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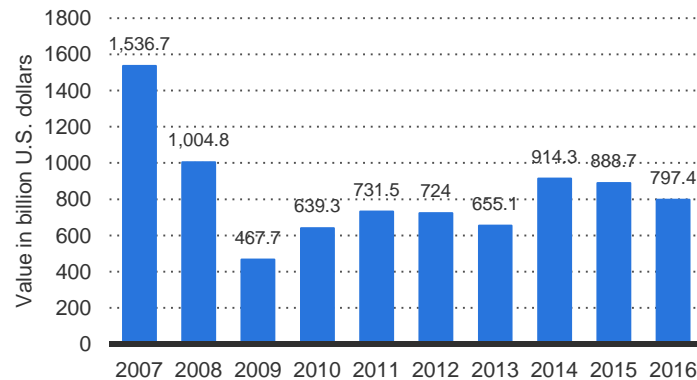
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M&A in Europe: the point of the situation

By Saro Capozzoli, Steffen Hansel – Jesa

In hindsight, the growth in European mergers and acquisitions cooled down over the last three years. In 2016, the value of M&As in Europe dropped significantly by more than 10%, after a slight cutback (-2,8%) in 2015. Reasons differ: often the stringent regulatory requirements and the valuation gap between buyers and sellers are called as the biggest challenge in European M&A technology market. Furthermore, in the next 12 months the overall amount of Cross-Border M&A deals is expected to grow more slowly than what was expected one year ago.

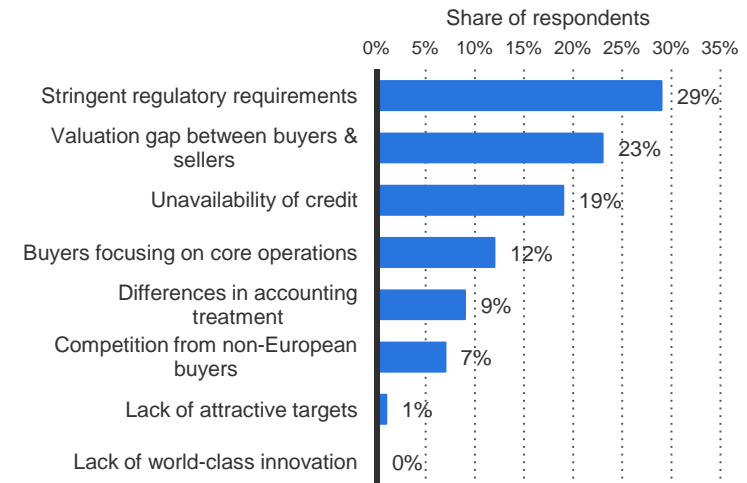
Value of Merger and Acquisition (M&A) deals in Europe From 2007 to 2016 (in billion US dollars)



Source: Mergermarket

In light of the survey conducted by Pinsent Masons with 151 senior executives in 2014, it is worth noting that the lack of attractive targets is not a barrier for M&A deals in Europe. Undoubtedly, the regulatory environment needs to be adapted through new reforms in order to ensure right incentives and strengthen the M&A market in the future.

In Europe, which of the following has been the biggest challenge for technology M&A over the past year?

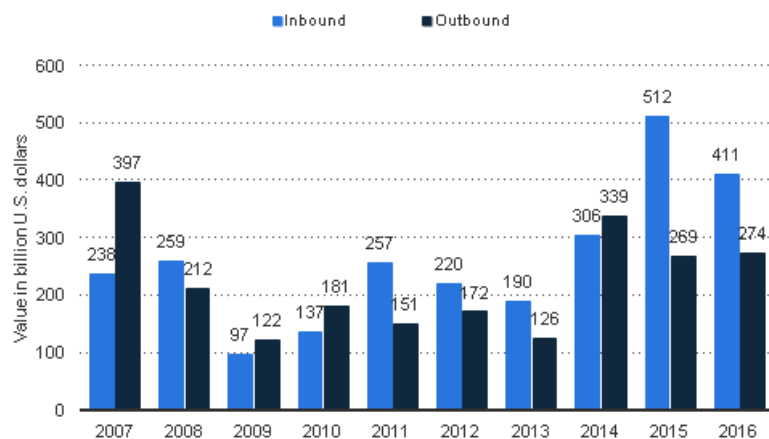


Source: Pinsent Masons; Mergermarket

The European market is becoming more and more attractive for foreign investors. Of course, important deals, such as the one of Syngenta and ChemChina in 2016, are driving the values and show how interesting European strategic industries for foreign investors are. Nevertheless,

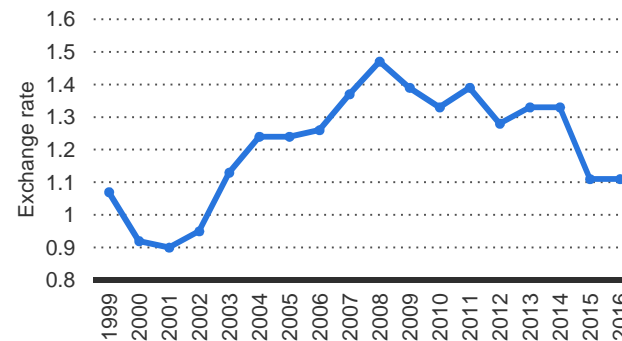
in the last three years, outbound investments were shrinking, which might be caused by the EURO currency depreciation. Especially, the drop of the EUR/USD in 2015 led to a sharp increase of inbound activities.

Value of inbound and outbound merger and acquisition (M&A) deals in Europe from 2007 to 2016 (in billion U.S. dollars)



Source: Mergermarket

Euro (EUR) to U.S. dollar (USD) annual average exchange rate from 1999 to 2016

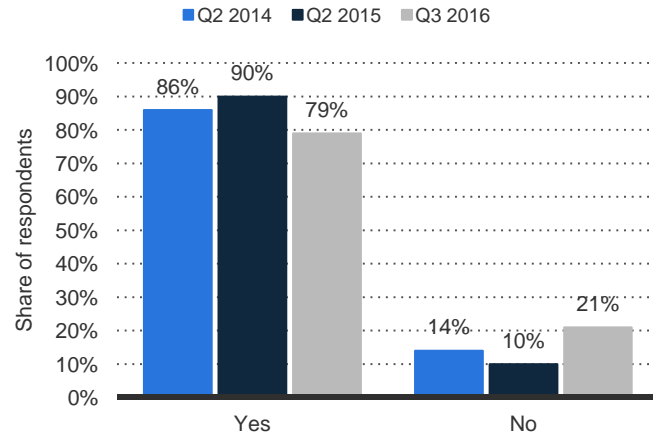


Source: European Central Bank

The survey of CMS Cameron McKenna in Q3 2016 with 230 M&A stakeholder and corporate executives addresses the expectation of future Cross-Border deals. After 2015, when 23 participants did not expect a rise in Cross-Border M&As, which took place and holds true, the number doubled already. Still, the majority is optimistic about the 2017 outlook and expects more than 411 billion USD inbound investment in Europe.

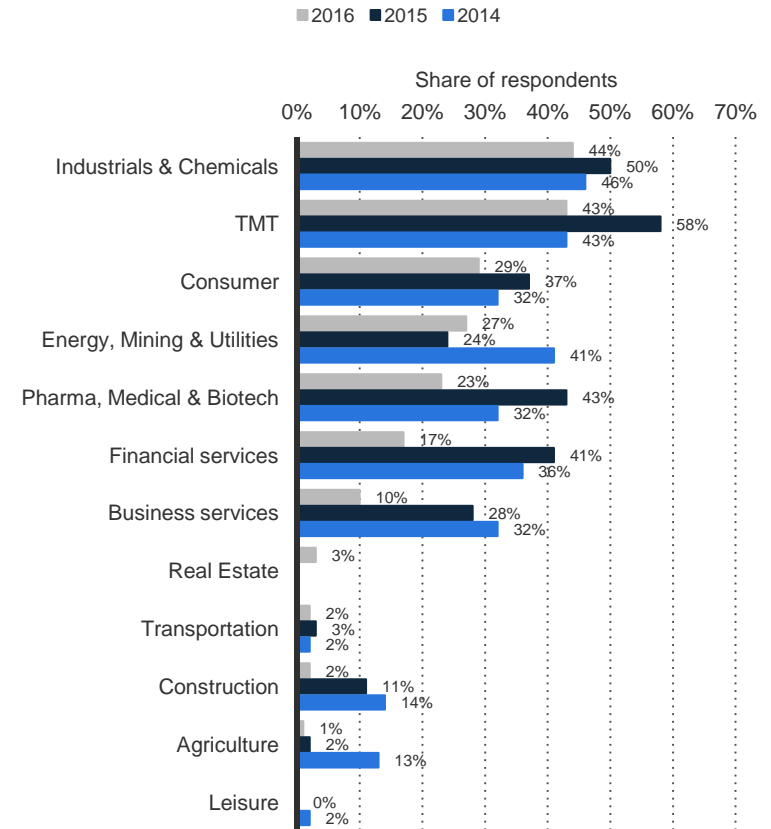
Do you expect cross-border M&A into Europe (non European buyers) to increase over the next 12 months?

Which sector do you believe will witness the most M&A activity in Europe over the next 12 months?



Source: CMS Cameron McKenna

The main industry sector is shifting. Industrials & Chemicals will take the lead in 2017, although TMT might be close. A big drop faced the pharmaceutical industry, where small investments are expected.

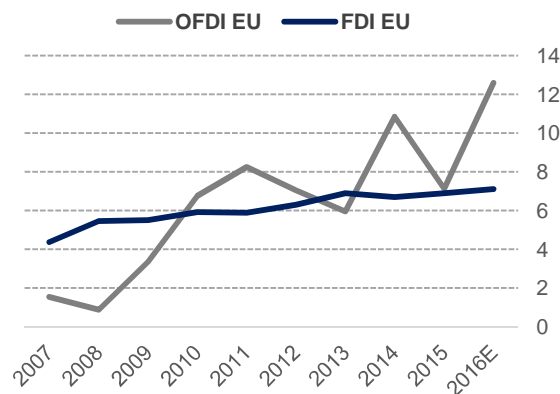


Source: CMS Cameron McKenna

Focusing on China's investment activities, its investment amount overtook during the big drop in currency 2014/2015 its inbound EU FDIs by more than 20%. The jump in 2008 has different reasons.

Especially, the 'going out' strategy of the Chinese government pushed the mostly State-Owned-Enterprises to new outbound markets. Liberalization and the need of strategic assets are recent transactions' main drivers.

Overseas FDI vs. FDI to/from Europe 2016 (in billion U.S. dollars)

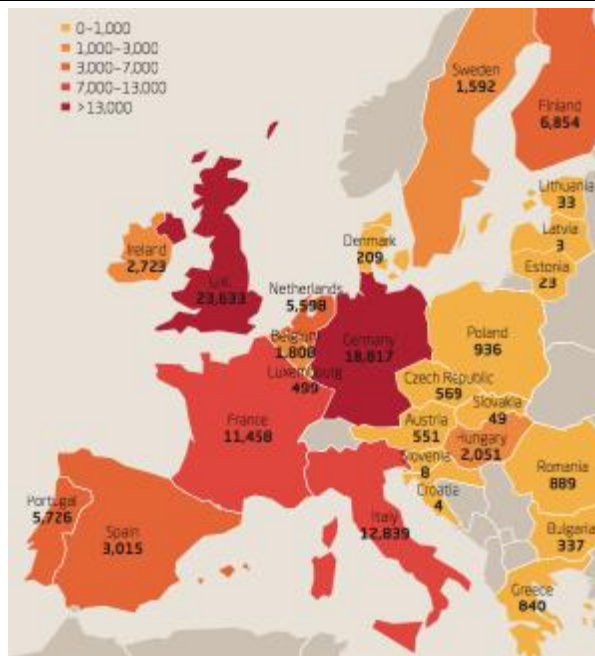


Source: National Bureau of Statistics of China

technology-oriented one. These investment are to be considered strategic and an opportunity for both parties. For many foreign enterprises is the only way to expand their activities in the Chinese, Asian markets together a strong partner in a win-win situation.

These investments have generally been welcomed by European firms, since they provide fresh capital for hailing European companies and expanding their activities, as it can be noticed from the Pirelli or the Volvo deals. Overall, Germany is the most targeted country (not counting the UK), followed by Italy and France. Also Finland, thanks to the high presence of high-tech companies, appears to be appealing when talking about Chinese OFDIs. The map below indicates the Chinese investments' amount in Europe in 2016 in Million of USD.

China is in fact expanding the interest and going abroad by acquiring even minority shares especially of high-technology companies. According to the central government plans, the country is going to shift its economy from a heavy-production oriented one into a services and



Source: Haneman T., Huotari M., 2017, RECORD FLOWS AND GROWING IMBALANCES

When brands and trademarks come to a hard challenge: IPRs' protection relevance in the Chinese market

By Saro Capozzoli, Marella Moretti – Jesa

As widespread clichés suggest, China is the country where either goods or brands are easily and perfectly reproduced. In fact, the concept of Intellectual Property Rights (IPRs) could be considered as rather recent in the country since they have been officially introduced by government legislation in 1979. Although the legal framework is established, enforcement still shows significant gaps and challenges; despite it can be noticed and proved that IPRs protection has generally increased in the past five years. Obviously, this is not only relevant for domestic companies and products, but is even more important for foreign brands deciding to enter the Chinese market, as being able to safeguard their reputation and trademark is crucial for the success of their investment.

There are essentially three laws in force concerning intellectual properties in China: the Trademark Law, the Patent Law and the Copyright Law. They passed by the National People's Congress and their possible infringement is regulated by the Higher People's Court in Beijing or by special courts in Shanghai, Guangdong, Fujian and Hainan, being all of them independent entities separated from the economic division.

The most important aspect to highlight, at least as far as trademarks are concerned, is that China is not a "first to use country", but a "first to file system". The consequence is that the exclusive right to benefit from the use of a trademark is not granted to its first user or inventor,

but rather to the first player filing for its official registration. It can be deduced that this rule has some crucial implications for companies: they might even run the risk to be treated as infringers, even if they have actually been the creators of the brand itself. Moreover, registration must be properly filed to the China Trademark Office since the country hardly recognizes protection to IPs recorded abroad. Actually, this should not be the case, as the country entered the Madrid Protocol in 1995 that is an international procedure designed to make a trademark's registration effective in all the 97 participant states. However, the "Madrid Application" goes through a time-consuming process that, due to language barriers and application gaps, does not end up effectively in the majority of times. If it properly terminates, the enforcement is also demanding under the current legislative situation. Moreover, it should be noticed that Hong Kong, Taiwan and Macao are not even part of the protocol, requiring therefore an additional and separate filing procedure.

In addition, and even if a company registers its trademark in China Mainland, it should carry out the registration process also in neighbour areas that are Hong Kong, Macao, and Taiwan indeed. These three regions are mandarin speaking: brand's name distortions are easy to register and are not even part of the agreement. As a result, companies should consider verifying their trademark and consequently registering it also in those regions, to avoid potential and future problems.

Consequently, foreign companies entering the Chinese market need to act fast and to ensure they have their logos, mottos and names properly registered to the competent authority in order to prevent other players to use them. Furthermore, they need to make sure that

the process is properly completed before any exposure to the market (marketing activities and trade fairs included).

But this is not the end of the issue: what we often forgot is the identical Chinese brand. In fact, either through simple transliteration or more sophisticated methods as the concept's translation (for example BMW means "treasure horse", and this could be translated in Chinese), it is possible to create many different Chinese brands that basically correspond to the original company's identity. Again, companies need act defensively. In order to that, a preliminary trademark clearance is needed before proceeding with the proper filing, in order to verify brands' possibility to be registered in compliance with the recognition rules.

In particular, this is exactly what happened in the Jordan's case, which concluded on December 8th, 2016. During the late '90s, Nike expanded the "Air Jordan" brand, dedicated to the famous basketball player, to China with the registered English name JORDAN. However, only a few years later, a Chinese sport company obtained a trademark registration for QIAODAN (乔丹), which is the same name in Chinese characters. The Chinese brand 乔丹 reached huge success in the country, thanks to continuous references to the NBA star. It literally built a sports apparel empire in China with yearly sales of around 3 trillion RMB. Of course, the real Jordan started many actions to cancel the registration, which was beyond any doubt a clear reference to its person as well as the main reason behind the Chinese company's fame. After many failures and 4 years of appeals, the Chinese Supreme People's Court accepted Jordan's action and supported his cause for misleading behaviour towards consumers, recognizing Qiaodan Sports' bad faith. This is not only a huge victory for the basketball player, but it's also a great boost

of confidence for western brand owners, as well as a powerful public move to demonstrate China's effort in improving IPRs protection and enforcement's mechanisms.



"This case is not only about an individual sports icon, it is about creating a legitimate marketplace where consumers can trust products they buy" – Mark Elliot, executive Vice President of the Chamber's Global Intellectual Property Center.

As trademarks' verification and registration is a hot topic, we are at hand to defend and support international companies in their run to enter China with a safe name.

Work Time Systems in Mainland China

In terms of labor rights, China has become more and more sensitive over the years providing employees with a double system that applies according to the worker's status and needs.

Indeed, the **Standard Working Time System** in Mainland China is 8 hours a day, 40 hours a week, 5 working days a week, and 2 rest days a week. Although the majority of employers follow this working time system, it is possible to adopt other alternative working time systems, which must be approved by the Local Labor Bureau. As a matter of facts, employers can apply either for the **Non-Fixed Working Hour System**, which can be used by the senior management or special positions such as drivers, or for the **Comprehensive Working Hour System**, which can be used for periodical business activities (i.e. workers in manufactures often following orders, or peak & low season...).

Differences between the Standard Working Time System and the Non-Standard Working Time System (including Non-Fixed Working Time System and Comprehensive Working Time System) can be summed-up as follows:

The **Standard Working Time System** implies to work 8 hours/day, 40hours/week, 5 days/week; (2 days off/week):

- Y Overtime during the week cannot be shifted; it can only be paid 150% of the employee's basic salary;
- Y Overtime during weekends can be shifted with other week-days; if it can't be shifted by the employer, it must be paid 200% of the employee's basic salary;

- ÿ Overtime during Chinese Public Holidays (that are 11 days/year) cannot be shifted; if it's shifted, it must be paid 300% of the employee's basic salary;
- ÿ Normally, such overtime cannot exceed 1 hour/day even if, in special cases, it is allowed to reach maximum 3hours/day; nevertheless, the monthly overtime cannot exceed 36hours/month.

The Non-Fixed Working Time System implies that:

- ÿ It is mainly used by employees who present special characteristics and needs, or by those whom nature of work do not require a fixed-time (that is 8 hours/day, 40hours/week as above);
- ÿ The working time cannot be extended without putting a limit. The total working time shall be within 210 hours/month (=8 hours/day * 21.75 days/month + 36hours/month maximum overtime). If there is no compliance with a time limit, the working time might be reported as over time;
- ÿ Employees that work during weekends do not have to be paid 200% of their salary, while the overtime that is more than normal working time limit (210hours/month as mentioned above) shall be paid 150% of the employee's salary. Certainly, working time during Public Holidays (11days/year) must be paid 300% of the employee's salary.
- ÿ It is better not let employees work during Chinese Public Holidays (11 days/year); otherwise, 300% of overtime salary must be paid by the employer;
- ÿ The calculation base for overtime salary can be the normal contractual salary, or a special agreement;
- ÿ The employer must apply for this system at the Local Labor Office; without the approval from the Local Labor Office, it is not valid even if it is written down in the labor contract.

- ÿ If the position is part of the following categories, the company can apply for the Non-Fixed Working Time System:
 - ü Senior executives and senior management, outworkers, sales staff, and other workers on duty of work which cannot be measured by standard working hours;
 - ü Long-distance transportation means drivers, taxi and railways drivers, ports staff, warehouse staff, handling personnel, etc...;
 - ü Fire and rescue personnel on duty.

The Comprehensive Working Time System implies that:

- ÿ The calculation cycle of work time is not limited on "day" or "week", but could be based on "month" or "quarter" or even "bi-annual", in order to adapt to some industries with peak or low seasons;
- ÿ According to each "calculation base", the related working time shall be as follows:
 - If the cycle is on "month", the total working time shall be within 210 hours/month (=8 hours/day * 21.75 days/month + 36hours/month maximum overtime);
 - If the cycle is on "quarter", the total working time shall be within 630 hours/quarter, etc.
- ÿ If there is no compliance with a time limit, the working time might be reported as over time, which shall be paid 150% of the employee's salary;
- ÿ It is better not let employees work during Chinese Public Holidays (11 days/year); otherwise, 300% of overtime salary must be paid by the employer;
- ÿ The calculation base for overtime salary can be the normal contractual salary, or a special agreement;

Y The employer must apply for this system at the Local Labor Office; without the approval from the Local Labor Office, it is not valid even if it is written down in the labor contract.

It is worth it to underline that the positive result of the **Non-Standard Working Time Systems** application at the Local Labor Office cannot be guaranteed. In the majority of cases the Local Labor Office approves it; but the application might be rejected if the application documents are not well presented.

The approval is valid for one year, which means that in the second year of employment, the company must re-apply.

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