

## Executive Summary (English)

*Business Combination Agreements (BCA)* have gained a greater degree of prominence in Germany only since the merger of Daimler-Benz Aktiengesellschaft and Chrysler Corporation in 1998 and the merger of Hoechst AG and Rhône-Poulenc S.A. in the following year 1999. However, it took two court decisions by the Munich Higher Regional Court (Oberlandesgericht München) and one court decision by the Regional Court Munich I (LG München I) concerning the *BCA* between W.E.T. Automotive Systems Aktiengesellschaft, Amerigon, Inc. and Amerigon Europe GmbH until judicial science in Germany started analysing this kind of treaties, having their origin in Anglo-American law, in greater depth.

Following a comprehensive presentation of the typical content of past *BCA* and the particularities of selected *BCA* (Section 2), the legal basis of *BCA* will be addressed (Section 3). In short, a *BCA* can be defined as an agreement which structures and prepares the merger of at least two companies in an organised manner. In contrast to other agreements, which are known in German law concerning the combination of companies (e.g. letter of intent or memorandum of understanding), one of the key elements of *BCA* is – at least in parts – their binding nature.

Then, due to their outstanding importance for the judicial follow-up concerning *BCA* the *BCA* between W.E.T. Automotive Systems Aktiengesellschaft, Amerigon, Inc. and Amerigon Europe GmbH and the respective court decisions will be outlined in a separate section (Section 4) – the latter having been criticised consistently and justifiably.

Subsequently, the dissertation focuses on the validity of several clauses with respect to German stock corporation and capital market law (Section 5). As the analysis has shown, those analysed clauses are often integral parts of a *BCA*. Thereby, Section 76 of the German Stock Corporation Act and the allocation of powers and responsibilities under stock corporation law are of particular importance when drafting a *BCA*. According to the opinion of the author, the transfer of management decisions to a third party constitutes a violation of Section 76 of the German Stock Corporation Act in any case; on the other side, the board of management is permitted to enter into contractual relations which lead to a self-commitment regarding single management decisions, provided certain conditions are met. It is essential, however, to always comply with the allocation of powers and responsibilities under stock corporation law, so that in particular agreements regarding the future Corporate Governance must not put (factual) constraints on the actually competent body.

The dissertation is completed by presenting a selection of further problems in relation to the conclusion of *BCA*, especially the compliance with the disclosure requirements according to capital market law (Section 6). The dissertation concludes with an overall evaluation of *BCA* which are a valuable addition in the context of agreements facilitating and preparing transactions and with recommendations on the drafting of *BCA* in practice (Section 7). It needs to be emphasised that the content of a *BCA* should be tailored to the specific requirements of each individual case and should take into account all particularities of the respective merger. Special importance is attributed to the board of management as it is usually the competent body to negotiate and conclude a *BCA*.