



Public M&A Report 01/2026

# The German public takeover market in 2025

by Dr Volker Land and Dr Stephan Schulz, Hamburg



# Content

<b>Content</b> .....	4
<b>Editorial</b> .....	5
<b>Highlights</b> .....	7
<b>Market overview</b>	
Number and value of offers .....	9
Development in the segments .....	11
Distribution of offer value and selected transactions .....	13
Premium amount .....	15
Reasoned statements pursuant to section 27 of the German Securities Acquisition and Takeover Act .....	19
<b>Presumption of fairness of consideration in squeeze-outs under takeover law: is the practice under section 39a of the German Securities Acquisition and Takeover Act (WpÜG) contrary to European law?</b> .....	21
<b>Changes to delisting and downlisting under the Location Promotion Act (Standortfördergesetz)</b> .....	27
<b>Contacts</b> .....	35
<b>About Noerr</b> .....	37

# Editorial

## In the shadows of previous record years ...

Dear readers,

2025 ended as another weak year for public takeovers in Germany. Both the number of transactions and the total value of offers declined noticeably. The 20 offers made in 2025 involved target companies with a market capitalisation at the offer price of around EUR 16.9 billion, reaching the lowest level since 2015. There were no highlight transactions such as those that characterised the record years 2017 and 2021.

In this edition of our market report, we are pleased to present a new key figure. Until now, we have assessed the value of public offers exclusively on the basis of market capitalisation at the offer price ("MCO"). The number of shares that could actually be tendered to the bidder was not considered. We would now like to close this gap by considering the

actual offer value at the offer price ("AOV"), calculated on the basis of the shares not yet owned by the bidder, in addition to the MCO. This additional perspective will provide a more comprehensive insight into market development.

The past year has been significant for Germany as a capital market location with the introduction of the EU Listing Act and the legislative process for the Location Promotion Act (Standortfördergesetz), which came into force on 10 February 2026. However, these measures will only have a positive impact on the takeover market over a very long-term horizon. We are pleased that Julian Schulze De la Cruz and Philip Schmoll have contributed a focus article "Changes to delisting and downlisting under the Location

Promotion Act", in which they discuss the changes in takeover law, in particular with regard to delisting offers.

Finally, in December 2025, the European Court of Justice published its decision in the Svema Trade case. In this decision, the ECJ addressed the question of whether the presumption laid down by the European Takeover Directive, namely that the consideration paid in a mandatory offer is also appropriate in the event of a subsequent squeeze-out under takeover law, is rebuttable or irrebuttable. It held that the presumption is rebuttable. In their article "Presumption of fairness of consideration in squeeze-outs under takeover law: is the practice under section 39a German Securities Acquisition and Takeover Act (WpÜG) contrary to European law?", Stephan Schulz and

Bastian Stromann examine the implications for German takeover law.

We would like to thank our many colleagues for their assistance in preparing the Public M&A Report 01/2026. Special thanks go once again to Philip Schmoll for preparing the section on reasoned statements and to Bastian Stromann for his support in the editorial preparation.

We hope this report provides you with in-depth, well-founded insights into the latest developments in the public M&A market and that you enjoy reading it.



**Dr Volker Land**



**Dr Stephan Schulz**

# Highlights

## Significantly fewer transactions with very low offer value

In 2025, 20 public takeover offers were made. Following several years of market recovery and increased activity in public takeovers, this figure represents a 37.5% decrease in the number of offers compared to the previous year. The decline in aggregate offer value, expressed as market capitalisation at the offer price (“MCO”), in 2025 was even more pronounced. The MCO fell by 57.81% from approximately EUR 40.11 billion in 2024 to only around EUR 16.92 billion in 2025, the lowest level since 2015. The actual offer value based on shares not yet owned by the bidder at the offer price (“AOV”), which we have analysed for the first time this year, amounted to around EUR 8.86 billion in 2025. This corresponds to only 39.30% of the average value for the comparative period since 2014.

## Continued delisting trend and more takeover offers

The high number of pure and combined delisting offers already observed in previous years remained at a high level in 2025. In total, 35% of offers were aimed at delisting from the stock exchange, once again clearly exceeding the pre-2020 average value of less than 20%. The trend towards delisting offers observed in the 2020s therefore continued. In addition, four pure acquisition offers, i.e. those not aimed at delisting or acquiring control, were observed last year. This is the highest figure in the observation period since 2014.

## High proportion of large-cap transactions with low transaction value

In 2025, eight offers were made in the large-cap segment (offer value above EUR 1 billion). Large-cap transactions therefore accounted for 40% of all offers last year, meaning that, for the first time, most of the offers in a given year fell into this segment. However, this was offset by several very small offers in the small-cap segment. As no particularly large transactions were recorded in 2025, the share of the large-cap segment in total market capitalisation fell to a below-average 88.16%. By contrast, the small- and mid-cap segments were able to increase their share of total market capitalisation to an above-average level despite fewer offers. This increase corresponds to the below-average market capitalisation in the large-cap segment.

## High average premiums paid

After two weak years, the average premium paid in 2025 rose again to 27.64%. Offers with no premium or with a low premium of less than 10% more than halved, while more than half (61.11%) of all offers for which a three-month VWAP could be determined envisaged a premium of 20% or more.

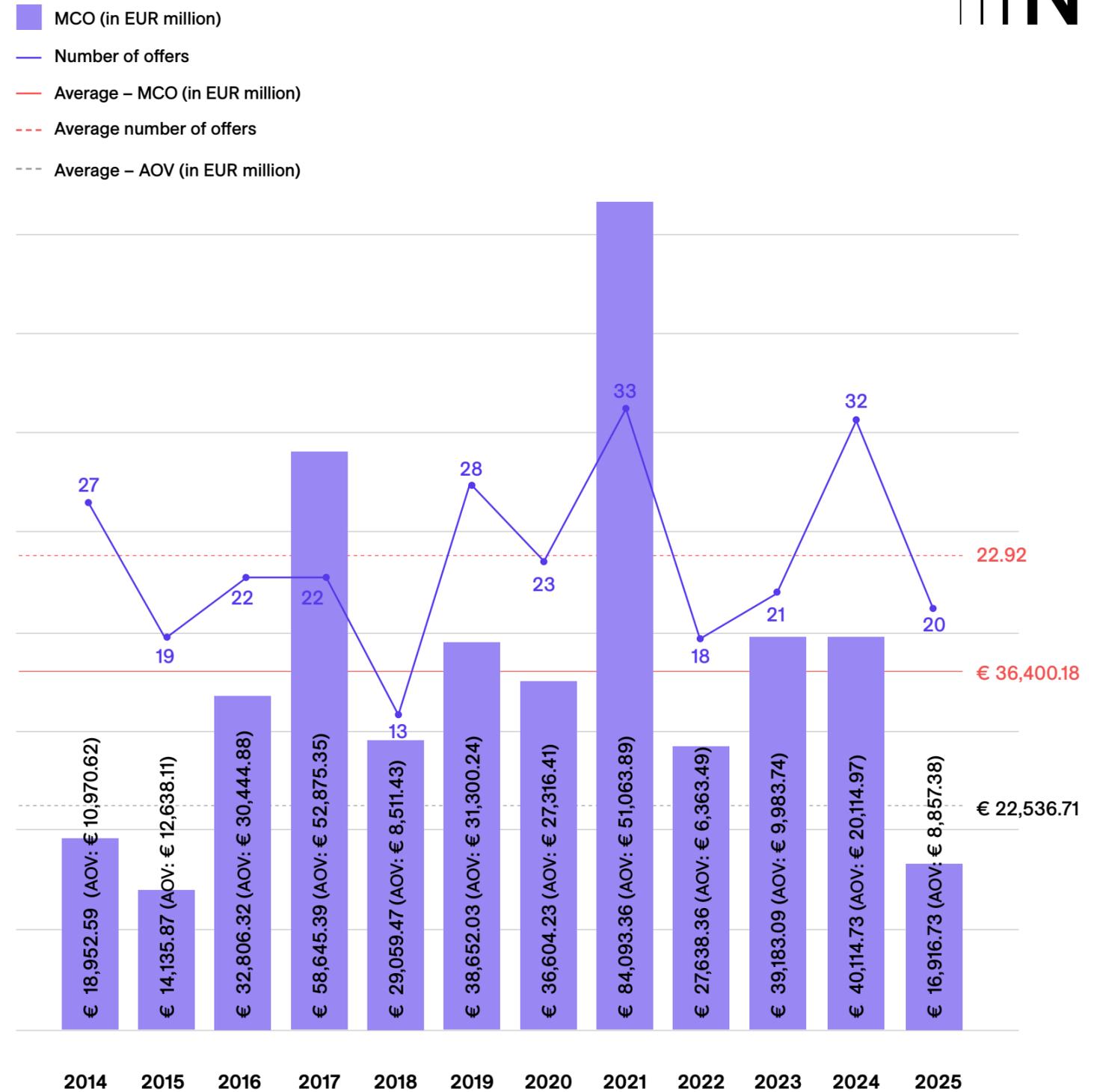


Fig. 1: Number and value of offers since 2014

Source: Noerr Research

<sup>1</sup> Offers not permitted by the Federal Financial Supervisory Authority (BaFin) are not included. Offers not permitted by it were made in 2014 (two offers), 2015 (one offer), 2017 (one offer), 2018 (two offers), 2019 (one offer), 2020 (three offers), 2021 (one offer) and 2022 (one offer). The evaluation of the average values in the period analysed since 2014 only considers offers approved by BaFin.

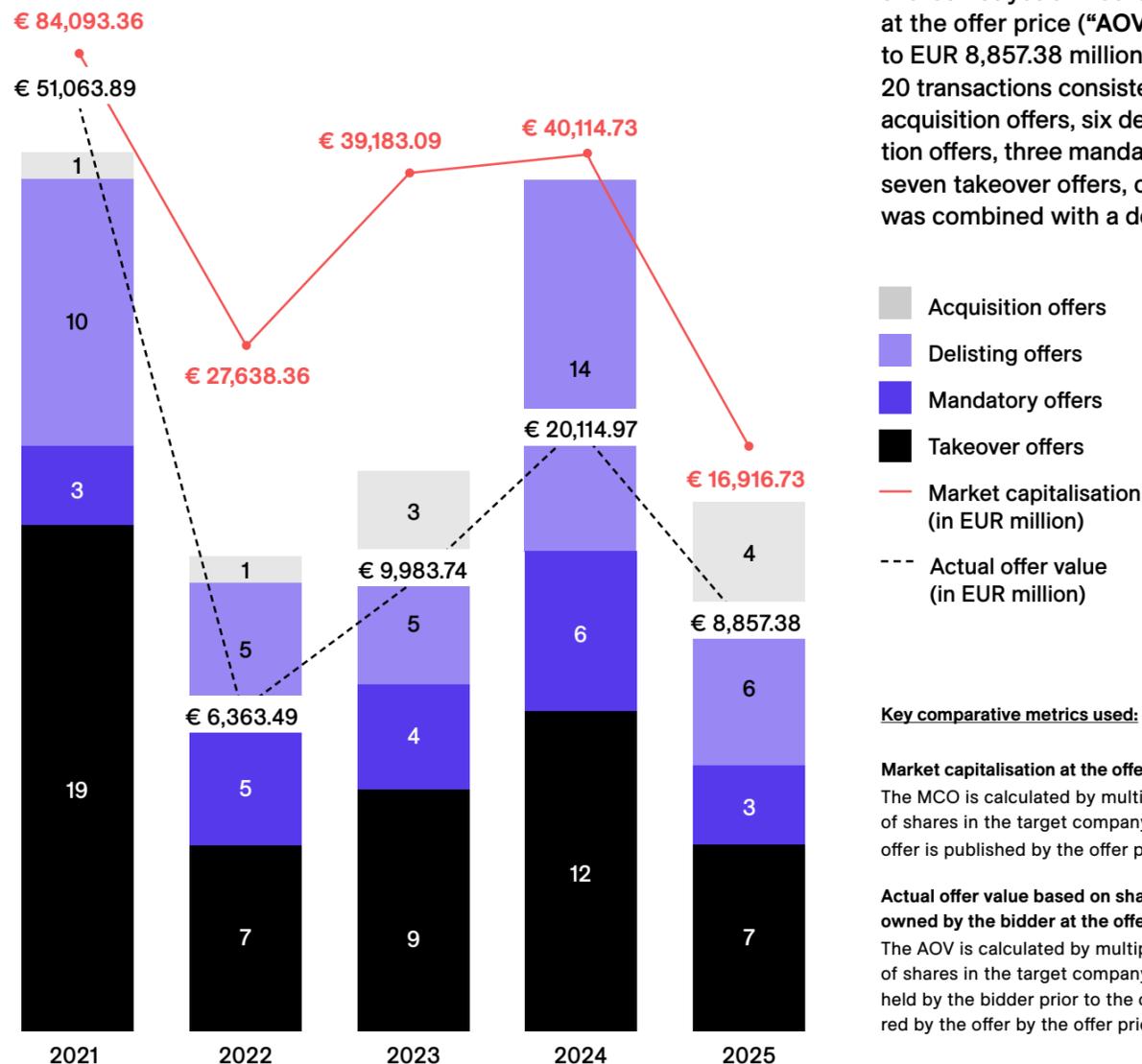
# Market overview

## Number and value of offers

The market recovery seen in the past two years did not continue in 2025. The number of transactions declined further and market capitalisation at the offer price fell to its lowest level in the past ten years. The consistently high number of delisting offers continues the trend towards market consolidation on the stock exchange.

In 2025, the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, “BaFin”) approved a total of 20 public offers under

the German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz (WpÜG); the “Takeover Act”). These offers related to target companies with a total market capitalisation at the offer price (“MCO”) of EUR 16,916.73 million, while the actual offer value based on shares not yet owned by the bidder at the offer price (“AOV”) amounted to EUR 8,857.38 million in 2025. The 20 transactions consisted of four pure acquisition offers, six delisting acquisition offers, three mandatory offers and seven takeover offers, one of which was combined with a delisting offer.



- Acquisition offers
- Delisting offers
- Mandatory offers
- Takeover offers
- Market capitalisation (in EUR million)
- - - Actual offer value (in EUR million)

**Key comparative metrics used:**

**Market capitalisation at 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 based on shares not yet owned by the bidder at the offer price (AOV):**  
The AOV is calculated by multiplying the number of shares in the target company that were not held by the bidder prior to the offer but are covered by the offer by the offer price per share.

Fig. 2: Number, type and value of offers

Source: Noerr Research

In 2025, the number of transactions in the German public takeovers market declined compared to previous years. After 32 approved and published offers in 2024, the number of transactions fell by 37.5% to 20 in 2025. Over the comparative period considered here, beginning in 2014, 2025 can be regarded as an average year, with the 20 transactions only slightly below the average of 22.92 public takeover offers per year. This finding highlights the exceptional nature of the record years 2021 and 2024. What was more striking was the sharp decline in the market capitalisation of the target companies (MCO) in 2025. Compared to the previous year (EUR 40.11 billion), this figure fell by 57.79% to only around EUR 16.92 billion. This is the lowest level since 2015 and, in absolute terms, around EUR 19.5 billion below the average since 2014. A decline can also be observed in the actual offer value (AOV), which is being examined in more detail in this report for the first time. The AOV amounted to approximately EUR 20.11 billion in 2024 and averaged approximately EUR 22.54 billion for the period since 2014. By contrast, the 2025 figure of EUR 8.86 billion represents a decrease of 55.97% compared to the previous year and 60.70% compared to the long-term average.

Delisting again remained a key objective of a number of public offers in 2025. Seven delisting offers (six pure and one combined) were made. Compared to the previous year (20 offers aimed at delisting), the number of delisting offers has thus more than halved, which, however, mirrors the general decline in the number of offers made. The proportion of offers aimed at delisting, at 35% of all offers made, is roughly in line with the trend observed in previous

years. Before 2020, the proportion of offers aimed at delisting was always below 20%, whereas between 2021 and 2024 it rose to an average of 46.24%. The trend towards delisting as the goal of public takeover offers therefore continued last year, although at a slightly slower pace.

In 2025, four pure acquisition offers were published. This is the highest number in the entire observation period since 2014. Last year, two bidders were solely interested in increasing their shareholding in the target company, but not in taking control. The aim of the other two acquisition offers was to further strengthen existing control over the target company. The number of takeover offers fell from 12 in 2024 to seven, with takeover offers not related to a delisting falling from eight to six. As a result, the proportion of takeover offers in the overall number of offers fell from 37.5% in 2024 to 35%, continuing the downward trend in takeover offers observed since 2022. Except for 2018, at least 14 takeover offers were made each year between 2014 and 2021.

The number of mandatory offers fell by 50% compared to 2024 to three mandatory offers. Their share of total public offers thus declined slightly for the third year in a row and amounted to only 15%.

Market capitalisation at the offer price (MCO) fell by 57.81% to EUR 16.91 billion in 2025, a significantly steeper decline than the mere reduction in the total number of offers compared to the previous year. Since we began collecting data in 2014, market capitalisation at the offer price has only been lower than in 2025 once, in 2015 (EUR 14.14 billion). The exceptionally low figure for the past year is

furthered under-scored by a comparison with the average market capitalisation since 2014 (EUR 36.4 billion), which is 117.33% above the 2025 figure. The sharp decline in 2025 is primarily attributable to a well below-average offer value in the large-cap segment.

The actual offer value based on shares not yet owned by the bidder at the offer price (AOV) amounted to only EUR 8.86 billion last year. This corresponds to only 39.30% of the average value in the period analysed since 2014 (EUR 22.54 billion). The 2025 AOV also falls well short of the peak values recorded in 2017 (EUR 52.88 billion) and 2021 (EUR 51.06 billion). Over the past twelve years, actual offer values have been lower than the 2025 figure only in 2018 and 2022. Looking at the ratio of AOV to market capitalisation at the offer price, last year's actual offer value corresponded to 52.36% of market capitalisation at the offer price. This was roughly on par with the previous year's level (2024: 50.14%), but below the average for the observation period since 2014 (60.57%).

## Development in the segments (large-cap, mid-cap and small-cap)

The market in 2025 was characterised by many large-cap transactions, whose average value declined for the fourth consecutive year. Despite fewer offers, the mid-cap segment accounted for an above-average share of total market capitalisation, while in the small-cap segment, following a strong 2024, the number of offers fell back to an average of seven.

The development of average MCO in the three segments is shown in detail below:

Average market capitalisation at the offer price

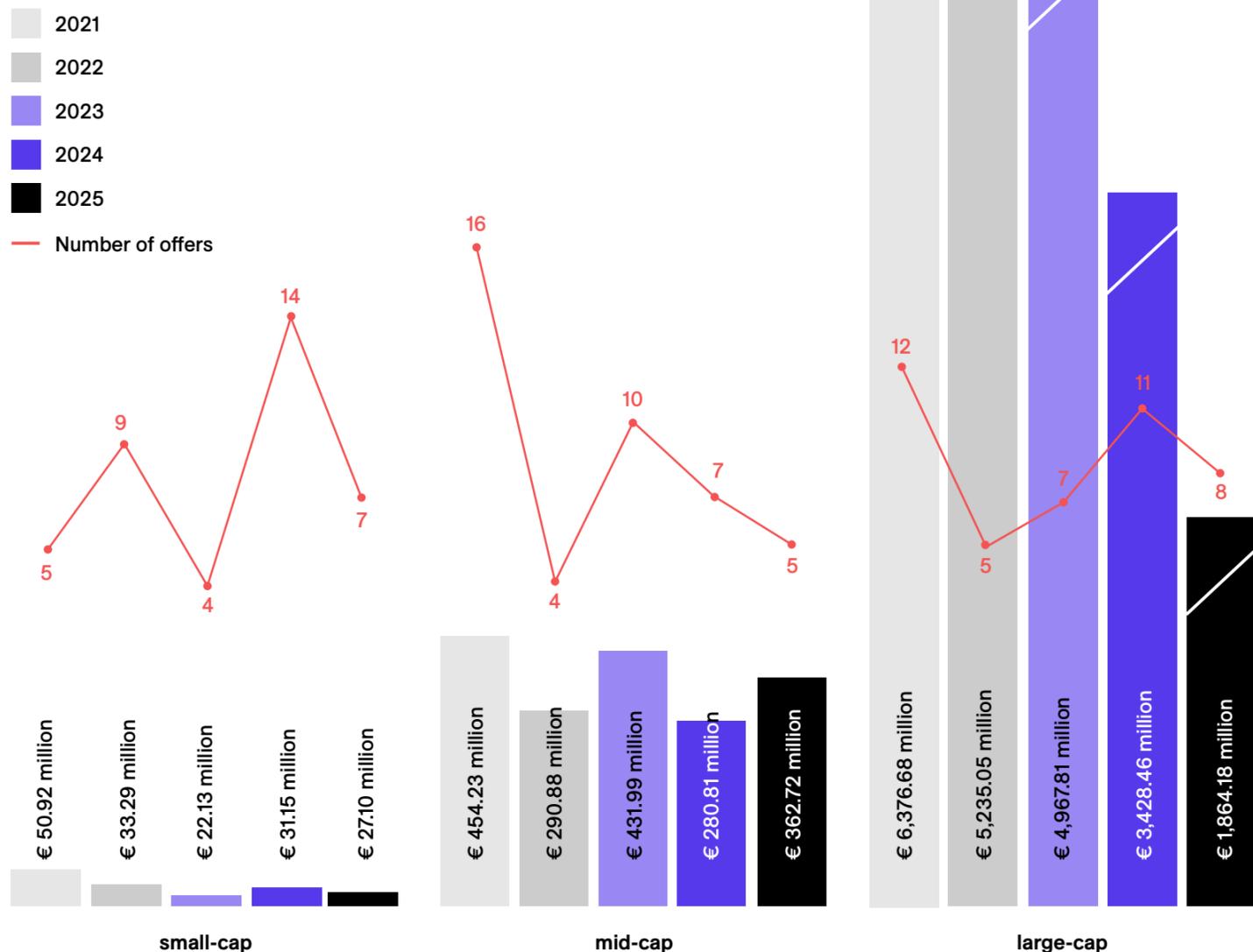


Fig. 3: Development in the segments

Source: Noerr Research

Small Cap MCO of the target company less than EUR 100 million  
 Mid Cap MCO of the target company less than EUR 1 billion and greater than or equal to EUR 100 million  
 Large Cap MCO of the target company greater than EUR 1 billion

Eight public offers were made in the large-cap segment in 2025, representing 40% of all transactions. Despite the decline in large-cap offers from eleven to eight, their share of overall transactions rose again (2024: 34.38%). For the first time since we began collecting data in 2014, most of the offers in one year were therefore attributable to the large-cap segment.

By contrast, the average market capitalisation at the offer price in the large-cap segment continued to decline. In 2025, this figure was only EUR 1.86 billion, 45.66% below the previous year (EUR 3.43 billion). This was the fourth consecutive decline in average MCO and marked the lowest average market capitalisation in the observation period. This is also illustrated by a comparison with the average value for the period analysed since 2014 (EUR 5.32 billion), which is 185.19% above the 2025 figure. As a result, the large-cap segment's share of total market capitalisation also fell to its lowest level since 2015 (2025: 88.16%). The sharp decline in average market capitalisation in the large-cap segment is attributable to the absence, last year, of any transaction comparable in value (MCO) to the largest transactions of previous years. In 2024, the public takeover offer by ADNOC International Germany Holding AG to the shareholders of Covestro AG had a valuation (measured in MCO) of EUR 11.72 billion. In 2023, on the basis of the delisting offer by Oak Holdings GmbH, Vantage Towers AG with an MCO of EUR 16.19 billion had the largest market capitalisation at the offer price. By contrast, in 2025, the offer made by United Internet AG to the shareholders of 1&1 AG only was based on an MCO of EUR 3.27 billion.

The number of public offers in the mid-cap segment also declined for the second year in a row. In 2025, only five offers were published (2024: seven offers), which is significantly below the average for the period analysed (8.17 offers). However, the average valuation of target companies in this segment (measured in MCO) recovered compared to the previous year, rising by 29.17% to EUR 362.72 million. This is roughly in line with the average value in the mid-cap segment since 2014, which stands at EUR 368.90 million. Due to the weak market capitalisation of large-cap offers, the mid-cap segment accounted for a comparatively large share of 10.72% of total MCO in 2025 (2024: 4.90%). This gave the mid-cap segment its fourth-largest share of total MCO since 2014 and put it above the average for this period (9.28%).

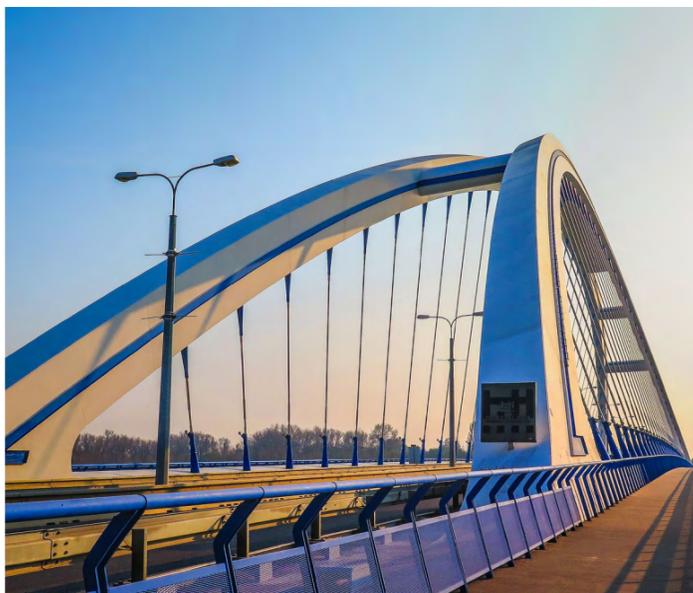
While the small-cap segment was fairly active in the previous year (14 offers), market activity returned to average levels in 2025. The number of offers made fell by 50% from 14 in the previous year to seven, which is close to the average for the period analysed (7.92 offers). The average transaction value in this segment also declined slightly compared to the strong previous year, but at EUR 27.10 million it was only EUR 0.7 million (minus 2.55%) below the average value since 2014 (€27.82 million). The small-cap segment's share of total offer value (measured in MCO), on the other hand, remained at a comparatively high level. In 2025, the previous year's high figure of 1.09% was slightly exceeded, reaching 1.12%. The share was thus well above the average level of 0.74% for the period since 2014.

All mandatory offers made last year (three) fell within the small-cap segment. Delisting and takeover offers accounted for the largest share of offers in the mid-cap segment, at 40% of offers each. A similar pattern emerged in the large-cap segment, where takeover and delisting offers each represented 37.5% of the offers in that segment.

## Distribution of offer value and selected transactions

Among the offers published in the large-cap segment last year, the highest market capitalisation at the offer price (MCO) was recorded for the voluntary public acquisition offer by United Internet AG to the shareholders of 1&1 AG. On the basis of this offer, 1&1 AG had an MCO of EUR 3.27 billion. However, with a share of 21.93 % of the MCO in the large-cap segment, the offer had less of an impact than the highest valuations in previous years. The largest valuation measured in MCO still accounted for 31.07 % of the total MCO in 2024 and as much as 46.48 % in 2023. There was therefore no standout transaction in 2025; instead, the MCO of all target companies in this segment ranged between EUR 1.18 and 3.27 billion.

When looking at the actual offer value at the offer price (AOV), another public takeover offer comes into focus. The offer made by the Chinese company Jingdong Holding Germany GmbH to the shareholders of CECONOMY AG had an actual offer value of 100 % of market capitalisation at the offer price. This was because the bidder did not hold any shares in the target company prior to the publication of the offer document and sought a complete takeover. Apart from this, there was no offer in the large-cap segment in 2025 from a bidder that was not already a shareholder in the relevant target company. However, this is not unusual: in 2024, only two of the eleven



large-cap segment were made by bidders that did not previously hold any shares in the target company, and in those cases the actual offer value equalled market capitalisation. By contrast, for the offer mentioned above to the shareholders of 1&1 AG, the actual offer value was only EUR 300.64 million (9.19 % of the MCO), as it was structured as a partial offer.

On average, total actual offer value in 2025 corresponded to 52.36 % of market capitalisation at the offer price, which was below the average for the period since 2014 (60.57 %). It should also be noted that in 2025 two different bidders made public offers to the shareholders of ProSiebenSat.1 Media SE as the target company. The first, a voluntary takeover offer by MFE-MEDIAFOREUROPE N.V., was published on 8 May 2025 and amended on 28 July 2025. The management board and supervisory board of ProSiebenSat.1 Media SE responded positively to this offer and, by the end of the extended acceptance

period, the bidder had secured a majority stake in the target company. The second, a partial acquisition offer by PPF IM Ltd published on 4 June 2025, was aimed at increasing its stake in ProSiebenSat.1 Media SE to up to 29.99 %. If the subsequent acquisition offer to the shareholders of ProSiebenSat.1 Media SE is excluded from the statistics, the large-cap segment's total takeover market value in 2025 (measured by MCO) would decrease only marginally, from 88.16 % to 86.89 %, due to the overall low market capitalisation.

There were also competing offers in the small-cap segment for the shareholders of Francotyp-Postalia Holding AG. Initially, the target company itself published a delisting offer (a "self-tender offer"). Shortly afterwards, SALTRAX GmbH together with Hans-Herbert Döber, acting as bidders, published an offer to acquire up to 14.85 % of the shares in the target company. In the large-cap segment, there was also a follow-up offer in 2025 from Caesar BidCo GmbH to the shareholders of CompuGroup Medical SE & Co. KGaA: the bidder had already made a takeover offer in 2024 and used the follow-up offer in 2025 to implement the planned delisting.

The following chart shows, for 2024 and 2025, the share of large-cap transactions in each year's total offer value (expressed in MCO) and the corresponding actual offer value (AOV):

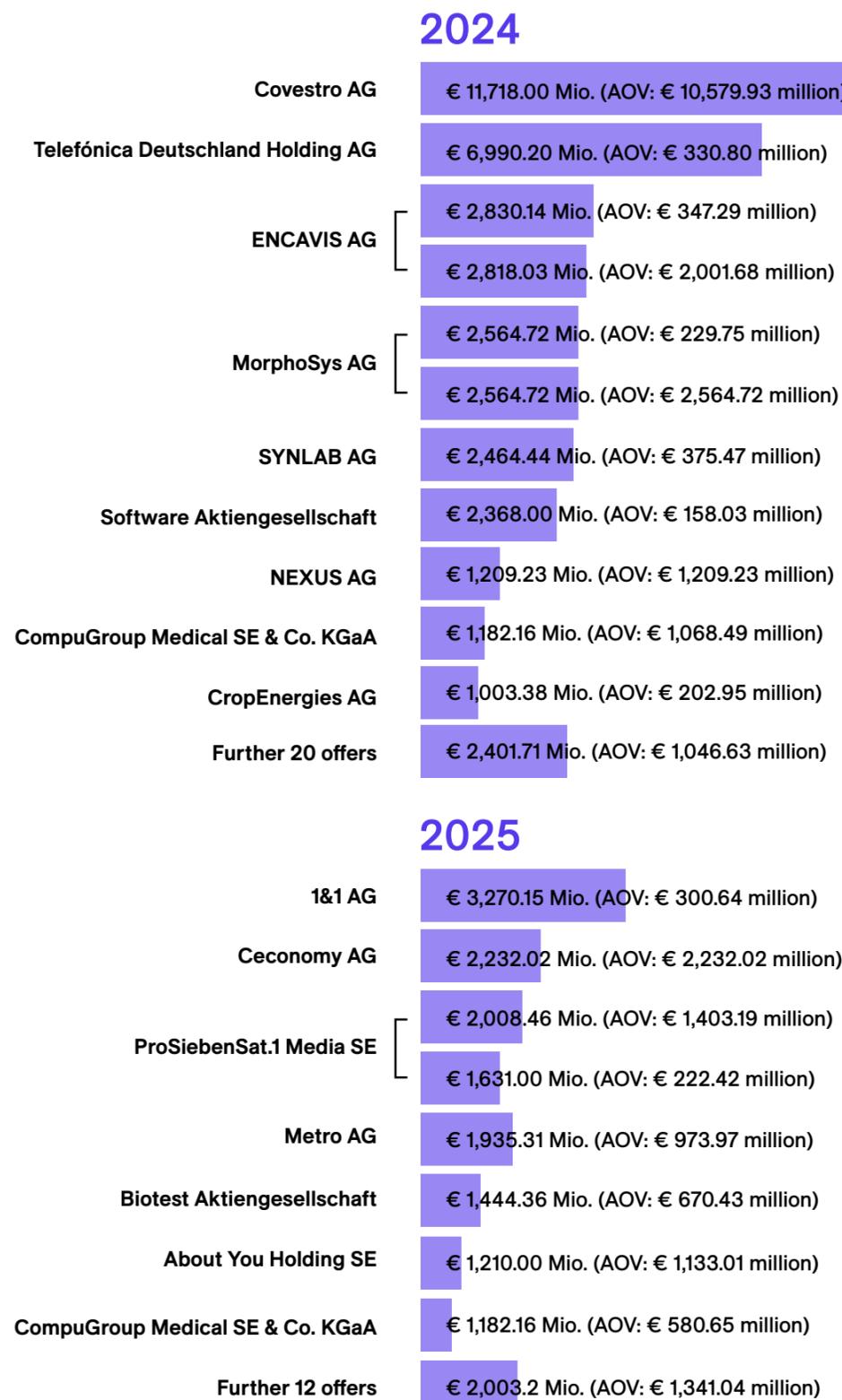


Fig. 4: Distribution of offer value and number of transactions

Source: Noerr Research

## Premium amount

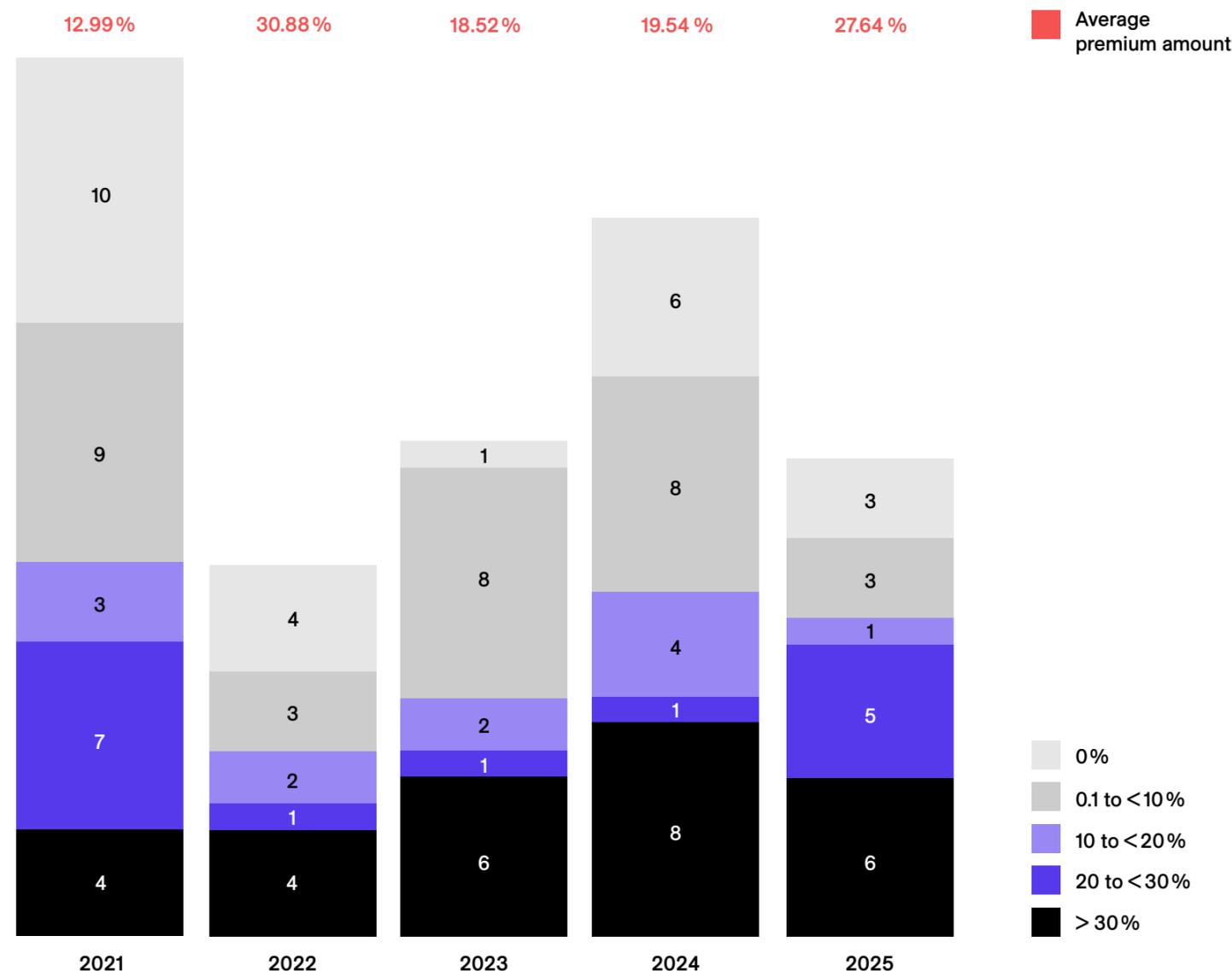
**In 2025, the premiums paid in the overall market rose significantly compared to the previous two years. Premium-free offers declined, while at the same time more than half of the published offers had a premium of 20% or more.**

In 2025, the premium<sup>2</sup> on the volume-weighted average price of the target companies' shares in the three months (or six months in the case of delisting offers) prior to the announcement of the offer by the bidder ("three-month VWAP" or "six-month VWAP") averaged 27.64%. Two offers were not taken into account because the Federal Financial Supervisory Authority (BaFin) was unable to determine a three-month VWAP or six-month VWAP for them. This is the case where BaFin the authority can only determine the stock exchange price for the shares affected by the offer on less than one third of the trading days in the relevant three-month or six-month period and records at least two consecutive price jumps of more than 5%. In 2025, this affected the mandatory offer by SGCI Corporate Finance GmbH and Hsiao-Hsuan "Leo" Wang to the shareholders of Leo International Precision Health Aktiengesellschaft and the mandatory offer by S77 Holdings GmbH to the shareholders of Turbon AG.

The highest premium in 2025 was offered by Zalando SE in its takeover offer to the shareholders of About You Holding SE, with a premium of 107.01%. The offer price significantly exceeded the relevant average price because the offer price was required by law to be at least equal to the highest consideration agreed in previous agreements for acquisitions of the target company. This premium was unparalleled in 2025. Zest Bidco GmbH also offered shareholders of PSI Software AG a considerable premium of 55.76% on the average price as part of its takeover offer. In addition, MFE-MEDIAFOREUROPE N.V. offered shareholders of ProSiebenSat.1 Media SE a premium of 50.17% as part of its amended public takeover offer.

Three offers made last year did not provide a premium on the volume-weighted average price (what is known as a "low-ball offer"), corresponding to 16.67% of all offers considered<sup>3</sup>. This concerned the voluntary public takeover offer by Obotritia Capital KGaA to the shareholders of Readcrest Capital AG, the mandatory offer by Apeiron Investment Group Ltd. to the shareholders of Heidelberger Beteiligungsholding AG and the delisting share buy-back offer by Francotyp-Postalia Holding AG to its own shareholders. This left only one delisting offer without a premium. In 2024, 30% of all (combined) delisting offers were made without a premium. The other six (combined) delisting offers made last year featured a wide range of premiums between 5.21% and 43.49%.

The following chart illustrates the premiums offered in 2025 for offers for which a three-month or six-month VWAP could be determined. The chart divides these offers into different categories and compares them with the premiums and average values recorded in previous years:



**Fig. 5: Premium amount**

Source: Noerr Research

<sup>2</sup> All premiums were calculated on the basis of the offer price. In the case of the takeover offer by MFE-MEDIAFOREUROPE N.V. to the shareholders of ProSiebenSat.1 Media SE, the premium was calculated on the basis of the amended, increased offer price as of 28 July 2025.

<sup>3</sup> Only the 18 offers for which a relevant VWAP could be determined were taken into account in calculating the relative shares in the premium distribution.

The average premium rate of 27.64% was the highest in three years and significantly higher than the previous year's premium rate (2024: 19.54%) and slightly above the average for the observation period since 2014 (25.44%). Six offers fell into the highest premium category of more than 30%. In addition, the number of offers with premiums between 20% and 30% rose from one offer in 2024 to five offers in 2025. In total, 61.11% of all offers considered for 2025 had premiums of 20% or more. This means that the proportion of high premiums last year was significantly higher than in 2024 (33.33%) and 2023 (38.89%). Compared to the previous year, the number of zero-premium offers also halved in 2025 (three in 2025 after six in 2024).

In the category of very low premiums of up to 10% above the three-month VWAP or six-month VWAP, there was a decline from eight such offers in 2024 to three in 2025, which is of course partly explained by the decline in the total number of offers. Nevertheless, the relative share of such low-priced offers in the total number of offers fell to 16.67% in 2025 (2024: 29.63%).

Six of the seven takeover offers in 2025 offered a premium; as in the previous year, one takeover offer did not offer a premium. The average premium for all takeover offers in 2025 was 45.17%. In the previous year, 2024, the average premium offered in takeover offers was 31.18%, which was roughly on par with the levels seen in 2023 (29.59%) and 2022 (30.71%). Last year, bidders were therefore willing to pay a significantly higher premium on the average price than in previous years to gain control of the target company.



By Dr Philip M. Schmoll, Frankfurt on the Main

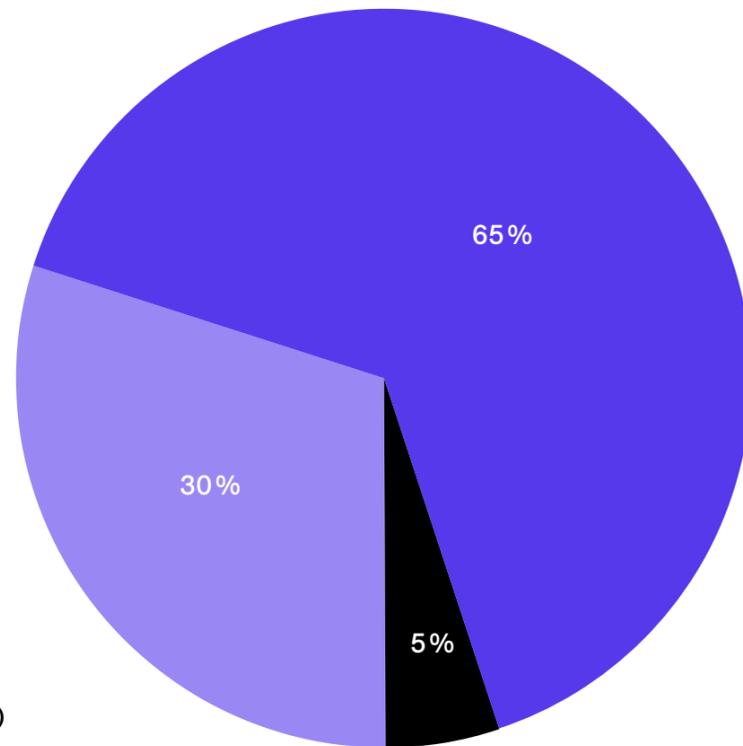
## Reasoned statements pursuant to section 27 of the German Securities Acquisition and Takeover Act

In 2025, the boards of target companies published a total of 20 reasoned statements pursuant to section 27 of the German Securities Acquisition and Takeover Act (WpÜG; the “Takeover Act”) in response to 20 public offers.<sup>1</sup> Following amendments to the offers, the administrative bodies of H&R GmbH & Co. KGaA and ProSiebenSat.1 Media SE (regarding the takeover offer by MFE-MEDIAFOREUROPE N.V.) also issued joint supplementary reasoned statements. All of the statements were joint reasoned statements by the administrative bodies of the relevant target companies.

### Overall assessment of the offer

The boards’ final assessment of the 20 offers made in 2025 was as shown in the following chart.

The management board and supervisory board of ProSiebenSat.1 Media SE initially issued a negative statement on the takeover offer by MFE-MEDIAFOREUROPE N.V., as they found the consideration to be unfair. However, after the share component of the consideration was increased, they regarded the increased consideration as fair and recommended that the shareholders accept the takeover offer.



- 13 positive statements (65%; previous year: 62,5%)
- One negative statement (5%; previous year: 9,4%)
- Six neutral statements (30%; previous year: 25%)

**Fig. 6: Reasoned statements pursuant to section 27 WpÜG**

Source: Noerr Research

In the context of the joint reasoned statement by the general partner and the supervisory board of CompuGroup Medical SE & Co. KGaA on the delisting offer by Caesar BidCo GmbH, the chairman of the administrative board and a managing director issued a joint special vote, having abstained from the resolution on the statement owing to potential conflicts of interest. However, they ultimately concurred with the assessment and recommendation to accept published in the statement.

### Fairness Opinions

To support ten of the 20 reasoned statements (50%; previous year: 37.5%), opinions on the fairness of the consideration offered were obtained from external advisors. These included, among others, opinions on six of the seven (pure and combined) takeover offers in 2025. In eight of the ten cases, the administrative bodies jointly obtained a fairness opinion. In two of the ten cases (CECONOMY AG and ProSiebenSat.1 Media SE), the management board and supervisory board each obtained a fairness opinion from different financial advisors. In these cases, the target companies were valued at over EUR 2 billion based on the offer price. As part of the supplementary joint reasoned statement by the management board and supervisory board of ProSiebenSat.1 Media SE on the amended takeover offer by MFE-MEDIAFOREUROPE N.V., the administrative bodies again obtained fairness opinions from different advisors.

The ten reasoned statements that were not supported by a fairness opinion related to mandatory offers, acquisition offers and delisting offers, as well as the takeover offer to the shareholders of Readcrest Capital AG. In the latter case, a valuation of the target company had already been carried out as part of a capital increase through a contribution in kind. For mandatory, acquisition and delisting offers in the small- and mid-cap segment, fairness opinions are regularly not obtained for cost reasons. The same applies where a delisting offer is preceded by a takeover offer for which one or more fairness opinions have already been obtained.

### Date of submission of reasoned statements

In 2025, reasoned statements were submitted on average 12.1 days after publication of the offer document, which is comparatively late (previous year: 8.8 days). In ten of the 20 reasoned statements (50%), the administrative bodies of the target companies already knew that the relevant bidder would make a public offer as they had entered into a transaction agreement with the bidder prior to the announcement of the offer in accordance with section 10 of the Takeover Act (a “section 10 announcement”). These reasoned statements were published on average 12.2 days after the publication of the offer document (previous year: 8.5 days).

<sup>4</sup> A detailed evaluation of the reasoned statements can be found in the article by Schmoll/Dreinhöfer in WM 2026, p. 365 et seqq., or on request from our contact persons.

By Dr Stephan Schulz and Bastian Stromann, both Hamburg<sup>5</sup>

## Presumption of fairness of consideration in squeeze-outs under takeover law: is the practice under section 39a of the German Securities Acquisition and Takeover Act (WpÜG) contrary to European law?

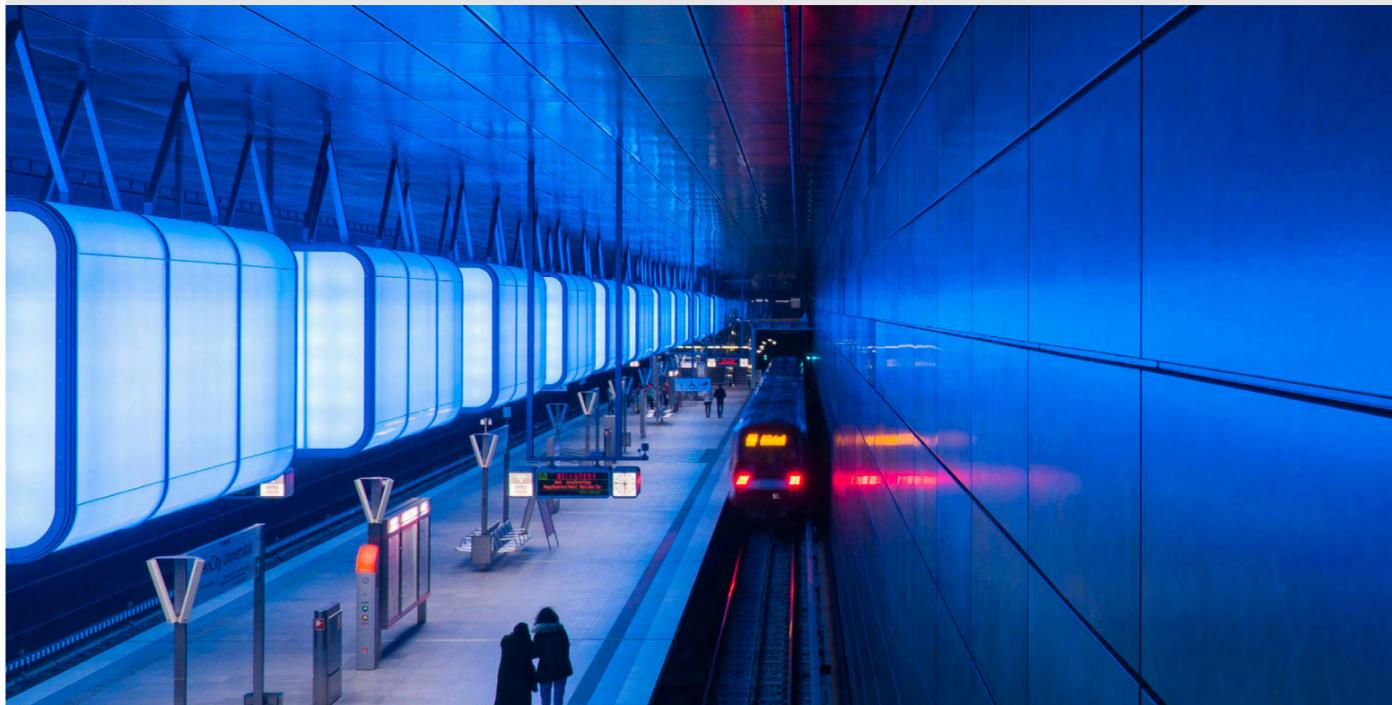
Comments on the European Court of Justice (ECJ) decision dated 27 November 2025, Case C-567/24 (Svema Trade) on Art. 15 para. 5 of Directive 2004/25/EC (“Takeover Directive”)

According to the ECJ, the presumption of fairness in the case of a squeeze-out under takeover law pursuant to third subparagraph of Article 15(5) of the Takeover Directive is rebuttable.

This case law also applies to the interpretation of the third sentence of section 39a(3) of the German Securities Acquisition and Takeover Act (WpÜG; the “Takeover Act”), which has been regarded as an irrebuttable presumption by the prevailing opinion to date.

Shareholders who consider the consideration granted in the takeover procedure to be unreasonable now have a basis for asserting their objections in court thanks to the ECJ’s ruling. This applies even though the ECJ allows the presumption to be rebutted only in narrowly defined cases only accepts a rebuttal of the presumption in certain cases.

This decision creates a risk of delays for bidders and target companies, which reduces the attractiveness of squeeze-outs under takeover law.



### Introduction

Following a public takeover or a change of control, a squeeze-out offers the opportunity to compensate the remaining shareholders and take over the target company in its entirety. Squeeze-outs under takeover law are regulated in section 39a and 39b of the Takeover Act. They must be linked in time to a takeover or mandatory offer. If, after the offer, the bidder holds at least 95 % of the target company’s voting share capital and applies for the exclusion of the remaining shareholders, the competent court must transfer the remaining shares to the bidder in return for the payment of fair consideration. If, as a result of the offer, the bidder has acquired shares representing at least 90 % of the share capital affected by the offer, the fairness of the consideration offered is also presumed for the squeeze-out (third sentence of section 39a(3) of the Takeover Act). The provision has a European legal background as it serves to implement Article 15(3) of the Takeover Directive.<sup>6</sup>

### The ECJ’s ruling

This article deals with the judgment of the European Court of Justice (“ECJ”) of 27 November 2025 in the Svema Trade case (Case C-567/24). The judgment was based on a referral concerning the European legal basis for the presumption of fairness in squeeze-outs under takeover law. According to the first sentence of the first subparagraph of Article 15(5) of the Takeover Directive, fair consideration must be ensured in the event of a squeeze-out. In the case of a prior mandatory offer, the first sentence of the third subparagraph of Article 15(5) presumes that the consideration offered in the mandatory offer is also considered fair for the purpose of the squeeze-out.

### Facts

The dispute over fair consideration in the squeeze-out was preceded by a public mandatory offer by the Slovenian company Svema Trade d.o.o. to the shareholders of the Slovenian target company HRAM Holding d.d. As a result of the offer, Svema Trade acquired over 90 % of the shares in the target company. This exceeded the threshold relevant under Slovenian takeover law for a squeeze-out. The bidder initiated the corresponding squeeze-out procedure. This led to a dispute between the parties regarding the fairness of the consideration. The Ljubljana District Court hearing the case referred to the ECJ the question of whether the presumption in the third subparagraph of Article 15(5) of the Takeover Directive can be rebutted.

<sup>5</sup> The authors would like to thank Mr Florian Nölle, research assistant, for his support in preparing this article.

<sup>6</sup> Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ 2004 L 142, 12.

	Takeover law	Stock corporation law	Reorganisation law
<b>Legal provision</b>	Sections 39a and 39b of the Takeover Act	Section 327a and following of the German Stock Corporation Act (AktG)	Section 62(5) of the German Reorganisation Act (UmwG)
<b>Required shareholding</b>	95 %	95 %	90 %
<b>Context</b>	Previous voluntary takeover offer or mandatory offer	At any time	Previous merger of a subsidiary into its parent company
<b>Decision</b>	Application by the bidder and transfer resolution by the Frankfurt am Main Regional Court	Resolution of the general meeting and entry in the commercial register	Provision in the merger agreement and resolution of the Annual General Meeting and entry in the commercial register
<b>Consideration</b>	Fair consideration; Presumption of fairness of the consideration for the takeover or mandatory offer in the case of 90 % approval	Fair consideration	Fair consideration; Reference to section 327a et seqq. AktG
<b>Judicial review of consideration</b>	Immediate appeal (sofortige Beschwerde)	Valuation proceedings (Spruchverfahren)	Valuation proceedings (Spruchverfahren)

**Fig. 6: Overview of the various squeeze-out options**

Source: Noerr Research

*Reasons for the decision*

The ECJ first observed that the different language versions of the Directive were inconsistent and therefore did not allow any conclusions to be drawn. It found that some versions indicate a rebuttable presumption (such as the English and French versions), while others indicate an irrebuttable presumption (such as the German version).

The decisive factor for the ECJ was a systematic consideration of the Takeover Directive. It held that member states of the European Union may authorise their supervisory authorities to modify the consideration of a mandatory offer determined in accordance with the prescribed criteria. To this end, the second subparagraph of Article 5(4) Takeover Directive lists circumstances under which, in exceptional cases, an adjustment may be made to ensure fair consideration, for example:

- the market prices of the securities in question have been manipulated;
- market prices in general or certain market prices in particular have been affected by exceptional occurrences;
- or a company in financial difficulty needs to be rescued.

The ECJ reasoned that the idea that a price determined in accordance with the provisions of the Takeover Directive may need to be adjusted in certain circumstances must also apply to the consideration in a squeeze-out. It concluded that if the consideration can already be modified in the case of a voluntary sale of shares by a shareholder pursuant to a mandatory offer, this must apply even more strongly in the case of a compulsory sale in the context of a squeeze-out.

In the ECJ’s opinion, the purpose of the Takeover Directive also requires a rebuttable presumption of fairness. The directive aims to protect security holders in companies controlled by another shareholder. It would, in the court’s view, be contrary to this protective objective if shareholders were always required to sell their shares at the mandatory price offer in the case of an irrebuttable presumption of fairness.

Accordingly, the ECJ concluded that the presumption set out in the third subparagraph of Article 15(5) of the Takeover Directive must be rebuttable in certain exceptional cases. The Court referred in this regard to the circumstances listed in the second subparagraph of Article 5(4) of the Takeover Directive (see above). In such exceptional cases, the presumption may be rebutted if the supervisory authority was unaware of them at the time of the mandatory offer or if they arose only later.

**Previous legal situation in Germany under section 39a of the Takeover Act**

The question of whether the presumption of fairness is rebuttable has been debated in Germany since the provision was introduced. The German federal government’s explanatory memorandum to section 39a(3) of the Takeover Act refers to an “irrebuttable presumption of the fairness of the compensation”. The German Bundesrat (the federal legislative body representing the German federal states) criticised this wording during the legislative process and highlighted the resulting reduction in legal protection for shareholders. Critics have also argued that the different language versions of the Takeover Directive are inconsistent. In addition, the history and structure of the Directive have been cited as arguments in favour of a rebuttable presumption.

In its decision of 5 May 2009 (20 W 13/08), Stuttgart Higher Regional Court argued in favour of an irrebuttable presumption, relying on the German federal government’s explanatory memorandum and the wording of the German provision. The majority of legal scholars also consider the presumption to be irrebuttable. It has been argued, for example, that an irrebuttable presumption of fairness also serves the purpose of the provision, namely to prevent lengthy proceedings. Some scholars, however, have sought to limit the scope of cases in which the presumption of fairness is rebuttable, at least as regards exceptional cases such as abuse and market manipulation.

Target Company	Bidder	Date of the Frankfurt am Main Regional Court's transfer decision	Type of offer	Squeeze-out consideration	Consideration corresponds to previous offer price	MCO
Infas Holding Aktiengesellschaft	Ipsos DACH Holding AG	Outstanding (application filed on 8 January 2025)	Cash compensation	EUR 6.80	Yes	EUR 61 million
Biotest AG	Grifols S. A.	30 November 2022	Cash compensation	EUR 43.00	Yes	EUR 1,583 million
Vwd Vereinigte Wirtschaftsdienste Aktiengesellschaft	Vienna GmbH	3 April 2013	Cash compensation	EUR 2.80	Yes	EUR 72 million
Tognum AG	Engine Holding AG	8 December 2011	Cash compensation	EUR 26.00	Yes	EUR 3,416 million
Kühlhaus Zentrum Aktiengesellschaft	Nordfrost GmbH & Co. KG	22 December 2010	Cash compensation	EUR 750.00	Yes	EUR 780 million

**Fig. 7: Transfer decisions of the Frankfurt am Main Regional Court on squeeze-outs under takeover law since 2010**

Source: Noerr Research

## Impact of the ECJ decision on German law

The ECJ's decision has far-reaching implications for the attractiveness of squeeze-outs under German takeover law. In the future, the third sentence of section 39a(3) of the Takeover Act must be interpreted in accordance with the Takeover Directive, as the previously prevailing opinion is no longer compatible with ECJ case law. This means that the presumption that the consideration offered in the previous takeover or mandatory offer is also fair for the squeeze-out where the acceptance rate exceeds 90% can now be rebutted under German law.

When analysing the practical consequences, it should be noted that the presumption of fairness still applies, even when interpreted in accordance with the Takeover Directive. The shareholders concerned must therefore present circumstances and show that the consideration from the mandatory offer is not (or no longer) fair. In its judgment, the ECJ sets strict standards for the exceptions and the point in time at which they apply. The hurdles for shareholders to rebut the presumption of fairness are therefore high.

However, the ECJ decision leads to less legal certainty for potential bidders. Shareholders affected by a squeeze-out under takeover law now always have a basis on which to seek the judicial review of the fairness of the consideration in such a squeeze-out. Unlike in the case of a squeeze-out under stock corporation law, there is no provision for valuation proceedings, which are advantageous for the bidder and do not prevent the measure from being implemented. In the case of a squeeze-out under takeover law, shareholders can instead lodge an immediate appeal against the court's decision ordering the transfer of their shares. The suspensive effect of the appeal provided for in the third sentence of section 39b(3) of the Takeover Act has the potential to delay the squeeze-out procedure under takeover law. The squeeze-out under takeover law therefore loses its key advantage over other forms of squeeze-out.

## Conclusion

According to the ECJ's judgment in the Svema Trade case, the presumption of the fairness of the consideration in a squeeze-out under takeover law pursuant to the third sentence of section 39a(3) of the Takeover Act is to be regarded as rebuttable. As regards the conditions under which this presumption may be rebutted, the ECJ identifies certain categories of cases and indicates that strict standards are to apply. However, these categories are only outlined in broad terms and will require further clarification. The legislature will have to take action in this regard. Until this happens, it is to be hoped that administrative and judicial practice will proceed cautiously when it comes to rebutting the presumption. Either way, the attractiveness of squeeze-outs under takeover law is adversely affected.

# Changes to delisting and downlisting under the Location Promotion Act (Standortfördergesetz)

## Starting point and objective of the reform

The German legislature aims to strengthen the capital market, facilitate access to stock market financing and, at the same time, modernise specific investor protection regulations by means of the German Location Promotion Act (StoFöG; “Location Promotion Act”), which came into force on 10 February 2026. In terms of content, the Location Promotion Act is largely based on the changes to capital market and stock corporation law already provided for in the – ultimately unsuccessful – draft of the German Second Future Financing Act (ZuFinG II; “Second Future Financing Act”).

Particularly with regard to stock and capital market law, the Location Promotion Act provides for far-reaching changes to the regulations governing the so-called “delisting”, i.e. withdrawal from the stock exchange. The aim of the reform is to respond to the experience gained since the introduction of section 39(2) to (6) of the German Stock Exchange Act (BörsG; “Stock Exchange Act”) in 2015, particularly following the market slump caused by the COVID-19 pandemic, as well as to the legal policy debate on how growth markets for small and medium-sized enterprises (“SME”) should be structured.

In addition to a reform of delisting (see below “Changes relating to delisting”), the Location Promotion Act also introduces changes for segment changes from the regulated market to an SME growth market (known as downlisting) (see below “Changes in relation to downlisting”).

## Changes relating to delisting

### Previous legal position

Since 2015, section 39 of the Stock Exchange Act has provided that the revocation of the admission of shares to trading on the regulated market is, as a rule, only permissible if outside shareholders are made an acquisition offer under the Securities Acquisition and Takeover Act (WpÜG; the “Takeover Act”) (see the third sentence, no. 1 of section 39(2) of the Stock Exchange Act). This “delisting offer” is intended to offset the reduced tradability of the shares resulting from the loss of the stock exchange listing.

As a minimum consideration, a delisting offer must, as a rule, be based on the volume-weighted average price over the six months prior to the announcement of the decision to make the delisting offer (“six-month VWAP”). Delisting law is therefore heavily shaped by capital markets law: it relies on market transparency and price efficiency and, in contrast to the earlier case law of the German Federal Court of Justice, dispenses with the requirement for a resolution of the general meeting.

In its previous version, section 39(3) of the Stock Exchange Act also contained exceptions which, under certain conditions, allowed a departure from the market price in favour of a company valuation, specifically in cases of breaches of ad-hoc disclosure obligations, market manipulation and – a narrow market.

## Background to the reform

Within this framework for delistings, the legislature has identified a need for reform for both practical and legal policy reasons:

### Increase in delisting offers

On the one hand, the proportion of delisting offers in offers under the Takeover Act had recently risen significantly. Delisting offers have consistently accounted for at least one third of all offers published in Germany over the past five years, so questions around the structure of mandatory offer obligations, minimum consideration and legal protection in connection with delisting offers have taken on growing practical importance.

#### %-proportion of offers

Delisting-offers <sup>7</sup> in absolute numbers

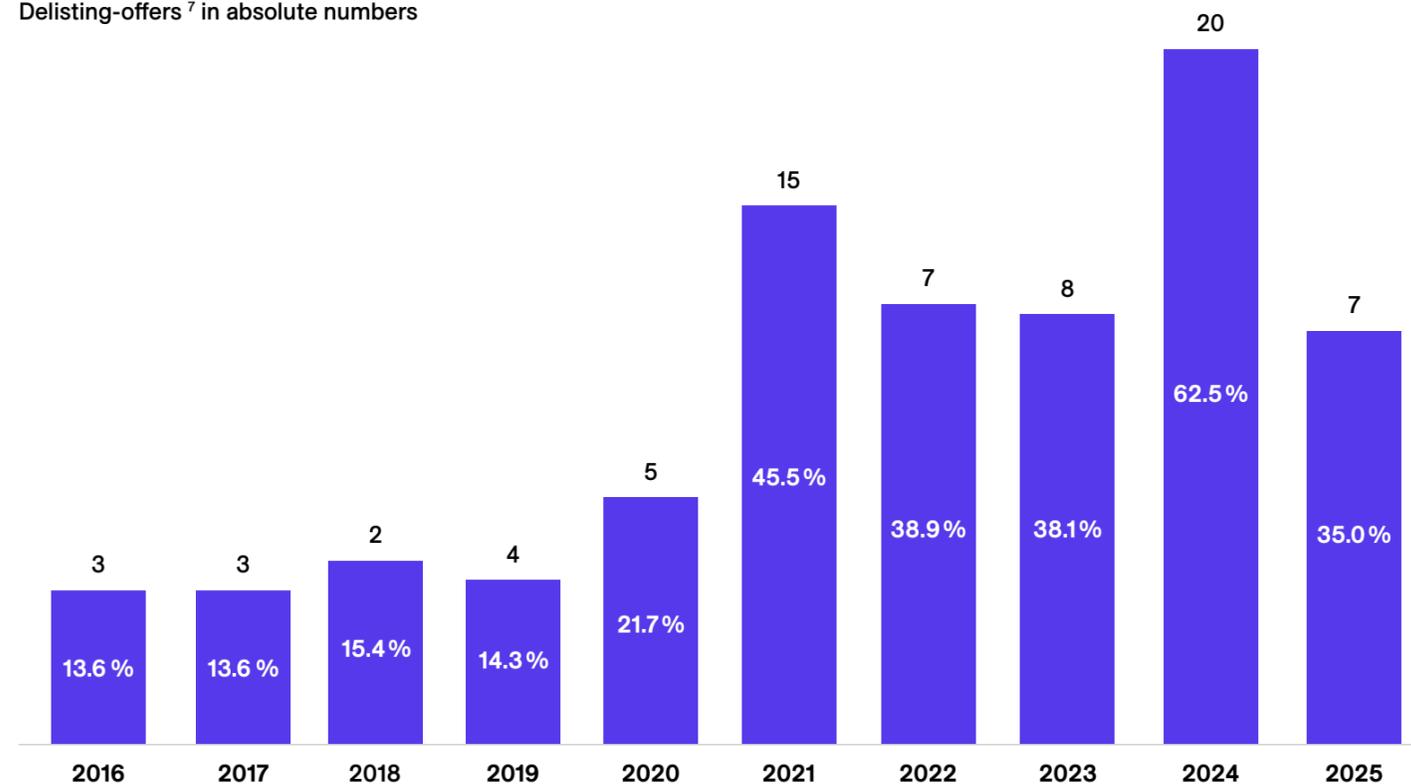


Fig. 8: Development of delisting offers

Source: Noerr Research

<sup>7</sup> The number of delisting offers shown here includes both pure delisting offers and those combined with a mandatory or takeover offer. For this reason, the figures may differ from those shown in Figure 2 of the market overview, which only shows pure delisting offers.

## Takeover offers for Rocket Internet and CENTROTEC

These issues came into even sharper focus in connection with the delisting offers for Rocket Internet SE and CENTROTEC SE. In 2020, Rocket Internet SE successfully completed a delisting share buy-back offer and thereby withdrew from the stock exchange. However, the six-month VWAP offered as the minimum consideration was only EUR 18.57 per share – not least as a result of the COVID-19 pandemic – which represented a substantial discount compared with the original IPO price of EUR 42.50 per share in 2014. This marked discrepancy fuelled a legal policy debate as to whether the statutory exceptions in section 39(3) of the Stock Exchange Act were still adequate, and whether there might be exceptional situations in which a company valuation should take precedence over reliance on the stock market price. Berlin Regional Court held that, in the case at hand, a company valuation was not required and pointed to the absence of any statutory basis; in the Court's opinion, the exceptions in section 39 of the Stock Exchange Act are exhaustive in this respect. However, the delisting offer for CENTROTEC SE in 2021 also caused a stir, as shareholder protection groups again argued that there was a considerable gap between the (assumed) intrinsic value and the minimum consideration offered.

## Grant Thornton study

To underpin the need for reform of the delisting regime with empirical evidence, the Federal Ministry of Finance instructed the audit firm Grant Thornton to examine whether, as a matter of principle, basing the minimum consideration in delisting offers on the six-month VWAP affords investors adequate protection. The study found that, for delistings from a regulated market since the introduction of section 39(2) of the Stock Exchange Act, average “**abnormal returns**” (i.e. the difference between the realised returns influenced by the delisting announcement and the returns that would have been expected without that announcement) have been less negative and in some cases even positive, whereas in the case of “unregulated” delistings from an SME growth market, average abnormal returns have remained negative, resulting in a loss of wealth for shareholders. By contrast, no significantly negative abnormal returns were observed for “**downlistings**”, i.e. transfers from the regulated market to an SME growth market. The findings of the study have fed into the reform of the delisting rules under the Location Promotion Act.

### Amendments to the delisting-regime:

The reform of the delisting regime now implemented by the Location Promotion Act comprises:

- a reorganisation of the scope of application of section 39 of the Stock Exchange Act;
- the design of the minimum price rule as a general clause;
- the possible review of the offer price in valuation proceedings; and
- the classification of the decision on the revocation as a non-discretionary decision.

## The new scope of application of section 39 of the Stock Exchange Act

### Delisting offer for delisting from an SME growth market

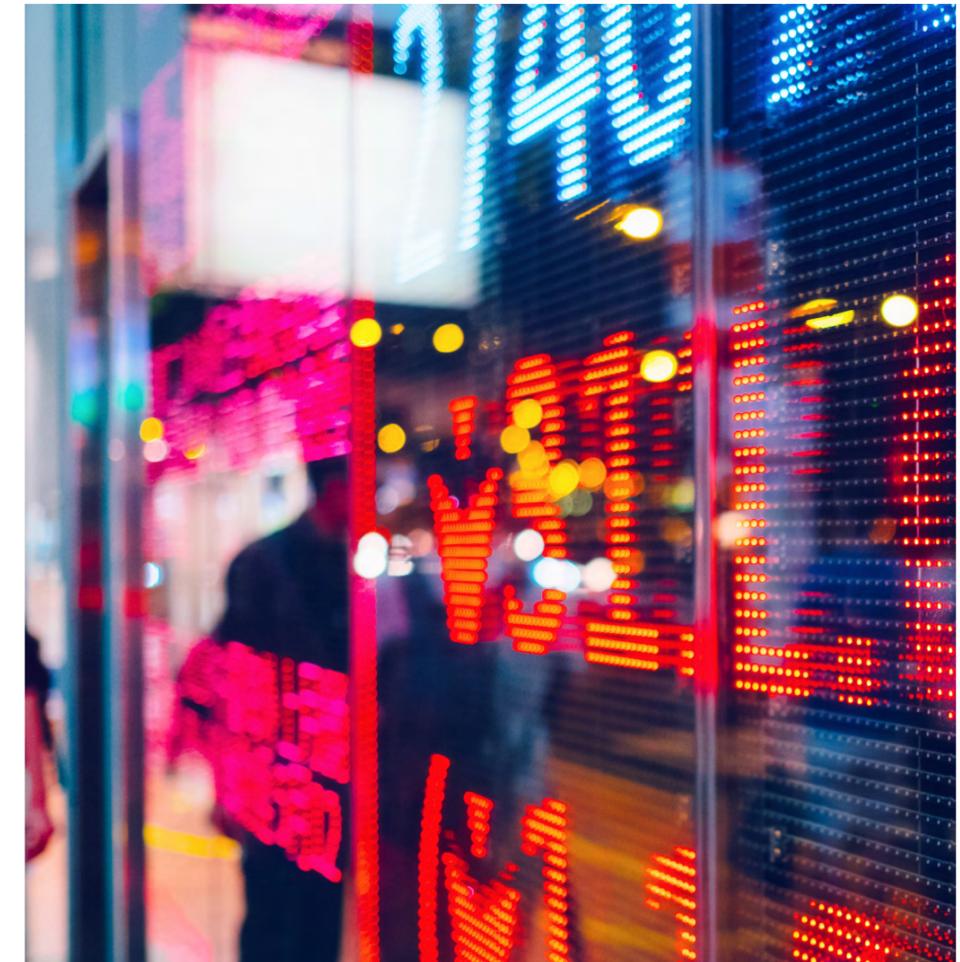
Until now, no delisting offer was required when delisting from an SME growth market, such as the Scale segment of the Frankfurt Stock Exchange. It was sufficient for a company to give notice of termination to the Frankfurt Stock Exchange, subject to a three-month notice period.

Following the amendment introduced by the Location Promotion Act, the delisting rules now explicitly apply to SME growth markets as well. Section 48a(1b) of the Stock Exchange Act clarifies that section 39(2) to (6) of the Stock Exchange Act applies with the necessary changes to the termination of inclusion in trading by an issuer, unless the issuer simultaneously applies for admission of those securities to trading on the regulated market.

Therefore, an issuer will now be required to make a delisting offer when withdrawing from the Scale segment. This requirement also applies to Scale issuers whose shares have not previously been admitted to trading on the regulated market. This change considerably tightens the legal position for issuers that went public through the Scale segment. Before the amendment entered into force, there had been a notable increase in companies moving to other over-the-counter trading segments as a result.

### No delisting offer in the case of a downlisting to an SME growth market

For a downlisting, i.e. a transfer from the regulated market to the Scale segment, a delisting offer under the second sentence, no. 3 of section 39(2) of the Stock Exchange Act will no longer be required in future. The legislature thereby follows the findings of the Grant Thornton study, which found no significantly negative abnormal returns in the case of a downlisting to an SME growth market, whereas a complete withdrawal from such a market was associated with noticeable price declines.



### No delisting acquisition offer in the event of the issuer's insolvency

It is also new that no delisting offer is required pursuant to the second sentence, no. 4 of section 39(2) of the Stock Exchange Act if insolvency proceedings have been opened in respect of an issuer's assets. This is intended to prevent shareholders from receiving undue preferential treatment over creditors, as a delisting offer would burden the insolvent estate and impair the satisfaction of creditors.

The legislature is thus following a proposal frequently made in insolvency and company law literature to allow delistings during insolvency without any obligation to pay compensation. The explanatory memorandum to the law further emphasises that shareholders in insolvency proceedings can normally expect only a very small recovery rate, and that additional costs arising from a delisting offer, including a possible valuation proceeding, would further diminish the insolvent estate.

### General clause as an exception to the six-month VWAP

When determining the minimum consideration, the legislature, through the Location Promotion Act, introduces in the fourth sentence of section 39(3) of the Stock Exchange Act a general clause as an exception to the rule that the six-month VWAP is normally the decisive benchmark. According to this rule, if special circumstances influence the issuer's stock market price in the six-month period prior to the publication of the decision on the delisting offer to such an extent that it is unreasonably low for determining the consideration, the bidder must pay a higher consideration, which is to be determined on the basis of a company valuation of the issuer.



The previous exceptions under the third sentence of section 39(3) of the previous version of the Stock Exchange Act, such as failure to publish, or publication of false, ad hoc announcements or violations of the prohibition of market manipulation by the issuer or bidder, are now included in the fifth sentence of section 39(3) of the Stock Exchange Act as standard examples of "special circumstances" in which a company valuation is required.

The interpretation of the general clause is left to legal debate. In future, it will therefore be necessary to clarify whether "special circumstances" are to be understood exclusively as company-related circumstances or whether they could now also include situations in which several issuers are equally affected, such as in the case of sudden market distortions like those caused by the COVID-19 pandemic. This opening up is also interesting in that, by means of section 39 of the Stock Exchange Act, the legislature has created a countervailing counterpoint to the previous trend of strengthening the stock market price as the decisive reference point for determining company value. This trend can be seen, for example, in section 255(5) of the German Stock Corporation Act (AktG; "Stock Corporation Act"), as amended, and in the recent case law of the Federal Court of Justice on determining compensation in the context of structural measures, such as squeeze-outs. Whether this opening up of the market as a result of the amendment will lead to an increase in legal disputes over the amount of consideration or whether, in practice, little will change remains to be seen.

### Introduction of valuation proceedings to review the adequacy of the offer price

Shareholders who accepted a delisting offer previously had only one way of seeking an additional payment, namely by bringing a civil action (known as a "top-up claim"). This has several disadvantages: first, the cost risk rested entirely with the claimant shareholder, and second, a court decision in favour of one shareholder generally only benefited the successful claimant and not the other shareholders. Although it was possible to initiate a model case under the Capital Markets Model Case Act (KapMuG) to clarify certain elements of the claim (such as establishing a breach of the obligation to publish ad hoc announcements), in practice this option was almost never used.

The Location Promotion Act therefore extends the scope of application of the German Valuation Proceedings Act (SpruchG) In future, shareholders who accept a delisting offer will be able to have the amount of the consideration reviewed in valuation proceedings under section 1 no. 8 of that Act. This is intended to improve the legal protection of shareholders without preventing the delisting from going ahead. In addition, a judicial decision in valuation proceedings has effect for all shareholders who have accepted the offer ("erga omnes") and the cost risk generally lies with the respondent, i.e. typically the bidder.

The provision has so far met with a mixed response from legal commentators. A civil action did not previously result in any bar on registration, so enabling a valuation proceeding, in particular to review any company valuations, was therefore an obvious but not a necessary step. The failed government draft of the Second Future Financing Act had also envisaged allowing shareholders to accept the delisting offer after the conclusion of a valuation proceeding. However, this proposal was rightly not implemented in the Location Promotion Act, as such a possibility would have created a considerable potential for abuse.

## Delisting as a non-discretionary decision by the stock exchange management

The new version of the first sentence of section 39(2) of the Stock Exchange Act also clarifies – in line with case law and legal literature – that, where the issuer applies for it, the revocation of admission is a non-discretionary decision for the management of the stock exchange. If the statutory requirements are met, the issuer will therefore in future have a right to have the admission revoked. The stock exchange management has no discretion of its own in this regard.

## Changes in relation to downlisting

### General principles:

As described above, in the case of a change of segment (downlisting) from the regulated market to the Scale segment, the legislature will in future dispense with the requirement to make a prior delisting offer. The new rules therefore enable issuers to leave the regulated market in situations where the cost savings associated with the segment change are attractive, but no shareholder has so far been willing or able to bear the costs of a delisting offer. When a company moves to the Scale segment, a number of capital market and stock corporation law obligations that attach to a listing on the regulated market cease to apply, including in particular:

- the obligation to prepare accounts in accordance with IFRS;
- the obligations of shareholders to notify, and of the company to publish, voting rights notifications under sections 33 and following of the German Securities Trading Act (WpHG);
- the special disclosure requirements pursuant to sections 289a and following of the German Commercial Code (HGB);
- the rules on transactions with related parties under sections 111a and following of the Stock Corporation Act;
- the duties to pass resolutions on the management board remuneration system and the remuneration report (sections 120a, 113 and 162 of the Stock Corporation Act); and
- the declaration of conformity with the German Corporate Governance Code pursuant to section 161 of the Stock Corporation Act.

### Requirements for a downlisting

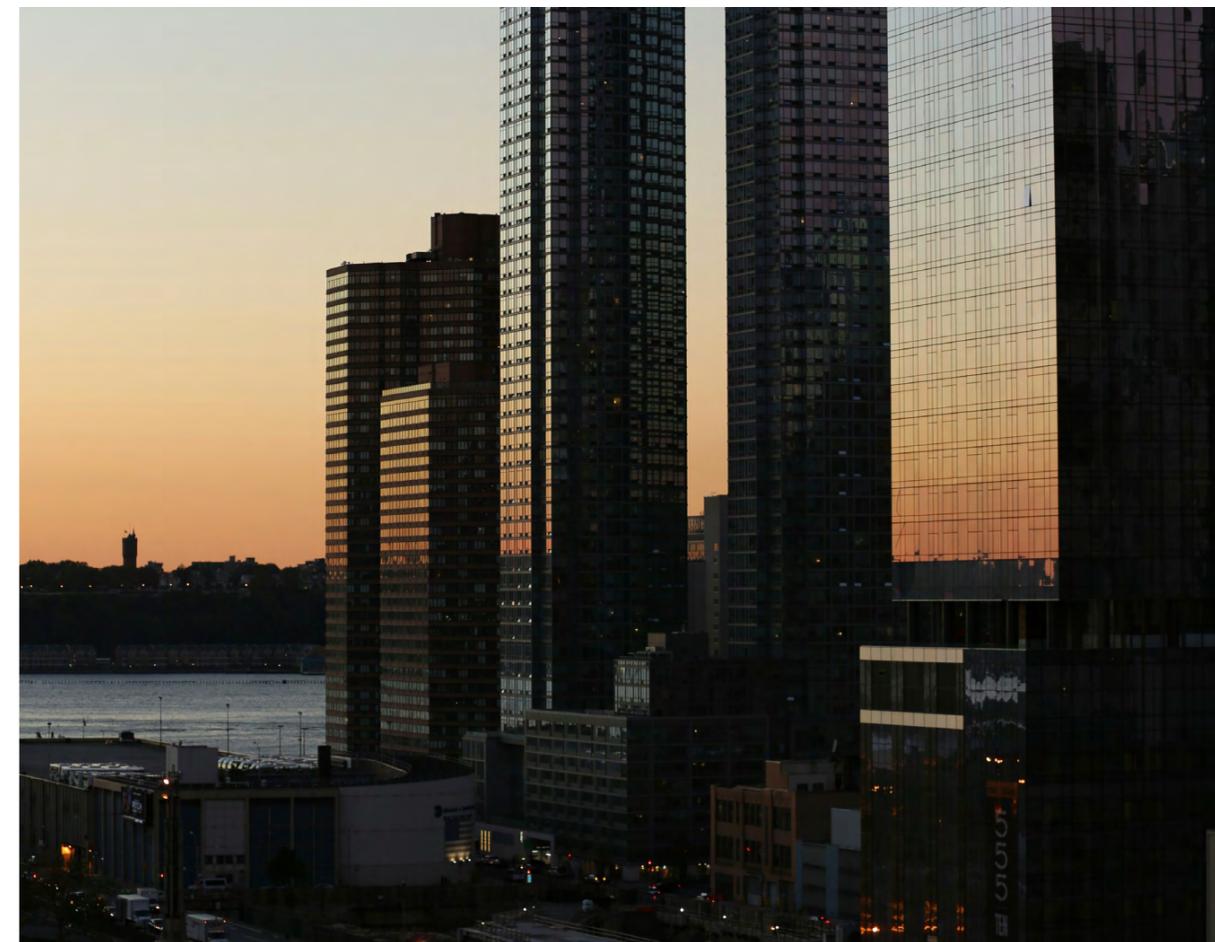
A downlisting from the regulated market to the Scale segment consists of (i) a revocation of the admission of the shares to trading on the regulated market pursuant to section 39 of the Stock Exchange Act and (ii) the inclusion of the shares in trading on the Scale segment. Inclusion in the Scale segment requires meeting the conditions for inclusion under the Frankfurt Stock Exchange's general terms and conditions for the open market, which include, among other things, the preparation of an inclusion document and a market capitalisation of at least EUR 30 million.

A resolution of the annual general meeting is not required for a downlisting. A resolution by the management board with the approval of the supervisory board is sufficient. However, with regard to institutional investors, it is advisable to review the shareholder structure before taking such a decision. If, for example, investment funds hold shares in the company and their investment guidelines require the company to be listed on the regulated market, a downlisting could force those funds to sell their shares.

## Conclusion

The new delisting regime seeks to address the legal policy debate on the adequacy of consideration in delisting cases by introducing a general clause with illustrative examples, thereby allowing deviations from the stock market price in special situations. The extent to which this will increase the number of cases in which a company valuation, rather than the stock market price, is binding will depend on how courts and legal literature interpret the new provisions in future.

The new downlisting rules are likewise to be welcomed, as they enable issuers to exit the demanding environment of the regulated market without having to make a costly delisting offer.



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