

# Activists force conglomerate structure re-think amid growing investor collaboration

**SYNOPSIS:** This article from Activistmonitor, first published in January 2018, quotes Statera Partners co-founder Michael Henson. Its focus is on the growing trend of activist involvement in UK and European companies, often focused on effecting governance, strategic, and / or management change. Statera Partners LLP was specifically established to provide boards of companies with independent, experienced advice on governance, stewardship, shareholder activism, and remuneration.

A growing emphasis on simplifying Europe's large conglomerates is forcing strategic and structural change at companies where activists are yet to even disclose a stake, according to advisors interviewed by Activistmonitor.

In 2017, activists openly pushed for demergers at companies including [ABB](#) [VTX:ABBN], [ThyssenKrup](#) [ETR:TKA], [Clariant](#) [VTX:CLN], [Nestle](#) [VTX:NESN], [BHP](#) [LON:BHP], [Shire](#) [LON:SHP], [Credit Suisse](#) [VTX:CSGN], and [Whitbread](#) [LON:WTB], but many more companies are ripe for simplification and specialisation, they said.

Activists launched 56 public campaigns in 2017, down from 63 in 2016, according to Activistmonitor data.

However, the increasing role of US activists, such as [Elliott Management](#), [Corvex](#) and [Third Point](#) in Europe contributed to positive growth in public and potential campaigns in both the mid-cap (USD 1bn-2bn) and large-cap (over USD 2bn) markets.

Public demands from investors addressing bolt-on acquisitions, divestitures or spin-offs increased 130% from 2016 to 2017 (from 10 to 23), Activistmonitor data showed.

Europe's largest corporates are taking notice of the impact that activists are having and beginning to take more proactive steps to explore strategic options including de-merging of conglomerate structures, said Harald Selzner, partner and co-Chair Global M&A at Latham & Watkins in Dusseldorf.

Boards are thinking about whether the conglomerate composition is really their best set-up, and are now more willing to adjust, if necessary, Selzner said.

"Either it is triggered or proposed by activists or it is a proactive consideration by the board to avoid an investor making such a proposal, meaning they would no longer be in the driver's seat."

In five years, every important structural decision on capital allocation and transactions will need to be discussed or tested in advance with shareholders, said Paris-based Lazard MD Gilles Mentré, part of the investment bank's Shareholder Advisory Group that specialises in activism defence.

"When preparing for a transaction advisors will need to be able to factor in, more than was the case in the past, how they anticipate shareholder reactions as they increasingly consider themselves not only as investors, but as co-owners," Mentré said.

The European shareholder rights directive was cited at the IBA's corporate governance conference in Frankfurt last year as a key change in investors acting as owners in companies. The directive outlines the need for investors to have an effective say on director pay, which is seen as allowing them to weigh in on important strategic decisions.

Companies that want to retain a conglomerate structure need to be well equipped with arguments backing their sum of the parts valuation and ideas for narrowing the holding company discount, Mentré said.

German conglomerates, such as [Continental](#) [ETR:CON] and [Siemens](#) are two companies exploring strategic options in light of recent demerger transactions despite a lack of any overt activist pressure, Selzner noted.

Siemens CEO Joe Kaeser stated that "conglomerates have no future" in [August](#) and has publicly criticised the structure of its American counterpart [GE](#) [NYSE:GE] - often considered the ultimate exemplar of a successful conglomerate.

## Board, management and governance change

Change in a company's board, executive management or governance still ranked as the most frequent public demands from activists, with 65 instances in 2017, down from 86 in 2016, according to Activistmonitor data.

[TCI Fund Management's](#) campaign to have Xavier Rolet continue as CEO of [LSE Group](#) [LON:LSE] despite the board's decision to let him go "hit the City at its core", Michael Henson said. Henson is a former Sard Verbinnen MD who is setting up his own firm, Statera Partners, alongside former [Rolls-Royce](#)[LON:RR] IR head John Dawson, focused on counseling boards on investor relations and governance.

Even though Rolet eventually left and chairman Donald Brydon was retained by shareholder vote, the campaign showed the UK's largest companies can be pulled into very public stoushes with investors.

Typically though a chairman or CEO change is not the final move of an activist campaign, said Henson. "It's not the checkmate move, but it often initiates a strategic or financial end-game."

"Activists come out and say 'This is a lazy board, the CEO is not focused on the right issues, here's my proposal for the board'," said Mentré. "They get a foot in the door and then they go for changes to capital allocation, balance sheet and capital return."

But, board and executive change is being made easier by the growing credibility of activists in Europe, which means high level candidates are now willing to allow activists to nominate them for a board position at a targeted company, noted Mentré.

In Germany, the corporate governance code ([Deutscher Corporate Governance Kodex](#)) has been updated to enforce the role of the chairman of the supervisory board in direct interactions with investors. This modification was introduced to the code to bring it more in line with the international expectations of the markets, said Selzner.

"Given the two-tier board system in Germany, there are discussions in academia to what extent the Kodex conflicts with the mandatory corporate law allocation of competencies between the boards," he noted.

"Any investor communication by the supervisory board chairman will require, despite the most recent Kodex modification, a thoughtful handling to avoid a corresponding liability exposure."

## Investors team up to pressure boards

While activists' ideas are a catalyst, the pressure ultimately emanates from the wider pool of institutional shareholders who support an activist's proposal, said Henson.

Blackrock founder Larry Fink's most recent "[Letter to CEOs](#)", in which he acknowledged the value of activists' ideas and encouraged companies to engage with them, is a signal of tighter links between passive and active shareholders globally, the advisors agreed.

On average in France the top 25 shareholders in a company will own 25% of the stock, whereas in the US the top 25 will have more than 50% of the stock.

In Europe, a less concentrated shareholder register makes proxy fights more complex in terms of outreach to many different investors, Mentré said.

With passive funds growing and the concentration of asset managers continuing you have a higher concentration of shareholders, more temptation to go to proxy fights, and more inclination of companies to settle ahead of a proxy fight to avoid that kind of scenario, said Mentré.

Shareholder lobby groups are another conduit for long-only investor agitation as the weight of ESG priorities grows in the minds of active and passive asset managers alike, said Henson.

The UK's [Investor Forum](#) showed its strength by effectively forcing [Rio Tinto](#) [LON:RIO] to [abandon](#) a plan to appoint former Xstrata boss and current Conservative party CEO Mick Davis as its chairman, he said.

The Investor Forum and institutional investors tend not to make highly detailed proposals like classical activists, they tend to express well founded concerns privately and put the onus on companies to take meaningful steps to address them, Henson said.

"This makes the activism threat more varied and potent because the classical activist funds and institutional investors can create a pincer movement, and companies can't ignore the combined influence," he said.

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