

PRESS RELEASE

**CMS Reich-Rohrwig Hainz
Rechtsanwälte GmbH**
Gauermannngasse 2
1010 Vienna
Austria

cms.law

T +43 1 40443-4000
F +43 1 40443-94000
E presse@cms-rrh.com

Date 26th March 2018
Page(s) 4
Subject **CMS European M&A Study: Sellers take centre stage as European M&A deal value surges in 2017**

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

- European M&A witnessed a bumper year in 2017 compared to 2016, whilst global M&A activity fell by 3% in value and 1% in volume
- Sellers were more successful in shifting risk to buyers in private company M&A than at any time in the last decade
- Stark differences in seller/buyer risk allocation remain embedded in the US and European deal structures for private company M&A

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. Commenting on the positive figures, Peter Huber, partner and head of the Corporate Practice at CMS Austria, said: "The increase in European M&A transactions illustrates just how stable the Eurozone is on the back of solid GDP and job market data. This is largely attributable to the strong economies in Germany and France."

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. 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, Brunnschweiler said: "We are delighted to be celebrating the tenth anniversary of the European M&A Study. The insights obtained provide companies with a crucial benchmark before engaging in future deals. It showcases key risk allocation features like no other study of its kind."

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.

For more information click [here](#).

- END -

Contact:

Kristijana Lastro

Head of Marketing & Communications

T +43 1 40443 4000

E kristijana.lastro@cms-rrh.com

This and other press releases can be downloaded from our home page under cms.law.

About CMS Reich-Rohrwig Hainz

CMS Reich-Rohrwig Hainz is one of the leading law firms in Austria and Southeast Europe. Because we are specialists, our lawyers and tax advisors are able to provide you with advice of the highest calibre and sophistication, both from a legal perspective as well as through our industry specific know-how. Highly-specialised teams consisting of internationally experienced lawyers primarily provide services in the following fields of law:

M&A, banking and finance, real estate, construction law, taxes, labour laws, IP and IT laws, and public procurement.

We not only create sound legal solutions for you but also work to create pragmatic solutions, also with regards to your commercial goals. Our solutions correspond as much as possible to your company's business needs. We operate offices in Vienna, Belgrade, Bratislava, Brussels, Istanbul, Kiev, Ljubljana, Podgorica, Sarajevo, Skopje, Sofia and Zagreb. All CMS offices together offer clients a team of more than 600 experienced specialists in 15 offices across the CEE/SEE region. cms.law

About CMS

Founded in 1999, CMS is a full-service top 10 international law firm, based on the number of lawyers (Am Law 2016 Global 100). With 71 offices in 40 countries across the world, employing over 4.500 lawyers, CMS has longstanding expertise both at advising in its local jurisdictions and across borders. CMS acts for a large number of Fortune 500 companies and the FT European 500 and for the majority of the DAX 30. Revenues totalled EUR 1,05bn in 2016.

CMS provides a wide range of expertise across 19 expert practice and sector areas, including Corporate/M&A, Energy, Funds, Lifesciences, TMC, Tax, Banking and Finance, Commercial, Competition & EU, Dispute Resolution, Employment & Pensions, Intellectual Property and Real Estate & Construction.

For more information, please visit cms.law

CMS offices and associated offices: 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, Monaco, Montenegro, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Tehran, Utrecht, Vienna, Warsaw, Zagreb and Zurich.