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The International Comparative Legal Guide to:

Mergers and Acquisitions 2015

9th Edition

A practical cross-border insight into mergers and acquisitions

Published by Global Legal Group, with contributions from:

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URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd.
March 2015

ISBN 978-1-910083-35-2
ISSN 1752-3362

Strategic Partners

ECLA – European Company Lawyers Association

FSC – MIX – Paper from responsible sources – FSC® C013262 – www.fsc.org

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Mergers & Acquisitions*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of mergers and acquisitions.

It is divided into two main sections:

Four general chapters. These are designed to provide readers with an overview of key issues affecting mergers and acquisitions, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in mergers and acquisitions in 55 jurisdictions.

All chapters are written by leading mergers and acquisitions lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Hatchard of Skadden, Arps, Slate, Meagher & Flom (UK) LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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M&A Trends and Outlook for 2015

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Introduction

With a total deal volume of over $3.3 trillion, 2014 was the best year for global M&A since the financial crisis. Seeing only 11.8% less deal activity than 2007, deal value in 2014 increased by 44.7% from 2013, according to Mergermarket. The principal deal drivers of 2014, such as low borrowing rates and strong capital markets, have been in place for a number of years. However, 2014 saw the return of increased management confidence in M&A as a way to create growth. We believe this confidence will continue in 2015. Although 2015 has begun with some unsettling headlines, including the continuing decline in oil prices, a worsening of the situation in Ukraine and renewed concern over the euro triggered by elections in Greece, we remain optimistic 2015 will bring strong M&A activity, in part because in 2014 investors proved surprisingly resilient in the face of bad news (crises in the Middle East and Ukraine, and the Ebola outbreak in West Africa).

Cross-border Transactions

Cross-border transactions were a major deal driver in all markets during 2014, and we anticipate this will continue in 2015. The U.S. saw a very high number of foreign acquirors, especially Europeans, purchasing U.S. targets. Acquisitions of U.S. targets by European investors more than tripled from 2013, including several high-value deals such as Merck's acquisition of Sigma-Aldrich for $17 billion. Although the European economy remained weaker than the U.S. economy, cross-border transactions into Europe continued at record levels. Cross-border transactions also played a significant role in the Asia-Pacific region, where foreign investment into the region continued to grow as American and European buyers snapped up Asian targets for rising prices. Asian buyers also increased their number of cross-border acquisitions, although the value of these transactions grew more slowly than the volume. Looking forward, we anticipate continued cross-border M&A activity in all markets. Weaker European economies and renewed euro uncertainty may cause some foreign investors to think twice about acquiring European targets, however we do not expect a significant decline, because Europe's large profit pool has allowed relatively stable cash flows, despite weaker economies.

Mega Consolidations Returned

Megadeals returned in 2014, with 21 deals valued at more than $10 billion, a 75% increase from the 12 deals valued at over $10 billion in 2013, according to Dealogic. The U.S. telecommunications industry led the way with massive mergers between Comcast and Time Warner, in a deal valued at $70.7 billion, and AT&T and DirectTV, in a deal valued at $67.2 billion. Megadeals, however, were not limited to the U.S. telecommunications industry. Other industries also saw industry-reshaping transactions such as European cement powerhouses Holcim and Lafarge's merger valued at $39.6 billion, and energy giants Halliburton and Baker Hughes's combination valued at $38.0 billion. As discussed below, the pharmaceutical industry saw several megadeals occur and some particularly large transactions fail due to changes in regulation. Industry-reshaping consolidations look likely to continue in 2015 as many industries remain in need of consolidation. This is especially true in the telecommunications industry where companies are seeking to increase customer loyalty by providing all their telecommunications needs, creating a need for mergers – such as the acquisition of EE, a mobile phone provider, by BT, a provider of fixed-line phones, internet and cable, announced in December 2014.

Connected to megadeals, 2014 saw an increase in the amount of time it took to close deals. While the sheer complexity of some megadeals delayed closing, other deals have been held up by heightened regulatory review as competition regulators, including in the U.S., Europe and China, have closely examined deals. In addition to regulatory scrutiny, megadeals face increased political scrutiny. In the wake of the Kraft/Cadbury merger, UK politicians have taken a more active role in relation to M&A, as was shown in the case of the Pfizer/AstraZeneca proposed combination. Increased political scrutiny is a feature of large M&A transactions that we believe will continue in Europe, including the UK, as well as elsewhere.

Strategic Spin-offs and Divestures

While some companies are consolidating, others are divesting or spinning off assets; often in the face of or to prevent activist shareholders challenges. Even for large widely held companies, the threat of activist shareholder battles has led corporate directors and managers to constantly assess corporate assets, brand and strategic vision, especially in the U.S. This focus on the company's core business can lead to the divestments of poor-performing assets or tangential business segments. In October 2014 Hewlett-Packard announced its intention to separate its printer and laptop computer divisions, and eBay announced its intention to spin-off PayPal; both companies argued the changes would allow for better management of segments facing different growth profiles. We anticipate divestment and spin-offs to continue as corporate management and boards attempt to fend off activist shareholders by focusing on growing their corporations' core business.

Tax Inversions

Tax implications have always played a role in mergers: historically companies have sought to reduce costs as well as acquire new assets through deals. Controversially, 2014 saw governments take an active interest in tax inversions, culminating in a change in tax regulations in late 2014 that led to the failure of a number of transactions, including notably Abbvie's proposed acquisition of Shire. Treasury's move slowed, but did not completely stop, tax inversions, with Medtronic becoming an Irish company through its merger with Covidien after Treasury announced the new rules. The largest pharmaceutical deal of the year, the Actavis/Allergan merger, highlighted the advantages held by companies that successfully completed tax inversions. Actavis became an Irish company after a tax inversion in 2013 and its more efficient structure allowed it to offer $66 billion to acquire Allergan. Although tax inversions may be less of a deal driver in 2015 because of the Treasury Rules, transactions that are supported by sound strategic considerations and enhanced by tax benefits of inversions permitted by the Treasury Rules will continue, in our view.

Focus on Oil Prices

The energy sector saw over $409 billion in deals in 2014, making it the leading industry for M&A, according to Mergermarket. However, late 2014 saw the industry plunge into turmoil as crude oil prices rapidly declined. Some investors suffered significant losses, especially private equity funds which had invested heavily in oil, betting on continually increasing demand and rising prices. Despite these losses, we do not foresee the end of energy M&A in 2015. Declining oil prices are likely to increase the pressure on oil companies to consolidate, in fact several months after prices began to decline, Halliburton and Baker Hughes announced their merger, the second-largest oil and gas deal of 2014. In addition, private equity has not been completely driven away by some funds' losses; several funds are looking to buy, as they anticipate bargains.

Private Equity Rebounding

Although private equity transactions have yet to return to the volume seen in 2007, 2014 was a good year for private equity. Mergermarket reports private equity exits, through sales and IPOs, were at an all-time high in 2014, up 71% from 2013. However, private equity acquisitions have not kept pace with the exits, rising only modestly from 2013 to 2014. The rapidly rising stock market played a role in slowing private equity acquisitions in 2014 because it made potential targets difficult to value. Looking to 2015, the predicted slower growth in the stock market, coupled with continued low interest rates, could lead to a return to 2007 levels of private equity M&A. A sign of the good times to come may have been the highly contentious December 2014 auction for Petsmart, producing the largest leveraged buyout of the year, valued at $8.7 billion.

Conclusion

The growing U.S. and UK economies, coupled with strong financial markets and continued low interest rates, even with the signals from the U.S. Federal Reserve that interest rates will increase, will support a high level of deal activity in 2015, because companies will continue to look globally for growth and innovation, and to drive core business growth through strategic acquisitions and divestments. Therefore we expect M&A activity in 2015 to be varied and diverse.

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Mr. Simpson's European M&A assignments have included representing: AAR in the $56 billion sale of TNK-BP to Rosneft; Outokumpu in a business combination involving the $3.5 billion acquisition of Germany's ThyssenKrupp's stainless steel unit; Colfax Corporation in its $2.4 billion acquisition of Charter International plc; Fresenius SE, in its agreement to acquire APP Pharmaceuticals Inc for $5.6 billion; Basell Polyolefins in its $22.2 billion acquisition of Lyondell Chemical Company; International Paper in its acquisition of a 50 percent equity interest in Ilim Holding; and Tele Atlas N.V. in connection with an agreed takeover proposal from TomTom N.V. and an unsolicited takeover proposal from Garmin Ltd.

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Lorenzo Corte concentrates in cross-border mergers and acquisitions, including contested takeovers, private sales and acquisitions, and joint ventures. His M&A assignments included acting for: LetterOne in its $5.81 billion acquisition of RWE AG's oil and gas unit Dea; Assicurazioni Generali in connection with its $3.3 billion acquisition of the stake in its joint venture with PPF Group it did not already own; Altimo in connection with its acquisition of $3.6 billion of shares in VimpelCom from the Sawiris family and, previously, Vimpelcom Limited's $7 billion acquisition of the assets of Weather Investments S.p.A.; Portugal Telecom SGPS SA in the $9.8 billion acquisition by Telefónica S.A. (Spain) of Portugal Telecom's 50 percent stake in Vivo Participacoes S.A. (Brazil); and Arcelor in its defence against an unsolicited $22.8 billion bid from Mittal Steel Company NV and in their subsequent $33.8 billion merger.

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