December 2008

IT Sector M&A Spotlight

A mergermarket report in association with Morrison & Foerster and Updata Advisors

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Foreword

Morrison & Foerster and Updata are pleased to present the IT Sector Spotlight in association with mergermarket.

Uncertainty has reached a fever pitch since the onset of the financial crisis. M&A faces a diverse mix of obstacles, including financing difficulties and a dried up IPO market, which make it difficult to speculate on the year ahead. These conditions are bound to influence M&A activity in the IT sector, and so it is not surprising that 55% of respondents expect activity in the sector to decrease, while only 25% expect an increase.

At the same time, however, respondents point out that M&A activity in the sector has strong fundamentals guarding it against the downturn. 82% of respondents expect M&A to stem primarily from large-cap companies vying for global leadership. Microsoft's repeated attempts to acquire Yahoo! earlier this year never crystallized into a deal and speculation over a potential takeover has since died down. But the resignation of co-founder Jerry Yang has placed Yahoo! back into the spotlight. With several attractive assets under its belt, such as its search engine unit, Yahoo! may still be a target in the year ahead, albeit as a very different transaction from the one originally expected.

IT companies' desire for expansion and innovation is indeed expected to translate into a greater appetite for acquisitions. Respondents from all three regions say they will aim to acquire new products and services in the year ahead, and also to increase market share for their current products and services. These two separate goals will together drive acquisitions for 85% of Asian respondents, 80% of North American respondents and 65% of European respondents

In fact, this trend is already beginning to surface. Microsoft, for example, looked to Silicon Valley when it wanted to enhance its search engine unit. In May, Microsoft announced it would acquire Powerset, a California based search technology company with natural language processing technologies that make searches more transparent. The deal will allow Microsoft to strengthen its search engine portfolio to compete with search engine powerhouses like Google and Yahoo!

Microsoft is not the only company moving into new markets by way of M&A. In March, America Online Inc. announced its $850m bid for global social networking portal Bebo. The deal bears a striking resemblance to Microsoft's $240m bid for a 1.6% stake in Facebook, as the deals will position the bidders, both industry giants, to benefit from potential ad dollars associated with online communities. IT companies are attracting interest from beyond the sector also. In October of 2007, Providence Equity Partners, a US based private equity firm, acquired a 10% stake in Hulu LLC, a joint venture formed by News Corporation and NBC Universal which provides television content on the web.

The IT sector is still facing harsh economic realities. 20% of respondents believe the attractive pricing of IT targets will drive M&A in the year ahead, however securing financing for these targets will be a challenge in the upcoming year. Additionally, attractively priced targets in the US, where respondents expect to see the highest volume of inbound deals, often depend on the weak valuation of the US dollar; now that the value of the dollar is growing stronger, it is unclear whether this trend will play out.

Uncertainty aside, the strength of key subsectors within the IT industry is expected to keep M&A activity buoyant. Respondents expect companies providing crucial IT services, such as Internet security and fraud protection, to remain prime targets in the upcoming year.

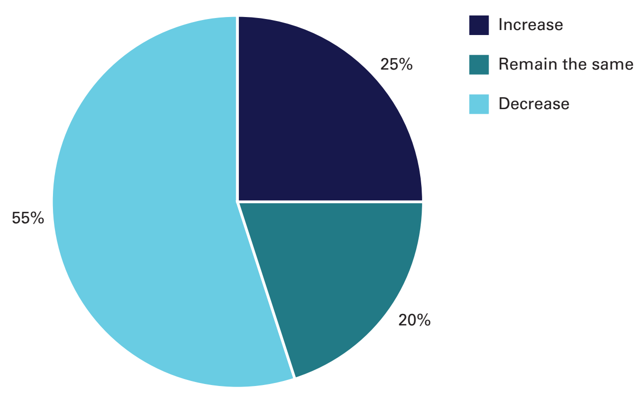
In spite of economic conditions which are driving activity downward in other sectors, respondents' outlook for M&A is cautiously optimistic for the year ahead. Respondents across all three regions offer unique perspectives on the direction M&A will take in the upcoming year, all of which reflect the realities of an uncertain, post credit crisis environment. While respondents are certainly reluctant to expect an increase in M&A activity in any sector, the IT sector does appear to be well positioned to buck the trend of declining M&A activity. With a string of significant deals in place for the upcoming year, M&A prospects look strong in the rapidly changing IT sector, which still contains a fair amount of uncharted territory. We hope you find this survey interesting and informative, and we welcome your feedback.

Methodology

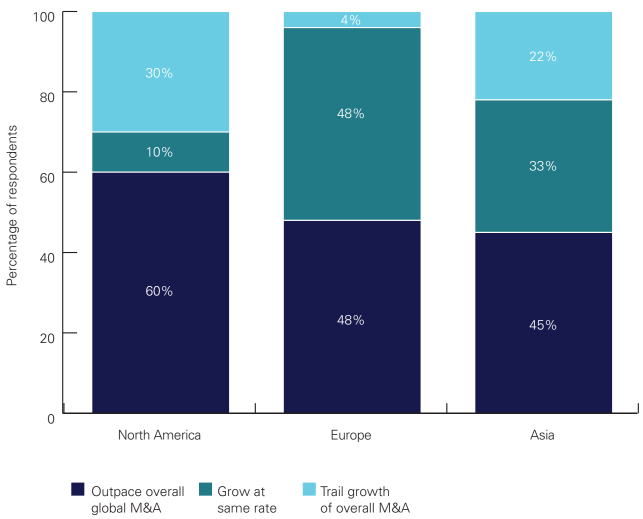
Morrison & Foerster and Updata Advisors commissioned mergermarket to survey senior executives in the IT sector in the North American, European and Asia Pacific regions. During the third quarter of 2008, mergermarket interviewed senior executives in the sector regarding their perspectives on M&A in the IT sector, as well as M&A trends to expect in the upcoming year. All results are anonymous and presented in aggregate.

Survey Findings

Given the recent financial crisis, what do you expect to happen to the overall levels of global M&A in the IT sector?



How do you expect IT M&A to grow relative to global M&A?

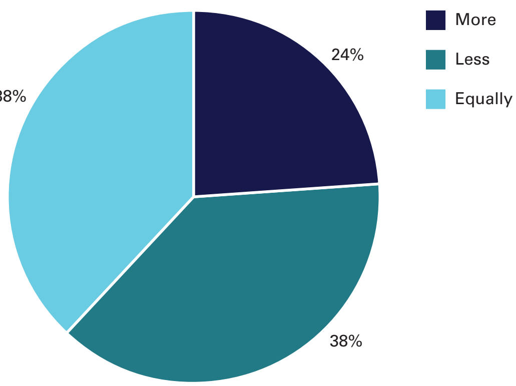


- The majority of respondents expect to see a decrease in M&A activity in the IT sector. Still, a quarter of respondents believe M&A in the sector will actually increase in the midst of the financial crisis. One respondent explains that some firms will be more acquisitive than others: "The larger players will be hit harder, but if they are financially solid they will have opportunities to acquire."

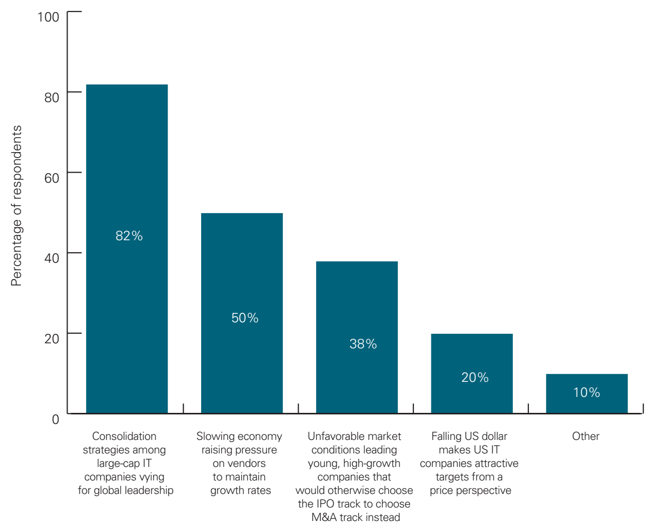
- The majority of overall respondents expect M&A in the IT sector to either match or outpace global activity levels. North American respondents are the most optimistic, with over half (60%) expecting IT sector M&A to accelerate faster than global M&A.
- European respondents are the least likely to forecast slow M&A growth in the IT sector relative to M&A growth globally. Only 4% of European respondents expect IT sector M&A to trail global M&A, compared to 30% of North American respondents and 22% of Asian respondents.

Survey findings

Do you expect the IT sector to be more, less or equally affected by the current financial crisis compared to other sectors?



What do you expect will be the top two drivers of global M&A activity in the IT sector in the coming year?

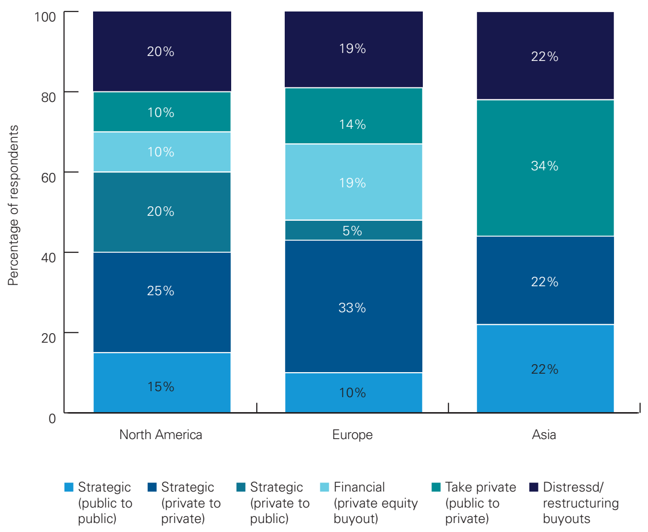


- Respondents are divided: an equal percentage of respondents (38%) expect IT firms to be less affected or equally affected by the financial crisis compared to other sectors. A comparable 24% believes the IT sector will be more affected than other sectors.
- Of those who expect IT to be less impacted, most respondents refer to technology's role in cost-cutting. In an effort to cut costs, "firms will look towards IT to cut operating costs and achieve higher productivity," explains one respondent. Another respondent agrees: "IT will still have a level of investment as it will help drive productivity and lead the recovery."

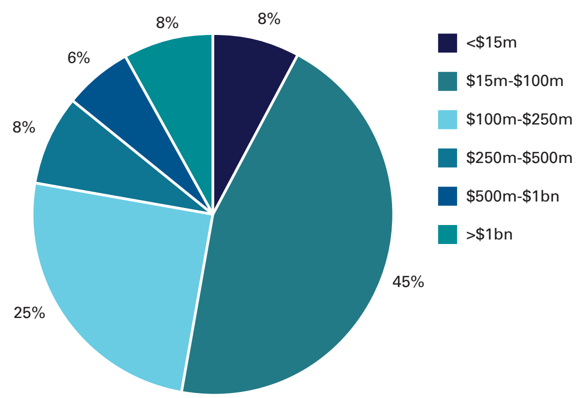
- The overwhelming majority of respondents expect consolidation among large-cap IT companies to be the main driver of M&A activity in the sector this year. In order to keep a competitive edge, some of the biggest global players may need to acquire smaller firms for access to a wider range of services. Indeed, one respondent cites "competitive pressure" as a major driver in this respect. Similarly, another respondent explained that companies will be driven by the prospect of moving into new consumer markets: "The desire for a software or product company to be able to opt for a wider range of services outside of their traditional market is a major factor."
- Broader economic factors are expected to carry a lot of weight as well. In fact, respondents tend to see the slowing economy as a deal driver. 50% of respondents expect to see vendors who feel pressured by the slowing economy to use M&A as a way of maintaining growth rates. Similarly, 38% of respondents expect M&A to serve as an attractive alternative to an IPO for strong companies facing a down market, while 20% expect the weak US dollar to fuel M&A by creating cheap targets.

Survey findings

What type of M&A deal do you expect to see most in the upcoming year in the IT sector?



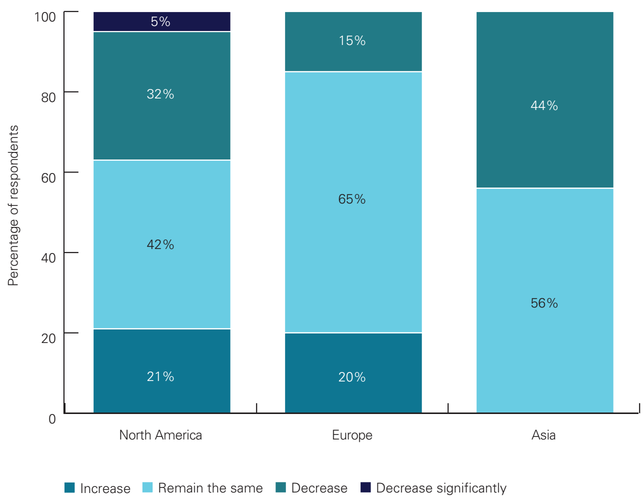
Within what deal size range do you expect to see the most M&A activity in the IT sector this year?



- Asian respondents constitute the only group that does not expect financial buyers to play a role in the year ahead. Additionally, 34% of Asian respondents expect to see predominantly take private deals in the upcoming year, more than triple the percentage of North American respondents (10%) and European respondents (14%).
- 60% of North American respondents expect strategic deals to dominate deal volume in the next 12 months, while there was no majority among European and Asian respondent groups.
- 86% of respondents overall expect deals to fall within the mid-market range ($500m or less) in the upcoming year. Within this range, the largest percentage of respondents (45%) expect deals to fall between $15m-$100m and a quarter of respondents expect deals to fall between $100m-$250m, still significantly less than the upper end of the mid-market. This could stem from the difficult lending environment, which has turned many buyers toward cheaper targets, or, as one respondent explains, "the decreasing valuation of IT companies." The regional breakdown of responses did not differ materially from the overall responses.

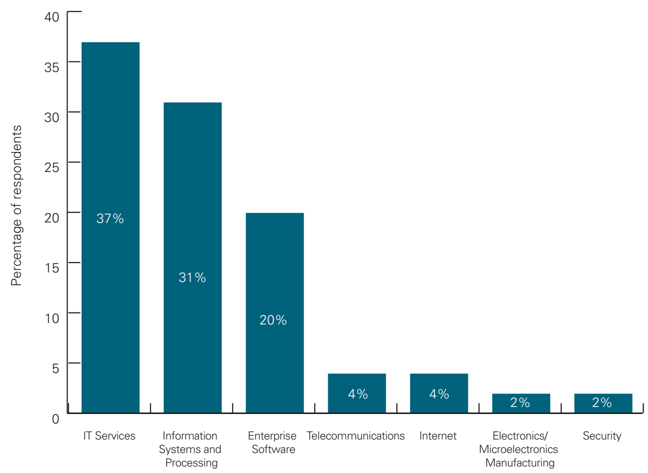
Survey findings

What do you expect to happen to valuations of companies in the IT sector in the next 12 months?



- Overall, the majority of respondents do not expect valuations to change in the upcoming year. Asian respondents are least optimistic, with the highest percentage of respondents (44%) expecting a decrease and no respondents expecting an increase.
- North American and European respondents, on the other hand, contained a small but approximately equal amount of respondents expecting an increase, with 21% and 20% respectively. North American respondents are also more than twice as likely to expect a decrease in valuations than European respondents, with 37% and 15%, respectively.

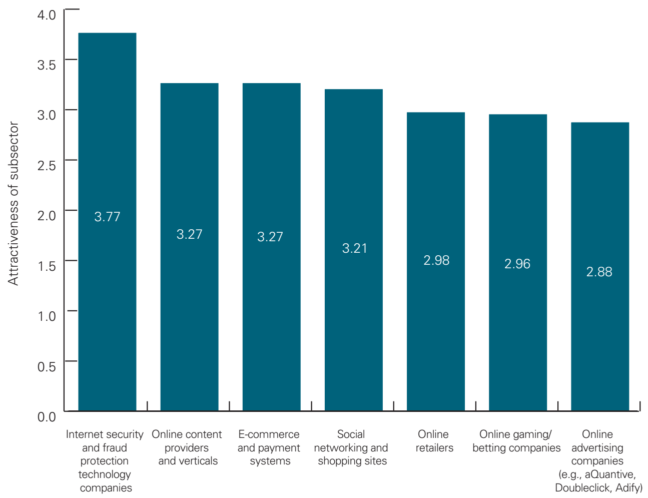
In which IT subsector do you expect to see the most M&A activity in the next 12 months?



- Three subsectors are expected to generate the most M&A activity in the upcoming year. The highest percentage of respondents (37%) expects IT Services to attract the most deals, followed by Information Systems and Processing (31%) and Enterprise Software (20%).

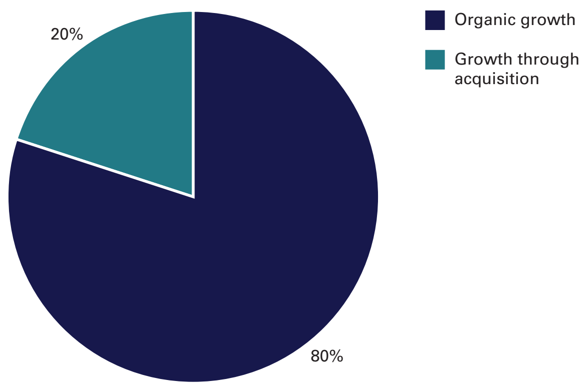
Survey findings

In the Internet subsector specifically, how attractive will the following target companies be in the next 12 months? (Where 1= not attractive at all and 5 =extremely attractive)



- Respondents expect Internet security-focused companies to attract the most attention from buyers in the year ahead, perhaps mirroring the growing concern over Internet security and fraud protection. In spite of recent acquisitions in the social networking space, such as America Online's $850m buyout of Bebo Inc., and Microsoft's investment in Facebook Inc. last year, overall respondents found social networking and online shopping targets relatively less attractive.

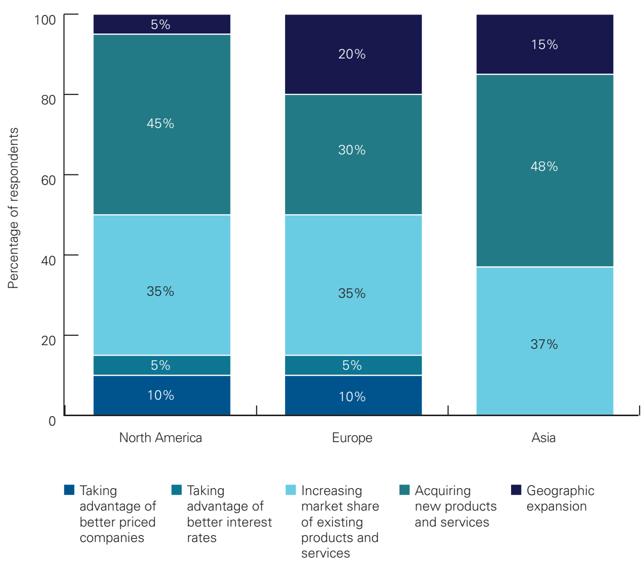
What will your primary corporate strategy be for the next 12 months?



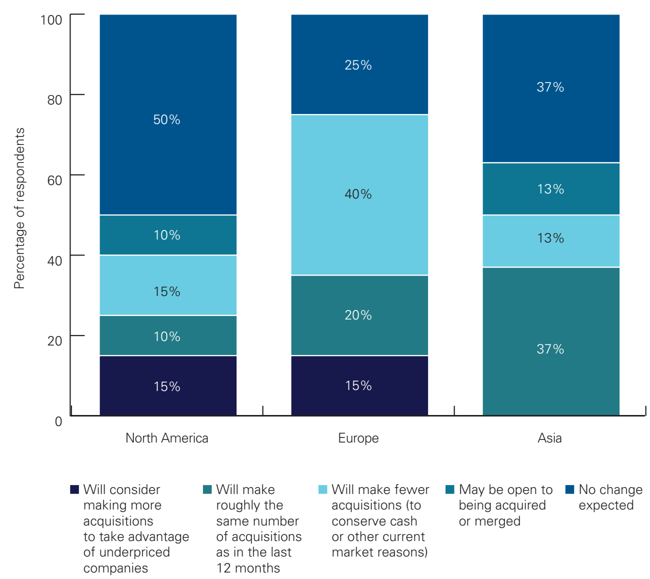
- An overwhelming 80% of respondents expect to employ a strategy of organic growth rather than growth through acquisitions. But some respondents expect to overlap these two strategies: several respondents say they will grow organically for the most part, but will also grow through acquisitions to take advantage of attractively priced targets. None of the respondents expect divestitures to be their main strategy.

Survey findings

What will be the driving force behind your acquisitions in the next 12 months?



How has the credit tightening affected your company's acquisition plans in the next 12 months?



- Respondents from all three regions will be focused primarily on acquiring new products and services and increasing market share for existing products and services. Combined, these two goals are expected to drive acquisitions for 85% of Asian respondents, 80% of North American respondents, and 65% of European respondents.

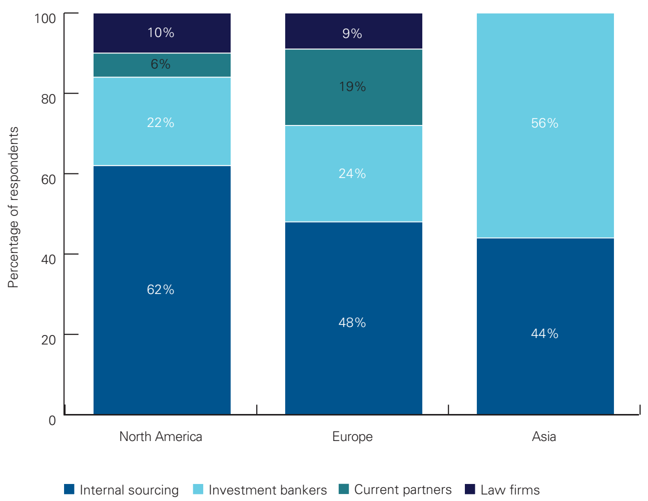
- North American respondents are least concerned with geographic expansion, with only 5% citing this as a driving force behind acquisitions in the upcoming year. Respondents in all three groups stressed the importance of expanding IT companies' geographic footprint, especially in the Asia Pacific region.

- The US is, arguably, suffering from a greater fallout of the credit crunch than other regions, yet half of North American respondents say their acquisition strategy in the IT sector will not be changed due to the credit tightening in the upcoming year. Comparatively, 25% of European respondents and 37% of Asian respondents expect to remain steadfast in their strategy.

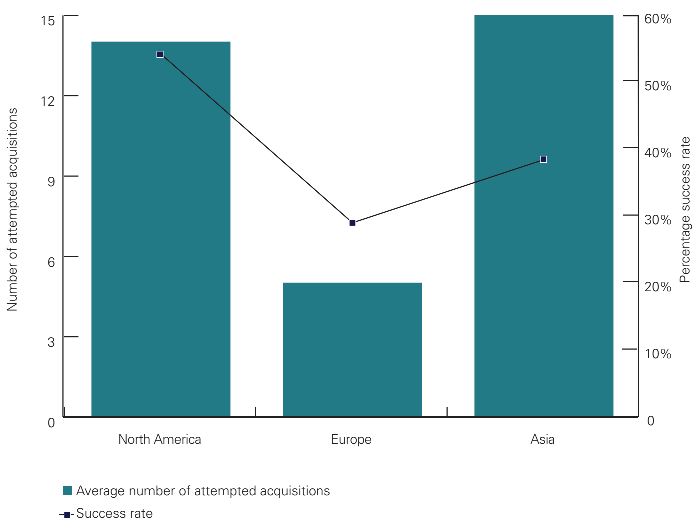
- European respondents expect to be less bullish than other groups in the year ahead in terms of M&A. 40% of European respondents say they will likely be less acquisitive in order to conserve cash, or due to outside economic conditions. Only 13% of Asian respondents and 15% of American respondents will limit their acquisitions for the same reasons.

Survey findings

How do you find most of your deals?



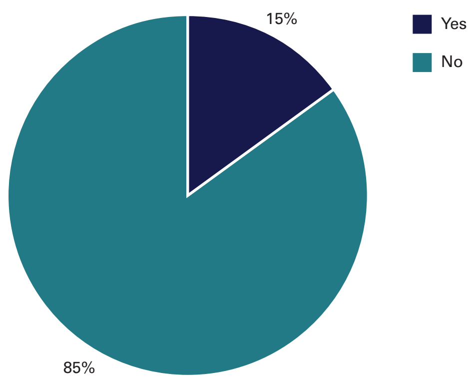
How many acquisitions have you attempted in the past year and what percentage of them were successful?



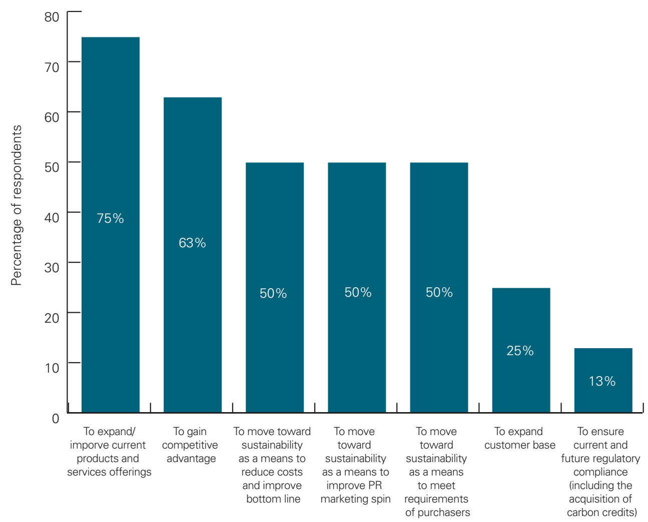
- Internal sourcing is the foremost source of finding deals for North American respondents, with 62% identifying this as their primary source. 48% of European respondents and 44% of Asian respondents rely on internal sourcing as well.
- 56% of Asian respondents cited investment bankers as their main source for locating deals, thus identifying only two methods of finding deals while the other respondent groups identified four.
- Investment bankers are a far less prominent source for deal opportunities for other respondent groups, with 22% of North American respondents and 24% of European respondents citing it as the main source for locating deals. Respondents from each of these two groups also gave examples of alternative methods. One European respondent says his firm finds deals through consultancy firms, while another North American respondent said: "We go out and contact targets directly".
- Nearly 80% of overall respondents attempted an acquisition in the past year, however less than half (40%) of these acquisitions were completed. Looking at the regional breakdowns, Asian respondents attempted the greatest volume of acquisitions at 15, with a success rate of 37%, while North American respondents attempted an average of 14 deals with a 54% success rate. European respondents were the least aggressive in their acquisition strategy (5 attempts) and their overall success rate (29%).

Survey findings

Do you anticipate acquiring or investing in IT companies that specialize in green/clean technologies or services in the next 12 months?



If yes, what are the drivers behind these acquisitions/ investments? (select as many as apply)

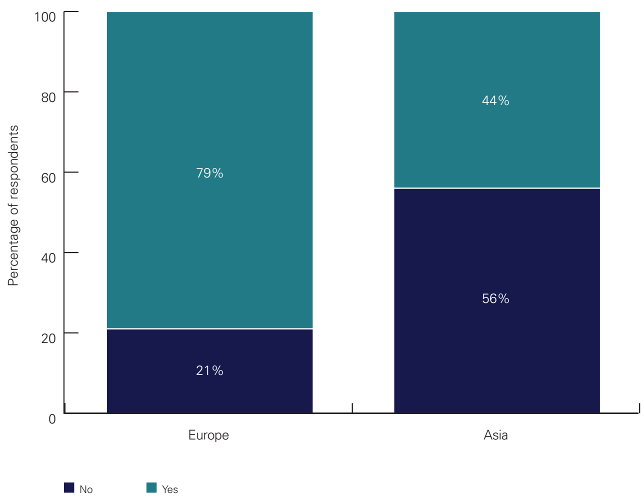


- Only a small fraction of respondents (15%) say they plan to acquire IT companies focused on going green in the upcoming year.

- Of the 15% of respondents who plan to acquire green/clean technology, the desire to expand/improve current projects and services was identified as the main driver by 75% of respondents, followed by gaining competitive advantage with 63% of the respondents.

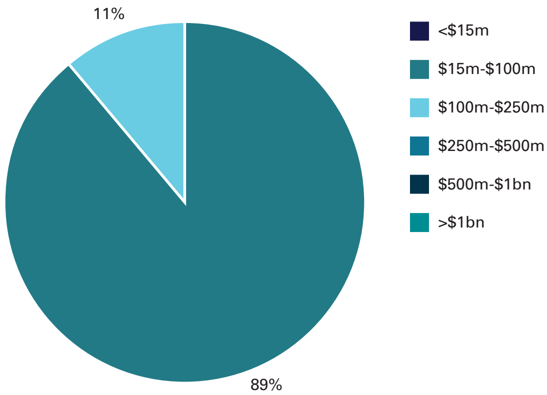
Survey findings

(For non-US respondents) Do you expect to acquire IT firms in the US over the next 12 months?



- 79% of European respondents expect to acquire US based IT companies in the upcoming year, compared to less than half (44%) of Asian respondents. One Asian respondent shed some light on these figures by explaining why his firm will not target US based IT companies: "A major concentration of our IT business is in the US, but we are looking at the market potential in Asia right now. Strategically, it makes more sense to move into the Asia Pacific region."

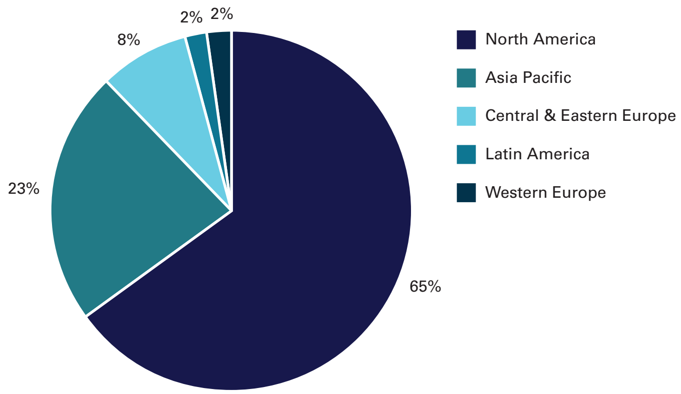
(For non-US respondents) If yes, what deal size?



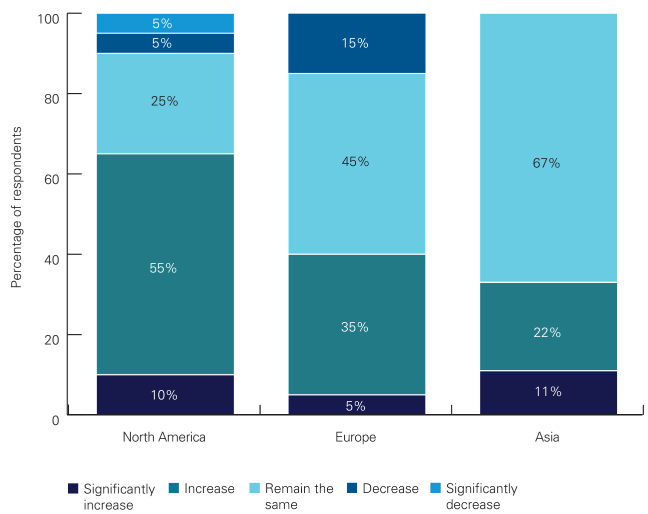
- Respondents outside the US expect to target only those IT companies worth between $15m and $250m. For these respondents, IT deals are expected to fall in different portions of the mid-market. 89% of respondents expect to acquire IT companies worth between $15m and $100m, while the remaining 11% will spend between $100m and $250m.

Survey findings

In which region do you expect to see the most inbound M&A activity in the IT sector?



What do you expect to happen to the total number of acquisitions of US IT companies by foreign companies in the next 12 months?

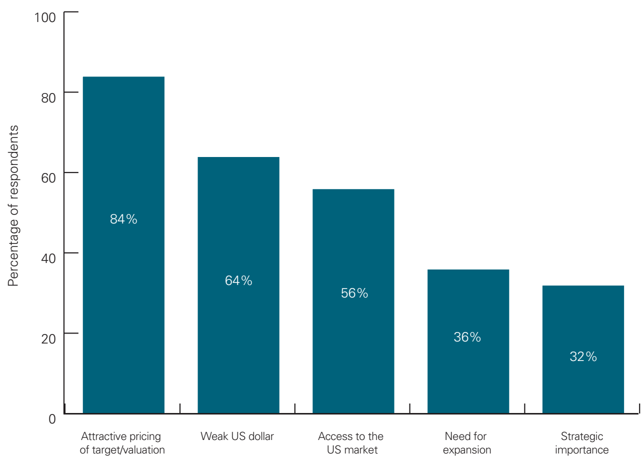


- Respondents believe North America contains the most potential inbound IT M&A activity. Indeed, 65% of respondents favored North America in terms of IT sector M&A in the upcoming year. Respondents expect this region to see the highest volume of inbound deals, second only to the Asia Pacific region, in which just under a quarter of respondents expect to see the greatest inbound deal flow this year.

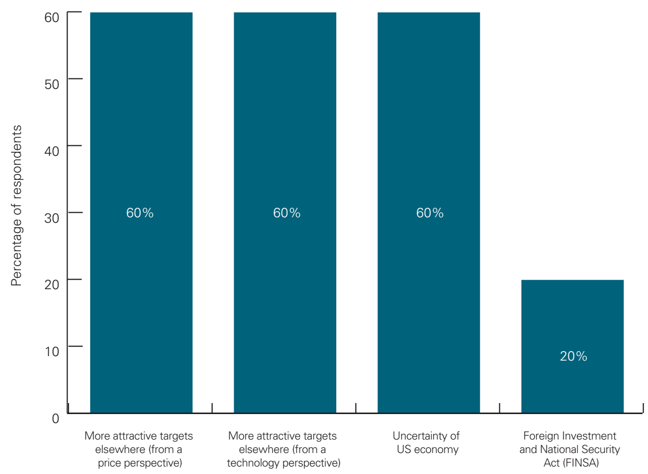
- Respondents are relatively optimistic regarding IT acquisitions inbound to the US in the year ahead. 65% of North American respondents expect the country to see an increase in inbound M&A within the IT sector, while 40% of European respondents and 33% of Asian respondents are also expecting an increase.
- Although Asian respondents are generally less likely to expect an increase in the number of US targets in the IT sector, they remain optimistic for the year ahead. Indeed they are the only respondent group that does not report expecting a decrease in targets.

Survey findings

If you believe it will increase, what do you expect to drive these foreign acquisitions into the US? (select as many as apply)



If you believe US inbound M&A activity will decrease, what will be the main causes of the slowdown? (select as many as apply)



- Of the 49% of overall respondents expecting an increase, pricing of the target is expected to be the number one driver. 84% of respondents expect overseas investors to acquire targets due to their attractive prices, in all likelihood a result of the weak US dollar. Indeed, the US dollar came in a close second, with 64% of respondents citing this as a driver of foreign acquisitions in the region.
- Foreign IT firms seeking to establish themselves abroad expect to target US based firms specifically, which in turn will fuel inbound M&A within the US IT sector. According to one Asian respondent, the US is strategically compelling because "increased geographical coverage" is crucial to IT businesses.
- Of the 10% of overall respondents who expect a decrease in inbound M&A in the US IT sector, three factors are expected to influence inbound deal flow equally. 60% of respondents cited the presence of more attractive targets beyond the US, from both a financial and a technological perspective. Similarly, 60% of respondents also identified the uncertain economic conditions within the country as a major factor. Only 20% expect the Foreign Investment and National Security Act to drive a decrease in M&A.

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Selected transactions:

MARSHAL Secure. Protect. Comply. *has merged with* 8e6 Technologies — November 2008	CLINPRO incorporated *has been acquired by* PACIFIC DATA DESIGNS — November 2008	managed objects *has been acquired by* Novell — October 2008	SECURIFY *has been acquired by* secure computing — September 2008	Akonix *has been acquired by* QUEST SOFTWARE — August 2008
TechTeam *has acquired* ONVAIO a global services company — June 2008	SWAPDRIVE *has been acquired by* symantec — June 2008	versata *has acquired* eti — May 2008	versata *has acquired* TENFOLD — March 2008	eclipse solutions Built on Experience *has been acquired by* PUBLIC CONSULTING GROUP — March 2008
Aperture *has been acquired by* EMERSON Network Power — February 2008	versata *has acquired* NUVO — December 2007	exploit PREVENTION LABS *has been acquired by* AVG — December 2007	eyp mission critical facilities *has been acquired by* hp — November 2007	SurfControl *has been acquired by* WEBSENSE — October 2007
NETCONTINUUM *has been acquired by* BARRACUDA NETWORKS — September 2007	ciber *has acquired* METAMOR a headstrong company — September 2007	intego *received strategic investment from* BESSEMER VENTURE PARTNERS — June 2007	rmi *has sold a majority ownership stake to* THE CARLYLE GROUP — June 2007	Insight Global, Inc. *received strategic investment from* H.I.G. CAPITAL — April 2007

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WHO TO CALL FOR TECHNOLOGY M&A ADVICE?

THAT'S THE $70 BILLION QUESTION.*

$27.5 Billion
Sale to TPG Capital and GS Capital Partners
M&A Regulatory & Antitrust Counsel to Alltel Corporation

$4.5 Billion
Acquisition by Hewlett-Packard
Counsel to Mercury Interactive Corp.

$1.6 Billion
Acquisition of IKON Office Solutions, Inc.
Counsel to Ricoh Company, Ltd.

$565 Million
Acquisition of Authorize.net
Counsel to CyberSource

$546 Million
Acquisition by Software AG
Counsel to webMethods

$492 Million
Acquisition of FasTech, Inc.
Counsel to Dubai International Capital and Doncasters Group Ltd.

$176.6 Million
Merger With LTX Corporation
Counsel to Credence Systems Corp.

$110 million
Acquisition of SigmaTel, Inc.
Counsel to Freescale Semiconductor, Inc.

$76.5 Million
Acquisition by ManTech International Corporation
Counsel to McDonald Bradley, Inc.

$60 Million
Acquisition of PCTEL's Mobility Solutions Group
Counsel to Smith Micro Software

$55 Million
Acquisition of Sarcom, Inc.
Counsel to PC Mall, Inc.

$50 Million
Acquisition of the Fiber Optics Division of Westover Scientific, Inc.
Counsel to JDS Uniphase Corporation

Future Internet Technologies

$26 million
Stake purchase in Advance Global Communications
Counsel to Future Internet Technologies

ALL COMMUNICATIONS CORP.

$25 Million
Merger with View Tech, Inc. to form Wire One Techologies
Counsel to All Communications Corp.

Undisclosed
Acquisition of Security Solutions Division of Maximus
Counsel to Cogent Systems

Undisclosed
Acquisition of Archivas, Inc.
Counsel to Hitachi Data Systems Corporation

Undisclosed
Acquisition of Madison Research Corp. and Haverstick Consulting, Inc.
Counsel to Kratos Defense & Security Solutions

Undisclosed
Sale to Visionary Integration Professionals, LLC
Counsel to Meridian Knowledge Solutions, Inc.

Undisclosed
Acquired by GENBAND Inc.,
Counsel to NextPoint Networks

Undisclosed
Acquisition of Enpocket
Counsel to Nokia

Undisclosed
Acquisition of Guam Cellular and Guam Wireless
Counsel to NTT DoCoMo

Undisclosed
Acquisition of SPL WorldGroup Holdings, LLC
Counsel to Oracle Systems Corporation

Undisclosed
Acquisition of 80% Interest in B4 Consulting Inc.
Counsel to Sumisho Computer Systems

Undisclosed
Acquisition of Alps HDD Head Business
Counsel to TDK Corp.

Undisclosed
Acquisition of Overture
Counsel to Yahoo Japan Corporation

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For more information regarding our M&A practice, please contact Walter Conroy at 415-268-7461, Greg Giammittorio at 703-760-7320, Gavin Grover at 415-268-7113, Michael O'Bryan at 415-268-6352, or Larry Yanowitch at 703-760-7318, or visit www.mofo.com.

*MORRISON & FOERSTER HANDLED MORE THAN 120 M&A TRANSACTIONS WITH A VALUE OF $70 BILLION IN 2007.

Cross-border M&A activity in the IT sector

Introduction

The financial crisis has made it extremely difficult to speculate on future trends in M&A activity. Each day seems to bring new challenges and uncertainties, but the current conditions are also creating opportunities for companies with strong balance sheets and sound strategic growth plans. In spite of gloomy global economic conditions, M&A activity in the IT sector is not expected to decline dramatically—particularly for inbound deals to the US. Sixty-five percent of overall respondents in this report expect North America to see a higher volume of inbound activity in the year ahead, exceeding the expectations for Europe and Asia.

Their confidence is not unfounded. Many corners of the industry are still developing, and growth through M&A is necessary for companies to establish themselves as global leaders. In the Internet/e-commerce space, for example, the US has seen 19 deals so far this year, compared to 23 in 2007, and only 14 in 2006. Indeed, 82% of respondents to this survey believe competition for global leadership will be a primary driver of M&A in the year ahead, which is perhaps why 56% of Asian respondents say they expect to acquire US IT firms in the next 12 months. This is in spite of the fact that the tightened credit markets have caused companies across the board to often choose to conserve capital rather than make strategic acquisitions.

On the other hand, deals announced in 2008 provide solid evidence that the key drivers for M&A in the IT sector—particularly cross-border M&A—have not changed with the financial crisis.

Inbound M&A in the US

One of the key drivers of inbound activity in the US has always been the attractive features of the US market itself. By acquiring US targets, bidders can often broaden their user base and establish themselves as leading industry players. Eighty-two percent of respondents expect competition for global leadership to be a primary driver of activity, and having a strong hold on the US market is widely considered a prerequisite for global leadership.

For example, in 2007 Software AG acquired webMethods for approximately $546 million in cash and immediately became one of the top 10 middleware vendors globally, taking on over 1,000 of the target's "blue chip" accounts.

Of course, the timing of the deal is critical. Software AG's acquisition of webMethods closed on the cusp of the credit crunch in the spring of 2007, and it is therefore important to consider the dramatically different circumstances under which deals are currently proposed and negotiated. However, today's climate has not lessened the incentives for foreign IT companies that want to enter the US market to do so through acquisition opportunities.

The recent acquisition of US-based Performics, formerly a unit of Google's DoubleClick, is a clear indication that cross-border activity will continue to be fueled by the attractiveness of the US market. Publicis Groupe, the listed France-based communications company, acquired Performics from Google, Inc., with geographical expansion in mind. Post-acquisition, Publicis Groupe will gain access to the target's 200 search marketing specialists in Chicago, San Francisco, New York, London, Hamburg, Singapore, and Beijing.

When DoubleClick acquired Performics for $58 million in 2004, the strategy was similar. The two companies already shared 11 key clients, but post-acquisition, the combined entity was able to offer users full-service access to both technologies, which were integrated onto a single platform.

Regulatory Issues

The US is indeed home to an abundance of attractive IT targets, but it is not always easy to get deals done. In 2006, for example, the $13.4 billion merger of Alcatel, a French wireless telecommunications company, and US-based Lucent Technologies Inc., had an approximate seven-month time window between its announcement and its completion, due largely to its extensive review by the Committee on Foreign Investment in the United States (CFIUS). In order for CFIUS to approve the deal, Alcatel and Lucent had to enter into a national security agreement which restricted Alcatel's access to the communications infrastructure in the US and sensitive information contained in Lucent's research unit, Bell Labs.

Cross-border M&A activity in the IT sector can be highly sensitive to US regulatory standards, especially CFIUS, which reviews the national security implications of inbound acquisitions in the US. In recent years, CFIUS has brought to light some of the key security issues that are unique to the IT sector. IT companies' clientele can often consist of government agencies, including those in defense and intelligence, or foreign militaries, and can thus open deals up to strict scrutiny.

The 2008 lapsed acquisition by Bain Capital and Huawei Technologies, the Chinese telecommunications equipment company, is perhaps the clearest example of the Committee's influence on cross-border activity. A consortium involving Huawei Technologies and US-based private equity firm Bain Capital attempted to acquire 3Com. The parties eventually left the deal behind due in part to the difficulty of obtaining CFIUS clearance.

There are often a number of products and services embedded in IT companies, which could be problematic. In the case of 3Com, it was TippingPoint, 3Com's anti-hacking, network-based intrusion prevention software unit, which drew the most attention from a national security perspective. Arguably, software glitches in a product of this nature could be difficult to uncover and could have substantial adverse consequences for US security. Even though 3Com was reportedly willing to divest its TippingPoint division, eventually the parties jointly called off the acquisition.

Outlook

Certain key drivers are likely to sustain inbound M&A activity in the US, although many deals will undergo heightened diligence and increased board-level scrutiny. The United States has always been a leader in technological innovation, and has a strong demand for IT products and services. That, in itself, has attracted foreign buyers for many years, and the currently low valuations have made these targets all the more enticing. Indeed, 65% of respondents cite the devaluation of the US dollar as a primary M&A driver of inbound deals to the country. Despite the dollar strengthening since the survey results we have gathered, the decline in valuations will likely attract those buyers with cash who are willing to think long-term.

The IT sector is not immune to the economic challenges facing industries around the globe. The tightening of credit has created financing difficulties for potential acquirers no matter the sector or the region, placing even the most attractively priced targets out of reach for some would-be buyers. Nevertheless, deals will still get done, but buyers will be more selective and will likely focus on filling technology gaps or expanding geographically, but at the same time avoid blockbuster-size transactions and the enhanced risk those deals often create.

Case Study

UPDATA ADVISORS
Investment Banking

Updata Advisors Represents Marshal Ltd. in its Merger With 8e6 Technologies, and as Advisor to Marshal8e6 in Raising Financing

On November 12, 2008, privately held Marshal Ltd. and 8e6 Technologies announced that they would combine to form Marshal8e6, a global Internet communications security software company with more than 20,000 corporate and government customers.

Marshal is a web and email filtering security software vendor based out of the United Kingdom. 8e6 Technologies is a web security firm based in California.

Updata Advisors was selected to represent Marshal in a potential sale. Updata was chosen ahead of other banks in a competitive process due to its technology focus and expertise in the IT security sector.

While selling Marshal to a public company was an option, Updata proposed a merger of equals with private company 8e6 as more strategic as it would enable both companies to build greater value ahead of an eventual exit or IPO. Updata had relevant experience representing publicly-traded web filtering firm SurfControl plc in its $400 million merger with public competitor Websense Inc. in 2007.

In addition to orchestrating the merger, Updata led a successful process to raise new equity for the combined entity, and introduced Marshal and 8e6 to a former director of SurfControl, who was nominated as chairman of Marshal8e6.

The new company, Marshal8e6, will be able to compete more effectively in the global IT security market by providing a broader range of Internet-security products and by increasing its geographic scope. Marshal and 8e6 have highly complementary product lines, customer bases, channels and geographic strengths.

With the best interests of its clients at the forefront of each stage of this simutaneous merger and financing transaction, Updata Advisors demonstrated creativity and a determined resourcefulness that brought this combination to life. Updata developed the combination strategy, helped negotiate myriad issues, secured investment and ultimately created a value-added end result.

About Morrison & Foerster LLP

According to mergermarket, Morrison & Foerster ranked as one of the top legal advisors on technology M&A deals and one of the top law firms on telecom M&A transactions during 2007, rising in the rankings nearly five-fold over the prior year. In the last three years alone, the firm has handled approximately 400 M&A deals valued at more than $200 billion.

With more than 150 M&A attorneys handling deals from 17 international offices, Morrison & Foerster has one of the largest and most robust M&A practices globally. The M&A powerhouse handles a full array of deals, from the $41 billion acquisition of SDL by JDS Uniphase (the largest IT acquisition in history), to Mercury's $4.5 billion acquisition by HP, the $3.7 billion acquisition of ADESA by a group of private equity funds, and the $925 million acquisition of Burt's Bees by The Clorox Company, to deals of a hundred million dollars and less.

In 2007, our extended team of M&A specialists worked on one or more aspects of some of the largest deals of the year. For example, we handled the regulatory work on Alltel Corporation's $27.5 billion acquisition by TPG Capital and GS Capital Partners. This was the largest private equity acquisition in the wireless industry to date. Our team also advises on antitrust, tax, labor, and other issues for our buyside and sell-side clients as well as financial advisors.

Morrison & Foerster's global M&A group represents Fortune 500 companies in mergers, stock and asset acquisitions, tender and exchange offers (both friendly and hostile), recapitalizations, restructurings, joint ventures, and other strategic alliances. The group has advised public companies on a comprehensive range of offensive and defensive techniques, including poison pills and other measures. The firm also has considerable experience representing corporations in smaller, venture capital style investments as part of a larger relationship involving technology development, licensing or distribution rights. In addition to the corporate attorneys leading their M&A engagements, the firm brings complementary resources in areas like IP (including patents, copyright, trade secrets, and trademarks), licensing, tax, employee benefits and labor, ERISA, real estate, environmental, and litigation, that the firm utilizes in a team approach in providing due diligence support, risk analysis, and transaction execution.

Morrison & Foerster attorneys are known for frequently innovating new techniques and tactics to help clients achieve their goals. For example, they are leading the way in areas such as topping, hopping, and shopping. At any given time the firm's international M&A group is likely to be involved in an extraordinarily diverse range of transaction types, including buy or sell side; financial or strategic; stock, asset, or both; negotiated or contested; tender or proxy; divestitures, spin offs or carve-outs; going private, SPAC, or reverse mergers; joint ventures or strategic alliances; or restructurings, workouts, or recapitalizations.

Clients and peers consistently praise Morrison & Foerster's approach and results. In the growing market for cross-border M&A, Morrison & Foerster continues to appear at the top of the rankings for the quality and leadership in its cross-border work. For example, the firm was named "Best Legal Advisor in Asia" in 2008 by *Global Finance* magazine, for the second year in a row. The *International Financial Law Review* ranked Morrison & Foerster as a Tier 1 firm for Mergers & Acquisitions in Japan, and the firm was named as a leader in Japan for Corporate/M&A, and in China for Cross-Border Advice in the *PLC Which Lawyer? Cross-Border Mergers & Acquisitions Handbook*. Mergerstat (2007) listed Morrison & Foerster #4 in the Top 10 Legal Advisors in Asia Pacific, and mergermarket (Q3 2008) ranked Morrison & Foerster #5 in Japan and #7 in Greater China in announced deals by deal count. Among additional top cross-border recognition for the firm, Bloomberg Global Legal M&A Rankings named Morrison & Foerster #1 in Japan (2007) in announced deals by deal count. In fact, Morrison & Foerster is consistently listed in the top rankings of M&A firms in the world's most respected surveys and tables, including: Mergerstat, PLC *Mergers & Acquisitions Handbook, Chambers Global: The World's Leading Lawyers,* Bloomberg Global M&A Rankings ("Legal Advisor League Tables"), *M&A Asia Legal Advisor, The American Banker,* Thomson Financial Mergers & Acquisitions, Private Equity Analyst, and *International Financial Law Review 1000*.

While Morrison & Foerster is international in nature and its practice is varied, it delivers on its pledge of close integration throughout its offices. Morrison & Foerster is known for assembling the optimal team of resources from across the firm to tackle its clients' legal challenges, bringing to all transactions the strength and resources of a large global law firm. Morrison & Foerster's 17 offices serve all major US geographic areas and the world's non-US financial and governmental centers: Tokyo, Hong Kong, Singapore, Beijing, Shanghai, London, and Brussels.

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About Updata Advisors, Inc.®

Based in New York, New York and Reston, Virginia, Updata Advisors is a leading investment bank specializing in Mergers & Acquisitions, Private Placements, Fairness Opinions and Corporate Restructurings for the Information Technology industry. Updata® strategic M&A advisory services create Greater Outcomes® for clients as measured by growth, innovation and shareholder value. Since 1987, the firm has advised on more than 400 transactions valued at over $15 billion for application and infrastructure software, internet, security and IT services companies. Updata Advisors is perennially ranked among the top five advisors in transaction volume to companies in the Computer Software, Supplies & Services industry, according to Factset Mergerstat.

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About mergermarket

mergermarket is an unparalleled, independent Mergers & Acquisitions (M&A) proprietary intelligence tool. Unlike any other service of its kind, mergermarket provides a complete overview of the M&A market by offering both a forward-looking intelligence database and an historical deals database, achieving real revenues for mergermarket clients.

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