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A Snapshot of Irish M&A

Alan Casey, A&L Goodbody provides an overview of the key factors that have been driving Ireland's M&A market.

Notwithstanding an eventful and unpredictable global backdrop from both a political and economic standpoint, 2016 has seen Ireland continue on its path of economic growth. With its economy on target to grow by 6.5% this year, Ireland has regained its position as the fastest growing economy in Europe. Ireland's cost competitiveness, attractive tax regime, talented work-force and pro-business environment continue to attract foreign investors from the U.S., Europe and Asia who are seeking to access the EU single market through direct investment and/or acquisitions.

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Consistent with global trends, Irish deal activity slowed compared with the bumper activity levels of 2014 and 2015. Brexit, and the uncertainty it has brought with it, presents significant challenges and opportunities for the Irish economy and it has undoubtedly impacted the pace of deal activity throughout 2016. Nevertheless, overall activity levels have remained healthy with a number of significant deals taking place. As in previous years U.S. buyers have been key drivers of M&A activity in Ireland. However, 2016 has also seen a growth in confidence among domestic buyers with a number of Irish corporates announcing acquisitions overseas.

PUBLIC M&A TRENDS

2016 has continued to see a very active public company M&A market in Ireland. Despite the U.S. Treasury steps to curb the number of corporate migrations by U.S. companies, Milwaukee based Johnson Controls Inc's acquisition of Tyco International plc for nearly $16.5bn was successfully completed in September 2016. Those new U.S. Treasury rules had previously derailed the proposed Pfizer acquisition of Irish-incorporated Allergan plc earlier in the year. Like the proposed Pfizer deal, the Johnson Controls transaction was structured as a reverse merger subject to the Irish Takeover Rules (as was the Willis Towers Watson merger which completed in early 2016). An advantage of the reverse merger structure is that the Irish Takeover Rules do not automatically apply in their entirety to such transactions. Instead certain key rules will apply by default while the Irish Takeover Panel has discretion to decide which other rules will apply during the offer period.

The Johnson Controls / Tyco acquisition was also notable in that it involved a post-merger spin-off of Johnson Controls' automotive interiors and seating business into an independent, publicly traded Irish company, Adient plc, with 75,000 employees worldwide. This is consistent with global trends in 2016, which have seen an uplift in the number of international corporates shedding non-core assets with a view to focussing their business lines and raising capital.

Throughout 2015 a particular feature of the Irish M&A market was a significant number of bolt-on acquisitions by previously migrated companies using their Irish platforms. This trend continued in 2016 with the announcement by Horizon Pharma plc of its $800m acquisition of Raptor Pharmaceutical as well as significant deal activity from Allergan, Medtronic and Accenture using their Irish platforms. At the higher value end of this scale we saw Jersey incorporated, Irish tax resident Shire's $32bn acquisition of Illinois-based Baxalta in 2016 to create a world leading biotechnology company focussed on rare diseases.

A positive sign for the Irish market in 2016 was a return to more traditional strategic M&A as international buyers began to seek out successful home-grown Irish companies in order to diversify their existing global offering. A strong example of this was Verizon Communications Inc's $2.4bn acquisition of Fleetmatics Group plc. Fleetmatics is an Irish born company listed on NYSE and the leading global player in the developing telematics industry. The deal was announced shortly after Verizon announced the acquisition of Yahoo's core business.

The Fleetmatics acquisition was a straight takeover of an Irish company by way of scheme of arrangement, governed by both the SEC Rules and by the Irish Takeover Rules. In that context, the transaction was distinguished from the more recent inversion transactions as regards the application of the Takeover Rules, which required a number of complex changes to the structure of the transaction compared to previous U.S. buyer/Irish target deals.

IRISH PUBLIC COMPANY TAKEOVER STRUCTURES

As U.S. bidders are likely to continue to consider attractive Irish targets, it is worth reviewing some of the key differences between U.S. and Irish takeovers:

- The break fees payable by an Irish target are more limited than for a U.S. target under the Irish Takeover Rules. Generally such fees are restricted to reimbursing the bidder's expenses of up to no more than 1% of the target's equity value in the deal.
- It is more difficult for an Irish target to take any action which may result in the frustration of an offer or possible offer, including soliciting competing or alternative offers.
- Invoking a condition precedent in order to abandon a pending takeover offer for an Irish company requires prior Takeover Panel approval, which will not be granted where the Panel deems the condition to be of a subjective nature and where breach of the condition is not of such materiality as to alter the core purpose of the deal.
- Other provisions customary in U.S.-style acquisition agreements for friendly, negotiated transactions will generally need to be reviewed and approved in advance by the Takeover Panel as some of these may be uncommon in the Irish M&A market.
- Stakebuilding is permitted under the Irish and U.S. rules outside of an offer period. However, once a potential bidder receives material non-public information from an Irish target as part of diligence, Irish insider trading considerations restrict the bidder's ability to acquire any shares on the open market.

PRIVATE M&A TRENDS

As in recent years, much of Ireland's M&A growth can be attributed to greater access and choice in sources of finance, reflecting a return to more stable investment opportunities. Ireland continues to attract capital from many sources including debt financiers and private equity. The number of large funds in the market, the very favourable tax regime, availability of debt and the number of private equity funds competing with each other for assets have combined to provide for a favourable environment for mid-market private M&A activity.

Private equity deal value in Ireland increased by 106% in the first half of 2016 up to $2bn. This is driven in many cases by private equity houses using Irish acquisitions as a launchpad for expanding into the UK. Significant transactions included the acquisition of motoring group AA Ireland by Carlyle Global Financial Services Partners and Carlyle Cardinal Ireland for $166m as well as the sale by

Permira of Creganna-Tactx Medical to Swiss-based TE Connectivity for $871m.

The robust recovery in the Irish economy means we are now seeing more Irish businesses strong and confident enough to actively take steps to grow their global footprint through foreign acquisitions. Examples of this include Kingspan's acquisition of German company ESSMANN Gruppe, Kerry Group's acquisition of Vendin S.L., Fyffe's acquisition of All Seasons Mushrooms Inc. and Greencore's acquisition of The Sandwich Factory. This would indicate that M&A remains the preferred strategy for international growth for most Irish corporates as opposed to organic growth.

FOREIGN DIRECT INVESTMENT

Despite the uncertainty in global markets as a result of the Brexit decision as well as the U.S. and European elections, the combination of a talented English speaking workforce and continued access to the EU has seen both blue-chip multinationals and international (in particular, U.S.) emerging high growth businesses continue to establish European operations in Ireland. Since the Brexit referendum result on 23 June 2016, total job announcements from IDA Ireland (the Irish government's FDI agency) in Ireland was over 5,000 across 57 different companies such as Storyful, MetLife, Pfizer, Ayrton Group, Oneview Healthcare, SAS, Jazz Pharmaceuticals, GE Healthcare, Coca Cola, Mallinckrodt, Deutsche Bank, Software One, Fazzi, Trusource Labs and WP Engine.

FUTURE PROSPECTS FOR IRISH M&A

Ireland's strong recovery, which was initially driven by net exports, is now, according to the European Commission, firmly based on demand across economic sectors and appears to be resilient to weaker global growth. In a period of political and economic uncertainty the Irish market offers a steady platform from which to take advantage of future M&A opportunities. Consistent with global trends and following record deal levels in 2014 and 2015, we expect the more normalised M&A activity levels of 2016 to continue into 2017. 2017 is also likely to see the sale by the Irish Government of at least 25% of Allied Irish Banks plc, one of Ireland's pillar banks, and the readmission of its shares to trading on the main markets of the London Stock Exchange and Irish Stock Exchange, and this will likely represent one of the largest Dublin and London IPOs in 2017.

While the full extent of the impact of Brexit and the fallout from the U.S. presidential election on M&A activity remains to be seen in 2017, the business as usual message from the Irish market should continue to prove attractive. As indigenous businesses continue to expand by way of acquisition, emerging international businesses continue to locate operations in Ireland and foreign acquirers seek potential expansion targets. We expect that the U.S. will remain the number one source of direct investment into Ireland and continue to be a key driver of M&A activity throughout 2017. ■

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