

II

# II

## **Exemptions from Mandatory Bids**

2002–2016

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
1	BNP Paribas S.A., Paris, France	Berliner Effektengesellschaft AG, Berlin	3/5/2002	granted	<p>The applicant acquired a 53% stake in Berliner Effektengesellschaft AG, a stock broker at the Berlin stock exchange, mediated through Consors Discount Broker AG.</p> <p>The reasons for the exemption were not published.</p>
2	Kraftwerk Laufenburg AG, Laufenburg, Switzerland	Kraftübertragungswerke Rheinfelden AG, Rheinfelden	5/16/2002	granted	<p>The exemption was granted based on Section 36 no. 3 of the Takteover Act.</p> <p>The applicant acquired 69% of the shares in the target in the course of a reorganization within a group of companies.</p> <p>Despite being granted an exemption, the applicant launched a tender offer for the remaining shares in the target (see no. 18 in Survey I: Public Bids).</p>
3	Marbert AG (subsequently Marbert Holding AG), Dusseldorf	Jean Pascale AG, Norderstedt	8/15/2002 (date of publication by the applicant)	application withdrawn	<p>The applicant acquired a 88.6% stake in the target, mediated through Wiland S.A., Luxembourg, and its subsidiary.</p> <p>Following the acquisition of an indirect shareholding in the target, the applicant initially reserved the right to apply for an exemption. Subsequently, the applicant made a mandatory bid, abandoning the earlier reservation (see no. 31 in Survey I: Public Bids).</p>
4	Thiel Logistik AG, Grevenmacher, Luxembourg	Microlog Logistics AG, Frankfurt am Main	10/17/2002 (date of publication by the applicant)	granted	<p>The exemption was granted based on Section 36 no. 3 of the Takeover Act.</p> <p>The applicant acquired 67.9% of the shares in the target by way of, inter alia, a capital increase in the course of reorganization measures within the corporate group.</p> <p>Despite being granted an exemption, the applicant launched a tender offer for all the shares in the target (see no. 34 in Survey I: Public Bids).</p>
5	FGS Alpha 131 GmbH (subsequently M.K.B. Media Kommunikationsberatungs GmbH), Bonn	Media! AG für innovative Medientechnologie, Munich	10/30/2002	granted	<p>The applicant acquired 44.78% of the (voting) shares in the target. The exemption was granted under the condition that the applicant transferred all shares in AVT GmbH and PROTEC GmbH and a shareholder's loan in the amount of approx. €9.05m to the target in the course of a capital increase against contribution in kind.</p> <p>The reasons for the exemption were not published, but the exemption was probably granted in connection with the restructuring of the target.</p>
6	Helmut Thoma	MobilCom AG, Büdelsdorf	12/5/2002	granted	<p>The exemption was granted based on Section 37(1) of the Takeover Act.</p> <p>The target was in an unstable financial situation. Shares corresponding to 42.41% of the voting shares in the target were transferred to the applicant, who acted as trustee for the former shareholders Gerhard Schmid and Millenium GmbH. The target's majority shareholder France Télécom S.A. made this acquisition a condition precedent for granting further financial aid. The intention was to block the former shareholders' voting rights. No further details available.</p>
7	DIA Vermögensverwaltungs-GmbH, Munich	Württembergische Hypothekenbank AG, Stuttgart	1/3/2003	granted	<p>No details available.</p>
8	DIA Vermögensverwaltungs-GmbH, Munich	Hypo Real Estate Bank AG, Munich	4/2/2003	granted	<p>The exemption was granted based on Section 36 no. 3 of the Takeover Act (reorganization measures within a group of companies).</p>
9	Hypo Real Estate Holding AG, Munich	Württembergische Hypothekenbank AG, Stuttgart	12/1/2003 (date of protest decision)	granted	<p>Indirect acquisition of target's shares due to spin-off.</p> <p>No further details available.</p>
10	P7S1 Holding LP, c/o Walkers SPV Limited, Cayman Islands (Haim Saban)	ProSiebenSat.1 Media AG, Unterföhring	2003	application withdrawn	<p>Withdrawal of application due to cancellation of the acquisition agreement by the liquidator. No further details available.</p>
11	LAGO Elfte GmbH (subsequently Kenvelo Deutschland GmbH), Norderstedt	Jean Pascale AG, Norderstedt	9/24/2003	granted	<p>The exemption was granted based on Section 37(1) of the Takeover Act. Target filed for insolvency on 2/16/2004.</p> <p>No further details available.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
12	Axel Fischer, Wolf-Dieter Gramatke, Paulus Neef et al.	Pixelpark AG, Berlin	4/16/2003 4/23/2003	denied	<p>In an attempt to avoid insolvency and to rescue the target, its CEO Mr. Neef put forward a restructuring proposal. Bertelsmann AG, which indirectly held approximately 60% of the shares in the target, endorsed the restructuring proposal and concluded several agreements with Mr. Neef and one of the target's major creditors. One of these agreements involved an obligation on the part of Bertelsmann AG to relinquish 40.27% of the target's shares to the CEO or a third party to be named by him. Mr. Neef subsequently appointed Mr. Fischer and Mr. Gramatke each to acquire shares amounting to approximately 20.14% of the voting rights in the target.</p> <p>BaFin denied the exemption due to the expiration of the application period set forth in Section 8 of the Bid Regulation (i.e., 7 calendar days following the gaining of control). BaFin also questioned compliance with the so-called restructuring privilege (Sanierungsprivileg) set forth in the Section 9(1) no. 3 of the Takeover Act (i.e., the reorganization of the target). However, the Higher Regional Court (Oberlandesgericht) of Frankfurt am Main ruled that no mandatory bid was necessary because the applicants did not exceed the 30% control threshold (no acting in concert).</p>
13	Kleinewefers Verwaltungs-GmbH, Krefeld	Jagenberg AG, Neuss	2/4/2004	granted	The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (restructuring of the target). No further details available.
14	cellent AG, Stuttgart	tiscon AG Infosystems, Neu-Ulm	7/2/2004	granted	<p>The exemption was granted based on Section 36 no. 3 of the Takeover Act (reorganization measures within a group of companies).</p> <p>No further details available.</p>
15	Actris AG, Mannheim	Park & Bellheimer AG, Pirmasens	8/5/2004	granted	The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (applicant gained control in course of restructuring of the target). Target filed for insolvency on 6/6/2003.
16	Moffat, Philip F., Hamburg	BK Grundbesitz & Beteiligungs AG, Munich	1/17/2005	granted	No details available.
17	Ganymed 347. VV GmbH, Bonn (subsequently: Moeller Ganymed GmbH) (Doughty Hanson)	Felten & Guillaume AG, Cologne	10/7/2005	denied	No details available.
18	DKM Asset Management AG, Stuttgart	DKM Wertpapierhandelsbank AG, Dusseldorf	1/20/2005	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e., restructuring of the target).</p> <p>The target was in an unstable financial situation. To ameliorate its condition, BaFin claimed that the applicant should contribute new equity to the target. To this end, the applicant concluded several share purchase agreements, acquired 51.03% of the shares in the target and thus exceeded the 30% control threshold.</p> <p>Despite the granted exemption, the applicant launched a tender offer for the remaining shares in the target (see no. 147 in Survey I: Public Bids).</p>
19	UniCredito Italiano S.p.A., Genoa, Italy	DAB Bank AG, Munich Köhler & Krenzer Fashion AG, Ehrenberg AGROB Aktiengesellschaft, Ismaning	12/15/2005 (date of publication by applicant)	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e., indirect acquisition of the target).</p> <p>The applicant acquired an indirect shareholding in the targets, mediated by Bayerische Hypo- und Vereinsbank AG, Munich ("HVB"). BaFin may in particular grant an exemption from the obligations to publish the gaining of control and to make a mandatory bid if indirect control of the target company was acquired as a consequence of the acquisition of control of one or more other (intermediate) companies, and the book value of the acquired company's participation in the target is less than 20% of the book value of such acquired company's nominal assets (the "Balance Sheet Test"). The 20%-threshold, however, merely constitutes a guideline for the decision of the authority. Even if such threshold is exceeded, the BaFin may grant an exemption if the target is otherwise of minor importance or did not constitute, from an economic perspective, the object of the acquisition. In the case at hand, the book value of HVB's (i.e., the acquired company's) direct shareholding in the targets accounted for less than 20% of HVB's nominal assets.</p>
20	Downslake Venture Ltd., Road Town, Tortola, British Virgin Islands et al.	Pandatel AG, Hanover	1/17/2006 (BaFin granted exemption) 7/31/2007 (revocation)	revoked	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e., the restructuring of the target).</p> <p>The applicant acquired shares in the target that represented 49.98% of the voting rights. The exemption was granted under the condition that at least 95% of the shares in Downslake Microsystems Corp., a subsidiary of the applicant, were contributed the target by way of a capital increase against payment in kind or otherwise transferred to the target by 12/31/2006. The registration of the capital increase or other transfer was not effected by that date due to various pending actions challenging the respective decisions of Pandatel AG's shareholders' meeting, so that the exemption was consequently revoked.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
21	NSG UK Enterprises Limited., St. Helens, United Kingdom  NSG Holding (Europe) Limited, St. Helens, United Kingdom  Nippon Sheet Glass Co., Tokyo, Japan	Dahlbusch AG, Gelsenkirchen	10/31/2006 (date of withdrawal by applicant)	application withdrawn	<p>The applicants, as a corporate group, acquired an indirect shareholding in the target representing 98.81% of the (voting) shares mediated by Pilkington plc. and applied for an exemption under Section 37(1) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e., the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>Without publishing any reasons, the applicant subsequently withdrew the application and launched a mandatory bid (see no. 195 in Survey I: Public Bids).</p>
22	FIBA Beteiligungs- und Anlage GmbH (“FIBA”)  WAB Privatstiftung  Dr. W. Hochsteger  A. Weißenbacher (all Hallein, Austria)	WMF Württembergische Metallwarenfabrik AG, Geislingen	4/3/2007	granted	<p>FIBA acquired 36.93% of voting rights in the target. Prior to gaining control, FIBA applied for an exemption.</p> <p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 second sentence no. 1 of the Bid Regulation (i.e., a third party has a larger percentage of voting rights than the applicant that pursuant to Section 30 of the Takeover Act are neither treated as equal to voting of, nor are to be attributed to, the applicant or persons acting in concert with the applicant).</p> <p>BaFin granted the exemption, as at the time of gaining control Crystal Capital GmbH (Capvis) (“Crystal”) already held voting rights in the target of 51.806%, so that the applicants were not in a position to actually exercise control. The exemption was granted under the condition that voting rights held by Crystal were not attributable to the applicants. BaFin also reserved the right of revocation in case Crystal did not hold more voting rights than the applicants. In this case, the applicants were obliged not to exercise their voting rights exceeding a percentage of 29.99 in the target’s shareholders’ meeting, and that the applicants procure that the BaFin is informed in due course about a reduction in Crystal’s voting rights.</p>
23	GDD Holding GmbH, Munich  Mas Verde GmbH, Munich  Jens Röhrborn	CDV Software Entertainment AG, Bruchsal	4/20/2007	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e., the restructuring of the target). BaFin emphasized that a restructuring concept does not have to guarantee the success of the restructuring process or let it happen with utmost probability. According to the regulator, it is sufficient if the concept is generally appropriate to remedy the cause of the restructuring and thereby insures the continuity of the target.</p> <p>The exemption was granted under the conditions that (i) the target’s share capital was significantly decreased, and (ii) that certain shareholdings in other companies were contributed into the target.</p>
24	AXA S.A., Paris, France	DBV-Winterthur Holding AG, Wiesbaden	5/9/2007	granted	<p>The exemption was granted based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>The applicant acquired an indirect shareholding in the target, corresponding to 96.689% of the voting rights mediated through the holding company Winterthur Schweizerische Versicherungs-Gesellschaft, Winterthur, Switzerland (“Winterthur”) and certain of its downstream subsidiaries. BaFin regarded the nominal assets of the directly acquired entity (i.e. Winterthur) as decisive in this case. The accumulated book value of the participation in the target in the balance sheets of Winterthur and each of its relevant downstream subsidiaries accounted for less than 20% of Winterthur’s nominal assets. According to the BaFin, the applicant was, in addition, not primarily aiming at the acquisition of the target.</p>
25	MS Privatstiftung, Vienna, Austria  Martin Schlaff, Vienna, Austria	Didier-Werke AG, Wiesbaden	7/3/2007	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>The applicants acquired an indirect shareholding in the target, mediated through RHI AG and its subsidiary. Although MS Privatstiftung, a foundation of which Mr. Schlaff is the beneficiary, only holds 26% of the voting rights in RHI AG (“RHI”), the BaFin, applying German law, nevertheless assumed the possibility of actual control due to low attendance at shareholders’ meetings. The book value of the direct and indirect participation in the target held by RHI accounted for only 14.8% (i.e. less than 20%) of RHI’s nominal assets according to Austrian law.</p> <p>BaFin further stated that no significant differences between the relevant accounting provisions of Austrian and German law exist that would lead to a higher percentage.</p>
26	Erwerbsgesellschaft der S-Finanzgruppe mbH & Co. KG  Regionalverbandsgesellschaft mbH  Deutscher Sparkassen- und Giroverband öK (all Berlin; German Savings Banks)	Berlin-Hannoversche Hypothekenbank AG, Berlin	7/19/2007	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>In the course of the acquisition of a 80.95% stake in Landesbank Berlin Holding AG (“LBBH”) by the German Savings Bank Association (“DSGV öK”) in 2007, the question arose whether the applicants would also be obligated to make an offer to the remaining shareholders of Berlin-Hannoversche Hypothekenbank AG (“Berlin Hyp”), in which LBBH’s 100%-subsidiary, Landesbank Berlin AG (“LBB”), held a 90.36% stake. The new aspect of the decision was that the 20% threshold was not calculated with regard to the directly acquired company LBBH, but with regard to its subsidiary LBB.</p> <p>BaFin took a mere economic perspective and stated that the proportion of the book value of the participation in the target (i.e. Berlin Hyp) and the nominal assets of the directly controlled company or the economically pivotal entity of the group shall be decisive under the Balance Sheet Test.</p> <p>BaFin further stated that in the case at hand the economically pivotal entity was LBB, as the group’s operations were bundled in this entity. The value of LBB’s participation in Berlin Hyp only accounted for 0.61% of LBB’s nominal assets.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
27	Erwerbsgesellschaft der S-Finanzgruppe mbH & Co. KG  Regionalverbandsgesellschaft mbH  Deutscher Sparkassen- und Giroverband öK  (all Berlin; German Savings Banks)	Landesbank Berlin Holding AG, Berlin	7/30/2007	denied	<p>The applicant had signed a share purchase agreement to acquire approx. 80.95% of the shares in the target from the State of Berlin. The EC Commission compelled the State of Berlin to sell its shareholding following the granting of state aid benefiting the target.</p> <p>BaFin denied an exemption based on Section 37(1) alternative 1 of the Takeover Act (i.e. the manner in which control was gained) mainly on the following grounds: (i) it was irrelevant for the applicants' position and hence for the decision on the exemption that the State of Berlin was obliged to sell its shareholding; (ii) a mandatory bid would not benefit the target's shareholders in a way that contradicted the decision by the EC Commission; (iii) the acquisition of the shares by the applicants was not the only way to comply with the EC Commission's decision and avoid a repayment of the state aid; (iv) the minority shareholders required protection despite the fact that the Commission's decision envisaged the change of control.</p> <p>BaFin also denied an exemption under Section 37(1) alternative 2 of the Takeover Act (i.e. the intention behind gaining control), since avoiding repayment of the state aid was not the applicant's primary intention behind gaining control of the target.</p> <p>Prior to the application, the applicants already published their intent to make a takeover bid in lieu of a mandatory bid pursuant to Section 35(3) of the Takeover Act in case the exemption was not granted, which was subsequently carried out (see no. 226 in Survey I: Public Bids).</p>
28	Rasperia Trading Ltd., Limassol, Cyprus  Valtoura Holdings Ltd., Limassol, Cyprus  Oleg V. Deripaska, Moscow, Russia	STRABAG AG, Cologne	9/6/2007	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Takeover Act (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>The applicants, as a corporate group, acquired an indirect shareholding corresponding to 65.85% of the voting in the target, mediated through STRABAG SE and one of its subsidiaries. Voting rights in the target were attributed to the applicants, as Rasperia Trading Ltd., a 100%-subsidiary of Valtoura Holdings Ltd. (wholly owned by Mr. Deripaska), was a party to a pooling agreement (Syndikatsvertrag) on the level of STRABAG SE. The accumulated book value of the participation in the target in the stand-alone balance sheets of STRABAG SE and its relevant subsidiary accounted for less than 20% of STRABAG SE's nominal assets in STRABAG SE's stand-alone financial statement.</p> <p>According to the BaFin, the applicants were further not primarily aiming at the acquisition of the target, as STRABAG AG, for several reasons, did not constitute the economically pivotal entity of the group.</p>
29	TFG Capital AG Unternehmensbeteiligungsgesellschaft, Marl	Ehlebracht AG, Enger	9/13/2007	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target) under the conditions that (i) the applicant in fact subscribed the shares, and (ii) that the target repaid certain loans as previously agreed with its creditors. The applicant had undertaken to subscribe new shares in the target in the nominal amount of approx. €12m as part of a restructuring plan.</p>
30	Salzgitter AG, Salzgitter  Salzgitter Mannesmann GmbH, Salzgitter	RSE Grundbesitz und Beteiligungs-AG, Frankfurt am Main	9/26/2007	granted	<p>Salzgitter Mannesmann GmbH, a subsidiary of Salzgitter AG, directly and indirectly acquired 97.30% of the shares in the target. Salzgitter AG in turn held 2.25% of such shares. In view of a squeeze-out in accordance with Section 327a et seq. of the German Stock Corporation Act, the applicants had applied for the exemption.</p> <p>The exemption was initially based on Section 37(1) alternative 4 of the Takeover Act (i.e. a particular shareholder structure).</p> <p>According to the BaFin, the facts of the case substantially deviated from the typical situation for which Section 35 of the Takeover Act provides for a mandatory bid (i.e. a large number of remaining shareholders), whereas the minority shareholders only held less than 1% of shares in the case at hand. The intended squeeze-out in the target sufficiently accounted for the minority shareholders' interest in exiting the company.</p> <p>The exemption was initially granted with the obligation to grant the minority shareholders a cash compensation of €11.66 plus interest in the ensuing squeeze-out. BaFin reserved the right of revocation if the applicants failed to meet this obligation or if they did not carry out a squeeze-out in the target within a reasonable period of time.</p> <p>Applicants filed an objection against the BaFin's decision, asked the regulator to base the decision on the restructuring privilege (Sanierungsprivileg) and provided respective conclusive evidence. Against this background, BaFin waived the abovementioned obligation to bring about the squeeze-out (see no. 312 in Survey III: Squeeze-Out Proceedings)</p>
31	Kinowelt GmbH, Leipzig  MK Medien Beteiligungs GmbH, Feldafing et al.	Intertainment AG, Munich	12/12/2006 and 1/16/2007 (BaFin granted decision) 11/15/2007 (BaFin revoked the decision)	revoked	<p>The exemption was based on Section 37 of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants had applied for an exemption subsequent to the acquisition (directly or by “acting in concert”) of 37.85% of the voting shares in the target. BaFin granted the exemption on 12/12/2006 and 1/15/2007, respectively, reserving, inter alia, the right of revocation if the target failed to acquire all shares in Epsilon Motion Pictures GmbH (one of the applicants) by way of a contribution in kind in the course of an intended capital increase by 9/30/2007. On 11/15/2007, the applicants declared they would waive their rights arising from the exemption and suggested the revocation of the exemption. BaFin revoked the exemption on 11/16/2007.</p> <p>The applicants subsequently made a mandatory bid to the shareholders of the target (see no. 244 in Survey I: Public Bids).</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
32	HAG Holding GmbH, Ulm	Hageda AG, Cologne	12/18/2007	granted	<p>The exemption was granted based on Section 37(1) alternative 4 of the Takeover Act (i.e. a particular shareholder structure).</p> <p>The applicant had acquired (partly directly, partly indirectly) 97.6% of the voting shares in the target by means of contributions in kind made in return for new shares in the applicant. Based on this majority, the applicant intended to initiate a squeeze-out of the target's minority shareholders according to Section 327a et seq. of the German Stock Corporation Act.</p> <p>According to BaFin, the facts of the case substantially deviated from the typical situation for which Section 35 of the Takeover Act provides for a mandatory bid (i.e. a large number of remaining shareholders).</p> <p>The intended squeeze-out in the target sufficiently accounted for the minority shareholders' interest in exiting the company. The exemption was made subject to detailed conditions ensuring adequate compensation of the minority shareholders.</p>
33	Macquarie Group Ltd., Sydney Macquarie Financial Holdings Ltd., Sydney Macquarie Capital Group Ltd., Sydney (all Australia)	Techem AG, Eschborn	2/5/2008	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target). The applicants acquired control of the target as a result of the reorganization of a corporate group involving a change of the group's holding company. According to the BaFin, there was no need for a mandatory bid since the minority shareholders of the target had already been given the opportunity to exit the company by accepting a takeover bid made by MEIF II Energie Beteiligungen GmbH &amp; Co KG acting jointly with the applicants.</p>
34	Immosolar GmbH für Energiemanagement, Darmstadt	Solon AG, Berlin	2/14/2008	granted	<p>The exemption was granted based on Section 37(1) of the Takeover Act.</p> <p>The applicant had been diluted and consequently lost control of the target due to a third party subscribing new shares as part of a capital increase with an exclusion of the remaining shareholders' subscription rights. The applicant subsequently acquired shares in the target for the sole purpose of regaining control without the intention to materially exceed the previous quota.</p>
35	SALVEO Beteiligungs GmbH Gorosa Beteiligungsverwaltungs GmbH VICTORY Industriebeteiligungs AG MILLENIUM PRIVATSTIFTUNG RPR Privatstiftung et al. (all Vienna, Austria)	caatoosee AG, Leonberg	4/15/2008	partly granted / partly rejected	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>The applicants, as a corporate group, acquired an indirect shareholding representing 51.61% of the voting shares in the target, mediated through MWZ Beteiligungs GmbH ("MWZ") and its subsidiary, M+W Zander Facility Engineering GmbH ("MWZ FE"). According to the BaFin, the book value of the participation in the target in MWZ FE's balance sheet accounted for less than 20% of the nominal assets of MWZ (only 4.9%). As an additional endorsement of this finding, BaFin stated that such "range" is also confirmed when considering the value of the direct participation of MWZ FE in MWZ's balance sheet (4.58%).</p> <p>With regard to two applicants, the BaFin held that they did not gain control over the target, so that an exemption was not required and thus had to be denied.</p>
36	MIH Internet B.V., Hoofddorp, The Netherlands Myriad International Holdings B.V., Hoofddorp, The Netherlands Naspers Ltd., Cape Town, Republic of South Africa	ricardo.de AG, Hamburg	4/23/2008	granted	<p>The exemption was granted based on Section 37(1) alternative 4 of the Takeover Act (i.e. a particular shareholder structure).</p> <p>The applicant acquired an indirect shareholding in the target, mediated through a holding company owning approx. 97.66 % of the voting shares in the target. The holding company intended to carry out a squeeze-out in the target under Section 327a et seq. of the German Stock Corporation Act.</p> <p>According to the BaFin, the facts of the case substantially deviated from the typical situation for which Section 35 of the Takeover Act provides for a mandatory bid (i.e. a large number of remaining shareholders). The intended squeeze-out in the target sufficiently accounted for the minority shareholders' interest in exiting the company (see no. 320 in Survey III: Squeeze-Out Proceedings).</p>
37	Ferdinand Karl Alpha Privatstiftung, Vienna, Austria	Porsche Automobil Holding SE, Stuttgart	May 2008	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 2 of the Bid Regulation (i.e. donation between personally unrelated parties).</p> <p>By gratuitous transfer of all of Ferdinand Piech's shares in the Piech GmbH, Salzburg, the applicant indirectly acquired 6.58% of the ordinary shares in the target. Because of a voting agreement with other shareholders, the applicant thereby gained indirect control of the target. Regarding undertakings characterized by family ownership, the exemption for donations even applies to donations made between legal and natural persons, provided that the purpose of a donation is to ensure long-term control by members of the family or legal persons affiliated or associated with them.</p>
38	Ferdinand Karl Alpha Privatstiftung, Vienna, Austria	Volkswagen AG, Wolfsburg	May 2008	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 2 of the Bid Regulation (i.e. donation between personally unrelated parties).</p> <p>By gratuitous transfer of all of Ferdinand Piech's shares in the Piech GmbH, Salzburg, the applicant indirectly acquired 6.58% of the ordinary shares in the target. Because of a voting agreement with other shareholders, the applicant thereby gained indirect control of the target.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
39	Michael Tsifidaris, Hamburg Dietmar Müller, Ainring Uwe Grünewald, Leichlingen Leonardo Musso, Kempen	HAITEC AG, Munich	5/7/2008	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants acquired control by acting in concert pursuant to Section 30(2) of the Takeover Act. According to the BaFin, the applicants had made a substantial contribution to the company's financial recovery.</p> <p>BaFin reserved the right of revocation in the case of an early withdrawal of liquidity from the target.</p>
40	JPMorgan Chase Bank N.A., New York, USA	Evotec AG, Hamburg	5/21/2008	granted	<p>The exemption was granted based on Section 37(1) alternative 2 of the Takeover Act (i.e. the intention behind gaining control).</p> <p>The applicant technically subscribed new shares (totaling 32.18% of all voting shares) in the target as part of the acquisition of Renovis Inc. (USA) by the target in the form of a share exchange. The applicant subscribed these shares in the interest of the former shareholders of Renovis Inc. and issued corresponding ADR's (American Depositary Receipts) in accordance with a deposit agreement to them in return for their shares in Renovis Inc. The purpose of this structure was to create a position similar to a shareholding in the target. Due to the different stock corporation laws it was claimed to be impossible for the former shareholders of Renovis Inc. to become shareholders in the (German) target. According to BaFin, an ADR holder is in a similar position as a shareholder of the target, in particular as the deposit agreement entitled the ADR holder to determine the exercise of voting rights attached to the corresponding shares in the target. Thus, the interests of the applicant and the minority shareholders of the target materially deviated from the typical interests arising from the acquisition of control.</p> <p>The exemption was granted under the condition that the applicant refrained from executing the voting rights in its own interest rather than according to the instructions of the ADR holders.</p>
41	MASIS-Stiftung, Vaduz, Liechtenstein MASIS-CASSIOPEIA Verwaltungs GbR, Dusseldorf	Henkel AG & Co. KGaA, Dusseldorf	6/16/2008	granted	<p>The exemption was based on Section 37(1) alternative 4 and 5 of the Takeover Act (i.e. a particular shareholder structure and the actual possibility to exercise control).</p> <p>MASIS-Stiftung acquired indirect control of the target joining a shareholders' agreement regarding 51.48% of the voting rights in the target that governed, inter alia, the exercise of the parties' voting rights (acting in concert), and subsequently contributed its participation into MASIS-CASSIOPEIA Verwaltungs GbR. Despite the shareholders' agreement, the applicants were in fact unable to control the target.</p>
42	LSF6 Europe Finance Holdings L.P., Dallas, USA LSF6 Europe Partners LLC, Dallas, USA Lone Star Europe Holdings L.P., Hamilton, Bermuda John P. Grayken, Cohasset, USA (Lone Star)	IKB Deutsche Industriebank AG, Dusseldorf	10/22/2008	granted	<p>The applicants, a corporate group, acquired 90.81% of the shares in the target.</p> <p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target), subject to the applicants' obligation to make specified contributions to the target's recovery by 3/31/2009 in the total amount of no less than €360m.</p> <p>BaFin reserved the right of revocation if the applicants failed to meet this obligation or if they carried out a squeeze-out in the target prior to 11/30/2010.</p>
43	Dresdner Bank AG, Frankfurt am Main	Conergy AG, Hamburg	11/11/2008	granted	<p>The exemption was granted based on Section 37(1) alternative 2 and 3 of the Takeover Act (i.e. the intention behind gaining control and the fact that the voting right percentage falls below the control threshold after control has been gained).</p> <p>The applicant had subscribed to and taken over new bearer shares corresponding to 37.01% of the voting rights in the target from a cash capital increase by the target with the obligation to offer such shares to the target's shareholders for their subscription in accordance with Section 186(5) of the German Stock Corporation Act. The decisive aspect for the BaFin to grant the exemption was that the applicant acted as underwriter in the capital increase and had no further business interest in the target beyond such function as service provider. Exceeding the control threshold was therefore of a mere transitory nature. However, due the fact that a prompt placement of the shares was not possible in light of the situation of the financial markets, BaFin also stressed the need to fall below the 30% control threshold in close temporal proximity. Thus, the exemption was only granted under the condition that the applicant did not directly or indirectly exercise any voting rights resulting from shares in the target to the extent that its share in the voting rights reaches or exceeds the 30% control threshold.</p> <p>BaFin further reserved the right of revocation in case the participation of the applicant in the target would not fall below the 30% control threshold within a year following registration of the target's capital increase with the competent Commercial Register on 12/1/2008.</p>
44	EN Germany Holdings B.V., Amsterdam, The Netherlands et al.	Cycos AG, Alsdorf	12/19/2008	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>The applicants, as a corporate group, acquired an indirect shareholding representing approx. 91.25% of the voting shares in the target, mediated through Siemens Enterprise Communications Management GmbH, Siemens Enterprise Communications Beteiligungen GmbH &amp; Co. KG, Siemens Enterprise Communications GmbH &amp; Co. KG (“Siemens Enterprise KG”) and further subsidiaries. The book value of the participation in the target accounted for less than 20% of the nominal assets (only 3.77%) of Siemens Enterprise KG, which according to the BaFin, contained the Communications Enterprise Business of Siemens, which was thus the economically pivotal entity and the acquisition of which was the main objective of the transaction.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
45	Commerzbank AG, Frankfurt am Main	Conergy AG, Hamburg	1/12/2009	granted	<p>The exemption was granted based on Section 37(1) alternative 2 and 3 of the Takeover Act (i.e. the intention behind gaining control and the fact that the voting right percentage falls below the control threshold after control has been gained).</p> <p>The applicant indirectly acquired 37.01% of the target's voting rights by acquiring all outstanding shares of Dresdner Bank AG ("Dresdner"). In the course of the execution of a planned increase of the target's share capital, Dresdner held numerous new bearer shares in the target. Dresdner only acted as a temporary underwriter aiming for a near-term sale of the shares, therefore having no own business interest in the target in its capacity as underwriter. The exemption was granted on the basis that Dresdner only acted as underwriter aiming for a near term sale of the shares, and therefore having no further business interest in the target. Exceeding the control threshold was therefore of a mere transitory nature. Although the applicant itself did not act as an underwriter for the target, the reasoning leading to an exemption for Dresdner was also applied to Commerzbank. The exemption, as provided in the case of Dresdner itself, was only granted under the condition that the applicant does not directly or indirectly exercise any voting rights resulting from shares in the target to the extent that their share in the voting rights reaches or exceeds the 30% control threshold.</p> <p>BaFin further reserved the right of revocation in case the participation of the applicant in the target would not fall below the 30% control threshold within a year following registration of the target's capital increase with the competent Commercial Register on 12/1/2008.</p>
46	CROSS Industries AG, Wels Pierer GmbH, Wels Knünz GmbH, Dornbirn DI Stefan Pierer, Wels Dr. Rudolf Knünz, Dornbirn (all Austria)	TRIPLAN AG, Bad Soden	1/26/2009	granted	<p>The exemption was based granted on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Takeover Act (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>The applicants, as a corporate group, acquired an indirect shareholding in the target, mediated through BEKO Holding AG ("BEKO") which held approx. 52.95% of the voting shares in the target. The book value of the participation in the target accounted for less than 20% of the nominal assets (only 14.14%) of BEKO. Further, according to the BaFin, the acquisition of BEKO, and not of the target, was the main objective of the transaction.</p>
47	News Adelaide Holdings B.V., Amsterdam, The Netherlands  News Corporation, New York, USA News Publishing Australia Ltd., New York, USA News America Inc., New York, USA News Corp Europe Inc., New York, USA  News Netherlands B.V., Naarden, The Netherlands (Rupert Murdoch)	Premiere AG, Unterföhring	1/30/2009	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants, as a corporate group, intended to acquire control of the target by subscribing new shares to be issued by way of a capital increase. The envisaged capital increase by the total nominal amount of €450m was part of a restructuring plan (Sanierungsplan) for the target. A corresponding obligation was also incorporated in a Financial Support Agreement ("FSA") between the target and its financing banks.</p> <p>BaFin reserved the right of revocation if the intended capital increase with the applicants subscribing the new shares was not completed by 1/31/2010 and/or the financing banks failed to grant new loans in the total amount of €525m, as was stipulated in the FSA.</p>
48	Chantal Kroll, Zurich, Switzerland Olympe Pape, Paris, France Andreas Thorbecke, Zug, Switzerland	Henkel AG & Co. KGaA, Dusseldorf	2/6/2009	granted	<p>The exemption was based on Section 37(1) alternative 4 and 5 of the Takeover Act (i.e. a particular shareholder structure and the actual possibility to exercise control).</p> <p>The applicants acquired control of the target joining a shareholders' agreement regarding 51.48% of the voting rights in the target that governed, inter alia, the exercise of the parties' voting rights (acting in concert). Despite this agreement, the applicants were in fact unable to control the target. Their combined direct voting rights represented less than 0.02% of the voting rights in the target.</p> <p>BaFin reserved the right of revocation if the agreement was discontinued with respect to the exercise of the voting rights.</p>
49	CROSS Industries AG, Wels Pierer GmbH, Wels Knünz GmbH, Dornbirn DI Stefan Pierer, Wels Dr. Rudolf Knünz, Dornbirn (all Austria)	All for One Midmarket AG, Filderstadt-Bernhausen	2/18/2009	granted	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test – see no. 19 in this Survey for the definition).</p> <p>The applicants, as a corporate group, acquired an indirect shareholding in the target, mediated through BEKO Holding AG ("BEKO") which held approx. 56.74 of the voting shares in the target. The book value of the participation in the target accounted for less than 20% of the nominal assets (only 18.59%) of BEKO. Further, according to the BaFin, the acquisition of BEKO, and not of the target, was the main objective of the transaction.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
50	Julius Textile Investments S.à r.l., Luxembourg, Luxembourg  H.A.R.D.T. GROUP Opportunities Fund, St. Helier, Jersey, Channel Island  Kingsbridge Capital Management GP 2 Ltd., St. Helier, Jersey, Channel Islands  Kingsbridge Capital Holdings Ltd., St. Helier, Jersey, Channel Islands	Kunert AG, Immenstadt	2/19/2009	granted	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Takeover Act (i.e. the restructuring of the target).</p> <p>The applicants, as a corporate group, intended to acquire control of the target by subscribing new shares to be issued by way of a capital increase. The intended contribution of the applicants consisted of a cash contribution in the minimum nominal amount of €3m and, as a non-cash contribution, an affiliated company's claim for repayment of a loan against the target.</p> <p>BaFin reserved the right of revocation if the applicants did not make the intended contribution by 3/31/2009 and/or if the target failed to obtain a current account overdraft credit facility in the amount of no less than €2m by 6/30/2009, as envisaged in the restructuring plan.</p>
51	IC Green Energy Ltd., Tel Aviv, Israel et al.	Petrotec AG, Borken	2/26/2009	granted	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants, as a corporate group, acquired approx. 42.83% of the voting shares in the target. After signing the respective share purchase agreement (“SPA”), the applicants intended to make a voluntary bid which was subsequently prohibited by BaFin. Only prior to the closing and in rem transfer of the shares, the applicants realized the severity of the target's financial difficulties. They thus renegotiated the terms of the deal and developed a restructuring plan for the target. Despite having formed the intention to rescue the target well after signing the SPA, the applicants were granted the exemption. However, BaFin reserved the right of revocation if the applicants failed to comply with certain specified obligations ensuring the target's liquidity.</p>
52	Becast KG, Düsseldorf  Careno GmbH & Co. KG, Wain  Careno Vermögensverwaltungs-GmbH, Wain  Truwa GmbH & Co. KG, Wain  Truwa Vermögensverwaltungs-GmbH, Wain  Udo und Anette Brandhorststiftung, Cologne  Udo Brandhorst, Cologne	Henkel AG & Co. KGaA, Dusseldorf	3/2/2009 3/18/2009 4/13/2009	granted	<p>The exemption was based on Section 37(1) alternative 4 and 5 of the Takeover Act (i.e. a particular shareholder structure and the actual possibility to exercise control).</p> <p>The applicants acquired control of the target by a shareholders' agreement regarding 51.48% of the voting rights in the target that governed, inter alia, the exercise of the parties' voting rights (acting in concert). Despite the shareholders' agreement, the applicants were in fact unable to control the target. Their respective direct voting rights represented less than 1% of the voting rights in the target.</p> <p>BaFin reserved the right of revocation in case the agreement was discontinued with regard to the exercise of voting rights.</p>
53	Mourant Ireland Limited, Dublin, Ireland  Mourant & Co. Limited, Jersey, Channel Islands et. al.	alstria office REIT-AG, Hamburg	5/8/2009	granted	<p>The exemption was based on Section 37(1) alternative 2 and 5 of the Takeover Act (i.e. the intention behind gaining control and the actual possibility of exercising control).</p> <p>Mourant Ireland Limited, a subsidiary of Mourant &amp; Co. Limited, acquired 52.98% of the share capital and the voting rights in the target free of charge on December 22, 2008 from, and holds shares in the target only on a fiduciary basis for, and subject to binding instructions of, several trustor companies. Thus, Mourant Ireland Limited did not pursue any own business or other interests.</p>
54	Deutscher Ring Krankenversicherungsverein a.G. (“DR Kranken”), Hamburg  Balance Vermittlungs-Beteiligungs-AG (“Balance”), Norderstedt  IDUNA Vereinigte Lebensversicherung a.G. für Handel, Handwerk und Gewerbe (“Iduna Leben”), Hamburg  SIGNAL Krankenversicherung a.G. (“Iduna Kranken”), Dortmund  SIGNAL Unfallversicherung a.G. (“Iduna Unfall”), Dortmund	OVB Holding AG, Cologne	5/18/2009	denied	<p>DR Kranken, Iduna Leben, Signal Kranken and Signal Unfall are insurance companies that established a horizontal group of companies (Gleichordnungskonzern) by agreement dated 4/1/2009. Balance is a 100%-subsidiary of DR Kranken.</p> <p>The applicants directly or indirectly held shares in the target, and some of them were parties to a vote pooling agreement regarding the composition of the target's supervisory board.</p> <p>BaFin, implicitly verifying whether the applicants' voting rights had to be reciprocally attributed according to Section 30(2) of the Takeover Act (acting in concert), stated that a cooperation beyond the composition of the supervisory board, such as an underlying common corporate strategy for the target, did not exist and that thus the applicants did not fulfill the requirements of acting in concert under the Takeover Act. Also, according to the BaFin, the agreement creating the horizontal group of companies did not lead to a reciprocal attribution of voting rights among the applicants, and even if such would be the case, only 29.9% of voting rights would be encompassed.</p> <p>Consequently, BaFin found that the applicants had not acquired control of the target so there was no need for an exemption since the applicants were not obliged to make a mandatory bid.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
55	MCP GP III Inc., George Town, Cayman Islands  Monitor Clipper Partners II (Cayman) L.P., George Town, Cayman Islands  MCEP II Europe (Cayman) L.P., George Town, Cayman Islands  Monitor Clipper Equity Partners II (RLG) LLC, Wilmington, USA	CCR Logistics Systems AG, Dornach	6/25/2009	granted	<p>The exemption was based on Section 36 no. 3 of the Takeover Act (i.e. reorganization measures within a group of companies).</p> <p>The applicants, as a corporate group, acquired approx. 82.49% of the voting shares in the target in the course of a reorganization of the entire corporate group.</p> <p>The exemption was granted because there was no change to be expected in the target's management.</p>
56	Alexander Frey  Andreas Frey  Karl Michael Frey  (all Switzerland)	Henkel AG & Co. KGaA, Dusseldorf	7/1/2009	granted	<p>The exemption was based on Section 37(1) alternative 4 and 5 of the Takeover Act (i.e. a particular shareholder structure and the actual possibility to exercise control).</p> <p>The applicants acquired control of the target by joining a shareholders' agreement regarding 51.48% of the voting rights in the target that governed, inter alia, the exercise of the parties' voting rights (acting in concert).</p> <p>Despite the shareholders' agreement, the applicants were in fact unable to control the target. Their respective direct voting rights represented less than 0.0000008% of the voting rights in the target. BaFin reserved the right of revocation if the agreement was discontinued with regard to the exercise of voting rights.</p>
57	Michael Herz, Norderstedt  Wolfgang Herz, Norderstedt  MPS Erste Vermögensverwaltung GmbH, Hamburg  BO-DO Vermögensverwaltung GmbH, Norderstedt  monacada Holding GmbH, Norderstedt  Kol HoldCo Vermögensverwaltung GmbH, Norderstedt	ESCADA AG, Munich	7/3/2009 (publication of decision)	granted but revoked on 9/30/2009	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants intended to acquire control by subscribing new shares of the target in the course of a capital increase, which was part of a restructuring plan that also proposed a debt restructuring (inter alia an exchange offer for an outstanding high-yield bond).</p> <p>BaFin reserved the right of revocation if (i) the intended capital increase was not entered in the commercial register by August 31, 2009, and/or (ii) the intended exchange offer was accepted for less than 80% of the nominal amount, and/or (iii) the applicants failed to subscribe a specified number of new shares by 8/31/2009.</p>
58	City of Hamburg, Hamburg  State of Schleswig-Holstein  HSH Finanzfonds AöR, Hamburg	Hamborner AG, Duisburg	7/15/2009	granted	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test; see no. 19 for the definition).</p> <p>HSH Finanzfonds AöR ("HSH Finanzfonds"), which is mutually owned and controlled by the City of Hamburg and the State of Schleswig-Holstein, gained control of the target in the course of a capital increase of HSH Nordbank AG ("HSH"), further mediated through two of HSH's subsidiaries, HSH Beteiligungen and HSH Real Estate AG ("HSH Real Estate").</p> <p>BaFin granted an exemption, since the book value of the participation in the target set forth in the balance sheets of HSH Beteiligungen and HSH Real Estate accounted for less than 20% of the nominal assets (only 0.06%) of HSH.</p>
59	Unister Holding GmbH, Leipzig  Unister GmbH, Leipzig  Thomas Wagner, Leipzig  Daniel Kirchhof, Markkleeberg  Sebastian Gantzckow, Leipzig  Christian Schilling, Leipzig  Oliver Schilling, Leipzig	Travel24.com AG, Munich	8/21/2009	granted	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants acquired control of the target, which was in a difficult financial situation, by acting in concert. Their restructuring plan proposed, inter alia, a capital increase, the conversion of convertible bonds into target shares and the sale of the target's internet domains to the applicant Unister Holding GmbH.</p> <p>BaFin reserved the right of revocation if certain specified convertible bonds were not converted into shares by 7/30/2010 and/or the target was charged any fee for using the sold domains until 12/31/2011.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
60	Böwe Systec Treuhand GmbH & Co. KG, Augsburg  Böwe Systec Treuhand Verwaltungs GmbH, Augsburg  Cornelius Treuhand GmbH, Frankfurt am Main  Reinhard Edelmann, Frankfurt am Main	Böwe Systec AG, Augsburg	11/13/2009	granted	<p>The exemption was based on Section 37(1) alternative 2 of the Takeover Act (i.e. the intention behind gaining control):</p> <p>The applicants, as a corporate group, acquired 50.06% of the voting shares in the target, acting as trustees for the former shareholder with the sole purpose of selling the shares. The exemption was granted because the applicants had merely acquired formal control of the target without the intention of exercising actual control in the sense of controlling the target’s management. The exemption was granted under the condition that the applicants refrained from exercising any voting rights in relation to shares representing 30% or more of the voting rights in the target.</p> <p>BaFin reserved the right of revocation if the applicants failed to sell the shares by 3/31/2011 and/or if the applicants effected a substantial and permanent change of the target’s entrepreneurial focus.</p>
61	Phoenix Erste Treuhand GmbH, Berlin  Prof. Dr. Harald Wiedmann, Berlin	F. Reichelt AG, Hamburg	12/1/2009	granted	<p>The exemption was based on Section 37(1) sentence 1 alternative 2 of the Takeover Act “taking account of the reasoning”of Section 9 sentence 1 no. 4 of the Bid Regulation (i.e. for the purpose of securing a right to payment).</p> <p>The applicants indirectly acquired 84.89 % of the voting rights in the target, acting as trustees for members of the Merckle family, who temporarily transferred their direct and indirect shareholdings and interests in various companies of the Merckle Group, known as the “Phoenix Group”, to the applicants.</p> <p>According to the BaFin, the position of the applicants was comparable to a lender that solely acts in the interest of securing its claim, but not to influence the business policy and/or the target’s corporate strategy.</p> <p>BaFin further stated that the transfer of the shares was only of a temporary nature with the objective to ensure a restructuring and partly divestiture of the “Phoenix Group”. The deed of trust stipulated that the applicants may not sell any of the transferred shares, which were to be retransferred to the trustees after the restructuring of the “Phoenix Group”. The applicants were bound by the deed of trust and deemed to act according to the interest and binding instructions of the trustors. Hence, the applicants did not have an own business interest in the company. This was bolstered by the fact that the applicants were chosen by the lending banks and the trustors as a “neutral trustee”. Consequently, there was no danger for the target’s remaining shareholders of a change of the target’s decision making process, which would in turn result in a change of business conduct.</p> <p>BaFin reserved the right of revocation in case the trust assets are not sold and transferred by 12/31/2010 and in case the applicants exercise their voting rights attached to the shares held against or without the instructions of the trustors. The BaFin shall be notified of any circumstances that may justify such revocation without undue delay.</p>
62	VEM erste Treuhand GmbH, Cologne  Dr. Martin Stockhausen, Cologne  VEM zweite Treuhand GmbH, Cologne  Dr. Klaus Hubert Görg, Cologne	Württembergische Leinenindustrie AG, Blaubeuren	1/13/2010	granted	<p>The exemption was based on Section 37(1) sentence 1 alternative 2 of the Takeover Act “taking account of the reasoning” of Section 9 sentence 1 no. 4 of the Bid Regulation (i.e. for the purpose of securing a right to payment).</p> <p>The applicants are special purpose vehicles and their managing directors, which have assumed the fiduciary administration and liquidation of certain shareholdings as trust assets belonging to the so-called Merckle-ratiopharm-Group under a notarial deed of trust (Treuhandvertrag) dated 5/5/2009. One of the companies whose shares have been entrusted under the deed of trust owns 91.47% of the shares and voting rights in the target.</p> <p>According to the BaFin, the position of the applicants is comparable to a lender that solely acts in the interest of securing its claim, but not to influence the business policy and/or the target’s corporate strategy.</p> <p>BaFin stated that applicants were bound by the deed of trust and deemed to act according to the interests of the trustors, which are entitled to give them binding instructions, and the holders of the residual claim, and had been chosen by the lending banks as neutral trustees. The BaFin further stated that the sole purpose of the transaction was to prepare certain divestments and disposals, to implement a restructuring, the sale and liquidation of the Merckle-ratiopharm-Group as well as the subsequent distribution of proceeds. The applicants themselves therefore did not pursue any strategic objectives with respect to the target.</p> <p>BaFin reserved the right of revocation that the trust assets are not sold and transferred by 12/31/2010 and that the applicants will not exercise their voting rights attached to the shares held against or without the will of the trustors. Shall be notified to BaFin.</p>
63	State Street Corporation, Boston, USA  State Street AIS Europe LLC, Boston, USA	alstria office REIT-AG, Hamburg	2/25/2010	granted	<p>The exemption was based on Section 37(1) alternative 2 and 5 of the Takeover Act (i.e. the intention behind gaining control and the actual possibility of exercising control).</p> <p>State Street AIS Europe LLC indirectly gained control over the target by acquiring all shares in Maurant &amp; Co. Limited that holds 52.98% of the shares and voting rights of the target via its subsidiary Maurant Ireland Limited on a fiduciary basis of certain trustor companies.</p> <p>According to the BaFin, the effective target of the applicants was not alstria office REIT-AG. The BaFin also based its decision on the fact that the applicants were not in a position to actually exercise control over the target, as they were subject to binding instructions by the trustor companies. This was already the case with regard to Maurant Ireland Limited, and is even more so the case with respect to the applicants.</p> <p>The exemption is subject to the condition that Maurant Ireland Limited does not exercise any or all voting rights in the target’s shareholders’ meeting against the instructions of the trustor companies, and the BaFin be informed of any circumstances that would trigger such condition.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
64	Juris Limited, St. Helier, Jersey, Channel Islands	alstria office REIT-AG, Hamburg	3/15/2010	granted	<p>The exemption was based on Section 37 (1) alternative 2 and 5 of the Takeover Act (i.e. the intention behind gaining control and the actual possibility of exercising control).</p> <p>The applicant was the parent of Maurant Ireland Limited, which held 52.98% of the share capital and the voting rights in the target. Maurant Ireland Limited holds shares in the target only on a fiduciary basis for, and subject to binding instructions of, several trustor companies.</p> <p>BaFin stated that the gaining of formal control over the target by the applicant was not effected with the intention to actually control such company by influencing the target's management. The BaFin further stated that the applicant was not in a position to actually exercise control over the target, as Maurant Ireland Limited may only exercise voting rights in the target according to the instructions of the trustor companies. According to the BaFin, both aspects hold even more true with respect to the applicant.</p> <p>The exemption is subject to the condition that Maurant Ireland Limited does not exercise any or all voting rights in the target's shareholders' meeting against the instructions of the trustor companies, and the BaFin be informed of any circumstances that would trigger such condition.</p>
65	ICWET L.P., London ICWET GP Limited, London Indigo Capital IV L.P., London Indigo Capital IV General Partner L.P., Edinburgh Indigo Capital Fund IV (GP) Ltd., London Indigo Capital (Holdings) Limited, London Indigo Capital LLP, London (all United Kingdom)	W.E.T. Automotive Systems AG, Odelzhausen	3/31/2010	granted	<p>The exemption was based on Section 37 (1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>ICWET L.P. and Indigo Capital IV LP were about to acquire 33.62% and 28.95%, respectively, of the shares and voting rights in the target. All applicants were in a parent-subsidiary structure so that they were all to acquire control over the target. The target had obtained a senior bank loan and had issued certain guarantees regarding its subsidiaries in favor of the banks in the pertinent senior loan agreement. Due to breaches of financial ratios, the relevant banks were entitled to accelerate repayment of all outstanding loans. Without the grant of a restructuring investment, the target would not have been able to repay the received loans, thus the economic existence of the target was at stake. The restructuring plan established by the applicants together with the banks inter alia provided for ICWET L.P. to grant a further qualified, non-secured and junior ranking shareholder loan in the amount of at least €7,140,000 (the "Shareholder Loan").</p> <p>BaFin reserved the right of revocation if (i) ICWET L.P. does not grant the Shareholder Loan, and (ii) ICWET L.P. and Indigo Capital IV LP propose or resolve upon the payment of a dividend by the target until 9/30/2012.</p> <p>The exemption was further granted with the obligation to inform the BaFin of the imminent acquisition of the controlling share in the target and to give evidence of the granting of the Shareholder Loan and the fact that no dividend payment was proposed or resolved until 9/30/2012.</p>
66	Corsair Capital LLC, Wilmington, Delaware, USA  Corsair III Financial Services Offshore Capital Partners L.P., George Town, Cayman Islands  Corsair III Finance Europe S.à r.l., Luxembourg  Corsair III Investments International S.à r.l., Luxembourg  Corsair III Participations S.à r.l., Luxembourg  Corsair III Benelux Investments S.à r.l., Luxembourg  Corsair III European Investments S.à r.l., Luxembourg  Corsair III Investments (Luxembourg) S.à r.l., Luxembourg  MPC Münchmeyer Petersen & Co. GmbH, Hamburg  Oldehaver Beteiligungsgesellschaft mbH, Quickborn  Ulrich Oldehaver, Norderstedt	MPC Münchmeyer Petersen Capital AG, Hamburg	4/8/2010 4/12/2010	granted	<p>The exemption was based on Section 37 (1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants collectively held 63.38% of the shares and voting rights in the target, but individually did not exceed the 30% control threshold. To safeguard the solvency of the target, the applicants intended to increase the company's share capital by at least €7,272,728 ("Capital Increase"). In order to implement the respective restructuring concept, certain of the applicants were to coordinate their conduct in relation to the target on the basis of shareholders' and vote pooling agreements, leading to a reciprocal attribution of voting rights according to Section 30(2) of the Takeover Act (acting in concert), so that the control threshold was exceeded.</p> <p>The decision of the BaFin contains certain conditions to ensure the implementation of the Capital Increase by 5/31/2010 and the participation of certain applicants therein.</p> <p>(see no. 253 in Survey I: Public Bids)</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
67	Corsair Capital LLC, Wilmington, Delaware, USA Corsair III Financial Services Offshore Capital Partners L.P., George Town, Cayman Islands Corsair III Finance Europe S.à r.l., Luxembourg Corsair III Investments International S.à r.l., Luxembourg Corsair III Participations S.à r.l., Luxembourg Corsair III Benelux Investments S.à r.l., Luxembourg Corsair III European Investments S.à r.l., Luxembourg Corsair III Investments (Luxembourg) S.à r.l., Luxembourg MPC Münchmeyer Petersen & Co. GmbH, Hamburg	HCI Capital AG, Hamburg	4/12/2010	granted	<p>The exemption was based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants, as a corporate group, acquired control over the target, mediated through MPC Münchmeyer Petersen Capital AG. To safeguard the solvency of the target, the controlling shareholder MPC Münchmeyer Petersen Capital AG intended to acquire new shares in the target against payment of up to €14,400,000 in a capital increase with a volume of at least €22 m, but at least in an amount corresponding to the execution of all subscription rights resulting from the target shares held by MPC Münchmeyer Petersen Capital AG ("Capital Increase").</p> <p>In order to implement the respective restructuring concept, certain of the applicants were to coordinate their conduct in relation to MPC Münchmeyer Petersen Capital AG on the basis of shareholders' and vote pooling agreements, leading to a reciprocal attribution of voting rights according to Section 30(2) of the Takeover Act (acting in concert), so that the control threshold was exceeded. MPC Münchmeyer Petersen Capital AG was therefore regarded as subsidiary of such applicants, so that the controlling stake and related voting rights of MPC Münchmeyer Capital AG in the target were attributed to such applicants.</p> <p>BaFin's decision contains certain conditions to ensure the implementation of the Capital Increase by 7/30/2011.</p> <p>(see also no. 253 in Survey I: Public Bids)</p>
68	Asion SE, (subsequently: Fresenius Management SE), Düsseldorf	Fresenius Medical Care AG & Co. KGaA, Hof (Saale)	5/6/2010	granted	<p>The exemption was based on Section 37(1) alternative 1 of the Takeover Act (i.e. the manner in which control was gained), but also in connection with Section 9 sentence no. 3 of the Bid Regulation (i.e. the Balance Sheet Test; see no. 19 for the definition).</p> <p>Fresenius SE holds 35.58% of the shares in Fresenius Medical Care AG &amp; Co. KGaA ("Fresenius Medical Care"). It was intended to change Fresenius SE's legal form to a KGaA, i.e. a partnership limited by shares. To prevent a loss of control of Fresenius SE's majority shareholder, the foundation Else Kröner-Fresenius-Stiftung, in the course of such conversion, the applicant, a 100% subsidiary of Else Kröner-Fresenius-Stiftung, was to join the new partnership limited by shares as a general partner.</p> <p>BaFin stated that the modalities of gaining control were comparable to a situation in which control is gained in the course of an intra-group reorganization, in which the exemption would have to be granted pursuant to Section 36 no. 3 of the Takeover Act. Like in certain reorganization scenarios, the minority shareholders were confronted with the same majority shareholder prior to and following the gaining of control by the applicant, as actual control (indirectly) remained with Else Kröner-Fresenius Stiftung. For technical reasons, however, Section 36 no. 3 of the Takeover Act could not be applied due to Else Kröner-Fresenius Stiftung's legal form. According to the additionally applied Balance Sheet Test, the book value of the participation in Fresenius Medial Care amounted to less than 20% of Fresenius SE's nominal assets.</p> <p>The decision of the BaFin contains certain obligations to ensure that the authority is informed about the due implementation and registration of the conversion of Fresenius SE.</p>
69	Roald Pauli, Hockenheim	PARK & Bellheimer AG, Pirmasens	5/27/2010	granted	<p>ACTRIS AG was holding 81.29% of the shares in PARK &amp; Bellheimer AG. Roald Pauli was the CEO of both ACTRIS AG and PARK Bellheimer AG. He was scheduled to purchase all of ACTRIS AG's shares in PARK Bellheimer AG by way of a management-buy-out.</p> <p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The decision of the BaFin contains obligations to ensure the implementation of certain restructuring measures concerning the PARK &amp; Bellheimer AG.</p>
70	Schaeffler Verwaltungs GmbH, Herzogenaurach Schaeffler GmbH, Herzogenaurach Schaeffler Managment GmbH, Herzogenaurach	Continental AG, Hanover	6/7/2010	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>BaFin reserved the right of revocation should the planned transfer of the shares not be effected by 9/30/2010.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
71	KKR Fund Holdings L.P., Cayman Islands KKR Fund Holdings GP Limited, Cayman Islands KKR Group Holdings L.P., Cayman Islands KKR Group Limited, Cayman Islands KKR & Co. L.P., USA KKR Management LLC, USA	ProSiebenSat.1 Media AG, Unterföhring	6/25/2010	granted	<p>The exemption was based on Section 36 no. 3 of the Takeover Act (88% of the voting rights in the target had not been taken into account to determine if a mandatory offer had to be made).</p> <p>The gaining of control by the applicants did not change their group's percentage of voting rights but was merely a side effect of an internal corporate restructuring of the applicants' group.</p>
72	Mithril GmbH, Darmstadt	Solon AG, Berlin	7/8/2010	granted	<p>The exemption was based on Section 37(1) alternatives 1 and 3 of the Takeover Act (i.e. the manner in which control was gained and the fact that the voting right percentage falls below the control threshold after control has been gained).</p> <p>The applicant had only briefly relinquished control over the target for the purpose of effecting a capital increase.</p>
73	Dr. Wolfgang und Anita Bürkle Stiftung, Kirn	Simona AG, Kirn	8/9/2010	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 1 of the Bid Regulation (i.e. the manner in which control was gained).</p> <p>The applicants were already holding 12.13% of the shares in Simona AG when they gained control by inheriting another 18.66% (the total of shares thus amounting to 30.79%).</p> <p>Also the applicants were not related to the deceased in the meaning of Section 36 no. 1 of the Takeover Act, but BaFin stated that the situation was comparable and should be treated in the same way.</p>
74	Günther Cramer, Kassel, Peter Drews, Kassel, Prof. (em.) Dr. Ing. Werner Kleinkauf, Kassel, Reiner Wettlaufer, Kaufungen	SMA Solar Technology AG, Niestetal	10/1/2010	granted	<p>The exemption was based on Section 37(1) alternative 1 of the Takeover Act (i.e. the manner in which control was gained).</p> <p>The applicant was only to be in control of the company for a brief period of time by way of a share pool agreement and with adequate measures in place to ensure that he would not exercise the voting rights on his own terms. The ultimate goal of the share pool agreement was to benefit from certain tax rules.</p>
75	dievini Hopp BioTech holding GmbH & Co. KG, Walldorf, DH-Capital GmbH & Co. KG, Wiesloch, Golf Club St. Leon-Rot Betriebsgesellschaft mbH & Co. KG, St. Leon-Rot, Verwaltungsgesellschaft des Golf Club St. Leon-Rot GmbH, St. Leon-Rot, Dietmar Hopp, Walldorf, OH Beteiligungen GmbH & Co. KG, Wiesloch, OH-Capital GmbH & Co. KG, Wiesloch, Oliver Hopp, Walldorf, BW Verwaltungs GmbH, Wiesloch, Berthold Wipfler, Walldorf	Agennix AG, Heidelberg	11/5/2010	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>dievini Hopp BioTech holding GmbH &amp; Co. KG was holding 24.9% of the shares in the target. When the target had financial difficulties related to the need for capital for the purpose of conducting the extensive research and development necessary in the bio-technology and medical sectors, dievini Hopp BioTech holding GmbH &amp; Co. KG entered into a commitment agreement and committed to purchase all the new shares from a capital increase which would not be purchased by the other shareholders. Pursuant to that obligation dievini Hopp BioTech holding GmbH &amp; Co. KG purchased 19,244,641 new shares, thus reaching a majority of 59% of the share capital in the target. The other applicants were direct or indirect shareholders of dievini Hopp BioTech holding GmbH &amp; Co. KG.</p>
76	Petra Neureither, Heidelberg	SNP Schneider-Neureither & Partner AG, Heidelberg	11/22/2010	granted	<p>The exemption was based on Section 37(1) alternative 5 of the Takeover Act (i.e. the actual possibility of exercising control).</p> <p>BaFin reserved the right to revocation should the circumstances regarding the voting rights present in a general shareholders' meeting change, i.e. should the applicant gain actual control over the target.</p>
77	Zukunftsstiftung Jugend, Umwelt und Kultur, Einbeck	KWS-Saat AG, Einbeck	12/15/2010	granted	<p>The exemption was based on Section 37(1) alternative 5 of the Takeover Act (i.e. the actual possibility of exercising control). BaFin based its decision on the fact that the applicant was not in a position to actually exercise control over the target.</p> <p>BaFin reserved the right to revocation should the respective circumstances change, i.e. should the applicant gain actual control over the target.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
78	Dietmar Hermle, Gosheim, Birgitta Hermle, Gosheim, Miriam Hermle, Gosheim, Benedikt Hermle, Gosheim, Hildegard und Katharina Hermle-Stiftung, Gosheim, Kathi Hermle, Gosheim	Maschinenfabrik Berthold Hermle AG, Gosheim	1/10/2011	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 2 no. 2 of the Bid regulation (i.e. endowment).</p> <p>The applicants concluded a pool-agreement to ensure the continuity and independence of the target. The BaFin argued that the target's situation did in fact not significantly change because of the pool agreement since there already was a shareholder holding more than 30% of the shares in the target and that it was not to be expected that the applicants would control more than 50% of the shares present in the target's general shareholders' meetings.</p> <p>BaFin included conditions precedent to ensure that the applicants would not exercise their control should the situation occur that they would control more than 50% of the shares present in a general shareholders' meeting of the target.</p>
79	Michael Müller Beteiligungs-GmbH, Stuttgart	Müller – Die lila Logistik AG, Besigheim	1/12/2011	granted	<p>The exemption was based on Section 37(1) alternative 1 of the Takeover Act (i.e. the manner in which control was gained).</p> <p>Shares in the target were delivered as a contribution in kind to the applicant. Such contribution did not change the fact that the sole shareholder of the applicant was in control of the target before and after such transaction.</p> <p>BaFin reserved the right of revocation should the planned contribution in kind not be effected by 1/31/2011.</p>
80	Thomas Wolf, People's Republic of China	RIB Software AG, Stuttgart	3/1/2011	granted	<p>The exemption was based on Section 37(1) alternative 1 of the Takeover Act (i.e. the manner in which control was gained).</p> <p>The applicant was already in control of the target before the target went public and his re-gaining of control after the public offer was solely due to the technicalities of a so-called greenshoe-option.</p>
81	Exceet Group AG, St. Gallen, Switzerland	Winter AG, Unterschleißheim	3/2/2011	granted	<p>The exemption was based on Section 37(1) alternative 4 of the Takeover Act (i.e. a particular shareholder structure).</p> <p>The applicant purchased all of the shares in the target held by the previous majority shareholder. The previous majority shareholder had successfully completed a squeeze-out procedure, hence there were no minority shareholders left whose interest would need to be protected by a mandatory bid.</p>
82	Bio-Rad Laboratories, Inc., USA, Bio-Rad Luxemburg S.à r.l., Luxembourg, Bio-Rad France Holding SAS, France, Bio-Rad Laboratories GmbH, Munich	Sartorius AG, Göttingen	4/4/2011	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 2 no. 1 of the Bid Regulation (i.e. the actual possibility of exercising control).</p> <p>Bio-Rad Laboratories GmbH was about to gain direct control, the other applicants were about to gain indirect control over the target by way of acquiring an over 30% share of the target's share capital. However, there was a third-party majority shareholder holding more than 50% of the target's share capital, preventing the applicants from gaining the actual possibility of exercising control.</p> <p>BaFin reserved the right to revocation should the respective circumstances change, i.e. should one of the applicants gain actual control over the target.</p>
83	Jochen Döhle, Hamburg, Döhle ICL Beteiligungsgesellschaft mbH, Hamburg, Peter Döhle Schifffahrts-KG, Hamburg, Beteiligungs- und Verwaltungsgesellschaft Peter Döhle mbH, Hamburg	HCI Capital AG, Hamburg	5/3/2011	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The applicants were not part of the original restructuring concept and the respective decision of the BaFin to grant an exemption from the rules on mandatory bids. However the BaFin argued, that it would not serve the clear objective of the restructuring exemption to demand the abortion of the original plan and the adoption of a new one instead of simply granting a second exemption for the additional participants of a revised version of the original restructuring concept.</p> <p>The decision of the BaFin contains certain obligations to insure the implementation of certain restructuring measures.</p>
84	NECKARPRI GmbH, Stuttgart State of Baden-Württemberg	ZEAG Energie AG, Heilbronn	5/3/2011	granted	<p>The exemption was based on Section 37(1) alternative 2 of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test; see no. 19 for the definition).</p> <p>The applicants had gained control over EnBW AG and, therefore, indirectly also gained control over the target. The book value of the participation in the target accounted for less than 20% of the nominal assets of the EnBW AG. Further, according to the BaFin, the acquisition of EnBW and not the indirect control over the target, was the main objective of the transaction.</p>
85	NCR GmbH, Augsburg NCR Corporation, USA	Turbon AG, Hattingen	5/5/2011	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 5 and sentence 2 no. 1 and 2 of the Bid Regulation (i.e. the actual possibility of exercising control).</p> <p>The applicants' gaining of control was based on a reduction of the total amount of voting rights in the target, a third party shareholder with a larger percentage of voting rights was present and such shareholder was expected to take part in the shareholders' meetings.</p> <p>BaFin reserved the right to revocation should the respective circumstances change, i.e. should the applicant gain actual control over the target.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
86	Steuler Holding GmbH, Höhr-Grenzhausen	Norddeutsche Steingut AG, Bremen	5/24/2011	granted	<p>The exemption was based on Section 37(1) of the Takeover Act and BaFin stated that a corporate reorganization had no actual influence on the control over the target and that the minority shareholders therefore had no protected interest in a mandatory offer.</p>
87	Dr. Michael Müller, Austria	Amictus AG, Aschaffenburg	7/1/2011	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>BaFin’s decision contains the obligation to demonstrate to the BaFin the conducting of the general shareholders’ meeting and to submit the Amictus group’s annual financial statements.</p>
88	Tele München Fernseh GmbH & Co. Produktionsgesellschaft, Munich,  Tele-München Fernseh-Verwaltungs GmbH, Munich,  Dr. Herbert G. Kloiber, Austria	Odeon Film AG, Munich	7/27/2011	granted	<p>The exemption was based on Section 37 of the Takeover Act in connection with Section 9 sentence 2 no.1 und no. 2 of the Bid Regulation (i.e. a particular shareholder structure and the actual ability to exercise control).</p> <p>BaFin reserved the right to revocation should one of the applicants gain actual control over the target.</p>
89	Hirzel IV PTC Limited, St. Peter Port, Guernsey, Channel Islands	Utimaco Safeware AG, Oberursel	8/1/2011	granted	<p>The exemption was based on Section 37(1) alternative 5 of the Takeover Act (i.e. the actual possibility of exercising control).</p> <p>The applicant was merely acting as a trustee for the previous majority shareholder and was set up and managed in a specific way to ensure that the applicant would only act in the interest of the previous majority shareholder and in compliance with its decisions.</p>
90	Schaeffler Beteiligungsholding GmbH & Co. KG, Schaeffler Familienholding Drei GmbH & Co. KG, Schaeffler Familienholding Eins GmbH, Schaeffler Familienholding Zwei GmbH, all Herzogenaurach	Continental AG, Hanover	10/12/2011	granted	<p>The exemption was based on Section 37(1) of the Takeover Act and BaFin stated that a corporate reorganization had no actual influence on the control over the target and that the minority shareholders therefore had no protected interest in a mandatory offer. The other applicants were direct or indirect shareholders of Schaeffler Beteiligungs GmbH &amp; Co. KG. The plan was to transfer 36.14% of the shares in the target from Schaeffler GmbH to the Schaeffler Beteiligungsholding GmbH &amp; Co.</p>
91	Anneliese Grenke, Baden-Baden, Moritz Grenke, Baden-Baden, Roland Grenke, Baden-Baden, Oliver Grenke, Baden-Baden	GRENKELEASING AG, Baden-Baden	11/11/2011	granted	<p>The exemption was based on Section 37(1) alternative 5 of the Takeover Act (i.e. the actual possibility of exercising control).</p> <p>The applicants were about to gain control of the target by way of concluding a pool-agreement (mainly for tax law purposes). However, there was no material change for the target to be expected, since another shareholder, Wolfgang Grenke, (also part to the pool-agreement) was already in control of more than 30% of the shares in the target and would continue to be in control in the future.</p> <p>BaFin reserved the right to revocation should one of the applicants gain actual control over the target.</p>
92	ACP Fund V LLC, USA  AMA Capital Partners LLC, USA  ACP Fund V Investors LLC, USA	Lloyd Fonds AG, Hamburg	12/13/2011	partly granted / partly rejected	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The exemption was granted to ACP Fund V LLC and AMA Capital Partners LLC but rejected regarding the third applicant, ACP Fund V Investors LLC. The rejection was based on the fact that due to the corporate structure of the applicants, only ACP Fund V LLC and AMA Capital Partners LLC would gain control of the target and would thus need an exemption.</p> <p>BaFin’s decision contained the obligation to demonstrate to the BaFin the implementation of the planned restructuring measures. BaFin reserved the right to revocation should the planned restructuring measures not be effected.</p>
93	Volkswagen Aktiengesellschaft, Wolfsburg et.al.	Renk Aktiengesellschaft, Augsburg	1/20/2012	granted	<p>The exemption was based on Section 37(1) alternative 2 of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test; see no. 19 for the definition).</p> <p>The Volkswagen Aktiengesellschaft and the other applicants had gained indirect control over the target (majority of voting rights in the amount of 78,86%) by way of a mandatory takeover offer of the Volkswagen Aktiengesellschaft to the remaining shareholders of MAN SE, and, therefore, indirectly also gained control over the target.</p> <p>The book value of the participation in the target accounted for less than 20% of the nominal assets of the MAN SE. Further, according to the BaFin, the acquisition of MAN SE, and not of the target, was the main objective of the transaction.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
94	Deutsche Balaton AG, Heidelberg, VV Beteiligungen Aktiengesellschaft, Heidelberg, DELPHI Unternehmensberatung Aktiengesellschaft, Heidelberg, Wilhelm Konrad Thomas Zours, Germany	MISTRAL Media AG, Cologne	3/2/2012	granted	<p>The exemption was based on Section 37(1) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>Deutsche Balaton AG was holding 29.877% of the shares in the target before the envisaged restructuring and planned to increase this stake by purchasing new shares from a capital increase in the target. The other applicants were direct or indirect shareholders of Deutsche Balaton AG.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected.</p>
95	DB Equity S.à r.l., Luxembourg, DB Valoren S.à r.l., Luxembourg	Deutsche Postbank AG, Bonn	3/23/2012	granted	<p>The exemption was based on Section 37(1) alternative 4 of the Takeover Act (i.e. a particular shareholder structure).</p> <p>DB Equity S.à r.l. is a 100% subsidiary of the DB Valoren S.à r.l., which in turn is a 100% subsidiary of Deutsche Bank AG. The applicants were about to gain control over the target by way of a recession of a securities lending transaction. BaFin argued that this recession would not change the fact that the Deutsche Bank AG controlled the company via a majority stake in the shares of the target held by the Deutsche Bank AG's subsidiary DB Finanz-Holding GmbH.</p>
96	Golden Tiger Investment Ltd, Xiao Ting Zhang, People's Republic of China	Enerxy AG, Stuttgart (formerly: Business Media China AG)	7/19/2012	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>Golden Tiger Investment Ltd. was subscribing approximately 70% of the shares in the target, newly issued on the basis of a capital increase, in connection the envisaged restructuring. Furthermore Golden Tiger Investment Ltd. financed the company via the granting of a loan. Mr. Xiao Ting Zhang was the sole shareholder of Golden Tiger Investment Ltd.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected or should Enerxy AG file for insolvency prior to 12/31/2013.</p>
97	Whirlpool Germany GmbH, Stuttgart Whirlpool Corporation, U.S.A.	ALNO AG, Pfullendorf	8/5/2012	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>Whirlpool Germany GmbH was holding 18.25% of the shares in the target before the envisaged restructuring and planned to increase this stake by purchasing new shares from a capital increase in the target as well as by purchasing additional shares from another shareholder. The other applicant, Whirlpool Corporation, is the sole shareholder of Whirlpool Germany GmbH.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected.</p>
98	Mr. Bodo Sohnemann, Langen Mr. Matthias Sohnemann, Langenhagen	KWS SAAT AG, Einbeck	8/28/2012	granted	<p>The exemption was based on Section 37 of the Takeover Act in connection with Section 9 sentence 2 no.1 und no. 2 of the Bid Regulation (i.e. a donation between personally unrelated parties and the actual ability to exercise control).</p> <p>BaFin reserved the right to revocation should one of the applicants gain actual control over the target in a different way than via a donation between personally unrelated parties.</p>
99	Cortas Vermögensverwaltungs Gesellschaft mbH, Peter Naumann, Hiltrud Naumann (all: Eppelborn)	BHE Beteiligungs-Aktiengesellschaft, Ahrensburg (subsequently: BHE Finanz AG)	8/27/2012	partly granted / partly rejected	<p>The exemption was granted for Cortas Vermögensverwaltungs Gesellschaft mbH and based on Section 37 of the Takeover Act in connection with Section 9 sentence 2 no.1 und no. 2 of the Bid Regulation (i.e. the actual ability to exercise control).</p> <p>Cortas Vermögensverwaltungs Gesellschaft mbH had formally gained control over the target via the entering into of a participation agreement. However, a different shareholder was already controlling the target and retaining that position despite of the participation agreement. The application was rejected for Peter Naumann and Hiltrud Naumann on the basis that they had not acquired a controlling position and hence the granting of an exception was not necessary.</p> <p>BaFin reserved the right to revocation should Cortas Vermögensverwaltungs Gesellschaft mbH gain actual control over the target.</p>
100	SAK Invest GmbH, Hans-Joachim Kirchner, Susanne Frenkel-Kirchner (all Garding)	BHE Beteiligungs-Aktiengesellschaft, Ahrensburg (subsequently: BHE Finanz AG)	8/27/2012	partly granted / partly rejected	<p>The exemption was granted for SAK Invest GmbH as well as for Hans-Joachim Kirchner and based on Section 37 of the Takeover Act in connection with Section 9 sentence 2 no. 1 und no. 2 of the Bid Regulation (i.e. the actual ability to exercise control).</p> <p>These applicants had formally gained control over the target via the entering into of a participation agreement. However, a different shareholder was already controlling the target and retaining that position despite of the participation agreement. The application was rejected for Susanne Frenkel-Kirchner on the basis that she had not acquired a controlling position and hence the granting of an exception was not necessary.</p> <p>The BaFin reserved the right to revocation should SAK Invest GmbH or Hans-Joachim Kirchner gain actual control over the target.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
101	TWI Invest GmbH, Hamburg Thomas Wendtlandt, Hamburg	BHE Beteiligungs-Aktiengesellschaft, Ahrensburg (subsequently: BHE Finanz AG)	8/27/2012	granted	<p>The exemption was based on Section 37 of the Takeover Act in connection with Section 9 sentence 2 no.1 und no. 2 of the Bid Regulation (i.e. the actual ability to exercise control).</p> <p>The applicants had formally gained control over the target via the entering into of a participation agreement. However, a different shareholder was already controlling the target and retaining that position despite of the participation agreement.</p> <p>BaFin reserved the right to revocation should one of the applicants gain actual control over the target.</p>
102	Genetrix Life Sciences, A.B., Uppsala, Sweden Genetrix, S.L., Tres Cantos, Spain	SYNGIS Pharma AG, Heidelberg	9/20/2012	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The target was envisaged to be restructured via a capital reduction and a subsequent capital increase via a contribution in kind. After the envisaged contribution in kind Genetrix Life Sciences A.B would directly and Tres Cantos would indirectly hold approximately 65.09% of the shares in the target.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected.</p>
103	Johannes Mann, Karlsruhe	POLIS Immobilien AG, Berlin	11/1/2012	granted	<p>The exemption was based on Section 37(1) alternative 2 of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test; see no. 19 for the definition).</p> <p>Johannes Mann had gained indirect control over the target by way of entering into a participation agreement on the level of the majority shareholder (subsequently sole shareholder) of the target, Mann Immobilien-Verwaltung Aktiengesellschaft.</p> <p>The book value of the participation in the target accounted for less than 20% of the nominal assets of the Mann Immobilien-Verwaltung Aktiengesellschaft. Further, according to the BaFin, the acquisition of Mann Immobilien-Verwaltung Aktiengesellschaft, and not of the target, was the main objective of the transaction.</p>
104	Dr. Mathias Döpfner, Potsdam	Axel Springer Aktiengesellschaft, Berlin	10/24/2012	granted	<p>The exemption was based on Section 37 of the Takeover Act in connection with Section 9 sentence 2 no.1 und no. 2 of the Bid Regulation (i.e. the actual ability to exercise control).</p> <p>The applicant had formally gained control over the target (with a majority of 54.65%) via the entering into of a participation agreement. However, a different shareholder was already controlling the target and retaining that position despite of the participation agreement.</p> <p>BaFin reserved the right to revocation should one of the applicants gain actual control over the target.</p>
105	AOB Invest GmbH, Grünwald	ATOSS Software AG, Munich	12/5/2012	granted	<p>The exemption was based on Section 37(1) alternative 4 of the Takeover Act (i.e. a particular shareholder structure).</p> <p>The applicant gained control of the target via a transfer of shares from the applicant's sole shareholder to the applicant. Therefore, BaFin argued that this transaction would not change the actual control situation, i.e. that the sole shareholder of the applicant only changed his majority participation (50%) from a direct to an indirect one.</p>
106	Donau Invest Beteiligungs Ges.m.b.H., Vienna, Austria, de Krassny Privatstiftung, Vienna, Austria, Alain de Krasny, Vienna, Austria	Praktiker AG, Kinkel	12/13/2012	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The target was envisaged to be restructured via a capital increase by which the applicants were about to gain control of the target.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected. The de Krassny Privatstiftung is the direct and Alain de Krassny the indirect majority shareholder of Donau Invest Beteiligungs Ges.m.b.H.</p>
107	Addison Nominees Ltd., Channel Islands	Kampa AG, Minden	2/11/2013	granted	<p>The exemption was based on Section 37 alternative 1, 2 and 5 of the Takeover Act (i.e. the actual ability to exercise control). The applicant could not actually exercise control over the target due to a "ring participation"and his fiduciary duties as a commercial holding company managing third party participations.</p> <p>BaFin reserved the right to revocation should the applicant gain actual control over the target.</p>
108	BAUER Stiftung, Schrobenhausen	BAUER Aktiengesellschaft, Schrobenhausen	11/26/2012	granted	<p>Section 37 of the Takeover Act; Section 9 sentence 2 no. 1 and no. 2 of the Bid Regulation (i.e. the actual ability to exercise control).</p> <p>The applicant had formally gained control over the target via the entering into a participation agreement. However, the applicants´ shareholding in the target (0.0000058%) and voting rights in the pool established by the participation agreement (0.0012%) was deemed insignificant by the BaFin.</p> <p>BaFin reserved the right to revocation should the applicants gain actual control over the target.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
109	WEGOLD Holding AG, Wendelstein Mr. Jürgen Freisleben, Schwabach	Dresdner Factoring AG, Dresden	2/4/2013	granted	<p>The exemption was based on Section 37 alternative 1 of the Takeover Act (i.e. the manner in which control was gained).</p> <p>WEGOLD Holding AG had gained direct and Jürgen Freisleben had gained indirect control (59.43%) of the target by a mandatory takeover offer of WEGOLD Holding AG (see no. 383 in Survey I: Public Bids)</p>
110	Sol Futura Verwaltungsgesellschaft mbH, Ulm Mr. Tobias Wahl, Mannheim	centrotherm photovoltaics AG, Ulm	2/22/2013	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The target was envisaged to be restructured via a capital reduction and a subsequent capital increase via a contribution in kind, in connection with an insolvency plan. After the envisaged contribution in kind Sol Futura Verwaltungsgesellschaft would directly and Tobias Wahl would indirectly hold 80% of the shares in the target.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected.</p>
111	Mr. Richard Peter Hanson, London, United Kingdom	CinemaxX Aktiengesellachaft, Hamburg	5/22/2013	granted	<p>The exemption was based on Section 37(1) alternative 2 of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test; see no. 19 for the definition).</p> <p>Peter Hanson had gained indirect control over the target by way of a change to the Sections of association of a holding company. The book value of the participation in the target accounted for less than 20% of the relevant holding companies. BaFin applied the Balance Sheet Test to the holding companies it deemed to be commercially relevant.</p>
112	Advent International Corporation, USA	buch.de internetstores AG, Münster	5/14/2013	granted	<p>The exemption was based on Section 37(1) alternative 2 of the Takeover Act in connection with Section 9 sentence 2 no. 3 of the Bid Regulation (i.e. the Balance Sheet Test; see no. 19 for the definition).</p> <p>The applicants had gained control of the target (79.94% majority) via a voluntary public offer of Beauty Holding Three AG (one of the 49 applicants). The book value of the participation in the target accounted for less than 20% of the relevant companies.</p>
113	Enprovalve P. koschel Unternehmensberatung Ltd., Birmingham, United Kingdom	Schumag AG, Aachen	7/3/2013	granted	<p>The exemption was based on Section 37 of the Takeover Act in connection with Section 9 sentence 2 no. 1 and no. 2 of the Bid Regulation (i.e. the actual ability to exercise control).</p> <p>The applicant had only formally but not actually gained control over the target because the ownership in the relevant shares was unclear and disputed and later the relevant shares were deposited with the local court of Krefeld.</p>
114	Loewe Beteiligungs GmbH, Frankfurt am Main	Loewe AG, Kronach	8/12/2013	granted	<p>The exemption was based on Section 37(1) alternatives 2 and 3 of the Takeover Act (i.e. the intention behind gaining control and the fact that the voting right percentage is envisaged to fall below the control threshold after control has been gained).</p> <p>The applicant gained control of the target as a fiduciary for an other shareholder in order to enable the target to find a long term investor for a restructuring of their business.</p> <p>BaFin reserved the right to revocation should the applicant not have reduced its shareholding as envisaged by 6/30/2014 or should it cause permanent and significant changes to the target's business.</p>
115	Special Purpose Zwei Holding GmbH, Droege Capital GmbH, Droege International Group AG, Droege Holding GmbH und Co KG, Droege Holding Verwaltungsgesellschaft mbH, Walter P. J. Droege (all Dusseldorf)	Höft & Wessel AG, Hanover	9/12/2013	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The target was envisaged to be restructured via a capital increase by which the applicants were about to gain control of the target.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected. Droege Capital GmbH is the sole shareholder of Special Purpose Zwei Holding GmbH, Droege International Group AG is the sole shareholder of Droege Capital GmbH, Droege Holding GmbH &amp; Co. KG is the sole shareholder of Droege International Group AG, Droege Holding Verwaltungsgesellschaft mbH is the sole general partner of Droege Holding GmbH &amp; Co. KG, and Walter P.J. Droege is in turn the majority shareholder of Droege Holding Verwaltungsgesellschaft mbH.</p>
116	Deutsche Zentral-Genossenschaftsbank AG, Frankfurt am Main	GSW Immobilien AG, Frankfurt am Main	9/16/2013	granted	<p>The exemption was based on Section 37(1) alternatives 2 and 3 of the Takeover Act (i.e. the intention behind gaining control and the fact that the voting right percentage is envisaged to fall below the control threshold after control has been gained).</p> <p>The applicant was about to gain control of the target as a fiduciary for other shareholders in order to effect an exchange of shares in connection with a public exchange offer (issued by Deutsche Wohnen AG).</p> <p>BaFin reserved the right to revocation should the applicant not have gained and subsequently lost control as envisaged by 6/1/2014.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
117	UBS Deutschland AG, Frankfurt am Main, UBS Beteiligungs-GmbH & Co. KG, Frankfurt am Main, UBS AG, Zurich, Switzerland, UBS Finanzholding GmbH, Frankfurt am Main	GSW Immobilien AG, Frankfurt am Main	9/16/2013	granted	<p>The exemption was based on Section 37(1) alternatives 2 and 3 of the Takeover Act (i.e. the intention behind gaining control and the fact that the voting right percentage is envisaged to fall below the control threshold after control has been gained).</p> <p>UBS Deutschland AG was about to gain direct control and the other applicants were about to gain indirect control of the target as a fiduciary for other shareholders in order to effect an exchange of shares in connection with a public exchange offer (issued by Deutsche Wohnen AG).</p> <p>BaFin reserved the right to revocation should the applicant not have gained and subsequently lost control as envisaged by 6/1/2014.</p>
118	Prof. Dipl.-Ing. Georg Heinz Nemetschek, Munich,  Nemetschek Verwaltungs GmbH (formerly: Blitz 13-409 GmbH), Grünwald,  Nemetschek Vermögensverwaltungs GmbH Co. KG (formerly: Blitz F12-fünf-zwei-sieben GmbH Co. KG), Grünwald	Nemetschek AG, Munich	12/20/2013	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 2 of the Bid Regulation (i.e. the manner in which control was gained; donation between personally unrelated parties).</p> <p>The exemption is a result of the continuation of efforts of a family-run company (succession in family businesses). The applicant Nemetschek Vermögensverwaltungs GmbH Co. KG will gain direct control of the target as a result of a donation. Prof. Dipl.-Ing. Georg Heinz Nemetschek dominates Nemetschek Vermögensverwaltungs GmbH Co. KG. Nemetschek Vermögensverwaltungs GmbH Co. KG obtains ownership of the controlling shares through a so-called deposit contract. In substance, it is a gift, because no consideration is given on the deposit. Aim and requirement of the relevant exception is to facilitate the continuation of family-run businesses.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
119	Dr. Frank Asbeck,  Solar Holding Beteiligungsgesellschaft mbH (both Bonn)	SolarWorld AG, Bonn	1/21/2014	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with Section 9 sentence 1 no. 3 of the Bid Regulation (i.e. the restructuring of the target).</p> <p>The target was envisaged to be restructured via a capital increase by which the applicants were about to gain control of the target.</p> <p>BaFin reserved the right to revocation should the planned restructuring measures not be effected. Those restructuring measures included the waiving of rights by the applicants under existing contracts, including the waiver of compensation for his services as a director for Dr. Asbeck.</p>
120	VMAX Familienstiftung, Neutraubling	KRONES AG, Neutraubling	1/28/2014	granted	<p>The exemption was based on Section 37(1), (2) of the Takeover Act in connection with sentence 1 no. 2 of the Bid Regulation (i.e. donation between personally unrelated parties).</p> <p>The applicant is a trust founded by the family who owned and controlled the target for many years and such trust gained control of the target free of charge in the process of ensuring the continuation of the family business via a new structure.</p>
121	Mezzanine IX Investors S.A., Luxembourg	Adler Real Estate AG, Hamburg	3/17/2014	granted	<p>The exemption was based on Section 37 alternative 1 and 4 of the Takeover Act (i.e. the manner in which control was gained and the particular shareholder structure).</p> <p>The shares held by the applicant were transferred from the Mezzanine IX Investors L.P., Atlanta, USA due to a share transfer agreement. This transfer was a result of a restructuring of the Mezzanine Group. The Mezzanine Group moved its headquarters from the U.S. to Europe. The shares in the target company are the only assets of both the Mezzanine IX Investors L.P and the applicant. BaFin therefore considers the transfer as a transformation of the legal form within the meaning of Section 36 no. 2 of the Takeover Act (“Economic Transformation of Legal Form”).</p>
122	Vougeot Holdco Limited, Jersey,  Vougeot Finco Limited, United Kingdom,  Vougeot Midco Limited, United Kingdom,  Vougeot Bidco p.l.c., United Kingdom	CinemaxX AG, Hamburg	4/4/2014	granted	<p>The exemption was based on Section 37 alternative 4 of the Takeover Act (i.e. the particular shareholder structure).</p> <p>The Applicants are affiliated companies. In addition to the applicants no outside shareholders are present in the target since the registration of the squeeze-out resolution in the commercial register on 2/6/2014. Therefore, the ownership structure of the target makes an offer dispensable.</p>
123	Grenke Beteiligung GmbH & Co. KG, Baden-Baden,  Grenke Vermögensverwaltung GmbH, Baden-Baden	GRENKELEASING AG, Baden-Baden	9/1/2014	granted	<p>The exemption was granted based on Section 37(1) alternative 1 and 2 of the Takeover Act in connection with Sections 8 and Section 9 first sentence no. 2 of the Takeover Act –AV. The main reason for the exemption was that control was obtained through donation.</p>
124	Sapinda Entertainment Investments B.V., The Netherlands  Sapinda Holding B.V., The Netherlands  Altitude Holdings S.à r.l., Luxembourg  Altitude Investments Limited, Jersey  Consortia Trustees Limited, Jersey  Consortia Partnership Limited, Jersey	SENATOR Entertainment AG, Berlin	9/11/2014	granted	<p>The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 first sentence no. 3 of the Bid Regulation. The main reason for the exemption was the applicants’ contribution to the financial recovery of the target.</p>
125	Hg Pooled Management Limited, London, United Kingdom	P&I Personal Informatik Aktiengesellschaft, Wiesbaden	11/18/2014	granted	<p>The exemption was granted based on Section 37(1) alternative 1 and alternative 4 of the Takeover Act. The main reason for the exemption was that there was no material change in control of the company.</p>
126	Capita IRG Trustees Limited, Beckenham,  Kent Capita IRG Trustees (Nominees) Limited, Beckenham,  Kent Capita PLC, London (all United Kingdom)	TUI AG, Berlin/Hanover	12/19/2014	granted	<p>The exemption was granted based on Section 37(1) alternative 2 of the Takeover Act. The exemption was granted given the limited function of the applicant as a financial service company and its resulting objectives for the target.</p>
127	Newinvest Assets Beteiligungs GmbH, Bonn Newinvest Assets Co S.A., Panama Victor Garrido Montes des Oca, Dominican Republic	IFA Hotel Touristik AG, Duisburg	2/9/2015	granted	<p>The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 second sentence no. 1 and 2 of the Takeover Act – AV. The main reason for the exemption was that, due to the ratio of voting rights, the actual material control of the company stayed with a third party and did not transfer to the applicants.</p>

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
128	Genetrix Life Sciences A.B., Genetrix S.L., Madrid, Spain	SYGNIS AG, Heidelberg	2/27/2015	granted	The exemption was granted based on Section 37(1) alternative 1 and alternative 2 of the Takeover Act. The main reason for the exemption was the fact that a loss (and subsequent regaining) of control by applicants was only temporary due to diluted voting rights as a consequence of a capital increase.
129	CEW Germany GmbH, Frankfurt am Main	VTG Aktiengesellschaft, Hamburg	2/10/2015	granted	The exemption was granted based on Section 37(1) alternative 1 and alternative 4 of the Takeover Act. The main reason for the exemption was that there was no material change in control of the company.
130	DLG Acquisitions Limited, United Kingdom, Discovery Luxembourg Holdings 1 S.à r.l., Luxembourg, Discovery Luxembourg Holdings 2 S.à r.l., Luxembourg, Discovery Foreign Holdings, Inc. USA, Discovery Communications, LLC, USA, Discovery Communications Holding, LLC, USA, DHC Discovery, Inc., USA, AMHI, LLC, USA, Discovery Holding Company, USA, Discovery Communications, Inc., USA LGCI HoldCo 1 B.V., The Netherlands, Liberty Global Content Investments B.V., The Netherlands, Liberty Global plc, United Kingdom	MME Moviemment AG, Berlin	6/19/2015	granted	The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 second sentence no. 3 of the Takeover Act – AV. The main reason for the exemption was the fact that the book value of the participation in the target company was below 20% (in this case 12.4%) of the aggregate asset value of that company.
131	Ascalon Holding GmbH, Austria, Mr. Victor Trenev, Russia, Lisoma Beteiligungs GmbH, Hamburg, Dr. Eike Matthiessen, Hamburg, Adwian OHG, Kampen, Sylt, Herr Wieland Frank, Wilnsdorf	VBH Holding AG, Korntal-Münchingen	6/23/2015	granted	The exemption was granted based on Section 37(1) and (2) of the Takeover Act in connection with Section 9 first sentence no. 3 in of the Bid Regulation. The main reason for the exemption was the applicants' contribution to financial recovery of the target.
132	UBS Deutschland AG, Bockenheimer Landstraße 2–4, 60306 Frankfurt am Main, UBS Beteiligungs-GmbH & Co. KG, Bockenheimer Landstraße 2–4, 60306 Frankfurt am Main, UBS Finanzholding GmbH, Bockenheimer Landstraße 2–4, 60306 Frankfurt am Main, UBS AG, Bahnhofstraße 45, 8001 Zurich, Switzerland, UBS Group AG, Bahnhofstraße 45, 8001 Switzerland	DO Deutsche Office AG, Cologne	8/31/2015	granted	The exemption was granted based on Section 37 (1) alternative 2 and 3 of the Takeover Act. The main reason for the exemption was the fact that the intention behind the acquisition was not to obtain control of the company as well as the subsequent loss of a controlling shareholding.

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
133	Horizon Holdings III, Paris, France, Horizon Holdings II SAS, Paris, France, Horizon Holdings I SAS, Paris, France, Horizon Holdings SAS, Paris, France, Horizon Intermediate Holdings S.C.A., Luxembourg Horizon UP S.à r.l., Luxembourg Horizon Parent Holdings S.à r.l., Luxembourg AP VIII Horizon Holdings L.P., George Town, Cayman Islands, AP VIII Horizon Holdings Ltd., George Town, Cayman Islands, AIF VIII Euro Leverage, L.P., George Town, Cayman Islands, Apollo Advisors VIII (EH), L.P., George Town, Cayman Islands, Apollo Advisors VIII (EH-GP), Ltd., George Town, Cayman Islands, APH Holdings, L.P., George Town, Cayman Islands, Apollo Principal Holdings III GP, Ltd., George Town, Cayman Islands, APO Asset Co., LLC, Wilmington, USA, Apollo Management VIII, L.P., Wilmington, USA, AIF VIII Management, LLC, Wilmington, USA, Apollo Management, L.P., Wilmington, USA, Apollo Management GP, LLC, Wilmington, USA, Apollo Management Holdings, L.P., Wilmington USA, Apollo Management Holdings GP, LLC, Wilmington, USA, APO Corp., Wilmington, USA, Apollo Global Management, LLC, Wilmington, USA, AGM Management, LLC, Wilmington, USA, BRH Holdings GP, Ltd., George Town, Cayman Islands	Saint-Gobain Oberland Aktiengesellschaft, Bad Wurzach	10/20/2015	granted	The exemption was granted based on Section 37 of the Takeover Act in connection with Section 9 second sentence no. 3 of the Takeover Act – AV. The main reason for the exemption was the fact that the book value of the participation in the target company was below 20% (in this case 13.15%) of the aggregate asset value of that company.

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted / Denied	Basic Facts and Reasons for the Exemption/Comments
134	Europe Project Management Pte. Ltd., Singapore,  Bright Horizon Global Limited, British Virgin Islands,  Europe Engineering Holdings Pte. Ltd., Singapore,  Westley Global Group Limited, British Virgin Islands,  Europe Technology Investment Pte. Ltd., Singapore,  Maystar Capital Limited, British Virgin Islands,  Yap Lian Seng, Singapore,  AVIC International Engineering Holdings Pte. Ltd., Singapore,  Goldimax Group Limited, British Virgin Islands,  Golden Prosperity Group Limited, British Virgin Islands,  Max Glory Industries Limited, People's Republic of China,  Kaihang Industrial Limited, British Virgin Islands,  AVIC International Kairong Limited, People's Republic of China,  AVIC International Beijing Co. Limited, People's Republic of China,  AVIC International Holdings Limited, People's Republic of China,  AVIC International Shenzhen Company Limited, People's Republic of China,  AVIC International Holding Corporation, People's Republic of China,  AVIC Industry Corporation of China, People's Republic of China	KHD Humboldt Wedag Industrial Services AG, Cologne	12/18/2015	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 second sentence no. 3 of the Takeover Act – AV. The main reason for the exemption was the fact that the book value of the participation in the target company was below 20% (in this case 2.98%) of the aggregate asset value of that company.
135	Ferdinand Porsche Familien-Privatstiftung, Salzburg, Austria	Porsche Automobil Holding SE, Stuttgart,  VOLKSWAGEN AKTIENGESELLSCHAFT, Wolfsburg,  AUDI Aktiengesellschaft, Ingolstadt,  MAN SE, Munich  Renk Aktiengesellschaft, Augsburg	1/13/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence no. 2 of the Bid Regulation. The main reason for the exemption was that control was obtained through donation.

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
136	Dr. Geraldine Porsche, Austria	Porsche Automobil Holding SE, Stuttgart, VOLKSWAGEN AKTIENGESELLSCHAFT, Wolfsburg,  AUDI Aktiengesellschaft, Ingolstadt,  MAN SE, Munich  Renk Aktiengesellschaft, Augsburg	3/10/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence no. 2 of the Bid Regulation. The main reason for the exemption was that control was obtained through donation.
137	Diana Porsche, Austria	Porsche Automobil Holding SE, Stuttgart, VOLKSWAGEN AKTIENGESELLSCHAFT, Wolfsburg,  AUDI Aktiengesellschaft, Ingolstadt,  MAN SE, Munich  Renk Aktiengesellschaft, Augsburg	3/11/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence no. 2 of the Bid Regulation. The main reason for the exemption was that control was obtained through donation.
138	Felix Alexander Porsche, Austria	Porsche Automobil Holding SE, Stuttgart, VOLKSWAGEN AKTIENGESELLSCHAFT, Wolfsburg,  AUDI Aktiengesellschaft, Ingolstadt,  MAN SE, Munich  Renk Aktiengesellschaft, Augsburg	3/22/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence no. 2 of the Bid Regulation. The main reason for the exemption was that control was obtained through donation.
139	Genetrix S.L., Madrid, Spain	SYGNIS AG, Heidelberg	4/20/2016	granted	The exemption was granted based on Section 37(1) alternative 1 of the Takeover Act. The main reason for the exemption was the fact that a loss (and subsequent regaining) of control by the applicant was only temporary due to diluted voting rights as a consequence of a capital increase.
140	Deutsche Balaton Aktiengesellschaft, Heidelberg,  VV Beteiligungen Aktiengesellschaft, Heidelberg,  DELPHI Unternehmensberatung Aktiengesellschaft, Heidelberg,  Wilhelm Konrad  Thomas Zours	Youbisheng Green Paper AG, Cologne	7/4/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence no. 3 of the Bid Regulation. The main reason for the exemption was the applicants' contribution to the financial recovery of the target.
141	Dr. Shahab Manzouri, c/o Norton Rose Fulbright LLP, Taunustor 1 (TaunusTurm), 60310 Frankfurt am Main	DF Deutsche Forfait AG, Cologne	7/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence no. 3 of the Bid Regulation. The main reason for the exemption was the applicants' contribution to the financial recovery of the target.
142	Shanghai SafBon Investment Co., Ltd., People's Republic of China,  SafBon Water Service (Holding) Inc., People's Republic of China,  Mr. Chunlin Zhang, People's Republic of China	ItN Nanovation AG, Saarbrücken	11/9/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence 1 no. 3 of the Bid Regulation. The main reason for the exemption was the applicants' contribution to the financial recovery of the target.

Survey II: Exemptions from Mandatory Bids

No.	Applicant(s)	Target	Date of BaFin Decision	Exemption Granted/ Denied	Basic Facts and Reasons for the Exemption/Comments
143	Fosun International Limited, Room 808, ICBC Tower, 3 Garden Road, Central, Hong Kong, PR China,  Fosun Holdings Limited, Room 808, ICBC Tower, 3 Garden Road, Central, Hong Kong, PR China,  Fosun International Holdings Limited, P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands  Guo Guangchang, No. 109, Lane 108, Gulang Road, Shanghai, PR China	TOM TAILOR Holding AG, Hamburg	11/28/2016	granted (redundant)	The decision has become redundant given that the applicants took part in the capital increase of the target company in the meantime, in accordance with their current stake in company shares, equaling 29.47% and have therefore not reached the control threshold of 30% voting rights of the target company, pursuant to Section 29(2) of the Takeover Act.
144	KD River Invest GmbH, Cologne, Rifero AG, Switzerland, Mr. Robert Straubhaar, Switzerland	KÖLN-DÜSSELDORFER Deutsche Rheinschiffahrt AG, Dusseldorf	12/9/2016	granted	The exemption was granted based on Section 37(1) alternative 4 of the Takeover Act. The main reason for the exemption was the fact that as of effective date, 10/13/2016. i.e. 10/17/2016., only 415 shares of the target company (which corresponds to 0.86% minority shares) were trading on the regulated market. Given the fact that the shares will be acquired through the squeeze-out at the later phase anyway, a mandatory bid would only strain the applicants with unnecessary costs.
145	AR Holding GmbH, Frankfurt am Main, TR Asset Management GmbH, Frankfurt am Main, GR Capital GmbH, Munich, GCS Verwaltungs GmbH, Glattbach, Prof. Dr. Gerhard Schmidt, Glattbach	TTLInformation Technology AG, Munich	12/20/2016	granted	The exemption was granted based on Section 37(1), (2) of the Takeover Act in connection with Section 9 first sentence no. 3 of the Bid Regulation. The main reason for the exemption was the applicants' contribution to the financial recovery of the target.