Ireland

Alan Fuller, Aidan Lawlor & Bruff O'Reilly
McCann FitzGerald

Overview

For the fourth successive year, Ireland is reported to have remained the fastest-growing economy in the European Union. In spite of economic uncertainty caused by the political disruptions of 2016 on both sides of the Atlantic, Irish M&A activity returned to a strong, healthy level reflecting a European trend. The Central Bank of Ireland ("**CBI**") estimates that GDP grew by 7.0% in 2017, and the European Commission is forecasting GDP growth of 4.4% for 2018 and 3.1% for 2019, respectively. This expansion continues to be driven by the buoyancy of domestic economic activity, which is benefiting from sustained employment growth and underlying investment. Although the growth is likely to moderate in coming years, the CBI indicates that the economic outlook for Ireland remains fundamentally positive.

There was strong M&A activity in Ireland in 2017, with 143 deals announced worth in total €14.9bn, representing an increase in deal volume of 5.9% compared to 2016, according to recent data from MergerMarket. Domestic and inbound M&A accounted for 58% of the total share of deal volume, up from 53% in 2016. It would appear that the increase in activity over 2016 represents the market's adaption to uncertain conditions, and desire to forge ahead with deals that had failed to materialise in 2016. 2017 featured a more traditional, strategic approach to M&A, as global buyers sought out indigenous Irish companies to diversify and expand their existing international offerings, and was marked by strong, consistent deal-making activity rather than the "mega deals" of previous years. Only three deals exceeded €500m in value, down from seven transactions in 2016 when a number of tax inversion deals served to increase overall deal value. Instead, the mid-market (€5-250m) range accounted for 93.5% of total deal volume, increasing from 82.4% in 2016. These 72 mid-market deals, spread evenly across all sectors, illustrate the continued strength and diversity of the Irish SME bracket.

Outbound M&A in 2017 saw a total of 93 deals announced worth in total €9.4bn, making up 42% of the total M&A activity, up from 39% in 2016. Irish companies, with surplus cash reserves and increased access to capital, sought out strategic, bolt-on opportunities globally. Most notably, building materials giant CRH and diversified logistics company DCC followed through on several large acquisitions, making up six of the top ten outbound deals in 2017.

Ireland's strong M&A activity in 2017 was an important part of a larger European growth story, with MergerMarket reporting an increase of 14% in the value of M&A activity across Europe when compared against 2016. This represented 29.6% of global M&A, the highest amount since 2012. According to data from Experian, there was an Irish element in 3.3% of all European transactions in 2017 by volume, up from 2.8% in 2016.

Significant deals and highlights

Inbound

In the context of inbound M&A activity, the more significant deals in Ireland in 2017 were in the financial services, technology media and telecommunications, and energy sectors. The largest deal was reported in April 2017 when Dubai Aerospace Enterprise announced its purchase of Dublin-based Aircraft lessor AWAS for €6.8bn. The transaction will see Dubai Aerospace Enterprise become one of the world's top aircraft lessors with a fleet of about 400 aircraft.

In December 2017, Irish telecoms company eircom Group agreed to sell a majority stake to a consortium led by French billionaire Xavier Neil, for €3bn. For eircom the deal represents a significant shift in strategy, having considered an IPO prior to the purchase. The new majority stake owners have now stated that an IPO is no longer on the table.

The sale of Royal Dutch Shell's 45% stake in Corrib oilfield to CPPIB, Canada's biggest public pension fund and Vermilion Energy, an international oil and gas producer, represents the largest energy deal of 2017, with the minority stake sold for €830m. The €180m acquisition of a 60% stake in Invis Energy, a company engaged in electricity generation from onshore wind, by Kansai Electric Power, Sojitz Corporation and Mitsubishi UFJ Lease & Finance Co represents the continued strength of the Irish wind energy sector.

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

Date	Sector	Target	Bidder	€ Deal value
24/04/2017	Financial Services	AWAS Aviation Capital Limited	Dubai Aerospace Enterprise	6,908m
20/12/2017	Telecoms	eircom Group Limited (64.5% Stake)	Iliad SA; NJJ Holding	2,994m
12/07/2017	Energy	Royal Dutch Shell Plc (Corrib oilfield) (45% Stake)	Vermilion Energy Inc.; CPP Investment Board European Holdings S.ar.l	830m
18/12/2017	Financial Services	Generali PanEurope	Life Company Consolidation Group Limited	286m
03/04/2017	Media	Experian Plc (75% stake)	Vector Capital; Peter McCormick (Private Investor)	281m
31/07/2017	Energy	Invis Energy (60% Stake)	The Kansai Electric Power Co., Inc.; Sojitz Corporation; Mitsubishi UFJ Lease & Finance Co., Ltd.	180m
10/08/2017	Financial Services	Aegon Ireland plc	Athene Holding Ltd.	179m
31/07/2017	Services (other)	Noonan Services Group Limited	Bidvest Group Limited	175m
02/02/2017	Financial Services	Allianz - Irish Life Holdings plc (33.5% Stake)	Allianz SE	160m
27/07/2017	Telecoms	E-Nasc Eireann Teoranta (78% Stake)	AMP Capital Investors Limited; Irish Life Investment Managers Limited	156m

(Source: MergerMarket, 2018)

Outbound

In the context of outbound M&A activity, the key major deals in 2017 were in the construction, medical and utilities sectors. Building materials giant CRH pursued an aggressive acquisition strategy, making up three out of the top five M&A deals. The landmark acquisitions of Ash Grove Cement, Suwannee American Cement, and Fels-Werke for €2.9bn, €640m, and €600m respectively, saw CRH expand and consolidate its operations on both sides of the Atlantic.

In the medical sector, Botox maker Allergan agreed to pay €2.01bn in cash for Zeltiq Aesthetics, a company that specialises in non-invasive fat reduction procedures.

Diversified Irish logistics and sales support group DCC played a particularly active role in the consumer and utilities sectors, with three large acquisitions made to expand their international footprint. The acquisition of Esso Norge for €275m in Norway; of AS NGL Energy Partners LP for €173m in the United States; and of Royal Dutch Shell for €141m in Hong Kong and Macau; demonstrated the growing global reach of the company. Insulation giant Kingspan also expanded its operations through acquisitions across the globe, most notably through the purchase of Grupo Synthesia for €250m to enhance its presence in Spain and Central and South America.

The following table, produced by MergerMarket, sets out the top 10 outbound deals from Ireland which took place last year:

Date	Sector	Target company	Bidder company	€ Deal value
20/09/2017	Construction	Ash Grove Cement company	CRH Plc	2,923m
13/02/2017	Medical	ZELTIQ Aesthetics, Inc.	Allergan plc	2,068m
26/12/2017	Medical: Pharmaceuticals	Sucampo Pharmaceuticals Inc	Mallinckrodt Plc	898m
21/11/2017	Construction	Suwannee American Cement LLC	CRH Plc	639m
07/08/2017	Construction	Fels-Werke GmbH	CRH Plc	600m
08/11/2017	Construction	Fermacell GmbH	James Hardie Industries SE	473m
07/02/2017	Consumer: Retail	Esso Norge AS (142 retail petrol stations)	DCC Plc	275m
15/12/2017	Chemicals and materials	Grupo Synthesia	Kingspan Group Plc	250m
07/11/2017	Utilities (other)	NGL Energy Partners LP (Certain Retail Propane Businesses)	DCC Plc	173m
05/04/2017	Utilities (other)	Royal Dutch Shell Plc (liquefied petroleum gas business in Hong Kong and Macau)	DCC Energy Ltd.	141m

(*Source: MergerMarket, 2018*)

Funding environment

Ireland's M&A growth in recent years has largely been attributable to increased access and choice with regard to sources of finance. Ireland has continued to attract capital from

different sources, including private equity and traditional debt financiers. A number of factors, including the favourable tax regime, access to debt, and the large pool of private equity funds have created an excellent environment for M&A activity. In particular, private equity played an important role in 2017. Private equity investment rose to record levels, with a total of 37 deals worth €12.2bn, representing an increase in value of 141% from 2016. This represents the further development of private equity funding both from international investments in Ireland, as well as Irish private equity funds – such as Carlyle Cardinal Ireland and Broadlake, both of which had notable exits in 2017.

Key developments

Increase in stamp duty

In October 2017 the Irish government increased the rate of stamp duty payable on the sale of non-residential properties from 2% to 6%. The 2% rate had been introduced in 2011 during the economic downturn as an incentive to increase commercial property transactions. However, given the significant upturn in activity in the commercial property sector in recent years, the Irish government has now increased the stamp duty rate as a revenue-raising mechanism, a tool to rebalance construction activity towards residential development and also as a way to avoid overheating the construction sector. It should be noted that the increased rate remains far below the 9% maximum rate charged between 2002 and 2008.

The increased rate applies to instruments that are, or are deemed to be, conveyances or transfers on sale of any property (other than stocks or marketable securities or a policy of insurance or a policy of life insurance) or to certain leases executed on or after 11 October 2017. As such, the increased rate will likely impact on acquisitions taking effect by way of business purchase or asset sale after this date, and acquirers should be cognisant of this higher rate which will apply on the transfer of certain categories of asset.

In addition, the Irish government introduced measures to impose the new 6% stamp duty rate on transfers of commercial property holding companies conducted by way of share sale or similar-type sales. This measure was introduced to prevent persons from availing of the lower 1% stamp duty rate on share sale transactions in property holding companies, and to ensure uniform stamp duty treatment whether the commercial property is sold directly or indirectly through a company, fund or partnership interest.

To reduce the potential impact of the stamp duty increase on Ireland's residential housing sector, the sale of development land with the ultimate intended use as residential property will be subject to a stamp duty refund scheme. The refund will be subject to certain conditions, including a requirement that the relevant development is commenced within 30 months of the land acquisition. Further details of the scheme have yet to be announced.

Companies (Accounting) Act 2017

The Companies (Accounting) Act 2017 (the "**2017 Act**") was commenced in June 2017 to transpose the EU Accounting Directive 2013/34/EU into Irish law. This sizeable piece of legislation amended many of the provisions of the Companies Act 2014 relating to the statutory financial statements and related reports of companies and should therefore be borne in mind in the context of M&A transactions.

Merger relief

The 2017 Act amends the Companies Act 2014 (the "**2014 Act**") to provide that transactions involving foreign targets can avail of merger relief. The 2014 act provides that where an

Irish company acquires 90% or greater interest in an Irish company in exchange for shares issued at a premium, then the company issuing the shares does not have to transfer the share premium to its share premium account. The 2017 Act amends the definition of a company for the purposes of merger relief to provide that this provision now applies to the acquisition of a foreign company.

Extension of US GAAP provision in limited circumstances

The 2014 Act provides that certain Irish companies who have not previously filed non-US GAAP accounts with the CRO and whose securities are registered with the Securities and Exchange Commission may prepare their financial statements in Ireland using US GAAP. This was initially introduced as a temporary measure and was due to expire on 31 December 2020. The 2017 Act has now extended this provision for a further ten years, until 31 December 2030. However, the extension only applies to companies incorporated in Ireland on 18 July 2017.

Definition of "branch"

Under the 2014 Act, a foreign incorporated limited liability body corporate with a branch establishment in Ireland has to register certain details at the CRO and file accounts on an annual basis. The 2017 Act extends the registration and filing obligation to unlimited foreign incorporated bodies that are subsidiaries of limited liability bodies corporate.

Private unlimited companies

The 2017 Act has reduced the scope for private unlimited companies to avoid filing financial statements. Under the 2014 Act, a private unlimited company ("**ULC**") incorporated in Ireland must file its financial statements with the Companies Registration Office ("**CRO**") if it is deemed to be a designated type. The definition of designated ULCs was previously very narrow and allowed for ULCs that had set up in certain group structures to avoid filing financial accounts with the CRO. The 2017 Act increased significantly the number of designated types and has therefore made it much more difficult for a ULC to avoid the filing obligation. This has had the effect of preventing organisations from taking advantage of the relaxed ULC filing obligation while simultaneously allowing their ultimate shareholders to benefit from limited liability.

Financial statements – Directors' report

The Companies Act 2014 requires a company to disclose remuneration details, for both the current and the preceding financial year, in respect of company directors, including gains made by directors on the exercise of share options. The 2017 Act introduces an additional obligation to disclose any consideration to third parties for the services of any person as a director of the company or of any of its subsidiaries, or otherwise in connection with the management of the company's affairs or that of any of its subsidiaries. In relation to the acquisition or disposal of its own shares, the 2017 Act provides that the company will have to give reasons in the report for any acquisition of its own shares during the financial year as well as the proportion of called-up share capital held at the beginning and end of the financial year.

General Data Protection Regulation

The General Data Protection Regulation ("GDPR") will come into force across the EU on 25 May this year, but its impact on M&A deals in Ireland has already been felt, as its presence has increased consideration, by buyers and sellers of companies and businesses, of data protection issues in the M&A process.

For potential buyers, the consequences of purchasing a company that is at risk of

conducting its operations in breach of the GDPR are very significant. The robust penalties to be introduced under the GDPR mean that organisations that commit a serious breach of its provisions face potential fines up to the greater of €20m or 4% of global annual revenue. Up to now, in Ireland no fines could be levied for data protection issues (aside from fines for limited criminal offences relating to data protection and direct marketing). In addition, the potential reputational damage for low levels of data protection compliance is necessarily higher and this becomes even more significant where, as is the case under the GDPR, the data protection obligations companies are required to discharge have themselves been substantially increased.

As such, companies are examining potential targets in this new light: this has implications for the amount that acquirers are prepared to pay to complete deals, and has also increased data protection due diligence and given rise to a greater desire on the part of buyers of Irish targets to seek relevant warranty and other contractual protection.

Sellers, for their part, are keen to progress GDPR compliance programmes to demonstrate to buyers good levels of compliance in companies and businesses which they are attempting to sell, while at the same time seeking to resist taking on disproportionate levels of risk by minimising the data protection deal protections offered, such as data protection indemnities.

Non-financial disclosures for large companies

The European Union (Disclosure of Non-Financial And Diversity Information By Certain Large Undertakings and Groups) Regulations 2017 (the **"Non-Financial Disclosure Regulations**") came into operation on 21 August 2017, and transposed into Irish law Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large companies and groups. Under the Non-Financial Disclosure Regulations, certain companies must disclose information about their policies and practices relating to matters such as environment, anti-corruption as well as report on the company's diversity policy, for financial years beginning on or after 1 August 2017.

The Non-Financial Disclosure Regulations apply to companies or holding companies that are classified as both an "ineligible entity" and a "large" company under the Companies Act 2014 and which also employ on average over 500 employees. An "ineligible entity" includes entities that are listed on a regulated market of an EEA member state as well as banks, insurance undertakings or other companies designated as public interest companies.

The directors of these companies must publish a "non-financial statement" describing, among other factors, environmental matters, anti-corruption and bribery matters, social and employee matters, and human right matters. Where a company does not have policies in these areas, it must provide an explanation as to why not. The "non-financial statement" may form part of the annual director's report, or may be prepared as a separate statement.

The Non-Financial Disclosure Regulations also require that directors of a "traded company" that is a "large company" must prepare a diversity report on its diversity policy. This report must include description of the diversity policy that applies in respect of their board of directors, and address factors such as gender, age, professional background and educational attainment. The diversity policy must form part of the corporate governance statement in the directors' report. Where a company does not have a diversity policy, it must provide an explanation as to why not. A "traded company" includes public companies listed on a regulated market in an EEA state as well as certain other company types which have debt securities admitted to trading on such a market.

Industry sector focus

Following a quiet 2016, the financial services sector accounted for 53% of deal value in 2017. The headline €6.8bn acquisition of AWAS Aviation Capital by Dubai Aerospace Enterprise accounted for much of the sector's deal value. The insurance market also saw notable activity with the €281m purchase of Dublin-based Generali PanEurope by Life Company Consolidation Group; the €179m purchase of Aegon Ireland by Bermuda-based re-insurance firm Athene Holding; and the purchase of the remaining 33.5% stake in Allianz-Irish Life Holdings by its German parent, Allianz, for €156m.

Activity in the technology, media and telecommunication ("**TMT**") sector remained strong, accounting for 15% of volume and 25% of value. The most notable deals in this sector were Iliad's purchase of a 64.5% stake in telecoms company eircom Group for €3bn, and the sale of cross-marketing business Experian to private equity firm Vector Capital for €281m. These examples illustrate that the highly innovative and attractive Irish targets in this sector are seen to provide significant competitive advantage to their acquirers in allowing them to pursue important bolt-on strategies. Additionally, Irish companies have ambitions abroad. The purchase by the Irish Infrastructure Fund of a majority stake in Enet, the now sole-bidder for Ireland's National Broadband Plan tender, for €156m was made with the aim that such investment will allow the company to expand its pan-European operations.

The energy sector saw a notable increase in deal value, from 3% to 8% of the 2017 total. The wind energy sector was particularly active in 2017, with the €180m acquisition of a 60% stake in Invis Energy, owner of a portfolio of wind farms in Munster and Connaught, by a consortium comprising Kansai Electric Power, Sojitz Corporation and Mitsubishi UFJ Lease & Finance Co., this coming after the flotation of Greencoat Renewables on the Irish Stock Exchange in July which raised €270m from investors. The Greencoat Renewables flotation should lead to additional deal-making activity, with the funds from the listing earmarked for several acquisitions across Europe in the near future.

The consumer sector grew from 8% to 14% in deal volume and from 1% to 4% of total deal value. Foreign investors were particularly active in this sector. For example, major US household product manufacturer Church & Dwight acquired hair growth vitamin supplement producer Viviscal for €150m, while US-based private equity Carlyle Cardinal Ireland purchased an undisclosed majority stake in pharmacy group Sam McCauley Chemists for €50m.

The agri-food and beverage sector recovered well from its initial post-Brexit shock. With Irish exports reaching record levels, there was a commensurate uplift in M&A activity, with a significant proportion of cross-border deals. Manor Farm, Ireland's largest chicken processor, was bought by Swedish group Scandi Standard for €70m. The acquisition of chocolate manufacturer Lily O'Brien by Colian Holdings, a Polish food company, for €40m stands also out as another notable deal.

The year ahead

The outlook for M&A activity in Ireland in 2018, as gauged by market participant sentiment, indicates a greater level of optimism than previous years, with 92% of M&A executives and advisors in a survey conducted by KPMG ("**KPMG Survey**") expressing their belief that 2017 will prove to be an equally, if not more prolific, year than 2017. This renewed optimism arises from the ability demonstrated by the Irish market to weather the impact of the macro shocks and political upheaval of previous years.

The progressive withdrawal of quantitative easing by the European Central Bank ("**ECB**") and the US Federal Reserve, and an associated increase in interest rates in the world's largest economies, poses a possible threat to continued high levels of M&A activity. In October 2017 the ECB announced a plan to gradually unwind the monetary stimulus measures it has put in place that served to stabilise European economies during the economic downturn, starting with a process of halving its bond-buying programme from €60bn to €30bn a month, commencing in January 2018. This measure has brought the ECB's policy position closer to that of the US Federal Reserve.

However, with the ECB unlikely to increase interest rates until 2019 and the US federal interest rate rising slowly, there may be increased buyer appetite in 2018 to seek out M&A opportunities while the cost of debt financing remains low. The market may see a number of deals completed in 2018 while interest rates remain at lower levels.

On 22 December 2017, the Tax Cuts and Jobs Act 2017 was enacted by President Trump. These wide-ranging tax reforms involve the reduction of business and individual tax rates and the inclusion a number of measures intended to modernise US international tax rules and incentivise American corporates to repatriate their offshore funds. The impact of these reforms could adversely affect inward investment into Ireland, which is currently incentivised in part by Ireland's relatively low corporate tax rate. However, the new corporate rates established by the US reforms are still higher than the 12.5% corporate rate offered in Ireland, and the effective tax rate of many companies in Ireland is lower still. While the full impact of these reforms remains to be seen, the opinion held by many appears to be that Ireland remains highly competitive from an international tax perspective.

The initial shock of the Brexit result, most apparent in the reduced M&A activity in Q3 2016, has gradually worn off as buyers became accustomed to transacting in a relatively uncertain political and economic environment. The conclusion of the Phase 1 negotiations at the end of 2017 provided some degree of comfort, particularly in terms of the likely impact on trade on the Island of Ireland and between Ireland and Britain. The cautiously optimistic mood that emerged from the Phase 1 negotiations was reflected in the KPMG survey, where only 34% of respondents said that they expected Brexit to have a negative impact on M&A volumes (compared with almost half of respondents in a similar survey last year.) Indeed, 36% of respondents felt that Brexit would spur on an increase in deal activity.

The agri-food and beverage, TMT, healthcare and property sectors are expected to see the most deal activity in 2018. The TMT sector promises to deliver another impressive year, driven by the desire of companies to make strategic acquisitions of tech-enabled companies as a safeguard against growing competition and disruption. For example, the purchase by Kerry Group of US-based tech company Ganeden, a specialist in probiotics and related technologies, in October 2017 for an undisclosed sum illustrates the trend of large corporates acquiring smaller, innovative companies to ensure competiveness moving forward. Respondents to the KPMG Survey indicated that Irish investors would seek out opportunities across the globe – with continental Europe (23%), the United States and Canada (18%), and the emerging markets (10%) making up more than half of the estimated destinations for Irish acquirers.

The MergerMarket Spotlight 2018 Outlook found that that a majority of respondents believe M&A deal count will increase in the next 12 months, with 68% predicting an increase of 5% or more. This increase in confidence, matched with the robust performance of the Irish M&A market in 2017 and forecast growth in GDP of 4.4% in 2018, should mean that Ireland will experience another impressive year of M&A activity in 2018.

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 (MergerMarket, Experian, Investec, etc.) and other publicly available information.

Alan Fuller
Tel: +353 1 607 1372 / Email: alan.fuller@mccannfitzgerald.com
Alan is a partner in, and head of, the firm's Corporate Group and specialises in private company M&A and private equity transactions, and has advised on a number of energy sector transactions. Alan has advised a number of private equity funds in relation to acquisitions of large portfolios of loan assets and has also advised institutional sellers of loan portfolio assets.

Aidan Lawlor
Tel: +353 1 607 1450 / Email: aidan.lawlor@mccannfitzgerald.com
Aidan is a partner in, and head of, the firm's Corporate Finance Group and specialises in equity capital markets, corporate finance and private and public company M&A. Aidan also advises on private company acquisitions and disposals.

Bruff O'Reilly
Tel: +353 1 511 1592 / Email: bruff.oreilly@mcannfitzgerald.com
Bruff trained with McCann FitzGerald and qualified into the Corporate Group as an associate in 2018 having previously worked on the team as a trainee. Since qualification Bruff has gained experience in a range of practice areas including mergers and acquisitions, corporate reorganisations and joint ventures. He also advises on general corporate law issues.

McCann FitzGerald

Riverside One, Sir John Rogersons' Quay, Dublin 2, Ireland
Tel: +353 1 829 0000 / URL: www.mccannfitzgerald.com