C'M'S'

Law . Tax

CMS European M&A Study 2011

//

Table of contents

//

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 1005 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.

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

Introduction and methodology

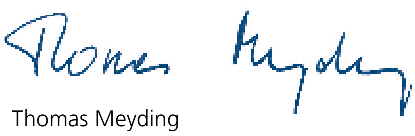
Introduction

We are delighted to present the CMS European M&A Study 2011 (the 'Study'). We are encouraged by very positive feedback from M&A practitioners. To them, the Study is an important source of information for their daily M&A practice. This is our third annual study which means that we have now reviewed over 1,000 deals spanning the very dramatic period of 2007–2010, a period of prosperity, financial crisis and slow recovery. M&A has been affected, not only in the size and number of deals done, but also in the realignment of contractual risk allocation. In last year's CMS European M&A Study we saw the effect of a buyer's market. Now we see the first signs that sellers are regaining some ground in terms of offloading contractual risk onto buyers.

The CMS European M&A Study 2011 provides insight into the legal provisions of M&A agreements, makes comparisons across Europe and with the US and identifies forward-looking market trends. It evaluates M&A agreements for over 1,000 transactions relating to both non-listed public and private companies in Europe for the four-year period 2007–2010. About 300 transactions relate to 2010. In this Study, we believe that it is no longer relevant to trace what happened only by reference to the 2008 financial crisis. We have analysed new developments which are emerging, such as more locked box deals being done across Europe. We also see signs of the US influence on European deals with a slight upward shift in the number of deals with no *de minimis* provision and with warranty recovery on an excess only basis. For the first time clauses relating to tax indemnification have been evaluated.

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 an organisation of independent European law and tax firms and 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

Methodology

The Study includes deals which were structured either as a share sale or an asset sale, including transactions where a seller held less than 100% of the target company's share capital, provided this represented the seller's entire shareholding in the target company. The Study also includes property transactions which involved the sale or acquisition of an operating enterprise such as a hotel, hospital, shopping centre or comparable business, and not merely a piece of land. Internal group transactions were not included in the Study.

The data has been divided for comparative purposes into four European regions. The countries included in each of these regions are as follows:
- Benelux: The Netherlands and Belgium
- Central and Eastern Europe (CEE): Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Russia, Slovakia and Ukraine
- German-speaking countries: Austria, Germany and Switzerland
- Southern Europe: Italy and Spain

France and the United Kingdom are presented as individual categories.

Transactions included in the Study cover all business sectors, including:
- Financial Institutions (Finance and Insurance)
- Energy & Utilities
- Hotels & Leisure
- Consumer Products
- Technology, Media and Telecommunications
- Infrastructure & Project Finance
- Lifesciences
- Real Estate & Construction

Comparative data from the US was derived from the 2009 Private Target Mergers & Acquisitions Deal Points Study reporting on transactions completed in 2008 and produced by the Mergers & Acquisitions Market Trends Subcommittee of the Mergers & Acquisitions Committee of the American Bar Association's Section of Business Law.

References to percentages (%) are to percentages of deals across the four-year period 2007–2010 unless otherwise specified.

Where time trends are displayed in a graph as a red line, this line constitutes a linear trend.