

PRESS RELEASE

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CMS European M&A Study 2019: Sellers set the agenda, despite market uncertainty

The "seller-friendly" dynamic in European M&A transactions strengthened during 2018, notwithstanding a drop-off in volumes towards the end of the year. This comes in marked contrast to the US market, where risk allocation continues to favour the buyer.

These conclusions were published by CMS today in the 11th edition of its annual European M&A Study, a multi-year analysis of the key legal provisions within M&A agreements. The study is the most comprehensive of its kind and is based on a proprietary database comprising more than 4,000 deals over a 12-year period.

Stefan Brunschweiler, Head of the CMS Corporate/M&A Group, said: "Brexit and wider geopolitical challenges are weighing on European M&A. Yet while volumes have tailed off, we're still seeing a sellers' market when it comes to the terms of completed deals. In our view, this won't change. Buyers remain hungry for growth and when they see opportunities, they want to capitalise on them."

Key findings of the report include:

- **Decreased use of purchase price adjustments (PPA)** – around 44 percent of deals included a PPA compared with 48 percent in 2017. This represents a notable movement against the overall trend in recent years
- **Significant increase in the application of locked box structures** – of the deals that did not involve a PPA, 59 percent used a locked box in 2018 which represents a significant increase over the 49 percent in 2017
- **Earn-outs continue to grow in popularity** – there was a two-percentage point year on year increase in the use of earn-outs in 2018. A quarter of small and mid-cap deals now involve earn-outs
- **A record year for Warranty & Indemnity (W&I) insurance** – sellers are increasingly offloading their warranty exposure by pre-packaging a buyer's W&I policy. Nearly a third (30 percent) of deals valued over EUR 100m now involve this form of insurance

Regional differences

Vincent Dirckx, Partner and Head of the CMS Corporate/M&A practice in Belgium, notes the following major differences in market practice within the Benelux:

- There was a significant increase in the use of locked box structures, with 69% of transactions without a PPA using this structure, which is an increase from 50% in 2017 and which is ahead of the European average of 56% of such transactions.
- There was a large decrease in the application of earn-outs in the Benelux countries, with just 21% of deals in 2018 as compared with 30% in 2017. This also compares with an average of 23% for all European deals.

Vincent Dirckx adds: *"There continues to be regional variations in the application of de minimis clauses. The UK and Benelux are clear leaders with 88% and 91%, with CEE and the German-speaking countries at 71% and 73% and less usage in France and Southern Europe at 57% and 45% respectively."*

The concept of data room disclosure has not become widely adopted in Southern Europe. Only 7 percent of transactions in the region reflect such a provision compared with 74 percent for the Benelux and 61 percent for the UK.

CEE leads in the use of MAC clauses (an increase this year) and continues to apply more arbitration than other European jurisdictions. Once again, the German-speaking countries reflect their geographic setting and sit in the middle on most risk allocation issues.

In contrast to Europe, the US is a buyer's market. This is reflected in a much more frequent application of purchase price adjustments and MAC clauses.

For more information: <https://cms.law/en/BEL/Publication/CMS-European-M-A-Study>

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About the Report:

The CMS European M&A Study 2019 provides insight into the legal provisions of merger & acquisition agreements, makes comparisons across Europe and with the US, and identifies market trends. CMS analysed private M&A agreements relating to both non-listed public and private companies in Europe for the twelve-year period 2007 – 2018. Of the 4,109 CMS transactions we analysed, 458 relate to 2018 and 3,651 relate to the period 2010 – 2017.

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the FT European 500 and for the majority of the DAX 30. Revenues totalled EUR 1.3bn in 2017.

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