Pitfalls for remedies and their implementation

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Jonas Koponen

Linklaters

Too much focus on "asset – composition" risks?

Three scoping examples

> *Huntsman/Rockwood* (M.7061)

   > Concern in Europe, global divestiture

> *Baxter/Gambro* (M.6851)

   > Concern in Europe, global divestiture + set up new EEA production for buyer

> *Zimmer/Biomet* (M.7265)

   > Product line divested in DK, S + rights facilitating EEA expansion

   > "transfer <u>the largest part </u>of Biomet's market share to a competitor"

Too much focus on "purchaser" risks?

Up-front / fix-it-first by the numbers

Source: DG COMP

4
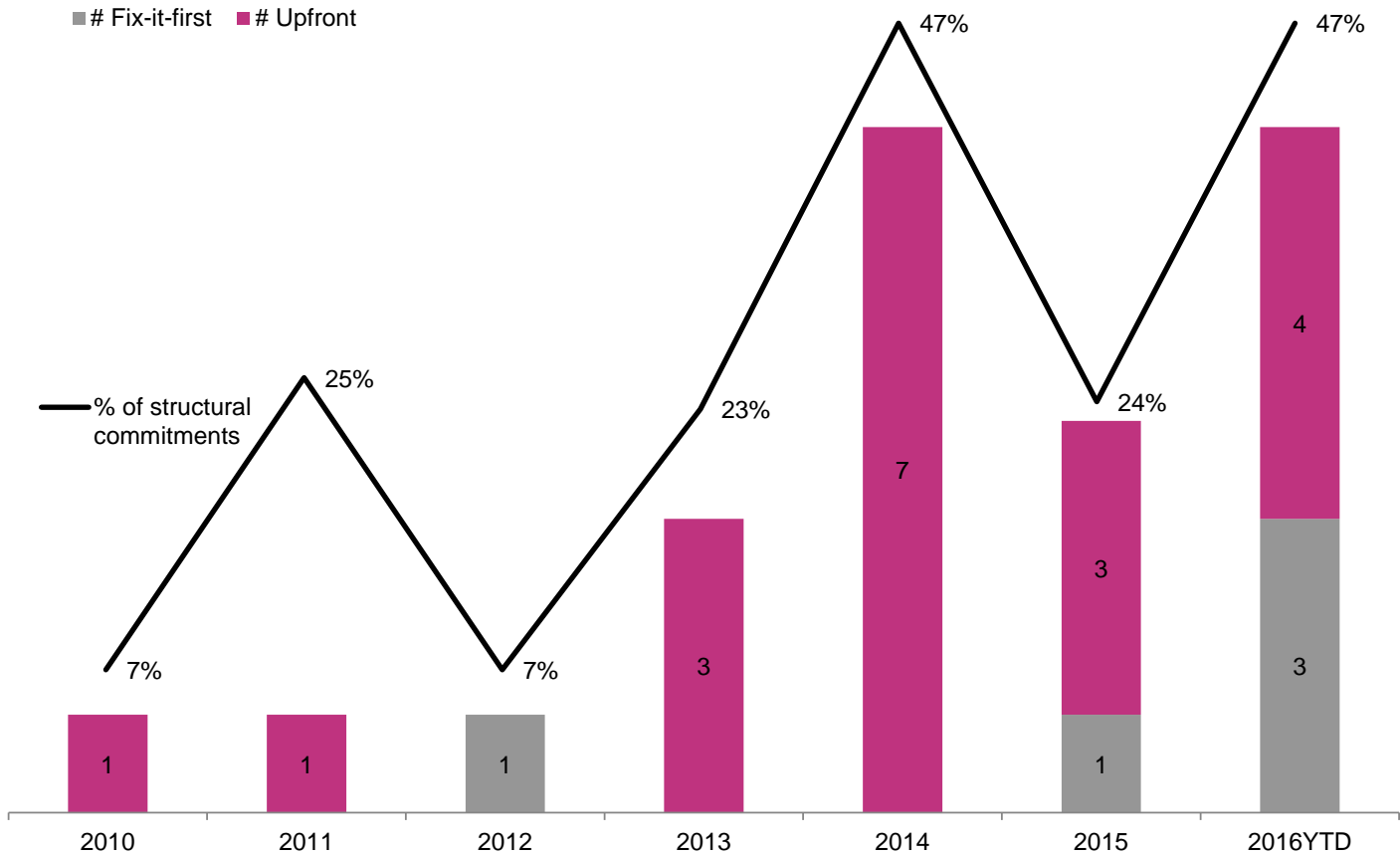
Up-front beyond the numbers

Remedies notice: considerable
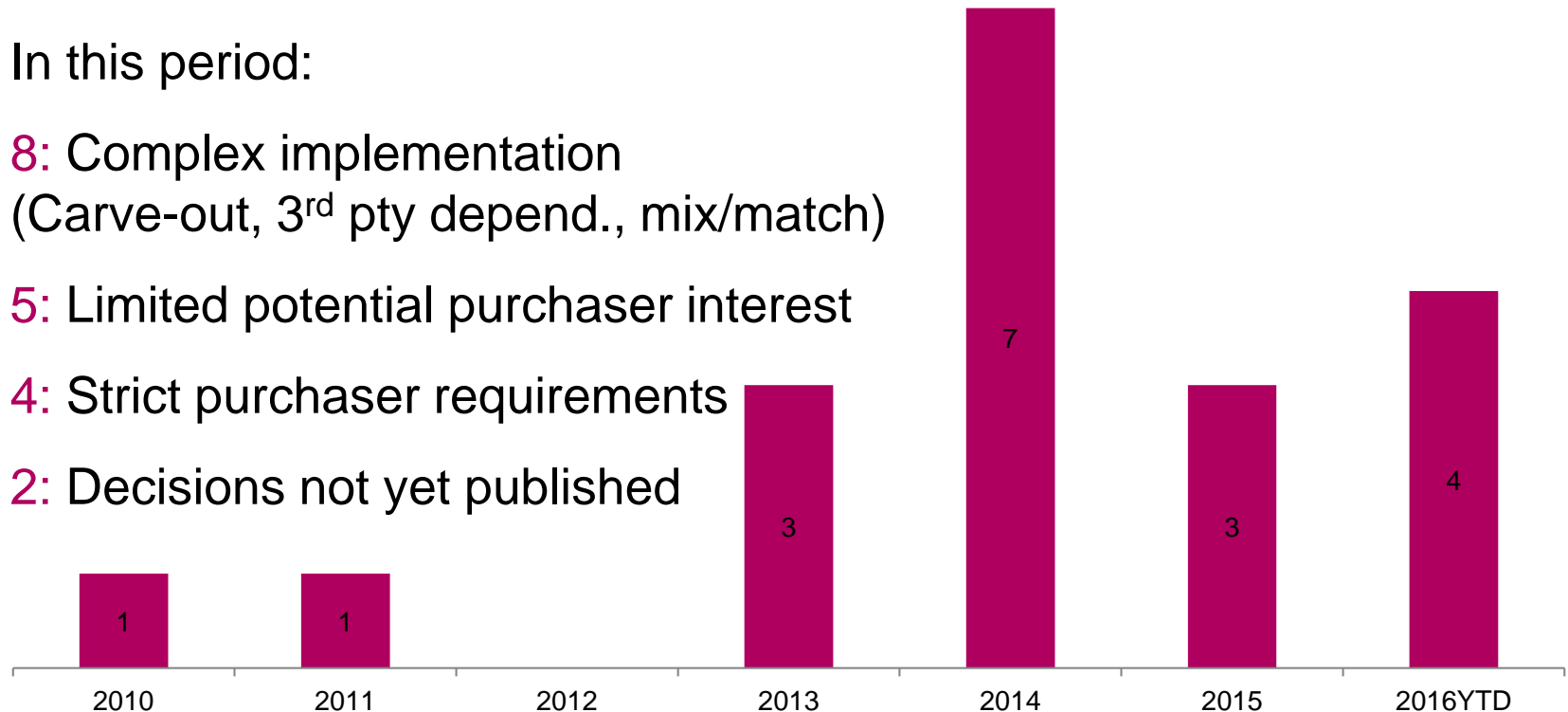"*obstacles for a divestiture*" or "*risks of preserving the competitiveness and saleability*"

In this period:

8: Complex implementation
(Carve-out, 3rd pty depend., mix/match)

5: Limited potential purchaser interest

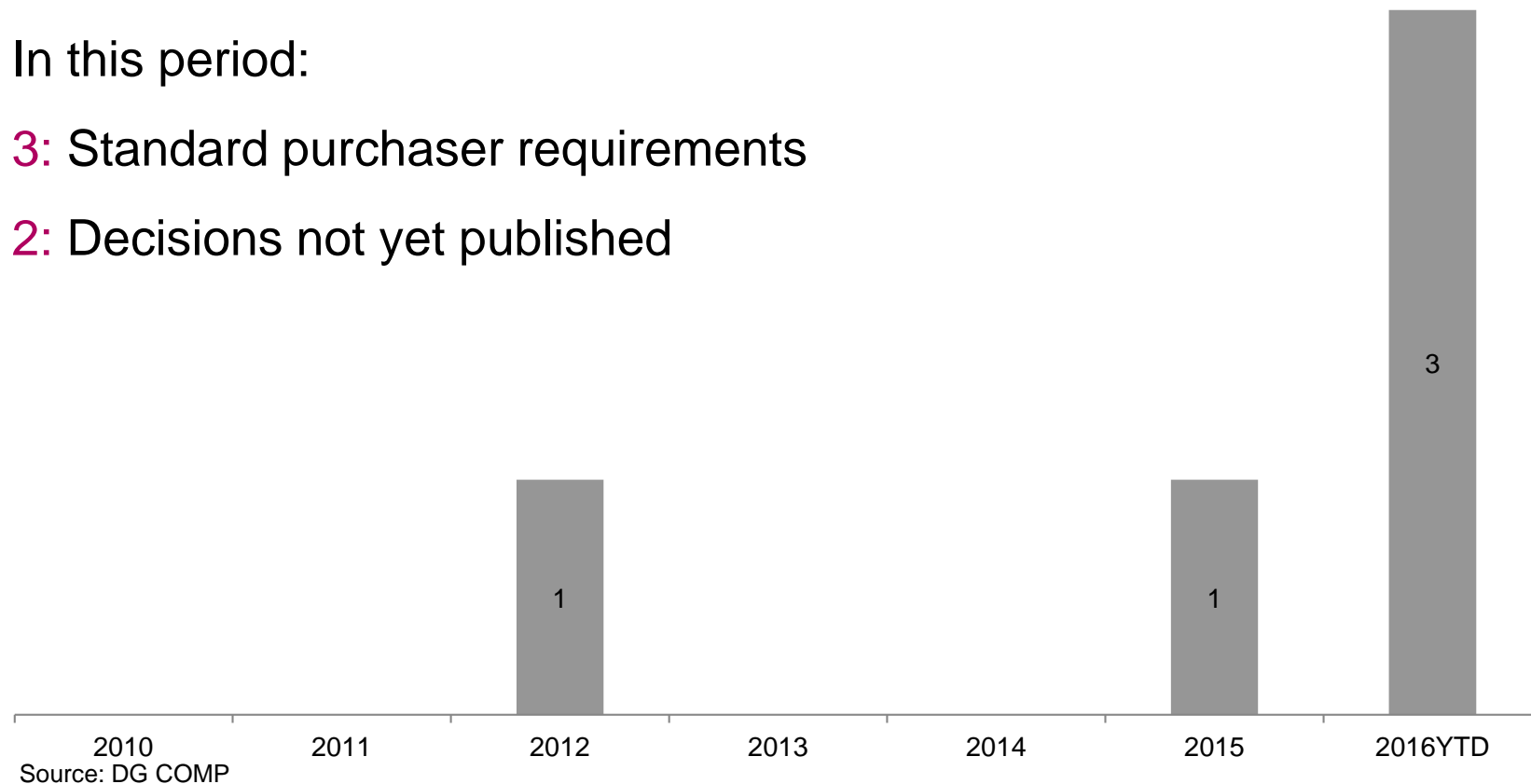4: Strict purchaser requirements

2: Decisions not yet published

2010	2011	2012	2013	2014	2015	2016YTD
1	1		3	7	3	4

Source: DG COMP

5

Fix-it-first beyond the numbers

Remedies notice: "*identity of the purchaser is crucial for the effectiveness*"

In this period:

3: Standard purchaser requirements

2: Decisions not yet published

| 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016YTD |

Source: DG COMP

Additional purchaser requirements

> Zimmer/Biomet (M.7265)

  Purchaser (upfront) must *"demonstrate its capability in orthopaedic implants and its presence or willingness to expand its presence in a significant proportion of the EEA countries where the Divestment Businesses are currently active"*

> Syniverse/MACH (M.6690)

  Purchaser (upfront) must e.g. not be a financial investor, have particular industry-specific capabilities or be part of an MNO

Too much "structural – behavioural" orthodoxy?

Agnostics welcome!

> The aim to make a 'one-time intervention' makes perfect sense

> But does this necessarily mean divestiture?

> Lufthansa/Swiss (M.3770) (Appeal in T-712/16)

> Liberty Global/Ziggo (M.7000)

> A more agnostic approach: theory of harm, source of concern and solution, e.g.

> Why are shares persistently high?

> What prevents entry?

> What can be effective, proportional and administrable?