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IN THIS ISSUE

EUROPEAN M&A DOS AND DON'TS FOR NON-EUROPEAN BUYERS

By James Robinson

Inbound M&A in Europe by non-European buyers increased in 2014 by 68.6% compared to 2013, representing over a third of USD 901.4 billion total European M&A.[1] For non-European buyers the basic framework of transactions may be similar, but there are a number of important dos and don'ts to help get European M&A deals over the line.

- **Culture.** Do not underestimate the differences in lifestyle, social protection and history. This is not just an issue to consider for M&A between the Americas or Asia and Europe but, especially where the target has operations across Europe, among countries on the same continent.

- **"European Law".** There is a harmonization of laws across Europe but this does not mean that the law is the same across Europe. While there are some directly applicable EU laws, in practice, each country implements European-level legislation locally and ever so slightly (or not so slightly) differently.

1 Source: Mergermarket global and regional M&A: 2014

continued on page 2

- **Due Diligence Planning.** Do prepare with proper controls, communication and reporting systems, as well as by allowing additional time for the distance and time zones involved, to conclude physical diligence meetings. Online data rooms are prevalent, but on pan-European deals physical meetings are important for more effective integration planning (and cultural adaptation) post acquisition.

- **Disclosure and Warranties.** The approach to disclosure (against purchase agreement warranties) may be very different. While specific disclosures are often included, in Europe there is a common acceptance of general disclosure of information provided to a buyer during the diligence process. This, combined with an avoidance of indemnities (except for specifically identified issues), may mean a less absolute set of contractual protections in your purchase agreement than you may get elsewhere.

- **Labor Law.** Europe has very wide labor and social protection legislation, though this again varies among countries. Most sizeable companies will have employee works' councils or unions on a country-by-country (and/or subsidiary-by subsidiary) basis. This is important both in terms of due diligence as well as deal structuring. You may need to establish a timetable for employee consultation and/or make (binding) statements as to future workforce intentions. One labor law advantage in Europe is the ability in an asset deal to automatically transfer employees along with a business (often termed Transfer of Undertakings or TUPE).

- **Antitrust and Corruption (FCPA).** Awareness of these issues is high in Europe. So basic European compliance polices will normally be more adequate than elsewhere, especially in the more developed European economies (though compliance must of course still be subject to due diligence). However, each country has different rules for antitrust matters. So don't assume that you can simply confirm compliance with a "Brussels standard".

- **Merger Filings.** While Brussels does offer a "one-stop shop" EU merger filing, each transaction will need to meet the relevant thresholds to qualify. If it does not, the merger may have to be filed in multiple countries with different forms, languages, timetables, fees (and possibly results). Be aware, however, that the merger qualifies to be filed in three or more individual EU countries, there is the possibility of electing to "move up" to a single European-wide filing in Brussels (with no filing fee).

- **Deal Litigation Risk.** The possibility of shareholder activist or trade union litigation of a proposed deal varies significantly among European countries. For example, it is rare in the UK but more common in Germany and the Netherlands.

- **Taxation.** Tax efficient structures should be considered early on. This is not just about choosing an optimal acquisition vehicle. It may also be beneficial to structure a mix of asset and stock deals given the tax approach of individual countries (as well as deal costs, notary fees and stamp duties, which should not be underestimated). It is also important to carefully review the tax impact of the target's operations in due diligence, especially given the higher focus on transfer pricing by European tax authorities.

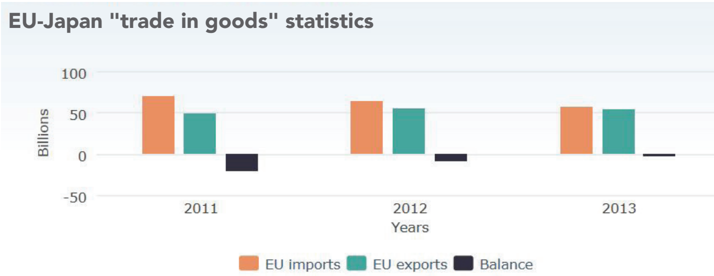
CURRENT DEVELOPMENTS

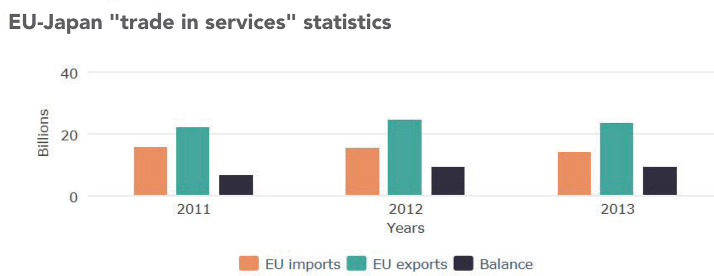
Prospects of a Trade Agreement Between the EU and Japan

The European Union and Japan are holding negotiations to conclude a Free Trade Agreement (FTA) to open markets and remove trade barriers between both economies. Since March 2013, there have been nine negotiation rounds and the next is announced to take place in April 2015 in Tokyo. Both partners aim to reach a comprehensive agreement in the areas of goods, services and on eliminating tariffs, non-tariff barriers as well as other trade-related issues, such as public procurement, regulatory issues, competition and sustainable development. Negotiations are led by Mauro Petriccione, Deputy Director-General of DG Trade, for the EU delegation and Yasumasa Nagamine, Deputy Minister for Foreign Affairs, for the Japanese delegation.

Japan is the EU's second biggest trading partner in Asia and the seventh largest trading partner globally. Conversely, the European Union is the third largest trading partner of Japan after China and the U.S. Not only with respect to imports and exports, but also with respect to investments, the economic and commercial relationship between the EU and Japan remains highly important to both markets. Moreover, with the conclusion of an FTA between these two major economies, it is expected to boost Europe's economy by 0.6 to 0.8% of its GDP and it is expected to result in growth and creation of 400,000 jobs. Furthermore, it is expected that exports from the EU to Japan could increase by 32.7% and Japanese exports into the EU by 23.5%.

continued on page 3





Source and more information: http://ec.europa.eu/trade/policy/countries-and-regions/countries/japan/

NOTEWORTHY DEALS

Intel Buys German Chipmaker Lantiq

Intel, the U.S.-based international tech giant, has agreed to buy Lantiq, the German network chipmaker. Lantiq, a former Infineon unit, produces chips for broadband access and home networking. With the transaction, Intel will be able to expand its range of chips used in Internet-connected gadgets. Morrison & Foerster has advised Intel in the IP due diligence, on contractual questions, and on antitrust and merger-control issues.

Recruit Holdings to Take Over Berlin-Based Start-Up Quandoo

Japanese advertisement and human resources company Recruit Holdings acquired Quandoo, a Berlin-based start-up which provides a restaurant reservation platform, for a total amount of EUR 198.6 million in cash. This followed Recruit's investment to acquire 7% of the shares of Quandoo in fall last year. The start-up was founded in 2012 and today employs approx. 280 employees. It collaborates with 6,000 restaurants in 45 cities in 13 countries. With start-ups like Rocket Internet, Zalando, Delivery Hero and Quandoo, Berlin is attracting more and more attention from international investors.

Solvay to Sell Germany-Based Refrigerant Business and Pharma Propellants to Daikin

Solvay, the Brussels-based international chemical company, has agreed to sell its refrigerant business and pharma propellants to Daikin, the Nikkei-listed company, headquartered in Osaka, Japan. Solvay is to focus on selective high value-added segments in fluorine specialties and high purity chemicals which resulted in the divestiture of its business unit in Frankfurt. The deal is subject to customary closing conditions, such as a regulatory clearance in Germany and Austria.

NTT Communications to Purchase Control of German e-shelter

Tokyo-based NTT agreed to buy control of e-shelter facility services GmbH, the German data center operator, based in Frankfurt. NTT, listed both on NYSE and LSE, acquired the shareholdings of Boston private equity house Abry Partners LLC as well as of Rupprecht Rittweger, founder and CEO of e-shelter, resulting in a 86.7% stake for NTT, which is paying EUR 742 million.

Hitachi to Acquire Two Rail Units of Finmeccanica

Hitachi, the publicly traded Japanese industrial company, agreed to buy two rail units of the Italian Finmeccanica SpA. The agreement includes the purchase of the train manufacturing unit AnsaldoBreda SpA for EUR 36 million and Finmeccanica's 40% stake in the rail signing equipment unit Ansaldo STS SpA for EUR 773 million. Finmeccanica aims to focus on aerospace and defense which resulted in the acquisition opportunity for Hitachi.

Berkshire Hathaway to Take Over Hamburg-Based Detlev Louis

Warren Buffett's Berkshire Hathaway acquired the German motorcycle apparel and accessories retailer Detlev Louis Motorradvertriebs GmbH, based in Hamburg, for total amount of EUR 400 million. This is the first representative deal by Mr. Buffett after his announcement of plans for expansion and major investments in Europe. Mr. Buffet publicly claimed himself to have discovered the "key" to German Mittelstand (mid-size German companies).

Samsung SDI Acquires Battery Unit from Magna Steyr

Korean digital display device manufacturer Samsung SDI agreed to acquire the entire battery unit of Magna Steyr, an Austrian affiliate of Magna International, the Canadian automobile supplier listed on NYSE. The deal is announced to be closed within the first half of 2015, and is still subject to regulatory approval. Samsung takes over all of the 264 employees, production and development sites and also the existing contracts by way of a combined share and asset deal.

continued on page 4

Fujitsu and Panasonic Merge System LSI Businesses Into New Global JV

Japanese technology companies Fujitsu and Panasonic have established a joint venture which will consolidate their system LSI businesses. The newly established joint venture Socionext, Inc. will be headquartered in Yokohama, Japan, and also operate business units in Europe and the U.S. Morrison & Foerster has advised Fujitsu Limited, and its wholly owned subsidiary, Fujitsu Semiconductor Limited on the joint venture.

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Morrison & Foerster LLP | Marketing Team
Potsdamer Platz 1 | 10785 Berlin | Germany
germanymarketing@mofo.com