PRESS RELEASE

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M&A panel 2017/II survey by CMS and FINANCE: Increasing risk of political intervention

Frankfurt/Main – The German mergers and acquisitions market continues to perform strongly and remains stable. There is an increasing risk of political intervention. M&A bosses are relying heavily on their own cash resources for financing. Those are the key findings of the latest survey of the M&A panel polled three times a year by commercial law firm CMS Germany and FINANCE magazine. The heads of the M&A departments at German companies plus leading investment bankers and M&A consultants provide anonymous assessments of the market for the survey.

More political intervention in M&A transactions

Many M&A managers in German companies feel that the risk of political intervention is increasing: 60% of respondents see a slight increase over the past five years, while 11% identify a very sharp rise. None of those polled regard political influence as declining. "We can confirm that considering the possibility of any intervention by the state and the associated risks is an increasingly important aspect when talking to our clients during the preparatory or initial stages of a transaction," said Dr Oliver Wolfgramm, Corporate partner at CMS.

The impact of state intervention is viewed as highly dependent on the particular sector. The survey found that corporate M&A managers see the defence sector (100%) and aviation (90%) as being particularly liable to such intervention. This represents the continuation of an established trend. "Defence-related transactions have been subject to special requirements in the past, starting at the due diligence stage," said Dr Thomas Meyding, Corporate partner at CMS.

Political influence as a transaction risk

Corporate M&A experts do not – as yet – wish to engage intensively with political bodies such as the Committee on Foreign Investment in the United States (CFIUS) ahead of M&A transactions. On an intensity scale from 1 to 10, respondents ranked themselves at 5.00 (10 = very intensive engagement). "In the final analysis, it is an additional regulatory transaction risk that must be carefully assessed in advance. If the parties are willing to accept this transaction risk, appropriate provisions on rights and obligations need to be incorporated into the agreement," said Thomas Meyding. "We see firms being increasingly willing to accept that a transaction might fail due to lack of clearance by the competition authorities."

In Germany, the Federal Ministry of Economics is responsible for reviewing foreign investment. The panellists have yet to reach a consensus view as to whether the existing legal options for monitoring and prohibiting foreign direct investment will also be tightened in Germany over the medium to long term. On average, corporate M&A representatives put the likelihood at 5.72 (10 = very likely). "We believe that no country in Europe will go it alone. Rather, discussions are revolving around supplementing existing EU law by giving Member States more leeway for blocking unwanted investors. Germany, France and Italy asked the EU Commission to address this matter in February," explained Oliver Wolfgramm.

Importance of bank loans as finance option declining

For corporate M&A chiefs, their own cash resources remain by far the most important financing instrument. They rate their importance at 8.17 (10 = very important financing instrument). The importance of bank finance continues to decline; the current assessment is 5.56. The importance of private equity is up slightly, at 3.78.

All respondents agree that diverging price expectations are the biggest deal breaker. With a rating of 6.89 among corporate M&A bosses and 6.00 for M&A advisors and investment banks, negative findings during due diligence are the second most important reason for negotiations to fail. "Due diligence has become more important again," observed Thomas Meyding. "For US investors in particular, extensive due diligence has always been important, but European companies are now also paying increasing attention to intelligent due diligence." The uncertain political environment is a factor in this respect, since in this situation no company boss wants to be open to the accusation of making technical errors in a transaction.

More projects for M&A advisors

M&A advisors continue to assess their own workload as above-average and are optimistic about the future. Compared with the February survey, project deal flow has risen slightly, both among consulting firms focusing on mid-caps and large caps and among those operating in the small-cap segment. The future level of project activity with deal signing taking place in the next three to eight months is also assessed as positive. Small-cap advisors see a rise from the current level of 1.71 to 1.95 (on a scale of –5 to +5, where zero (0) represents average project deal flow). Mid-cap and large-cap advisors are expecting a rise in project workload to 2.41, up from the current level of 2.00.

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