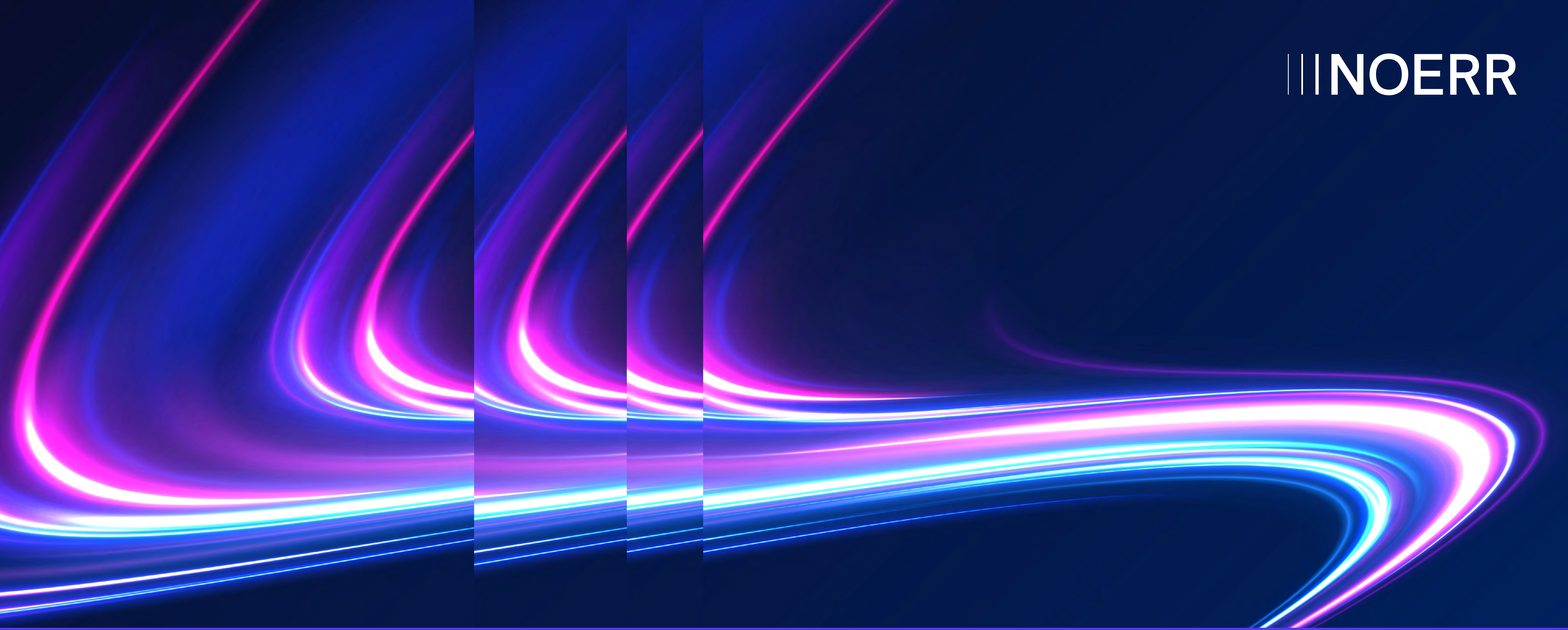


Public M&A Report 02/2026

The German public takeover market in the first half of 2026

by Volker Land and Stephan Schulz, Hamburg

Editorial

Few deals but much discussion

Dear readers,

If one only looks at the offer documents published during the first six months of 2026, one might get the impression that not much has happened in the German market for public takeovers. There were just four offers – another all-time low. Despite this, the seven announcements of offers (referred to as Section 10 Announcements) published in June and July 2026 suggest that the market will pick up in the second half of the year.

Yet at the same time, takeover-law issues featured more prominently than usual in the business press during this period. This was mainly due to UniCredit S.p.A. publishing its takeover offer to the shareholders of Commerzbank AG in May 2026 – one of the most significant deals of recent years in the German banking sector. In light of this exceptional case, there were intense discussions in the specialist and business press regarding issues such as minimum prices, "creeping in," improper advertising, and the use of complex derivative structures in public takeovers.

We also wish to reflect these trends in our Noerr Public M&A Report. This has led us to shorten our market report in view of the low number of deals and to structure it differently from usual. Rather than looking at the market as a whole, we focus more on individual deals in this issue. Special attention is given to the Commerzbank takeover, which had not yet been finalised at the time our report went to press.

This takeover procedure also prompted the feature article by Stephan Schulz and Bastian Stromann on "Advertising in public offers under the German Securities Acquisition and Takeover Act". This topic has taken on new relevance following intervention by Germany's financial regulator Bafin (Federal Financial Supervisory Authority) regarding statements made by UniCredit on social media channels.

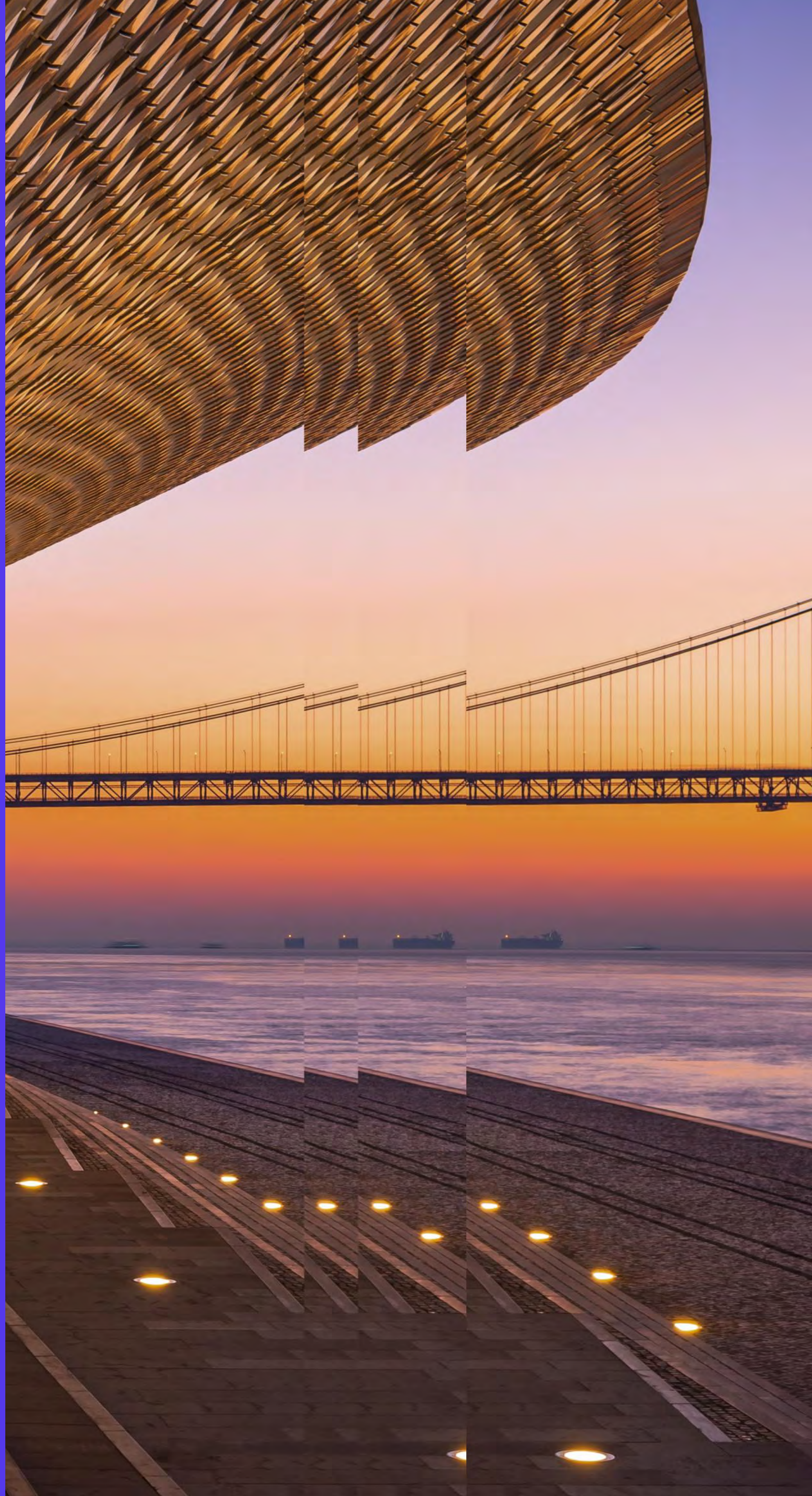
Despite activity on the market being somewhat muted, the regulatory framework continues to evolve rapidly. On 12 February 2026, the ECJ's judgment in Case C-864/24 (Valora Effekten Handel) was published, declaring the previous prevailing view on interpretation of the acting in concert provision in section 34(2) of the German Securities Trading Act (Wertpapierhandelsgesetz) as contrary to European law. The judgment raises many questions concerning the preparation and conduct of public takeover offers and could prompt lawmakers to adjust the disclosure requirements for shareholdings in listed companies. In his feature article "Limits to attribution of voting rights following the ECJ's 'Valora Effekten Handel' ruling", Michael Brellochs sets out the legal position following the judgment and the current state of debate.

We would like to thank the many colleagues at Noerr who helped us prepare the Public M&A Report 02/2026. Special mention should go to Bastian Stromann for his editorial support throughout the project.

We hope that by reading this issue of the Noerr Public M&A Report you will gain helpful insights into what is happening on the German takeover market and how German takeover law is currently developing.

Dr Volker Land

Dr Stephan Schulz



Market overview

Number, type and value of offers

The German public takeover market saw a new all-time low in the first half of 2026, with just four offer documents published. But owing to the large-scale UniCredit/Commerzbank takeover offer, both market capitalisation based on the offer price and actual offer values still reached record half-yearly figures.

The public takeover offer made by UniCredit S.p.A. to the shareholders of Commerzbank Aktiengesellschaft dominated market activity during the first six months of 2026. Based on this offer, Commerzbank had a market capitalisation based on the offer price ("**MCO**") of €38.73 billion. The actual offer value related to the shares not yet owned by the bidder based on the offer price ("**AOV**") stood at €28.36 billion.

Alongside this, the German financial regulator Bafin (Federal Financial Supervisory Authority) approved only three other public offers under the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz) in the first half of 2026, two just at the end of June. Together, the four offers had an MCO of €43.95 billion. These consisted of three voluntary public takeover offers and one mandatory offer, all of which fall within the large-cap segment, with an MCO of over €1 billion. This continues a trend observed in the first half of 2024 and 2025, during which most offers (H1 2024: six out of 13 offers; H1 2025: seven out of ten offers) were also in the large-cap segment.

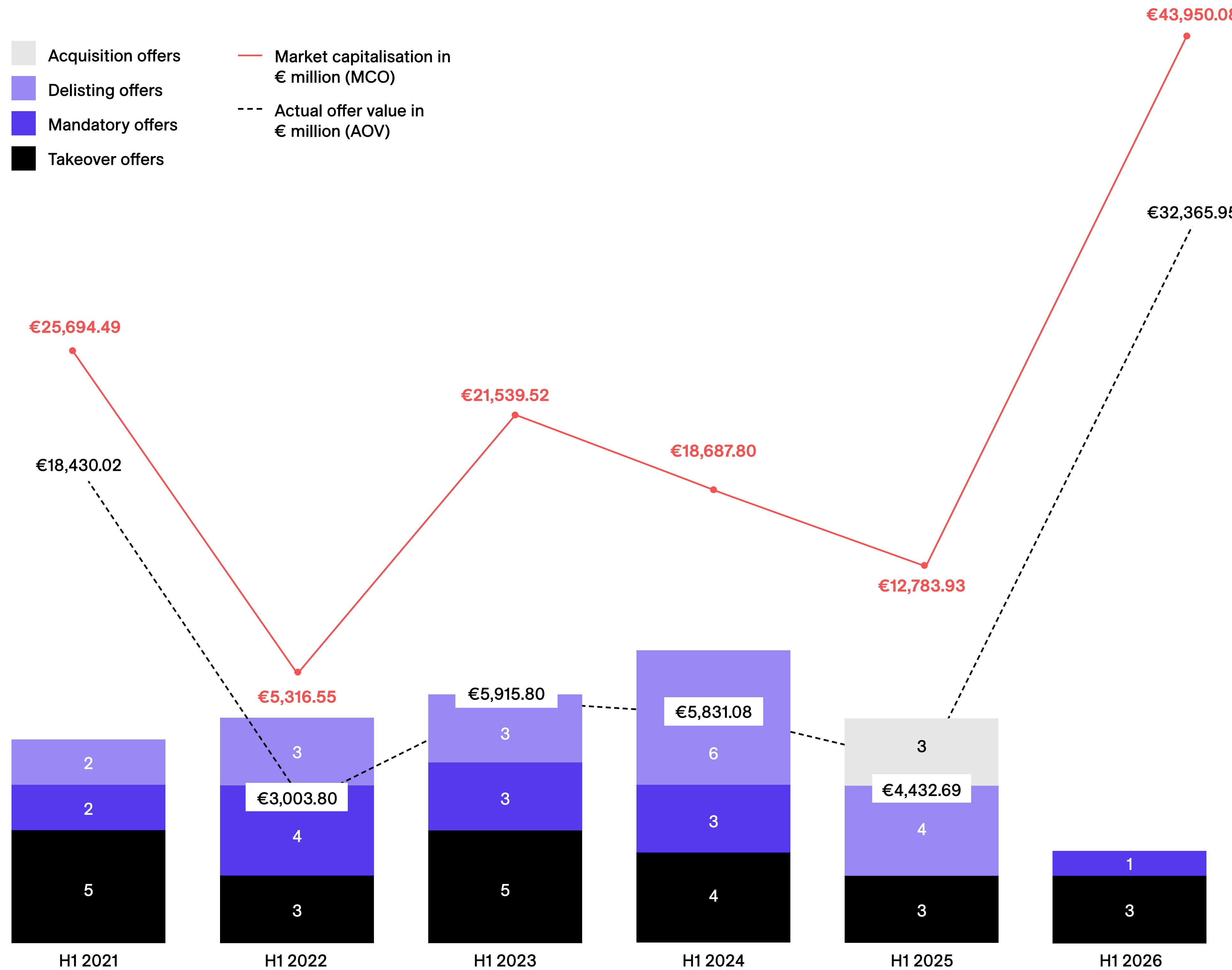


Fig. 1: Number, type and value of offers

Source: Noerr Research

<u>**Key comparative figures used:**</u>

Market capitalisation based on the offer price (MCO): The MCO is calculated by multiplying the number of shares in the target company at the time the offer is published by the offer price per share.

Actual offer value related to the shares not yet owned by the bidder based on the offer price (AOV): The AOV is calculated by multiplying the number of shares in the target company not held by the bidder before submitting the offer but covered by the offer by the price offered per share.

Closer look at the deals

When comparing the four published offers with an average offer, UniCredit S.p.A.'s takeover offer to the shareholders of Commerzbank Aktiengesellschaft stands out.

MCO in € million

Fig. 2: MCO of offers in H1 2026 The average values refer to the period since 2014
Source: Noerr Research

AOV in € million

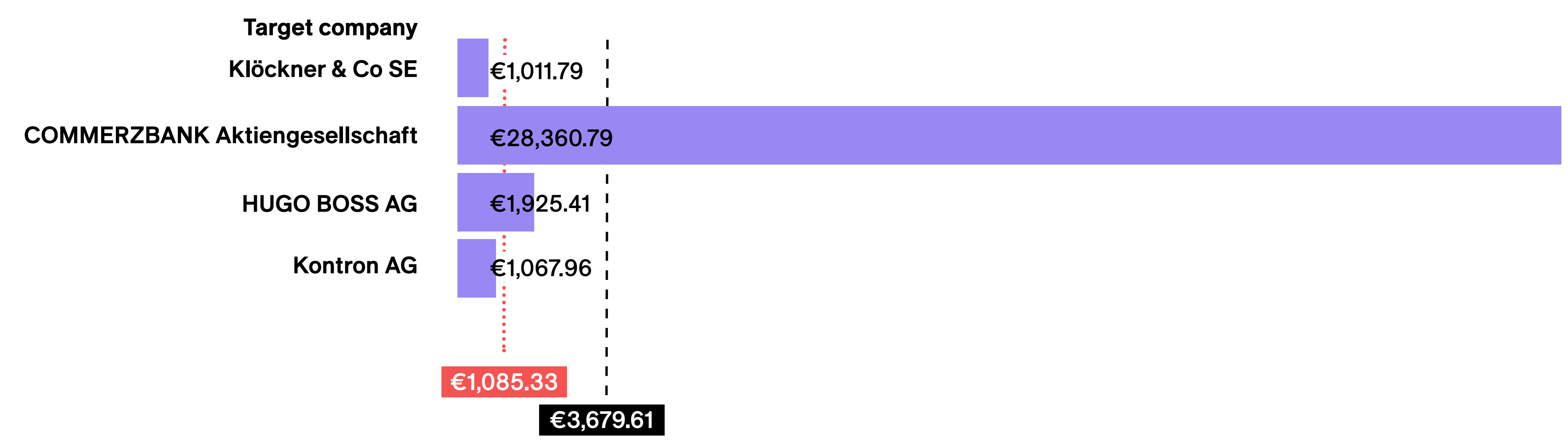


Fig. 3: AOV of offers in H1 2026 The average values refer to the period since 2014
Source: Noerr Research

Premium amount as a percentage

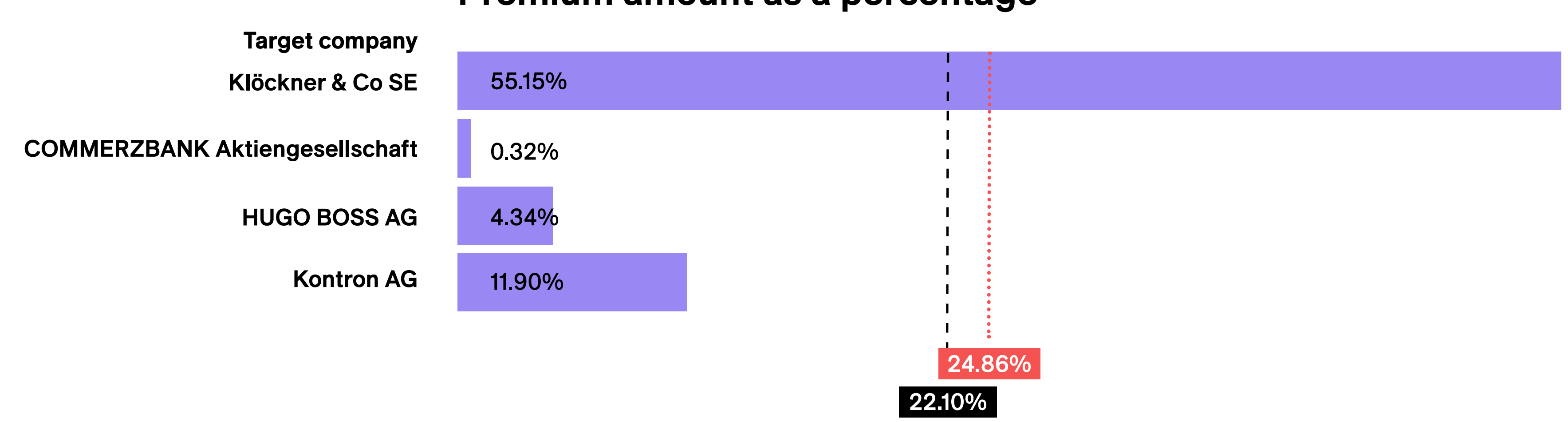


Fig. 4: Premium amounts in H1 2026 The average values refer to the period since 2014
Source: Noerr Research

UniCredit/Commerzbank takeover offer

The exchange offer made by UniCredit to Commerzbank's shareholders dated 5 May 2026 exceeded average values many times over in terms of MCO and AOV. No offer during the observation period since 2014 achieved a higher MCO. UniCredit has been Commerzbank's largest single shareholder since July 2025, ahead of the Federal Republic of Germany (12.72% stake[1]), meaning that the actual deal value of the public takeover offer corresponded to 73.23% of the MCO.

Rumours of a reduction in the German state's stake in Commerzbank had already begun to circulate in the market in 2024. In September 2024, the Federal Republic of Germany finally sold 4.49% of its shares held through the Financial Market Stabilization Fund to UniCredit, which subsequently gradually increased its stake in Commerzbank. In response, the Federal Republic of Germany halted the sale of further blocks of shares. The German government commented on several occasions on the importance of Commerzbank being an independent financial institution for German SMEs and refused to tender the shares held by the state during the public takeover procedure. According to press reports, government officials have recently expressed more openness to selling shares to UniCredit.

Before the takeover offer was published, Commerzbank's management board had emphasised the bank's independence and positive business performance in recent years. In May 2026, Commerzbank announced adjustments to the growth strategy it had been implementing since February 2025. As part of this, it also agreed with the general works council and the trade union ver.di to cut jobs. The financial press interpreted these as defensive measures against a takeover by UniCredit. At the same time, Commerzbank signalled its willingness to enter into takeover talks provided there were benefits for shareholders. UniCredit publicly emphasised the importance of a competitive, major European bank. In this context, it criticised Commerzbank's past performance and strategy. UniCredit's approach to communication prompted Bafin to intervene and to issue a prohibition order.[2]

UniCredit published its announcement regarding the decision to launch a takeover offer on 16 March 2026. In the offer document dated 5 May 2026, it offered Commerzbank's shareholders 0.485 of its own shares for each share tendered (exchange offer). Based on the volume-weighted average price of the shares in the target over the three months prior to the section 10 announcement (“**3-month VWAP**”), the consideration was valued at €34.35, representing a premium of just 0.32% over Commerzbank's 3-month VWAP on the same reference date. On the final day of the acceptance period, however, 0.485 UniCredit shares were quoted at €37.61 (closing price), which corresponded to a premium of approximately 9.84%. The fairness opinions commissioned by the target's management board and supervisory board for the reasoned statement pursuant to section 27 of the Securities Acquisition and Takeover Act each assessed the consideration offered as unreasonable. By the end of the extended acceptance period on 3 July 2026, 17.6% of Commerzbank's shares had been tendered to UniCredit by shareholders.

Irrespective of the acceptance rate, closing of the takeover offer is subject to conditions typical of transactions in the banking sector. These include, among other things, merger control approval by the European Commission, as well as regulatory approvals from the ECB and various national banking supervisory authorities. The financial regulatory approvals must be obtained by 19 June 2027.

1 The figure for the Federal Republic of Germany's shareholding in Commerzbank is taken from the offer document dated 5 May 2026 and relates to the shareholding prior to the takeover procedure.

2 For more on this, see the article “Advertising in public offers under the German Securities Acquisition and Takeover Act” in this report.

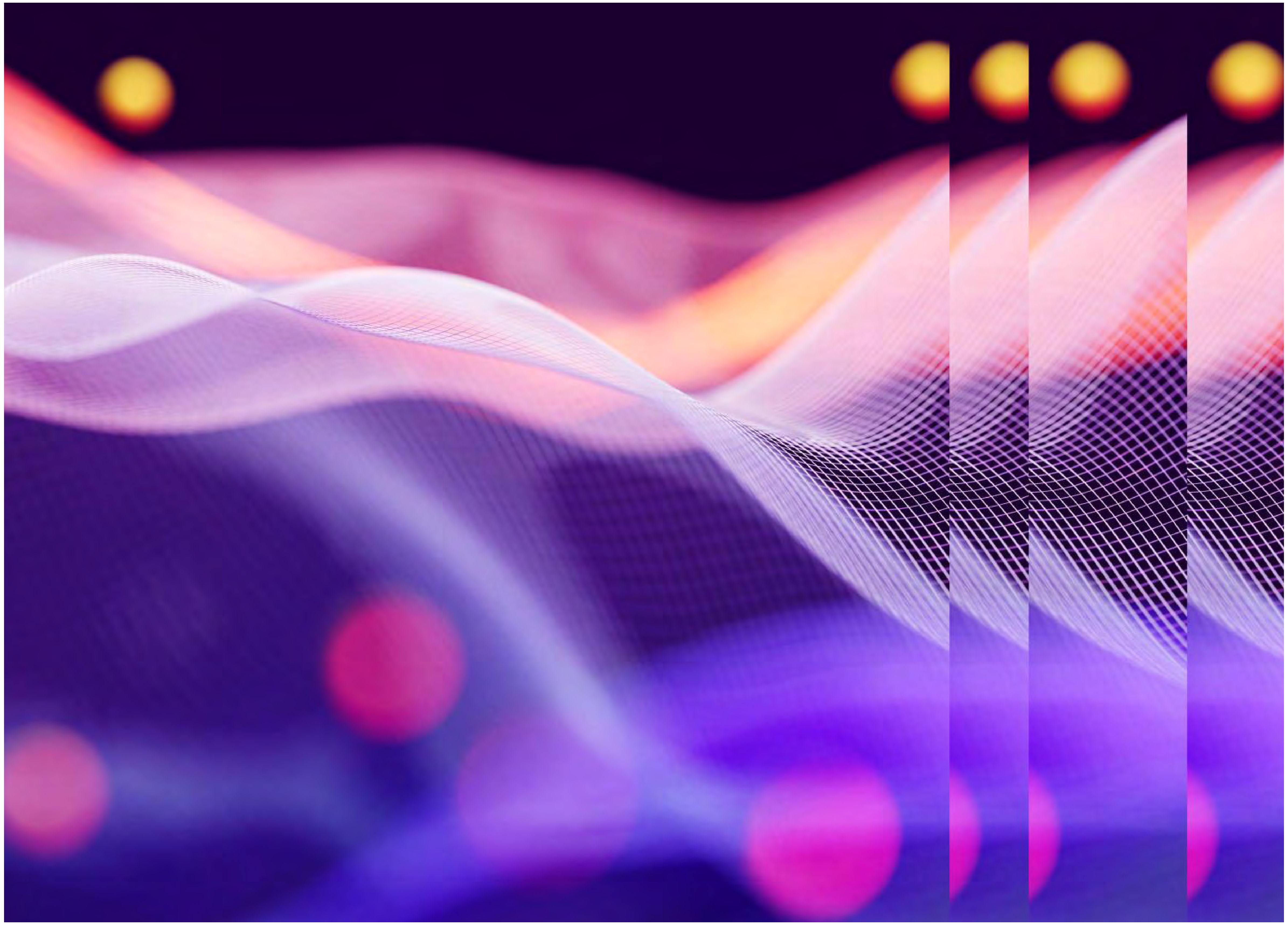
Other takeover offers

Alongside the offer to acquire Commerzbank, Worthington Steel GmbH made an offer to the shareholders of Klöckner & Co SE (5 February 2026) and Frasers Group plc made an offer to the shareholders of HUGO BOSS AG (25 June 2026). On 29 June 2026, the shareholders of Kontron AG received a mandatory offer from the Taiwanese company Ennoconn Corporation. All these offers were below the average for large-cap offers in terms of MCO and AOV (see figures 2 and 3 above in this report).

Before the offer was announced, Worthington Steel GmbH indirectly held just 7.79% of the shares in Klöckner & Co SE, which is why the AOV was almost equal to the MCO. It offered shareholders a premium of 55.15% on the 3-month VWAP, which is more than twice as high as that for an average large-cap offer. Worthington Steel GmbH was seeking to acquire all of the shares in Klöckner & Co SE and made closing conditional on a minimum acceptance threshold of 65%. Since the acceptance rate was initially low, the bidder lowered the threshold to 57.5% by amending the offer on 10 March 2026. Taking into account shares previously held and purchases settled before the offer, the bidder held 64.87% of the shares in the target at the end of the acceptance period. As already announced in the offer document, the bidder announced on 3 June 2026 that it would be publishing a delisting tender offer for the remaining shares in Klöckner & Co.[3]

The takeover offer by Frasers Group plc had not been agreed with the management of HUGO BOSS AG. Nevertheless, the bidder supports Hugo Boss's sustainable growth strategy and, by making a voluntary takeover offer, pre-empted a mandatory one. In their reasoned statement, the target company's management board and supervisory board have recommended that shareholders do not accept the offer. The main reason for this is the low premium of just 4.34% on the three-month VWAP. When the offer was published on 25 June 2026, the Hugo Boss share was even trading at €37.50 (closing price), €0.50 below the offer price. Frasers Group plc recently announced that, upon completion of the offer, it directly holds approximately 47.89% of the shares and voting rights in HUGO BOSS AG.

Ennoconn Corporation, based in Taiwan, published its mandatory offer to the shareholders of Austrian corporation Kontron AG on 29 June 2026. The bidder had previously acquired 30.01% of the shares in the target company through a share purchase agreement dated 10 June 2026, triggering an obligation to make an offer under section 35 of the Securities Acquisition and Takeover Act. Ennoconn Corporation does not intend to exert any influence over the target company's operational activities or restructuring. The international nature of the takeover means that the mandatory offer is subject to conditions such as the need to obtain investment control approval from the German Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie) and clearance from the Federal Cartel Office (Bundeskartellamt).



[3] The offer document for the delisting tender offer by Worthington Steel GmbH to the shareholders of Klöckner & Co SE was published on 15 July 2026. This delisting offer will be analysed in more detail in the Noerr Public M&A Report 01/2027 as part of the review of the entire previous year. The Noerr Public M&A Report covering the whole year is published regularly in the first quarter of the following year.

Advertising in public offers under the German Securities Acquisition and Takeover Act

by Stephan Schulz and Bastian Stromann, both Hamburg[4]

Admissibility of advertising in connection with public offers under the German Securities Acquisition and Takeover Act and Bafin's options for action under section 28.

Highlights:

- To address irregularities, Germany's financial regulator Bafin (Federal Financial Supervisory Authority) is able to prohibit certain types of advertising under section 28 of the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz).
- This power to intervene is intended to ensure that takeover offer procedures are carried out properly and to avert serious disadvantages for the securities market.
- In assessing whether there are any malpractices in offer-related advertising, Bafin considers that the key factors are the objectivity of the communication and the economic validity of the statements made. Also, the reach and accessibility of the advertising are also taken into account.

Bafin's decision in the context of the UniCredit/Commerzbank takeover

Up to now, the Bafin's power to prohibit advertising under section 28 of the Securities Acquisition and Takeover Act has tended to be of a theoretical nature. As far as can be seen, Bafin had not made use of this provision in the UniCredit/Commerzbank case prior to its prohibition order of 24 April 2026.[5]

By issuing its order, Bafin was responding to social media advertisements bearing the headline "A better bank for Germany, a better bank for Europe". UniCredit had published these throughout Europe. A figure in the article showed a greyscale picture of the Commerzbank headquarters on the left-hand side overlaid with the phrase "Current situation: neglected, unsafe, short term oriented" in red lettering. This was juxtaposed on the right-hand side with an image of the headquarters set against a blue sky, featuring the phrase "Our vision: strong, competitive, leading provider".

In its order of 24 April 2026, Bafin prohibited UniCredit from disseminating unobjective advertising during the ongoing takeover proceedings. It prohibited the bidder from describing Commerzbank in the way outlined above in any advertising statements. The order also extends to "statements about the target company or its subsidiaries [...] that portray the company's current economic situation or that of its subsidiaries and their future prospects in a negative light in a sensationalist, alarmist or unobjective manner". Bafin assessed the statements in the advertisement as mere speculation regarding the target company's financial situation. It pointed out that making unobjective statements, disseminating misleading analyses and forecasts, and engaging in advertising that relies more on the suggestive power of the statements than on their economic substance is not permitted in takeover proceedings.

Conditions and legal consequences of a ban on advertising in connection with public takeover offers

Section 28 of the Securities Acquisition and Takeover Act allows Bafin to prohibit certain types of advertising in order to address irregularities in advertising relating to takeover offers. The regulator's power to intervene extends to all parties involved in the takeover proceedings. The first condition is the existence of an advertising measure. The term is interpreted broadly and covers any communication intended to influence the recipients of an offer with the aim of persuading them to accept or reject the offer.

The wording of the Securities Acquisition and Takeover Act also requires that "malpractices in advertising" exist for Bafin to act. The term "malpractices", which is not defined in section 28 of the Act, is interpreted in the light of the principles of takeover law set down in its section 3 and the understanding of "malpractice" within the meaning of the second sentence of section 4(1). Legal literature assumes that a malpractice exists where the advertising measure in question is likely to cause serious disadvantages for the securities markets or to impair the orderly conduct of the procedure. This specifically includes advertising that hinders or thwarts free decision-making by the offerees through unobjective statements, misleading forecasts or suggestive statements. The determination of whether a malpractice exists is subject to full judicial review; Bafin is not granted any discretion in this matter.

When assessing whether a malpractice has occurred, Bafin may take into account not only the content of the communication in question but also the manner of presentation, the medium used and the scope of the measure. The target audience of the advertising is also relevant; institutional investors, for example, are likely to be less in need of protection than the general public. Finally, the communication must reach a certain level of severity, as only then is intervening in the constitutionally protected freedoms of communication and advertising justified.

Bafin has the discretion to decide whether to take action in the event of malpractices and to what extent it does so. It can ban advertising just in relation to certain content or scope or the mode of transmission, for example. Parties intentionally or negligently breaching the prohibition may be subject to a fine.

Practical implications

From Bafin's perspective, the publication's reach is a key factor. Its decision also highlights the importance of an objective approach. It is clear from the decision that the regulator regards statements as problematic if they are based more on their suggestive power than on setting out their economic substance.

The prohibition order does not impose any new requirements on advertising during a takeover procedure that have not already been discussed in legal literature.

However, in the context of the prohibited social media advertisements, Bafin's decision reaffirms that even the concise form of presentation common on social media must meet the requirements for objective, accurate and non-misleading advertising. When assessing whether a malpractice has occurred in context of offer-related communication via social media platforms their enormous reach must be taken into account.

---

4 The authors would like to thank trainee lawyer Florian Nölle for his help in preparing this article.

5 Bafin's prohibition order is available under https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Massnahmen/Massnahmen_WpUEG/meldung_260424_unicredit_s_p_a_en.html.

Limits to attribution of voting rights following the ECJ's "Valora Effekten Handel" ruling

by Michael Brellochs, Munich

Background

Acting in concert is one of the main criteria leading to the attribution of voting rights in capital market transactions and the involvement of shareholders in listed companies. In Germany, the same wording is used in section 34(2) of the German Securities Trading Act (Wertpapierhandelsgesetz) and section 30(2) of the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz) and apart from reaching an understanding on the exercise of voting rights also covers engaging in concerted action "in another way" with the aim of bringing about a lasting and material change in the issuer's business strategy. Over the years, lawmakers and the courts in Germany progressively broadened the scope of applicability, which has led to considerable grey areas and uncertainty in practice.

ECJ's judgment of 12 February 2026 (Case C-864/24)

In preliminary ruling proceedings initiated by the German Federal Court of Justice (Bundesgerichtshof),[6] the European Court of Justice (ECJ) was required to rule on whether the provision in section 34(2) of the Securities Trading Act concerning engaging in concerted action "in another way" is compatible with the requirements of the Transparency Directive (Directive 2004/109/EC). The ECJ ruled that it was not.

Article 10(a) of the Transparency Directive links the attribution of voting rights in cases of acting in concert to the existence of an agreement that obliges the parties to adopt a lasting common policy towards the issuer's management. The German provision goes beyond this by also covering engaging in concerted action "in another way", without a binding agreement. As the Transparency Directive provides for full harmonisation within its scope of application, the ECJ has held that stricter national rules on the attribution of voting rights are only admissible if they are directly related to takeover offers, merger transactions and other transactions affecting the ownership structure or control of companies (point (iii) of the fourth subparagraph of article 3(1a) of the Transparency Directive). Section 34(2) of the Securities Trading Act applies in all cases where there is a notification requirement under section 33, i.e. even well below the control threshold under takeover law and regardless of any takeover offer. Consequently, according to the ECJ, the necessary direct link to a transaction leading to control is lacking and the wording of section 34(2) of the above act contrary to European law if it goes beyond the wording of the Transparency Directive.

Bafin's response (supervisory notice of 20 March 2026)

The ECJ's judgment concerns not only the criteria attributable to "acting in concert", but all the criteria under section 34 of the German Securities Trading Act going beyond the provisions of the Transparency Directive. This judgment prompted Bafin to respond by publishing a supervisory notice (No. 02/2026 (WA))[7] and amend its administrative practice:

- **Section 34 of the Securities Trading Act:** Bafin immediately started applying section 34(2) of the act in such a way that (in line with the wording of Article 10(a) of the Transparency Directive) voting rights are only attributed for agreements that oblige the parties to adopt a lasting common policy towards the issuer's management. Besides this, the Bafin no longer applies the criteria for attribution set out in subparagraphs 3 and 5 of section 34(1) of the act, as there are no equivalent attribution criteria for this in the Transparency Directive. Thus the previous administrative practice set out in the regulator's issuer guidelines and FAQs no longer applies.
- **Section 30 of the Securities Acquisition and Takeover Act:** In contrast, the attribution of voting rights under takeover law remains unchanged. Bafin assumes that the provisions of the Securities Acquisition and Takeover Act comply with European law because point (iii) of the fourth subparagraph of article 3(1)(a) of the Transparency Directive expressly authorises member states to lay down more stringent attribution rules in connection with takeover offers.

Federal Court of Justice judgment of 16 June 2026

Following the ECJ's ruling of 12 February 2026 in which it answered the question referred by the Federal Court of Justice (Bundesgerichtshof), the Federal Court of Justice reconsidered the case. By judgment of 16 June 2026, it referred the matter back to the appeal court on the grounds that it was not yet in a position to reach a decision based on the ECJ's ruling. The Federal Court of Justice reiterates the ECJ's statements that section 34(2) of the Securities Trading Act only covers agreements on conduct falling under article 10(a) of the Transparency Directive. This states that an agreement (which may also be implied but requires a meeting of minds) is required which obligates the parties to adopt a lasting common policy towards the management of the issuer.

Contrary to the view of the lower court, mere concerted behaviour resulting from any act of communication is not sufficient. What is required is a high degree of commitment over a certain period of time, which must be consistent and directed towards the issuer's management. As the appeal court had not established the existence of such an agreement (after concluding from the circumstantial evidence that collaboration certainly had taken place in some other way), the Federal Court of Justice referred the case back. The appeal court must now examine whether an agreement satisfying the requirements of EU law was in place.

Practical implications

The implications of the ECJ's ruling are significant:

1. **Stricter criteria for attribution in the Securities Trading Act:** The criteria for attribution in section 34 of the Securities Trading Act have to be limited to the wording of the underlying provisions of the Transparency Directive. In particular, the variant of the provision relating to engaging in concerted action "in another way" is no longer applicable within the framework of section 34(2) of the above act. An agreement meeting the requirements of the Transparency Directive is required.
2. **No effects on section 30 of the Securities Acquisition and Takeover Act:** As the criteria for attribution in section 30 of the Securities Acquisition and Takeover Act are not immediately affected by the ECJ's ruling, a legally questionable situation may arise where acting in concert exists for takeover law purposes and triggers a mandatory offer although the party acquiring control did not yet have to submit a voting notification under the Securities Trading Act.
3. **Relief for investor alliances:** The ECJ's judgment brings more legal certainty for investors who collaborate below the control threshold in listed companies on topics such as governance or ESG, because the offence of acting in concert is limited and defined more precisely.
4. **Need for legislative action:** Lawmakers will have to amend the wording of section 34 of the Securities Trading Act and bring it in line with the Transparency Directive so that it complies with European law. When doing so, they will also have to decide whether to abandon the current alignment of the attribution provisions under the Securities Trading Act and Securities Acquisition and Takeover Act or to take the more logical option in legislative terms by limiting section 30 of the Securities Acquisition and Takeover Act in line with section 34 of the Securities Trading Act in order to maintain this alignment.

[6] See Noerr Public M&A Report 01/2025.

[7] Bafin's prohibition order is available under https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Aufsichtsmitteilung/2026/aufsichtsmitteilung_02_2026_auswirkungen_eugh_auf_34wphg_30wpueg.html (German only).

Your contacts

Hamburg

Volker Land
Partner, Noerr
volker.land@noerr.com
T +49 40 300397102

Stephan Schulz
Partner, Noerr
stephan.schulz@noerr.com
T +49 40 300397108

Dusseldorf

Natalie K. Daghles
Partner, Noerr
natalie.daghles@noerr.com
T +49 211 49986157

Munich

Michael Brellochs, LL.M.
Partner, Noerr
michael.brellochs@noerr.com
T +49 89 28628468

Gerald Reger
Partner, Noerr
gerald.reger@noerr.com
T +49 89 28628155

Ralph Schilha
Partner, Noerr
ralph.schilha@noerr.com
T +49 89 28628167

Frankfurt on the Main

Holger Alfes
Partner, Noerr
holger.alfes@noerr.com
T +49 69 971477231

Julian Schulze De la Cruz
Partner, Noerr
julian.schulzedelacruz@noerr.com
T +49 69 971477231

About Noerr

We live partnership – and have done so for more than 75 years. We make your goals and interests our own and are fully committed to realising them with the highest quality and innovative spirit.

Based in Germany and highly respected around the world, we not only guide our clients through their most important strategic challenges, but also develop innovative and viable solutions with them when they explore unchartered territories.

Our advisors blend legal excellence with a profound understanding of industry-specific needs and entrepreneurial ideas. We advise corporations, investors, governments and growth companies in the most complex and challenging national and international projects. Our fervent dedication and cooperative approach lay the groundwork for a collaboration where our clients' added value always takes centre stage.

Noerr partners with top law firms worldwide and is the exclusive member firm in Germany for Lex Mundi, the world's leading network of independent law firms with in-depth experience in 125+ countries.