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Ireland

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Overview

Ireland is reported once again to have remained the fastest-growing economy in the European Union in 2016 for a third successive year, having weathered the knock-on effects of an eventful and somewhat volatile year from both a global economic and geo-political perspective. Domestically, Ireland was itself without a government for a number of months following elections early in the year, which may account to some extent for the relatively weak start experienced to M&A activity in 2016. However, viewed overall, the M&A market in Ireland remained relatively strong in 2016, buoyed no doubt by the resilience of the economy in the face of global vicissitudes. The Central Bank of Ireland ("CBI") estimates that GDP grew by 4.5% in 2016 and the European Commission is forecasting GDP growth of 3.6% for 2017 and 3.5% for 2018 respectively. This growth has been led mostly by the strength of domestic demand, which after a period of robust growth, appears now to be gradually moderating; however, the CBI indicates that prospects for sustained, solid growth in Ireland remain positive.

There were 422 deals announced in 2016, which was a reduction of 11.3% compared to 2015 according to recent data from Experian. Transactions totalled about €49bn in value, 67% less than 2015. This decrease in activity should be viewed against the backdrop that 2015 was an exceptional year in which the total recorded deal value was heavily inflated by three large transactions which completed during the course of the year (CRH's €6.5bn acquisition of certain assets of Holcim Limited and Lafarge S.A.; Bohai Leasing's €6.5bn acquisition of Avolon Holdings Limited; and Paddy Power and Betfair Group Plc's €3.8bn merger). Also, as was to be expected, the uncertainty arising from the result of the British referendum on EU membership in June 2016 led to many transactions being suspended or abandoned entirely and contributed to a reduction in the overall deal volume for the year, with the impact felt most in Q3. The decrease in deal flow may also be attributed, in part, to the clampdown on corporate inversion transactions by the US Treasury Department, which had been responsible for Ireland becoming one of the most targeted countries by US companies for M&A transactions in 2015.

Although 2016 did not reach the highs attained the previous year, when taken in the context of the last decade as a whole, 2016 remains one of the strongest years for M&A transactions in recent times and indeed, Irish transactions accounted for 2.9% of all European deals and represented 5% of their total value over the course of the year. The decrease in activity in 2016 is also in line with general global trends.

In terms of the nature and composition of the deals which occurred in 2016, there was a notable absence of the type of high-value, "mega deal" acquisitions that have been a feature

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of the Irish M&A landscape in recent years; however, by contrast there was an increase of 16.7% in the number of small deals concluded, with a corresponding uplift of 23.4% in the value of such deals from 2015.

As regards the type of transactions which took place, as was the case in 2015, the most common form of acquisition encountered in Ireland was one in which a foreign company acquired an Irish target, with such transactions accounting for 37% of the total volume of deals according to research by Investec.

The sector of the economy that oversaw the largest number of transactions in 2016 was the Technology, Media and Telecommunication sector, with the continuing attractiveness of Irish offerings in this sector largely attributable to the ability of such companies to scale quickly.

Significant deals and highlights

While 2016 was not characterised by the "megadeals" which were witnessed in 2015 and, in fact, the year recorded less than half as many deals with a consideration of over €1bn than in the previous year, there were nonetheless a number of highlights in 2016. The largest deal was reported in November when Allergan commenced a €9.4bn share buyback after the abandonment of its merger with Pfizer last year, following the change of rules relating to inversions (discussed in further detail below). Johnson Controls Inc., a US maker of car batteries and heating and ventilation equipment, and Cork-based Tyco International Plc agreed to merge in a deal valued at $16.6bn, resulting in a corporate tax inversion for Johnson Controls. While last year's Pfizer-Allergan transaction did not overcome the scrutiny of the US Treasury under the new inversion rules, it appears that the Johnson transaction inversion has been deemed to be primarily for operational reasons and not solely a tax avoidance strategy.

Avolon, the Irish aviation leasing company purchased by Bohai Leasing Co., Limited, part of the Chinese HNA Group, in 2015 agreed to acquire the leasing business of CIT Group Inc. for $10bn. This transaction will see Avolon become the third-largest aircraft-leasing company in the world, behind Gecas and Aercap. In another significant transaction, Fleetmatics, a fleet management business which originated in Ireland but which has a US activity base, was taken private by Verizon, the US telecoms group. This deal represents a return to the traditionally strategic approach of global companies purchasing home-grown businesses in order to diversify their positions. At the end of December 2016, Sumitomo, the Japanese conglomerate, announced that it had offered €751m for the Dublin-based fruit distributors Fyffes in a deal which will result in the merger of the largest banana distributors in Asia and Europe respectively.

The following table, produced by Experian, sets out the top 10 deals which took place in Ireland last year:

Date	Consideration (€m)	Deal Type	Target	Bidder
11/11/2016	9,375	Share Buy-Back	Allergan Plc, Dublin	
06/10/2016	9,375	Acquisition	Aircraft Leasing Business of CIT Group, Inc. USA	Avolon Holdings Ltd. Dublin

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Date	Consideration (€m)	Deal Type	Target	Bidder
25/01/2016	3,225	Reverse Takeover	Johnson Controls Inc. USA	Tyco International Plc, Cork
18/08/2016	2,836	Acquisition	Valves and Controls Business of Pentair Plc, Dublin	Emerson Electric Co. USA
01/08/2016	2,765	Acquisition	LifeCell Corp, USA	Allergan Plc, Dublin
20/09/2016	2,141	Acquisition	Fleetmatics Group Plc, Dublin	Verizon Communications Inc, USA
31/05/2016	1,538	Acquisition	Tobira Therapeutics Inc. USA	Allergan Plc, Dublin
27/06/2016	1,211	Acquisition	Celator Pharmaceuticals Inc. USA	Jazz Pharmaceuticals, Dublin
12/09/2016	975	Acquisition	Heartware International Inc,	Medtronic Plc, Dublin
09/12/2016	944	Acquisition	Raptor Pharmaceutical Corp, USA	Horizon Pharma Plc, Dublin

(*United Kingdom and Republic of Ireland M&A Review:* Experian Business Research: Full Year 2016, Experian)

As regards the type of transactions which took place, as was the case in 2015, foreign acquisitions by Irish companies were the most important types of deal in Ireland last year. However, US buyers have also played a significant role in driving transactions, as evidenced in the table above. One such notable deal in the technology sector, was the acquisition of Movidius by Intel in a deal worth €355m in September 2016. Movidius makes computer vision hardware which is used in drone and camera technology, and US-based Intel hopes to integrate Movidius's technology into its RealSense platform, which is being built into augmented-reality headsets.

Private equity is also playing an increasingly important role as seen, for example, in the acquisition of AA Ireland by Carlyle Global Financial Services Partners and Carlyle Cardinal Ireland for $166m. Pharmaceuticals and Agri-Food companies also continue to be important players, as evidenced in the table above.

Key developments

US measures to limit inversions

On 4 April 2016, the US Department of the Treasury announced that it was introducing further measures to "rein in" corporate inversion transactions which see US-parented multinational corporate groups acquiring smaller foreign companies and then altering the tax domicile of the merged group to that of the foreign-acquired company in order to reduce or avoid paying tax in the US. These new rules build upon guidance that had previously been issued by the US Treasury Department in September 2014 and November 2015 in which it had tried to curtail these types of transactions by making it more difficult for companies to undertake an inversion, and by reducing the economic benefits of doing so.

Despite the US Treasury's guidance, inversion transactions had become quite a prevalent feature of the Irish corporate landscape in recent years due to the low rate of corporate tax payable in Ireland once a US company re-domiciles to Ireland. The Central Statistics Office

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in Ireland identified these kinds of transactions as one of the main drivers for the sharp rise in GDP experienced in 2015.

The new rules represent an attempt to reinforce the US Treasury Department's well-established anti-corporate inversion stance, and included the introduction of temporary regulations on inversions in April as well as additional regulations to address earnings stripping (which were eventually introduced in October).

Earnings stripping was described by the US Treasury Department as a tactic often employed after a corporate inversion, whereby the US tax liability of the corporation is minimised through the use of internal loans which see the new US subsidiary company borrowing from the new foreign parent or one of its foreign affiliates in a low-tax country and using the interest payments on the loans to offset earnings. The result is that the profits of US-based businesses are effectively moved overseas. The new rules (81 FR 72858) classify this type of intra-company transaction as if it were stock-based instead of debt, thereby eliminating the interest deduction for the US subsidiary.

The temporary regulations introduced regarding inversion operate so as to prevent the practice whereby foreign companies increase their size through the acquisition of multiple US companies over a short timeframe or through a corporate inversion in order to avoid the inversion thresholds under current US law. This in turn enables them to complete a subsequent and, often, larger acquisition of an US company to which the US tax code's existing curbs on inversions will not apply. The new rules restrict this practice by providing that the stock of a foreign acquirer which is attributable to assets acquired from a US company within the previous three years is to be disregarded when calculating the size of that company for the purpose of the US tax code.

The combination of these new rules has greatly reduced the economic benefit and rationale for structuring transactions in this manner and Ireland has seen a corresponding drop in the number of these types of transactions occurring in 2016, as well as the abandonment of some corporate inversions which were understood to be in the pipeline. Chief among these was the planned $160bn merger of Pfizer and Allergan, which would have created Ireland's biggest company by shifting Pfizer's global tax base to Ireland but which was reported to have been abandoned by virtue of the new rules.

The Treasury Department has acknowledged that these new rules are not likely to completely halt the flow of such transactions – such a move would only be possible if Congress voted to change the US tax code, which is only expected to occur as part of a complete overhaul of the tax code and is therefore unlikely in the near future – and indeed, despite the introduction of these new controls, 2016 still witnessed the merger of US company Johnson Controls Inc. and Cork-based Irish Tyco International plc, which saw the headquarters of the merged company move to Cork.

Market Abuse Regulations

The Market Abuse Regulation (EU 596/2014) ("MAR") and the Market Abuse Directive on criminal sanctions for market abuse (Directive 2014/57/EU) came into effect in Ireland and across the EU on 3 July 2016, and are aimed at strengthening the legal framework underpinning the function of detecting, sanctioning and deterring market abuse and ensuring greater transparency and market integrity. MAR extends the application of the existing market abuse and inside information regime beyond issuers with shares admitted to trading on regulated markets, such as the Main Market of the Irish Stock Exchange ("ISE"), to include issuers of securities traded on multilateral trading facilities such as the ISE's secondary market, the Enterprise Securities Market ("ESM"). As MAR has direct effect in

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all EU Member States, its introduction had an immediate implication for M&A transactions carried out by such issuers.

The following are the main changes that MAR has introduced which should be borne in mind by companies in the context of M&A transactions:

- Market soundings: MAR introduced new procedures in relation to "market soundings", which are described as communications of information prior to the announcement of a transaction in order to gauge the interest of potential investors in a transaction and the possible conditions attaching to it (such as its potential size or pricing). This could cover takeover situations where information is communicated between the bidder and the target's shareholders with a view to the bidder seeking irrevocable undertakings. Such market soundings may involve the disclosure of inside information to potential investors; however, provided that the requirements of MAR are complied with in advance of making such a disclosure (these requirements include making a written assessment as to whether the content of the communication constitutes inside information, and procuring the consent of the recipient of the market sounding), it will be nonetheless deemed to be legitimate. Issuers will also be required to maintain, for a period of five years, records demonstrating their compliance with MAR in relation to market soundings. This new regime effectively regulates the practice of market soundings for the first time, and issuers will need to ensure adherence to these new requirements in future.
- Insider lists: MAR introduced heightened requirements in respect of the maintenance of insider lists by issuers, which must now detail those persons acting on the issuer's behalf (including advisers) who have access to inside information (which could include information in relation to a proposed M&A transaction). Such lists must now be kept in a prescribed format and will require a greater level of information to be provided than previously. Issuers are also required to ensure that those persons with access to inside information acknowledge their duties in this regard and are cognisant of the applicable sanctions for breach of these duties.
- Delay of disclosure of inside information: MAR imposes a general obligation on issuers to inform the public as soon as possible of any inside information; however, issuers are entitled to delay the disclosure of this inside information where it would be likely to prejudice their legitimate interests, provided that the delay is not likely to mislead the public and the confidentiality of the information can be ensured by the issuer. M&A negotiations will continue to be covered by this legitimate interest exemption; however, MAR now requires that issuers inform the CBI where disclosure of inside information was delayed and to provide a written explanation of how the conditions for delay were satisfied. This will require companies to make a clear determination as to whether proposed M&A activity has reached the threshold to become inside information and will entail ongoing monitoring of any such delay, as well as detailed record-keeping to be undertaken by issuers to ensure that delay of such information is permitted and justified. From a target's perspective, it should be noted that it is likely to be deemed to be in possession of inside information as soon as an approach is received.
- Stake-building: In addition to the safe harbour provided by MAR in relation to market soundings, MAR provides a safe harbour in respect of certain "legitimate behaviours" which may be relevant to actions undertaken in connection with a takeover. For example, where a person has obtained inside information in the conduct of a public takeover or merger with a company and uses that information only for the purpose of

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completing that takeover or merger, then there is a presumption that such behaviour is not insider trading. This presumption, however, explicitly excludes stake building – the practice of acquiring shares in a target ahead of making a bid – and such activity will only fall outside the new market abuse rules if the only knowledge the bidder has is its own knowledge of its imminent, but as yet unannounced, offer.

Beneficial ownership of corporate entities

Regulations giving effect to Article 30 of the fourth Anti-Money Laundering Directive 2015/849 came into force in Ireland on 15 November 2016. Article 30 requires each Member State to ensure that corporate and other legal entities incorporated within the Member State have "adequate, accurate and current" information on their beneficial ownership which is held in a central register and is accessible to competent authorities. These requirements apply generally to all corporate entities (excluding corporates listed on an EU regulated market who are subject to disclosure requirements consistent with other aspects of EU law) and therefore will need to be borne in mind in the context of M&A transactions.

A corporate must now enter the following information into its beneficial ownership register: (i) the name, (ii) date of birth, (iii) nationality, and (iv) residential address of each of its beneficial owners; (v) a statement on the nature and extent of the interest of that beneficial owner; (vi) the date on which each natural person was entered into the register as a beneficial owner; and the (vii) date on which each natural person ceased to be a beneficial owner. Where there is doubt as to the identity of the natural person beneficial owner, then the corporate must enter the details of the senior managing official, such as a director or CEO, into the register.

Beneficial ownership is defined as either direct (through holding 25% plus one share of the shares/voting rights of the corporate body) or indirect (by controlling multiple legal bodies which hold over 25% of the shares in the relevant body). In certain circumstances, the beneficial owner is required to notify the corporate body in question of his/her position as a beneficial owner and of any change in this status. The body corporate must maintain an up-to-date register of beneficial ownership and give notice to any natural person where there is "reasonable cause to believe" that he/she is a beneficial owner.

Industry sector focus

The Technology, Media and Telecommunication sector recorded the highest volume of deals as well as the highest level of deal value in 2016. Deals in this sector accounted for 36.3% of the total deal value for the year, and in total 45 deals were recorded. In a continuation of trends seen in recent years, a large proportion of deals in this sector (approximately 50%) saw foreign companies targeting Irish businesses as part of expansion strategies. Most notable among these deals was Verizon's acquisition of Fleetmatics, Intel's acquisition of the processor chip company Movidius, the acquisition of Dublin-based billing software company Brite:Bill by Amdocs, as well as the sale of UTV Ireland to telecoms company Virgin Media.

By contrast, the Agri-Food/Food Services sector saw the majority of deals, more than 80% of the total, involving the acquisition of foreign businesses by Irish companies. One such deal was Greencore's acquisition of US-based Peacock Foods for €695m which, together with Sumitomo's purchase of Fyffes in December, contributed to this sector posting 22% of the total deal value.

Considering the banner year experienced by the pharmaceutical sector in 2015 in which the sector generated many of the largest domestic and international M&A transactions, 2016

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was comparatively quiet. This can generally be attributed to the US Treasury clampdown on corporate inversions, however, the sector continues to remain an important source for Irish M&A activity, and contributed 13% of all inbound deals in the first half of 2016. The most significant outbound deal in this sector was the acquisition of Celator Pharmaceuticals for €1.1bn by Jazz Pharmaceuticals in May.

High property valuations and the prospect of good rates of return on investment resulted in an increase in deal flow in the real estate sector, where venture capital funds appear to be starting to realise their investments and exit the market. Within this sector the retail property market enjoyed particular success with €1.6bn reported to have been invested in the sector in 2016, exceeding the 2015 total by 60%. By contrast, with the prevalence of portfolio sales over the last number of years, the majority of such retail investment sales in 2016 were single asset sales, with the acquisition of Blanchardstown Town Centre by Blackstone for €950m representing the largest single asset sale in the history of the State. 2016 also saw Oaktree Capital Management, a US-based private equity firm, purchase two Hazel Portfolio retail parks for a combined total of €50m.

Following an active 2015, the Irish hotel sector recorded 55 hotel sales in 2016 with approximately €700m changing hands. These figures would be higher still if investment sales or loans associated with hotel properties, which were purchased as part of loan portfolio sales, were taken into consideration. Significant transactions in this sector included the sale of the Gresham Hotel, the Burlington Hotel and the Dublin Lifestyle Collection, which comprises the Morgan, the Spencer and the Beacon Hotels.

The year ahead

The outlook for M&A activity in Ireland in 2017, as gauged by market participant sentiment, has been characterised as "cautiously optimistic", with 81% of M&A executives and advisers in a survey conducted by KPMG expressing their belief that 2017 will prove to be an equally, if not more prolific, year than 2016. The caution underlying this optimism undoubtedly stems from the uncertainty that still surrounds the likely implications of both Brexit and the change to the political administration in the US.

While it now seems probable that the government in the United Kingdom ("UK") will be in a position to trigger article 50 of the Lisbon Treaty by the end of March and thereby begin the two-year period of withdrawal negotiations, there is still much that is unclear as regards the exact form that this exit from the EU will take, and the nature of the UK's future trade relationship with the EU and, in particular, Ireland.

Ireland is uniquely exposed to the potential effects of Brexit by virtue of the shared land border and close historic and economic ties with the UK. By way of example, total goods and services exports to the UK are equivalent to around 17% of Irish GDP and the UK represents one of Ireland's largest trading partners.

As regards the impact of Brexit on M&A activity, initially, there is likely to be a decrease in the number of Irish investors seeking UK targets for acquisition until new trade agreements are agreed and investor confidence in the UK is restored, with dealmakers projecting that Irish assets will overtake UK assets, in a shift from previous years.

However, Brexit is also likely to present opportunities for Ireland that may counteract some of the possible negative effects. These are likely to include the migration of activities and businesses from the UK to Ireland as businesses seek to retain access to the European market, with the Industrial Development Agency ("IDA") reporting that a significant number of UK businesses are currently considering relocating to Ireland. In this regard,

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Ireland as an English-speaking, Eurozone, common-law country, with a well-educated workforce and stable local political landscape is likely to prove attractive as a location for increased inward investment for such companies in the coming years. In addition, Brexit may result in increased M&A activity due to the diversification of businesses as companies attempt to de-risk, and asset re-pricing as a result of fluctuations in the value of the pound.

The optimism expressed for the year ahead may also be somewhat tempered by virtue of the uncertainty regarding the approach of the new Trump administration towards foreign investment by US-based companies, including the warning made by a senior economic adviser to the administration that the US corporate tax rate could be cut from 35% to 15%. Such a move would be likely to reduce the incentive for companies to locate activities outside the US, including in Ireland, but it remains to be seen whether such plans could or would be implemented.

Debt funding seems set to remain the preferred means of financing deals in 2017 and crucially, access to such funding in Ireland is increasing as a result of the expanding range of borrowing options open to dealmakers, as represented by the growing number of alternative, non-traditional debt providers and the continued presence of private equity funds in the Irish market.

The sectors which are expected to see the most activity in 2017 are the technology, agri-food and healthcare/pharma sectors, which are areas which have traditionally provided robust levels of investment in Ireland. The anticipated upward trend of M&A activity in the agri-food sector is in spite of this industry's heightened exposure in the short term to the potential consequences of Brexit, given that almost 50% of Irish food exports are sold into the UK. Indeed, the Unconditional Phase 1 approval of the ABP Group merger with Slaney Foods by the European Commission during the year suggests there is scope for further consolidation of Irish agri-food businesses.

This year is also likely to see the re-admission to trading of Allied Irish Banks p.l.c. ("AIB") shares on the London Stock Exchange and Irish Stock Exchange, which had been forecast to take place during 2016 but which was delayed due to unfavourable market conditions. This will represent one of the largest Dublin and London IPOs this year and the process will also see the sale by the Irish Government of at least 25% of its stake in the bank. There is also speculation of a possible flotation of Irish telecoms company, Eir, however this may be pushed to 2018 as the company undergoes a process of deleveraging in order to get its debt under control prior to any flotation.

The EY Global Capital Confidence Barometer has found a near-record 57% of companies surveyed actively pursuing acquisitions in the next 12 months, pointing to an increase in M&A activity globally in 2017. The resilience demonstrated by the Irish economy in the last year, coupled with the 3.6% forecast increase in GDP for 2017 (which is about double that expected for the Eurozone as a whole) and the "business as usual" attitude of market participants, should mean that Ireland is likely to experience growth in M&A activity in 2017.

* * *

Sources

The information in this chapter is based on reports in the financial press, publications of the Central Bank of Ireland and European Commission, specialist reports, company and financial websites (Experian, Investec, etc.) and other publicly available information.

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