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# Plenary session: "The Role of Support Services in the Business Transfer Process"

14.15-15.30, 19 May, 2009



**Jean-Marie Catabelle**, President, CRA (FRANCE)



**Christopher Kummer**, President, The Institute of Mergers, Acquisitions and Alliances (IMAA) (SWITZERLAND- AUSTRIA)



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Keynote speech by

**Christopher Kummer**, President, The Institute of Mergers, Acquisitions and Alliances (IMAA) (SWITZERLAND- AUSTRIA)





Institute of Mergers, Acquisitions  
and Alliances

# The Role of Support Services in the Business Transfer Process

Adj. Prof. Dr. Christopher  
Kummer



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- The European Market of SME Mergers & Acquisitions
- A holistic view on the M&A Process
- The complexity in deal situations –  
The different types of advisors and their roles
- The challenges of giving and taking advice in SME deals



# THE EUROPEAN MARKET OF SME MERGERS & ACQUISITIONS



# Mergers & Acquisitions by European SME as Acquiror



1995-2008:  
 • 120,000 deals with  
 • 5,400 bil. EUR

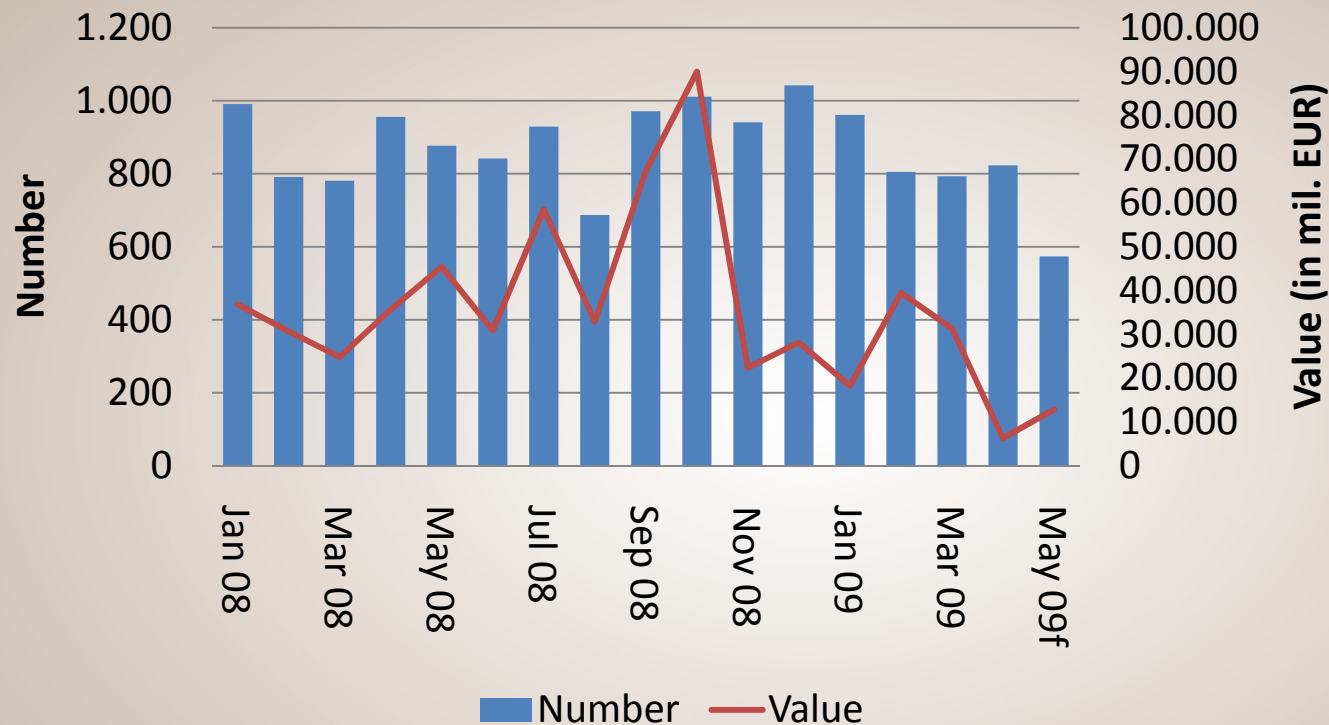
\* 2009 as of 16 May 2009; Source: Thomson Financial, IMAA analysis

This year in comparison to 2008:

- number of deals: -25%
- value of deals: -55%.



# Mergers & Acquisitions by European SME as Acquiror



\* as of 16 May 2009; Source: Thomson Financial, IMAA analysis

This May in comparison to May 2008:

- number of deals: -35%
- value of deals: -72%.



# A HOLISTIC VIEW ON THE M&A PROCESS



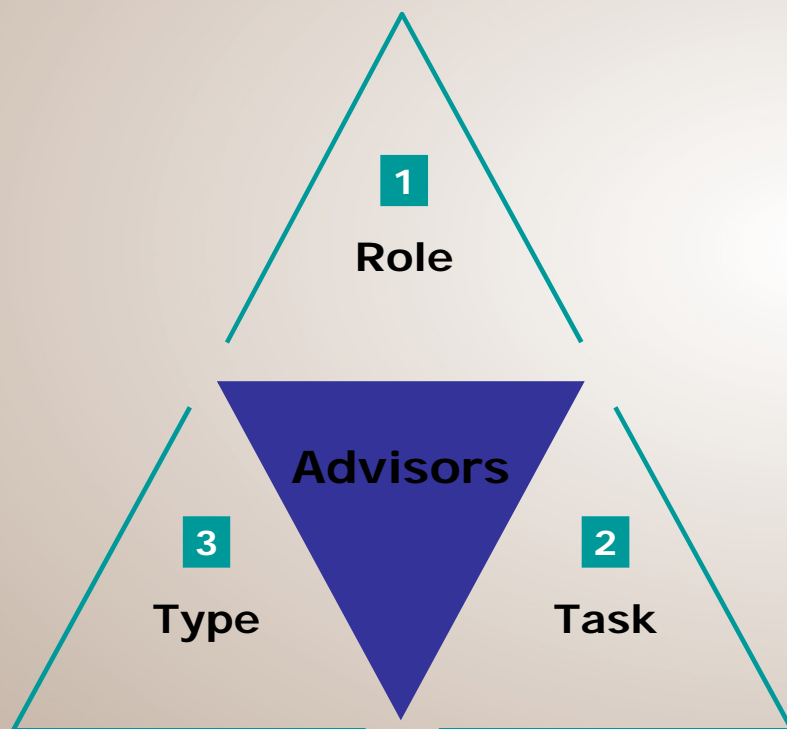
# A Holistic View on the Mergers & Acquisitions process



# **THE COMPLEXITY IN DEAL SITUATIONS – THE DIFFERENT TYPES OF ADVISORS AND THEIR ROLES**



# M&A process: Advisors can be described in terms of their roles, tasks or their type of firm



## 1 Role

- e.g. financial, legal, accounting, tax

## 2 Task

- e.g. preparation of information memorandum, communication with transaction partners

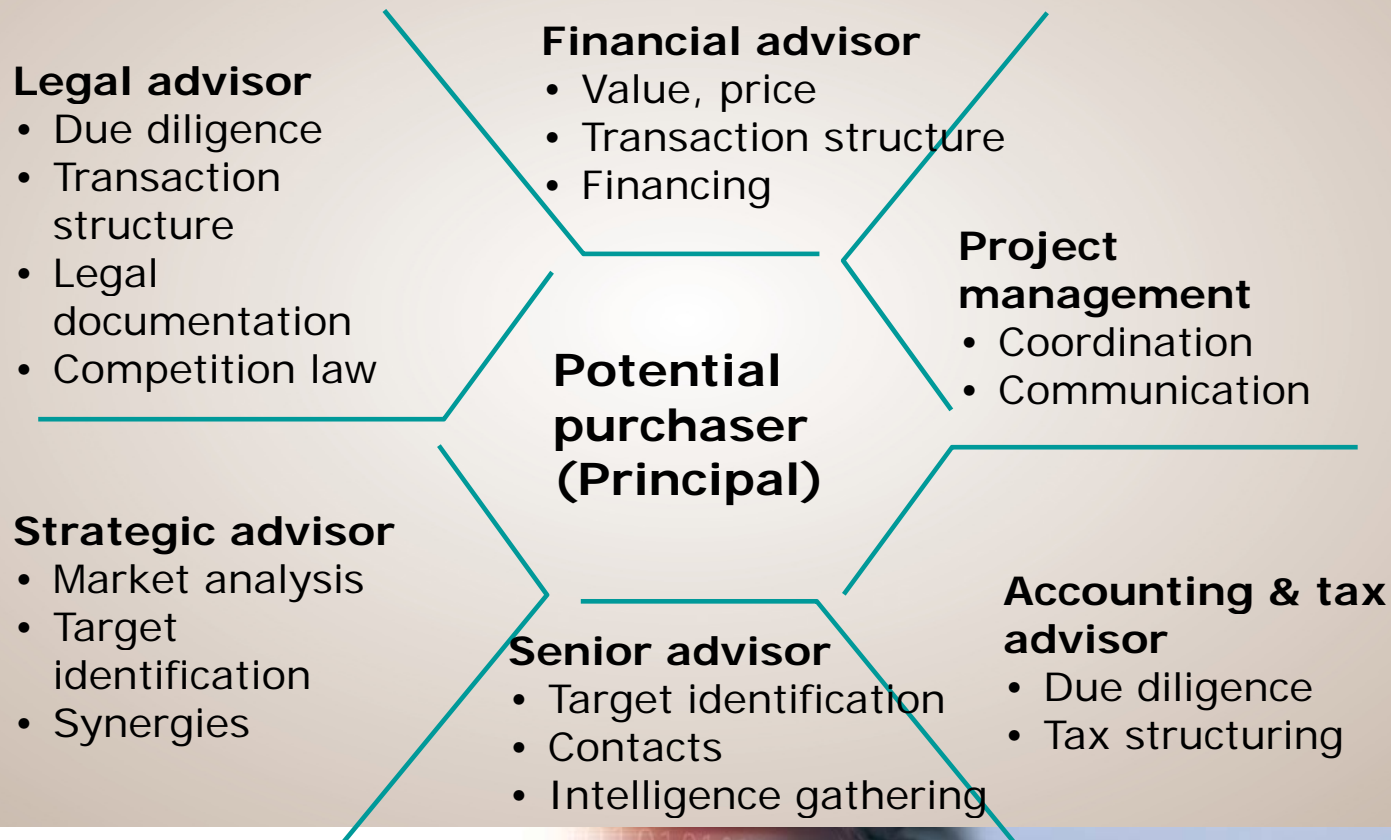
## 3 Type

- e.g. investment bank, accounting firm, law firm, in-house department, management consultant



# M&A process: The number and type of advisors involved depends mainly on the complexity of the transaction

Typical roles in a buy-side M&A situation



# M&A process: The number and type of advisors involved depends mainly on the complexity of the transaction

Typical roles in a sell-side M&A situation



# M&A process: Key tasks of a financial advisor (1)

Investment bank, accounting firm, management consultant, corporate development dept.

## Value, price

- Preparation and/or analysis of financial projections
- Company valuation
- Advice on capital markets environment
- Tactical advice on pricing
- Negotiation (or negotiation assistance)
- Communication of price (e.g. offer document, fairness opinion, board documents)

## Transaction structure

- Evaluation of alternative solutions to M&A
- Scope of the transaction
- Type of transaction (e.g. spin-off, auction, private sale; asset deal, share deal)
- Type and timing of consideration (cash, shares; earn-out)
- Definition of a reference point for price during the negotiations
- Advice on key commercial and contractual terms

## Financing / use of proceeds

- Access to the financial markets
- Coordination of external financing
- Optimizing the financing structure
- Currency hedging
- Investment of proceeds



# M&A process: Key tasks of a financial advisor (2)

Investment bank, accounting firm, management consultant, corporate development dept.

## **Selling documents**

- Gathering of information on the target
- Preparation of selling documents (teaser, information memorandum)
- Preparation of management presentation
- Briefing of target management for Q&A sessions



# M&A process: Key tasks of a project manager

Investment bank, management consultant, corporate development department

## **Coordination**

- Coordination of all parties on the side of the principal
- Project planning and management
- Management of documents and deliverables
- Coordination of dataroom and management presentation
- Contact management
- Hand-over to Post Merger Integration team

## **Communication**

- Communication to boards and shareholders (investor relations)
- Communication with transaction partner(s)
- Communication with regulators
- Communication with management and employees
- PR



# M&A process: Key tasks of an accounting & tax advisor

Accounting firm, tax firm

## (Vendor) Due diligence

- Accounting, commercial and tax due diligence
  - Dataroom proceedings
  - Q&A with transaction partner(s)
  - Preparation and/or analysis of financial projections
- Audit of financial statements if required and practicable
- Documentation (e.g. bid document, merger report)

## Tax structuring

- Optimization of one-off tax effects
- Optimization of ongoing tax structure
  - Tools: e.g. domicile of transaction partners, asset vs. share deal, cash vs. stock, timing, price level, purchase price allocation, accounting regime



# M&A process: Key tasks of a senior advisor

(Former) board member, "Elder Statesman", independent consultant

## Target / buyer identification

- Identification of potential targets and acquirers through network of contacts
- Assessment of willingness to make a deal
- Assessment of impediments to making a deal (e.g. strategic and financial status)

## Contacts

- Access to key decision makers at the potential transaction partner(s)
- Access to key regulatory decision makers
- Clear showing of commitment to a transaction partner

## Intelligence gathering

- Up-to-date knowledge about the M&A market, including competing sellers and acquirers
- Knowledge of the current status of an M&A process beyond the official routes
- Assessment of the position of regulators towards a transaction



# M&A process: Key tasks of a strategic advisor

Management consultant, industry consultant, market research firm

## Market analysis

- In-depth knowledge of market size, market participants and key trends
- Market side input for business plan / valuation
- Input for strategic rationale of the transaction
- Input for key criteria for target or buyer selection
- Assessment of supplier, customer and competitor reaction

## Synergies

- Identification, quantification and timing of synergies and dissynergies
- Identification of key implementation risks
- Hand-over to post merger integration team
- Execution of post merger integration

## Separation issues

- Identification of suitable candidates for divestiture
- Managing the consequences of a partial divestiture



# M&A process: Key tasks of a legal advisor

Law firm, legal department

## **(Vendor) due diligence**

- Legal due diligence (incl. contracts, litigation, labor, environmental, property, insurance IP)
  - Dataroom proceedings
  - Q&A with transaction partner(s)
- Identification of key risks
- Implications for contract negotiations

## **Legal docu- mentation**

- Confidentiality agreements
- Corporate documentation (e.g. board minutes, corporate actions, setting up NewCos)
- Capital markets documentation (e.g. announcements, prospectuses, filings)
- Contracts (e.g. sale and purchase agreement, financing, auxiliary agreements)
- Regulatory filings
- Archiving and ongoing legal relationship (e.g. monitoring of warranties)
- Assessment of merger control implications and filing requirement for the potential buyers, for a potential buyer and for competing buyers
- Assessment of timing of merger control processes in various jurisdictions
- Management of merger control applications (documentation, communication, arguments)
- Mitigation of adverse impacts

## **Competition law**



## **M&A process: Depending on the exact type of transaction, other consultants may be needed for certain tasks**

- IT consultants
- Environmental consultants
- HR consultants
- Insurance brokers
- Surveyors / property consultants
- Public relations, investor relations and PR consultants
- Corporate intelligence bureaus



# THE CHALLENGES OF GIVING AND TAKING ADVICE IN SME DEALS



# Some Challenges in SME Deals

- 1) Knowledge about M&A and management capacity
- 2) People: Founders, owners, ...
- 3) Timing: Too late, too slow or right?
- 4) The role of public structures and players
- 5) Risks: Relative importance of M&A investment and deal success
- 6) Deal structuring vs. financing
- 7) The quality of advisors and advice in SME deals
- 8) The split of work around M&A

