



# The Importance of Fairness Opinions – Public Mergers & Acquisitions Transactions: Spotlight Germany

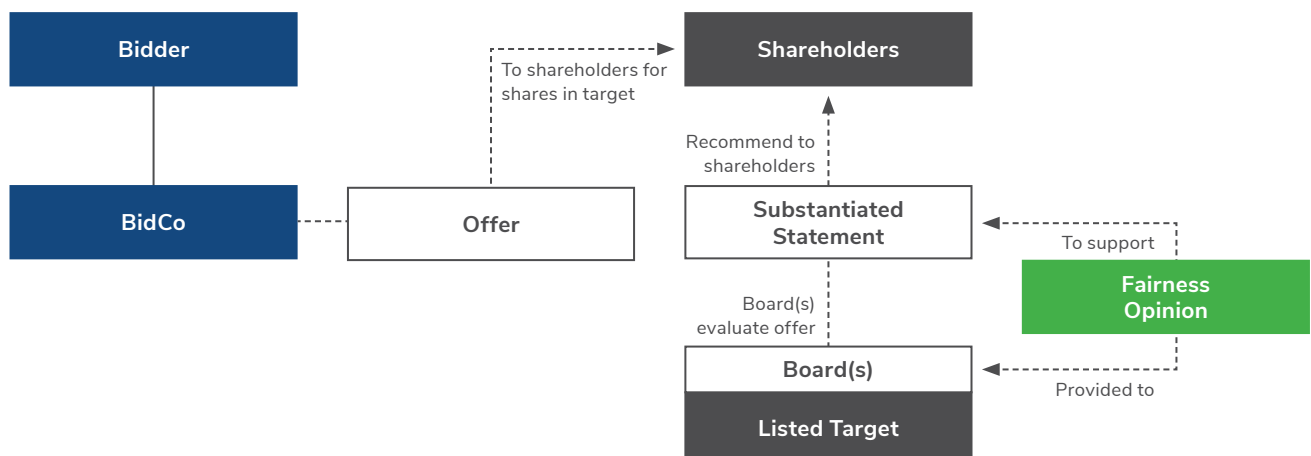
## Public Takeover

Due to the specific corporate governance structure of listed companies with typically widespread shareholder bases, public takeovers have been regulated by a European directive subsequently implemented into national takeover laws.

One of the key objectives of the takeover regulation is to provide the target company's shareholders with sufficient information and time to be able to make an

informed decision in relation to an offer. The German Securities Acquisition and Takeover Act ("Takeover Act" or WpÜG) requires the board of management and supervisory board of the target company to publish a so-called substantiated statement (according to section 27 of the Takeover Act) to comment on a bidder's offer, including on the appropriateness of the offered consideration.

## Key Elements Of Public Takeover Process In Germany

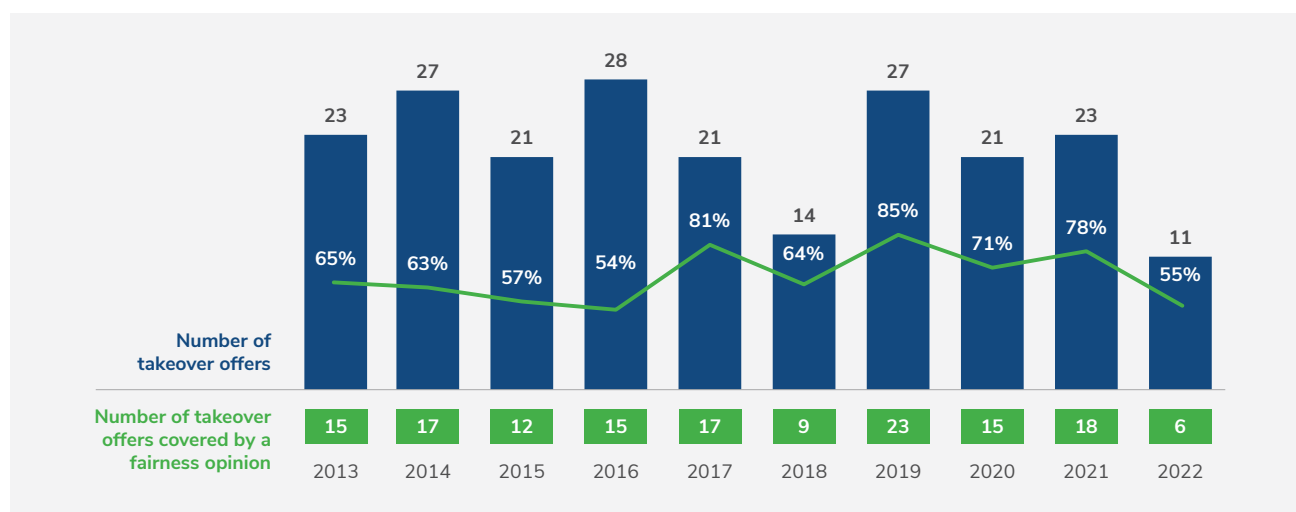


### Fairness Opinions In Public Takeovers Have Become Market Standard In Germany

Over the last few years, boards of management and/or supervisory boards (individually “Board” or together “Boards”) have increasingly obtained an external fairness opinion to support their substantiated statement, and the practice has become market standard. The Board(s) of the target company can rely on a fairness opinion in preparing their own statement of position to their shareholders, in accordance with their obligation to

comment on the offer (according to section 27 of the Takeover Act, and especially with regard to the appropriateness of the offered consideration). The Boards may, but are not obliged to, publish a joint substantiated statement. Hence, individual statements by each Board, supported by separate fairness opinions, have also been common practice over recent years. In addition, the Board(s) may wish to receive fairness opinions from more than one financial advisor to enhance objectivity and independence.

## Announced Public Takeover Offers In Germany With Fairness Opinion



Source: BaFin (Federal Financial Supervisory Authority), German Takeover Report 2022, Kroll research

### A fairness opinion in the context of a public takeover serves the following key purposes:

- Assessment of the financial appropriateness of an offer for the shares of the target company within the meaning of the Takeover Act, from the perspective of the shareholders of the target company
- Supporting element that the target company's Board(s) have fulfilled their fiduciary duties to diligently explore the facts under the business judgement rule

### Fairness Opinions Based On International Common And Acceptable Standards By Qualified And Independent Financial Advisors Are Becoming Increasingly Important

In a public takeover situation, Board(s) must make decisions that are subject to intense external scrutiny. The financial advisor issuing a fairness opinion assists the Board(s) in this complex decision-making process, supporting their duty to act on an informed basis.

Thus, the respective financial advisor should have the necessary professional qualifications and experience.

A fairness opinion in the public takeover domain is supported by a fundamental valuation analysis utilizing internationally accepted methodologies, including a discounted cash flow analysis, public company market multiples and/or precedent transaction multiples. The analysis leads to objective and highly informative advice that provides the Board(s) and shareholders with a truly independent view of the current fair market value of the target company and the financial appropriateness of the consideration to be received by the target shareholders.

## The Role of Kroll's Opinions Practice In Public Takeover Transactions

In our role as independent financial advisors, we typically opine on the fairness of the consideration to be received by the target shareholders that elect to accept the offer of the bidder for their shares in the target company.

## The Kroll Difference

The Opinions practice of Kroll serves as an independent advisor to management boards, supervisory boards, special committees and other fiduciaries and, in this capacity, we are a leading global provider of fairness opinions in corporate transactions. Our team has expertise in situations where advisor independence is paramount and scrutiny is elevated.

We have provided more than 1,500 fairness opinions with almost \$700 billion in aggregate deal value since 2005.



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