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PRESS RELEASE

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CMS European M&A Study: Sellers take centre stage as European M&A deal value surges in 2017

- Transactions in Benelux with an escrow account increased significantly from 24% in 2016 to 37% in 2017 and Benelux is the region with by far the highest number of such transactions compared to other jurisdictions (e.g. France 8% and UK 15%).
- There has been a significant decline in the application of MAC clauses in the Benelux region, falling from 26% of transactions in 2016 to 13% in 2017 although this seems to reflect a move back to the 2010 – 2016 average of 15%.

Brussels, 22 March 2018 - CMS has published the tenth edition of its annual *European M&A Study 2018*, which analyses more than 3,650 of its private M&A transactions and compares the CMS deals of 2017 against its deals from 2010-2016.

The European M&A market remained buoyant throughout 2017. This surprising trend was against a backdrop of political uncertainty, including national elections in France, Germany, UK and the Netherlands. Driven by solid European economic data, overall deal value climbed in Europe to USD 929.3bn, up 14% compared to 2016. Structural changes arising from President Trump's "America First" policy and Brexit along with strong eurozone performance continue to attract foreign investors particularly from the US and Asia. Deal data for 2018 suggests activity levels have continued where 2017 left off, indicating another productive M&A year to come.

According to the Study, there were changes in risk allocation in 2017 compared to 2016. The position of sellers in 2017 was strengthened thanks to more deals with locked boxes, W&I insurance and lower liability caps.

Stefan Brunnschweiler, Head of the CMS Corporate/M&A Group, commented: "We have analysed thousands of our European deals, witnessing some of the most significant changes since 2010. In 2017, we saw sellers exploit the buoyant M&A market by reducing the residual risk on seller/buyer risk allocation to the same level as 2015, and they probably did even better than that."

Boom in W&I

The 2017 European deal landscape paved the way for warranty and indemnity insurance (W&I insurance) to boom, enjoying a ten-year high. Vincent Dirckx, Partner and Head of the CMS Corporate/M&A practice in Belgium, agrees: "W & I insurance has changed the M&A landscape during 2007 – 2017 and has never been more widely used in M&A deals than in 2017." A total of 14% of all European deals used W&I insurance in 2017, compared to 9% of deals in 2016. This was especially prevalent in deals valued above EUR 100m.

The sector with the highest proportion of deals using W&I insurance was Real Estate and Construction where 42% of deals included the structure. The incidence was lower in other sectors in 2017 including Consumer Products (9%), TMC (9%), Hotel and Leisure (7%), Energy (7%), Infrastructure (4%), Industry

(7%) and Business (other services) (15%). The Study revealed that the increase in W&I insurance has historically been driven by private equity activity, with a steady increase in large buy-out deals.

Increased use of locked boxes
The use of locked boxes continued to increase, with data showing this structure featured in 25% of all deals across Europe in 2017 compared to 23% in 2016. The Study highlights that the larger the transaction, the more likely that locked boxes were used, where the deal did not include price purchase agreements (PPA). The highest percentage of locked boxes was seen in deals larger than EUR 100m that did not include PPA (88%). Comparatively, locked boxes were used in only 39% of deals of up to EUR 25m in value without PPA provisions.

There was also a marked increase in the use of locked boxes in UK and German-speaking countries from 2016 to 2017, from 40% of deals to 51% in the UK and from 38% of deals to 49% in German-speaking countries. The use of locked boxes in Southern Europe increased from 36% of deals in 2016 to 58% in 2017, while the largest decline was seen in the Benelux where 50% of deals used the structure in 2017, down from 71% in 2016.

Decrease in liability caps
Liability caps, which appeared to have stabilised in 2016, decreased, with 60% of 2017 deals now having a liability cap of less than half the purchase price. The use of liability caps below 10% of the purchase price in 2017 stood at 21% of deals compared to 14% in 2016, with these lower liability caps particularly prevalent in deals of more than EUR 100m. This demonstrates an increase in sellers' negotiation power, with the rise of W&I insurance being one of the main reasons for the lower liability caps. The buyer can top up its protection relating to warranties by purchasing cover from an insurer on top of the cap agreed to by the seller.

Regional differences
The Study revealed core differences in mechanisms within Europe. For instance, an earn-out element applies in 21% of transactions across Europe but is much higher in Benelux, Southern Europe and German-speaking countries with percentages of 30%, 33% and 28% respectively. Meanwhile, the percentage of deals applying an earn-out is much lower in CEE (15%), France (8%) and the UK (15%).

In France, there was an increase in transactions with a lower liability cap of up to 25% of the purchase price, from 70% of deals to 76%, higher than the European average of 42%. The UK saw higher level of sellers' liability caps than any other region except Southern Europe.

The Study also highlighted a number of stark differences between the US and Europe in relation to seller/buyer risk allocation. One example is the inclusion of Material Adverse Change (MAC) clauses in 93% of US deals compared to 13% of European deals. Despite the differences, the Study predicts that US corporates will continue to target European M&A alongside Asian and eurozone dealmakers.

Commenting on the tenth edition, Vincent Dirckx, Partner and Head of the CMS Corporate/M&A practice in Belgium, said: "Transactions in Benelux with an escrow account increased significantly from 24% in 2016 to 37% in 2017. Benelux is the region with the highest number of such transactions compared to other jurisdictions. However, there has been a significant decline in the application of MAC clauses, falling from 26% of transactions in 2016 to 13% in 2017."

In the latest Study, CMS analyses over 3,650 deals, focusing on 438 CMS deals in 2017 and 2,488 CMS deals in the period from 2010-2016. For comparative purposes, the data has been divided into four European regions: Benelux, Central and Eastern Europe, German-speaking countries and Southern Europe. France and the United Kingdom are individual categories.

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