

AFP Global Corporate Treasurers Forum

San Francisco

13 May, 2005

Table of Contents

I. M&A Market

II. European Deal Technology

- Financial Assistance
- Merger Control
- EU Harmonization
- Regulation Process
- Public Offer
- Private Transactions
- Sample Timeline

III. Non Technical Issues: Cultural Hurdles and the Rest

I. M&A Market



M&A Activity - 2000



- In 2000, global M&A deals topped \$1 trillion, marking one of most explosive periods of global M&A activity ever
- Big was better, growth was about global scale and penetrating new markets
- European M&A market took off with introduction of Euro and harmonization and liberalization of European merger laws
- “Europe is on fire” *Investment Dealers’ Digest, 17 January, 2000.*
- Growth in global M&A activity shaped by emergence of “Megadeal” e.g. Vodafone’s \$176 billion acquisition of Germany’s Mannesmann (1999)



Today's M&A Market

2004 A Good Year All Round



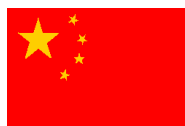
- 2004 saw +40% increase in worldwide M&A volume from 2003
- M&A fueled by:
 - continued consolidation in financial services sector
 - renewed deal activity among telecommunications companies, and
 - resurgence in leverage buyouts
- Return of “mega-deal”. 62.3% of deal volume announced as billion dollar transactions
- Growth explained: executives shift focus from SOX compliance matters to growth and acquisitions; overseas corporations seek bargains in US as a result of weak dollar



- US M&A in 2004 + 46% to \$833 billion (\$570 billion in 2003). Best overall performance for US M&A since 2000



- European 2003-04 M&A activity + 6.6% and spending +43.5%. Best overall performance for European M&A since 2001



- China - second-most popular destination (after Japan) for companies looking for acquisitions in Asia-Pacific: US \$18 billion of deals involving foreign buyer in 2004 i.e. triple 2003 figure



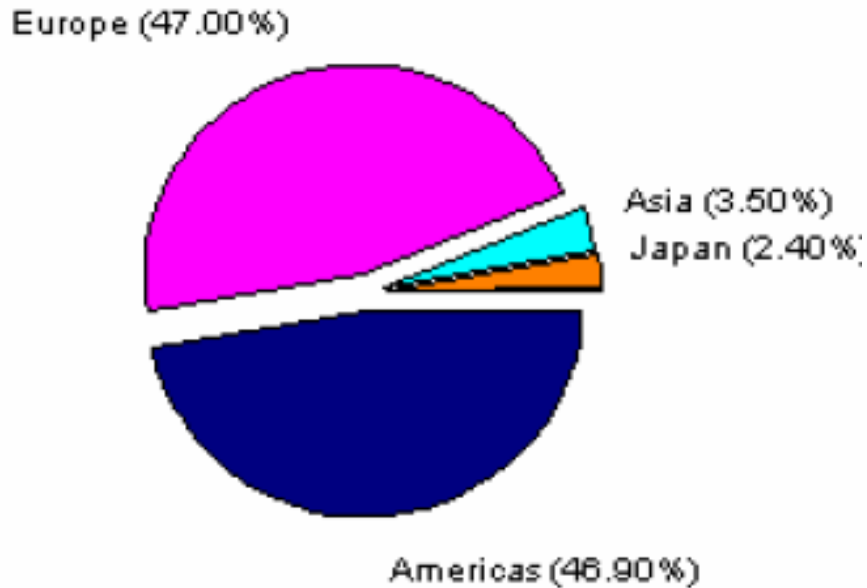
- Asia (excl Japan) 2004 M&A activity = US \$103 billion, +3.06% on 2003. N^o announced deals +17.35%



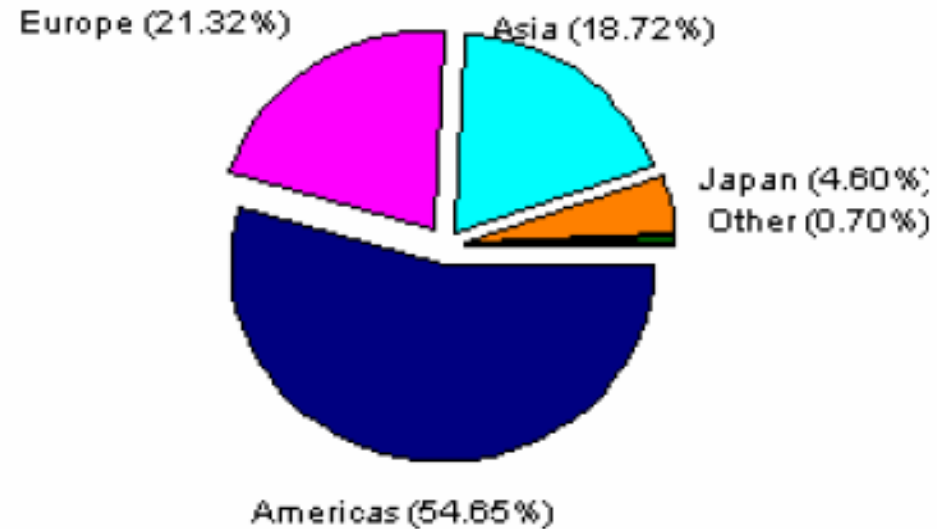
- 2004 M&A activity in line with global trend. Value of M&A for Japanese targets +42% over 2003. 167 cross-border transactions announced, -16% from 2003

Worldwide Announced M&A by Target Region

2003



2004

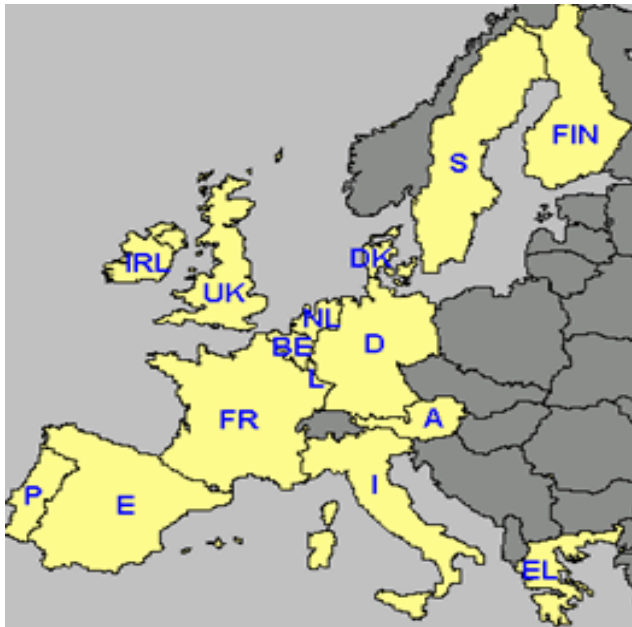


Q1 2005 M&A Activity Around the World

Rank	Target Nationality	Value \$m	Deals	Value Change
1	United States	278,584	1,861	11%
2	Japan	86,686	628	222%
3	United Kingdom	45,060	575	31%
4	Italy	28,504	160	356%
5	France	23,159	250	-75%
6	Australia	21,445	244	264%
7	Germany	19,537	227	16%
8	Canada	15,392	259	-7%
9	Denmark	12,970	77	188%
10	Russian Federation	12,679	75	423%
11	Spain	12,471	127	139%
12	Netherlands	10,732	74	15%
13	South Korea	7,609	26	51%
14	China	7,330	326	54%
15	Indonesia	5,454	26	370%
	TOTAL	646,740	6,433	16%

New Hunting Ground

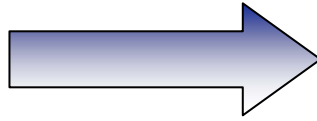
**European Union
Pre 1 May, 2004**



**European Union
Post 1 May, 2004**



**European Union
Pre 1 May, 2004**



**European Union
Post 1 May, 2004**

- 15 Member States
- Population = 380 million
- 11 languages spoken
- Surface area = 3.23 million sq. km

- 25 Member States
- Population = 450 million
- 20 languages spoken
- Surface area = 3.94 million sq. km (10% increase)

Enlarged EU represents $\frac{1}{4}$ of world's wealth and is world's largest single trading bloc

The Private Equity Factor

- *Big private equity firms* - easier for companies to sell non-core businesses and offload unwanted parts of an acquisition to these firms
- Private equity houses and funds account for larger slice of M&A activity and will drive cross-border market. They will combine on huge deals because:
 - They don't want to compete against each other
 - It will help them spread the risks of big investments
 - They all need to put their money to work
 - But possible concerns for the funds' investors

Different Players

Different Rules

- Bidding processes
- Aggressive terms
- Lengthier Discussions
- Exclusivity Rare

II. European Deal Technology

GENERALITIES

European Deal Technology (I)

- Anglo-Saxon M&A model has spread increasingly throughout Europe
 - English as deal language
 - Globalization of capital markets law firms & banks
 - Lead to apparent uniformization
- Culturally sensitive exceptions
 - Family-owned businesses: privacy & succession issues
 - State-owned enterprises: government & unions
- European corporate law
 - EU harmonization v. national laws
 - No single European corporate law comparable to Delaware

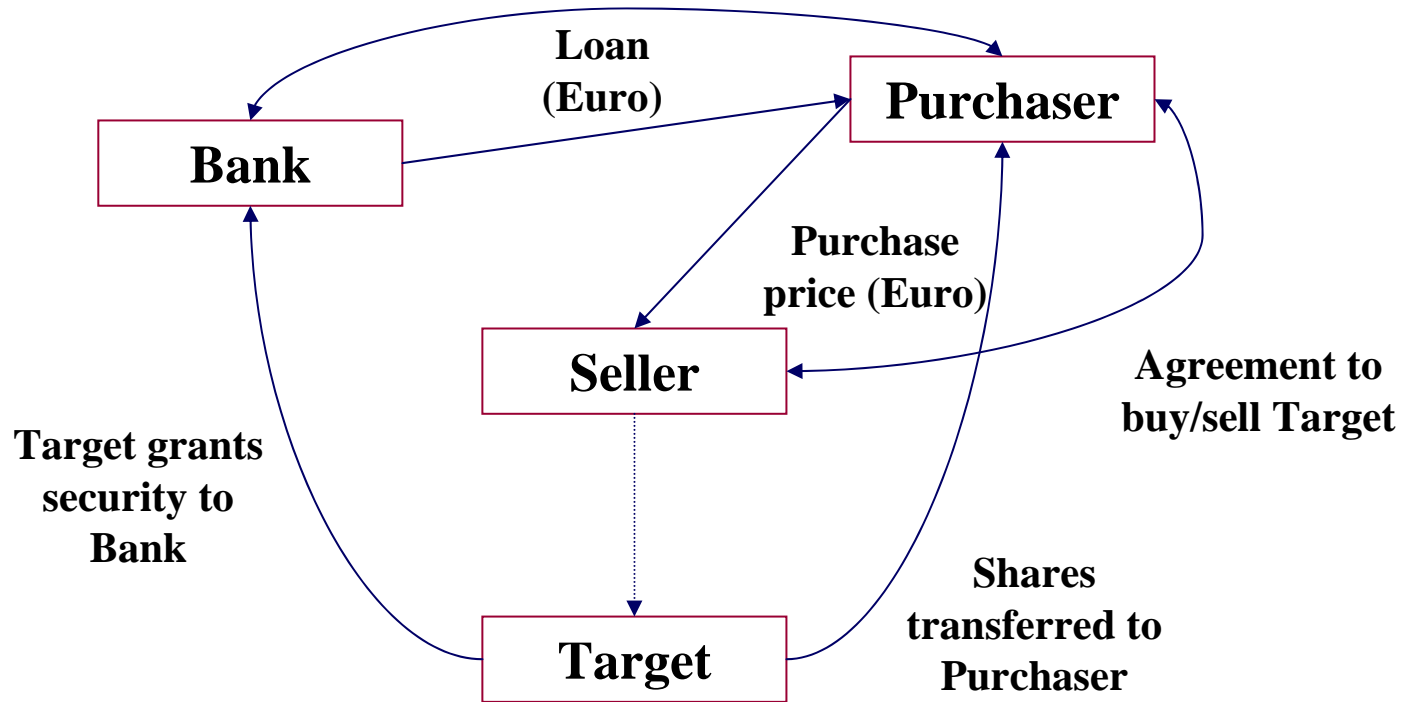
European Deal Technology (II)

- Empirical Nature of Rules
 - City Takeover Code vs. SEC laws & regulations
 - Less Precedents
 - U.S. imports
- Traps for the unwary
 - Duties to all stakeholders, not just shareholders
 - Employee consultation rights
 - Minority rights
 - Squeeze-outs
 - Criminalization of corporate conduct

FINANCIAL ASSISTANCE

Financial Assistance

Standard Set-up



Financial Assistance (I)

- Maintenance of capital/creditor protection
- Not lawful for company to assist in acquisition of its own shares
- Assistance - guarantee, security, funds, loans
- Limitations to the prohibition variable:
 - **In UK:** “whitewash” is authorized
 - Net assets reduced?
 - Covered by distributable reserves?
 - Then - statutory declaration of Directors
 - Auditors confirmation
 - Special resolution (75%)

Financial Assistance (II)

- In France:
 - Prohibition limited to *direct* financial assistance - should not extend to actions taken by subsidiary of target, or a subsidiary of subsidiary of target
 - Prohibition does not cover other means of upstreaming funds, including a distribution of dividends
- In Germany:
 - Results can be avoided by domination and loss and profit pooling agreements between acquisition company and target company. Downside: results in obligation to reimburse annual deficit of target company and to compensate minority shareholders with respect to losses incurred due to directions given to management of governed AG.

MERGER CONTROL

Merger Control (I)

Notification of Thresholds

- EU: merger has a European dimension when:
 - Combined aggregate worldwide turnover of all undertakings concerned greater than €5 000 million
 - Aggregate Community-wide turnover of each of at least two of the undertakings concerned greater than €250 million; OR
 - Each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

Merger Control (III)

Notification of Thresholds

US comparison

- Transactions valued in excess of \$212.3 million* are reportable, regardless of sizes of parties
- Transactions valued at less than \$53.1 million* are not reportable
- Transactions valued at more than \$53.1 million* but less than \$212.3* million, transaction is reportable if (a) either acquiring or acquired person has either annual net sales or total assets of more than \$106.2 million*, and (b) other person has either annual net sales or total assets of more than \$10.7 million* (For application of latter (i.e., the \$10.7 million*) test, an acquired person not engaged in manufacturing looks only to its total assets and ignores its annual net sales)

** Beginning 2005, all relevant dollar thresholds are subject to annual indexing. The numbers will apply throughout calendar year 2005 but will change early in 2006*

Merger Control (II)

Notification of Thresholds

France as a case study

- Notification required in France when:
 - Operation has no European dimension
 - Total worldwide turnover of all companies involved in merger greater than €150 million
 - Total turnover achieved in France by at least two of the companies concerned greater than €15 million

PUBLIC DEALS

THE EU LEVEL

EU Harmonization (I)

Public Transactions

- EU Directive on Takeover Bids, published in mid-May 2004, is a compromise and a first step towards harmonization of national takeover laws within EU
- Directive requires Member States to adapt their national laws to provisions of Directive by May 2006
- Four main features, directed at facilitating takeover bids and protecting minority shareholders' interests

EU Harmonization (II)

Public Transactions

Four main features:

- **Mandatory Takeover**

If a person or entity achieves control over a public company, the controlling entity will have to make a mandatory bid to all other shareholders at a "fair" price.

- **Reduce Defensive Actions and Structures Impeding Hostile Bids**

In principle, restrictions on share transfers, multiple voting rights and special shareholders' rights to appoint Board Members will be suspended in the course of a takeover bid. Defensive measures will no longer be capable of stopping hostile takeover bids. It is currently expected, however, that most Member States will opt out of this rule.

EU Harmonization (III)

Public Transactions

Four main features (cont'd):

- **Additional disclosure requirements**

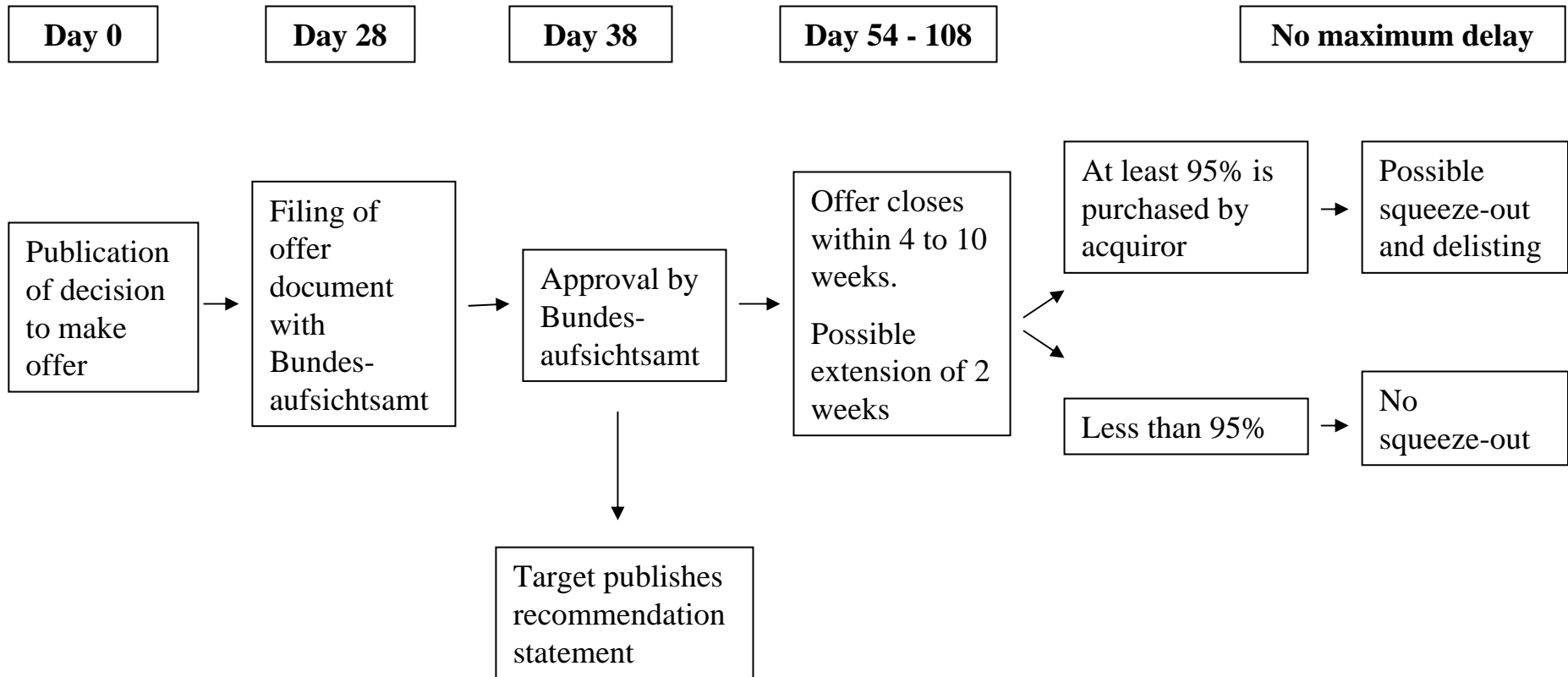
Listed companies will have to report on potential obstacles to hostile takeover bids, such as capital structure, different stock classes, significant shareholdings, special control rights and restrictions on share transfers and voting rights. This even includes change-of-control clauses in significant agreements of the company, except where their disclosure could seriously harm the company.

- **Harmonization of jurisdictional rules in EU**

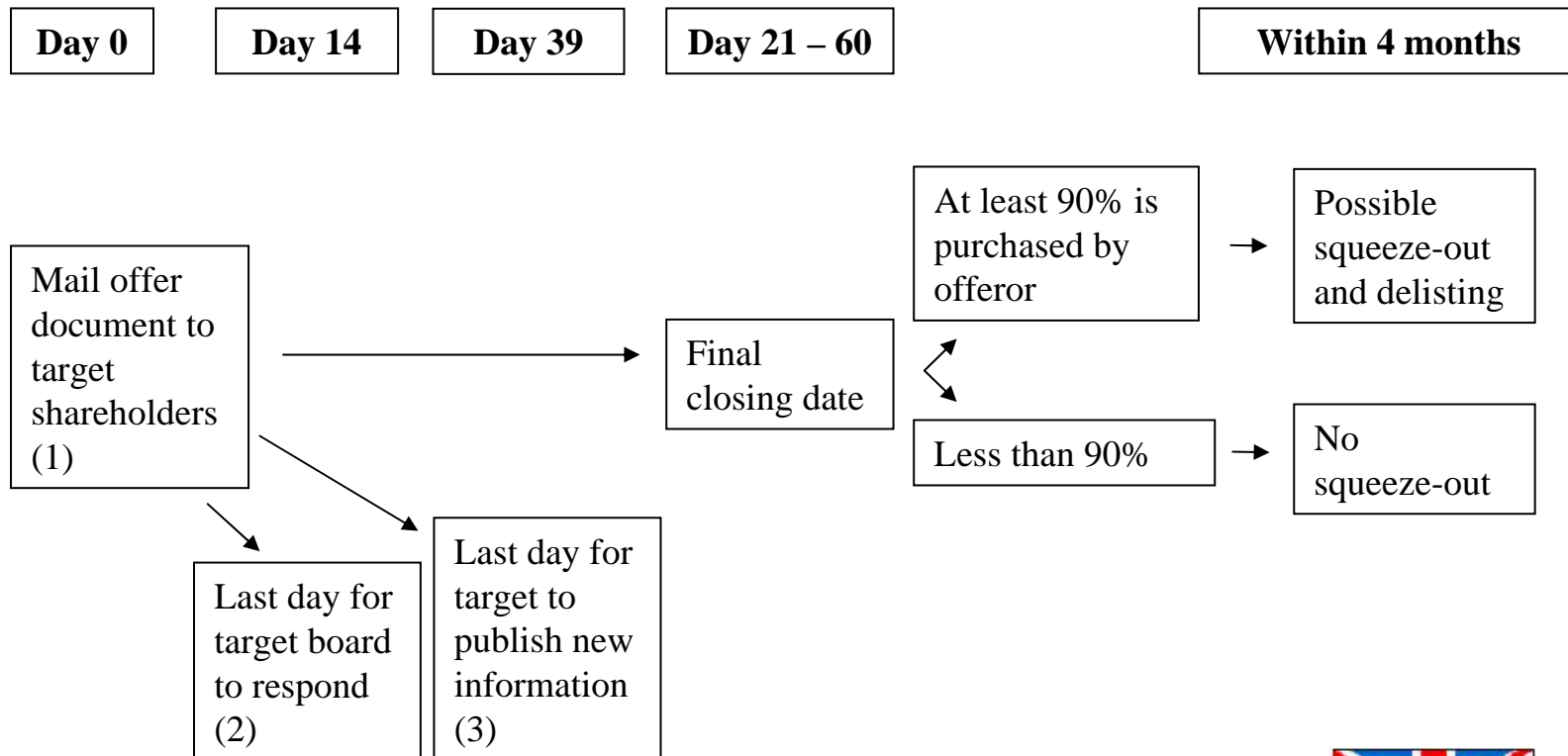
Directive also harmonizes conflicting jurisdictional rules governing application of various national takeover regulations in Europe, which now leads to uncertainties.

THE LOCAL LEVEL

Regulation Process *Germany*



Regulation Process *UK*



Note: Assumes hostile offer. If recommended, steps 1-3 will be simultaneous and no further documents will be posted to target shareholders.



Sources and Regulatory Bodies



Sources

Williams Act
Laws of the
target's state

City Code on
Takeovers and
Mergers

WpÜG
AktG
WpHG

RG AMF

Regulatory Bodies

SEC

Takeover Panel

Bundesaufsichtsamt

AMF
(merger of
CMF & COB)

Public Offer (I)

- Strict timeline starting from decision or requirement to make offer
- Ensure financing of offer prior to publication of offer document
- Mandatory offer required upon acquisition / holding of at least 30% (Germany) or 33% (France) of the voting rights
- Beware of attribution of voting rights (e.g. held by subsidiaries or in complex fund structures)
- Equal treatment of shareholders
- Poison pills (installation before offer possible, after offer only under limited conditions)
- Need 95% or 90% for squeeze-out of dissenters

Public Offer (II)

- Typically no acquisition agreement for public company deals
- No reps and warranties typically given, although a MAC is seen from time to time ... assume it will have extremely rare application
- Much easier in cash; If consideration consists of all or partial stock of US company, creates additional complications but is doable

Sample Timeline (I)

No.	Date (at the earliest)	Action	Responsible Party	Comments
UNTIL EXECUTION OF SPA				
1.	Weeks of April 25 – May 2	Finalization of legal, financial and tax DD		
2.	Weeks of April 25 and May 2	Negotiation of SPA and other related agreements	Buyer / Buyers Legal Advisors / Sellers	
3.	Week of May 2	Execution of confidentiality agreements with Presenting Bank and Valuation Bank	Buyers Legal Advisors / Sellers Legal Advisors	
4.	Prior to SPA being initialed	Finalize term-sheet (if possible with a commitment) for financing of transaction	Buyers/ Buyers Legal Advisors / Bank	
5.	May 8	Initial SPA	Buyer / Sellers	
6.	Week of May 9	Convening of Company's Workers' Council	CEO of Company	Must be convened with "reasonable" notice.

No.	Date (at the earliest)	Action	Responsible Party	Comments
7.	Week of May 9	Contact French and US antitrust authorities to present transaction	Buyers Legal Advisors / Sellers Legal Advisors	
8.	Week of May 16	First meeting of Company's Workers' Council to give opinion on contemplated transactions under SPA (parties can proceed with contemplated transaction as soon as Workers' Council gives an opinion, whether positive or not).	CEO of Company and Workers' Council	Workers' Council can delay its response by requesting additional information or appointment of an expert. In the worst case scenario, such delay can take a few months.
9.	Weeks of May 9 and 16	Finalize antitrust filings	Buyer / Buyers Legal Advisors / Sellers	
10.	Week of May 23	Second meeting of Company's Workers' Council	CEO of Company and Workers' Council	It is usual that Workers' Council give its opinion during a second meeting and not during first.
11.		Valuation Bank finalizes valuation of the Company	Valuation Bank	

No.	Date (at the earliest)	Action	Responsible Party	Comments
12.	Prior to execution of SPA	Finalize term-sheet with commitment for financing of transaction	Buyer / Buyers Legal Advisors / Bank	
13.	Week of May 30 (after opinion from Company's Workers' Council and Company's AGM)	Execution of SPA	Buyer / Sellers	
14.	Possibly at time of execution of SPA	Execution of financial documents for financing of transaction	Buyer	

FROM EXECUTION TO CLOSING

15.	Immediately after execution of SPA Week of May 30	Press release: execution of SPA and conditions precedent to closing	Buyer / Sellers / Company	
16.	ASAP after execution of SPA	Antitrust filings	Buyer	
17.	5 weeks until July 4	Antitrust waiting period		

No.	Date (at the earliest)	Action	Responsible Party	Comments
18.	Prior to Closing	Contact main clients, suppliers and other significant contractual parties of Company Group and obtain confirmation that they will not terminate their relationship with Company Group upon the Closing Date.	Company Group	
19.	Week of July 4	<p>Closing</p> <ul style="list-style-type: none"> -Payment of the Purchase Price; - Execution of ancillary agreements (non competition, non solicitation and confidentiality agreements, etc); - Company's board meeting: resignation of directors and appointment of new directors; - Filing notification of a foreign investment in France. 		

PRIVATE DEALS

Private Transactions (I)

Standard Timetable

- **Preliminary Negotiations with Target Company**
(approx. 2 to 6 weeks)
 - Contact Management and / or Shareholder(s)
 - First Evaluation and Purchase Price Negotiations
 - Non-Disclosure Agreement (NDA) / Exclusivity Agreement
 - Term Sheet, Letter of Intent (LoI), Memorandum of Understanding (MoU) or other Preliminary Agreements

Private Transactions (II)

Standard Timetable

- **Due Diligence** (approx. 2 to 8 weeks)
 - Preparation of Data Room (Due Diligence Request List, Data Room Procedures)
 - Putting together Due Diligence Team - technical, commercial, legal, environmental, financial, tax
 - Typical legal risks (corporate, product liability, labor law / pensions, litigation, environmental, etc.)
 - Preparation and Analysis of Due Diligence Report

Private Transactions (III)

Standard Timetable

- **Negotiations / Transaction Structure** (approx. 4 to 8 weeks)
 - Share deal / asset deal
 - Purchase price in cash or in shares
 - LBO / MBO
 - Financing / preparation of restructuring
 - Tax issues
 - Labor law issues / pensions
 - Antitrust issues
 - Reps and warranties / liabilities taken over by purchaser (MAC-clauses, specific local law provisions)
 - Cap de minimis-provision, no “double dip”, etc.
 - Guarantee by parent company
 - Miscellaneous (choice of law, place of jurisdiction, arbitration provision, etc.)

Private Transactions (IV)

Standard Timetable

- **Signing** (1 day)
 - Notarization may be required in Germany (transfer of shares in Limited Liability Company or transfer of real property)
 - Preparation of attachments and schedules (including disclosures re: reps and warranties)
 - Conclusion of ancillary agreements (e.g., service agreements for transition period, etc.)
 - Conditions precedent (antitrust clearance, board resolutions, etc.)

Private Transactions (V)

Standard Timetable

- **Period between Signing and Closing** (approx. 4 to 6 weeks)
 - Merger control review (national authorities or EU merger task force)
 - Board or shareholder approval and other closing conditions
 - Corporate governance (no material adverse change, preparation of exchange of management)
 - Restructurings
 - Preparation of closing balance
 - Registrations in commercial, patent and trademark registers

Private Transactions (VI)

Standard Timetable

- **Closing (1 day)**
 - Closing Protocol
 - Transfer of title (legal / economic effect of transfer of title)
 - Payment of purchase price (escrow agent, installments, proof of bank wire, etc.)
 - Exchange of management (resignation, appointment)

III. Non Technical Issues

- Cultural Tips
- Negotiation Tips

Cultural Differences

The Basics

ASPECTS	FRANCE	US	UK	JAPAN	CHINA
Greeting	Brief Handshake; Not very firm.	Firm Handshake, 3-5 seconds, look in the eyes.	Firm Handshake.	Bow - depth of the bow depends on client; Handshakes not uncommon but depends on which greeting Japanese client opts to use.	Bowing and/or nodding common; Handshake sometimes used but depends on which greeting Chinese client opts to use.
Salutation	Monsieur Madame; Use of formal address always.	Christian name normally used.	Mr. / Mrs.	Surname plus 'San'.	Formal titles, sometimes use a nickname to help foreigners.
Eye Contact	Intense eye contact.	Direct eye contact, seen as sincere and trustworthy.	Direct eye contact, no staring.	Prolonged eye contact avoided.	Prolonged eye contact avoided.

ASPECTS	FRANCE	US	UK	JAPAN	CHINA
Business Card Exchange	Informal; Exchange before or after meeting.	Informal; Exchange before or after meeting.	Informal; Exchange before or after meeting.	Formal; Must take with both hands, read and memorize name, put in special case (not in pocket or wallet), do not write on; Exchange always after bow; Meeting cannot take place until cards exchanged.	Formal; Must take with both hands, read and memorize name, put in special case (not in pocket or wallet), do not write on; Exchange always after bow; Meeting cannot take place until cards exchanged.
Language (Body)	Animated hands, gestures.	Smiling means sincerity.	Fairly reserved; Facial Expressions and hand gestures accepted.	Facial expressions and gestures can be misinterpreted; Smiling may be seen as good or bad; Hands should be on table when negotiating.	No hand movements as can be distracting; No pointing, only gesture with palm of hand.
Language (Spoken)	Appreciate art of conversation; Interrupt often; High regard for their language.	Tendency to be viewed as lecturing when speaking; interruption not done and seen as rude.	Sense of humor important.	Not uncomfortable with silence and use it to their advantage.	Silence held in high regard.

ASPECTS	FRANCE	US	UK	JAPAN	CHINA
Business during meals	Conducted during any meal but lunch best.	Any meal although more social conversation takes place.	Lunch is best; When socializing after work, no business talk.	Business occurs after hours and during events.	Business occurs after hours and during events.
Society	Hierarchical.	Individual is important.		Hierarchical. Group important.	Hierarchical. Group important.
Cultural Studies	Uncomfortable with taking risks; Strong need for social order.	Take risks, problem solvers, tolerance for ambiguity.		Take risks, problem solvers, tolerance for ambiguity.	Risk takers, problem solvers.
Values		Individualist, independent, autonomous.		Focus on group goals and hierarchical orientation; Importance placed on establishing relationships; Use of power is muted and indirect.	Group decisions.

ASPECTS	FRANCE	US	UK	JAPAN	CHINA
Negotiation Style	Can be perceived as aggressive negotiators; Use interruptions and threats to achieve goals; Probing, questioning; analytical and detail oriented.	Very Direct; Focused on preparation and planning skills; Deal with one issue at a time; Strong ability to think under pressure.		Negotiate very indirectly; Must listen between lines; May agree with you without really saying Yes, may say Yes without agreeing with you; Yes may simply mean that he understands your message.	Persistent and determined; Important to win respect and confidence; Very formal.
Biz Values	Business on surface, relationship matters.	Economics first.		Personal Relationship first.	
Deal Making	Do not concede very easily; May take a conflictual stand on grounds of principle.	Short term goals, fast, focused on direct results, relationship not as important; concede points reluctantly.	All important decisions will be brought up, discussed, negotiated and passed through; Use pressure tactics, impose deadlines to close deals.	Slow; Very patient; Most important in decision-making is team spirit, cooperation; Responsibility is spread among group; Focused on long-term goals.	Slow, patient, trained in art of gaining concessions; Focused on long-term goals.

ASPECTS	FRANCE	US	UK	JAPAN	CHINA
Punctuality	Very casual.	Punctual.	Punctual.	Very punctual.	On time or early.
Personal Space	Respect personal space.	Respect personal space.	Respect personal space.	Personal space very important; Approx gap of 4' when conversing.	Personal space very important; Approx gap of 4' when conversing.
Gift Giving	Not expected; Offering Books or Music as gifts demonstrates interest in intellectual pursuits.	Discouraged ; Can be seen as bribe.	Discouraged; Can be seen as bribe.	Very important; When offering should be given at end of visit; When being offered usually given at start of visit; Ceremony is tantamount; Give and accept with both hands; Will be politely refused 1 or 2 times then accepted; Gift should be of quality but not too extravagant.	Very delicate issue; Ceremony is tantamount; Give and accept with both hands; Will be politely refused 3 times then accepted; Most acceptable gift to offer Chinese is a banquet. Superstitious, symbolism very important in gift giving.

Cultural Differences

Negotiation Tips

- Local laws/jurisdictions affect deals regardless of whether other party is foreign, e.g. laws for buying/selling shares different in US, Germany and Hong Kong.
- Adapt: Don't expect things to happen that just won't. US can be very insular!
- BATNA - Never close your options
- Define goals carefully and understand those of your counterpart
- Learn about cultures: businesses are people and success of deals also stems from successful integration into local ways and customs. Numbers are not everything!

- Do not jeopardize the future relationship
- Don't Get Personal, unless you need to
- Choose good representatives and counsels and encourage other side to do same
- Practice Linkage
- Know your competition, if any
- Treat management well, even if you believe you do not need them, because:
 - management can harm you
 - they know the company
 - they know the rules
 - they can help you better understand the offer