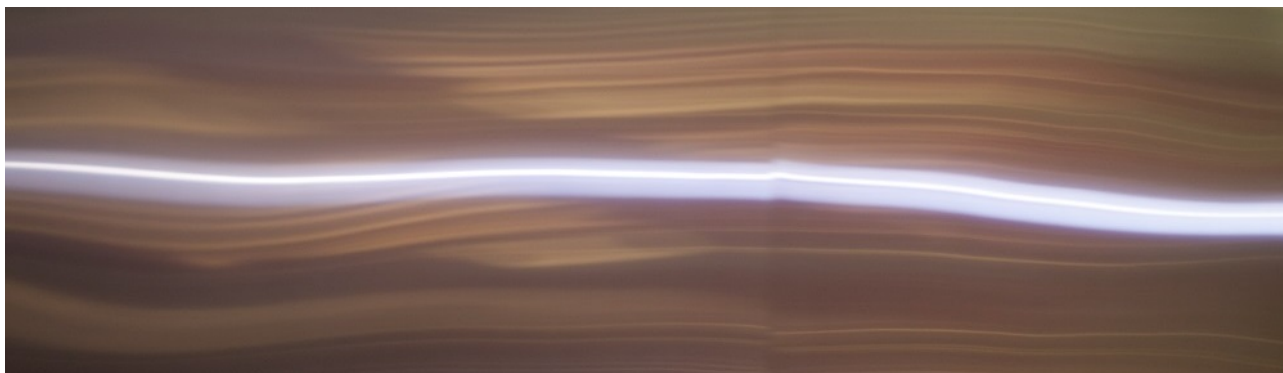


## M&A SNAPSHOT



### Highest first half year deals since 2001: inbound investment and megadeals rising

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In line with global M&A trends in 2017, high values and low deal count have been characteristic for European M&A activity as dealmakers become more strategic and selective. Europe has seen seven megadeals (> USD 10 bn) in the year-to-date, including four deals above USD 20 bn. This compares to just four megadeals in the first half of 2016, which included the USD 45.9 bn takeover of Syngenta by ChemChina. Four of the top five deals globally in 2017 have targeted Europe, two of which were announced in Q2.

As faith in the market continues to grow, European M&A has surged ahead, comprising a 32.3% share of the global value. European activity rose by 28.7% in Q2 to USD 271.2 bn (1,450 deals) compared to Q1 2017 (USD 210.7 bn, 1,641 deals). With 3,091 announcements in H1 2017, dealmakers generated a substantial USD 481.9 bn-worth of deals in Europe, representing a 30.1% increase compared to the same point in 2016 (USD 370.5 bn 3,732 deals). Inbound investment has been a key driver of activity in H1 with 593 deals worth USD 211.1bn announced so far this year – the highest year-to-date value ever recorded by Mergermarket (since 2001), and 43.8% of total European M&A. Activity from outside Europe has grown 14.4% by value with 34 deals valued at over USD 1bn each. Following the introduction of regulations on capital flight, Chinese investment into Europe has fallen to USD 25.6 bn (59 deals), a 65.7% drop in value compared to the same period last year (86 deals, USD 74.8 bn). With 342 deals worth USD 146 bn, the US has been the most active investor, accounting for a 69.2% of inbound activity by value.

Industrials & Chemicals once again led the way in Europe as it became the most targeted sector by both value and deal count. However, despite the tie-up between Praxair and Linde (USD 45.5 bn), the largest European deal across all sectors in 2017, total deal value in the industry is 19.2% behind last year's figure of USD 108.6 bn. With 648 deals worth USD 87.7 bn announced in H1 2017, the sector represents 18.2% of the region's total value.

*Source: Mergermarket, "Global and regional M&A: H1 2017"*

## European legal adviser League Table ranked by value, H1 2017

Rank	House	Value (USD m)	Number of Deals
1	<b>Best Friends Group</b>	<b>225,989</b>	<b>111</b>
2	Freshfields Bruckhaus Deringer LLP	128,270	47
3	Cravath, Swaine & Moore LLP	120,641	7
4	Davis Polk & Wardwell LLP	93,886	8
5	Blake, Cassels & Graydon LLP	88,134	7
6	Linklaters	87,773	74
7	Cleary Gottlieb Steen & Hamilton LLP	81,270	19
8	Latham & Watkins LLP	71,700	54
9	Sullivan & Cromwell LLP	65,464	10
10	Gleiss Lutz	55,156	28

*The League Table is based on announced deals with European targets between 01/01/2017 and 30/06/2017.*

**Best Friend Group:** *BonelliErede in Italy, Bredin Prat in France, De Brauw Blackstone Westbroek in the Netherlands, Hengeler Mueller in Germany, Slaughter and May in the UK, Uría Menéndez in Spain and Portugal.*

## Best Friends Deals



**02/05/2017**

Bosch sold its subsidiary Robert Bosch Starter Motors Generators Holding GmbH, including all subsidiaries, to the purchaser consortium ZMJ (Zhengzhou Coal Mining Machinery Group Co., Ltd.) and CRCI (China Renaissance Capital Investment).

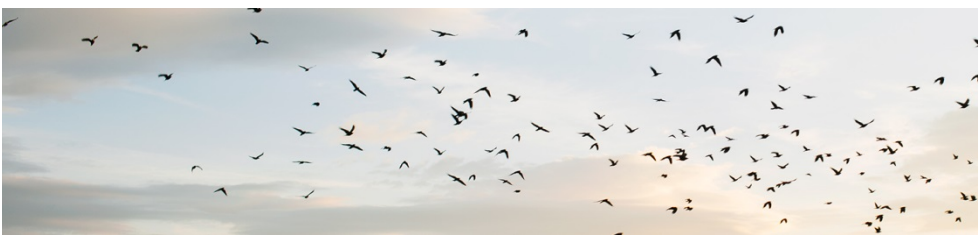
Hengeler Mueller advised Bosch on the worldwide carve-out of the Starter Motors and Generators division and the subsequent sale in an integrated team with Best Friend law firms Bredin Prat (France) and Uría Menéndez (Spain and Portugal) as well as further leading international law firms.

**06/03/2017:**

Groupe PSA and General Motors Co. announced an agreement under which PSA will acquire GM's Opel and Vauxhall businesses in a transaction valuing these activities at EUR 1.3 bn. PSA, together with BNP Paribas, will also acquire all of GM Financial's European operations, valued at EUR 900 m, through a newly formed 50%/50% joint venture that will retain GM Financial's current European platform and team.

Hengeler Mueller is advising PSA on the acquisition of GM's Opel/Vauxhall together with lead counsel Bredin Prat. The transaction is expected to close before the end of 2017.

## HM Deal Highlights

**01/06/2017:**

Linde AG and Praxair Inc. have signed a Business Combination Agreement on a merger of equals under a new holding company through an all-stock transaction. Hengeler Mueller is advising Linde AG on the transaction.

**12/05/2017**

United Internet AG and Drillisch AG have entered into a Business Combination Agreement governing the step-by-step acquisition of 1&1 Telecommunication SE by Drillisch under the umbrella of United Internet with the aim to merge United Internet's mobile and fixed-network business with Drillisch's mobile communications business. Hengeler Mueller is advising United Internet on the transaction.

**19/04/2017**

Pangea GmbH, a Busch SE group company, has published an Offer Document for a further unsolicited takeover offer for all shares in Pfeiffer Vacuum Technology AG following the failure of its first takeover bid. Hengeler Mueller is advising Pfeiffer Vacuum on the takeover attempt.

**15/03/2017**

Dr. August Oetker KG has signed with Maersk Line A/S, a subsidiary of A.P. Møller - Mærsk A/S, a Sale and Purchase Agreement for the sale of the German container shipping line Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft KG (Hamburg Süd). Hengeler Mueller is advising Oetker on the transaction.

> **All Deals:** [www.hengeler.com/de/service/mandate-und-news/2017/all/all/](http://www.hengeler.com/de/service/mandate-und-news/2017/all/all/)

## New Partners and Counsel 2017

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**Lucina Berger** (Partner, Frankfurt) advises on a broad range of corporate matters with a focus on corporate governance, compliance and directors' liabilities issues, on corporate reorganisations and M&A transactions. Her practice also includes capital markets work in connection with M&A transactions and public takeovers.

> [www.hengeler.com/en/lawyers/dr-lucina-berger/](http://www.hengeler.com/en/lawyers/dr-lucina-berger/)



**Daniela Böning** (Partner, Frankfurt) advises corporate clients, banks and funds on syndicated loans, high yield bonds, hybrid and other financings with a particular emphasis on corporate, acquisition and real estate financings.

> <https://www.hengeler.com/en/lawyers/dr-daniela-boening/>



**Annika Clauss** (Partner, Frankfurt) advises on corporate law matters and national as well as cross-border M&A transactions, in particular those involving China/Asia. Annika recently returned from her secondment to the private equity department of Chinese sovereign wealth fund CIC in Beijing.

> [www.hengeler.com/en/lawyers/dr-annika-clauss/](http://www.hengeler.com/en/lawyers/dr-annika-clauss/)



**Martin Ulbrich's** (Partner, Düsseldorf) practice focuses on national and international M&A. He advises financial investors and corporate clients in both buy and sell-side situations in diverse transaction structures, including private auctions and dual-track sales.

> [www.hengeler.com/en/lawyers/dr-martin-ulbrich/](http://www.hengeler.com/en/lawyers/dr-martin-ulbrich/)



**Fabian Quast** (Partner, Berlin) specialises in public law, EU and constitutional law with a focus on regulated industries. He advises and serves clients on environmental and product law in the automotive and energy sectors.

> [www.hengeler.com/en/lawyers/dr-fabian-alexander-quast/](http://www.hengeler.com/en/lawyers/dr-fabian-alexander-quast/)

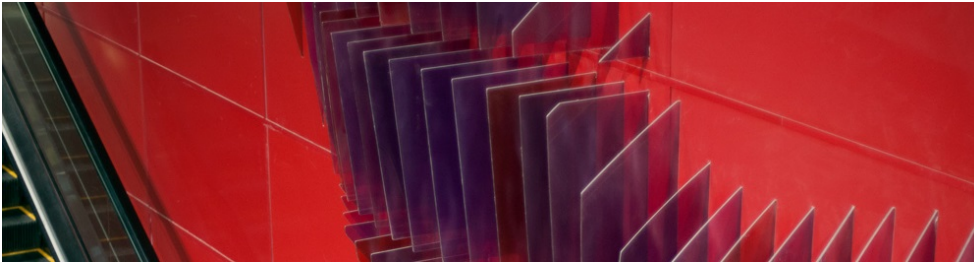


**Christian Häußer** (Counsel, Frankfurt) advises on collective and individual employment law including the structuring, planning and implementation of employment-related projects as well as ongoing advice.

> [www.hengeler.com/en/lawyers/dr-christian-haeusser/](http://www.hengeler.com/en/lawyers/dr-christian-haeusser/)

## INSIDE THE DEAL

### Everything covered: Braas Monier agrees on takeover by Standard Industries



Braas Monier Building Group (BMBG) is a leading global manufacturer and supplier of pitched roof products, including both roof tiles and roofing components. With its roots in Oberursel near Frankfurt, BMBG has operations in 36 countries, involving 121 production facilities. In 2016, it generated revenues of around EUR 1.2 bn. The holding company is headquartered in Luxembourg, although its shares were listed on the Frankfurt Stock Exchange.



Dr. Karsten Schmidt-Hern

In May 2016, the investment company 40 North acquired a 29.1% share in BMBG. 40 North is part of a US corporate group, as is Standard Industries Inc. An unlisted holding company with approximately 7500 employees, Standard Industries is a shareholder of, inter alia, GAF, one of the largest manufacturers of roofing materials in North America. In September 2016, a subsidiary of Standard Industries made a voluntary public takeover offer to all BMBG shareholders of EUR 25 per share, thereby valuing the Group at EUR 1.9 bn. BMBG's Board of Directors, however, considered the offer far too low and rejected it by way of an ad-hoc release in advance.

Because Standard Industries was not willing to increase its bid, BMBG announced a capital increase via the issue of bonus shares to its shareholders in late November 2016 to maximise the economic value for all shareholders – an exceptional strategy within a takeover situation. According to Luxembourg law applicable to BMBG, this seemed admissible, particularly as Standard Industries had not explicitly labelled a 10% capital increase as a deal breaker in the takeover offer.

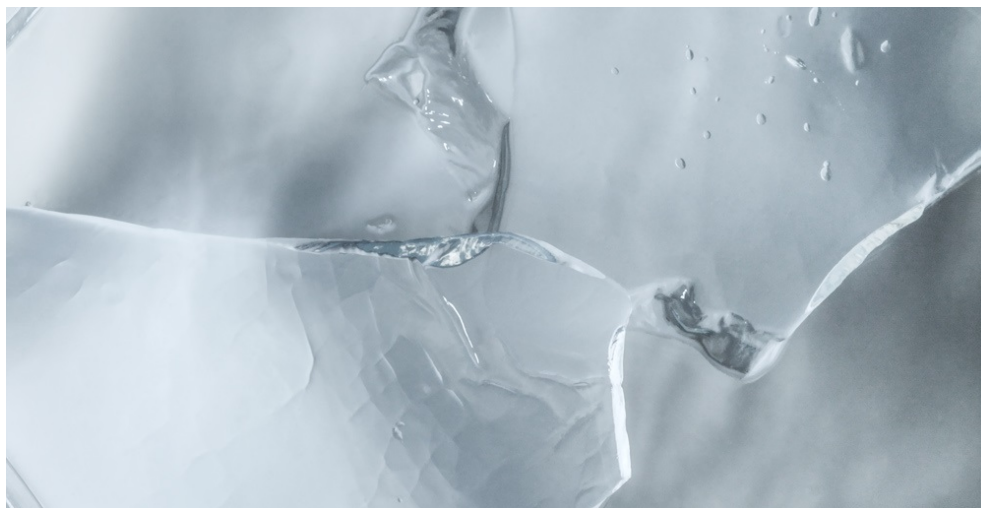
As a result, a complex exchange of legal blows ensued. In early December, Standard Industries initially obtained a temporary injunction against BMBG's planned capital increase measures. BMBG subsequently filed an application to the relevant Luxembourg Court to revoke the injunction. Before the dispute was heard by the court, both parties eventually reached an amicable agreement in late 2016 on the conditions of the takeover offer.

Hengeler Mueller advised BMBG during the takeover offer. Lead partner Karsten Schmidt-Hern said: "The planned capital increase in the context of European takeover laws and the jurisdictions involved was a complex and brave option, but definitely the best solution for the client and its shareholders in this situation."

Standard Industries agreed to a 10% capital increase and increased the initial offer price to EUR 25.27 per share, 27 cents more than before. Thanks to these measures as well as a special dividend, the value of the offer for BMBG shareholders totaled EUR 28.50. More than six months after the announcement of the public takeover offer, the path was then clear for the formation of a global roofing leader.

## LEGAL SPOTLIGHT

### Reforms to the German competition law regime



Dr. Alf-Henrik Bischke

On 31 March 2017, the German Parliament adopted reforms to the German Act against Restraints of Competition (“ARC”) containing significant changes to the German competition law regime, with particular regard to merger control. Further amendments will also be made to the law regarding cartel damages actions, cartel proceedings and other areas of competition law, including abuses of a dominant position in digital markets. The amended law, which came into effect on 8 June 2017, will apply across industries.

#### Reforms to merger control law

Under the revised law, the turnover of merged or acquired companies will no longer be the only relevant consideration: A notification to the German Federal Cartel Office (“FCO”) will also be required if the value of the consideration received from the acquirer exceeds EUR 400 m and the target is active “to an appreciable extent” in Germany.

The supplementary threshold was proposed following Facebook’s acquisition of WhatsApp which, despite concerns about the effects of the transaction on the German market, neither the FCO nor the European Commission initially had jurisdiction over (the transaction was ultimately reviewed by the European Commission).

#### Lack of clarity concerning new threshold

While there are clear advantages in increasing the authority of the FCO so that it can maintain its influence on deals likely to have substantial effects on the competitive landscape in Germany, there is uncertainty about the scope of the new threshold, in particular concerning:

- **Value of consideration** received from the acquirer: Parties assessing whether a deal needs to be notified with the FCO are basically free to choose the basis on which they wish to calculate the value of the consideration. Clarification on this point will be key as the value is likely to fluctuate substantially during negotiations or an auction process. It is also unclear which liabilities should be taken into account when determining the value of the consideration.
- **Activity of the target:** The target has to be active “to an appreciable extent” in Germany. The aim of this criterion is to ensure that the FCO has jurisdiction over transactions that

are likely to have an effect on the competitive landscape in Germany. However, the point at which a target's activities are to be considered "appreciable" cannot be assessed on the basis of quantitative thresholds and it will be necessary to have a case-by-case examination of whether this materiality requirement is met.

The FCO recently issued guidelines about the application of the new threshold. However, even with additional guidance from the regulator, it is very likely that closer examination of the details will be needed in future for many more cases in Germany.

### **Reforms to cartel damages actions**

A number of reforms will also be made to the relevant national law concerning cartel damages actions. The majority of these changes will simply implement requirements of the European Damages Directive. Examples include:

- Introduction of a rebuttable presumption that a cartel has resulted in damage
- Improvement of the position of indirect purchasers who want to demonstrate their own losses by showing that a pass-on of cartel overcharges from direct purchasers to them has occurred
- Expansion of limitation period from three years to five years

### **Provisions contained in the ninth ARC going beyond or diverging from what is required by the European Damages Directive include:**

- Increased right for parties to cartel damages actions to access documents or evidence in the possession of other parties, which may support the formers' case
- Parties will be able to direct questions to their opponents

### **Further reforms**

#### **Fines for cartels:**

- Parent companies will also be liable for fines imposed by the FCO: It is anticipated that the level of cartel fines will increase in future as the turnover of more group entities, and not just that of the entity involved in the infringement, will be taken into account in the calculations.
- In certain circumstances, the German authorities will also be able to impose fines on legal successors of entities that have been involved in cartel infringements.
- In certain circumstances, the German authorities will also be able to impose fines on legal successors of entities that have been involved in cartel infringements.

#### **Digital markets:**

- It will be possible to define a relevant product market for services rendered without charge. Such an approach is in line with that adopted by the FCO in its investigation into Facebook regarding a suspected abuse of the latter's market power through an infringement of data protection rules.
- Additional factors to be taken into account when assessing market power and two-sided markets: For example, in future, network effects, switching costs for users, innovation-driven competition and access to competitively relevant data will be considered. An examination of these factors should help the FCO appraise the competitive situation on platform markets more accurately.

## **Print Media industry**

- Print media enterprises will be able to cooperate more easily with regard to publishing outside of the editorial sphere as certain agreements will be exempt from the cartel prohibition under German law. Under this provision, the FCO will recognise the worsening economic conditions and increased competition from online media (e.g. Google and Facebook) faced by newspaper publishers.

## **Conclusion**

The amendments to the ARC and motives behind them are welcome inasmuch as they will bring German competition law in line with the requirements of the European Damages Directive, as well as the demands and peculiarities of the digital age. However, it remains to be seen how the new legislation will be applied in practice. There is clearly a need for further guidance from the FCO with regard to the new merger control threshold. Clients should prepare themselves for a period of uncertainty and take into account the need to allow sufficient time in their transactions to address any German merger control issues.

Meanwhile, it is unclear what effect the revised provisions will have on future cartel damages litigation in Germany. There are rumours that would-be claimants in some large cases are currently holding back their litigation so that they can take full advantage of the new disclosure rules when they enter into force this year.

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