

PRESS RELEASE

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Pages 3

Subject CMS European M&A Study: M&A robust in 2016
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- In 2016, the number of deals in Europe remained constant, despite lower M&A value; Europe saw more deals than any other region, including North America
- European M&A will continue to provide opportunities in 2017 although buyers will be more cautious about risk allocation
- The Study looks at risk allocation including general trends, regional differences and deal size impact in more than 3,200 CMS deals

Brussels, 22 March 2017 – CMS, one of the top international law firms, has published its CMS European M&A Study 2017, in which it analyses more than 3,200 of its non-listed European public and private company deals. Generally, the deals climate in 2016 was similar in value and volume to 2014, a good year, but not as frothy as 2015. Q4 was the best quarter for 2016, with inbound deals into Europe exceeding the previous year by 36% in value terms. Asian investors remained highly interested in European targets. Overall in 2016, Europe saw more deals than any other region including North America.

Vincent Dirckx, Partner and Head of the CMS Corporate/M&A practice at CMS in Belgium, said, “Our new study shows that, in Benelux, 92% of deals contained basket provisions of which 91% provided for ‘first dollar’ recovery. The limitation periods for warranty claims were the shortest within Europe with just 8% of deals in Benelux having warranty periods exceeding 24 months. The study also reveals that earn-outs were at an unprecedented level in many territories during 2016. With 26%, Benelux recorded the second highest percentage of earn-out deals in the period covered by this Study.”

The Study reveals changes in risk allocation in 2016 compared with 2015. Stefan Brunnschweiler, Head of the CMS Corporate/M&A Group, commented, "Buyers are becoming more cautious. The 2016 results show all the signs of buyers taking on less risk and leaving more residual risk with sellers, reversing the steady trend in favour of sellers seen since 2010."

According to the Study, risk allocation issues differ according to deal size. Different norms apply depending on the size of the deal. For example: In the larger EUR 100m+ deals, earn-outs are rarer and liability caps are proportionately lower.

2016 also saw a record year for earn-outs in virtually every territory, with most buyers no longer prepared to pay a full price upfront. 22% of analysed deals had an earn-out component. The highest proportion of earn-outs were in innovative sectors such as Lifesciences (33%), TMC (28%), Consumer Products (26%) and Industry (26%). Earn-outs are almost three times as likely to be used in smaller deals under EUR 100m (23%) than in bigger deals over EUR 100m (8%).

The seller's liability cap which was on a downward trend in previous years has now stabilised. The three territories with the most number of deals have seen an increase in the number of deals where the seller's liability cap is more than 50% of the purchase price in 2016 compared with 2015: German-speaking countries (33% to 38%), UK (53% to 55%) and France (20% to 30%). Also, the limitation periods for seller liability have become longer, with a greater number of deals having limitation periods exceeding two years.

The Study additionally highlights differences in practice within Europe. In the German-speaking countries, earn-outs continued to be popular with 25% of deals containing earn-out provisions. In France, there were low liability caps with 70% of deals having a seller liability cap of 25% or less than the sale price. In the UK, deals with earn-outs almost doubled in popularity compared with 2015 (20% from 12%).

According to the Study, North American buyers will be increasingly incentivised to make deals at home, with growing opportunities in a newly protected and lower tax US environment. As the priorities of the new US administration become clear, specifically the "America First" policy, most commentators believe there will be a short to mid-term boom in US based M&A.

Stefan Brunnschweiler, "Since 2010, we've analysed thousands of our European deals across a number of sectors. The insights that we've gained have brought significant benefits to our clients when negotiating their M&A deals. While companies will still have to deal with business challenges such as digitisation and changing business models, they will also be faced with a certain amount of political uncertainty caused by the French, Dutch and German elections as well as the impact of Brexit this year. However, we believe that European M&A will continue to provide opportunities in 2017."

In the latest Study, CMS analyses over 3,200 deals, focusing on 443 CMS deals in 2016 and 2,045 CMS deals in the period 2010 – 2015. 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: cms.law/en/BEL/Publication/CMS-European-M-A-Study-2017.

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