Family values hit deal-making in GERMANY

German dealmakers are seeing fewer higher-end transactions, but as values fall the void is being filled by an unlikely party: the family-owned business. **Mark Dunne** reports

Maria-Elisabeth and Georg Schaeffler made history in August. The mother-and-son ball bearing business became the first family-run enterprise to buy a top 30 company on the Frankfurt Stock Exchange – but not without a fight.

Schaeffler's €70-a-share bid for vehicle parts manufacturer Continental led to weeks of conflict with the target company's chief executive. Manfred Wennemer's efforts to keep the business independent ended when his shareholders approved a revised bid.

The deal was finally put to bed when Schaeffler tabled a €75-a- share offer, which valued the Hanover-based company at €12.1 billion (£9.6 billion). The shareholders were also won over by the acquirer agreeing to hold only a minority shareholding of 49.99 per cent for at least four years. Wennemer resigned from the board soon after.

THE FAMILY WAY

"Schaeffler's takeover of Continental is a good example of the kind of transactions that will be taking place here," says Dr Wolf Wagner.

The managing partner of consultancy Kurt Salmon Associates believes Germany will witness more deals in the Continental takeover mould this year, but not at these values.

He makes this claim after seeing more family businesses looking for strategic investments without the backing of private equity as prices are falling to more "reasonable" levels.

Wagner claims his current deal flow is at roughly the same value as last year, but he is working on more smaller deals, €100 million or less, and that isn't about to change. "I've talked to the large private equity houses, such as Premira, and for the rest of the year they will be working on smaller deals."

He is not the only one working on smaller transactions. Dr Michael Fischer, a partner in the Munich office of law firm Reed Smith, admits that last year was more prosperous for the firm as he is currently advising on fewer larger transactions.

"We are not seeing larger buy-outs these days," he says. "In general, there are fewer of them, but there are still lots of smaller transactions around."

He adds that expansion is not the only concern when family businesses dip into the M&A market. "Privately held German small and medium-sized companies are confronted by succession issues and that will remain an active and vibrant market for transactions lawyers."

He is also working with strategic corporate investors, where is he not seeing the same decline as in his private equity work. "Buy-out numbers have fallen over the last few months and I do not believe that we have reached the end of this phase.

"You will have heard that the EU

As recession hits, advisers expect to see more restructuring work (photo of Brandenburg Gate)

GERMANY	DEALS
Population: 82.2 million (2007)	**January to June 2007** – 441deals worth an announced €13.4 billion
GDP: £1.85 trillion	**January to June 2008** – 35 deals worth an announced €3 billion
GDP growth rate: 2.4% (2007)	Source: Zephyr
Dominant sectors: Motor, machinery, metals, chemicals, service sector	

said Germany is in recession and the International Monetary Fund came to the same conclusion. Let's see how the next few months will go, but I do expect to see more restructuring work."

TAKING IT EASY

Christian Kollmann, a partner at M&A consultancy InterFinanz, raises another issue. "We have some quarters, but he is clear about what is driving the activity that he is seeing.

"We work with family-owned businesses, which are usually sold due to succession issues," he says. "On the other hand, it's private equity firms making disposals and we are advising industrial firms on buy-side mandates. Looking at these three, I wouldn't say that there has been a change."

> "Privately held German small and medium-sized companies are confronted by succession issues"
>
> Dr Michael Fischer

interesting and prospective mandates, but they are taking longer to close than in previous years.

"It has to do with security and the economy, but financing conditions in particular for private equity transactions has become more difficult," he adds. "We will not have as good a year as we did in 2007."

To add to his problems, he saw a fall in leads for new projects in the first quarter of the year, a trend that continued into the second and third quarters, but he is clear about what is driving the activity that he is seeing.

Kollmann confirmed that he does not believe the larger transactions missing from 2008 so far will return by the end of the year. "Usually new projects start at the beginning of the year with the aim of closing by the end of December.

"New leads usually pick up during the fourth quarter to start the project at the beginning of the year, but general economic uncertainty is not in favour of more activity in 2009," he adds. ■

DONE DEALS

EM.SPORT MEDIA

In May Media group EM.Sport Media bought German film production company Constantin for €235.74 million (£186.7 million).

HCI CAPITAL AG

Investor MPC Münchmeyer Petersen Capital AG bought a 64.9 per cent stake in HCI Capital AG, a provider of close-ended investment funds in Germany and Austria. The deal was worth €221.49 million (£175.4 million) and closed in February.

PYRAMUS SÀRL

Pyramus Sàrl, formed by Apax Partners, increased its stake in d+s europe AG, a Hamburg-based provider of e-commerce and customer management services. It now holds 27 per cent of the equity from its initial 8 per cent stake. The deal was agreed for €13 a share, valuing the company at €100 million (£79.1 million).

CARDEA

Cardea became the majority shareholder in CEAG in June following a deal with Delton for €52 million (£41.1 million). The acquired company is a manufacturer of power supply equipment.

ERSOL THIN FILM

Ventizz Capital Fund III LP bought semiconductor specialist ersol Thin Film in February for €48 million (£38 million). The thin film technology company. This was the largest investment by Ventizz Capital Fund IV.

GSK STOCKMANN & KOLLEGEN

DR CHRISTIAN R SCHMIDT – PARTNER
+49 (30) 20 39 07-0
schmidt@gsk.de
www.gsk.de

Inbound international M&A in Germany has become quieter recently as foreign investors withdraw from the German market as a result of difficulties they face funding transactions. Like many other law firms, GSK is facing a dip in deal volumes involving foreign clients.

With some 120 solicitors located in offices across Germany, GSK has always maintained a balance between international and domestic mid-market work, which is why we have remained resilient and not as badly hit by the financial crisis.

Our legal expertise lies in real estate, M&A, financial services and infrastructure projects. The Frankfurt office continues its transactional work with investment bank Merrill Lynch, while the Berlin office has advised KWG Kommunale Wohnen AG, the mid-market listed German real estate company, on the acquisition of a 49.9 per cent stake in WVG Wohnungsbau-und Verwaltungsgesellschaft mbH Greifswald, a local building society owned by the city of Greifswald, for €60.1 million (£48 million).

> "Our legal expertise lies in real estate, M&A, financial services and infrastructure projects"

GSK's Berlin office has also advised the German Association of Cities on the sale of the famous Ernst-Reuter-Haus building in Berlin to an investor.

I believe that the German M&A market will remain quiet for some time to come – compared with the M&A boom times of 2005 to 2007 – or at least until there is some more clarity on the impact that the sub-prime crisis will have on major banks.

MACONDA CORPORATE DEVELOPMENT

DR RAINER MAYER – MANAGING PARTNER
+49 221 56964-0
r.mayer@maconda.de
www.maconda.de

We act as an independent management adviser for international corporate development, M&A and corporate restructuring. Our chosen areas of expertise are: business services, consumer goods, retail and wholesale, media and entertainment, telecommunications and internet businesses.

M&A activity in the first half of the year has been visibly lower than in 2007. We saw several potential deals disappear as a result of too little interest from bidders, unrealistic price expectations from vendors, cautious debt providers and trade worsening during the transactional phase.

Our transaction services team has been active this year assisting private equity portfolio companies with bolt-on acquisitions. In general the weaker market has led to lower valuations for smaller target companies, which has helped to bring interesting opportunities to the table for our clients – for four times to five times EBITDA, which is lower than this time last year.

Even in Eastern Europe, one of our preferred places for finding interesting bolt-on acquisition opportunities for private equity houses, prices fallen. Nonetheless, they are still relatively high – partly driven by a lack of experience on the side of vendors and therefore unrealistic expectations and partly triggered by high valuations on the stock market, particularly in Poland.

One of our latest engagements was the commercial due diligence on the customer care service provider Walter Services, which was acquired by investors led by Odewald & Compagnie. All of our deals normally fall within the €80 million (£64 million) to €400 million enterprise value range.

SUSAT & PARTNER

DR KAI BARTELS – HEAD OF M&A
+49 40 415 22-2495
k.bartels@susat.de
www.susat.de

In line with the European trend, overall deal values in Germany declined in the first half of 2008. However, the total number of transactions increased over the same period, particularly small and mid-cap M&A.

The financial services sector is still generating the highest deal flow, with almost 25 per cent of all acquirers falling with this sector. In the past month, we have seen a high number of acquisitions in the service industry as well as in energy, renewable energy, chemical/pharmaceutical, engineering and the financial service sectors.

Susat has been working on several mid-cap transactions, most of which have been disposals in sectors, such as renewable energy, production, trade and services. There are strategic and financial buyers out there, however, in light of the credit crunch strategic investors may have an advantage in obtaining the financing from banks

This year we expect Germany to remain one of the most attractive mid-cap M&A markets in Europe due to the 'Mittelstand' structure – German SMEs – and the increasing acceptance of private equity.

> "Susat has been working on several mid-cap transactions, most of which have been disposals in sectors, such as renewable energy"

P+P PÖLLATH + PARTNERS

DR MATTHIAS BRUSE – PARTNER
+49 89 24240-270
matthias.bruse@pplaw.com
www.pplaw.com

The volume of venture capital and private equity mid-market deals has remained stable this year. Recently we provided legal advice in these market segments to inter alia Barclays Private Equity, DZ Equity Parnters and Heidelberg Capital.

Activity in the mid-market has been buoyant, however, larger equity plays and secondary buy-outs have been few and far between. We expect to see a recovery in big-ticket private equity transactions in the course of 2009/2010 and, consequently, no major changes to the market for the rest of this year.

Big takeovers of strategic players are an important part of the present market in Germany, with major automotive supplier Schaeffler Group's takeover bid of automotive electronics vendor Continental AG in the headlines.

P+P's 25 partners, and a total of 95 attorneys and tax advisers, focus on legal and tax advice on M&As, private equity/venture capital, real estate, family businesses and asset management.

> "We expect to see a recovery in big-ticket private equity transactions in the course of 2009/2010"

In 2008, many P+P partners were ranked as leading or highly recommended in private equity, M&A, real estate and tax. In these specialist areas, P+P offers state-of-the-art expertise, judgment and independence, as well as full service. P+P works with leading professionals from national and international firms as well as with other advisers.

SALANS

DIRK-REINER VOSS – PARTNER
+49 30 2 64 73 506
dvoss@salans.com
www.salans.com

There has been a reasonable amount of deal-making in Germany, but less so than last year. We are finding that deal volumes and values have decreased; the former by as much as 45 per cent. This is clearly a consequence of the sub-prime crisis that has affected real estate in particularly.

A strong interest in established medium-sized German companies, especially from investors in Eastern Europe and Asia, is currently driving deal flow. The transport, energy, utilities and chemical sectors seem to be attractive for investors.

Within the private equity market the consumer services industry and the energy sector are popular with investors.

We believe a number of private equity firms have postponed deals, obviously because they have been unable to secure the required bank financing. Again, this trend is more visible in larger deals.

We have seen a tendency for private equity houses to be much more selective about the industries that they are willing to invest in. In general, the value of investment by private equity firms in Germany has increased compared with the same period last year. They invested €3.6 million (£2.8 million) in Germany during the first half year of 2008; compared with the €932 million invested by international private equity firms over the same period.

Over the course of the year, we expect to see a further recovery of the market as the effects of the sub-prime crisis are digested.

Russian investment in Germany may be affected by the current crisis in the Caucasus.

SJ BERWIN

THOMAS GERALD – PARTNER
+49 69 50 50 32 500
thomas.gerald@sjberwin .com
www.sjberwin.com

While big-ticket deals have virtually vanished, our core business of mid-cap buy-outs has still maintained a decent level, albeit reduced compared with the previous couple of years, which were extremely busy for us.

Today, our transaction sizes seem to fall in the range of €50 million (£39 million) to €500 million. SJ Berwin predominantly works on the buyer as well as on the seller side of mid-cap buy-outs, which are of a multi-jurisdictional nature. Recent transactions, amongst others, mainly fall within the consumables, automotive and energy sectors.

We recognise that private equity investors are currently finding sectors determined by cash flow and sustainability, rather than products, more appealing.

At SJ Berwin the Tax team offers a full range of strategic tax planning services on structuring multi-jurisdictional and national private equity and M&A transactions, focusing on mid-cap deals.

Our team of highly skilled and experienced tax experts develops tax-optimised, yet feasible, acquisition structures, always considering disciplines critical to complete the deal.

Our approach to deal-making involves delivering integrated advice to our clients, considering not only tax issues, but also the legal, economic and accounting aspects of a transaction – especially cross-border transactions comprising elaborated financing structures. We think deals will continue to be competitive as prices remain constant this year. Next year, we believe that there will be an increased level of deal activity after some consolidation.

EBNER STOLZ & PARTNER

MARTINA SCHAAF – PARTNER
+49 711 2049 1145
martina.schaaf@ebnerstolz.de
www.ebnerstolz.de

DR WOLFGANG RUSS - PARTNER
+49 711 2049 1131
wolfgang.russ@ebnerstolz.de
www.ebnerstolz.de

Ebner Stolz was founded in 1974 as a nationwide professional services provider, focusing on auditing, tax advice and business consulting. It is the eighth largest firm of auditors and tax advisers in Germany.

We currently have a workforce comprising 520 employees at nine offices across the country. There are about 250 employees at the Stuttgart headquarters. The organisation is led by 61 partners.

Ebner Stolz advises and audits reputable medium-sized enterprises in the manufacturing, services and trading sectors of various industries, with our clients ranging widely in size and expectations.

Ebner Stolz is a member firm of Nexia International, an international association of business consultants and audit firms. Nexia consists of independent companies who are among the top ten in their respective national markets.

We have assisted a number of corporate transactions, providing advice to strategic and financial investors. These include Takkt AG, Dürr AG, MW-Zander Group, R Stahl AG, Schlott AG, DZ-Equity Partner GmbH, Deutsche Beteiligungs AG, HANNOVER Finanz GmbH, L-EA Private Equity GmbH, 3i, Odewald & Cie, Heinrich & Cie. et cetera.

We have been engaged as the auditor or expert appraiser of mergers and squeeze-outs related to Telekom AG/T-Online AG, Wella AG/Procter & Gamble, Postbank AG, BHW, Jil Sander, Bayer/Schering, Singulus/HamaTech and Fujitsu/TDS.

Our advisory concept is based on composing a team of qualified individuals who possess not only the required technical skills but also the familiarity with the relevant industry. We take pride in rendering our services with a high degree of flexibility.

HEYMANN & PARTNERS

THOMAS HEYMANN – MANAGING PARTNER
+49 69 768 0630
t.heymann@heylaw.de
www.heylaw.de

It's a strange market. Everybody predicted that the private equity market would break down, and there has been a sharp decline in larger deals, but it's business as usual for small-cap buy-outs.

At the larger end, deals are more difficult to leverage as EBIT/debt ratios are going down. We have seen deals, with just one bank prepared to underwrite the debt. This meant all the bidders had to accept their terms and the absolute amount of debt they were willing to provide. As a consequence, the funds compete on the equity side.

We have seen highly-leveraged transactions, but we are also seeing a lot of pain. The number of covenants that will be broken by the end of this year will go up dramatically.

All this may be bad news for private equity, but it's not necessarily bad news for lawyers and advisers who are forecasting significant portfolio restructuring; starting with waivers and amendments.

There will be transactions, where senior debt will squeeze out equity and junior tranches. Funds will be required to provide additional equity, be it in the form of formal equity cures under existing documentation, or in providing additional equity in order to obtain waivers and prevent themselves from being squeezed out.

If in previous years transaction lawyers were focused on smoothly managing one deal after another, we will now start to read contracts, advise clients on options, prepare for litigation, advise when it is worth it and when (and how) to avoid it. Lawyers will therefore become much more traditional lawyers and litigators than in the last ten years. And, the interplay between debt and equity will become quite interesting.