Mergers and acquisitions

In November 2006, Glarner Kantonalbank (GLKB) submitted a tender offer for all Bank Linth shares. After reviewing the proposal, Bank Linth’s Board declined the offer stating that valuation was too low and, more importantly, synergies were insufficient. At this point, Liechtensteinische Landesbank (LLB) was welcomed as a white knight and took over Bank Linth in March 2007. Josef Fehr, CEO of LLB, and Thomas Eichler, CEO of Bank Linth, walk us through the process, the merger rationale and their lessons learned.

We certainly all agree on the existing downside potential of inaccurate communication. But what this journal tends to discuss is the upside potential of “good” communication. In other words, this publication asks the question whether and to what extent state-of-the-art communication contributes to the success of a planned transaction? Furthermore, are there specific aspects to consider when being in the position of the bidder or the target?

The opinion leaders represented in this journal approach the value of communication from different angles and present their view. In this 14th issue of “The Communications Journal”, we identify the view. In this 14th issue of “The

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**SUCCESS FACTOR COMMUNICATION?**

Following the fifth edition of a survey analysing IR Practices worldwide published by the Bank of New York Mellon in January 2009, only 39 % of respondents have a written crisis or transactional communication policy in place. In other words, at least 60 % of companies in Europe, Middle East, the Americas and Asia Pacific are not prepared for the occurrence of an unsolicited takeover bid. Some of these companies certainly have good reasons why they do not have such a policy. Other may not yet have started to think about catapulting themselves in a steep learning curve when this scenario suddenly appears.

Yet, roughly 70 % of takeovers add little value to the acquire’s performance. Part of the failure is due to poor or absent communication about the benefits of the change. It is the role of communications to untringly point out that during significant changes the need and desire for information increases dramatically. Employees, financial analysts, the media as well as business partners ask for timely, thorough, consistent and comprehensible information. Moreover, communication specialists wag their finger to resisting organisations. If they are not ready to provide the information, rumours will fill the vacuum and, as a consequence, management’s credibility, the company’s reputation and quality of service could suffer irreparable damages.

We had been in touch with the Board and Management of Bank Linth already long before the actual merger in 2007. For a while already, LLB managed one of their most popular investment funds, the Regiofonds Zürichsee. Other forms of cooperation had always been a topic in informal meetings but were not concluded.

**What changed in the contacts you had before to Bank Linth when GLKB entered the scene?**

Josef Fehr: Already back in 2005, we have defined a corporate strategy that aims to diversify our businesses across customer segments and territories. In this context, extending our footprint in the Swiss market has always been an overriding goal. As we are a market leader in a neighbouring country of Switzerland and have close economic ties, we have always been active in the Swiss market. Also, with LLB (Schweiz) AG we have our affiliate in Zurich since 1998 and Lugano since 2006.

**Can you explain LLB’s business strategy and how Bank Linth fits into this framework?**

Josef Fehr: We now see promising signs as Bank Linth has full access to LLB’s ‘s Private Banking and Wealth Management products and services. We believe that the Bank Linth platform allows us to also accelerate the growth of our wealth management franchise.

**How did you get in contact with Bank Linth’s management and how positive you feel about the outcome of the merger?**

We had been in touch with the Board and Management of Bank Linth already...
stakeholders; especially for customers, employees and shareholders.

With regards to M&A communication, what is special in the buyer position?

When announcing such a transaction you are always tempted to focus your message to the shareholders of the target company in order to assure that a majority of shareholders finally tender their shares. But, being a listed company ourselves, we were careful to shape our messages so that it made sense to our shareholders and employees as well. Judging by the market reaction on the day of the announcement, we were successful with our approach. On December 7, 2006, our share price increased by more than 6% and continued to outperform the market thereafter. We also received strong support from our employees and customers.

What were the main challenges in the communication process?

I believe that the Bank Linth transaction was very different in terms of communications from most M&A deals you can observe in the Swiss market. Bank Linth had – and still has – a very fragmented shareholder structure. There were no big or institutional shareholders we had to convince but a big number – some 12,000 – of retail shareholders, who were mostly customers of the bank enjoying special conditions for Bank Linth services. So in order to convince all these people we strongly relied on Bank Linth’s staff to convince their customers of the advantage of the transaction. I believe that the information event of Bank Linth that was held before the offering period started and was attended by some 3,000 shareholders was crucial to our success. Furthermore, we launched an advertising campaign in the regional press and established a shareholder hotline that answered all critical questions with regard to the transaction.

GLKB applied a very aggressive communication approach and even suggested Bank Linth should not be sold to a foreigner. How did you deal with this situation?

Indeed, we felt that their communication approach was too aggressive and potentially even pushed some Bank Linth shareholders and customers away. We felt that a more calm and controlled communication would be more supportive of the cause. In an M&A transaction you always have to be in mind that the actual closing of the transaction is not the end point but rather the start of the cooperation between two companies.

What are your lesson learned from the Bank Linth transaction?

It is clear to us that in our business only a friendly offer can deliver added value to stakeholders. In a services business like ours where people are key, an unsolicited bid risks rapidly destroying value, which was created over many years. Close cooperation with Bank Linth was not only crucial in executing the deal but also – and most importantly – in the post-merger integration phase.

Transaction at a glance

| Summer 2006 | Glarner Kantonalbank indicates interest to merge with Bank Linth. Bank Linth refuses the approach in writing. |
| Nov. 3, 2006 | Bernt Arpagaus, CEO of Glarner Kantonalbank, informs Heinz Knecht, Chairman of Bank Linth, in a voice mail that he will launch a takeover offer at CHF 330 in cash / CHF 130 PS of Glarner Kantonalbank. |
| Nov. 4, 2006 | Chairman Heinz Knecht responds the same day publicly describing the offer as “unfriendly and not attractive”. |
| Nov. 5, 2006 | Chairman Bank Linth states that Bank Linth is not for sale at any price. |
| Nov. 6, 2006 | Glarner Kantonalbank launches pre-announcement. |
| Nov. 30, 2006 | Glarner Kantonalbank launches offer at CHF 480 per share (up from CHF 460). Bank Linth rejects improved offer. |
| Dec. 1, 2006 | Bank Linth shares increase to CHF 520, triggering speculations on potential upcoming higher offers. |
| Dec. 4, 2006 | CEO Glarner Kantonalbank expresses his assumption that a white knight must offer at least CHF 600/share. |
| Dec. 7, 2006 | CEO Bank Linth confirms fighting the offer from GLKB whilst St. Gallen Kantonalbank examines an offer. |
| Dec. 8, 2006 | St. Gallen Kantonalbank is no longer interested in a merger. |
| Dec. 13, 2006 | CEO Glarner Kantonalbank does not believe shareholders will tender to a foreign institution, and is therefore not planning to increase the offer. |
| Feb. 23, 2007 | Liechtensteinsche Landesbank holds 74.3% of shares after expiry of offer period. |

Continued from page 1
M&A communication starts on day one

Merger and acquisitions are central elements of corporate strategy implementation. Yet, the transaction itself typically is a special situation for most companies and bears a number of risks. Targeted communication measures help to successfully execute an M&A transaction and lay the foundation for the post-merger integration process.

In 2008, almost every day of the year a Swiss company was involved in an M&A deal. Growth fantasy is among the key value drivers of a company. Defining its growth strategy is at the heart of each corporate strategy. M&A are — besides internal growth and cooperations — a central mechanism to realise such a growth strategy. But M&A are not a goal in themselves. Transactions should always be used as a tool to implement a corporate strategy. Even opportunist transactions should make sense in the broader context of the corporate strategy.

M&A are an activity full of risks. We all know that the majority of M&A transactions never deliver on promises. One of the challenges to make an M&A transaction successful is communications. M&A decisions and their acceptance are based on expectations, and expectations are shaped by communications.

M&A have to be “sold” to multiple target groups: People who have the idea for such a deal have to “sell” it to the company’s senior management; if accepted, top management has to “sell” the deal proposal to the firm’s board of directors; if accepted, the owners and management of the target company have to be convinced about the rationale of the deal; if they agree, employees of both firms have to be persuaded that they should invest their time and motivation in the execution of the post-merger integration. In a big and complex transaction many other stakeholders — like the public, politicians or NGOs — demonstrate their interests in the transaction. In an M&A deal there are twice as many parties involved as in normal corporate communication situations. This is because you have to deal with two sets of stakeholder groups — one on the buyer side, and another on the target side.

This complexity shows that communications are not an afterthought to be dealt with after closing the transaction. Communications have to be taken seriously from the early stages of the planning of a transaction. Early communication failures can often not be corrected later and their price can be significant: lost credibility, lawsuits, job resignations or missing support for the integration.

There are two typical communication dilemmas a company faces in an M&A situation:

1. Secrecy versus disclosure
On the one hand deals have to be developed under the pledge of secrecy. This secrecy is protected by “organisational firewalls” like code names, separate offices or tagged deal documents. This secrecy is absolutely necessary in the early stage of a transaction to prevent other companies from capturing the idea for their own purposes. A too early communication of a deal also creates unwanted rumours and volatility in the capital markets. On the other hand and apart from legal restraints, a company has to communicate a planned deal early enough, to give shareholders and other stakeholders a chance to take up their stance on the transaction plan. If the disclosure comes very late, the probability increases that information leaks appear and the deal makers lose control over the communications process.

2. Exclusivity versus involvement
On the one hand, because of secrecy, deals have to be prepared only by a very small group of corporate managers. On the other hand, corporate management often does not have the necessary knowledge of the business to take the right decisions. For example, synergy estimations are often wrong because of a lack of detailed technical facts; or there is resistance to realise these synergies because of a cultural clash between parties. But having the right experts in the team would not only help to avoid such problems, it would also help to get support for the deal and its integration. The broader the involvement before the closure of the transaction, the stronger the commitment. And in the integration phase, corporate management strongly hinges on the commitment of employees. But besides tactical considerations there are also legal restrictions on what can be communicated about a pending transaction.

Even in cases of a broad involvement, the disclosure of a transaction is usually a big surprise. Often the news is fearsome for employees e.g. because of hierarchical relationships, job security or career prospects. The challenge is now to communicate the deal to the people to get their buy in the integration phase. There are some rules to follow in such a situation:

• Take communications seriously. Tell employees why the company engages in the transaction and why now is the right moment. Focus communications on the creation of meaning for the transaction because people want to control their own fate in face of uncertainty. To avoid an information overload, do not get lost in explaining all details; focus on explaining the purpose and the key elements of the planned transaction.

• Do not allow rumours to spread. If possible correct emerging rumours based on official facts. Try to communicate proactively to avoid rumours.

• Address the concerns of employees through the use of many different and appropriate communication channels. Deal with the chances and risks members of staff see for themselves, for their direct work environment and for the company.

• Give the deal a face by showing the responsible persons and involve them in a constructive dialogue.

• Integration management needs strong leadership on all levels of the organisation. A constitutive component of a strong leadership is intense direct communication.

• Keep people continuously informed about the progress of the integration process. Show “early wins” to create trust in the rationale of the transaction.

• Communications are not only based on voice. Symbols, gestures or pictures also send a message to the public — intended or unintended.

• Be careful about not communicating, because it also communication and will be interpreted.

Each transaction is unique. Using standard communication procedures does not account enough for the situation and the stakeholders involved. This means M&A communication must be tailored to the particular challenges of each case.
Defence against hostile takeovers

Unfriendly tender offers and stake buildings have become a common feature of the Swiss market in recent years. Defence preparations and defence tools are therefore an important topic for Swiss listed companies.

H ostile tender offers and unfriendly stake buildings have become frequent in Switzerland in recent years. While such transactions may be in the interest of the target and its stakeholders in the specific case, experience shows that unfriendly offers are often submitted at a relatively low price, while unsolicited stake buildings may give the raider de facto control with- out an exit opportunity for the minority shareholders. Against this background, defence preparations and defence tools have become an important topics for Swiss public companies.

The readiness is all

Unsolicited offers and stake buildings often occur surprisingly, with little or no lead time. Preparation is therefore key. For the purpose of preparation, many Swiss companies have established Defence or M&A Manuals. These handbooks are prepared, and from time to time revised, by a committee of the board and the management with the assistance of outside advisers such as investment bankers, PR/IR advisers and specialised lawyers. The preparation and the resulting “education” process for directors and officers may take several weeks. The manuals often cover four principal areas, namely organisation and measures prior to a hostile situation, organisation and measures in case of a hostile situation, an enterprise valuation and analysis of possible raiders, white knights and white squirels.

The importance of PR and IR

PR and IR aspects are obviously important elements both in the preparatory and in the defence phase. In “times of peace”, PR and IR efforts aim at creating a positive corporate image and goodwill and at building a solid shareholder base in order to ensure support in the event of an attack and, importantly, sustain a fairly valued share price. In the defence phase, PR and IR a decisive factors to regain the initiative as quickly as possible. Therefore, Defence Manuals often set out detailed procedures and draft press statements for the first 24 hours after an unfriendly situation has arisen.

Preparatory defence tools

There are a number of possible legal defence tools which may be considered in the preparatory phase. The preferred preparatory tool consists in share transfer restrictions (Vinkulierung). Typically, the articles of association provide for a percentage limitation, e.g. 3% or 5%. In many cases the transfer restriction is combined with a voting restriction (Stimmrechtsbeschränkung). The resulting difficulty or even impossibility to exercise control in the shareholders’ meeting is an efficient tool to defend against activist shareholders, as the recent examples of Implenia and Sulzer show. However, these restrictions are not a foolproof defence against unsolicited takeovers. If a tender offer is perceived to be sufficiently attractive, the target board may decide to call shareholders’ meeting and the shareholders may be willing to abolish the restrictions. For that purpose, the offerer will typically include a condition precedent in its offer.

In order to strengthen their share transfer or voting right restrictions, some companies have introduced supermajorities in their share issues or dividend decisions which require qualified quota for the removal of the restrictions, for instance an approval by 25% of all issued shares. Supermajorities are an efficient tool to prevent unfriendly tender offers and stake buildings. However, they may also impede friendly transactions and should therefore be considered carefully.

A possibility to defend against a surprising change of control on the board level consists in the introduction of a staggered board, where the tenures of office of the board members expire in different years (e.g., one third each year). As a result, only a limited number of board members will be up for re-election each year. Approximately one fifth of all Swiss listed companies have opted out of the mandatory tender offer rules or adopted an opting-up (i.e., increased the threshold). If an opting-out or opting-up exists, a raider may exceed 33% of the votes of the target without being required to make an offer to the minority shareholders. A company with an opting-out or opting-up should consider opting into the rules by changing its articles accordingly.

There are a number of other defence measures which are frequently discussed during the preparations, such as the introduction of golden parachutes for members of management, of change of control clauses in important commercial contracts or of authorised share capital permitting the board to withdraw pre-em- pitive rights in case of a hostile tender offer. In order to be permissible, such measures must be in the company’s interest and be supported by valid commercial or business reasons. If implemented with the mere aim of defence, such tools may be critical from a corporate law perspective.

Defence measures in an unfriendly situation

Once an unfriendly offer has formally been made, the ability of the target board to adopt typical defence measures, such as scorched earth, Pacman or crown jewel defences, is significantly constrained by the Swiss takeover rules which prohibit, for instance, the acquisition or disposal of assets in excess of 10% of total assets or contributing more than 10% to the profitability of the target, or the acquisition or disposal of treasury shares and the issuance of shares, conversion or option rights. Therefore, such measures are rarely implemented in Switzerland. The more relevant and often successful way to defend against a hostile bid or an unfriendly activist shareholder consists in the search for white knights and white squirels. The target might also consider rejecting a raider’s request for entry into the share ledger on the basis of the argument that the raider is not the beneficial owner of the shares or is in such a position that voting with voting rights requires prior merger clearance by the competent antitrust authorities. Further, initiating legal proceedings has become a significant tool in recent situations. Such proceedings may, for instance, be based on alleged violations of disclosure duties. Under the new takeover rules which entered into force on January 1, 2009 and strengthened the procedural rights of target shareholders holding more than 5% of the voting rights, the target may also consider seeking support from qualifying shareholders as parties in the proceedings before the Takeover Board.

Manage the process

Mergers and acquisitions are central elements of corporate strategy implementation. Yet, the transaction itself typically is a special situation for most companies and bears a number of risks. Targeted communication measures help to successfully execute an M&A transaction and lay the foundation for the post-merger integration process.

Strengthening the market position

The success of a transaction. But communication professionals should beware since shareholders of the target company will form their opinion based on pure eco- nomic terms, i.e. the price offered. In- vested of the bidding firm, however, are more critical. For them, the strategic rationale of the transaction and the poten- tial for added value need to be con- vincing. Management of the bidding firm has to balance the interest of its own shareholders for a value-adding transaction while convincing the share- holders of the target company of the attractiveness of their offer. By experi- ence, the immediate share price reaction of both companies after the an- nouncement provides a solid judgment of the transaction and is indicative for the long-term share price development.

Even in M&A situations communi- cations are not a black box that cannot be controlled. Companies can prepare for such events. Communication meas- ures and tools may be prepared well in advance in order to use them at the push of a button. Three success factors are identified:

1. Integrate communication in the planning and preparation phase

M&A transactions of listed companies are subject to a stringent regulatory re- gime. Thus from the start, the communi- cation strategy should be coordinated with the legal team so that no work is done is first an event-driven communica- tion plan whose rhythm matches the regulatory regime. Secondly, the neces- sary communication tools such as press releases, presentations, etc. need to be
prepared. Finally, different scenarios should be taken into account.

2. Communicate the full story and include unambiguous targets

Opinions are formed quickly; it is next to impossible to change opinion leaders' minds once they have taken a position. As a result, communication efforts on the announcement day need to deliver a credible, full story including unambiguous financial or operational targets in order to assure an immediate impact. Buzzwords such as “convergence”, "significant synergies", "profitable growth", or "creating shareholder value" without any supporting facts and timing must be avoided because such unsupported buzzwords transmit alert signals to investors. Eventually the bidding company hast to convincingly explain how expected synergies (revenue synergies or cost synergies) cover the takeover premium offered.

3. Avoid unnecessary uncertainties

Some uncertainty lies in the nature of each and every M&A transaction. But additional speculations and rumors that could complicate or even obstruct the post-merger integration process should be avoided with the announcement of the merger. Employees need to be informed carefully but openly about possible uncertainties, which is a major responsibility of management teams who want to be prepared once a battle breaks out. Including this item on the agenda triggers sensitisation with the topic whilst diminishing the surprise effect. In any case, board members must learn about their shareholders' interests and expectations. Knowing the counter-party's situation helps a lot to build relationships and create loyalty. Furthermore, communication needs to aim at preserving all assets of the target company; including employees as well as customers and suppliers.

Be prepared!

Defence preparation is part of good corporate governance for every listed company whose shareholder structure allows for takeover approaches. The fact that defence scenarios are on the board’s agenda is already a first achievement.

W ith financial markets worldwide in bad shape and valuations at levels not seen for many years, developing defence scenarios is a current topic for responsible board and management teams who want to be prepared once a battle breaks out. Including this item on the agenda triggers sensitisation with the topic whilst diminishing the surprise effect. In any case, board members start to think about the value of self-determination and preparedness.

Correspondingly, one of the first questions executives have to address is how to react in case of friendly or unfriendly approaches. The aim is not to prevent a takeover per se, as it is an eminent part of a market system. First, it is to protect shareholders from unfair or inadequate takeover offers and abusive tactics, which is a major responsibility of each company’s board. Secondly, appropriate preparation increases the board of directors’ control over an unsolicited approach by enhancing its negotiating leverage and flexibility. Thirdly, it protects the board of directors’ ability to comply with its fiduciary responsibilities under the respective legislations.

Think first

Although the basic principles appear obvious, looking back on recent cases it seems that many defence communication teams were not aware of them. Yet, lack of awareness may not be the appropriate explanation. Most likely they were poorly prepared to the situation and acted in a rush, not determining and thinking about the goal of their actions.

Analyzing and monitoring shareholder structure

It starts with profiling current and potential shareholders that may buy into the stock. Right from the beginning it is important to detect informal groups within the shareholder base. As a second step, also as meeting preparation, the team should learn about their shareholders’ investment background in order to better understand their individual perspectives and expectations. Knowing the counter-party’s situation helps a lot to build relationships and create loyalty. Thereby, non-attributed shares need to be observed and monitored closely. Any developments could give further insight and reveal hidden block build-ups by an interested party. Recent examples, such as Sasa Burgess, Implenia or Sulzer, showed strong movements in share ownership and volume before unsolicited attacks or full takeover bids were launched. Also, specific trading patterns in registered and non-attributed shares were recorded.

Existence of a value-based threat?

A potential undervaluation increases an organisation’s attractiveness as an acquisition target. The question is whether the sum of the values of each individual business and development project equals the company’s overall valuation, as determined by the market, i.e. the share price. A lower overall valuation would point to a value gap. Irrespective of whether this gap results from insufficient communications or a difference of opinion on further developments and the relevant cash flows, management will have to emphasise its arguments towards these stakeholders.

Emergency planning

Having to start from scratch distracts the team from focusing on the real important things at levels not seen for...
Difficult times create challenges

The environment for M&A transactions has changed significantly over the last years. Not only fewer deals get done, also some pre-financial crisis trends became even more relevant and now present additional communication challenges for deal makers.

Preparation improves the communication output

Nowadays, likely targets are better off by preparing and doing their homework in terms of defence planning. This takes away two bidder advantages: the element of surprise and the target's loss of crucial momentum at the beginning of the process. Targets have thus a better chance of avoiding grave communication errors in their first reaction to a bid announcement.

On the other hand, this implies for the deal maker that he needs to put even more effort in the preparation of communication and messaging, anticipating the defence storyline and defining how to react to strikes by preparing a detailed messaging scenario of arguments and counterarguments.

Role of communications

Communications are especially important in high-profile M&A situations to secure the support of his own shareholders and other crucial stakeholders. Activists build on public pressure Shareholders who want to capitalise on M&A situations potentially cause further communication needs for deal makers. On the one hand, the large number of event-driven investors is helpful, because when they oversee a large volume of shares, the likelihood of a successful deal increases. On the other hand, activist shareholders will do everything they can to force a higher offer or more favourable terms.

Finally, the current financial markets environment creates a metachallenge that influences and summarises most of the points mentioned above. The main issue is the dramatically increased strategic and execution risk of the transaction which has a number of implications:

- The strategic rationale and story need to be very convincing to address concerns regarding the execution risks;
- The financing of a transaction will be permanently questioned until payment has been made;
- The communication with the bidder's own stakeholders becomes more important as they need to be reassured about the transaction's progress;
- Finally, the communication scenario planning must not only include reactions for interventions by any critic but also an exit strategy if the transaction cannot be closed successfully.

The deal maker is forced to undertake more effort in the preparation of communication and messaging, anticipating the defence storyline and defining how to react to strikes by preparing a detailed messaging scenario of arguments and counterarguments. 

Looking at the way transactions are carried out, one can detect a return of uninvited or hostile takeover bids. By definition, two bidders are involved – there will be winners and losers. 

Therefore, a deal maker needs to evaluate approach tactics carefully and prepare leak statements that reflect possible scenarios.

Innovative transaction structures add complexity

More complex transaction structures increase the need for detailed communication and explanation. Clearly, some transactions are only possible because of innovative and complex financing and transaction structures. This might involve the use of derivatives for pre-bid stake building, earmarked divestments for financing or regulatory reasons, or dealing with the target's change of control clauses. The deal maker must be able to cope with detailed examination of the deal structure as well as to secure the support of his own shareholders and other crucial stakeholders.

Avoiding any intercultural missteps

Increasingly, transactions are cross-border deals adding an international dimension and posing specific communication requirements. First, the likely lack of profile and position of the bidder in the target company's home country as well as potential country-specific compliance issues. On a practical level, it adds coordination and resource requirements to manage communication in two or three languages and across time zones. The deal maker is forced to undertake rapid profiling and positioning efforts in the target market and avoid any potential intercultural missteps. In a hostile scenario, he will also need to deal with the target's mobilising activity in his home market.

Non-financial stakeholders articulate their interests

Currently, as a result of the financial crisis, the interaction and the influence of non-financial stakeholders increase. As national industrial policies with a particular focus on jobs and taxation gain importance, politicians, unions and interest groups will engage in the takeover process. Legal restrictions continue to limit direct influence, but indirect influence through positive or negative comments cannot be underestimated. Mobilising employees remains a key defence tactic in hostile takeovers. Hence, the deal maker must aim to secure political support including all stakeholders in a proactive communication approach and try to win over the target's business partners early.

Continued from page 5
Recent transactions in Switzerland

The following portraits summarise recent major takeovers with the involvement of a Swiss company. They provide a comprehensive set of lessons learnt, i.e. regarding the buyer’s motivation and tactics as well as the target’s defence strategies.

Ciba acquired by BASF, 2008

Until March 2009, Ciba was an independent Swiss speciality chemical company producing chemical additives for the plastics, paper and coatings industries. The company, active in more than 120 countries around the world, generated sales of CHF 5.9 billion and invested more than CHF 230 million in R&D. On September 15, 2008, BASF made a friendly cash offer for Ciba for CHF 50 per share, offering a premium of 32% over the last price traded and valuing the company at CHF 61 billion. Ciba had disappointed analysts and investors repeatedly not reaching its targets. After reporting a loss for the second quarter of 2008, Ciba had announced it might sell certain business units in order to return to profitability. After initial opposition by the activist shareholder Adriano Agost and investor Bestinver, BASF secured the required two-thirds stake in Ciba’s share capital.

**Conclusion**
*Defining common interests and strategies with the target of the company early can facilitate a smooth takeover and pave the way for an efficient integration process.*

Implenia opposed Laxey, 2007/08

Implenia is Switzerland’s largest construction and building services provider. In 2008, the company generated sales of CHF 2.2 billion with a total workforce of almost 5,200 specialists.

Starting in the first quarter of 2007, the British hedge fund Laxey Partners built a stake in Implenia AG calling for a strategy change in the company. Implenia partly denied registering the corresponding voting rights, saying Laxey infringed the country’s disclosure obligations. Implenia argued that the fast build-up of a stake of more than 22%, which was not traceable in stock market transactions, indicated arrangements with other market participants.

In November 2007, Laxey launched a takeover offer for Implenia at CHF 33.23 per share clearly below previous day’s closing price of CHF 36, valuing the Swiss construction group at around CHF 614 million. The bid was conditional on Implenia changing its statutes and removing the cap on Laxey’s voting rights. At this point, Laxey already held 33.4% of the stocks, forcing it under Swiss law to launch a bid for the entire group.

In March 2008, Laxey reported it only had acquired 4.1% Implenia shares during the offer period. Furthermore, since Implenia’s Board refused to fully register shares held by funds under Laxey’s management, it decided to end the offer. Shortly thereafter, the Swiss Federal Banking Commission (SFBC) confirmed that Laxey had acquired its stake in Implenia by illegal means.

**Conclusion**
*Clever legal strategies are crucial in defence situations. PR professionals may win over media and public opinion, but not necessarily on the company’s investors.*

Leica Geosystems acquired by Hexagon, 2005

Leica Geosystems was best known for its broad array of products that capture spatial information accurately, model it quickly, analyse it easily, as well as visualise and present it efficiently. Based in Heerbrugg, Switzerland, Leica Geosystems was a global company supported by more than 3,500 employees in 28 countries and counting hundreds of partners located in more than 120 countries around the world.

In August, Laxey Partners further increased its stake in Leica Geosystems, launching a public tender offer for all shareholders at CHF 440 per Leica share, valuing the company at about CHF 1 billion. But Leica rejected the offer, arguing that it was priced too low.

**Conclusion**
*Activist shareholders often set different priorities: Whilst Laxey favoured significant capital reductions resulting in immediate capital gains, management intended to invest this money in buying rival companies, which should have helped it to resume top- and bottom-line growth. In the wake of the economic downturn things look different.*

Saurer acquired by OC Oerlikon, 2006

Previously, Saurer was an independent Swiss textiles machinery and car parts maker. Today, Oerlikon Saurer presents itself as a preferred partner for machine software and complete solutions in various textile applications with a special focus on twining and embroidery.

**Conclusion**
*Never say no! At the very end, investors will weigh economic terms offered and quickly, analyse it easily, as well as visualise and present it efficiently. Based in Heerbrugg, Switzerland, Leica Geosystems was a global company supported by more than 3,500 employees in 28 countries and counting hundreds of partners located in more than 120 countries around the world.*

Leica Geosystems’ Board of Directors advised company shareholders to accept the friendly bid of white knight Danaher from the United States amounting to CHF 500 per share and entered a transaction agreement with this company. In August, Hexagon increased its offer to CHF 440 in cash plus five B shares of Hexagon, which increased the bid to CHF 594 giving Leica a valuation of nearly CHF 1.5 billion. Due to Hexagon’s raised offer, the Board of Leica agreed with Danaher to end the transaction agreement with immediate effect.

**Conclusion**
*Activist shareholders often set different priorities: Whilst Laxey favoured significant capital reductions resulting in immediate capital gains, management intended to invest this money in buying rival companies, which should have helped it to resume top- and bottom-line growth. In the wake of the economic downturn things look different.*

Unaxis controlled by Victory, 2005

Unaxis, today renamed Oerlikon Group, is one of the world’s leading high-tech
industrial groups specialising in machine and plant engineering. The company offers pioneering solutions for the production of thin-film silicon solar modules, textile production, thin-film coatings, and drive, precision and vacuum systems. With a workforce of almost 18,500 at 180 locations in 37 different countries, the company’s sales reached CHF 4.8 billion in 2008.

In the first half of 2005, Victory Industriebeteiligungen AG, Vienna, continuously built up a majority stake in voting rights of Unaxis through a combination of the registered shares and option rights. At the extraordinary General Meeting of Unaxis held on June 28, 2005 and requested by Victory, all existing members of the Board of Directors of Unaxis with the exception of Thomas P. Limberger resigned from office. Instead, Dr Mirko Kovats (as Chairman), Günther Robol, Christian Schmidt and Georg Stumpf were newly elected to the Board of Directors. Thomas P. Limberger took over the function of Unaxis CEO as of August 1, 2005. In addition, the proposal by Victory to reinstate the statutory ex- emption from the duty to make a full tender offer was approved. In a letter dated July 1, 2005, the Swiss Federal Banking Commission dismissed an obligation by Victory to make a public offer for the outstanding shares of Unaxis Holding Inc.

Conclusion
In order to ensure a fair market system, a clear and transparent regulation of the stakeholding process is pivotal. In the meantime, the legislator has reacted and tightened the disclosure obligations.

Forbo opposed CVC Capital Partners, 2004/05

Forbo is a leading producer of flooring systems, adhesives, as well as power transmission and conveyor belt solutions. The company employs some 6,500 people and has an international network of 44 sites with production and distribution as well as 51 pure sales organisations in a total of 35 countries worldwide. Today, Forbo Holding still operates independently and is listed on the SIX Swiss Exchange.

In November 2004, CVC Capital Partners repeatedly expressed its interest in Forbo, without actually making an official offer for the company. A first indicative offer stood at CHF 330 per share. Later it was raised to CHF 350–370 per share. Finally, the official offer, announced in early March 2005, amounted to CHF 260 per share valuing the company at around CHF 705 million. Already in February 2005, Swiss entrepreneur Michael Pieper, who built up a 25% stake in Forbo, requested the bidding process for control of the company be stopped. Subsequently, Forbo’s Board of Directors, who stated that it prefers Forbo to remain an independent company, asked its shareholders to vote on the offer at the occasion of an extraordinary General Meeting. Shareholders followed Michael Pieperabolishing the voting rights restriction of 8% of the company’s share capital. This action resulted in the withdrawal of CVC Capital Partner’s offer.

Conclusion
Indicative offers can materially differ from official bids. Furthermore, large shareholders can help fighting off unwelcome takeover offers.