

Your World First

C/M/S/

Law . Tax

CMS European M&A Study 2014

Sixth Edition

Table of contents

Introduction	3
Executive summary	4
Purchase price adjustment	7
Earn-out	10
<i>De minimis</i>	13
Basket	14
Liability caps	17
Warranty & Indemnity insurance	19
Limitation period for warranty claims	21
Security for warranty claims	22
Closing conditions	23
MAC clauses	25
Non-compete	27
Arbitration	29
Tax	31
Methodology	33
Key contacts	34
Where can I find CMS?	35

Disclaimer

The results of the Study and/or this report and the conclusions presented in the Study and/or this report do not necessarily reflect the views of any member of CMS, the lawyers or the support staff who assisted with preparation of the Study and/or this report. The Study and/or this report evaluated over 2,000 M&A transactions. Inevitably, there were many differences between the underlying agreements, and the vast majority of them were negotiated. In order to compare the results, individual provisions were categorised. When categorising the individual provisions, a degree of subjective judgment was necessary. Although certain trends can be deduced from the Study and/or this report, each transaction has individual features which are not recorded in the Study and/or this report and to which no reference is made. As a result, the conclusions presented in the Study and/or in this report may be subject to important qualifications that are not expressly articulated in the Study and/or in this report.

Anyone relying on the Study and/or this report does so at their own risk, and CMS and its members expressly exclude any liability, which may arise from such reliance.

CMS Legal Services EEIG ('CMS EEIG') owns the copyright for the Study and/or this report. Written consent from CMS EEIG is required to forward or publish the Study and/or this report. The Study and/or this report are/is protected by copyright and may only be used for personal purposes. The prior written consent of CMS EEIG is required for any reproduction, dissemination or other use (e.g. on the internet) of the Study and/or this report in whole or in part. When using the results of the Study and/or this report with the prior written consent of CMS EEIG, CMS must be cited as author.

The use and distribution of the Study and/or this report shall be governed by German Law. Place of jurisdiction is Frankfurt, Germany.

Introduction

We are delighted to present the CMS European M&A Study (the “Study”). This is our sixth annual study which means that we have now reviewed over 2,000 deals for the seven year period of 2007–2013, a period of prosperity, financial crisis, significant geopolitical changes, concerns about the Eurozone and, at last, signs of some sustainable recovery in Europe.

The CMS European M&A Study 2014 provides insight into the legal provisions of mergers & acquisitions (M&A) agreements, makes comparisons across Europe and with the US and identifies market trends. It evaluates private M&A agreements relating to both non-listed public and private companies in Europe for the seven-year period 2007–2013. Of the 2,068 transactions we analyse in the Study, 344 relate to 2013.

Particular highlights in our Study are the CMS Trend Index and Sector Focus described below:

- **CMS Trend Index** – for each of the aspects we report on, we provide a CMS Trend Index to illustrate a current fact or trend.
- **Sector Focus** – CMS has adopted for a number of years a sectoral approach and now we present risk allocation statistics within specific sectors. We provide 2013 sector statistics for a number of areas we report on, namely locked box deals, earn-outs, liability caps, limitation periods and MAC clauses.

The data used in the Study is not publicly available and is based on privately negotiated transactions in which CMS acted as an advisor to either the buyer or the seller. CMS is one of the few legal service providers with the capability to provide a European study of this kind due to its presence and market penetration in a wide range of jurisdictions across Europe.

We do hope that this Study helps you in your day-to-day M&A life. We are of course very interested in any suggestions, and would be more than happy to discuss and share any experiences you may have.



Thomas Meyding
Head of CMS Corporate Group

Key contacts

Austria

CMS Reich-Rohrwig Hainz
Rechtsanwälte GmbH
Gauermannngasse 2
1010 Vienna

Peter Huber

T +43 1 40443 1650
E peter.huber@cms-rrh.com

Belgium

CMS DeBacker
Chaussée de La Hulpe 178
1170 Brussels

Vincent Dirckx

T +32 2 74369 85
E vincent.dirckx@cms-db.com

CEE

CMS Cameron McKenna v.o.s.
Palladium, Na Poříčí 1079/3a
110 00 Prague 1
Czech Republic

Helen Rodwell

T +420 2 96798 818
E helen.rodwell@cms-cmck.com

CMS Reich-Rohrwig Hainz d.o.o.
Cincar Jankova 3
11000 Belgrade
Serbia

Radivoje Petrikić

T +38 1 11 3208 900
E radivoje.petrikic@cms-rrh.com

France

CMS Bureau Francis Lefebvre
1–3, villa Emile Bergerat
92522 Neuilly-sur-Seine Cedex

Jacques Isnard

T +33 1 4738 5500
E jacques.isnard@cms-bfl.com

Germany

CMS Hasche Sigle
Schöttlestraße 8
70597 Stuttgart

Maximilian Grub

T +49 711 9764 322
E maximilian.grub@cms-hs.com

Thomas Meyding

T +49 711 9764 388
E thomas.meyding@cms-hs.com

Italy

CMS Adonnino Ascoli & Cavasola
Scamoni
Via Agostino Depretis, 86
00184 Rome

Pietro Cavasola

T +39 06 4781 51
E pietro.cavasola@cms-aacs.com

The Netherlands

CMS Derks Star Busmann
Mondriaantoren – Amstelplein 8A
1096 BC Amsterdam

Roman Tarlavski

T +31 20 3016 312
E roman.tarlavski@cms-dsb.com

Portugal

CMS Rui Pena & Arnaut
Rua Sousa Martins, 10
1050-218 Lisbon

Francisco Almeida

T +351 21 0958 100
E francisco.almeida@cms-rpa.com

Russia

CMS, Russia
Gogolevsky Blvd., 11
119019 Moscow

David Cranfield

T +7 495 786 4000
E david.cranfield@cmslegal.ru

Spain

CMS Albiñana & Suárez de Lezo
Calle Génova, 27
28004 Madrid

Carlos Peña Boada

T +34 91 4519 290
E carlos.pena@cms-asl.com

Switzerland

CMS von Erlach Poncet
Dreikönigstrasse 7
8022 Zurich

Max H. Albers-Schönberg

T +41 44 2851 111
E max.albers@cms-vep.com

United Kingdom

CMS Cameron McKenna
Mitre House
160 Aldersgate Street
EC1A 4DD London

Martin Mendelssohn

T +44 20 7367 2872
E martin.mendelssohn@
cms-cmck.com

Where can I find CMS?



CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Geneva, Hamburg, Istanbul, Kyiv, Leipzig, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Mexico City, Milan, Moscow, Munich, Paris, Prague, Rio de Janeiro, Rome, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

www.cmslegal.com