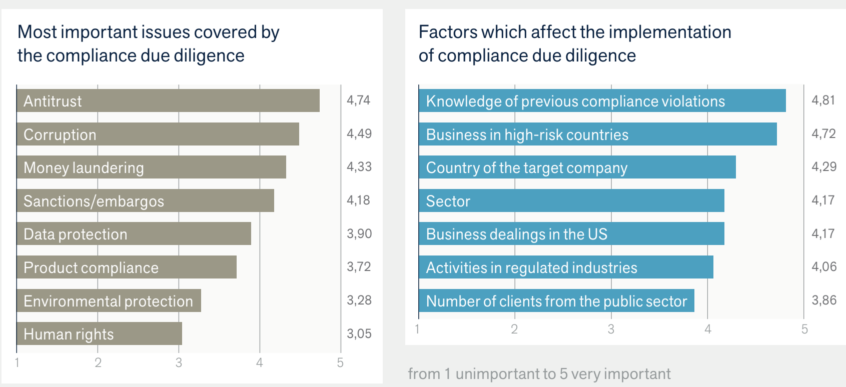
The recent guidance document published by the US Department of Justice (DoJ) outlining what it requires from compliance management systems could fuel the increasing institutionalisation of CDD. The document gives a relatively specific and comprehensive idea of what factors the DoJ considers when evaluating a compliance programme. It is also highly relevant to Department decision-makers and prosecutors when considering, for instance, whether to initiate (criminal) proceedings, assess a criminal fine, or appoint a monitor. A central issue in the evaluation of a compliance management system is the extent to which companies address their own risk profiles by means of specific policies and procedures. Besides employee training programmes and possible anonymous reporting of suspicions, the document explicitly mentions conducting adequate CDD in M&A processes. In light of the DoJ's often extensive jurisdiction, which from the US perspective can extend far beyond its own borders, and considering the signal this gives to European and German law enforcement agencies, CDD as an element of "best US practice" will likely continue to develop as a norm in M&A business.

A risk-based approach

The survey findings demonstrate that a CDD review is now part of acquirers' standard repertoire in an M&A transaction. The most important question for companies and investors in this context is therefore

no longer "whether", but rather how wide the scope of the review should be and what means should be used in conducting it. In this context, there is considerable latitude, which can also have a significant impact on the costs incurred and the time required. Acquirers should use this latitude and take measures based on the risks instead of adopting one-size-fits-all solutions. AML compliance can provide guidance with respect to risk analysis. The German Anti-Money Laundering Act identifies factors and possible indicators of a potentially higher or lower risk in respect of customers, products, services, transactions and distribution channels, as well as geographic risks. The individual factors are specific to money laundering, but the risk categories can also serve as the basis for other areas – such as product compliance and environmental protection.

Issues and factors of compliance due diligence



from 1 unimportant to 5 very important

› www.hengeler.com/cdd-survey

EVENTS

Peer2peer seminar – Opportunities and pitfalls in M&A transactions

Mergers, acquisitions, collaborations and carve-outs often create numerous challenges. In order to broaden the dialogue with clients on current key issues in M&A, Hengeler Mueller hosted a new type of seminar in Frankfurt in June 2019. The Peer2Peer event was led by 12 Senior Associates of Hengeler Mueller and attended by nearly 60 of their peers from various clients. The participants had a diverse range of professional backgrounds and different areas of expertise, from company legal and M&A departments, as well as from financial investors and investment banks. They were nominated to participate by their general counsel or divisional heads.

A range of topics were spread thematically across the various sessions, combined with examples drawn from real-life experience, which provoked intense discussion: purchase price adjustments, indemnities and warranties as elements of contract negotiations, as well as various compliance and tax aspects in conducting due diligence. Other topics included the principles of antitrust law on gun jumping (violations of the stand-still obligation) and the latest developments surrounding the increasingly stringent investment review in Germany. Under the heading "shaping the future in legal terms", the final session dealt with how to organise long-term collaboration and joint ventures that allow for different possible developments.

INTERVIEW

New compliance position at Hengeler Mueller

As of 1 May 2019, Hengeler Mueller has appointed Alla Drößler as director of internal compliance. Her responsibilities will include monitoring compliance risks at the firm relating to applicable professional law (Berufsrecht) and regulatory law. By institutionalising its operational compliance more effectively, Hengeler Mueller has become a pioneer in the German market.

What prompted the partnership to create a new compliance position?

Dirk Uwer: As an internationally active law firm, Hengeler Mueller is subject to numerous statutory obligations – ranging from those under professional law to other laws such as the protection of confidential information (Geheimnisschutz), anti-money laundering, data protection and insider trading. Compliance topics had, of course, been previously addressed in a systematic manner at Hengeler Mueller. However, compliance is never just about maintaining the status quo. Instead, it is a continuous process in which well-established procedures have to be revised and adjusted again and again. The increasing number of compliance issues and the growing awareness of supervisory authorities and clients on the one hand, and the rapid growth of the law firm on the other, have resulted in compliance becoming ever more complex in both legal and organisational terms. We have addressed these developments by institutionalising and enhancing our organisational compliance and creating the new position. Our new processes allow us to respond even faster and more reliably to the compliance demands of the market.

Now that Hengeler Mueller has this new position, how does it stand against the competition?

Alla Drößler: While the institutionalisation of compliance positions is standard practice in Great Britain not least because of regulatory requirements, Hengeler Mueller has become a pioneer in the German legal services market by creating a separate organisational area. In most law firms, responsibility for compliance remains in the hands of the partners or relevant committees. However, we sense a change in the market and assume that we will see more of these positions in this country in the future. In our opinion, the larger the law firm and the more international its clients, the more it's worth centralising responsibility for compliance.

How do clients profit from the greater institutionalisation?

Frank Burmeister: Hengeler Mueller can only credibly meet its aspiration of being the leading compliance adviser of clients when we have cutting edge compliance in our organisation. Many of the new regulatory requirements, for instance under data protection and anti-money laundering laws, are equally in need of interpretation for all companies, and hence for our own organisation as well. Moreover, these new regulatory requirements necessitate the implementation and adjustment of specific processes. Through ever greater institutionalised internal work on such key issues, Hengeler Mueller can even more effectively contribute to developing best practices in the market. At the same time, clients whom we advise on compliance can profit from practical solutions that we have tested ourselves. We therefore believe that further developing the internal compliance of our organisation can evolve into a real competitive advantage.

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AWARDS

H1 2019 — Broad recognition

IFLR Europe Awards 2019

Hengeler Mueller was awarded "Most innovative national firm of the year 2019, Germany" at IFLR's 20th annual European awards on April 4. Celebrating the most innovative legal deals of 2018 and the firms that completed them, the event in London brought together Europe's best legal talent. Hengeler Mueller was also shortlisted in several categories, including M&A and Private Equity.

Benchmark Litigation Europe Awards 2019

Hengeler Mueller partner Markus Meier has been named "German Lawyer of the Year" at Benchmark Litigation's 2019 Europe Awards. Hengeler Mueller was also shortlisted in several categories, including German Firm of the Year, Commercial & Transactions Firm of the Year and International Arbitration Firm of the Year.

Global Competition Review

Hengeler Mueller has been named 'Regional Firm of the Year' at the GCR Awards 2019. Held at the Four Seasons in Washington, DC, the event brought out the best of the antitrust world honouring the competition enforcement, merger and cartel defence elite.

International Tax Review European Awards

The Best Friends Tax Network (comprising Hengeler Mueller, BonelliErede (Italy), Bredin Prat (France), De Brauw (Netherlands), Slaughter and May (UK) and Uría Menéndez (Spain)) has been awarded European Tax Policy Firm of the Year at ITR's European Tax Awards 2019. Additionally, the Linde-Praxair merger, which Hengeler Mueller advised on, has been awarded "Impact Deal of the Year" at the 15th Annual International Tax Review European Awards in London. Together with the Best Friends, Hengeler Mueller was also shortlisted in further categories: "European Tax Firm of the Year"and "European Tax Disputes Firm of the Year".

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