A German Takeover Boom?

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FRANKFURT — German companies will face more frequent and persistent hostile takeover bids in the European Community's single market that takes effect in January, experts on Germany company law predict.

The lifting of barriers on capital movements is likely to accelerate foreign bids while pressures increase on German companies to ease defensive measures, the analysts said.

Despite the widespread belief that unfriendly takeovers do not work in Germany, a hostile bidder can be successful under current conditions, but only if it can obtain a controlling majority of shares quickly, they said.

Recent examples of foreign companies seeking to gain control by slowly building up their holdings show this method does not work, the experts said.

"German capital markets, although underdeveloped as compared to the British or U.S. markets, are not shielded against foreign takeovers through irresistible legal and structural barriers," said Hans-Jochen Otto, a corporate lawyer at the Stuttgart-based firm Thümmel, Schütze & Partner.

This means that as Germany moves into the EC single market, hostile bids for German companies by domestic and foreign competitors will become more frequent, he said. So will the pressure by shareholders on managers to lift obstructions against unwanted suitors and add value to their shares.

Last week, Christian Strenger, head of DWS, Deutsche Bank's fund-management division, called for an overhaul of Germany's corporate takeover rules, saying that shareholders in German companies were disadvantaged.

At the annual meeting this month of RWE AG, the electric utility, a group of domestic and foreign shareholders challenged as discriminatory a corporate statute that creates a class of shares with multiple voting rights.

Such moves are becoming more common in Germany as foreign investors are looking for a foothold in Europe's largest economy.

Under the EC single market, hostile bids for German firms will multiply.

Examples are the recent acquisitions of large stakes in the German insurers Nordstern Allgemeine Versicherungs AG and AMB AG by Union des Assurances de Paris and Assurances Générales de France.

Since buying a 25 percent stake plus one share in AMB late last year, AGF has been trying hard to get its voting rights recognized, and AMB shareholders will be asked Dec. 30 to approve a complex deal also involving Crédit Lyonnais and BfG Bank that would allow such recognition.

The battle over AGF's stake in AMB shows that potential bidders in Germany must gain control of their targets as quickly as possible, analysts said.

Nicolaus-Jürgen Weickart, a Frankfurt-based expert on corporate mergers, said any investor wanting to gain control of a German company "should do it the American way, which means aiming for a clear, undisputed controlling majority of the takeover target."

"Any other approach is bound to fail," he said.

As illustrations, Sweden's Stora AB gathered more than 85 percent of Feldmühle Nobel AG in its successful takeover, John Deere purchased more than 75 percent of Sabo Maschinenfabrik AG and Fried. Krupp GmbH started out by buying more than two-thirds of Hoesch AG when beginning its takeover late last year.

Other would-be acquirers failed to gain a majority stake of targets quickly because they did not follow an unequivocal takeover policy, analysts said.

Mr. Weickart said foreign bidders often wasted their time and money as they tried to strike clandestine arrangements instead of going the open, legal way.

This is because foreigners are too afraid of Germany's notorious "corporate clubbiness," which usually brings together a company with its creditor bank and its suppliers, he said.

Mr. Otto at Thümmel, Schütze said fear of collusion between shareholders could itself become a barrier to a takeover. "There's clearly a risk that a wrong perception of the facts could become a takeover barrier, perhaps even the most effective," he said.

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