PRESS RELEASE

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**4th CMS European M&A Study demonstrates that 2011 was a seller’s year**

**In a review of 1,350 deals done between 2007 - 2011, CMS’ fourth annual M&A Study shows that, in terms of risk allocation between seller and buyer, 2011 was definitely a seller’s year.**

Peter Huber, Managing Partner and Head of the transaction team at CMS Reich-Rohrwig Hainz, comments “The good news for sellers is that the trend is moving in their direction. The fact that there are a few more buyers looking to do deals, particularly private equity houses with funds to invest, means that sellers were able to be more robust in their negotiations.

“For example, our deal analysis shows that there has been a steady reinstatement of pre-2008 standards with certain seller-friendly provisions such as lower liability caps and reasonably generous de minimis and basket provisions. In addition, the greater spread of locked box deals and growing acceptance of warranty and indemnity insurance provide more protection against downside risk than was the case even pre-2008.”

However, sellers did not have it all their own way and a number of buyer-friendly trends are also noticeable. Huber continues, “2011 also saw a significant rise in securing non-compete covenants from sellers and a greater concern about obtaining security from the seller against warranty claims. However, buyers are definitely looking more to price their risk and concentrate on thorough due diligence rather than drive hard bargains on deal issues such as seller liability limitations.”

Other observations that can be made based on the findings of the CMS European M&A Study 2012 are:

* Compared with the US, there remains little appetite overall for earn-out deals in Europe (only 14% in 2011) apart from deals in the TMT sector. Earn-out clauses quite often give rise to difficult negotiations and subsequent disputes. In Europe we more often see purchase price gaps being bridged by vendor loans or option arrangements.
* It is good news for sellers that general liability caps are lower than in previous years, with the majority of deals now having a liability cap of less than half the purchase price. It is interesting to note that caps in the US tend to be much lower. Buyers are more willing to agree a lower cap because their risk appetite has increased and they are undertaking more thorough due diligence prior to signing.
* There is a growing recognition of Warranty & Indemnity insurance as the solution for the warranty gap where the seller refuses to give warranties – for example in the case of financial sellers.
* Buyers were more cautious in 2011, with a higher proportion (42% compared with 37% in the period 2007-2010) obtaining some form of security – whether it be the use of an escrow account, retention or bank guarantee. This is strong illustration of the fact that in mergers & acquisitions, “cash is king”.
* Sellers were still able to resist material adverse change (MAC) clauses. Only 16% of deals in Europe contained one – a significant contrast to the US where the overwhelming majority (93%) of deals have MAC clauses.

If you are interested in the Study, please contact Kristijana Lastro (presse@cms-rrh.com).

**About CMS Reich-Rohrwig Hainz**

CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH was founded in Vienna in 1970 and has since emerged as one of the leading specialists in all areas of commercial and labour law. Highly-specialized teams consisting of internationally experienced lawyers primarily provide services in the following fields of law: M&A, banking and finance, real estate, taxes, labour laws, IP and IT laws, and public procurement. The company operates offices in Vienna, Belgrade, Bratislava, Brussels, Kiev, Ljubljana, Sarajevo, Sofia and Zagreb. All CMS offices together offer clients a team of more than 600 experienced specialists in 13 offices across the CEE/SEE region. [www.cms-rrh.com](http://www.cms-rrh.com)

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