Mergers & Acquisitions

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Overview

2018 represented another strong year for M&A activity in Ireland with deal volume for the year reported to be at its highest level in recent years. This robust performance follows a number of healthy years of deal-making in Ireland and may be seen as a reflection of the continued confidence in the Irish economy despite the global economic and political volatility experienced throughout the year. The European Commission estimates Irish GDP to have grown by 6.8% in 2018, driven primarily by private consumption which in turn is supported by positive employment developments (the unemployment rate fell to 5.7% in 2018 and is expected to be at 5.2% in 2019), stronger wage growth, weak inflation as well as the acceleration of key domestic components of investment, such as building and construction.

However, the latest forecasts indicate that the pace of growth is likely to moderate over the coming years with the Economic and Social Research Institute predicting GDP growth of 3.8% for the Irish economy in 2019 and 3.4% in 2020. This anticipated deceleration in growth reflects the threat of a less favourable and more uncertain international economic environment in the coming year resulting from developments which occurred in 2018 such as intensified international trade tensions and disputes, a slowing world economy, global stock market instability, tax reforms in the US resulting in repatriation of earnings held abroad by US companies and reduced support from central banks. These developments, together with sustained uncertainty over the timing and nature of Brexit and its consequences for Ireland, made their impact felt towards the end of 2018. In Q4, deal volume fell sharply with many businesses seeming to adopt a more cautious attitude as the (now extended) March 2019 Brexit deadline loomed closer. Caution was equally apparent in the Irish equity market in this quarter with a number of planned IPOs being shelved in light of poor global capital markets performance. Nonetheless, and abstracting from these uncertainties, the Central Bank of Ireland suggests that the outlook for growth of the Irish economy remains broadly positive.

The total value of Irish M&A activity in 2018 is reported by Experian to have hit €92bn; however, this headline figure is skewed significantly by Takeda Pharmaceutical's c.$59bn takeover of Irish headquartered Shire Pharmaceuticals first announced in May 2018. When this transaction is discounted, the overall deal value for 2018 may be seen to have decreased when compared with 2017. Only three so-called "mega deals", exceeding €500m in value, were completed in 2018, while there were two deals with a value of between €251m and €500m – representing an overall decrease on the six deals recorded across these categories in 2017.

Turning to deal volume for the year, recent data from Mergermarket indicates that there were 162 deals announced in 2018 which marks a significant increase of 7% on the 151 transactions reported in 2017. As regards the breakdown of this deal volume, domestic and

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inbound M&A accounted for a 61% share of overall deal volume with outbound M&A activity making up the remaining 39%. Deals were spread evenly across all sectors and the figures are broadly in line with the balance of M&A activity for 2017.

The high proportion of inbound deals illustrates that cross-border M&A remains key to Irish deal-making, with foreign investment into the country reported to have reached its highest number of deals on record in 2018 and indicating that Ireland is still viewed internationally as an attractive destination for investment and that Irish companies represent strategic growth opportunities for overseas buyers.

The increasingly important role that private equity has played in the Irish M&A landscape in recent years continued apace in 2018 with deal volume remaining steady and any overall decline in deal value explainable when the distortion of the 2017 figures as a result of the Dubai Enterprise Aerospace and Eircom "mega deals" is taken into account. 2018 witnessed a number of notable private equity exits as investors began monetising investments made around 2013/2014. This included Broadlake's sale of their stake in Vita Liberata Limited, the UK-based manufacturer of self-tan beauty products, and MML's sale of its stake in Lowe Rental, which are illustrative of the fact that private equity funding has become a well-established and attractive funding and growth option for Irish companies.

Ireland's strong M&A activity in 2018 was part of a larger European growth story, with Mergermarket reporting that Europe reached its highest post-crisis M&A value (US$ 989.2bn) and highest value share of global M&A (28%) since 2014. According to data from Experian for the first three quarters of 2018, there was an Irish element in 3.3% of all European transactions, contributing to 10.3% of their total value which is up from 3.1% for the same period in 2017.

Significant deals and highlights

While the vast majority of deals that made up the overall Irish M&A deal volume in 2018 were mid-market deals, reflecting the strength of this section of Ireland's economy, it is significant to note that, in terms of deal value, the top 10 private M&A deals by value in 2018 accounted for approximately 65% of the overall disclosed deal value for the year according to research by Investec Corporate Finance.

In the context of the public company sphere, the most notable deal announced in 2018 was undoubtedly Takeda Pharmaceutical's c.$59bn purchase of Irish headquartered pharmaceutical company Shire plc, which completed in early 2019. The deal, which was Japan's largest ever foreign takeover, sees the 237-year-old Japanese Takeda group join the ranks of the world's top 10 largest drug-makers with combined revenues of $31bn.

Another noteworthy, large-scale pharmaceutical deal which concluded in 2018 in the private M&A sector was the €586m acquisition of Dublin-based Adapt Pharma by US group Emergent Biosolutions through which it acquired the commercialisation rights to Narcan Nasal Spray, an emergency overdose treatment drug being used to combat the opioid crisis in the US.

As regards inbound M&A activity in the Irish private sector more generally, the largest deal was reported in August when an Irish subsidiary of Japanese financial services firm ORIX Corporation acquired a 30% stake in Avolon Holdings Limited, an Ireland-based global aircraft leasing firm, for €1.9bn in a move designed to diversify and strengthen the financial profile of Avolon's shareholder base and facilitate positive credit rating momentum.

August 2018 also witnessed the announcement by private equity firm Cinven that it had agreed to purchase Dublin-headquartered insurer Axa Life Europe in a €925m deal. This acquisition

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is indicative of a recent trend which has seen private equity firms investing in European life insurance businesses in order to capitalise on the consolidation opportunities presented by this fragmented market. Another notable private equity deal which completed during the year was Apollo's acquisition of hotel management business Tifco for a reported €500m.

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

Announced Date	Target Company	Target Dominant Sector	Bidder	Deal Value
08/08/2018	Avolon Holdings Limited(30% stake)	Financial Services	ORIX Aviation Systems Limited	1,906
18/09/2018	AXA Life Europe DAC	Financial Services	Cinven Partners LLP	925
28/08/2018	Adapt Pharma Limited	Pharma, Medical & Biotech	Emergent BioSolutions Inc	586
10/09/2018	Tifco Hotel Group	Leisure	Apollo Global Management	500
31/05/2018	Mater Private Group	Pharma, Medical & Biotech	InfraVia Capital Partners	495
01/02/2018	Indego Ltd.	Real Estate	Oaktree Capital Management LP	250
17/01/2018	Green Isle Foods, Ltd.	Nomad Foods Limited	Nomad Foods Limited	226
11/08/2018	KN Group	TMT	Groupe Circet S.A.	150
10/05/2018	Imagine Communications Group Ltd (50.1% stake)	TMT	Brookfield Asset Management Inc.	120
09/11/2018	Gift Voucher Shop Limited	Consumer	Blackhawk Network Holdings	100

(*Source: Mergermarket, 2018*)

In terms of outbound M&A activity, the major deals in Ireland in 2018 were in the technology, industrials and consumer sectors. The target in the majority of foreign acquisitions by Irish companies was located in the US as was the case with the Kerry Group's acquisitions of Ariake USA and Southeastern Mills North American coatings and seasonings business for c.€325m. These acquisitions are expected to enhance the group's foundational technology portfolio, as well as strengthen its foodservice positioning.

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As regards outbound deal value, Irish packaging corporate Smurfit Kappa topped the outbound list with its €460m acquisition of the Dutch paper and board recycling business Reparenco, which is expected to deliver synergies of €30m.

On the public company side of outbound deals, the most significant transaction announced in 2018 was the agreed €1.7bn takeover of London listed financial trading systems firm Fidessa by Dublin-based financial software developer Ion Investment Group who are backed by private equity firm Carlyle. This deal saw Fidessa withdrawing its support for an earlier competing offer from Swiss Temenos group.

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

Announced Date	Target Company	Target Dominant Sector	Bidder	Deal Value
20/04/2018	Fidessa Group Plc	TMT	ION Investment Group Limited	1,659
24/05/2018	Parenco B.V; Reparco Nederland B.V.	Industrials & Chemicals	Smurfit Kappa Group Plc	460
02/08/2018	Welcome Break Limited (55.02% Stake)	Leisure	Applegreen Plc	362
25/10/2018	Fleischmann's Vinegar Company, Inc.	Industrials & Chemicals	Kerry Group Plc	350
15/03/2018	Clear Score Technology Limited	Business Services	Experian Plc	311
11/10/2018	SlimFast; Hyper Network Solutions of Florida LLC	Consumer	Glanbia Plc	303
01/02/2018	Dole Food Company, Inc. (45% Stake)	Consumer	Total Produce Plc	241
10/12/2018	Compuscan Holdings International (Pty) Ltd.	Business Services	Experian Plc	231
14/12/2018	Southeastern Mills, Inc. (North American coatings and seasonings business)	Consumer	Consumer Kerry Group plc	169
14/09/2018	Bonti, Inc.	Pharma, Medical & Biotech	Allergan plc	167

(*Source: Mergermarket, 2018*)

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Key developments

Merger notification

An important change to the Irish merger notification regime was announced in October 2018 with the passing of the Competition Act 2002 (Section 27) Order 2018 which increased the thresholds required for a compulsory notification to be made to the Irish Competition and Consumer Protection Commission (the "**CCPC**").

Previously, for a transaction to be mandatorily notifiable to the CCPC, at least one party to the transaction had to have turnover in Ireland of €3m or more and the aggregate Irish turnover of the parties had to be €50m or more. With effect from 1 January 2019, a merger or acquisition will be subject to mandatory merger review in Ireland if, in the most recent financial year:

- the aggregate turnover in Ireland of the parties involved in the transaction is €60m or more; and
- two or more parties involved in the transaction each have turnover in Ireland of €10m or more.

These changes were introduced on the back of a recommendation from the Department of Enterprise, Business and Innovation following a period of public consultation and are aimed at reducing the administrative and financial burden on smaller enterprises in making the required notifications and better aligning the Irish merger regime with international norms.

It is expected that the increased thresholds will result in a large reduction to the number of mergers notified to the CCPC (many of which in recent years had limited connection with Ireland or an insubstantial effect on competition in Ireland) and will therefore allow resources and efforts to be more appropriately focused on mergers which are likely to have a substantive impact on competition in Ireland.

For potential purchasers of Irish businesses, the revised thresholds will be seen as a welcome development, meaning that many smaller transactions, which would previously have been notifiable, can now avoid deploying the cost and resources associated with preparing a merger notification and will benefit from greater deal certainty as they will no longer be subject to regulatory approval.

It should be noted that the amendment does not affect mergers or acquisitions in the media sector for which a special jurisdictional regime exists in Ireland.

Data protection

The General Data Protection Regulation ("**GDPR**") came into force across the EU on 25 May 2018. In Ireland, the GDPR was complemented by the introduction of the Data Protection Act 2018 ("**DPA 2018**") which supplements, implements and derogates from certain provisions as permitted under the GDPR. The DPA 2018 also established the Data Protection Commission (the "**DPC**") as the designated supervisory authority in Ireland.

While some of the main data protection obligations under the GDPR and the DPA 2018 are similar to previous data protection law, there are significant new obligations in certain areas which may affect M&A transactions, such as in the engagement of service providers; for instance a data-room provider, and the now mandatory obligation to report to the DPC in relation to security breaches.

As reported last year, even prior to its commencement, the GDPR had impacted on the M&A process in Ireland with a heightened emphasis being placed on data protection matters arising on M&A transactions in the lead up to the implementation date. This development is

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motivated no doubt by the very significant fines (up to the greater of €20m or 4% of global annual revenue) which can be imposed on companies for non-compliance.

This increased focus on data protection compliance has continued post-commencement of the GDPR and the DPA and arises at many different stages over the lifetime of an M&A transaction, including at: the due diligence phase, where the provision and management of information in data rooms has become more sensitive and where greater scrutiny is placed on identified data protection compliance issues; the contract negotiation phase, where purchasers of Irish targets are seeking enhanced contractual protections as regards data protection compliance and, by corollary, sellers are seeking to resist the same so as to avoid disproportionate re-allocation of risk; and during post-completion integration.

Finance Act 2018

As part of the 2019 Irish budget, proposals revealed by the Minister for Finance on 9 October 2018, two significant tax measures were announced which may impact on Ireland's image as a competitive country with an attractive tax regime and consequently on inbound investment to Ireland. The two new measures introduced were a regime in relation to Controlled Foreign Companies ("**CFCs**") and a new exit tax which have both been implemented by the Finance Act 2018.

a. Exit Tax

Prior to the Finance Act 2018, Ireland had a limited exit tax regime that was designed as an anti-avoidance measure to restrict companies from moving their tax residency out of Ireland to avoid Irish capital gains tax. However, the EU Anti-Tax Avoidance Directive 2016/1164 (the "**ATAD**") required Member States to introduce further, more comprehensive measures in relation to exit tax by 1 January 2020. The new exit tax rules are therefore not entirely unexpected but their introduction is earlier than anticipated.

The Finance Act 2018 implemented this new exit tax regime, with effect for transactions on or after 10 October 2018 (the day after the regime was announced). The new rules impose a tax of 12.5% on unrealised capital gains where companies migrate their tax residency or transfer assets offshore, putting them outside the scope of Irish tax law. In such a scenario, the company is deemed to have disposed of the assets and immediately reacquired them at market value. The gain arising from this disposal will be subject to the exit tax of 12.5%. However, any deemed gain which is made as part of a transaction to dispose of an asset, the purpose of which is to ensure the gain is taxed at the 12.5% rate as opposed to the general capital gains rate (i.e. in cases of tax avoidance), will be charged at the current capital gains tax rate of 33%.

The overnight nature of the introduction of these rules has been criticised as creating undue uncertainty about future changes to Irish tax policy and portraying a negative image for multinationals who are considering investing or locating in Ireland and who need confidence that they can structure their tax affairs with sufficient certainty.

However, in spite of the surprise early announcement, the new rules may nonetheless be viewed as a positive development in that it is now clear that the general exit rate to be applied is 12.5% rather than the 33% rate that currently generally applies to taxable gains and, as such, reaffirms Ireland's commitment to the 12.5% corporation tax brand and to being viewed as a competitive country with an attractive tax regime for international business. It has additionally been speculated that the new rules may discourage US multinational companies from undertaking group restructurings involving the transfer of intellectual property from Ireland back to the US in order to avail of the new lower US tax rate on foreign derived intangible income which, if true, would also be positive for the Irish economy.

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b. Controlled Foreign Companies

The Finance Act 2018 has also introduced, with effect for accounting periods beginning on or after 1 January 2019, a new regime in relation to CFCs which is another measure required by the ATAD. This is the first time that Ireland will have a CFC regime in place and, as such, is a significant change to the Irish tax landscape.

The new CFC rules are designed to prevent companies from moving profits to low or no tax jurisdictions, thus eroding the Irish tax base. Under these rules, a company will be considered to be a CFC where it is a non-Irish resident company which is controlled by an Irish company, branch or agency. The rules operate by essentially attributing a portion of the undistributed income (which is taken to mean the company's accounting profits for the relevant period minus "relevant distributions") of a CFC to the Irish controlling company for taxation in Ireland where this income arises from non-genuine arrangements put in place for the purpose of obtaining a tax advantage. This charge will take effect when a CFC has any undistributed income that is reasonably attributed to "relevant Irish activities", which is broadly defined as significant people functions and key entrepreneurial risk-taking functions. The rate of tax chargeable is determined by the class of activity the income is generated from and will either be 12.5% or 25%.

It should be noted that a number of exemptions to the CFC charge are provided for in the Finance Act 2018. These exemptions can broadly be divided into two categories, one relating to exclusions from the CFC charge without a requirement to analyse the CFCs undistributed income and the other category relating to exemptions applied to specific income streams of the CFC.

While Ireland was required to establish a CFC regime by the ATAD, significant comfort may be taken from the policy approach adopted by Ireland in implementing the regime. The ATAD allowed Member States to determine whether the income of a CFC should be attributed to its parent using one of two options – the first option considers the nature of the income in the CFC and whether it is passive (as opposed to trading), whereas the second is primarily focused on whether the CFC is engaged in artificial/non-genuine activities.

As outlined above, Ireland selected the second option which has the benefit of avoiding the potential pitfall of option one which could have seen broad swathes of income being treated as CFC income, regardless of whether or not that income has any Irish nexus. As noted by the Irish Tax Institute, this would clearly have had a negative impact on the competitiveness of the Irish regime, particularly given the high 25% rate that is charged in Ireland on passive income, and so the introduction of CFC rules based on the second approach will no doubt be welcomed by most multinational corporations operating in Ireland and serve to maintain Ireland's competitive image.

Industry sector focus

While M&A activity was spread quite evenly across all sectors of the Irish economy in 2018, the financial services sector led the field in terms of deal value for a second year running and is reported to have accounted for 45% of the total M&A value for the year. This is largely due to a small number of high-value deals concluded in this sector, such as Orix's acquisition of a 30% stake in Avolon for €1.9bn and the purchase by Dublin based Goshawk Aviation of Sky Leasing's Irish subsidiary for a reported €2.4bn. These transactions equally demonstrate Ireland's position as an important player in the international aircraft leasing sector.

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Another sector which recorded significant deal value in 2018 was the Agri-Food/Food Services sector, which is said to have accounted for up to 24.6% of total deal value for 2018 and seems therefore, despite initial concerns, to be currently weathering any Brexit-related uncertainties as Irish companies in this sector continue to diversify and extend their international footprint as well as attract inbound investment. The overall figures for this sector are buoyed no doubt by acquisitions completed during the year by Glanbia plc and Kerry Group in the US (as referenced above) and the sale of Irish-based Green Isle Foods (trading as Goodfella's Pizzas) to the UK's Nomad Foods for £200m as part of its European expansion strategy.

The technology, media and telecommunication ("**TMT**") sector remained active in 2018, recording the highest number of deals for the year – or 18% of overall deal volume – according to research by Investec. Notable deals in this sector included Brookfield Asset Management's acquisition of a majority stake in Irish wireless broadband group Imagine Communications for approximately €120m and Dublin financial software firm Ion Investment Group's acquisition of Fidessa Group as referenced above. The perennial strength of the Irish TMT sector is further evidenced by the number of major international tech companies (such as Facebook and Amazon) who announced proposals to expand their presence or operations in Ireland during the course of 2018 and is indicative of the highly innovative and dynamic tech landscape that exists in Ireland.

The pharmaceutical/health sector continues to remain a fertile ground for Irish M&A activity, contributing 15% to the overall deal volume for 2018 and with its proportion of overall deal value rising to 18% due, in large part, to the €586m acquisition of Adapt Pharma by Emergent BioSolutions which captured the headlines in October. Another significant deal in this sector was the purchase of the Mater Private, Ireland's largest for profit private hospital group, by French-based InfraVia Capital Partners for a reported €495m.

2019 looks set to be a strong year for pharmaceutical/health sciences M&A activity globally with a number of large international pharmaceutical companies having recently announced deals to acquire biotech companies in order to replenish their R&D pipeline. With all top 10 of the world's leading pharmaceutical companies currently having operations in Ireland, it is likely this is an area which will experience significant activity over the coming year.

The year ahead

As noted above, M&A activity tapered off significantly in Ireland towards the end of 2018 amid gathering international economic and political headwinds. However, notwithstanding this volatility and the attendant uncertainties for the Irish economy, dealmakers in Ireland have expressed optimism for 2019 and anticipate there to be strong deal activity over the short and medium term. Some 87% of M&A executives and advisors in a survey conducted by KPMG (the "**KPMG Survey**") forecast activity for 2019 at or above 2018 base levels and 60% are of the opinion that 2019 will be a "seller's market" with increased competition (both domestically and overseas) for Irish targets.

This positive view is underpinned by the existence of a "*strong pipeline of attractive Irish assets, with sound post-recession financial track records*" as stated in the KPMG Survey, the availability of financing at attractive rates, a resurgent domestic banking sector and continued strong company valuations which in turn are being driven by strong corporate balance sheets.

As regards financing of deals, it is anticipated that in 2019 debt will once again constitute the preferred source of deal funding in Ireland, with attractive terms, flexible instruments

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and the increased presence of new and alternative lenders in the market providing enhanced choice and greater ease of access to capital for potential purchasers.

Although the level of capital committed to private equity funds fell globally in 2018, it follows a number of years of strong fundraising for such funds meaning that private equity firms have significant capital to deploy. As such, it is expected that private equity firms will feature prominently in Irish deal-making in 2019 with private equity divestitures also likely to make up a key component of M&A activity for the year. In this regard, it should be noted that 90% of private equity respondents in a global survey conducted by Deloitte confirmed that they planned to offload assets in 2019. The trend of private equity exits is thought to be likely to be complemented by Irish corporate divestitures, such as Greencore's 2018 disposal of its US division, as they seek to rationalise their portfolios and focus on core business functions.

Against these positive indicators for M&A activity in 2019 must be weighed current prevailing political and economic uncertainties. Ireland, as a highly open economy, is particularly exposed to changes in the international political, taxation and trade environment which could arise from any of the macro economic and political issues identified in the introduction above and which could influence conditions here significantly.

For example, while the end to the European Central Bank's (the "**ECB**") liquidity-boosting quantitative easing ("**QE**") measures, which was announced in December 2018, was widely anticipated, significant questions remain as to how this will affect business activity as a whole given that these measures, coupled with low interest rates, have been a key driver for economic growth in recent years. Indeed, the cessation of the QE programme could be argued to have had a chilling effect on Irish M&A in Q4 as deal-makers anticipated negative impacts for liquidity and the economy more generally. On a more positive note, the ECB has pushed back the timeline for the introduction of the first post-crisis interest rate hike until the first half of 2020, which may encourage buyers to spend while interest levels, and therefore the cost of lending, remain low.

As is to be expected, the main issue casting a shadow of pessimism over the outlook for Irish M&A in 2019 is concern surrounding the potential impact of Brexit for the Irish economy. While the deadline for implementation of Brexit has now been extended until 31 October 2019, neither this extension nor political developments in the UK and Europe during 2018, which saw the rejection of the negotiated withdrawal agreement, have brought much by way of further clarity. Indeed, at the time of writing, political focus in the UK is directed towards the Conservative Party leadership contest following Theresa May's resignation announcement on 24 May 2019 and, as such, the future policy direction of the UK government in relation to Brexit remains unknown.

All this uncertainty has provoked caution in Irish deal-makers with 75% of KPMG Survey participants disclosing that they expect Brexit to have an adverse or neutral effect on deal activity in 2019 which is a far more negative forecast when compared with last year. This cautious attitude is borne out by recent data from Experian which suggests that Irish M&A got off to a relatively subdued start in Q1 in 2019 with a 33% decrease in the number of deals recorded during the same period last year.

However, this uncertainty could also result in an increased deal flow in 2019 as investors, and private equity firms especially, look to diversify or "weather-proof" their portfolio companies with bolt-on or strategic acquisitions. In particular, it is thought that Irish companies will continue to prove attractive acquisition propositions for UK businesses in 2019 as they seek to de-risk and mitigate the effects of Brexit. When such opportunities are

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considered in the light of the positive growth forecasts for the Irish economy as a whole in 2019 it is thought that, on balance, Ireland is poised to experience another good year for M&A activity in 2019.

Sources

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

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