PRESS RELEASE

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M&A panel 2017/I survey by CMS and FINANCE: Companies focusing on transaction reliability

Frankfurt/Main – The German mergers and acquisitions market is in better-than-average shape. Political events on the world stage have so far not had any negative impact on deals. When considering M&A options, firms currently place particular value on transaction reliability. 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.

Companies seek exclusive negotiations

M&A chiefs from the corporate world have this year provided information about legal aspects of M&A negotiations for the first time. The results show that they attach great importance to transaction reliability and prefer to negotiate exclusively with target companies. Around a third of corporates wish to protect themselves against negative effects, with warranty and indemnity policies (W&I insurance) and MAC clauses gaining in popularity. "During contract negotiations, we are increasingly seeing buyers take up robust positions. Demands for exclusivity and MAC clauses are proof of this. Both of these demands are in the buyer's interests. Sellers are becoming more willing to at least negotiate on these points," said Dr Thomas Meyding, corporate partner at CMS.

Around 41% of the surveyed firms plan to spend more time on thorough due diligence. The focus here is on searching for suitable targets. The survey also shows that due diligence on selected risk areas has increased. "The latest buzzword is 'intelligent risk taking'. This involves defining the key areas for due diligence on the basis of the target's risk profile," explained Thomas Meyding. "Having said that, one topic is a regular feature of the list: compliance. Compliance due diligence is complex and poses a challenge for every buyer and their advisors."

Software and IT sector most attractive

On a scale of 1 (very unimportant) to 10 (very important), companies and M&A advisors alike state that deals are now driven primarily by a desire for faster growth (7.82 and 7.95) and to expand the existing product and technology portfolio (7.59 and 7.90). The M&A professionals in both camps also agree on the deal breakers. Transactions fail principally due to differing price expectations (7.94 and 8.00) and because the target company turns out to be less attractive than initially thought (7.06 and 6.38). While companies can practically ignore the finance environment as a deal breaker at present, M&A departments are becoming more concerned about the general economic situation. "The uncertain political situation in many countries has so far failed to have any immediate negative consequences for German M&A activity. But of course, strategic investors are considering very carefully whether and where they wish to invest and carry out major transactions, particularly in view of the forthcoming Brexit and the America First policy being pursued by Donald Trump," said Dr Oliver Wolfgramm, corporate partner at CMS. "Quite a few people believe that Germany, as an anchor of stability in Europe, will tend to become even more attractive for corporate acquisitions."

Transaction levels remain high, with M&A advisors and investment bankers believing that most mergers and acquisitions are currently taking place in the software and IT industry. On a scale of 1 (inactive) to 10 (very active), this sector is rated 7.90, indicating above-average prominence in the M&A market.

Weaker demand from outside Germany

The M&A activity of buyers from emerging markets has declined compared with the last survey. With a score of around 6.0 (10 = full agreement), fewer panellists than in the summer of 2016 agreed with the statement that buyers from emerging markets are currently very active in the German market. Agreement decreased by 6.8% among corporates, while for M&A advisors it was down 15.5%. "Chinese investor interest in European firms, and especially German companies, remains strong. Nonetheless, 2017 will fall short of 2016, which was a record year. There are several reasons for this: more stringent Chinese capital controls and the increasingly critical view being adopted by German and European politicians in relation to the acquisition of leading technology firms by Chinese buyers," said Oliver Wolfgramm. This more critical stance is also apparent in discussions around tightening up foreign trade legislation, he added.

Slight decline in workload

Even though M&A advisors still rate their own workload as above average, they are now bringing in rather fewer new M&A instructions than last year. Compared with the October survey, project deal flow has fallen slightly, both among consulting firms focusing on mid-caps and large caps and among those operating in the small-cap segment. Small-cap advisors assess the level of project activity with deal signing taking place in the next three to eight months at 1.78, while mid-cap and large-cap advisors put the figure at 1.94 (on a scale of –5 to +5, where zero (0) represents average project deal flow).

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