

The logo for Hogan Lovells, consisting of the company name in a serif font inside a light green square. The background of the entire page is a blurred image of a hand holding a tablet with a red and orange financial chart overlaid on it.

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Public Takeovers in Germany

Newsletter

2021



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1. Introduction

Welcome to the fourth edition of our “Public Takeovers in Germany” newsletter. It provides an overview of public takeovers carried out in Germany in 2020 under the German Securities Acquisition and Takeover Act (*WpÜG*) and of recent developments in German public takeover law.

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

The main part of this newsletter presents a statistical overview of the public takeovers executed in Germany in 2020 under the *WpÜG*. This overview is based on the database of German takeover bids published by the German Federal Financial Supervisory Authority (*BaFin*). In addition, we have analyzed the reasoned statements published by the management boards and supervisory boards of the target companies. Wherever a public offer was amended, our analysis reflects only the data from the final version of the offer, unless indicated otherwise.

In the “Profile” section we showcase in more detail what we consider the most noteworthy public takeover bids of the past calendar year in Germany. In 2020, these undoubtedly were the takeover battle over RHÖN-Klinikum AG as well as the failed takeover of QIAGEN N.V.

Finally, we discuss the recent legal developments which are relevant for the German takeover market. Following the judgment issued by the District Court (*Landgericht – LG*) of Frankfurt, already reviewed in the last issue of this newsletter, we will analyze the judgement issued by the Higher Regional Court (*Oberlandesgericht – OLG*) of Frankfurt in connection with the STADA AG takeover, which addresses potential rectification claims arising from subsequent acquisitions within the meaning of sec. 31 paras. 5 and 6 *WpÜG*.





2. Statistics

2.1 Overview – market trends

In 2020, the public takeover market in Germany showed the following trends:

- Notwithstanding the COVID-19 pandemic and with 23 public offers, the level of activity in the German public takeover market recorded the second highest level after last year's peak compared with the preceding four years.
- With an offer volume of EUR 31.20 billion in 2020, the high value of the previous year was narrowly missed.
- The average offer premium of 32.41% in relation to the weighted three-month average price prior to the offer shows the highest value over the comparative period of the last five years.
- Similar to 2016, 2017 and 2019, the technology sector recorded the highest level of activity in the German takeover market.
- Although the proportion of neutral statements has decreased compared to the previous year, with 23%, it still represents a significant proportion and is at the same level as in 2018.
- Foreign investors accounted for 74% of public takeovers, either submitting bids directly or via German acquisition vehicles.



2.2 Public takeovers and offer types

By the end of 2020, there were a total of 23 public offers in Germany. Compared to the peak in the past four years (28 public takeover offers in 2019), this represents a decline, but the deal volume is above the level of the years 2016 to 2018. This comparatively high level of activity in the takeover market in 2020 is particularly remarkable in light of the COVID-19 pandemic.

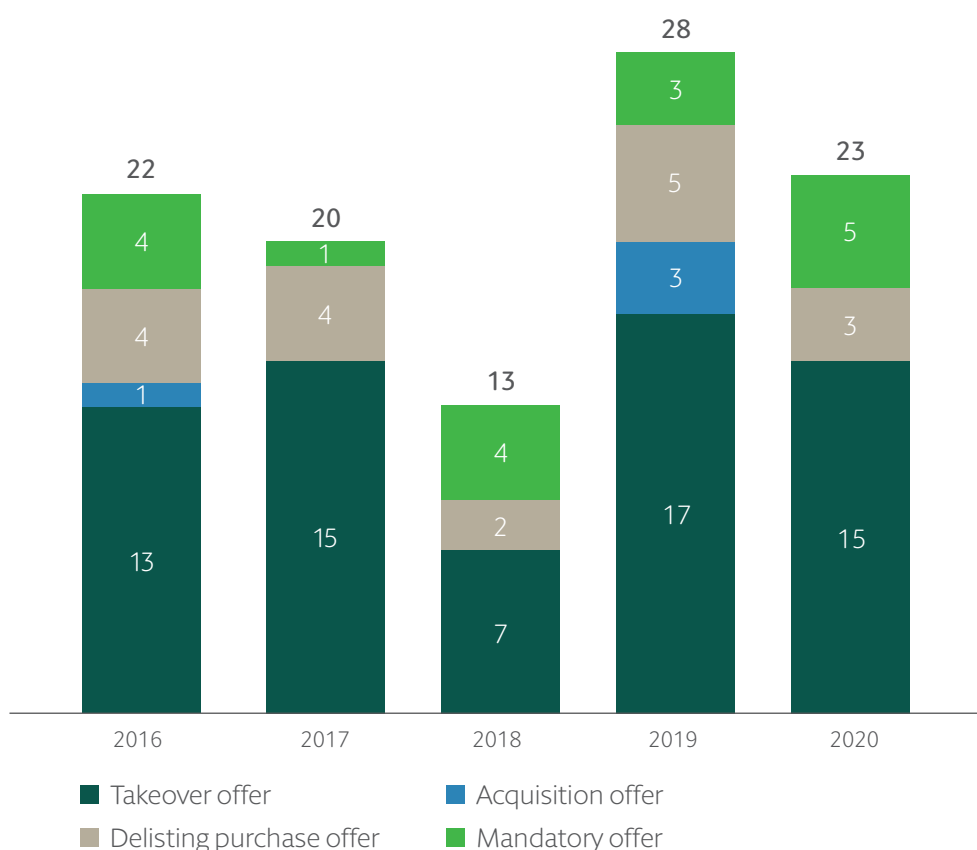
Once again, most of the offers made in 2020 were takeover offers. The number of mandatory offers increased to five, while there were again five delisting purchase offers (two of the delisting purchase offers were combined with a takeover offer at the same time, so these are included in the takeover offer statistics).

With the exception of the takeover offer by ADO Properties S.A. to the shareholders of ADLER Real Estate Aktiengesellschaft (exchange offer), all public offers in 2020 were made by way of a cash offer.

BaFin prohibited three public offers this year pursuant to sec. 15 WpÜG:

Due to a lack of liquidity of the shares offered as consideration (secs. 34, 15 para. 1 no. 1 WpÜG) and due to an obvious violation of the consideration provisions pursuant to sec. 31 para. 2 WpÜG (secs. 34, 15 para. 1 No. 2 WpÜG), BaFin prohibited the offer by Heidelberger Beteiligungsholding AG to the shareholders of Biofrontera AG.

Due to the delayed publication of the offer document, BaFin prohibited the issue of two mandatory offers pursuant to secs. 39, 15 para. 1 no. 3 WpÜG: Firstly, VICUS GROUP AG did not provide the offer document in time after gaining control over Travel24.com AG. However, this was made up for by an offer in the course of the year. Furthermore, Dana Middle East Technology W.L.L. (Manama Bahrain) and Mr Naif Omar A Alharti (resident in Saudi Arabia) have not yet fulfilled their continuing obligation pursuant to sec. 35 para. 2 sentence 1 WpÜG, after gaining control over Fritz Nols AG.



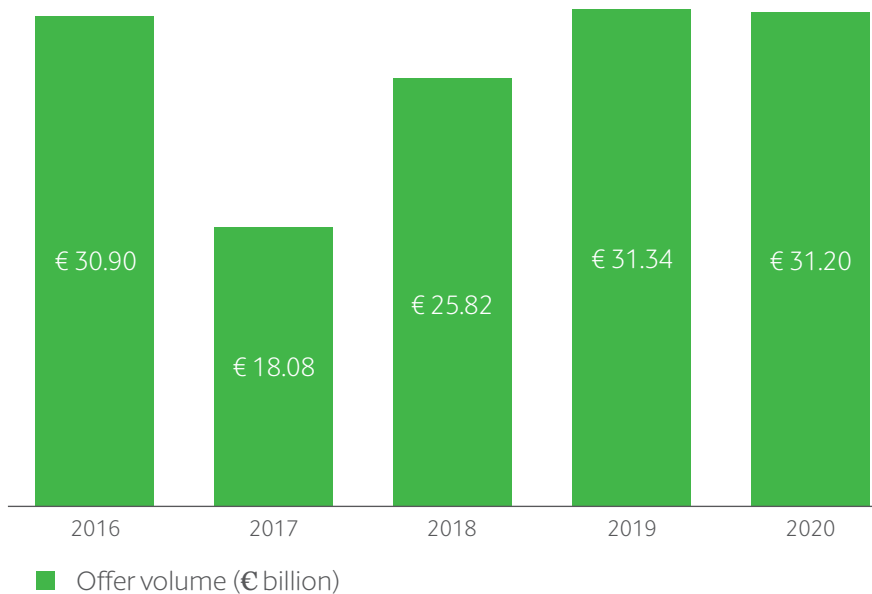
2.3 Offer volume

The total volume of offers in 2020 amounted to EUR 31.20 billion. Although the upward trend since 2018 has remained stable, last year's peak of EUR 31.34 billion (over the comparative period of the last five years) was narrowly missed.

The largest portion of the 2020 volume was attributable to the failed takeover of Qiagen N.V. for EUR 9.83 billion.

Furthermore, eight other public offers in the large cap segment (determined on the basis of market capitalization, see section 2.4) with the following offer volumes should be highlighted for 2020:

- The delisting purchase offer by Traviata B.V. to the shareholders of Axel Springer SE (EUR 3.74 billion);
- Rocket Internet SE's own delisting repurchase offer (EUR 2.54 billion);
- the takeover offer by GlobalWafers GmbH to the shareholders of Siltronic AG (EUR 3.75 billion);
- the takeover offer by EP Global Commerce GmbH to the shareholders of Metro AG (EUR 2.16 billion);
- the takeover offer by FS DE Energy GmbH to the shareholders of MVV Energie AG (EUR 1.78 billion);
- the takeover offer by Schneider Electric Investment AG to the shareholders of RIB Software SE (EUR 1.51 billion);
- the takeover offer by ADO Properties S.A. to the shareholders of ADLER Real Estate Aktiengesellschaft (EUR 1.27 billion); as well as
- the takeover offer by Asklepios Kliniken GmbH & Co. KGaA to the shareholders of RHÖN-KLINIKUM AG (EUR 0.86 billion).



2.4 Developments in the market segments

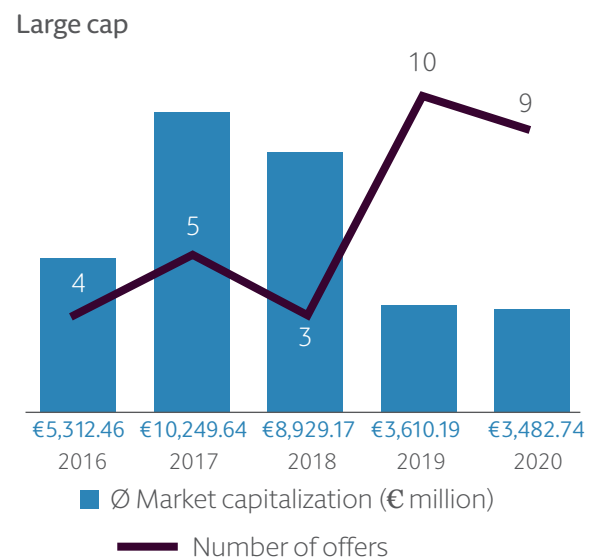
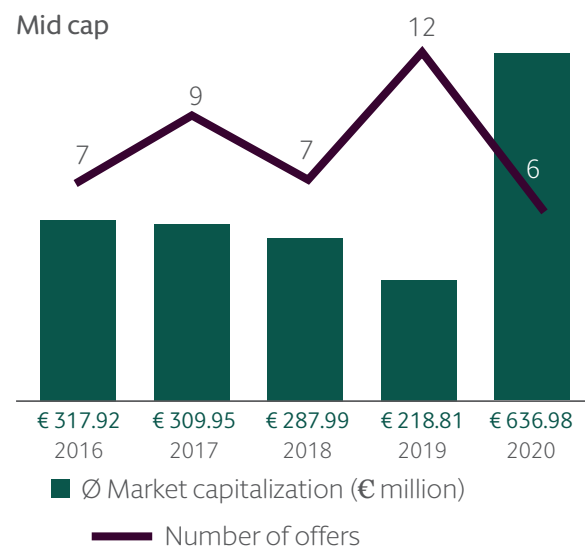
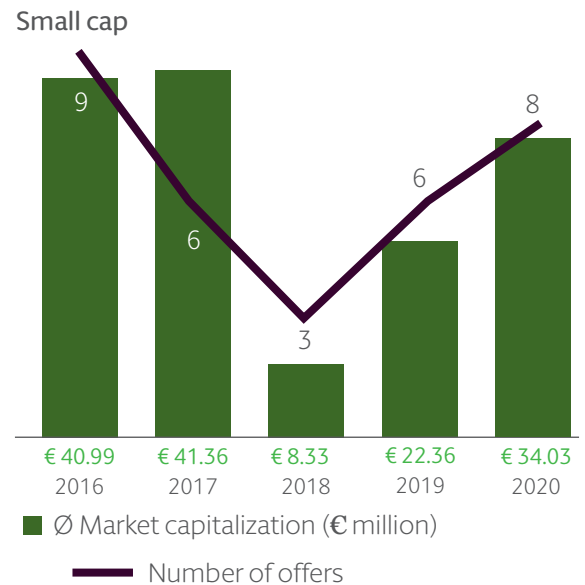
The market segments are defined as follows in line with the respective market capitalization of the target company:

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

The high level of takeover activity in 2020 – which is particularly remarkable in light of the COVID-19 pandemic – took place primarily in the large cap sector. Already in the last year, the ten bids in this sector represented two times the value of 2017. This very high level of activity remained almost stable in 2020 with nine bids. On the other hand, the average market capitalization value of EUR 3.48 billion in the large cap sector is the lowest value compared to the previous four years.

While the number of takeover bids in the mid cap segment has declined to six bids, the average market capitalization has increased significantly to EUR 636.98 million. This figure more than doubled compared to the previous highest value of 2016 over the comparative period of the last five years.

Since the low peak in 2018, the upward trend of 2019 has continued in the small cap segment in 2020. The average market capitalization of EUR 34.03 billion represents a significant increase compared to 2019, while it not quite reaches the level of 2016 and 2017. However, the eight bids in the small cap segment exceed the number of 2017 and almost reach the high level of 2016.



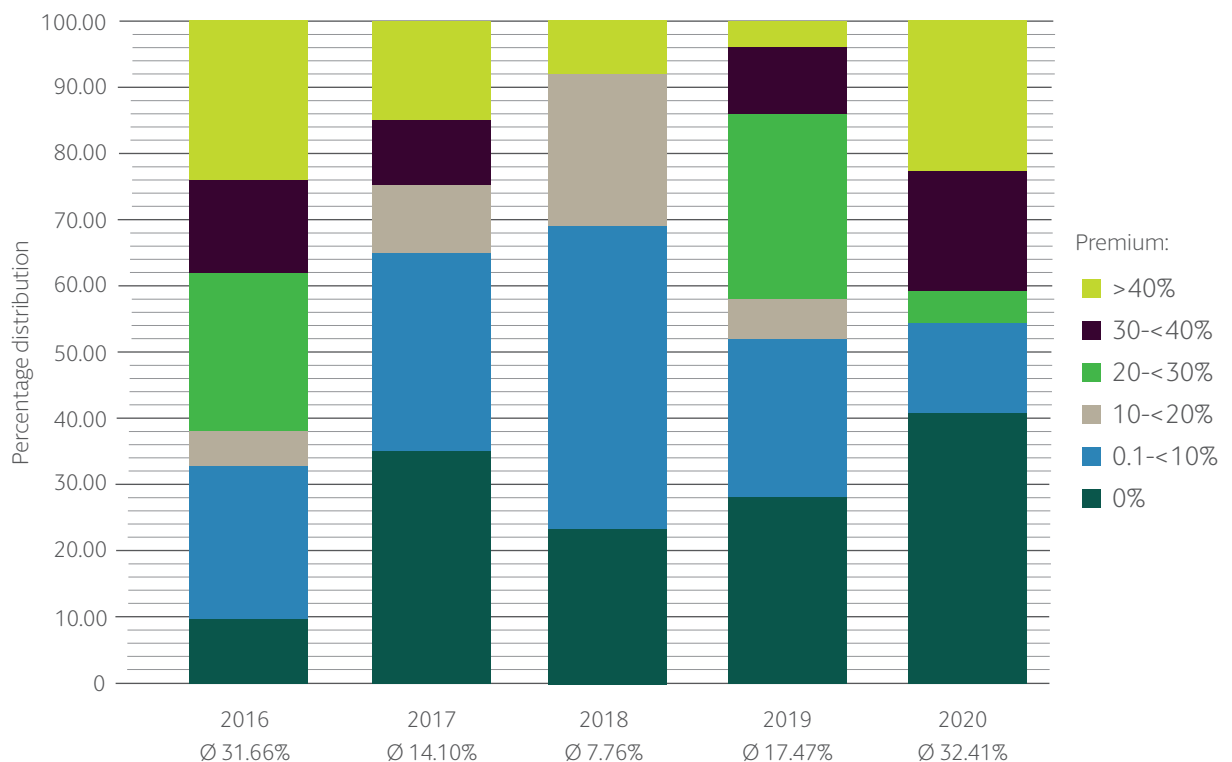
2.5 Offer premium

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

The average (unweighted) offer premium in 2020 amounted to 32.41%. This high figure results primarily from the premium of 242.47% granted to the shareholders of S&O Beteiligungen AG as part of the mandatory offer by BluGreen Company Limited. BaFin was unable to determine a valid three-month average share price on the relevant date, therefore the amount of the consideration had to correspond to the valuation of the company pursuant to sec. 5 para. 4 German Securities Acquisition and Takeover Act-Offer Ordinance (*WpÜG-AV*). Based on this valuation, the bidder was able to determine the premium offer amount, which the management board and supervisory

board of the target company agreed to in their reasoned statements. Without this special case, the average (unweighted) offer premium would amount to 22.40% which also confirms the upward trend since 2018 and is also above the level of the previous year.

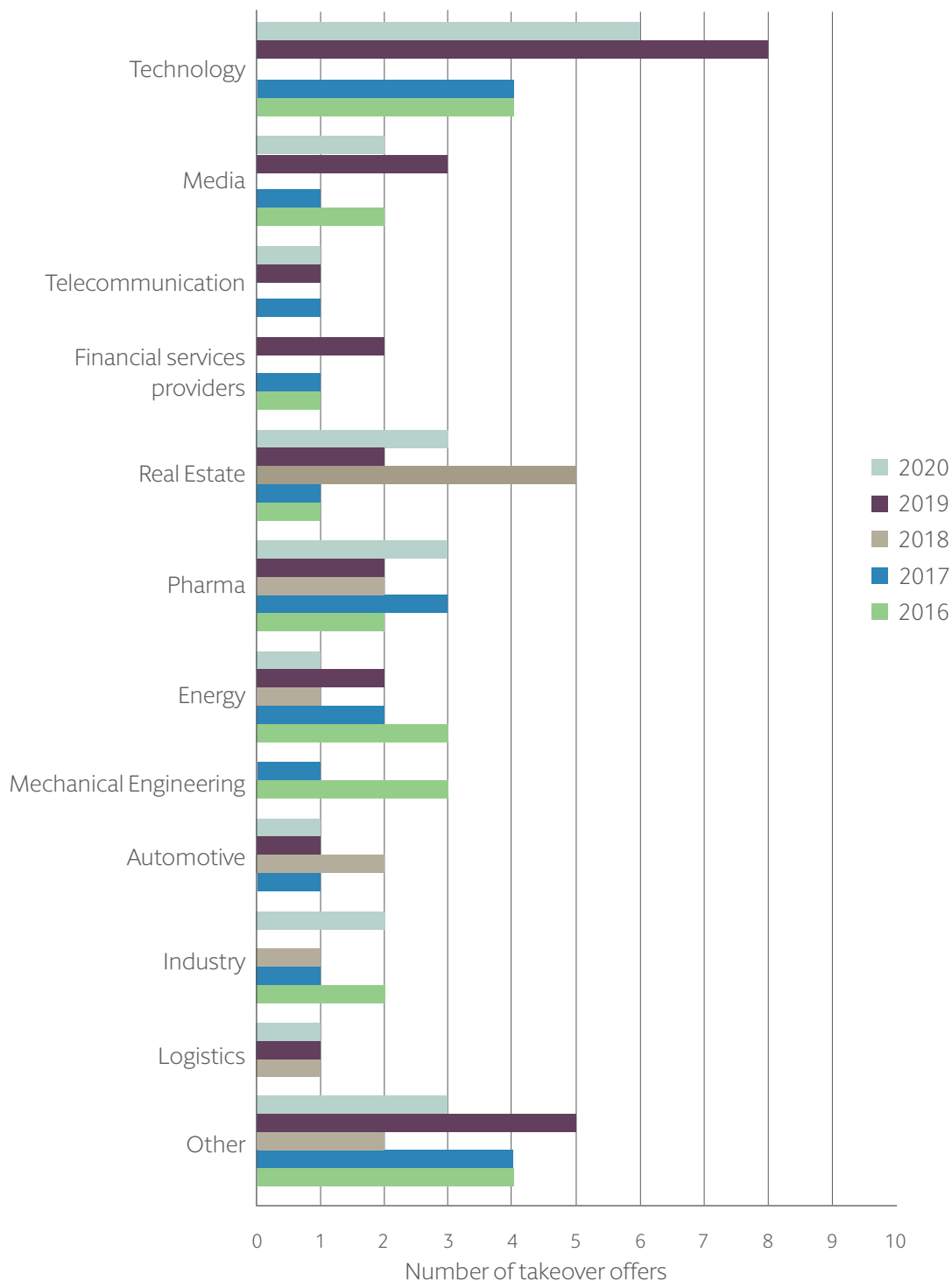
Last year, 55% of the bids offered a maximum premium of 10%. The percentage of premiums of 0% reached a new high of approx. 41%. By contrast, the percentage of premiums of more than 30% increased significantly and also reached a new high of 40%. This demonstrates that the “premium gap”, i.e. low to no premium on the one hand and maximum premiums of more than 30% on the other hand, is drifting apart. This also marks a reversal of the trend observed over the past four years of a falling percentage of premiums above 40%.



2.6 Takeovers by sector

2020 saw once again a continuation of the 2016, 2017 and 2019 trend that the technology sector recorded the highest level of activity in the takeover market. The technology sector accounted for almost a quarter of all public takeovers in 2020.

The second busiest sectors were real estate and pharma. In addition, an even distribution can be seen in the energy, automotive, industry and logistics sectors, while no acquisitions were recorded in the financial services providers and mechanical engineering sectors.



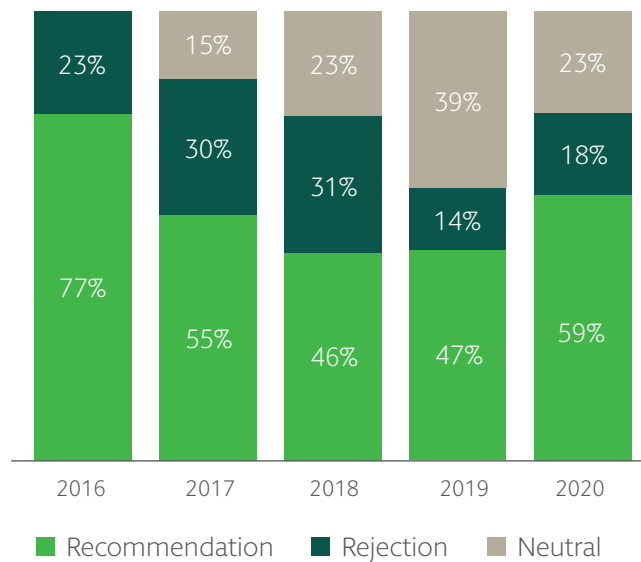
2.7 Management board and supervisory board statements

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

In 2020, 59% of the statements recommended accepting the public offer, whereas 18% recommended rejecting it.

With 23% of the statements expressing a neutral opinion on the offer, this figure decreased significantly from the previous year's figure of 39%.

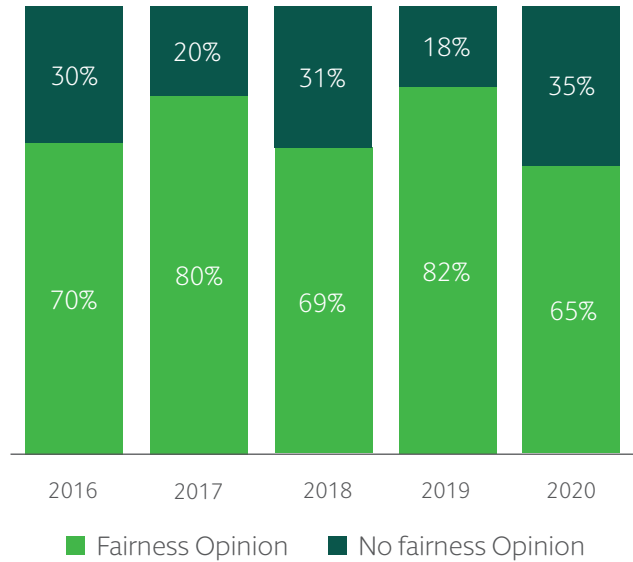
Also, in the past year a common reason given in the event of a neutral statement being expressed was that, while the consideration may seem appropriate, the management board and the supervisory board were not able to conclusively assess the investor's strategic aims. It seems that, over the last years, the strategic background to a bid has become increasingly significant and, as a consequence, the management board and the supervisory board for that reason avoid issuing a clear recommendation.



2.8 Fairness opinions

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

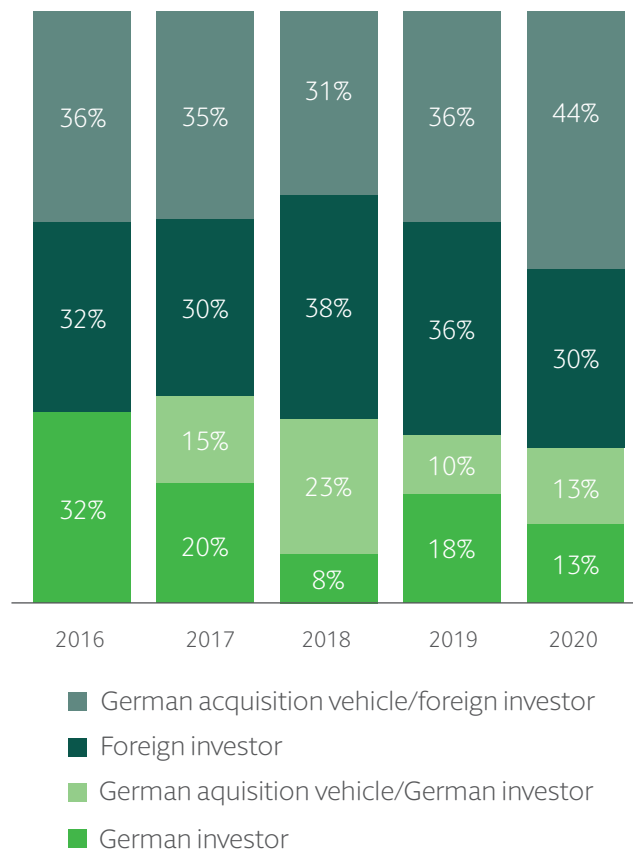
In 2020, management boards and supervisory boards obtained an external fairness opinion for 65% of the offers. This represents the lowest value over the comparative period of the last five years.



2.9 Origin of bidders

In 2020, 74% of the offers came from foreign investors who published an offer either directly or via German acquisition vehicles. Since 2018, this represents a further increase and also the highest value over the comparative period of the last five years.

In contrast, 26% of takeover offers were submitted by domestic companies directly or via a German acquisition vehicle.



3. Profile

3.1 The “takeover battle” over RHÖN-KLINIKUM AG

Back in 2012, the Fresenius Group, through FPS Beteiligungs AG, submitted a takeover offer for RHÖN-KLINIKUM AG at a price of EUR 22.50 per share with a minimum acceptance threshold of 90%. The high minimum acceptance threshold resulted from the (rare) majority requirement of 90% for the adoption of resolutions at the annual general meeting under the articles of association of RHÖN-KLINIKUM AG. Despite the existence of an irrevocable undertaking with the major shareholders Mr. and Mrs. Münch (12.45% of the shares), with an acceptance rate of 84.32%, FPS Beteiligungs AG failed to meet the acceptance threshold. This was due to Asklepios Kliniken Verwaltungsgesellschaft mbH (today: Asklepios Kliniken GmbH & Co. KGaA) having built up a stake of 5.01% which constituted a blocking minority.

Following the failed takeover, the Fresenius Group acquired a large portion of the hospitals from RHÖN-KLINIKUM AG in October 2013 by way of an asset deal. Since the transaction did not require the approval of the annual general meeting, neither the increase in the stake held by Asklepios Kliniken Verwaltungsgesellschaft mbH to ultimately 28.69% nor the entry of B. Braun Melsungen AG with approx. 25.23% of the shares in RHÖN-KLINIKUM AG could prevent it. Subsequently, a deadlock arose between these two major shareholders of RHÖN-KLINIKUM AG. The third major shareholder continued to be Mr. and Mrs. Münch.

The takeover offer submitted by Asklepios Kliniken GmbH & Co. KGaA on 8 April 2020 at a price of EUR 18.00 per share was now successful. The offer was preceded by a share purchase agreements with Mr. and Mrs. Münch, with the Münch Foundation and a joint venture agreement with HCM SE, which is controlled by Mr. Münch. The bidder thus already held directly and indirectly 50.07% of the shares in the target company.

B. Braun Melsungen AG, the second-largest shareholder, tried to prevent the takeover and convened an extraordinary general meeting for that purpose. The aim was to amend the articles of association of RHÖN-KLINIKUM AG so that a 75% majority would be required to pass resolutions instead of the simple majority that had been established in the meantime. Furthermore, Mr. Münch was proposed to be dismissed from the supervisory board. The general meeting took place on 3 June 2020, which led to an extension of the acceptance period pursuant to sec 16 para. 3 WpÜG. However, the proposals failed due to the majority of voting rights held by Asklepios Kliniken GmbH & Co. KGaA and Mr. and Mrs. Münch. Afterwards, B. Braun Melsungen AG declared its acceptance of the bidder's offer. At the end of the additional acceptance period on 6 July 2020, the acceptance rate amounted to 92.58%.

Overview	
Bidder	Asklepios Kliniken GmbH & Co. KGaA
Target company	RHÖN-KLINIKUM AG
Sector	Life Sciences
Acceptance period	Initial by 8 April to 6 May 2020, 24:00 (local time Frankfurt/Main), extended to 17 June 2020, 24:00 (local time Frankfurt/Main) due to the convening of a general meeting (sec. 16 para. 3 WpÜG). Additional acceptance period until 6 July 2020, 24:00 (local time Frankfurt/Main).
Acceptance rate	50.58% (5 May 2020); 83.24% (17 June 2020); 92.58% (6 July 2020).
Minimum acceptance threshold	n. a.
Status	Successful
Over volume (max.)	EUR 859.55 million
Type of offer	Voluntary takeover cash offer
Offer price	EUR 18.00 per share of RHÖN-KLINIKUM AG
Structure of participation	Asklepios Kliniken GmbH & Co. KGaA already held 28.69% of the shares in RHÖN-KLINIKUM AG. In addition, 0.31% were held by its limited partner (Broermann Holding GmbH). As a result of the agreements with the major shareholders Münch described above, the bidder held directly and indirectly a total stake of 50.07% prior to the takeover offer.
Agreements with major shareholders	<p>1. Share purchase agreement with Mr. and Mrs. Münch On 28 February 2020, the bidder entered into a share purchase agreement with Mr. Eugen Münch and Mrs. Ingeborg Münch with respect to a total of 8,294,407 shares (approx. 12.39%) in RHÖN-KLINIKUM AG at a price of EUR 18.00 per share. The share purchase agreement was subject to the condition precedent of the merger control decision.</p> <p>2. Share purchase agreement with the Münch foundation The bidder entered into another share purchase agreement with the Münch foundation with respect to approx. 1.08% of the shares in RHÖN-KLINIKUM AG. The share purchase agreement was subject to the condition precedent of the merger control decision.</p> <p>3. Joint venture agreement with HCM SE On 28 February 2020, the bidder entered into a joint venture agreement with HCM SE, which is controlled by Mr. Eugen Münch and holds 5,097,578 shares (7.61%) in RHÖN-KLINIKUM AG. The parties have undertaken to contribute all RHÖN-KLINIKUM shares held by them to AMR Holding GmbH as a joint venture company. The bidder holds 83.37% of the shares in AMR Holding GmbH, while HCM SE holds the remaining shares. The contribution agreements are each subject to the condition precedent of the merger control clearance by the German Federal Cartel Office. The shares in the target company acquired by the bidder in the course of the takeover are also to be contributed to AMR Holding GmbH. The joint venture agreement has an initial fixed term until 31 December 2025.</p>
Statement by the management board and supervisory board	The management and supervisory board have recommended accepting the offer.
Financing	Debt capital
Friendly/hostile	Friendly
Closing conditions	Merger control clearance by 31 December 2020
Links	Offer document dated 8 April 2020 Statement by the management board dated 22 April 2020 Statement by the supervisory board dated 22 April 2020 Addition to the statement by the management board dated 27 May 2020

3.2 The failed takeover of QIAGEN N.V.

On 18 May 2020, Quebec B.V., a wholly owned subsidiary of the US technology company Thermo Fisher Scientific Inc., published a takeover offer for QIAGEN N.V. at a price of EUR 39.00 per share with a minimum acceptance threshold of 75%. Despite the support of the offer by the management board and the supervisory board of QIAGEN N.V., the minimum acceptance threshold of 75% was subsequently not reached.

Therefore, Quebec B.V. published an amended takeover offer on 17 July 2020 at a price of EUR 43.00 per share with a lowered minimum acceptance threshold of 66.67%. However, due to the resistance of several shareholders led by the hedge fund Davidson Kempner, which held an 8.00% stake at the time, this threshold was not reached. At the end of the additional acceptance period, the acceptance rate amounted to approx. 47%. In particular due to the COVID-19 pandemic,

the associated high demand for COVID-19 tests produced by QIAGEN and the resulting expectation of a significant improvement in the company's business prospects, the majority of shareholders considered the offer consideration to be too low, even after the increase. As Thermo Fisher was not willing to increase the consideration again, the takeover failed.

Although QIAGEN has its registered seat in the Netherlands the offer was subject to German takeover law, due to the fact that their shares are listed on an organized market in Germany. Pursuant to sec. 1 para. 3 WpÜG in conjunction with sec. 2 German Securities Acquisition and Takeover Act- Applicability Regulation (*WpÜG-AnwendV*), the offer had to comply with the requirements of the German Takeover Act with regard to the consideration, the content of the offer document and the offer procedure.



Overview	
Bidder	Quebec B.V.
Target company	QIAGEN N.V.
Sector	Biotechnology
Acceptance period	Initially by 18 May to 27 July 2020, 24:00 (local time Frankfurt/Main), extended to 10 August 2020, 24:00 (local time Frankfurt/Main) due to an amended takeover offer (sec. 21 para. 5 WpÜG).
Minimum acceptance threshold	75% / 66.67%
Acceptance rate	47.02%
Status	Not successful
Over volume (max.)	Approx. EUR 9.83 billion
Type of offer	Takeover offer
Offer price	EUR 43.00 per share of QIAGEN N.V.
Structure of participation	Quebec B.V. is a wholly owned subsidiary of Thermo Fisher Scientific Inc. (NYSE: TMO, "Thermo Fisher"). At the date of publication of the offer document, neither Quebec B.V. nor any person acting in concert with Quebec B.V., including Thermo Fisher, held any shares in QIAGEN N.V.
Business combination agreement	On 3 March 2020 QIAGEN and Thermo Fisher have concluded a business combination agreement, which was adjusted in accordance with the amended takeover offer on 16 July 2020.
Competing offer	No competing offer
Statement by the management board and supervisory board	In the course of the business combination agreement, the management board and the supervisory board have undertaken to recommend accepting the takeover offer. Accordingly, the recommendation was made in the statement and furthermore, the management board and the supervisory board reaffirmed the recommendation in the additional statement dated 22 July 2020.
Financing	Equity and debt capital
Friendly/Hostile	Friendly
Closing conditions	<ul style="list-style-type: none"> • various merger control clearances by 27 July 2021; • minimum acceptance threshold of 66.67%; • no adverse change of the statement by the management board and supervisory board of QIAGEN; • no capital measures or amendments to the articles of association on the part of QIAGEN; • no insolvency of QIAGEN; • no material adverse impact on the consolidated results of the QIAGEN Group; • no material compliance breach by QIAGEN.
Links	Offer document dated 18 May 2020 Amended offer document dated 20 July 2020 Statement by the management board and supervisory board dated 18 May 2020 Addition to the statement by the management board and supervisory board dated 22 July 2020

4. Recent legal developments in the takeover law

Compensation agreement as subsequent acquisition pursuant to sec. 31 paras. 5, 6 WpÜG – STADA-takeover, judgement of the Higher Regional Court of Frankfurt dated 7 July 2020 – 5 U 71/19

(a) Facts

The judgement confirms and supplements last year's decision of the District Court of Frankfurt (3-05 O 138/18) as previous instance regarding the takeover of STADA AG. In April 2017, financial investors Bain Capital and Cinven submitted a takeover offer for STADA AG via the acquisition vehicle "Nidda Healthcare Holding AG".

However, this takeover offer was unsuccessful because the minimum acceptance threshold was not reached. One of the reasons was that the hedge fund Elliott acquired approximately 12% of the shares of STADA AG during the first takeover offer. In July 2017, Nidda Healthcare Holding AG submitted a new offer with the consent of STADA AG and the approval of BaFin. In this new offer, the acceptance threshold was lowered to 63% and the offer price was increased slightly to EUR 66.25 per share. With an acceptance rate of 63.87%, the offer was just about successful. In the second offer document, the bidder stated that it is intended to conclude a domination and profit transfer agreement with STADA AG.

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

tender shares on the agreed compensation offer. The tender was only made in response to a later delisting offer by a person acting in concert with the bidder on 11 October 2018.

The plaintiff had submitted its shares in the context of the second takeover offer on 9 August 2017 for an offer price of EUR 66.25. With its complaint, it wanted to recover the difference between this amount and the minimum compensation of EUR 74.40 agreed in the domination and profit transfer agreement. The complaint was based on a claim for additional payment under sec. 31 para. 5 sentence 1 or sec. 31 para. 6 WpÜG and, alternatively, on a damage claim in tort under sec. 12 para. 1 WpÜG.

(b) Legal considerations

Accordingly, the Higher Regional Court of Frankfurt had to assess the question of whether a relevant subsequent acquisition within the meaning of sec. 31 para. 5 or sec. 31 para. 6 WpÜG had taken place.

It held that there was no claim to an additional payment within the meaning of sec. 31 para. 5 sentence 1 WpÜG. It confirmed the opinion of the previous instance that, with regard to the agreement between the bidder and Elliott, the exception under sec. 31 para. 5 sentence 2 WpÜG applies, according to which there is no relevant subsequent acquisition if shares are acquired in connection with a statutory obligation to grant compensation to shareholders of the target company. Regardless of the agreement concluded with Elliott, the court argued that this was in essence a statutory compensation obligation of the bidder pursuant to sec. 305 para. 1 AktG, which was covered by the exemption. Furthermore, it was held that in this case the preconditions for a subsequent acquisition pursuant to sec. 31 para. 5 sentence 1 WpÜG were not fulfilled, as a tender of shares by Elliott had not actually been made for the agreed compensation, but only in connection with the later delisting offer.



The Higher Regional Court of Frankfurt also ruled out a claim under sec. 31 para. 6 WpÜG. Confirming the considerations of the previous instance, the court determined that the compensation agreement did not provide a legal basis for demanding the transfer of shares. The agreement could not be understood as a call-option, but at best as a put-option. Since in the case of put-option the bidder has neither a call-right nor the possibility to effect the tender itself, put-options could, according to the meaning and purpose of the provision, at most fall under sec. 31 para. 6 sentence 1 WpÜG if they were already “in the money” at the time of their agreement, which had not been the case here. Furthermore, the court pointed out that with regard to the claim under sec. 31 para. 6 sentence 1 WpÜG, the exception of sec. 31 para. 5 sentence 2 WpÜG applied.

Going further than the previous instance, the Higher Regional Court also addressed a possible liability claim due to incorrectness or incompleteness of the offer document pursuant to sec. 12 para. 1 WpÜG, but denied this in the end. At the time of its publication, the offer document was neither incorrect nor incomplete because the compensation agreement was concluded later. Furthermore, the claim could not be based on the fact that the offer document might have subsequently become incorrect or incomplete due to the conclusion of the compensation agreement between the bidder and Elliott. An obligation of the bidder to subsequently update the information provided in the offer document was rejected by the

court. The question whether such an obligation to update exists is disputed in legal literature. The Higher Regional Court of Frankfurt has now taken a clear position in this regard.

For a potential claim for damages under fraud pursuant to sec. 823 para. 2 of the German Civil Code (*BGB*) in conjunction with sec. 263 of the German Criminal Code (*StGB*), the court found – as did the Regional Court – that there was no causality as the plaintiff had already tendered its shares prior to the conclusion of the compensation agreement.

(c) Practical implications

The ruling of the Higher Regional Court Frankfurt on sec. 31 para. 5 and 6 WpÜG is not fully convincing and leaves some questions unanswered. However, it could have a signal effect for the future with regard to the possibilities for bidders to deal with opportunistic hedge funds. In case such compensation agreements become common practice, this could lead to offer acceptance thresholds not being reached in the future if activist minority shareholders are involved in the target company. In such cases, the other shareholders would always have to assume that a more favorable compensation agreement exists than the takeover offer. They might therefore tend to not accept the offer but to speculate on a higher compensation.

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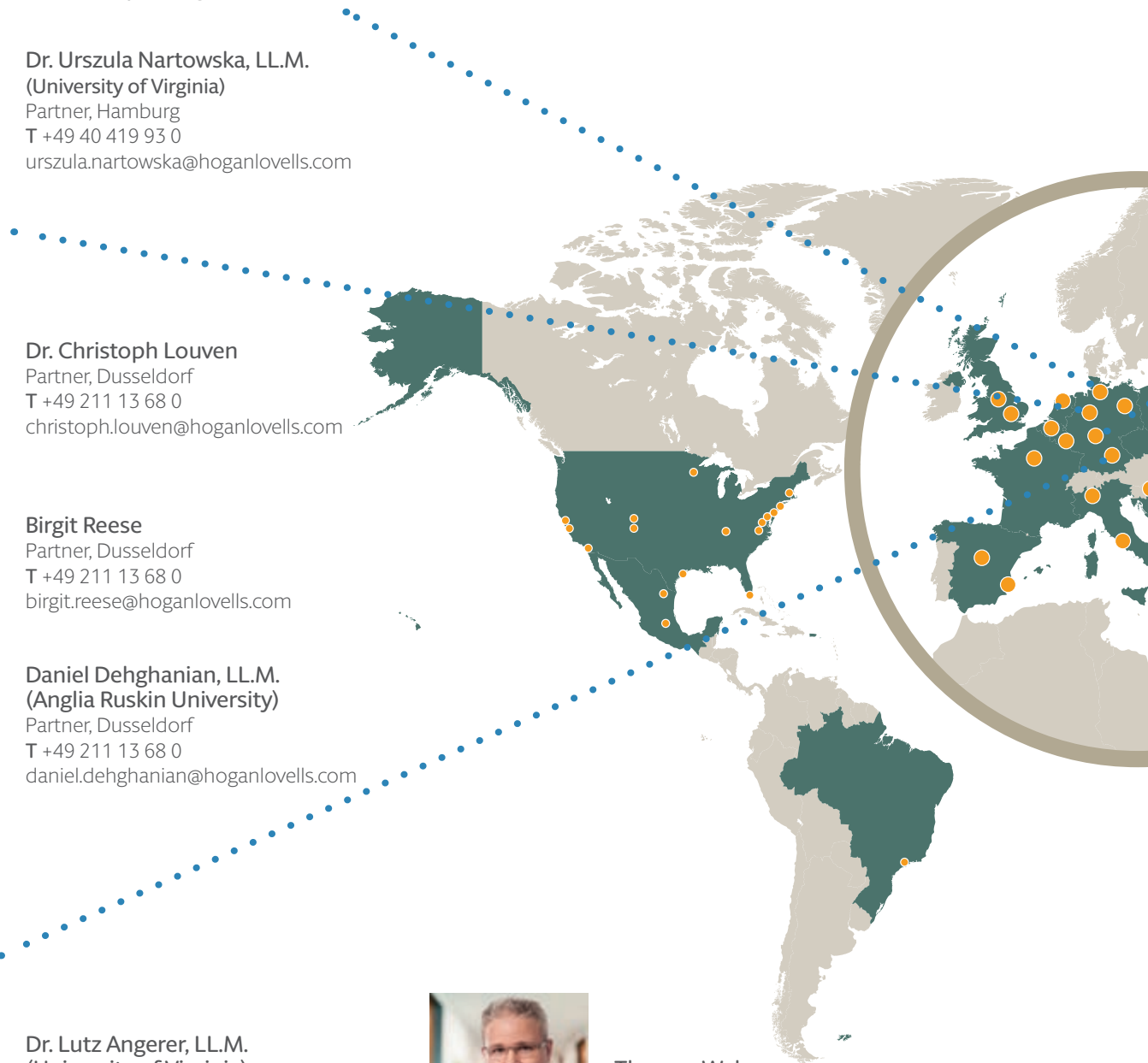
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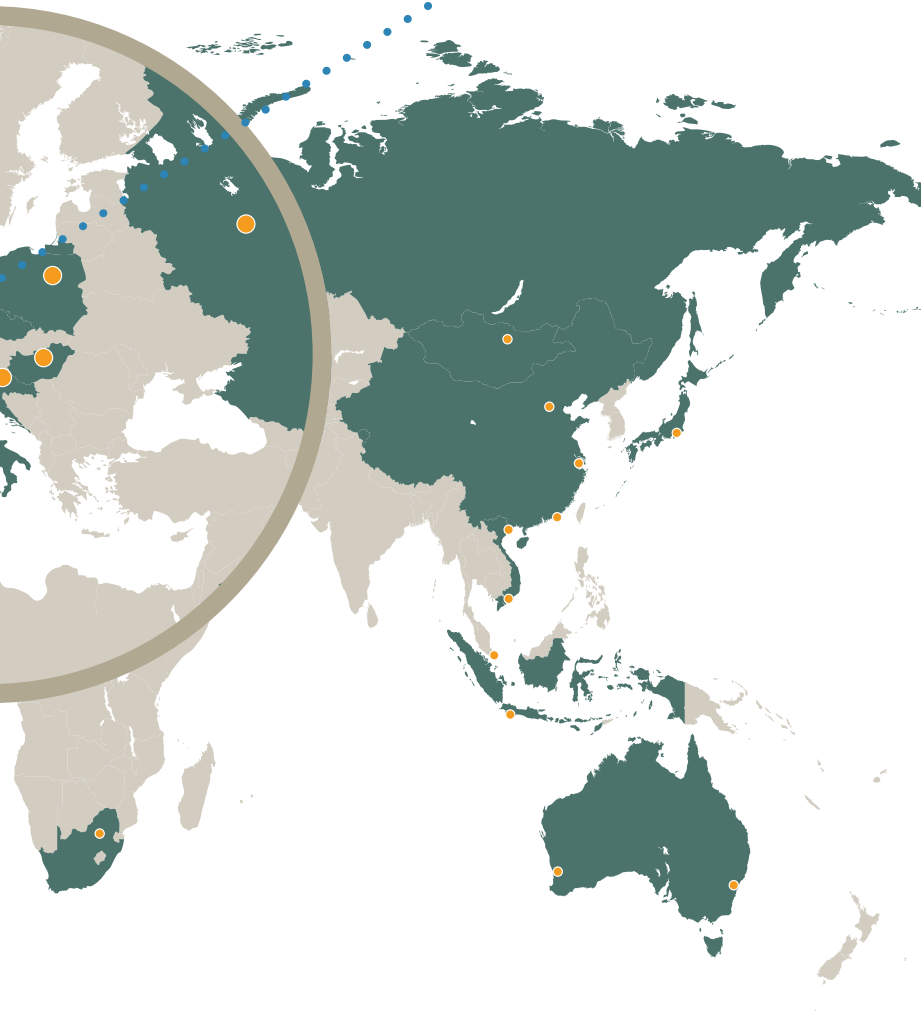


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