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M&A-Telegram 2019

+++ The German M&A market has proved robust in 2019. While the German M&A market in 2019 did not reach up to the strong M&A year 2018, it proves to be robust compared to the previous years. However, there are less large-scale transactions in 2019. Still, the acquisition of Cypress Semiconductor with a transaction volume of approximately EUR 9 billion constitutes the largest takeover in Infineon's history. Bayer sells its veterinary medicine division to Elanco for approx. USD 7.6 billion. ZF Friedrichshafen secures competitor Wabco for a total of approximately EUR 6.2 billion and Merck prevails against Entegris with respect to Versum Materials with a transaction volume of approximately EUR 5.8 billion. +++

+++ Public takeovers are stimulating the market, but they are not always successful. The Austrian AMS and a consortium of Bain and Carlyle start a takeover battle about Osram. In the first attempt, both offers fail. Shortly after, by using a loophole in the takeover law, AMS tries again and finally succeeds with a lowered minimum acceptance threshold. The takeover offer of Blackstone and Hellman & Friedman for Scout24 fails, however, at the already low minimum acceptance threshold of 50% plus one share. For the same reason EP Global Commerce remains unsuccessful in its attempt to take over Metro. +++

+++ Financial investors remain active and innovative. Financial investors are prominently involved in all major sales processes. The acquisition of Evonik's "Plexiglas" business for approx. EUR 3 billion is a highlight of Advent. CVC makes its move acquiring Bosch's packaging machine business and Apax acquires Dixi and Toi Toi rental toilettes following a competitive bidding process. By acquiring an interest in Axel Springer, KKR is consistently pursuing the "buy and build" strategy for value creation that it chose with the previous acquisition of various media companies. +++

+++ Activist shareholders establish themselves and get support. Meanwhile, activist shareholders have established themselves as market participants. At ThyssenKrupp, Cevian and Elliott place the elevator division on the sales list. Against internal resistance, but at Elliott's insistence, Scout24 ultimately considers the sale of AutoScout24. After a tough struggle, Elliott together with Knight Vinke, enables Fortum's takeover of Uniper. Activist shareholders now also receive support from increasingly active institutional investors, who at Bayer contribute to the first refusal to discharge an active member of a DAX management board and request supplementation of the supervisory board. +++

+++ Investment rules and industrial policy continue to gain significance. After the review threshold for non-EU/EFTA investments in sectors defined as critical has already been reduced to 10%, the list of critical sectors is to be supplemented again. In addition, there will be amendments to the test procedure as required by the new European control regime. Finally, the Federal Ministry of Economic's ministerial clearance for the merger of plain bearings manufacturers Miba and Zollern is followed by a draft for the reform of the antitrust regime and by further thoughts on the announced industry strategy. +++

+++ Anything seems possible in the new year. Shortly before the end of the year, transactions with US target companies at a total volume of over USD 70 billion were announced within a very short period of time; many market participants are expecting others to follow suit. They expect a significant increase in M&A activity in 2020, while others predict a sideways movement. Meanwhile, the German M&A market awaits the decision on the fate of ThyssenKrupp's elevator division. From an IPO to a partial or complete sale, anything seems possible. Continental, however, has now decided on a complete spin-off with a stock exchange listing for the Powertrain Division. Siemens intends to carve-out its energy division by spring 2020, followed by a public listing by late summer 2020. +++

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This M&A Telegram is addressed to clients and friends of Cleary Gottlieb who are interested in developments in the German M&A market. It does not constitute legal advice.

