

CMS EUROPEAN M&A SURVEY 2009

EXECUTIVE SUMMARY



ABOUT THE SURVEY

The CMS European M&A Survey evaluates M&A agreements for 494 transactions of both public and private companies in Europe in 2007–2008.

The data used in the Survey is not publicly available and is based on transactions in which a member of the CMS organisation acted as an advisor to either the buyer or the seller. CMS is an organisation of independent European law and tax firms and therefore 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.

The data has been divided for comparative purposes into six European regions as follows:

- United Kingdom
- German speaking countries: Austria, Germany and Switzerland
- France
- Benelux: The Netherlands and Belgium
- Central and Eastern Europe (CEE): Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Russia, Slovakia and Ukraine
- Southern Europe: Italy and Spain

Transactions included in the Survey cover all business sectors, including:

- Finance and Insurance
- Industry
- Energy
- Consumer Products
- Technology, Media and Telecommunications
- Lifesciences

KEY CONCLUSIONS

Buyers in M&A transactions were more risk adverse in 2008. This was reflected not only in valuations and pricing, but also in sales contract provisions which shifted risk to the seller. This risk reallocation was significant but not dramatic in 2008, although we expect this to become more pronounced in 2009 as buyers demand – and receive – more favourable acquisition terms.

The following points (among others) support this notion:

- Earn-outs (i.e. deals in which the purchase price is dependent on the future performance of the target business) became more popular. Indeed, 17% of relevant deals in the fourth quarter of 2008 included these provisions, compared to just 9% in the first half of 2008.
- Material Adverse Change or MAC clauses (which give the parties – usually the buyer – the right to rescind a transaction in the case of a material negative event) nearly doubled to 21% in the second half of 2008 compared to 11% in the first half of 2008.
- Time periods for general warranties became lengthier – 31% of deals in the second half of 2008 compared to 19% in the second half of 2007 had warranty claim limitation periods exceeding 24 months.

KEY FINDINGS

The Survey reveals significant differences in M&A customs and market practices within Europe, including for example:

- In the UK, purchase price adjustment mechanisms were more frequent (66% of deals compared to 53% for the rest of Europe). Deals were much less likely to be conditional and much more likely to have simultaneous signing and effective transfer (59% / 26%).
- In German speaking countries, escrow accounts or any other form of withholding portions of the purchase price were less common (32% of deals compared to 53% for the rest of Europe).
- In France, non-compete provisions exceeding 30 months were very unusual (12% of deals compared to 27% for the rest of Europe).
- In Central and Eastern Europe (CEE), general warranty periods tended to be longer than two years (40% of deals compared to 27% for the rest of Europe).

Compared to the US (according to data published by the ABA), there are also notable differences in European M&A deals:

- Material Adverse Change clauses were much more popular in the US than in Europe. MAC clauses were used in 78% of the deals in the US compared to just 17% of the deals in Europe.
- Working capital adjustments were by far the most common form of purchase price adjustment in the US. It was used in 68% of the deals in the US compared to just 24% of the deals in Europe.

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