

Your World First

C/M/S/

Law . Tax

CMS European
M&A Study 2017

Ninth Edition

-
- 3 M&A 2017
 - 4 CMS European M&A Study 2017
 - 5 Executive summary
 - 2016 results at a glance
 - CMS European/US Risk Allocation Comparison
 - CMS Deal Size Analysis
 - Key messages
 - CMS European Regional Differences
 - Conclusion

-
- 13 Purchase price adjustment (PPA)/Locked box
 - 17 Earn-out
 - 21 *De minimis*
 - 23 Basket
 - 26 Liability caps
 - 29 Warranty & Indemnity insurance
 - 32 Limitation period for warranty claims
 - 35 Security for warranty claims
 - 37 MAC clause
 - 40 Arbitration
 - 44 Tax

-
- 47 Where you can find CMS
 - 48 Our latest CMS Corporate/
M&A headline deals
 - 49 Sharing Knowledge
 - 50 Methodology and Contacts

Disclaimer

The results of the Study and/or this report and the conclusions presented in the Study and/or this report do not necessarily reflect the views of any member of CMS, the lawyers or the support staff who assisted with preparation of the Study and/or this report. The Study and/or this report evaluated over 3,200 M&A transactions. Inevitably, there were many differences between the underlying agreements, and the vast majority of them were negotiated. In order to compare the results, individual provisions were categorised. When categorising the individual provisions, a degree of subjective judgment was necessary. Although certain trends can be deduced from the Study and/or this report, each transaction has individual features which are not recorded in the Study and/or this report and to which no reference is made. As a result, the conclusions presented in the Study and/or in this report may be subject to important qualifications that are not expressly articulated in the Study and/or in this report.

Anyone relying on the Study and/or this report does so at their own risk, and CMS and its members expressly exclude any liability, which may arise from such reliance.

CMS Legal Services EEIG ('CMS EEIG') owns the copyright for the Study and/or this report. Written consent from CMS EEIG is required to forward or publish the Study and/or this report. The Study and/or this report are/is protected by copyright and may only be used for personal purposes. The prior written consent of CMS EEIG is required for any reproduction, dissemination or other use (e.g. on the internet) of the Study and/or this report in whole or in part. When using the results of the Study and/or this report with the prior written consent of CMS EEIG, CMS must be cited as author.

The use and distribution of the Study and/or this report shall be governed by German Law. Place of jurisdiction is Frankfurt, Germany.

M&A 2017

In geopolitical terms, there has been nothing to compare with 2016 since the end of the Cold War. Neither Brexit nor the election of President Trump was expected. The potential impact of either event, let alone both, could reasonably be anticipated to have given rise to inertia, confusion and uncertainty. In fact, M&A has been remarkably robust.

Although global M&A value tumbled by 18% in 2016, the number of deals remained constant. Overall, 2016 was similar in value and volume to 2014, a good year, but not as frothy as 2015. Remarkably, Europe saw more deals than any other region including North America.

Despite the prevailing uncertainty, there was a post-Brexit boom in the UK with foreign acquirers taking advantage of a much weaker GBP. This inflated European M&A figures to such an extent that Q4 was the best quarter for 2016. Inbound deals into Europe exceeded the previous year by 36% in value terms.

2017 presents more issues with political uncertainty caused by French, Dutch and German elections at a time when the UK has given notice to leave the European Union. North American buyers may feel more inclined to stay at home as they sense opportunities in a newly protected and lower tax US environment. Asian investors, however, remain highly interested in European targets and the private equity industry always has an existential reason to pursue deal flow. Global consolidation in various industries remains likely.

European M&A will continue to provide opportunities.

Our new CMS European M&A Study 2017 covers over 3,200 deals and we focus on the 443 CMS deals in 2016 and the 2,045 CMS deals in the period 2010–2015 by way of comparison. We trust that the Study will assist you in your everyday M&A life.



Stefan Brunnschweiler
Head of the CMS Corporate/M&A Group

Methodology

The Study includes deals which were structured either as a share sale or an asset sale, including transactions where a seller held less than 100% of the target company's share capital, provided this represented the seller's entire shareholding in the target company. The Study also includes property transactions which involved the sale or acquisition of an operating enterprise such as a hotel, hospital, shopping centre or comparable business, and not merely a piece of land. Internal group transactions were not included in the Study. The data has been divided for comparative purposes into four European regions. The countries included in each of these regions are as follows:

- Benelux: Belgium, The Netherlands and Luxembourg
- Central and Eastern Europe (CEE): Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Serbia and Ukraine
- German-speaking countries: Austria, Germany and Switzerland
- Southern Europe: Italy, Spain and Portugal

France and the United Kingdom are presented as individual categories.

Transactions included in the Study cover the following sectors:

- Banking & Finance
- Hotels & Leisure
- Energy
- Consumer Products
- Technology, Media & Communications
- Infrastructure & Projects
- Lifesciences (Pharmaceutical, medicinal and biotechnical products)
- Real Estate & Construction
- Industry
- Business (Other Services)

Comparative data from the US was derived from the "2015 Private Target Mergers & Acquisitions Deal Points Study" produced by the Mergers & Acquisitions Market Trends Subcommittee of the Mergers & Acquisitions Committee of the American Bar Association's Business Law Section.

Contacts

CMS Austria

Peter Huber
T +43 1 40443 1650
E peter.huber@cms-rrh.com

CMS Belgium

Vincent Dirckx
T +32 2 74369 85
E vincent.dirckx@cms-db.com

CMS CEE

CMS Czech Republic
Helen Rodwell
T +420 2 96798 818
E helen.rodwell@cms-cmck.com

CMS Serbia

Radivoje Petrikić
T +38 1 3208 900
E radivoje.petrikic@cms-rrh.com

CMS France

Jean-Robert Bousquet
T +33 1 4738 5500
E jean-robot.bousquet@cms-bfl.com

CMS Germany

Maximilian Grub
T +49 711 9764 322
E maximilian.grub@cms-hs.com

Thomas Meyding

T +49 711 9764 388
E thomas.meyding@cms-hs.com

CMS Italy

Pietro Cavasola
T +39 06 4781 51
E pietro.cavasola@cms-aacs.com

CMS The Netherlands

Roman Tarlavski
T +31 20 3016 312
E roman.tarlavski@cms-dsb.com

CMS Portugal

Francisco Almeida
T +351 21 09581 00
E francisco.almeida@cms-rpa.com

CMS Russia

Natalia Kozyrenko
T +7 495 786 4000
E natalia.kozyrenko@cmslegal.ru

Vladimir Zenin

T +7 495 786 4000
E vladimir.zenin@cmslegal.ru

CMS Spain

Carlos Peña Boada
T +34 91 4519 290
E carlos.pena@cms-asl.com

CMS Switzerland

Stefan Brunnschweiler
T +41 44 285 11 11
E stefan.brunnschweiler@cms-vep.com

CMS United Kingdom

Martin Mendelssohn
T +44 20 7367 2872
E martin.mendelssohn@cms-cmck.com

CMS tops M&A rankings again

2016 was another outstanding year for CMS' Corporate/M&A group, with excellent M&A rankings across Europe by deal count. With over 300 deals CMS advised on more transactions than any other law firm in Europe.

#1 in Europe
in CEE
in France
in Germany*
in UK

source: Bloomberg, *Bloomberg, Mergermarket and Thomson Reuters



Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.
cms-lawnow.com



Your expert legal publications online.

In-depth international legal research and insights that can be personalised.
eguides.cmslegal.com

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Medellín, Mexico City, Milan, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

cms.law