
ECM Market Review – June 2018

Welcome to the first edition of the CMS ECM Market Review, a review of recent events in some of the key sectors which we focus on.

It's now just over a year since the merger which created CMS Cameron McKenna Nabarro Olswang and its benefits were clear when we were ranked as the most active legal adviser on IPOs, second most active overall and most active on AIM in the Perfect Information ECMi Report 2017. In its latest research, The Lawyer ranked CMS joint first, alongside Slaughter and May, by number of FTSE 100 clients based on deal, litigation and panel win data from the last 18 months. With our enlarged reach across core sectors, we have asked our expert teams to share their views on what is happening across these sectors.

At a more macro level, the first few months of 2018 have seen something of a slowdown in the market compared to the early part of 2017. Despite Q4 2017 seeing more pulled IPOs than during the rest of the year, in a sign of market indigestion, it still turned out to be an active quarter with more IPOs than during the same period in 2016 (though not quite matching Q2 2017's high). Q1 generally sees lower levels of activity, and this has again been the case, with Q1 2018 activity representing around 40% of total activity during the rolling six month period. As a result of generally softer market conditions, market volatility in late February, and the impact of the main corporate reporting season in March, market participants are reporting a number of IPOs and secondary issues which have seen timetables slip in the hope of impacting during more receptive market conditions later in the year. That said, Q2 has seen the launch of a number of sizeable secondaries. On a more positive note, M&A activity continues to remain strong, despite the weighing threats of Brexit and trade wars.

At a sectoral level, activity has been (and continues to be) highest in financials and listed funds, with a relatively evenly balanced spread across other sectors from oil & gas and tech, to leisure and retail. This has been reflected in the activity we have seen across the CMS team, where we have been advising on deals including Aquis Exchange's IPO, Galliford Try's £150m rights issue, ITE Group's £300m rights issue and acquisition of Ascential's exhibitions business, Mirriad's £63m IPO, PHP's £115m placing and open offer, and Smart Metering Systems' £150m placing.

In the following pages, we share our views on the following sectors:

- Energy & Infrastructure
- Financial Institutions
- Hotels & Leisure
- Life Sciences & Healthcare
- Listed Funds
- Media
- Real Estate

We hope you find this publication useful and welcome any feedback. If you wish to discuss any of its contents, please feel free to contact your usual CMS contact(s) or any of those listed in this publication.

Kind regards,



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Energy & Infrastructure

Asset appropriation and nationalisation of regulated utilities was first announced by the Labour Party in its 2017 manifesto. Since then, utilities and infrastructure funds have struggled to shake the market's perception of risk and that they might not receive full market value compensation.

For domestic investors, the UK rule of law is strong and in most cases the underlying legal agreements, human rights legislation and regulatory frameworks would provide protection for investors and grounds to challenge anything less than full market value compensation.

Interestingly, for foreign investors, of which there are many in the sector, there is additional protection by way of international trade agreements which are legally enforceable by international arbitration (although there would be an outcry if foreign investors were compensated more than domestic investors). We currently have a number of disputes, commercial and otherwise, where treaty protection is proving to be the claimant's best cause of action.

In this context, bilateral trade agreements and the energy charter treaty are the most relevant. The bilateral trade agreements were originally designed to protect UK investors abroad but reciprocity has meant that they now serve as a useful tool for foreign investors in the UK. The energy charter treaty specifically covers energy assets. However, not all countries have the benefit of these agreements/treaties, most notably the US, Australia, Canada and China. It is for this reason that we are now advising a range of clients on optimal investment routes into UK utilities and infrastructure. That said, it is difficult to see how any government of the day would withstand the wrath of expropriation of assets from investors in these particular countries without full compensation, but then it may be better not to have to worry too. In addition to optimal investment routes, there is also the question of re-domiciling and re-structuring to achieve similar improved protection.

Whilst foreign investors may enjoy enhanced protection under these agreements and treaties, there is still a balance to be struck with particular jurisdictions and offshore structures as we see public sentiment causing offshore infrastructure funds to move onshore to utilise the UK investment trust regime, such as John Laing Infrastructure Fund, whom we recently advised and whose shareholders approved the move.

CMS' Energy & Infrastructure team has been very active on both M&A and ECM transactions, with recent highlights over the last six months including:

- CityFibre's £538m acquisition by a Goldman Sachs and Antin consortium
- Dalmore and GLIL on the acquisition of a 15% stake in Anglian Water from 3i Infrastructure
- GE Energy and GIG (part of Macquarie) on the acquisition of a 650MW wind farm in Sweden
- Infracapital's £270m offer for Gigaclear
- Mainstream Renewable Power on the sale of the £1.8bn NnG offshore wind farm to EDF Energy Renewables
- Quad Gas group on an option to acquire 25% of Cadent Gas for £1.2bn
- Sequoia Economic Infrastructure Income Fund's £75m tap issue



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Financial Institutions

Our corporate team has extensive experience of advising banks, insurance companies, asset managers and other financial institutions on all types of corporate transactions, including acquisitions and disposals, strategic investments and joint ventures, capital raisings, internal reorganisations (including Part VII schemes) and the negotiation and realisation of fintech investments. We act on strategic assignments for several large UK banks, insurers and fund managers. We also act for a wider spread of market participants including challenger banks, smaller niche businesses and fintech disruptors.

Digitisation of financial products and processes has been moving apace, in part driven by competition in the market from newer entrants and to reduce cost bases more generally. It is now clear that digital platforms are, in particular, driving the banks strategically as they look to react to open banking and to down-scale their branch footprints. These developments have seen increased interest in technology and the banks and other financial institutions are looking at the burgeoning fintech sector both in the UK and elsewhere to boost their offerings and to simplify their processes. We have been involved in a number of initiatives in this space with our financial sector clients.

We have also seen an upturn of activity in response to Brexit. We are actively working with clients in the sector looking to come to terms with the changes that the UK leaving the EU will bring for them.

Recent deal highlights for the CMS Financial Institutions team include:

- Advising Charles Taylor on the US\$50.5m acquisition of Inworx and on a major new Lloyd's contract
- Advising Standard Life Aberdeen selling its insurance business to Phoenix Group for approximately £3.2bn
- Advising Royal Bank of Scotland Group on its acquisition of AIM listed FreeAgent for approximately £53m
- Advising ClearScore Technology on its £275m sale to Experian
- Advising on a £200m funding programme for ESF Capital and its operating subsidiary ThinCats



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Hotels & Leisure

Whilst recent ECM activity in the Hotels & Leisure sector has been relatively muted, with no IPOs on the Main Market in 2017, which reflects perhaps the challenges generally faced by businesses that are reliant on consumer spending, there has been activity on AIM and in the secondary market, including the £47m IPO of The City Pub Company, the premium pubs business founded by serial pub entrepreneurs Clive Watson and David Bruce.

On the secondary markets, two transactions which garnered significant public attention included Cineworld's fully underwritten rights issue to raise £1.7bn as part of its financing of the acquisition of Regal Entertainment and easyHotel's £50m placing to fund the acceleration of its owned hotel roll-out strategy.

Consistent with many other sectors, recent months have seen a significant number of M&A transactions globally within the Hotels & Leisure sector, with approximately 419 deals having an aggregate transaction value of over £40bn (Mergermarket). Of those, around 19 deals (valued at over £8.5bn) took place in the UK. One such transaction was Fattal Hotels', Israel's largest hospitality organisation, £800m acquisition of the hotel operating businesses and brand of the Jurys Inn Group, a deal on which CMS acted for Fattal Hotels. In the broader leisure sector, whilst news in the restaurant and casual dining sector has been dominated by the difficulties being faced by the likes of Byron, Jamie's Italian, Prezzo and Strada, there have been significant M&A deals in the entertainment sector, including Cineworld's US\$3.6bn reverse takeover of US rival Regal Entertainment, to create one of the world's largest cinema chains, and the completion by GVC of its £4bn acquisition of Ladbrokes Coral to create one of the world's largest sports betting and gaming groups.



The CMS Hotels & Leisure team continues to be active on transactions, with recent highlights including:

- Advising the shareholders and management of D&D London on the management buy-out backed by private equity firm LDC
- Advising the shareholders of high-end steak restaurant concept Hawksmoor on the sale of their stake in the business to private equity specialist, Graphite Capital, as well as advising Hawksmoor on its new restaurant concept "Foxlow"
- Advising Lone Star/Atlas on the sale of a portfolio of approximately 50 hotels in the Atlas Hotels portfolio (mostly Holiday Inn Express) for a sum in excess of £500m to London & Regional
- Advising Hard Rock International Limited on its hotel franchise agreement and collaboration with The Cumberland Hotel in London (a subsidiary of glh Hotels) to establish the Hard Rock Hotel, London

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Life Sciences & Healthcare

IPO activity in the UK equity markets for 2017 was reasonably quiet in the Life Sciences & Healthcare sector, with a report by PWC (IPO Watch Europe) showing the value of new IPOs in the UK to be significantly down from the previous year and the lowest by the sectors analysed.

However, there has been significant M&A deal activity in the sector. In the first quarter of 2018, globally announced M&A has reached \$156bn (Bloomberg) including GlaxoSmithKline agreeing to pay \$13bn for Novartis AG's stake in their consumer healthcare JV and Cigna agreeing to purchase Express Scripts for \$54bn. In the last six months in the UK market alone, around 45 Life Sciences & Healthcare related deals took place having a total transaction value of around £800m. In addition, Takeda has made a £46bn offer for Shire, which is expected to complete in the first half of 2019.

Healthcare transactional activity remains high, particularly in respect of deals relating to real estate. 2017 saw healthcare property deals worth £1.3bn, a significant 275% rise on the previous year (Knight Frank). 2018 has continued to see deals completing, albeit at the smaller (sub-£100m) end of the market, with a number of larger transactions, involving the likes of HC-One and Court Cavendish, having been announced or rumoured to be taking place.

CMS Life Sciences & Healthcare teams continue to be active on both M&A and ECM transactions, with CMS being recently ranked by Mergermarket as the leading law firm in Europe for the number of completed M&A deals in the Life Sciences & Healthcare sector.

The strong fundamentals of Healthcare Services businesses and the product innovations being developed by Life Sciences companies continue to make investments in the sector attractive – a trend which it is anticipated will continue through 2018.

Recent deal highlights for the CMS Life Sciences & Healthcare teams include:

Life Sciences:

- £34m share placing by Alliance Pharma
- £19.3m placing of shares and warrants in the UK and US by Realm Therapeutics
- US\$80m series C financing by Autolus Therapeutics
- £88m series B financing by Freeline Therapeutics

Healthcare:

- Primary Health Property's £115m placing and open offer
- Montreux Healthcare Fund's acquisition of complex care provider, Active Assistance Group
- AMP Capital's acquisition of mental health and learning disability care provider, the Regard Group

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Listed Funds

CMS Listed Funds team had a busy 2017 and has had an equally busy start to 2018. After a solid Q3 and start to Q4 in 2017, the year drew to a shaky close with a number of high profile fund launches failing to get away. The market has seen a mixed start to 2018, with a number of deals pulled at a late stage and even some of the successful closes have been considerably below target. Investor appetite has proven greater for secondary, follow-on issues than for new launches. Despite this uncertainty, deals continue to be announced.

In addition to our transactional work, CMS has been at the forefront of advising on the various regulatory issues currently affecting the market. We were pleased to see acknowledgements by the regulator of the shortcomings of PRIIPs KIDs but these acknowledgements are cold comfort when one is at the sharp end of considering liability issues relating to KIDs. Issuers making a direct offer to the public or an open offer have to provide a KID alongside the prospectus, with the risk that investors may focus on the 3-page KID to the exclusion of the 200 page prospectus.

We have also been working through the MiFID II Product Governance requirements with banks and managers. Since investment company transactions typically involve an offer to the public, banks' standard internal procedures (which typically envisage institutional placings only) may need adapting. It also needs to be clear who is doing the Product Governance analysis and who is preparing any EMT.

Recent transactions on which the CMS Listed Funds team has been involved include:

- Pershing Square Holding's \$300m reverse auction tender for its own shares
- RM Secured Direct Lending and RM ZDP PLC placing, intermediaries offer and share issuance programmes
- Sequoia Economic Infrastructure Income Fund's £75m tap issue
- Supermarket Income REIT's £65m equity raise
- Triple Point Social Housing REIT's C Share placing, open offer and offer for subscription



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Media

The past twelve months saw major changes to the global media landscape and 2018 is shaping up to be potentially even more transformative.

Disney looked to build on its recent winning streak of acquisitions by having an initial bid accepted for the film and TV divisions of 21st Century Fox. A fictional portrayal of Rupert Murdoch in London's theatre blockbuster, "Ink", won rave reviews from theatre critics and audiences in 2017 but it remains to be seen whether this bold corporate move will be greeted with similar acclaim, with some analysts suggesting it is a media monopoly too far that will ultimately lead to a reduction in consumer choice. Star Wars fans were possibly most excited at the prospect of the distinctive 20th Century Fox movie studio fanfare once again being reunited with Lucasfilm for one of the many new films planned by Disney in a galaxy far, far away. However, Comcast's unexpected competing bid means that Disney have had to increase its offer to more than \$73 billion in recent weeks, which may itself prompt a further revised offer from Comcast. A long mooted merger that did proceed was that between Time Warner and AT&T, despite a protracted antitrust case brought by the Department of Justice. The eventual approval of the deal means that "Ma Bell" is now in control of Turner Broadcasting, HBO and the Warner Bros. studio.



Both these moves form part of the wider strategy of "old media" giants in their efforts to combat the rapid advance of Amazon, Netflix, Facebook and Apple, all of whom continue to diversify their media portfolio by moving into original productions and bidding for TV rights to sporting events. The "millennial media" of Vice and Spotify commanded large investments, with the latter enjoying a successful listing on the New York Stock Exchange in April. In the advertising sector, Dentsu Aegis and WPP continued to be acquisitive but WPP's most recent annual results, coupled with the departure of founder Sir Martin Sorrell, indicated that competition from the likes of Google and Amazon was buffeting the advertising agencies' previously unassailable position.

At the start of 2017, few would have guessed that investigations by The New York Times and New Yorker, both long-standing print publications, would lead to hugely popular TV shows cancelled, film leads recast and the bankruptcy of the previously dominant Weinstein Company. No one can predict how that particular story will continue to change the broader corporate cultures of media companies.

The UK media sector did not experience such dramatic upheaval in 2017 but as Comcast and 21st Century Fox are also engaged in a separate bidding war for Sky, the relatively settled picture will not stay that way over the next twelve months. Sky's share price continued to be on an upwards trend and the proposed sale to either bidder was approved by the UK Government, albeit 21st Century Fox must sell Sky News as part of its bid due to media plurality concerns. It is still unclear whether Comcast will manage to thwart 21st Century Fox's long held plan to own the entirety of the satellite broadcaster and if its bid will add a further twist to its US battle with Disney to acquire 21st Century Fox. Netflix acquired Millarworld, a comic books company founded by Mark Millar, writer of some of the seminal books in a medium that continues to be the source of much of Hollywood's most popular film and TV output. As print continued to try to compete against free digital content, publications like Monocle and Esquire explored alternative revenue streams such as podcasting and live events, while the UK division of Time Inc., publisher of such venerable titles as Horse & Hound and Country Life, was sold to Epiris, a private equity house. Newspapers continued to operate in challenging conditions and Trinity Mirror acquired the Express Newspaper group from Richard Desmond, which resulted in the left leaning Daily Mirror becoming an unlikely stablemate of the Daily Express.

Recent highlights of CMS's media sector work include:

- Advising BT plc on its multi-year agency deal for BT to market and sell Sky's NOW TV service to BT TV customers. Under the deal, BT customers will be able to watch Sky content seamlessly as an integrated part of the BT TV platform
- Advising Numis Securities and Baden Hill in relation to the £63m AIM-IPO of Mirriad Advertising, the global video technology company and developer of native in-video advertising
- Advising clients such as All3Media, BBC Studios, Fremantle, ITV plc and Zinc Media Group plc on various acquisitions and investments
- Advising ITE Group plc on its £300m rights issue and acquisition of Ascential's exhibitions business

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Real Estate

The Government's unexpected proposal in the 2017 Budget to tax capital gains realised by non-UK resident investors in UK property, with effect from April 2019, sent shockwaves throughout the real estate industry.

Very broadly:

- Tax will be charged on gains made by non-residents on disposals of UK commercial property
- Non-UK companies and other bodies corporate will become subject to corporation tax and individuals will become subject to capital gains tax
- Tax will also apply to a disposal of a 25% interest or more in a 'property rich' entity which derives, directly or indirectly, 75% or more of its value from UK land



This represents a significant and dramatic change to the current regime, as only direct disposals of residential property are usually within scope. The Government's consultation on these proposals closed in February 2018 and it is due to respond in late summer 2018.

The changes are not immediately fatal to offshore holding structures as material stamp duty benefits may continue to arise from the indirect sale of a 'property rich' SPV. However, there may be a tipping point at which the capital gains tax cost outweighs the expected stamp duty benefit. Going forward, we expect institutional investors to favour onshore structures, with REITs being the potential winner from these changes. A REIT is tax exempt on its underlying property rental business and so, for an exempt investor, offers a tax profile equivalent to a direct holding.



CMS has a market leading REITs practice, with specialists in Tax, Real Estate, Corporate Finance, Banking and Regulatory. We advise almost half of all premium listed REITs and have led the sector since the introduction of the REIT regime in 2007.

CMS' Real Estate team continues to be active on both M&A and ECM transactions, with recent highlights including:

- Galliford Try's £150m underwritten rights issue
- RDI REIT's £161m acquisition of an 80% interest in a portfolio of flexible offices in Central London from Forum Partners, the Kailong Group and Office Space in Town
- Savills' acquisition of British Land's third-party property management portfolio and Cluttons' Middle East business

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