

Under Attack

Preparing and Communicating for a Successful Defense



Today's presenters



Dr Lutz Golsch

Senior Managing Director
FTI Consulting Frankfurt

- **Head of the Strategic Communications Practice in Germany**
- Joined FTI Consulting in 2001 and was appointed Senior Managing Director in 2013
- Has been advising corporations and institutions on strategic communications for more than 18 years
- Focus on major issues in financial and corporate communications. In a world of complex and dynamic stakeholder relationships, Lutz Golsch helps clients navigate critical communications challenges, protect their reputation and enhance their enterprise value
- Particularly strong track record in special situations such as M&A transactions, IPOs, crisis situations and restructurings, having advised on numerous high-profile transactions and situations in the German market and across borders
- Advised on M&A transactions with a combined value of more than €50 billion over the past decade
- Considerable expertise across several industries, e.g. in technology, media and telecoms, financial services, health care, and private equity



Steven Balet

Managing Director
FTI Consulting New York

- **Head of Corporate Governance and Activist Engagement**
- Part of the Financial Communications and Capital Markets practices
- Joined FTI Consulting in April 2013. Prior experience included 15 years at MacKenzie Partners, including three years as head of their London Office
- Has advised public companies and hedge funds of all sizes on mergers & acquisitions, contested proxy campaigns and corporate governance issues for the past 19 years
- Experience includes providing strategic advice in cross-border and global proxy solicitations, corporate proxy defense strategy, dissident investor campaigns, proxy fights and M&A transactions
- Extensive experience working with issuers to develop the most effective message for delivering the vote; routinely counsels issuers on how to engage third party advisory groups such as ISS as well as providing background information on various activist stockholders and the techniques they employ
- Has been involved in some of the largest contested situations in the past decade; most recently advised Allergan in its defense against Pershing Square Capital Management and Valeant Pharmaceuticals' unsuccessful hostile takeover attempt, as well as Perrigo Company in its landmark defense against Mylan's N.V.'s \$26 billion hostile bid

Companies under attack by activist investors or unsolicited takeover bids



Shareholder Activism



Shareholder activism is spreading

Activist investing is growing

355 campaigns announced in 2015

→ More than 62% increase from 5 years ago

2015 saw 105 proxy fights, the most since 2009

- Of the 105 proxy fights announced in 2015, 46 resulted in board seats for the corresponding activist

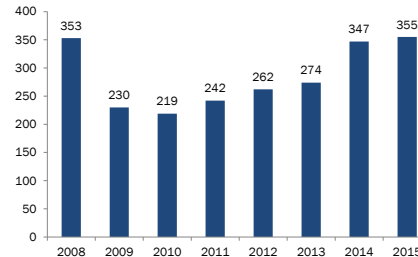
Board representation campaigns have more than doubled since 2005

- Between 2013 and 2015, activists sought 43 board seats, up from 23 between 2010 and 2012
- At the end of 2015, 118 companies had instituted proxy access bylaws and dozens more filed bylaw updates

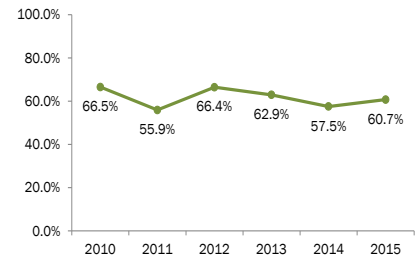
Activist funds with ca. \$170bn in capital in 2015

- In addition, an increasing number of funds that have not historically been activist are engaging in activist activity
- Institutional investors and the marketplace in general have increasingly sided with activists, which has provided a boost to activists' success rate

Total Number of Activist Campaigns
2008 – 2015



Activist Investor Success Rate
2010 – 2015



Shareholder activism is becoming more sophisticated and more nuanced

Universe of potential targets is growing

- Size is no longer a deterrent– activists no longer need to take large positions in order to win proxy fights and are not afraid of engaging with mega cap companies
- Activists have sought far more board seats at companies with greater than \$10 billion in market cap in the last few years than in previous years
- Institutional shareholders and pension funds are increasingly accepting of activist activities

Activists' approaches are becoming more business like

- Activists are more sophisticated – seeking structural changes and longer-term involvement with targets
- Activists are investing in more professional campaigns, hiring banking and PR professionals, producing extensive and detailed white papers as well as engaging in social media campaigns
- The media has become increasingly sympathetic to activists often cheering the fall of iconic CEOs and covering activist campaigns as they would political elections

Characteristics that contribute to a company being a possible target

Top 3 Reasons a Company may be targeted for Activism

Poor stock price performance



36%

Ineffective or inefficient capital deployment



27%

Poor corporate governance



18%

Increasing number of institutional investors support activists

How institutional investors viewed the growth of shareholder activism over the last few years



Favorable
76%



Neutral
13%



Unfavorable
10%

The majority of institutional investors believes activism adds value to a target company



Adds Value
84%



No Impact
9%



Reduced Value
7%

Factors Contributing to Shareholder Support of Activism



German companies are becoming more and more attractive for activists

Frankfurter Allgemeine
ZEITUNG FÜR DEUTSCHLAND

Stada gerät unter Druck von
aktivistischen Investoren

Bild

Investoren fordern
Milliarden-Entschädigung
– Jetzt kommt's für
Volkswagen richtig dick

Frankfurter Allgemeine
ZEITUNG FÜR DEUTSCHLAND

Balda Hängepartie: Aktionäre
stimmen Verkauf zu

FINANCE
Das Magazin für Finanzleute

SKW: Finanzinvestor
MCGM erhöht den Druck

Handelsblatt

Italiener steigen ein:
Der Bieterkampf um Balda geht weiter

FINANCE
Das Magazin für Finanzleute

Kauf von Atmel durch Dialog
Semiconductor droht zu kippen: Dialog
Investoren feiern das wahrscheinliche
Ende des gewagten Deals

Frankfurter Allgemeine
ZEITUNG FÜR DEUTSCHLAND

Aktivisten treiben Vorstände
vor sich her

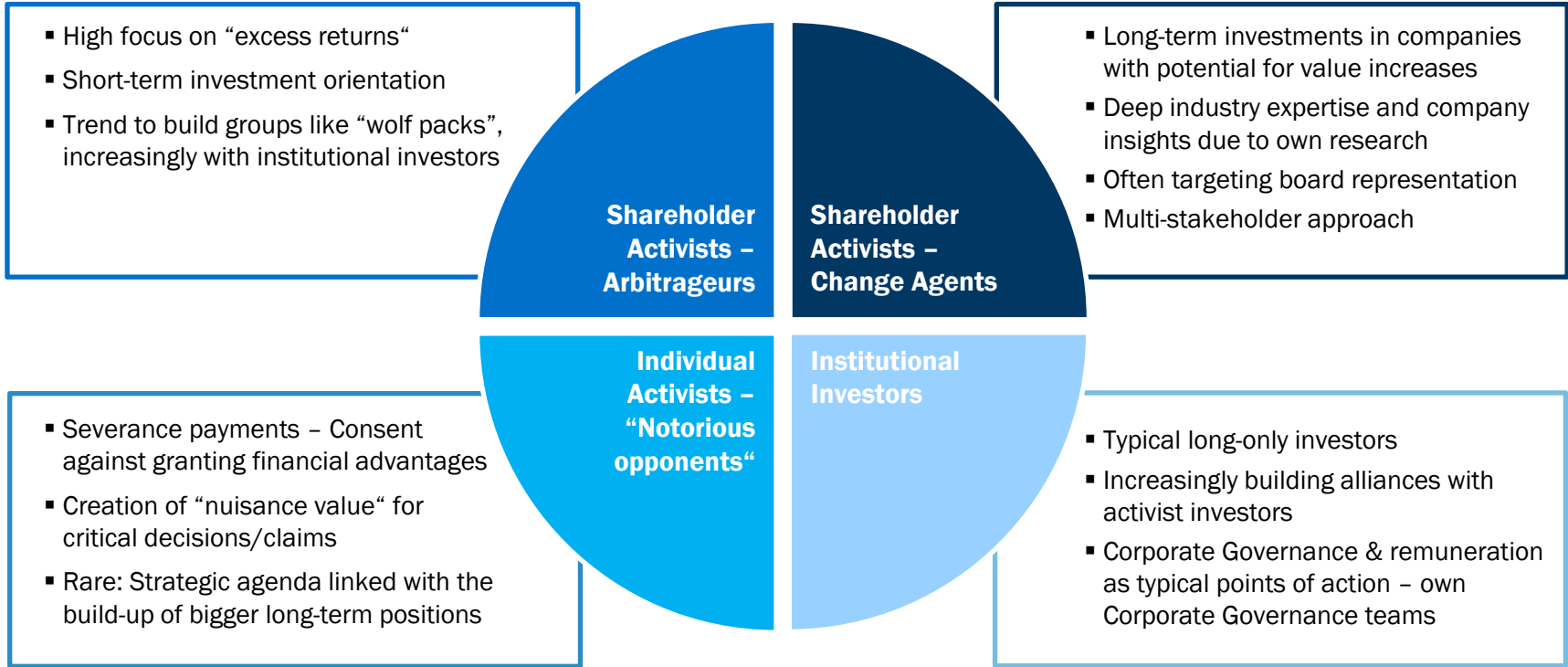
RHEIN-NECKAR-ZEITUNG

Chaosjahre bei Bilfinger:
Aktionäre üben scharfe Kritik

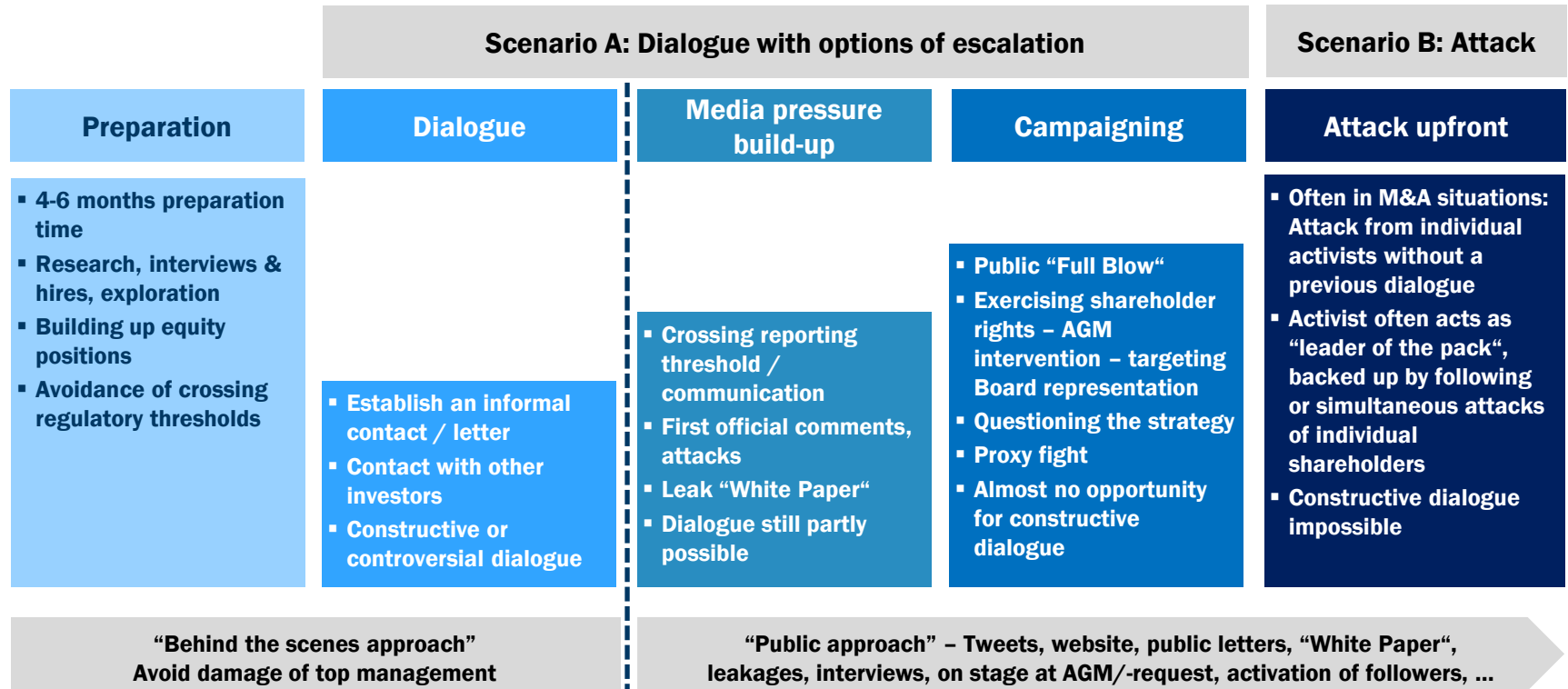
manager magazin

Aktivistische Investoren:
Ein Angriff auf Adidas
wäre nur logisch

Activists come in many forms and with varied interests



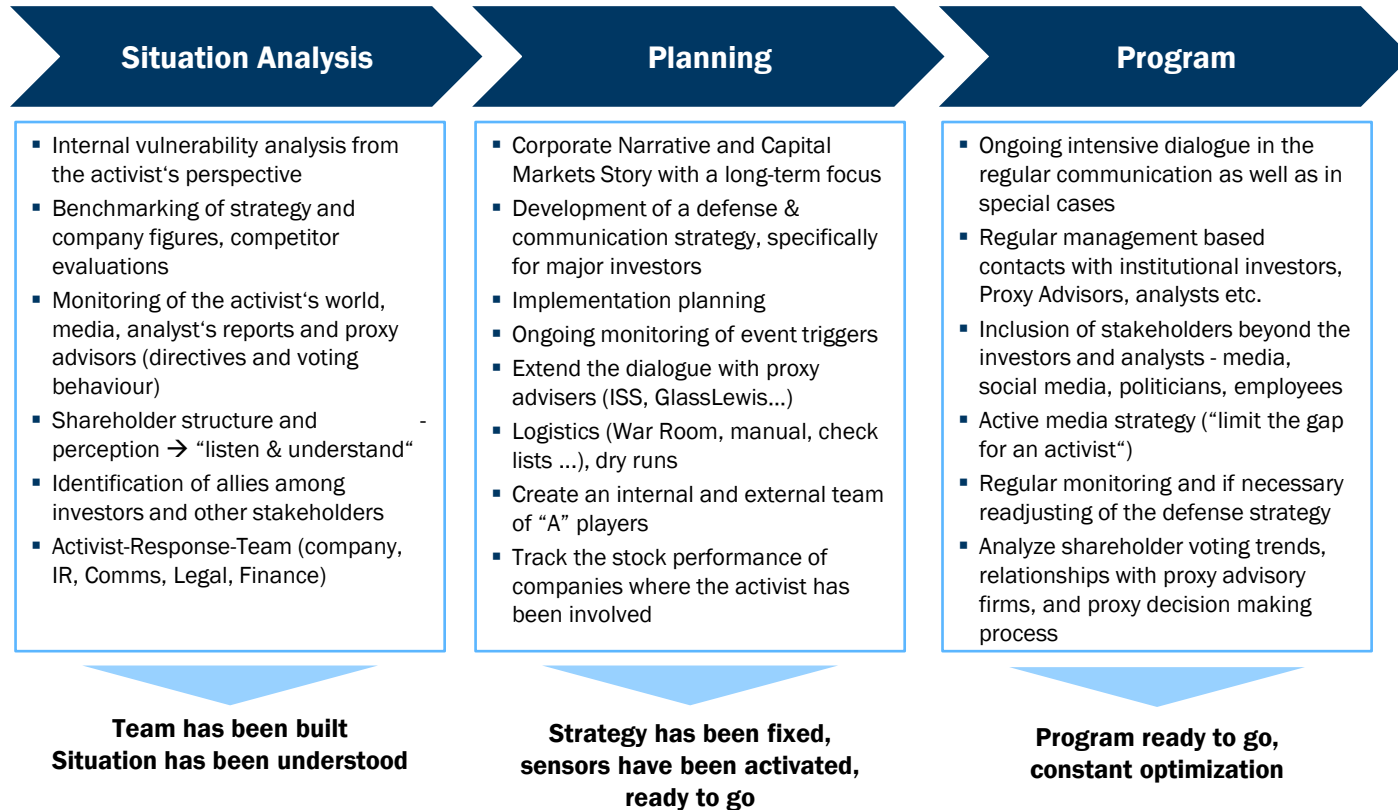
Thresholds of escalation and communications options



The use of media by activists in an attack scenario – example Carl Icahn



Preparation: “self-assess, prepare, engage”



Activist mapping: “reading the adversary”

What does the activist intend?

- Motivation (financial and /or strategic)
- Time of entry
- Investment strategy

What is his track record?

- Number of successful interventions
- Track record of his investments / returns
- Bad actions by portfolio companies
- Public perception and reputation

Which criticism does he usually express?

- Bad Performance
- Conglomerate discount
- Corporate Governance

When does he have a problem?

- When the company does not act
- High participation interests with high entry prices
- Danger of failing M&A offers

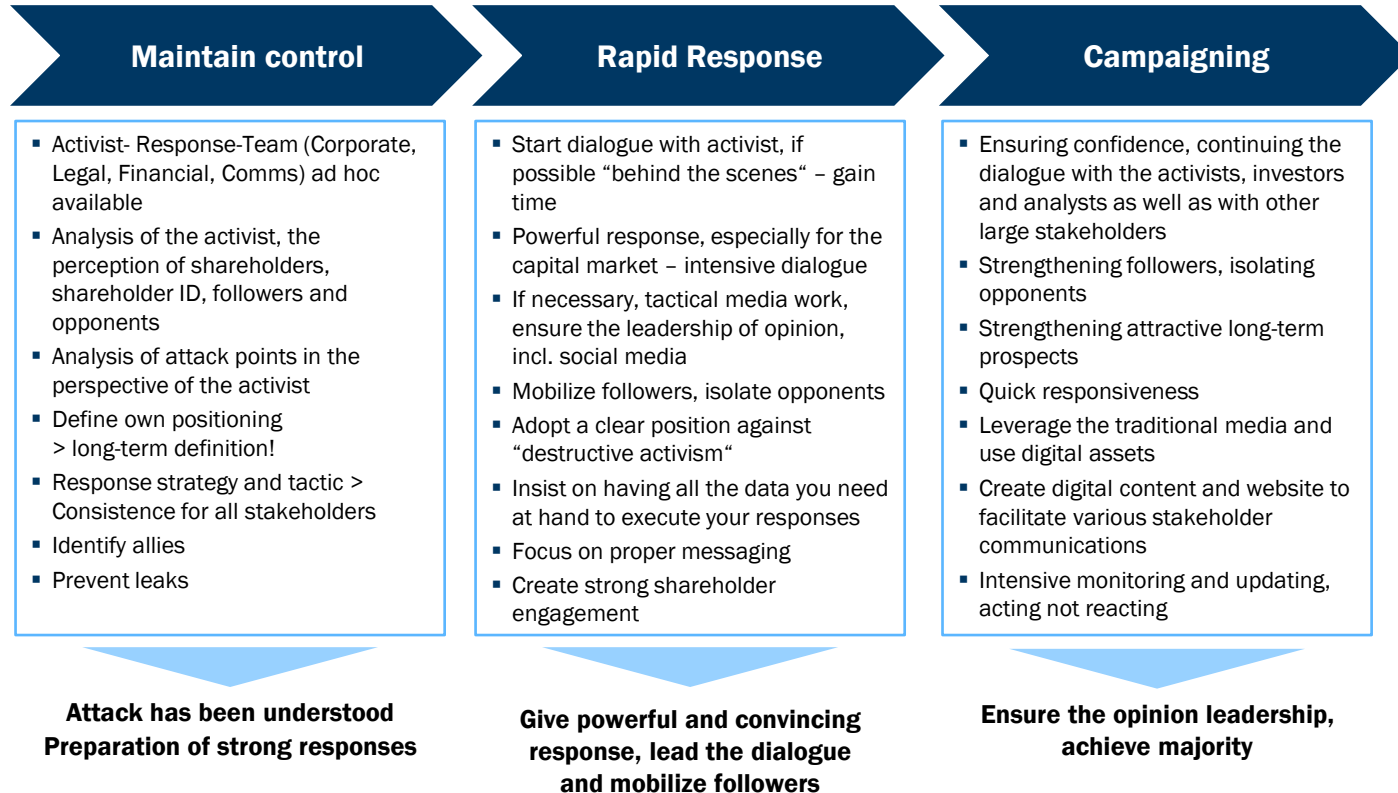
How does he act normally?

- “Behind the scenes” approach ...
- ... and / or official attack / Media campaign
- In-depth analysis of former targets

Who are his allies?

- “Friend” Investors
- Every one, who wins
- Contacts to politics, media ...

Defense: “maintain control under attack“



Case study: activism defense / Allergan

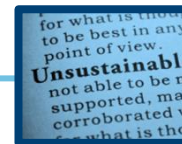
Our research and background investigations



Identified that Valeant's "double-digit" sales growth came from **excluding discontinued products and those with declining sales from its calculation**



Found Valeant likely **reorganized its reporting segments** for three consecutive years to conceal that **key products had declining sales volumes and that its 1,400+ development products did not produce meaningful revenue**



Found that Valeant's **unsustainable price increases – not growing unit sales volume** – were the revenue driver of key products



Found that Valeant used **inflated metrics** to support claims of successful acquisition history, when facts indicated otherwise



Identified that Valeant **senior management contradicted itself in public disclosures on the profitability calculation** associated with one of its top-selling products

Nine critical success factors for activism defense

1

Understand why you are a target and what this means for your defense, especially leading up to any proxy contest.

2

Use messaging that directly addresses the activists' assertions – avoiding them gives investors the impression that they are correct.

3

Engagement with shareholders needs to include the proxy-voting decision makers, which may not be the portfolio manager or analyst.

4

Shareholder research – understand voting guidelines, preferred engagement processes and identify voting decision makers.

5

Drive **messaging that resonates with investors** first and the media second.

6

Know your opponent and their slate including: history of success, history of companies where their nominees serve and background of nominees, institutions they have engaged with and which have supported them in the past.

7

Leverage the traditional media and use digital assets (website and social media) to get the message out quickly – use social media to reinvigorate the messaging as traditional media may tire of a story.

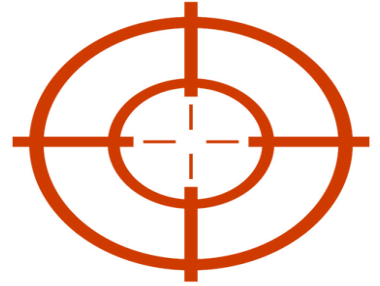
8

Monitor and keep track of all key influencers, e.g. within your shareholder base, sell-side analysts and bloggers.

9

Have a plan for Proxy Advisory Firms. The ISS/Glass Lewis strategy should not be the sole strategy for institutional support. Some arguments will not influence ISS/Glass Lewis, but may influence other institutions.

Hostile Takeover

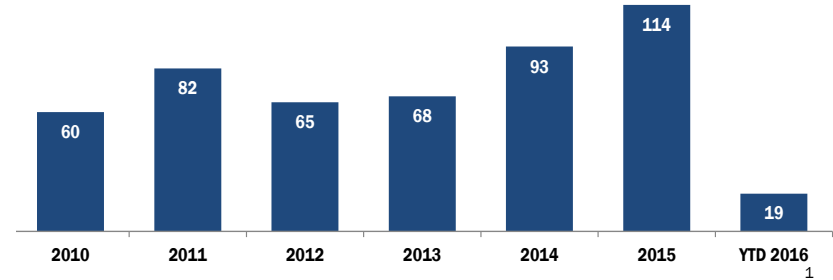


Hostile M&A is increasingly common across the globe

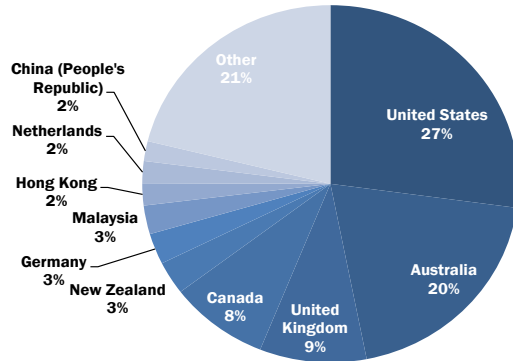
Between 2010 and May 20, 2016, there have been **501 hostile M&A situations globally** including both private equity and strategic buyers.

Of these transactions, about 50% were cancelled before close, however, about **30% were completed.**

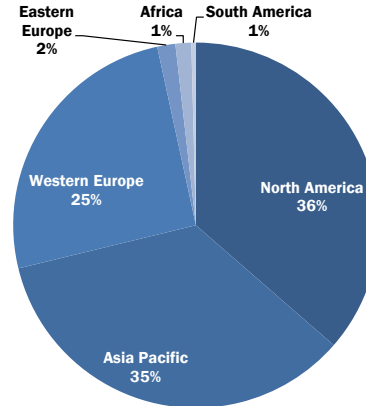
Number of Hostile M&A Transactions by Year



Hostile M&A Transactions by Country (2010 – YTD 2016)



Hostile M&A Transactions by Region (2010 – YTD 2016)



Source: FactSet; Data as of May 20, 2016

Growing number of hostile takeovers in Germany

Handelsblatt

K+S-Übernahme- 'Es gibt keine Killerverteidigung'

Börsen-Zeitung

Zeitung für die Finanzmärkte

Fosun legt feindliche Offerte für die BHF-Bank vor

Saarbrücker Zeitung

Bericht über feindliches Übernahmeangebot beflügelt K+S-Aktie

Frankfurter Allgemeine

ZEITUNG FÜR DEUTSCHLAND

Fosuns feindlicher Angriff

DIE WELT

Deutsche Wohnen wehrt sich verzweifelt gegen Vonovia

Handelsblatt

Feindliche Übernahme von R. Stahl geplatzt

Wirtschafts Woche

Potash bereitet offenbar feindliche Übernahme vor

Börsen-Zeitung

Zeitung für die Finanzmärkte

Chinesen greifen nach BHF Kleinwort Benson und fordern Lenny Fischer heraus

Aachener Nachrichten

Pleite für Vonovia: Feindliche Übernahme ist abgeblasen

Unequal conditions, unequal chances

THE (HOSTILE) BIDDER

150
Days

A bidder prepares its takeover approach on average for **4-6 months** before approaching a target or making an offer.

- Selection of target
- Analysis of valuation figures and outline of bid
- Limitation of potential issues
- Initial consideration of antitrust situation and potential undertakings
- Strategy to convince own and target investors
- Preparation of multi-stakeholder communications strategy
- Scenario plans (white knights etc.)

1
Day

THE TARGET

The target company often only has **24 to 48 hours** to prepare before an unsolicited offer approach becomes public.

- Activation of defense team
- Evaluation of offer and its chances
- Limitation of potential issues
- Assessment of likely investor reactions
- Development of an ad hoc response, short-term defense strategy and messages
- Activation of investor support
- Organization of logistics

Proper corporate governance requires a thorough and timely preparation process

Effective preparation for defense situations



Core arguments of bidders are predictable

Premium	“Attractive premium – reflects upside valuation potential“	
Strategy	“Excellent strategic fit“ “Matching business philosophy“ “Creating a market leader of a new dimension“	
Portfolio	Complementary: “Acquiring additional performance potential“	(Partial) Overlap: “Creating size and additional efficiencies“
Synergies	“Realizing significant synergies“ “Improving key figures“	
Investors	“Improving stock liquidity“ “Acceptance into share index membership and increased international recognition” “Moving ahead of immediate peer group”	
Financing	“Significantly improved capital markets access – both for debt and equity“	

”Valuation plus x”: Typical areas of hostile takeover defense

Valuation

- Attack the underlying valuation of the bid
- Depending on cash vs. share, attack the currency of the price paid

Strategy

- Contest the strategic fit of the companies
- Highlight dilution of successful strategy, mobilize customers

Synergies

- Highlight problems in realizing synergies and related issues for stakeholders
- Point-out dissynergies (e.g. customer conflicts or overlaps)

Antitrust & Politics

- Emphasize regulatory issues and damages from likely undertakings
- Mobilize political concerns and resistance, in connection with jobs / sites

Employees & jobs

- Raise concerns about job cuts and site closures
- Create strong coalition with workforce and workers councils to protect jobs

360° approach of stakeholders in defense situations

Defense Strategy

Defense Program

- Adapt defense program according to defense strategy
- Tactical analysis and implementation of response scenarios
- Tactical update of core messages, Q&As etc.

Employees	Media	Analysts / Institutionals	Private investors	Customers / Business partners	Political decision-makers
<ul style="list-style-type: none"> ▪ Management information ▪ Intranet ▪ Newsletters ▪ Events ▪ Internal hotline 	<ul style="list-style-type: none"> ▪ Active media contact management ▪ Press conferences, interviews, Backgrounders ▪ Press releases and follow-up ▪ Ongoing media monitoring 	<ul style="list-style-type: none"> ▪ Roadshow support ▪ Active contact and feedback management for investors and analysts ▪ Guidelines for bank communication ▪ Intense contact with advocates ▪ Communication with hedge funds, arbitrageurs 	<ul style="list-style-type: none"> ▪ Online newsletter ▪ Call center hotline ▪ Letters to shareholders 	<ul style="list-style-type: none"> ▪ Sales briefing plus speaker notes and Q&As ▪ Guidelines for personal appeals ▪ Speaker notes and Q&As for regional and local management ▪ Draft letters/emails 	<ul style="list-style-type: none"> ▪ Initiating contacts ▪ Individual talks/ briefings ▪ Speaker notes and Q&As for regional and local management ▪ Draft letters/ emails

Online / Social Media

- Defense website
- Online newsletter
- Real-time social media monitoring
- Active agenda setting and dialogue



Success factors of defense communications

- 1 Make sure the market recognizes and rewards the potential value of the company.
- 2 Identify potential bidder, monitor them diligently and know their (communication) strengths and weaknesses.
- 3 Define your goal: Stand-alone vs. best-possible buyer and price maximization. A “just say no“ strategy is rarely successful.
- 4 Define roles and relations of key players: Who is the face of defense? Who coordinates the process? Where are key supporters for endorsements?
- 5 Create unity among management, board and works council and include all employees, business partners, customers as well as local, regional and national politicians.
- 6 Ensure quick response times, protect company as well as management reputation and shape media coverage by means of agenda setting.
- 7 Always attack bidder on price, valuation and currency (cash vs. share). But keep in mind that other factors may well win the defense in the end.



Thank you for your attention!

QA

Critical Thinking at the Critical Time™

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