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**CMS Event “Inside M&A”: Trends Concerning M&A Contracts and Lively Discussion**

**On 22 May 2012, international law firm CMS Reich-Rohrwig Hainz gave an exclusive preview of the highlights of the CMS European M&A Study 2012. In a subsequent panel discussion, renowned experts discussed the future of the M&A market in Austria and CEE. About 80 visitors participated in the event hosted by CMS Reich-Rohrwig Hainz in the stylish Museumsquartier location.**

“2011 did not quite live up to the expectations of many investors concerning the developments on the European M&A market”, said M&A expert Peter Huber. The partner and head of the transactions team at CMS Reich-Rohrwig Hainz was one of the presenters of the Study. “The volume of the deals increased by about 5%, but the last quarter was very disappointing in Europe, showing a decrease of almost 30%. Nevertheless, our M&A Study showed a tendency towards a seller’s market”, he added.

On 22 May, a carefully selected number of guests were granted a preview of the highlights of the Study by CMS Reich-Rohrwig Hainz. The Study will be published in mid-June and will contain, just like the editions of the past three years, information about the design of those contract clauses which experience has shown to require especially intensive negotiations during M&A transactions. The Study also points out special features of the various European countries as well as differences between Europe and the US. For the first time, the Study discusses trends in the use of contract clauses in various industries.

**Methods of the Study**

The CMS European M&A Study 2012 is based on a thorough analysis of 1,350 transactions concluded between 2007 and 2011, roughly 330 of which are from 2011. The data used in the Study are not publicly available but were derived from deals in which CMS acted as an advisor to either the buyer or the seller.

If you are interested in the Study, please contact Kristijana Lastro ([presse@cms-rrh.com](presse%40cms-rrh.com)).

**Lively Panel Discussion on the Future of the M&A Market**

Following the presentation of the Study, a panel made up of renowned experts elaborated on the developments in the European M&A market from an entrepreneurial perspective. Herbert Cordt, Chairman of the Supervisory Board at RHI, Gilbert Frizberg, Chairman of the Supervisory Board at Verbund, Gottwald Kranebitter, Chairman of the Executive Board at Hypo Alpe Adria Bank International, Johannes Meran, Chairman of the Administrative Court at conwert, Alexander Pretzner, Managing Director at Citigroup Global Markets, and host Peter Huber discussed the future of the M&A market in Austria and CEE.

**M&A Market CEE**

Concerning this topic, the panellists held quite contrary views. While Hypo Alpe Adria CEO Kranebitter still sees great potential in CEE, regarding it as one of the key factors of Austria’s prosperity today, RHI Supervisory Board Chairman Cordt emphasised that the lack of (savings) capital formation in CEE would interfere with sustainable investment activities. He thus believed that steady, sustainable economic growth would be rather weak in the next years. Moreover, the various countries would be affected differently. The “big players” such as Poland and Russia would naturally continue to grow, a development he considered unlikely for the other countries. The question why not more M&A transactions took place despite the good liquidity of the companies was also discussed. The panel agreed that it was due to a lack of trust in the market, prompting companies to wait and hold on to their money reserves as a financial cushion. The M&A market would only start stirring again once the financial and banking crises were overcome.

**Dealbreaker: the CEO’s Ego**

The question in how far the ego of the participating actors played a role in transactions also produced intriguing insights. RHI Supervisory Board Chairman Cordt remarked that a big ego could get in the way of many things, including M&A transactions. A successful CEO needs a strong ego to lead a company and be able to make decisions. Yet this very confidence can play out negatively in negotiations over a transaction among two CEOs, ultimately even preventing a successful close of the deal.

**Failed Transactions: Bad Advisors or Bad Organisation?**

A spotlight was also put on the role of advisors in transactions. Verbund Supervisory Board Chairman Frizberg voiced his strong conviction that a transaction should only be entered with a clear picture of one’s expectations in mind. Moreover, negotiations should never be entirely left to the advisors, but be actively shaped by the company itself, which should ultimately make the decisions. Hypo Alpe Adria Executive Board Chairman Kranebitter pointed out that especially in large-scale transactions, renowned advisors with a proven track record of expertise were state of the art today. Yet all panellists agreed that a failed transaction was not due to bad advice, but in most cases had to be blamed on lack of organisation, communication and integration as well as management mistakes. conwert Administrative Board Chairman Meran asserted that in takeovers, the acquiring company and its management team had to set the tone and determine the procedure to follow.

**M&A Markets of the Future**

Asked where M&A activities could be expected in the near future, Citigroup Managing Director Pretzner pointed to the interest Asian buyers showed for the euro area. In this regard, the primary targets were likely to be the large markets of Europe (France, Great Britain, Germany), Austria would only be targeted **by buyers in a second** step. However, Austria’s successful activities in Eastern Europe constitute a significant reason especially for non-European investors to weigh their options in Austria.

**Also in Austria Now: Business Judgment Rule**

And finally, the panel scrutinised the issue of liability of board members in value-destroying transactions. In Austria and generally in Europe, courts very rarely had to deal with the question of liability of management and supervisory boards in M&A deals, CMS Managing Partner Huber reported, adding that potential liability cases were usually settled out of court. Concerning such liability questions, Austria was also influenced by the US “business judgment rule” which had already entered German stock corporation law. To be exempt from liability in company acquisitions and other discretionary decisions concerning business, the management of a company has to create an adequate basis of information. Due diligence thus gains an even greater significance in M&A deals.

For a free download of pictures of the event, please go to:
[http://sites.cms-rrh.com/downloads/events/120522/presse/index.html](http://sites.cms-rrh.com/downloads/events/120522/presse/index.html%20)

**Über CMS Reich-Rohrwig Hainz**

CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH wurde 1970 in Wien gegründet und entwickelte sich seitdem zu einem der führenden Spezialisten in allen Bereichen des Wirtschaftsrechts. Die Schwerpunkte der spezialisierten Teams mit international erfahrenen Juristen liegen in den Bereichen M&A, Banking & Finance, Real Estate, Steuerrecht, Arbeitsrecht, IP- und IT-Recht sowie Vergaberecht. Die Kanzlei hat eigene Büros in Wien, Belgrad, Bratislava, Brüssel, Kiew, Ljubljana, Sarajewo, Sofia und Zagreb. Gemeinsam bieten alle CMS Partnerkanzleien ihren Klienten ein Team von mehr als 600 erfahrenen Spezialisten in 13 Büros in der CEE/SEE-Region. [www.cms-rrh.com](http://www.cms-rrh.com)

**Über CMS**

CMS strebt danach, die beste Beratung in Rechts- und Steuerangelegenheiten in Europa anzubieten. Mandanten profitieren vom Fachwissen von 750 Partnern und 2.800 Rechtsanwälten, die in 52 Büros in 28 Ländern arbeiten. 2011 haben die CMS Partnersozietäten einen konsolidierten Gesamtumsatz von 766 Millionen EUR erwirtschaftet. [www.cmslegal.com](http://www.cmslegal.com/)

***Die zehn Mitgliedsfirmen von CMS sind:*** *CMS Adonnino Ascoli & Cavasola Scamoni (Italien); CMS Albiñana & Suárez de Lezo (Spanien); CMS Bureau Francis Lefebvre (Frankreich); CMS Cameron McKenna LLP (UK); CMS DeBacker (Belgien); CMS Derks Star Busmann (Niederlande); CMS von Erlach Henrici Ltd. (Schweiz); CMS Hasche Sigle (Deutschland) ; CMS Reich-Rohrwig Hainz (Österreich) und CMS Rui Pena & Arnaut (Portugal).*