MuMAC
MUNICH M&A CONFERENCE

2019 CROSS-BORDER M&A AND
PRIVATE EQUITY INVESTMENT CONFERENCE

MuMAC 2019 HIGHLIGHTS

10 Years of Growth — What Comes Next?

September 24, 2019

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MuMAC 2019

Dear clients, friends and conference participants,

On September 24, 2019, McDermott Will & Emery hosted the 9th annual Munich M&A and Private Equity Conference (MuMAC), welcoming approximately 300 participants representing financial investors, family offices, operating companies and corporate finance advisors.

The insightful discussions and engaged participation of the attendees helped to make this year's MuMAC a great event. Our 2019 conference saw thought provoking discussions on economic, political, financial and legal developments in the M&A and Private Equity markets. The topics that were debated included "Transatlantic Economy on a Free and Fair Footing", "The World in Disorder – End of the Growth Cycle?", "M&A Process Design for the 21st Century", the M&A and Private Equity market in 2019 and the M&A market cross-border from the United States and within Europe and from and into Asia. It covered the sectors Automotive and Fintech Industry, Life Sciences, Health Care and Automated Intelligence, and touched on the investment of Evergreen Funds, Transaction Financing, IPO, Post Transaction Value Creation and Crisis and Pre-Crisis Management.

McDermott is very thankful to our co-sponsors PwC, AlixPartners and VTC and to our conference partners Acquinex, AON, DC Advisory, Drake Star Partners, Helbling, Lincoln, Merrill DatasiteOne, Oaklins, Raymond James and Serafin.

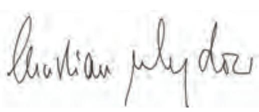
We would like to extend our sincere thanks to our keynote speakers, Consul General Meghan Gregonis, Dr. Daniela Schwarzer, Prof. Dr. Thorsten Feix, Prof. Dr. Wilhelm Haarmann and Jens Haas.

We are grateful to our various panel participants for their contributions and discussions, which are described in detail in the following pages.

We are happy to confirm that MuMAC will return in 2020, will celebrate its 10th anniversary and will again be hosted at the Bayerischer Hof.

MuMAC 2020 will once again feature detailed and stimulating discussions on developments in the M&A and Private Equity world, as the experts on the panels will debate recent changes and what the future may bring.

We invite you to note the date and location of next year's conference, Tuesday, September 22, 2020 at the Hotel Bayerischer Hof, and look forward to seeing you then. Until then, if we can be of any assistance, please do not hesitate to contact us.



CHRISTIAN VON SYDOW
Conference Co-Chair
csydow@mwe.com
+49 89 12712 141

DR. NIKOLAUS VON JACOBS
Conference Co-Chair
njacobs@mwe.com
+49 89 12712 231

DR. NORBERT SCHULTE
Conference Co-Chair
nschulte@mwe.com
+49 211 30211 350

Opening Statement by
Meghan Gregonis,
US Consul General, Munich

OPENING STATEMENT

PUTTING THE TRANSATLANTIC ECONOMY ON A FREE AND FAIR FOOTING

The honor of opening the ninth Munich Cross-Border M&A and Private Equity Investment Conference was given to Meghan Gregonis, General Consul of the United States in Munich. The topic of the opening statement—putting the transatlantic economy on a free and fair footing—aptly complemented the focus of the conference: "10 Years of Growth – What Comes Next?", as trade tensions these days seem to have an enormous impact on the markets.

Consul General Gregonis' remarks focused on the state of the trade relationship between the United States and the European Union, a partnership with a rich history of more than 70 years. After World War II, the institution of a free trade system not only lifted millions out of poverty and increased economic vitality, but it also led to lower prices, greater variety and quality, and to faster growth. However, Gregonis explained the US view that the current trade situation is neither free nor fair, as the core benefits of free trade—a better allocation of resources and welfare for both trading partners—are threatened. At the moment, the European Union imposes higher tariffs than the United States on a range of products, including cars and agricultural goods. Furthermore, other US products never make it to European markets due to regulatory restrictions, resulting in a goods trade deficit for the United States of USD 69 billion with Germany and USD 169 billion with the European Union. Gregonis noted that lower trade potential also limits innovation and therefore growth potential on both sides of the Atlantic.

Chaired by
Dr. Nikolaus von Jacobs,
McDermott Will & Emery

M&A AND PRIVATE EQUITY MARKET 2019

The six panelists in this discussion, Dr. Florian von Alten, Managing Partner at Oaklins Germany; Carsten Hagenbucher, Managing Director at Charterhouse Capital Partners; Dr. Sven Oleownik, Partner and Head of Germany at GIMV Germany; Norman Rafael, Chief Corporate Development & Investor Relations Officer of Armacell International; Dominik Schwarz, Director at EMH; together with panel head Dr. Nikolaus von Jacobs, Partner at McDermott Will & Emery, discussed the development of the M&A and the Private Equity Market in 2019.

The transaction numbers in the first half-year compared to the numbers last year are showing that the activity has decreased by close to 40% in the European Market. Especially transactions with German participation have gone down 18% in the first half-year of 2019 in comparison to the previous year. Many uncertainties such as Brexit and trade tensions are the main reasons for this decrease. The automotive industry in particular is concerned regarding this alarming trend. Ignoring these facts led to a tough awakening for some investors this year.

Nonetheless, the panelists agreed that the music is still playing, albeit less aggressively. If there are no deals to be done in Germany/Europe, investors are looking elsewhere (e.g. in Asia). To cope with this negative economic trend, many investors are focusing heavily on the digitalization industry as these companies have a great need for funding so they can develop and implement new technologies.

The current economic situation in Europe results, among other things, from the political situation in the US. Politics have an impact on M&A. The Trump administration continues to make it more difficult to do acquisitions in the US. Uncertainty about new tariffs are making things worse.

The panel turned towards the situation on the Chinese market, where just a few years ago, the structures were not quite competitive. But over time the Chinese have improved their systems significantly. As a result of trade tensions between the US and China, many Chinese companies and investors are turning their attention to Europe, also with the view to conquer the Chinese market with German products, especially in the Chinese consumer market. The Chinese are seen as partners rather than as competitors in Germany. However, it is of essence to find the right partners for your particular business. In this context, some specific and challenging acquisitions made were discussed on the panel. Furthermore, light was shed on the differences between state owned and private companies, the main difference being that state-held companies are less flexible and more difficult to understand regarding their processes than private ones.

Overall, the panelists agreed that in spite of some crisis symptoms, one could still be optimistic about the economic future, noting especially how the Chinese market has significantly changed over time being more attractive now.

From left to right: Dr. Sven Oleownik, GIMV Germany; Dominik Schwarz, EMH; Carsten Hagenbucher, Charterhouse Capital Partners; Dr. Florian von Alten, Oaklins Germany; Norman Rafael, Armacell International; Dr. Nikolaus von Jacobs, McDermott Will & Emery

Keynote by
Dr. Daniela Schwarzer,
German Council on Foreign Relations

KEYNOTE

THE WORLD IN DISORDER— END OF THE GROWTH CYCLE?

With her keynote speech, Dr. Daniela Schwarzer, director of the German Council on Foreign Relations, gave the audience an overview on the current geopolitical development in Europe and the world, and its impact on the economy. Following is a summary of the keypoints.
To make sure that a dialogue between companies and policy makers is actually happening, institutions like the German Council on Foreign Relations are needed to react to the fast-developing world.
This dialogue is important, as we live in a world that gets more and more risky and insecure. Business is already adjusting to these geopolitical and geo-economics challenges and changes; politics has to do so, as well. But, currently, German and European politics are struggling to adapt to these developments.
Also, we have to learn that the stability and the shared Western value system that we have thought anchored our environment is not as sound as we thought.
The free trade market and the peaceful resolution of conflict were standards on which we were able to rely in the past. But the world in which we live has seen a return to major conflicts.
Of key importance to continue living with these shared values are transatlantic relations, the transatlantic trade and the transatlantic dialogue.
Difficult points from a European or German point of view can be the escalating conflict between the United States and China or the question of how to deal with the problems around climate. Another big point is security and the question whether Germany should spend 2% of its BIP to strengthen security. Regarding these points, common ground has to be found to make sure that problems can be solved together and in a bilateral way.
An important matter is on how to deal with China. There is the new idea to bring the heads of all 26 European Union governments together with the Chinese administration, which can get difficult, because China is a polarizing matter in the European Union.
The French president, Emmanuel Macron, took a first step in inviting Jean-Claude Juncker and Angela Merkel to meet the Chinese president.
The relationship between the United States and China is of key importance for the development and competitiveness of Europe.
Another big player in this context is Russia. It is maybe less important from an economic standpoint, but more from a political and security perspective. Russia has violated several European and international norms. How has the relationship with Russian been brought forward? Given the behavior of Russia regarding hacks, fake news or cybercrimes, Europe has to find balance between pushing back and finding the constructive dialogue with Russia. At the end of the day, Russia is still a neighbor that has to be dealt with, but it is also clear that rules have to be made and a clear border of what is acceptable has to be shown.
Another problem in our world is the current rise of populism. To handle all of these problems, it is of key importance to manage international politics, domestic politics and economic competitiveness all together. The balance has to be found again—also in the social way, to not leave someone behind.
All these points have big influence on the question of the prospects of economic growth worldwide.
Whether the Eurozone is strong enough to handle a crisis like 2007/2008 is questionable. The European Union still has a lot of work to do and can be seen as an unfinished house. But at the same time, a lot of projects are on track that will strengthen the European Union for the future.
After the keynote speech, Mrs. Schwarzer also responded to a question from the audience about how Germany's role in Europe has to be seen as Emmanuel Macron and France are more and more taking the leading role.
The roles in the European Union and the Franco-German relationship are changing. The weaker French government from past days is changing to be more pushing forward and enthusiastic since the election of Macron, and Germany's position is getting less strong with a fragile domestic coalition. It will be interesting also to see the Franco-German summit in October: Mrs. Schwarzer expects there will be a push from France to Germany for discussing high politics and strategically important questions.

Chaired by
Sarah Antor,
Raymond James Financial

CROSS-BORDER M&A FROM AND TO THE UNITED STATES AND WITHIN EUROPE

William F. Detwiler, General Partner at Fernbrook Capital Management; Dr. Michael Drill, CEO and Managing Director at Lincoln International; Tom Sauermilch, Partner at McDermott Will & Emery; and Heather M. Schroder, Director, Senior Legal Counsel Mergers & Acquisitions, Corporate Governance at Robert Bosch together with panel head Sarah Antor, Managing Director and COO Investment Banking Europe at Raymond James, discussed Cross-Border M&A from and to the United States and within Europe.

The panel dove right into the different effects that cross-border investments have produced in the last few years: There has been a significant shift in the market away from a predominance of global players towards smaller, mid-market companies who are the new drivers in transnational investment schemes. They boost a well-structured organization, high-value resources and abide rigidly to due diligence-requirements.

With this evolution, new issues arise for the new mid-market players to deal with: Heather M. Schroder gave an example of the automotive industry, which is no longer homogenous, but rather has changed into a mobility service provider, thus entailing a complete market change. Innovation is a disruption that necessitates more co-investments, partnering and, effectively, more M&A-activity.

Tech-driven brand advancements have produced new classes of investors which need to concentrate their activity on early investments—predominantly series A and B-investments—in order to gain from the operational expertise. Dr. Michael Drill focused on this path of thoughtful growth, which he has been observing as an advisor throughout the past years: Large transactions from Europe—driven by Germany—have been success stories, often resulting in 70%-takeovers, but also vice-versa, there has been a strong deal-flow from the US into Member States of the European Union. In view of the ongoing trade war and the impact of geopolitical problems, the panel also discussed the increase of China's importance in international investments, which can be characterized as equally reciprocal, as the German Mittelstand is rapidly taking the opportunity to invest in the Asian country.

The panel identified the sectors continuing to drive cross-border investments to be software, healthcare, life sciences and mobility, and evoked the means of tech implementation available to businesses from a corporate perspective. Inhouse experts are crucial and can be organized either as centralized separate divisions or can be embedded horizontally into existing teams, thus synergizing in-depth at an early stage.

Tech as an investment sector can be seen as difficult because of the critical impact on investments of any caliber, pushed by data regulation requirements and, above all, the new GDPR. Corporate governance is as important as ever and disrupts companies fearing less growth. Especially small companies need to adapt in order to remain attractive also to public investors who don't show any tolerance concerning diligence requirements. Statistics are not showing any downwards trend at the moment. In a mid-term approach, the panelists expect investments in the US to pay out, notwithstanding the challenging situation.





From left above to right bottom: Dr. Michael Drill, Lincoln International; Tom Sauermilch, McDermott Will & Emery; Sarah Antor, Raymond James Financial; Heather M. Schroder, Robert Bosch; William F. Detwiler, Fernbrook Capital Management

Chaired by
Ding Han,
McDermott Will & Emery

CROSS-BORDER M&A FROM AND INTO ASIA

Jin Chen, CEO at SINO-CEEF EUROPE; Yao Sun, Investor Relations Manager at Haier Smart Europe, Mei Wu, Managing Director at Joyson Europe and Hui Zhang, Managing Director at Nio; together with panel head Ding Han, Foreign Counsel at McDermott Will & Emery discussed recent developments in Cross Border M&A from and into Asia.

The panelists outlined their analysis of the current situation regarding four key questions. First, they evaluated the tightening AWG (foreign trade law) and upcoming EU regulation with respect to M&A with Asia. Then, they discussed the clash of cultures that impact post-merger integration. They further shared their thoughts about the internal decision making within Chinese enterprises regarding investment-choices and gave reason and outline to the Chinese outbound investment in Germany.

The panelists started by each giving their empirical opinion about Chinese outbound investments in Europe and in particular in Germany, especially considering the current market frame of trade wars, changes in regulations and the tightening of trade laws, on both sides. While the Chinese outbound investment has dropped significantly in recent years, it was, however, emphasized that there has been a 2.7% increase in investment in recent weeks and that the downward trend appears to be turning. The panel continued to discuss that among all investments into Europe only 3% comes from China including Hong Kong and Macau. However, an increase in consumer sector investments was noted in the context of a stronger focus of Asian investments in Europe.

To comment on the reasoning behind the Chinese decision making regarding collective choices of investment towards Europe and its framework of regulations and complications, the Chinese government was compared with a "helicopter parent" that intends to make investments as safe and sound as possible for Chinese businesses even if that means limiting good investment opportunities.

The panel then discussed the status and changes within the automotive sector. It was explained how people and businesses got used to consistant substantial growth since the great recession in the automotive market, but had to cope with severe decreases in the past year. A prognosis of stagnation rather than decline in the next year is seen stated despite the macroeconomic decrease in the automotive industry and the several reasons for pressure on the Chinese car industry.

The panelists collectively agreed, however, on the newfound focus of Asian investment and M&A towards the German market, mainly due to the US-Chinese trade tensions. In their opinion, this investment change will continue to grow even though Germany has in fact tightened its rules what led to many discussions in China.

The panel continued to discuss the reasoning behind the current general Chinese investment decisions and it was explained that many Chinese investors are looking for critical economic structure when considering business investments. Chinese investors are, especially now, focussing strategic investments and concentrating on transaction certainty.

Considering the frequent conflicts and problems with post-merger integration, it was reinforced that nationality is and should not be a necessary consideration when talking about investment options and opportunities.

The panel concluded with a reinforced statement that the Chinese decision of investment towards Germany is solely strategically based and offers many opportunities for business and investment that have not yet been explored, but will most definitely in the upcoming years.

From left to right: Yao Sun, Haier Smart Europe; Hui Zhang, Nio; Dr. Mei Wu, Joyson Europe; Jin Chen, Sino-Ceef Europe; Ding Han, McDermott Will & Emery

Chaired by
Dr. Rainer Bizenberger,
AlixPartners

CRISES AND PRE-CRISIS MANAGEMENT

Together with the panel lead, Dr. Rainer Bizenberger from AlixPartners in Munich, seven panelists discussed current issues on Crisis and Pre-Crisis Management. The panelists in this discussion who participated were Dr. Uwe Goetker, Partner at McDermott Will & Emery in Düsseldorf; Jan Groß, responsible for restructuring at UniCredit Bank; Andreas Jaufer of Robus Capital Management; Daniel Jürgenschellert of Helbing Business Advisors in Düsseldorf; Alexander Reus, Partner at anchor Rechtsanwälte and active in insolvency advice; and Samuel E. Dewey, Counsel at McDermott Will & Emery in Washington.

The panel focused on two industry hotspots: retail and automotive industries. The central question: How can a company prepare for an impending crisis? The panel initially focused on the automotive industry. All divisions and suppliers are affected by the structural change in this industry. “It’s a complete circle,” said Daniel Jürgenschellert. This also applies to tool producers, steel producers and foundries—simply every part of the value chain. This development raises complex questions about financing: Many of those affected in the automotive industry would need more capital in the future, Andreas Jaufer explained. Dr. Goetker underlined this: “Automotive industry does face several issues. We do have an existing business, but the financing is difficult.” A large part of the problems lie in the future, as Dr. Goetker explained: “The business is not affected yet.”

As part of comprehensive restructuring processes, the automotive industry will be confronted with problems. The restructuring of automotive industries, the panelists agreed, will be driven by the Original Equipment Manufacturer. Nevertheless, not all companies on the market will be saved. At the end of the panel, the participants broadened their view and asked how to prepare to overcome some crisis scenarios. Above all, Daniel Jürgenschellert appealed to the companies: “Companies have to expend the risk management”. In German medium-sized companies, CEOs and CFOs have a good knowledge of their customers that should be used. In many cases however, they do not have in mind how big and flexible their asset base is. According to Alexander Reus, better early warning systems in companies would be particularly useful. Specifically, Plan B scenarios, i.e. alternative plans in the event of a crisis, should be thought through better in order to prevent a possible crisis. Dr. Goetker concluded, “To all business leaders I would say: Winter is coming.”

From left above to right bottom: Dr. Uwe Goetker, McDermott Will & Emery; Andreas Jaufer, Robus Capital Management; Daniel Jürgenschellert, Helbing Business Advisors; Alexander Reus, anchor Rechtsanwälte; Jan Groß, UniCredit Bank; Samuel E. Dewey. McDermott Will & Emery; Dr. Rainer Bizenberger, Alix Partners

Chaired by
Dr. Simon Weiß,
McDermott Will & Emery

PRIVATE EQUITY AND PUBLIC MARKETS: HOW DO THEY GO TOGETHER?

The four panelists in this discussion: Nadja Picard, Partner at PwC Germany; Christoph Großekämpfer, Managing Director at Mutares; Christian Kolodinski, Director at Rothschild Advisors; together with panel head Simon Weiss, Partner at McDermott Will & Emery, discussed how private equity and public markets go together.

First, the panel focused on the recent developments in the IPO market in 2019. They asserted that the number of IPOs decreased by about 40–45% compared to 2018 at the same time. The reasons for this trend can be found in relatively weak expectations for economic growth in Europe. Uncertainty of Brexit and trade wars, especially between the United States and China, generated this reserved mood. The big evidence for hesitation in European financial markets can be seen in the leaving of fund money out of Europe and toward the US market.

But the outlook for the rest of 2019 and the beginning of 2020 isn't as pessimistic as it seems at first glance. The panelists agreed that there is still money in the market and the companies that come to the market are successful because there is a need for fresh capital. The IPO of Teamviewer is an example of this.

Then the panel turned toward the question of what "IPO Readiness" means. They concluded that first a company has to understand what its equity story could be and back that up with numbers. Besides the numbers, it is also important to focus on the HR policy and the IT readiness. It is not to your advantage if important people are leaving the company right before the IPO. In addition to corporate readiness, it is also of great value to not lose sight of two other aspects. One is commercial readiness, which means generating market appetite at potential investors. The other aspect—one that is often underestimated in the beginning—is the execution readiness. Hiring the right advisor is an example of this pillar. All in all, it is important to develop the right set-up for your company. Normally an IPO lasts six months, but the three pillars should be built beforehand.

Lastly, the panel outlined the difference between M&A processes and IPOs. The main difference is the audience. In the M&A process, the advisor presents you a group of potential parties, you zoom in, and then at the end there are only one or two parties left that are worth digging deeper. In the IPO process, you have to hit the nail on the head because you speak to an anonymous mass. You can only tell the story once and it has to fit. For this, you need different skills and attitudes in your management for M&As. Mutares, itself a listed company, preferred an IPO to a trade sale because of the publicity and the transparency it entails.

In the end, all panelists agreed that the work in conjunction with an IPO must not be underestimated and that you shouldn't burn your team because sometimes the IPO could delay to the next quarter.




From left to right: Christoph Großekämpfer, Mutares; Christian Kolodinski, Rothschild Advisors; Nadja Picard, PwC Germany; Simon Weiss, McDermott Will & Emery

Keynote by
Prof. Dr. Thorsten Feix,
Augsburg/Munich/Harvard/Geneva

KEYNOTE

END-TO-END M&A PROCESS DESIGN FOR THE 21ST CENTURY: THE CHALLENGES AND LEVERS OF DIGITALIZATION AND BUSINESS MODEL INNOVATION

In his keynote, Prof. Dr. Thorsten Feix, Professor for M&A, Corporate Finance and Strategy in Augsburg, Munich, Harvard and Geneva, focused on End-to-End M&A Process Design for the 21st century and the challenges and levers of digitalization and business model innovation.

Prof. Feix identified that new business designs and players, especially platform builders, on the market are unified by the fact that they all do not actually own the assets their business model is based upon, be it mobility, digital business designs, the accommodation industry, retail, communication providers or even the Fintech sector.

This development of the M&A market requires concentrating on its true driver: Innovation. When comparing M&A volumes to their indicative deal premia, two market sectors are specifically interesting: Digital business designs and the amazonisation of the industry in total. They challenge traditional market and players, especially industry incumbents. The technological impact disrupting the M&A market prevails most severely in the media, automotive, fintech and pharma sectors.

Prof. Feix's team, when researching whether surplus acquisitions of media companies pay out, came to the remarkable conclusion that while target shareholders always gain, acquirer's shareholders are nowadays more open-minded, and this although deals still remain equally disruptive and risky.

The solution is hence a robust End-to-End M&A Process Design in order to conquer disruption by digitalization: Starting off with an indepth understanding of the industry's ecosystem (M&A-strategy analysis), investors need to not only boost excellent transaction and integration management, but also—and these elements are key—synergy and project management. The big advantage of this five-step model is its distinct end-to-end design, responding adequately to the needs of new business models, and making it possible to crosscheck early the investment thesis with due diligence outcomes. When looking at core and adjacent growth options, the model compares M&A with alternative growth and value options, like joint ventures, incubators, accelerators, alliances or inhouse business model innovation approaches.

Prof. Feix concluded his keynote with a positive outlook into the future, stressing his certainty that academia and consulting will be equally ready to deal with these new challenges of investment strategies in the 21st century.

Chaired by
Dr. Nils Wighardt,
McDermott Will & Emery

INTERVIEW ON PITFALLS AND CHALLENGES OF TAX GUARANTEES IN M&A TRANSACTIONS

Prof. Dr. Wilhelm Haarmann, Partner at McDermott Will & Emery, and Dr. Nils Wighardt, Associate at McDermott Will & Emery, discussed risks and challenges of tax guarantees in M&A transactions and talked about ways to prevent trouble related to tax law in these transactions.

To start the interview, Mr. Haarmann gave a short insight on his first nine months at McDermott Will & Emery and spoke about the IBA conference in Seoul in which he participated in a panel about tax war the day before the MuMAC.

The first question of the interview aimed on the definition of taxes in an M&A deal, and the problem that a specific tax doesn't fall under this definition. As buyer and seller have different interests in a deal, there can be also different ways to interpret what a tax is and what not. Therefore, to be secure and prevent more problems in arbitration or in court, a clear definition is essential in an M&A deal, in the interest of both sides.

The next topic of the interview was the overlap of other clauses that have an impact on taxes, and if the equity guarantee also covers the tax provision and the tax liability. In general, all tax issues should be covered in the balance sheet, and taxes are also part of the equity guarantee. Mr. Haarmann gave the advice to make always clear under which guarantee the taxes fall, to prevent further problems or discussions regarding this point.

Next up for discussion were tax audits, and how problems between seller and buyer can arise even after a done deal. From a legal point of view, the buyer has the say. But under certain circumstances, the seller can have an interest in also having influence, which is not in the interest of the buyer. Therefore, this problem can only get solved through negotiation, and will get decided with the fact who has the stronger position, buyer or seller.

Mr. Haarmann next addressed whether the wording in an M&A deal obligates the parties to initiate a tax audit immediately works after closing. Most of the time it works, but it depends strongly on a good relationship between the companies and the tax auditor, who has also an interest in clearing these kinds of question.

The next point of the interview was about the changes in tax law, and the difficulties more aggressive tax structures bring to M&A deals. Mr. Haarmann explained the impact of the new DAC 6 initiative, and in general the impact of new and aggressive tax structures. As a strategy to prevent problems with aggressive tax structures it makes sense to ask for aggressive tax structures to be fully disclosed and warrantied as within the law—not only to sewre the economics of the deal but also to prevent high fines or even criminal liability.

The importance of possible insurance against the risks of these aggressive tax structures was pondered, and it was mentioned that an insurance is possible—with the limit of criminal activities.

After that, Mr. Haarmann explained that it is possible to agree on a guarantee on the existence of an APA. He explained that it is very expensive for the company, but gives also a certain security to the company.

To close the session, Mr. Haarmann explained the difference between commercial arbitration and tax arbitration.

Chaired by
Julian Ostertag,
Drake Star Partners

M&A IN THE FINTECH INDUSTRY

Thomas Hürlimann, Board of Directors at Hiscox; Roman Rittweger, CIO and Founder of ottonova Holding; Dr. Gerrit Seidel, Managing Director at yabeo; Nikolaus von Taysen, Founder of Payworks & Circula and Pay.On, as well as Kilian Thalhammer, Advisor, Investor, FinTech Expert at Wirecard discussed the current status and developments of M&A in the FinTech Industry with Julian Ostertag from Drake Star Partners leading as the moderator of the panel. Together, they discussed the impact of digitalization on the FinTech industry as well as the reasons and fundamental issues that make a FinTech successful and attractive for investors. The discussion then moved to an exchange of opinions about the current state of fundraising and the ongoing M&A activity within the industry.

Panel moderator Julian Ostertag led with the question of what is driving the current FinTech surge, starting with the innovation gap seen in the market. Mr. Rittweger then explained the main market gaps tied to customer experience and drew attention to the importance of considering an insurance viewpoint. He went on to illustrate the negative aspects and problems of the German health insurance system as an example of customer experience and a gap where FinTechs can actually help through further investments.

The panelists then went on to discuss the common public mistrust towards banks and insurance companies as an example as to how the market must change since digitalization combined with the FinTech boom has the capacity of an industry-wide impact.

By moving to the payment side of the financial services, moderator JulianOstertag and Dr Gerrit Seidel discussed the possibilities for FinTechs to really create an entire value chain or whether it is easier to actually create specific services and products that are better for the consumer. Nikolaus von Taysen further gave an outline about the need for innovating the complete industry and market. However, all panelists agree that despite the urgent need for innovation and fundamental change, many FinTechs are actually not rethinking the entire value chain, but just improving the existing value chains through faster and cheaper technology. Kilian Thalhammer, however, argued that even though there is indeed not too much market disruption in the B2C world, there is in fact a change happening on the B2B side with new players entering the market.

The panelists further discussed the current success of FinTechs giving an outline why they appear to be so attractive for investors. They additionally compared the European and the US situation, pointing out that the progression of the FinTech industry in Europe is in fact slower and that there is still much room for innovation and execution in Europe.

The panel then concluded with an outlook of the future regarding current as well as new FinTechs and what they think is still to come. Overall, the panelists believe that the FinTech industry still offers a huge opportunity for both, growth investments and M&A transactions, as many FinTech sectors like insurance and banking have just started to see innovation.

From left above to to right bottom: Dr Gerrit Seidel, yabeo; Thomas Hürlimann, Hiscox; Roman Rittweger, ottonova Holding; Nikolaus von Taysen, Payworks & Circula and Pay.On; Kilian Thalhammer, Wirecard; Julian Ostertag, Drake Star Partners

Chaired by
Sharon Lamb,
McDermott Will & Emery

LIFE SCIENCES, HEALTH AND PRIVATE EQUITY

During this breakout session, moderator Sharon Lamb, Partner at McDermott, was joined by Georg Ganghofer, Head of Investments at Brockhaus Capital; Christoph Brandenberger, Managing Director at Brown Gibbons Lang; Tiemo Grimm, Principal at Nordic Capital; André Seidel, Senior Investment Manager at Nord Holding, and Dr. Ulrich Wandschneider, Operating Partner & Senior Advisor at Trilantic Europe.

The first of the three key themes the panel discussed was the status of the life sciences and healthcare industries and opportunities for private equity firms on both sides of the Atlantic.

After the financial crisis in the late 2000s, US private equity firms focused on healthcare and life science have experienced strong growth.

Globally, private equity deals in healthcare in 2018 and 2019 have tracked at record levels. This was particularly true in the US where, in 2018, reported healthcare transactions increased to $63.8 billion (being approximately 60% of overall globally reported healthcare deals of $101 billion.)

These increased levels of investment come at times of increased political and socio-economic uncertainty, perhaps indicating that health services are considered a safe haven for investors, given the long term increased global health needs of patients.

The panel concurred that the decade of growth was mainly due to a long and strong wave of consolidation of the market, especially in healthcare services and pharma and life sciences. However, despite this activity, the European market still appears to be at the beginning of the investment wave and is ripe for consolidation due to fragmentation and differences in health systems across Europe. The key investment areas and activity have, so far, been in life sciences transactions, investment in healthcare providers and related activities.

The second theme the panel discussed was the value of private equity and the question of whether private equity is an appropriate investing vehicle in the healthcare sector. The panel noted that there can be reservations about private equity involvement in healthcare but considered that private equity brings strong value to healthcare and observed that negative views may be driven by a combination of misconceptions and poor communication about the value, investment and capital brought by private equity. Negative views may also be affected by perceptions that private equity investments are short term and solely profit driven. It was noted however that private equity brings much needed capital and investment, the investment horizon is typically longer than expected and there is clear alignment in successful investments between high quality healthcare and investor needs. In addition, activity and data show that under private control businesses may often develop more quickly and be better at innovation adoption than under public control.

Towards the end of the discussion, the participants of the panel looked at future "hot" investment areas and the topics that were likely to be considered current in 2025. The panel agreed that healthcare would continue to be an area of increased investment and that future growth areas would include digital health, data technologies, pharma and outsourced pharma services as well those industries focused on targeting healthcare likely to be affected by demographic change, including ageing and mental health.

From left to right: Sharon Lamb, McDermott Will & Emery; Georg Ganghofer, Brockhaus Capital; Christoph Brandenberger, Brown Gibbons Lang; Tiemo Grimm, Nordic Capital; André Seidel, Nord Holding; Dr. Ulrich Wandschneider, Trilantic Europe

Chaired by
Dr. Oliver Hahnelt,
McDermott Will & Emery

TRANSACTION FINANCING

Ralph Betz, Managing Director at EQT Partners; Benjamin Blumenschein, Senior Director at Crescent Capital; Paul H. F. Kim, Managing Partner at Herter & Co.; Michael-Franz Müller, Head of Leveraged Finance Germany at NIBC Bank; Oliver Wolter, Head of Leveraged Finance DACH and Managing Director at SMBC Frankfurt Branch and panel head Dr. Oliver K. Hahnelt, Partner at McDermott Will & Emery discussed transaction financing.

The panel gave insight into the latest trends on the corporate finance market in Germany, particularly in the continuing rise of market shares of private debt funds in the MidCap leverage finance sector. In terms of leveraged finance, panel head Dr. Hahnelt stated that it has been quite an active year so far, though not as active as 2018, when the market share of private debt funds reaching a new all-time high of approximately 56%.

According to the experts, there are several factors that have contributed to the continued shift to leveraged finance transactions and their increased funding by private debt than bank debt. Among other reasons and factors, there is pressure on the banks in terms of compliance, the flexibility of private debt funds vary in terms of structuring, the financing and the speed of its decision-making process and more often aspects of confidentiality. Despite the general rise of debt funds, Michael-Franz Müller stated there are still sectors where the engagement of private debt funds is limited with banks maintaining their market share.

The panelists agreed that there is still a number of obstacles for private debt funds to deploy monies in the non-sponsor corporate lending territory, of course subject to certain areas where private debt already is considered as a valid alternative to bank debt.

Asked for a look one year into the future as to whether we will see increased default rates, the experts' opinions slightly diverged. But, the panelists agreed that any upcoming crisis presumably will not result in a major re-shuffle of market shares in favor of banks. Rather, if the default rates increase, this may have an effect of consolidation in the private debt fund segment themselves with the larger and more established private debt funds to take over market shares.

From left to right: Benjamin Blumenschein, Crescent Capital; Ralph Betz, EQT Partners; Michael-Franz Müller, NIBC Bank; Paul H. F. Kim, Herter & Co.; Dr. Oliver K. Hahnelt, McDermott Will & Emery

Chaired by
Frank Steinherr,
McDermott Will & Emery

DIGITALIZATION IN EUROPE – THE CHALLENGE IN BETWEEN THE US AND CHINA

Todd Albright, Chief Revenue Officer of Merrill Corporation; Fabian Wasmus, Partner at Vitruvian Partners; Carsten Burger, Managing Director of DC Advisory; together with panel head Frank Steinherr, Partner at McDermott Will & Emery discussed digitalization and artificial intelligence as a driver of M&A.

The panel began by noting that there is more computing power in the smartphones that are used today than in the computers used by NASA during the Apollo 11 lunar mission that put the first man on the moon just 50 years ago. As technology advances, so too does the rate of our technological advancements.

Digitalization – that is the system of converting text, pictures, sound and other analog information into a digital machine readable form capable of being processed by computers - has dramatically changed, and continues to change, the way of business.

The panel discussed the many wholly new businesses, industries and technologies that have emerged as a result of digitalization and advances in computing power and noted how many traditional businesses are embracing advances in digitalization to optimize their businesses. But there are limits to the powers of digitalization and digitalization itself is quite useless. Each company and industry has to find out how to convert the vast amounts of available data that can be created or mined into new opportunities and how these new opportunities can be used best.

The companies' attitude towards digitalization and artificial intelligence differs from sector to sector. But it is shown that even traditional sectors are dealing with this topic. Moreover, digitalization can also be seen as a cross-functional expertise. There are business models that were just not possible 10 years ago because the databases and the analytic capability weren't there. Artificial intelligence, which is born out of advances in digitalization and computing power presents both challenges and opportunities.

Convincing people of the variety of new opportunities is one of the biggest challenges in this field. Especially in Europe, people are very skeptical regarding Big Data and data security. Because of this, lots of data can't be used, although it is already available. Broader use of the full potential of digitalization will only be achieved by increasing levels of trust of data skeptic and the creation of government controls and industry standards to keep data protected and anonymous and, in some instances, demonstrating a clear benefit that may result from the exchange of certain degrees of privacy or other rights in favor of the advances that digitalization of such information might provide; the benefits of a better health care system or better clinical outcomes, for example.

Digitalization also affects M&A transactions. Todd Albright explained how advances that his company, Merrill Corporation, has made in digitalization have lead to reduced transaction time-lines, more in-depth diligence and reduced costs in the M&A process. Just a few years ago, for example, data rooms would be filled with physical documents whereas now it is completely digital. This brings up many advantages, such as an easier survey of the documents and a more convenient searching. The next step in the evolution is advances in artificial intelligence and machine learning software that will assist in the processing of large volumes of information.

All in all, we will see more technology transactions than ever before and rising cash flows in the technology industry, especially in the artificial intelligence sector. German investors are also looking for such opportunities.

From left to right: Fabian Wasmus, Vitruvian Partners; Carsten Burger, DC Advisory; Todd Albright, Merrill Corporation; Frank Steinherr, McDermott Will & Emery

Chaired by
Dr. Nadine Hartung
McDermott Will & Emery

W&I INSURANCE AND COMPLIANCE IN M&A TRANSACTIONS

Michael Gaul, Managing Director at Acquinex Germany, Felix Rettenmaier, Partner at Rettenmaier & Adick, Jacob Kuipers, Associate at McDermott Will & Emery, Dr. Barbara Roth, Chief Compliance Officer at UniCredit Bank AG, Simon Tesselment, Chief Broking Officer EMEA at AON, together with panel head Dr. Nadine Hartung, Counsel at McDermott Will & Emery, discussed issues around compliance in M&A transactions and the respective questions arising for obtaining W&I coverage.

The panel started by discussing recent trends across M&A transactions, including the filing of criminal complaints if compliance issues surface in the wake of a transaction. Mr. Rettenmaier stated his belief that the initiative for a more rigorous corporate criminal law will be implemented in some form or another within the near future. He provided a quick overview of the main features of such corporate criminal liability and what this means in a M&A context.

Asked for recent enforcement and legal trends in the US, Mr. Kuipers noted that in a cross-border context, it is important to focus on the laws that are covering entities regardless of their home jurisdiction. Important topics, therefore, are cybersecurity and privacy. Mr. Kuipers also drew attention to the fact that actions of the current administration—with respect to sanctions laws—are still rather unpredictable. Also, the compliance of a target can have a significant impact on the pricing of a deal. For example, in the Yahoo deal, the parties agreed on cutting the acquisition price by USD 350 million because of two security breaches at Yahoo.

Addressing her experiences with compliance risks in acquired companies and M&A transactions in general, Dr. Roth stressed the importance of due diligence and formal compliance guidelines and procedures for banks due to the fact that they are highly regulated. She also explained that any bank involved in the US Dollar market needs to tread very carefully due to recent enforcement trends in the US, in particular with respect to the US sanctions regime. In that context, any business with high-risk countries such as Iran, Sudan, Cuba, China, or Turkey, need to be reviewed intensively.

Mr. Gaul shared his view as an insurer and explained that there seems to be a recent shift from more abstract to more specific compliance guarantees. Asked what he as an insurer deems preferable, he explained that insurers are closely looking at new areas of regulation, such as for example data security, and are still in the process of learning more about the associated risks and their evaluation. Clearly, some areas of regulation are more critical than others.

The panel then shifted focus to questions arising for a seller that is aware of (current or past) non-compliance by the potential target or its personnel. Dr. Hartung asked the panel what the scope of disclosure should be and what they believe was the right time in a transaction process to disclose. Mr. Rettenmaier answered that from his point of view any information relevant for the pricing of the deal needs to be disclosed and the disclosure needs to be true and honest. He also stressed the need to properly document any disclosure to protect the seller against any alleged fraudulent behavior.

Mr. Gaul and Mr. Tesselment stressed that from the insurance point of view, the question whether fraud was involved or not is relevant in a second step. The insurance, usually taken out by the buyer, would cover guarantee breaches in a first instance. However, then the insurer would naturally review the question whether the seller acted fraudulently and needs to indemnify the insurer for fraudulent misrepresentations.

Dr. Roth pointed out that instances of non-compliance are often looked at retroactively, which influences the way a buyer or court looks at the issue. Disclosure in a transaction is particularly difficult if internal investigations are ongoing. Then any disclosure should be in line with any existing results of the investigation without jeopardizing the investigation or any position toward supervisory or criminal authorities.

The panel concluded that due diligence starts with understanding the market of the target, the applicable regulatory framework and high-risk areas. Any issues should be raised as early as possible and can usually only be solved if seller and buyer have an open and honest conversation about the issue. On the upside, prices for compliant organizations with a functioning compliance management will regularly be higher. Thus, compliance management in the best-case scenario adds significant value to an organization.

Chaired by
Dr. Carsten Böhm,
McDermott Will & Emery

EVERGREEN/INDUSTRY HOLDING INVESTMENT

The panel featured Philipp Haindl, Founding Partner at Serafin Group; Torsten Krumm, Chairman of the Investment Committee and Managing Partner at HQ Equita; Thomas Racky, Co-Founder and Managing Director at Strategic Family Office Advisors; and Richard G. Ramsauer, Co-Founder and Managing Partner at VTC Industriebeteiligungen. Dr. Carsten Böhm, Partner at McDermott Will & Emery, headed the expert group.

In contrast to previous panels, which discussed the investment side of evergreens and industry holdings, this year's discussion focused on looking behind the scenes, *i.e.*, how do they incentivize their partners, managers and employees?

Immediately it became clear that very different models exist, all of which bear the risk of being over-incentive and over-ambitious as well as in-flexible.

When asked which motivation structures have proven beneficial in the past, the panelists agreed that there are numerous models, but classic structures are still the most reliable. Drawing on the panelists' different experiences, the discussion focused on tools such as net-asset-value-based models (NAV; accumulated equity value), bonus payments based on individual goals and targets and buy & hold-returns. PE fund structures with carries and hurdle rates are also common in the market today. Undoubtedly, it is important to avoid schemes where assets remain in-house for a long time after exit, accumulating negative interest rates.

The panelists observed that management equity participation schemes also prove to be effective mechanisms for incentivizing as does management retention by means of redeemable participation and dividend payment. Notably, an equity participation is an ideal binding force which can be customized individually (*i.e.* limited to a particular portfolio company). Bonus payments in combination with direct participation schemes are most common.

Overall, the panelists agreed that the early implementation of an incentive scheme is key and predicted that new participation models will come about, especially on the secondary market, as incentivization is not only a monetary issue and needs to be addressed on a case-to-case basis.

From left to right: Thomas Racky, Strategic Family Office Advisors; Richard G. Ramsauer, VTC Industriebeteiligungen, Torsten Krumm, HQ Equita; Philipp Haindl, Serafin Group; Dr. Carsten Böhm, McDermott Will & Emery

Keynote by
Jens Haas,
AlixPartners

KEYNOTE

CHALLENGES FOR THE AUTOMOTIVE INDUSTRY—STATUS AND OUTLOOK

Jens Haas, managing director and automotive expert at AlixPartners, spoke about the ongoing and anticipated future challenges for the automotive industry regarding current struggles and serious changes. Mr. Haas based his keynote speech on the challenging year of 2019 for the automotive industry, as global volumes have gone down by 5% since 2018. However, he explained that despite challenging markets in 2019, a slow recovery was still possible from 2020 onwards, which is strongly dependent on China. Mr. Haas explained that China's automotive capacity utilization is trending down below healthy levels (70%) since 2016, with significant overcapacity.

Due to current regulations, original equipment manufacturers will struggle to make the 2021-set CO2 targets and a disruptive pace is required to hit 2030 targets. These regulations not only include CO2 targets but also the current discussions about trade tariffs, dependency shifts through new mobility concepts in cities and diesel bans; all interfering with and influencing the complete automotive industry and all its co-dependents.

Mr. Haas further gave an outline to the fundamental changes in the customers' expectations that are shifting to personalization, integration, and more eco friendliness. Performance, brand loyalty and the importance of ownership are now very challenged in comparison to past years and decades. Customers appear to have shifted more towards flexibility, eco-friendliness, and convenience as their focus points.

Mr. Haas illustrated the future of mobility with the image of CASE (Connected Autonomous Shared Electrified); the key drivers that will significantly change the industry and require heavy investments. In his opinion, electrification and automatization require investments of at least $275 billion within next five years. He sees a future within exploring the investment opportunities of the elements of CASE and further elucidated how CASE is driving partnerships in the industry as CASE-related partnerships have already grown by 56% in 2018. While automotive M&A activity dipped slightly in 2018, CASE- related deals climbed to 55% of all deals. He concluded that CASE is having a significant impact on the overall vehicle landscape and suppliers need to proactively adjust their portfolios.

Chaired by
Jens Weber,
PwC

POST-TRANSACTION VALUE CREATION

The panel discussion consisted of Sascha Günther from Oakley, Philipp Marquardt from AlixPartners, Arne Otto from Siemens Portfolio Companies, Dr. Karl Popp from SAP, and moderator Jens Weber from PwC.

The discussion kicked off with the question of how the panelists are working with 100-day plans in the post-sale transition period. Interestingly, all the panelists shared the same opinion, more or less, despite their diverse professional backgrounds. From the panel's perspective, it is important to create and have a 100-day plan when it comes to a transaction since it would provide great support for the structure and procedure of the post-transaction integration. However, it should be used as a guideline instead of hard rule, as in most cases three months are just not enough to achieve a successful integration and create both sustainable bottom and top-line synergies. In this context, the question of the human role in a transaction was raised, given the boom of machine learning and artificial intelligence. On one side, Karl Popp from SAP argued that the M&A process in particular could benefit from enhanced technology, e.g. quickly analyzing legal contracts. On the other hand, from a PE post-transaction perspective, humans still play a major role as the management team of the target represents, next to financial performance, the key deal driver. In other words, in a pre-deal world, it is more likely to see shifts in the replacement of humans by software solutions whereas in a post-deal world the human role is still going to be of significant importance.

At the end of the discussion, the audience was provided with some food-for-thought when the participants briefly explained their views on the value creation through tax compliance. Within the last few years, the issue of tax compliance has become truly complex and gained more and more importance for private equity investors. Therefore, it is crucial to go through the process as early as possible as it may affect a variety of determinants of the buyout's success. Starting with the entire set-up of the transaction, findings and takeaways from a thoughtful tax compliance can help structure loss carry forwards, dividend payments, and also guide the exit strategy—all symbolizing so-called hidden value pockets.

From left to right: Sascha Günther, Oakley; Philipp Marquardt, AlixPartners; Arne Otto, Siemens Portfolio Companies; Dr. Karl Popp; SAP; Jens Weber, PwC

Case Study by
Dr. Matthias Kampshoff,
McDermott Will & Emery

CASE STUDY

AUTOMOTIVE SUPPLIER—KEY FACTORS FOR A SUCCESSFULL RESTRUCTURING

In the final session of MuMAC 2019, we provided the audience with a snapshot of the typical issues facing automotive suppliers when undergoing restructuring as well as approaches for dealing with them. We worked through the classic starting points in the automotive supply industry and the main factors for a successful outcome.

Typical Starting Points

With automotive suppliers undergoing restructuring situations in the German market, a consistent pattern of complex interactions is common. First, smaller and mid-sized suppliers, at least, are focused on the automotive industry only. Consequently, the customer base is mainly comprised of automobile manufacturers and other automotive suppliers—only in rare cases you can also find other business areas which may allow for a wider approach to restructuring. In addition, the automotive suppliers typically have a global footprint, with production facilities in Germany, other European countries, the USA, Mexico, China and others. Given this, there are often rather complex group structures with individual subsidiaries in every country.

Management structures and capacities that have not been adapted to increased business size, and group complexity, are notable consequences tied to the significant growth of the industry over the last 10 years.

The last decade has also established a trend of increasingly complex financing structures, which today frequently include syndicated loans, bilateral and local financing, bonds (Anleihen) and promissory notes (Schuldscheine).

Successful Automotive Restructuring

If a supplier does not provide the ordered parts in time, customers face significant losses due to the just-in-time supply strategy. Consequently, a predominant goal of every restructuring process in the automotive industry is to ensure the continuous capability of supplying respective parts to the customers. "Losing even a single car" must be avoided. Customers play a dominant role and are crucial for success in restructuring in this industry. Very often, they only have a single source for respective parts, and it may take several weeks or even months to transfer the production of respective parts to another supplier. This places customers under intense pressure to avoid a stop in production by supporting the restructuring process. Such support is usually provided by way of shortening payment terms, advance payments, price increases or—in rare cases—direct financial assistance and loss coverage of the business operation (depending on the specifics of the respective case). A good relationship between the supplier alongside its advisors and the customers is an important factor for the negotiations.

The customer base and the complex financing structures together with the other complexities of the business of an automotive supplier lead to very complex stakeholder structures. The various stakeholders have all their own interests, which need to be aligned in the course of the negotiations. This requires excellent stakeholder management and transparent information policy for all stakeholders. An information disparity between different relevant stakeholders can easily jeopardize the restructuring. Thus, stakeholder management is another key factor for successful restructuring. Though this may be true for all larger restructuring cases, it becomes an even more significant element in the automotive industry. Here, excellent project management is essential to allow a timely finalisation of the various processes irrespective of the vast volume of the documentation which is usually associated with restructuring specifically in the automotive industry.

In summary, the key factors for successful restructuring effort in the automotive industry are (1) an early starting point, (2) excellent and efficient project management, (3) transparency vis-á-vis the relevant stakeholders as well as (4) the maintenance of good customer relationships.

PICTURES



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MWE Training UG (haftungsbeschränkt)
Nymphenburger Str. 3 - 80335 Munich
T: +49 89 12712 0, F: +49 89 12712 111, info-munich@mwe.com
Editorial responsibility: Christian von Sydow
Editors/Layout: Petra Niepage
Conference Co-founder and Advisor: David Cifrino