



Our Insights into M&A Trends 2014

Global Dynamics

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Visit our online resource:

The Clifford Chance Global M&A Toolkit
www.cliffordchance.com/GlobalM&AToolkit

M&A – The Global Picture



1

Whilst uncertainties remain, the market is strengthening and the stars appear to be aligned for a slow and steady recovery in the M&A market in 2014 and beyond.

Although the final quarter saw a slight decrease, the general upward trend in global M&A activity through 2013 reflects the tentative increase in confidence to invest through M&A. Significant uplifts in activity were seen in the second half of 2013 in Africa (+45%) and the key global markets of the US (+57%) and China (+24%). Looking ahead, the returning confidence and drivers for dealmaking will continue to strengthen M&A activity in 2014.

Positive indicators include increased global economic stability, a calming of euro zone troubles and US fiscal problems, China's strengthening commitment to becoming a market-driven economy, as well as increasing confidence and focus on growth in both the mature and emerging economies. On a more cautious note political and economic developments have the potential to impact any M&A revival, and there are certainly potential counter-balances to a pick-up in 2014 – the effects of the wind-down of quantitative easing, potentially dangerous asset 'bubbles' caused by the low interest rate environment, and the return of the US debt ceiling deadlines, to name a few.

It is also noteworthy that despite the improving economic landscape in recent months, the anticipated pick-up in M&A has been slow to materialise, although M&A activity in January 2014 has been strong.

Despite these uncertainties the mood of confidence is growing within boardrooms and momentum for deal-making is building. Of course, in the current environment we are seeing our clients highly focused on achieving and demonstrating stakeholder value and they remain relatively risk averse, with compliance and reputational issues high on the agenda in any transaction.

Matthew Layton
Clifford Chance LLP

Global activity levels

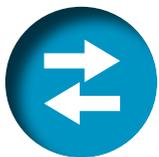
Large strategic deals went some way to bolster the value of M&A deals globally but did not change the position that overall 2013 deal values were broadly flat year-on-year



Global M&A in 2013 was broadly flat year-on-year (US\$ 2.22trn, versus US\$ 2.29trn in 2012). However, the second half was significantly stronger than the first half of the year, showing building momentum, and it is anticipated that this will continue into 2014



The US M&A market remains resilient with deals totalling US\$ 893.2bn in 2013. Africa and the Middle East have performed strongly, with M&A activity increasing 26%, and activity rose 15% in Asia Pacific. By contrast activity levels fell 12% across Europe as a whole, although there were notable hotspots



Cross-border M&A remains significant but lower in value in 2013 than in 2012, with cross-border deals totalling US\$ 781bn (35% of M&A deal value). Inter-regional M&A comprises 22% of total M&A activity. Europe has been the most targeted region for cross-border deals as investors focus on acquiring technology, skills and brands at attractive prices



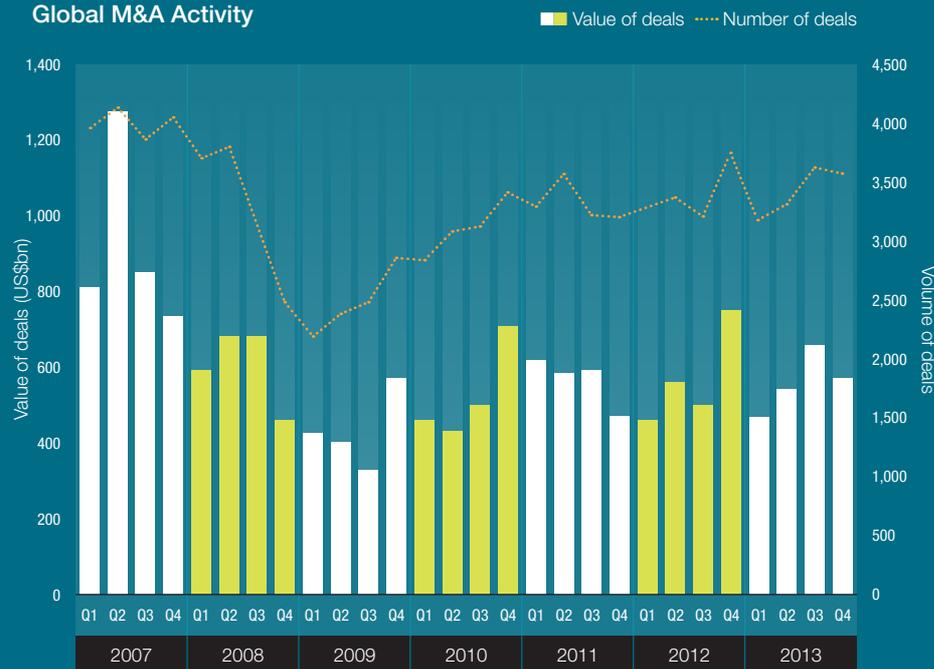
TMT was the hottest sector in 2013, buoyed by several significant transactions including the Verizon/Vodafone, Liberty Global/Virgin Media and Vodafone/Kabel Deutschland deals. Globally, TMT accounted for 23% of total M&A deal value and is the only sector to have experienced a significant increase in market share year-on-year



We are seeing increasing signs of life in the private equity market and near-record levels of 'dry powder' are likely to drive future activity. The rising wave of M&A activity in the US has accelerated private equity acquisitions there, leading to a moderate 2% increase year-on-year. In Europe PE activity remains subdued, although we are seeing an increasing focus on Southern Europe

Source: Data produced by Remark, taken from mergermarket.com

Global M&A Activity



Source: Data produced by Remark, taken from mergermarket.com

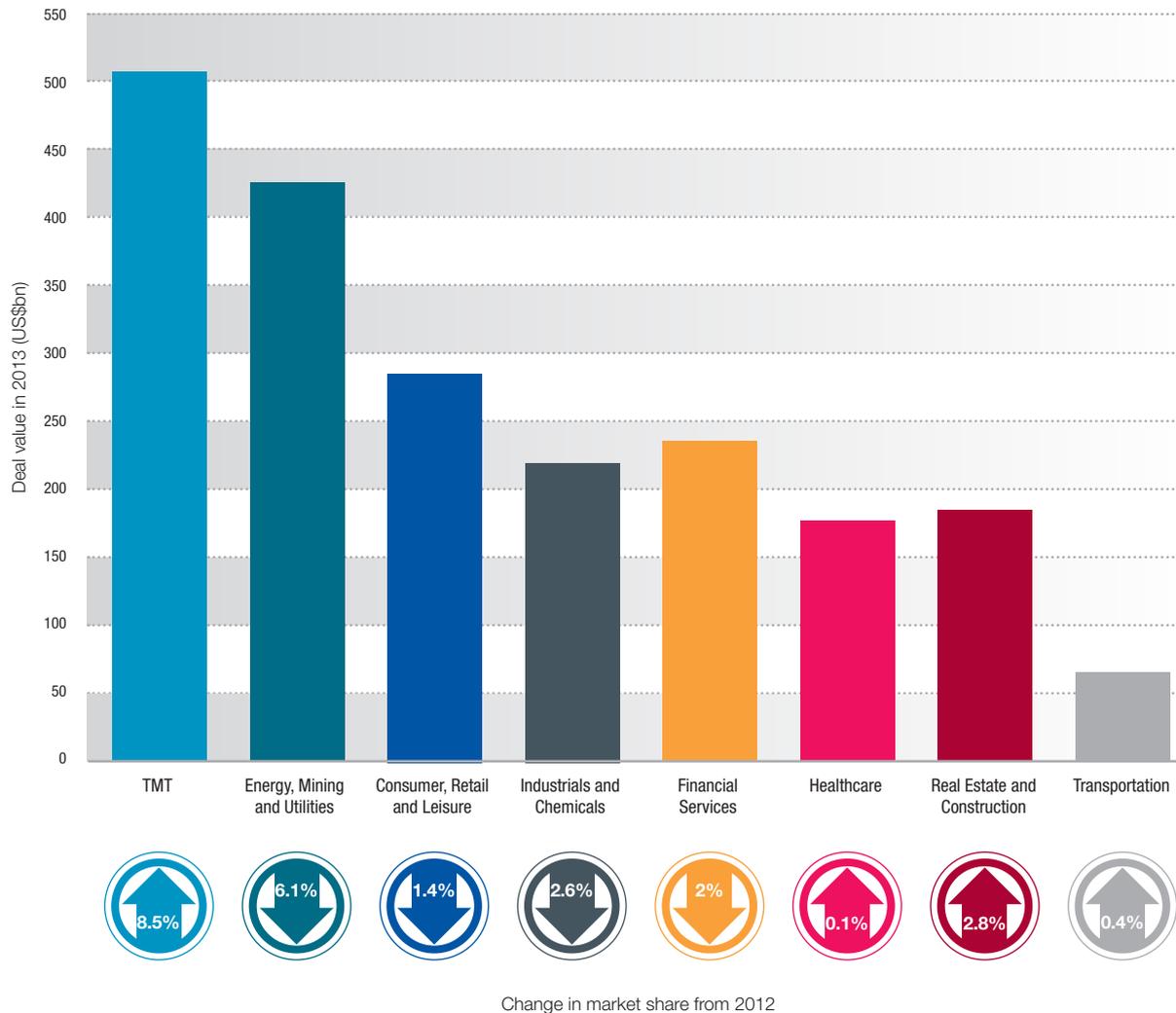


"We continue to see political, economic, technological and other risks evolve and emerge across western and developing economies. Agile, future-focused institutions need to build resilience and achieve strategic and competitive advantage in this ever-changing risk landscape"

Malcolm Sweeting, Senior Partner, London

Sector variations

The TMT sector has experienced a boom, increasing its share of total deal activity in 2013 to 23%, buoyed by the Verizon/Vodafone deal, the third largest transaction in corporate history. Energy, Mining and Utilities also performed well with US\$ 427bn in deal value, although its share of total activity fell by over 6%



The European and US telecoms sector is attracting a lot of M&A interest. Low growth in home markets is driving consolidation and M&A investments further afield. These juggernaut transactions usually require substantial funding and, thanks to a strong credit market, we expect more TMT M&A transactions in the coming twelve months

Dave Poddar, Antitrust Partner (TMT), Sydney

Faced with so-called 'patent cliffs' and under pressure to address unmet medical needs we are seeing innovative drug-makers, including those in Japan, accelerate their globalisation strategies by securing pipelines and expanding distribution channels through acquisitions

Miho Mizuguchi, M&A Partner (Healthcare), Tokyo

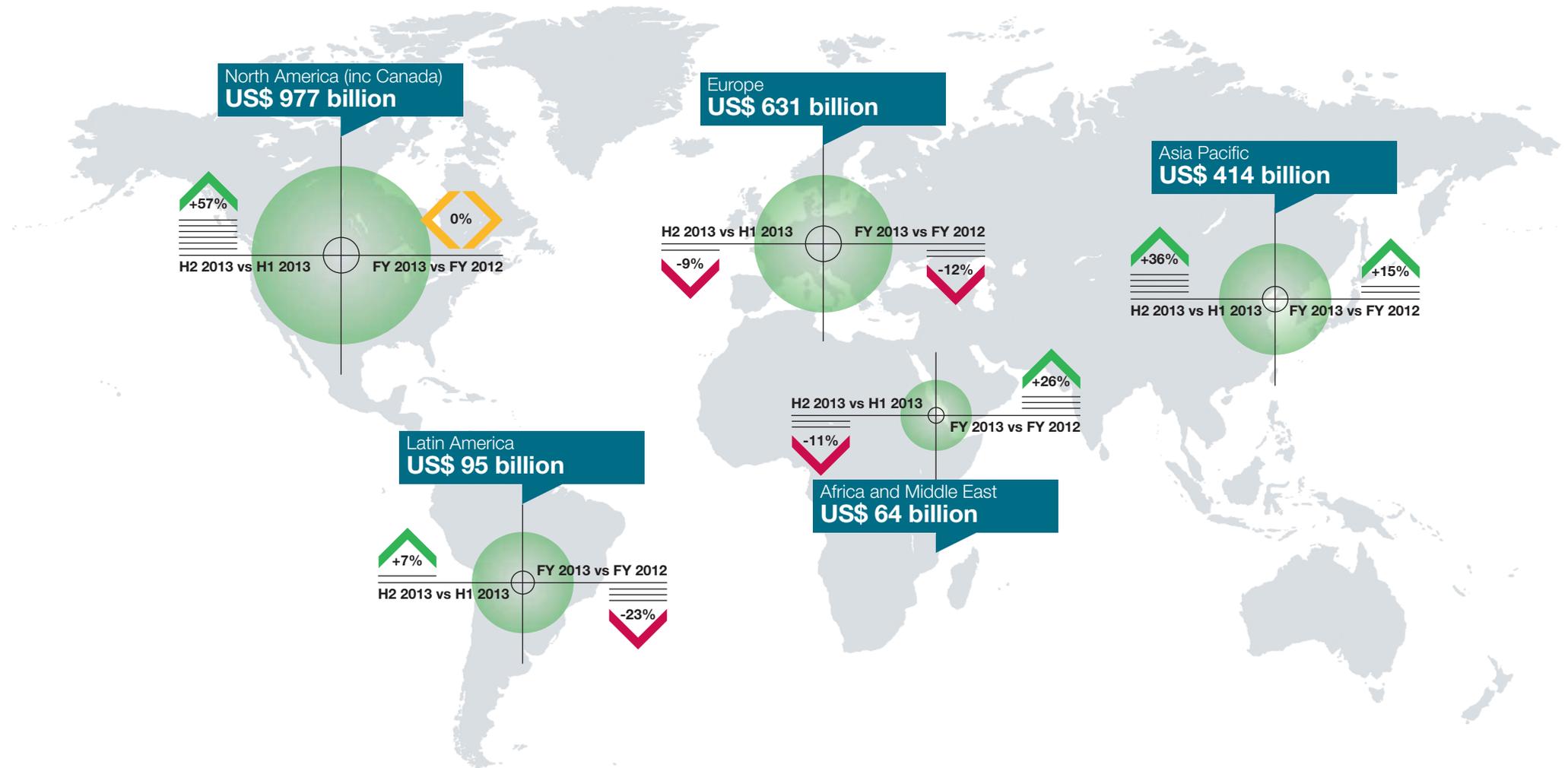
The retail and consumer sector has witnessed cautious yet stable activity in 2013, with transactions driven by a focus on core activities, strong brands and interest in and from fast-growing markets such as those in Asia

Dessi Savova, M&A Partner (Consumer), Paris



Regional Trends

Our map shows that the global picture is mixed as different impacts are being felt across the key regions. Whilst European M&A continued to fall in 2013, Asia Pacific M&A has picked up significantly, particularly in the second half of the year. The US remains the engine for M&A deals, and saw a big uplift in the second half. Overall statistics for the regions conceal significant variations within the regions – notably the 11% fall across the combined Africa and Middle East region in the second half of 2013 contrasts with a significant 45% uplift in African M&A during the period



Our map shows value of M&A (domestic and inbound). The source data is produced by Remark, taken from mergermarket.com

Note: Interactive maps showing investment flows into and out of each region are available on the Clifford Chance Global M&A Toolkit: www.cliffordchance.com/GlobalM&ATrends

Regional Trends

Key impacts across the different regions

US

- Although the surge in value in M&A in the second half of 2013 accompanied a 13% increase in deal count, it was primarily driven by several high value deals – nine of the top ten largest transactions worldwide involved US targets, including the Verizon/Vodafone US\$ 124.1bn mega-deal
- Dynamics in the US M&A market are changing: strategic buyers searching for growth are able to outbid financial buyers with their vast cash stockpiles; activist shareholders are leading changes on governance, pushing for alternative capital structures, and forcing sales and spin-offs of businesses
- Confidence is slowly returning as macroeconomic conditions have improved towards the end of 2013, and the possibility of a US budget deal could end the recent cycle of fiscal cliffs, government shutdowns and sequester cuts

Latin America

- 2013 saw a slowdown of some markets (eg Brazil), with volatile capital markets hindering exits; however the expected fall in valuations has not materialised and investors continue to face fierce competition for quality assets in the region
- Mexico is undergoing significant reforms that are expected to significantly increase deal flow in 2014, especially the reforms to open up competition in the energy sector
- 2014 is expected to be a better year for investment in Latin America generally. The most attractive markets include Brazil, Mexico and Colombia, while appetite for Chile and Peru is also increasing. Consumer, natural resources and real estate are the hottest sectors driving deal-flow in the region. The rise of pan-regional transactions around Latin America is also notable

Europe

- European M&A activity had a difficult year in 2013, falling to its lowest value since 2009. Top European M&A destinations in 2013 included the UK and Germany. Hot sectors include TMT and Energy, Mining and Utilities; Healthcare also saw a pick-up in activity during the year
- Across many parts of Europe businesses continue to hold onto their assets, waiting for valuations to rise before making disposals. In other areas, including Spain and Italy, quality assets are coming to market as a result of privatisations, asset sales by financial institutions and sovereign infrastructure divestments
- In CEE we are seeing an active mid-market, with succession issues causing sales by entrepreneurs. Increased interest from Asia Pacific (particularly China) in investing in the region is being embraced across the CEE

Africa

- African M&A continues to be dominated by deals in the Energy, Mining and Utilities sectors, and Chinese businesses remain the most active acquirers
- We are also seeing significant activity in the African telecoms space as tower sales continue, driven by dedicated players snapping up the tower assets of local telecoms companies who are offloading them due to high maintenance costs. The roll-out of the 4G spectrum is driving licensing deals and we expect some M&A activity as smaller operators consolidate or sell out to international players

Middle East

- Regional (including cross-border) M&A activity reflects growing ambitions of local market leaders to expand market share, as well as increased PE activity
- Shares are increasingly being used as acquisition currency and we expect to see more public M&A as execution risks reduce; bond markets are also being tapped (eg by regional telecom operators to fund large cross-border deals)

Asia Pacific

- China and Indonesia are the top M&A destinations, with notable activity in the Consumer and FIG sectors. Thailand and Vietnam also feature strongly
- Outbound M&A from Asia is being driven by a desire to conquer new markets and become global players as well as to secure knowhow, technology and brands and to invest in real estate. Japanese corporates/trading houses continue to focus on outbound activity, targeting South East Asia, the US and Europe

2

Key drivers and challenges for M&A in 2014

M&A activity is being stimulated by returning confidence in a global economic recovery, and we are seeing an increased focus on the developed, western markets

Investment is starting to flow back into attractive European economies, including those with undervalued assets and distressed opportunities, such as Spain. Africa continues to attract more risk-hardened investors, and saw a big pick-up in M&A activity in the second half of 2013

The European and US equity markets are performing strongly. Similarly, debt markets are booming, with acquirers accessing the leveraged loan and high yield bond markets, which had a record year in 2013



Key drivers for cross-border M&A in 2014...

**Cash on
balance
sheets**

**Congested
pipeline**

**Calming of
euro zone
troubles**

**Growth
market
bidders
wanting to
be global
players**

**Drive for
higher
returns**

**Shareholder
activism and
the need
to create
shareholder
value**

PE firepower

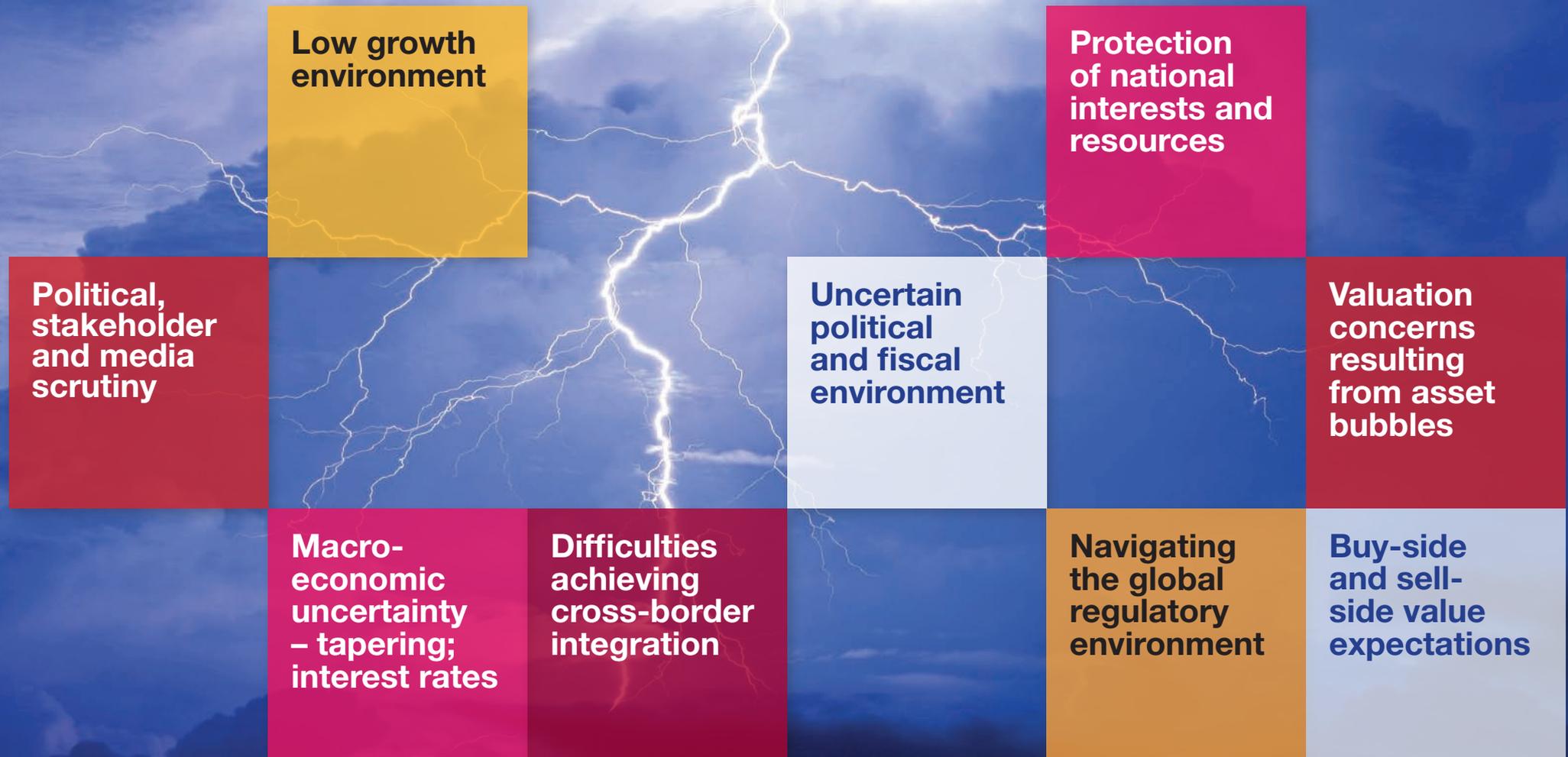
**Ongoing fight
for natural
resources**

**Strengthening,
less volatile
markets**

Opportunism

**Window of
opportunity
for cheap
debt**

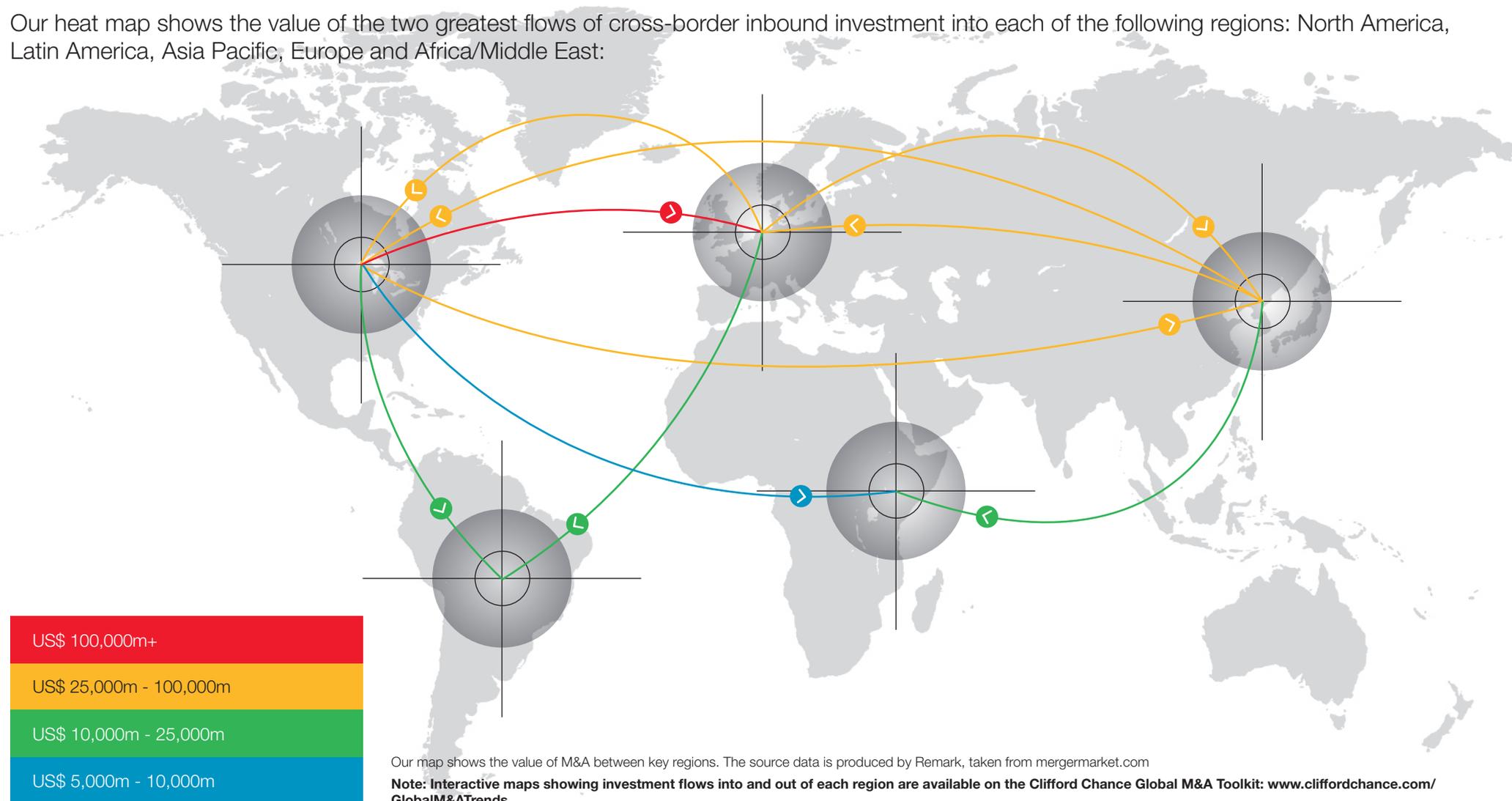
...and challenges for cross-border M&A in 2014



Where's the money being invested?

Inter-regional cross-border M&A amounted to 22% of total M&A in 2013. The most significant cross-border M&A flows were from North America into Europe (US\$ 128bn) and from Europe into North America (US\$ 93bn)

Our heat map shows the value of the two greatest flows of cross-border inbound investment into each of the following regions: North America, Latin America, Asia Pacific, Europe and Africa/Middle East:



Trends in inter-regional M&A

We consider how the investment flows on the map opposite reflect deal activity in 2013, as compared to the previous year, and some of the key trends underpinning these activity levels

North America

- **Inbound** – Cross-border M&A into the US fell 16% in 2013, due primarily to decreased activity from Europe and Japan. However, inbound activity picked up towards the end of the year, and 2014 has already seen key deals into the region, eg Suntory's US\$ 16bn acquisition of Beam
- **Outbound** – Outbound M&A from the US continues to centre on Europe, with big ticket deals in 2013 including Liberty Global's US\$ 25bn bid for the UK's Virgin Media

Europe

- **Inbound** – The value of M&A into Europe fell by 15% in 2013 as compared to the previous year, however the second half saw an uplift of 5%, reflecting investment into hotspots such as Spain and the UK
- **Outbound** – European outbound M&A also picked up in the second half of 2013, reflecting increasing confidence in European boardrooms. Deals into the US were up over 400% on the first half

Asia Pacific

- **Inbound** – Intra-regional M&A boomed, and inbound M&A into Asia Pacific rose 14% on the previous year, as a result of increased activity from North America (+26%) and Europe (+10%)
- **Outbound** – M&A into the US and Europe remain strong. However, notwithstanding big ticket transactions such as Softbank/Sprint and Shuanghui/Smithfield Foods, the value of deals into the US in 2013 was down 54% on the previous year

Latin America

- **Inbound** – Inbound M&A fell 34%, as a result of reduced M&A activity from Europe, its biggest source of investment
- **Outbound** – Outbound M&A from Latin America focused on Europe and in particular Spain, where investment was up over 2000% on the previous year

Africa/Middle East

- **Inbound** – Inbound M&A came primarily from Asia Pacific, which increased 168% year-on-year. Big ticket deals included Pavilion Energy's US\$ 1.25bn LNG acquisition from Ophir Energy in Tanzania
- **Outbound** – M&A activity from the region into Europe was particularly strong and investment into North America was also on the rise (295% up on the previous year)

Rebalancing of M&A activity

Growth market M&A remains strong, with steady quarterly increases throughout 2013. However, whilst not always reflected in the numbers for 2013, we are beginning to see a natural rebalancing in M&A activity as the western, developed markets come back into favour and we expect this trend to continue as 2014 progresses



US

The US is the largest market for M&A, and we expect 2014 to be stronger, buoyed by increasing confidence in the US recovery. The vast majority of US activity is domestic (up 10% to 82% in 2013). The TMT and natural resources sectors will likely continue to dominate the US M&A landscape

Recent hot deal*

American Tower extended its reach through the purchase of Global Tower for US\$ 4.8bn in a deal which will add 15,700 towers in the United States and Costa Rica



UK

The UK market has the strongest M&A market in Europe, with US\$ 111.6bn activity in 2013, and is expected to be increasingly buoyant as 2014 progresses. It is the preferred destination for investment outside the euro zone, but uncertainty surrounding a potential exit of the UK from the EU may impact activity

Recent hot deal*

Suntory's acquisition of GSK's Ribena and Lucozade brands, worth £1.4bn – an example of strong outbound activity from Japan into the UK market



Spain

Spain is expected to be a hotspot in 2014 as foreign investors are attracted to distressed debt opportunities and undervalued assets. Quality assets are on the market (see opposite). Foreign investment has been returning to the Spanish property market for the first time since 2008, and overall inbound M&A into Spain was up 126% in 2013

Recent hot deal*

Banesco of Venezuela acquired a 88.33% stake in the state-rescued bank NCG Banco, for a consideration of €1bn



Germany

German M&A in 2013 was up 27% year-on-year. A calming of euro zone troubles has increased its appeal as an investment destination. Germany is considered the safe option for investors, with its stable political regime and strong economic foundations, and we expect the M&A market to maintain a positive trajectory in 2014

Recent hot deal*

Cinven's acquisition of German ceramics business CeramTec from Rockwood Holdings for €1.5bn



Italy

The outlook for 2014 is better, as Mr Letta's new coalition government is adopting a pro-growth strategy, which is starting to attract foreign investment to Italy (eg in the TMT and retail sectors). Sovereign divestment and privatisations are creating opportunities for infrastructure and strategic investment

Recent hot deal*

Telefonica's €1.5bn investment in Telco, the major shareholder of Telecom Italia, the leading player in Italian telecommunication market



Australia

After a busy finish to 2013, Australian M&A rose 52% year-on-year, and a weakened dollar and revitalised IPO pipeline are positive indicators for activity to increase in 2014. Resources M&A – traditionally the key driver – has been soft but renewed interest from inbound investors may see it pick up

Recent hot deal*

Rockwood's US\$ 1bn joint venture with China's Chengdu Tianqi to acquire Australia's Talison Lithium, a global producer of lithium

*Note: Clifford Chance had an advisory role in relation to each of these transactions

Rebalancing of M&A activity

Institutional investors, including PE houses, sovereign investors and other financial investors, have been active in seeking opportunities in the resurgent western economies

Sovereign investors: a source of capital

- **Oil & Gas** – Pavilion Energy, a unit of Singapore's state investment company Temasek, acquired a 20% stake in UK listed Ophir Energy, a gas exploration company
- **Finance** – Qatar's sovereign wealth fund has built up a US\$ 1bn stake in the Bank of America
- **Real estate** – GIC, Singapore's sovereign wealth fund, purchased a 50% interest in London's Broadgate Estate and is part of a 50:50 joint venture with British Land to enable the future development of the estate. This deal is the largest single-asset transaction in UK real estate history
- **Energy** – State Grid Corporation of China purchased 20% of SP AusNet, a leading Australian energy infrastructure company
- **Consumer and retail** – Qatar's sovereign wealth fund acquired Valentino; luxury brands are of particular interest to these investors



“Global corporates responding to our recent survey: *European M&A: On the road to recovery?* confirmed that the stable regulatory environment in Europe, its infrastructure, technology, global brands and skilled talent pool were all strong draws for investors from the high growth markets. Markets such as Spain, which were considered closed for business some twelve months ago, are now starting to see something of a renaissance as economic conditions improve and investors begin to return”

Javier Amantegui, M&A Partner, Spain

Spain is ready for divestment

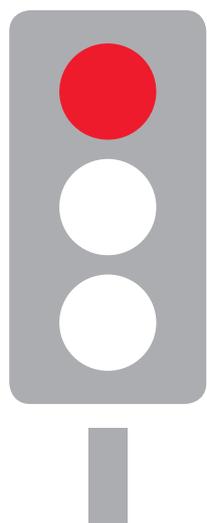
Spain is coming out of the doldrums and is an increasingly appealing market for sophisticated investors looking for attractive returns in a difficult global economy. Quality assets are on the market, as Spain is ready for divestment:

- **Financial sector:** Still a large part of the M&A market in Spain. The restructuring of the financial sector means that the banks are selling toxic and non-strategic assets in order to clean up their balance sheets. Both trade buyers and financial investors are competing for these assets
- **Real Estate:** A significant increase in M&A in the real estate sector. In 2013 we saw key transactions including TPG's acquisition of the real estate asset management business operated by Servihabitat from Caixabank
- **Industrials:** Spanish corporates are implementing divestment programmes with a view to reducing excess debt and/or generating financial flexibility. Ensuring a clean exit and rapid closing of the transaction are priorities for these sellers
- **Distressed assets/debt:** The sale of distressed assets or debt is ongoing and accounts for a large proportion of the current foreign or opportunist fund investment into Spain. For example, 30 bidders, including several US private equity firms, made offers for the first €300m bundle of toxic loans from Spain's 'bad bank' (SAREB)
- **Debt-to-equity deals:** A new wave of investors, led by special situation vehicles of mega funds and US funds, is assisting companies in distress to restructure their debt. But the price paid by the creditors and shareholders is not cheap, receiving as consideration acquaintance cheques and long-maturity rolled-over debt as well as dilutive equity linked instruments
- **Private Equity:** Players are cautiously awaiting the renaissance of traditional private equity transactions. In the meantime attractive assets are put on sale using dual track processes to maximize price. We also expect to see a rising trend of exits through IPOs in 2014
- **Infrastructure and energy:** The Spanish toll road concessions may be put back on the market after negotiations between the government and various stakeholders fell apart in 2013, or alternatively new investment structures may be put in place for these assets. In addition, new regulatory changes could result in renewable projects facing additional financial difficulties which would result in the need for restructuring their debt and equity structures. Those milestones may provide investment opportunities at low prices

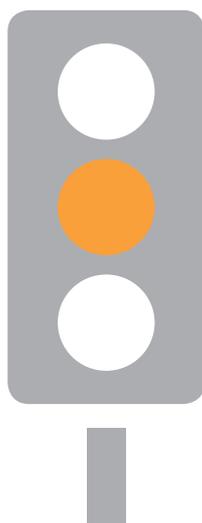
Strengthening performance of equity capital markets and robust financing conditions

Equity markets in the US and more recently in Europe are experiencing a period of relative stability and are broadly on an upward trajectory. The rising market is improving boardroom confidence which, coupled with the availability of relatively cheap debt, should encourage prospective buyers to reactivate their M&A activities

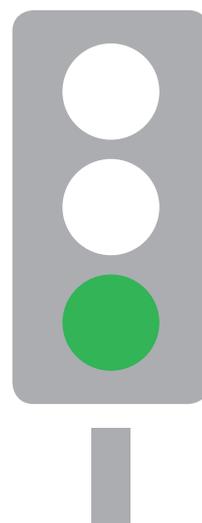
Equity capital markets – indicators for M&A activity?



- ▶ Global M&A activity historically tracks global market cap – however this has not been the case in 2011–13, where there has been a de-coupling of the M&A cycle with equity markets
- ▶ Boardroom confidence has been impacted by macroeconomic and political uncertainty over this period but now that economic conditions look set to improve, the hope is that M&A will come back to more closely correlate with the equity markets

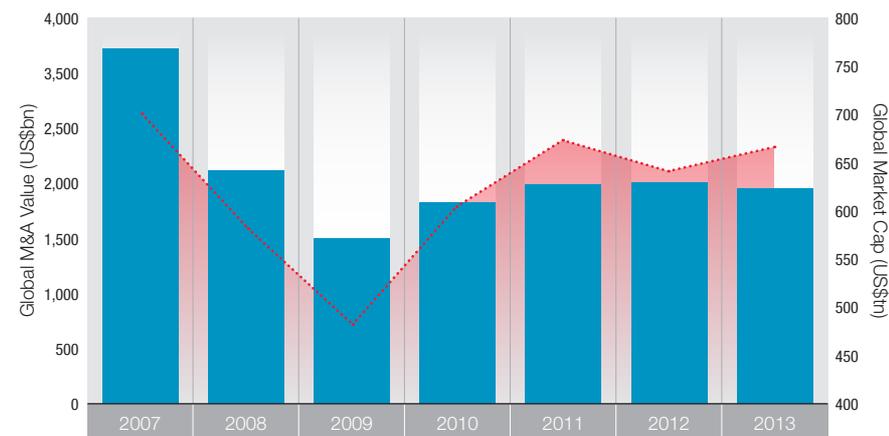


- ▶ The strong markets have resulted in paper being more readily used as bid consideration, particularly on cross-border deals. Towards the end of 2013, we saw more deals funded by a mix of cash and equity in the US and Europe, and also as a new phenomenon in the Middle East
- ▶ However, we see persistent difficulties in pricing share-for-share deals as the markets remain prone to shocks



- ▶ Some are taking advantage of the strength of equity markets by employing structures involving listed bid vehicles to fund acquisitions of targets already identified pre-listing, eg Tungsten
- ▶ More opportunities for PE exits as a result of several successful IPO exits in 2013, eg Partnership Assurance, Just Retirement, Moleskin etc

Global M&A Value and Global Market Capitalisation



■ Value of deals US\$bn ■ Total Market Cap (US\$tn)
 Market cap data up to 30 November 2013
 Source: World Federation of Exchanges



“Recent increases in IPO activity in Europe and the US suggests growing confidence in the equity markets. Many IPOs have been driven by PE houses seeking exits and returns for their investors and the fact that institutional investors are investing in PE-backed businesses indicates the strength and validity of the equity markets. Although ECM activity in the emerging markets has not been as strong as Europe/US, there are signs that the Chinese/Hong Kong market may return in 2014”

Simon Thomas, ECM partner, London

Robust financing conditions – the debt capital markets

Debt investors' continuing hunger for greater returns is driving renewed interest in the leveraged loan market and has already fuelled a sustained boom in the high yield bond market. The opening up of the leveraged loan market and the availability of relatively inexpensive high yield bonds should continue to stoke M&A activity in 2014, particularly in the US and Europe; increased convertible bond issuance is also expected

High Yield

- Yield hungry investors are willing to provide finance in the US and Western Europe and for an increasing number of other jurisdictions, as well as for more unusual structures in Europe and Asia
- European and Asian LBOs and companies with below investment grade credit ratings have been using the high yield markets to fund M&A deals in 2013 due to the appetite of both domestic and regional US investors in these jurisdictions – we expect this trend to continue in 2014
- We also expect there to be an increase in the use of high yield bonds to finance alternative deal structures, such as minority stakes (see opposite)

Convertible bonds

- 2013 was a strong year for convertible bonds, helped by the strength of the equity markets encouraging issuers to price them, and levels of convertible issuance are expected to rise further in 2014
- Verizon Communications sold US\$ 49bn of bonds in the largest bond offering in history (with demand exceeding US\$ 90bn), and nearly three times larger than Apple's US\$ 17bn record-setting bond offering earlier in the year. These offerings brought 2013 investment-grade debt issuance in the US to more than US\$ 1.1trn, a slight increase over the record set in 2012. However there are signs that these large bond deals might signal the end of cheap credit, and historically low yields are starting to creep up

Spotlight on Margin Bonds

- A margin bond is a recent and innovative development in the high yield market that has the ability to provide an attractive and flexible means of financing for private equity firms as well as other investors
- A high yield bond is structured in order to finance the acquisition of a minority stake in a company or a joint venture. There is a 'margin' element to the bond because, although the bond is secured against the shares acquired by the investor who is utilising the margin bond, the company itself is neither guaranteeing the bond nor providing the security
- In Europe, a margin bond was used by Emma Delta, a consortium of Eastern Europe based investors, to finance Emma Delta's acquisition of the Greek State's 33% shareholding in the Greek gaming operator, OPAP. The acquisition represented one of the first successful Greek privatisations since the financial crisis
- Margin bonds are expected to be particularly attractive to private equity houses in Asia, as well as parts of Europe and potentially Africa, who wish to utilise an increasingly deep and liquid high yield market as an alternative source of financing for minority acquisitions. They are particularly relevant in the context of owners of family businesses who are seeking a partial divestiture of their investment, whilst remaining actively engaged in management, and who are reluctant to lose control

3

Managing risks in Global M&A

A clear merger control strategy has never been more important on M&A deals, as regulators become more demanding and are increasingly sophisticated in their approach to reviewing transactions

The challenges and risks facing corporates are evolving and developing, with sophisticated cyber attacks, corruption and perceived 'immoral' tax avoidance being high on the list of concerns for many. Shareholders, politicians and other stakeholders are increasingly scrutinising M&A decision-making and are influencing the outcomes of deals

Companies continue to pursue new transaction structures. 2013 has been the year of the corporate 'inversion', which has been seen on several US cross-border deals

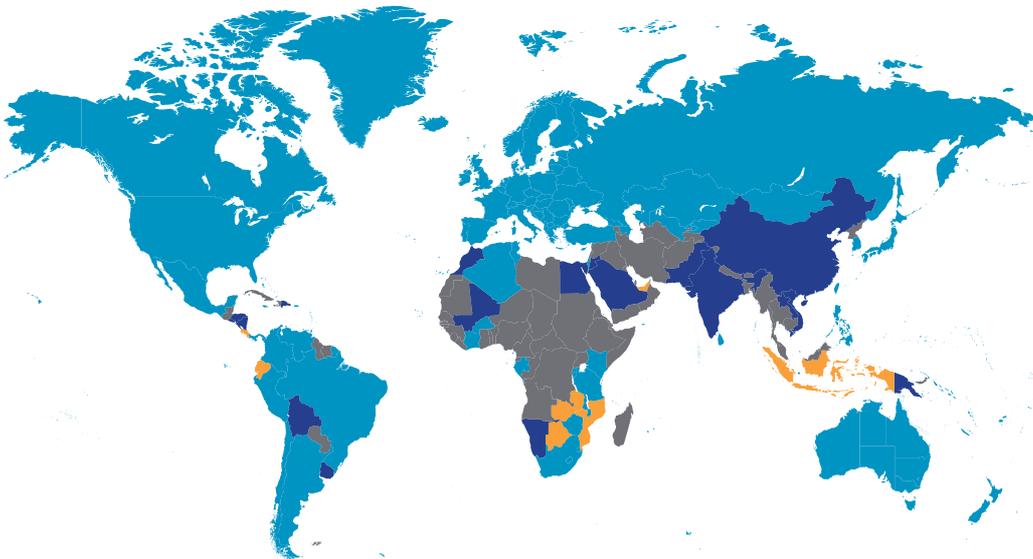


Proliferation of global merger control

International M&A transactions are subject to an ever-increasing number of merger controls, foreign investment and national security reviews – more than 100 countries now have merger control laws. But why does this matter?

Procedural and substantive divergences create risks for deal execution and value realisation. It is not just the number of reviews that is increasing – it is also the variety of issues that can hinder clearance. Wider public interest or industrial policy issues, such as impacts on employment, small businesses, national champions and security of domestic supplies, can become decisive (see Glencore/Xstrata case study, opposite)

Ever-increasing number of merger control regimes



National merger controls regimes since 2010

National merger control regime since 2000

National merger control regimes pre-2000

Tips for dealing with multiple reviews

1

Take early advice on local sensitivities in key markets, and engage public/government relations teams where necessary

2

Ensure a consistent narrative across jurisdictions (taking into account any public interest/national security sensitivities as well as competition factors) and manage document production

3

Have a timing strategy (eg file in one jurisdiction first, or parallel reviews?) and never underestimate timeframes

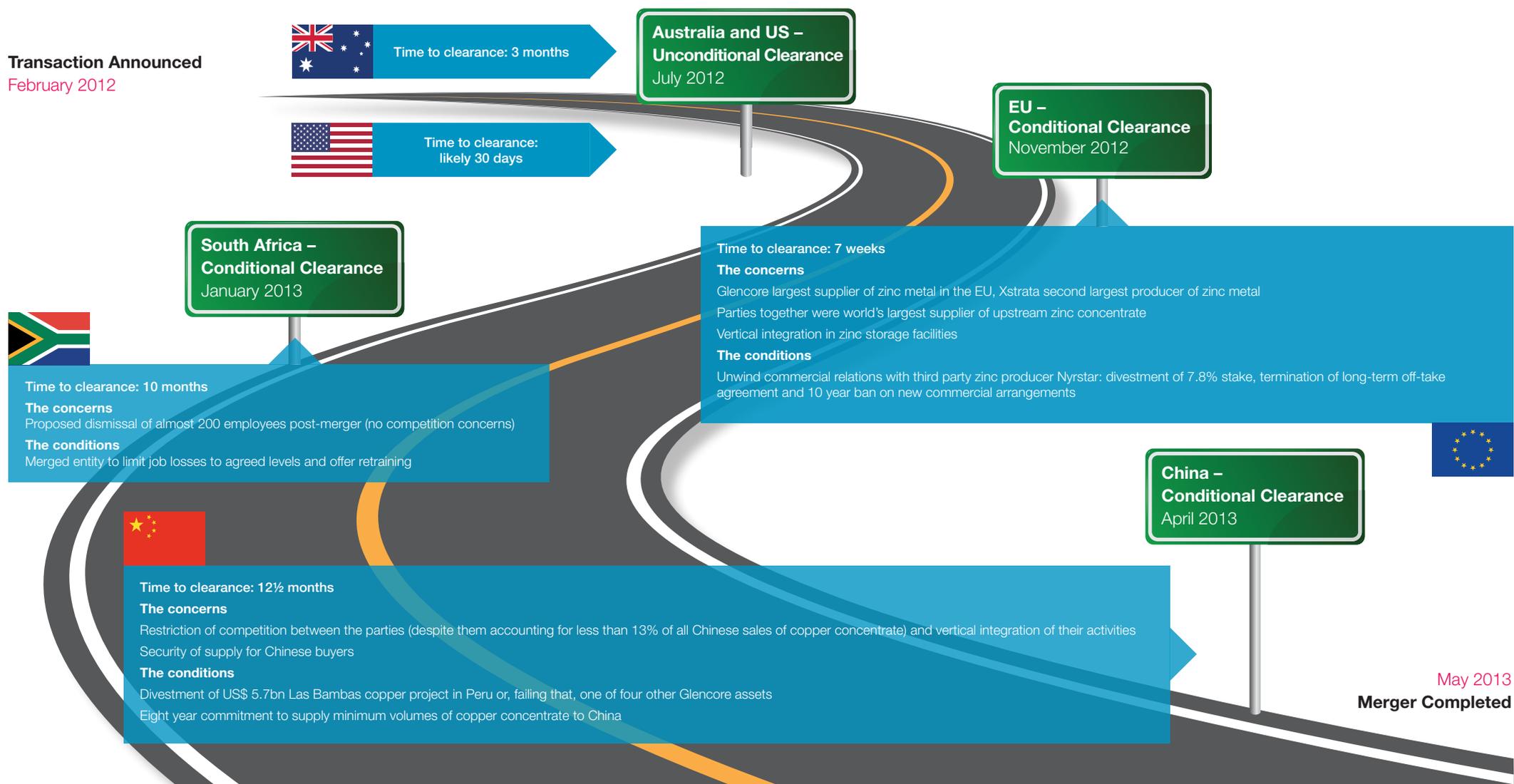
4

Consider up-front likely/possible remedies packages and divestments, and seek potential buyers for any likely divestments. Failure to find a convincing up-front buyer can be fatal (eg UPS/TNT)

Note: For more on recent global trends in merger control and antitrust enforcement, see 'Our Insights into Antitrust Trends', available on the Clifford Chance Global M&A Toolkit: www.cliffordchance.com/GlobalM&AToolkit

Glencore/Xstrata – the impact of multiple merger control reviews in practice

Securing the necessary clearances to complete the Glencore/Xstrata transaction took in excess of 12 months. Aside from the extended timeline, multiple merger control review processes resulted in the range of different outcomes shown below. Although the merger affected markets in various countries differently, inconsistent substantive priorities and procedures between the merger review processes were partly responsible for the divergent outcomes

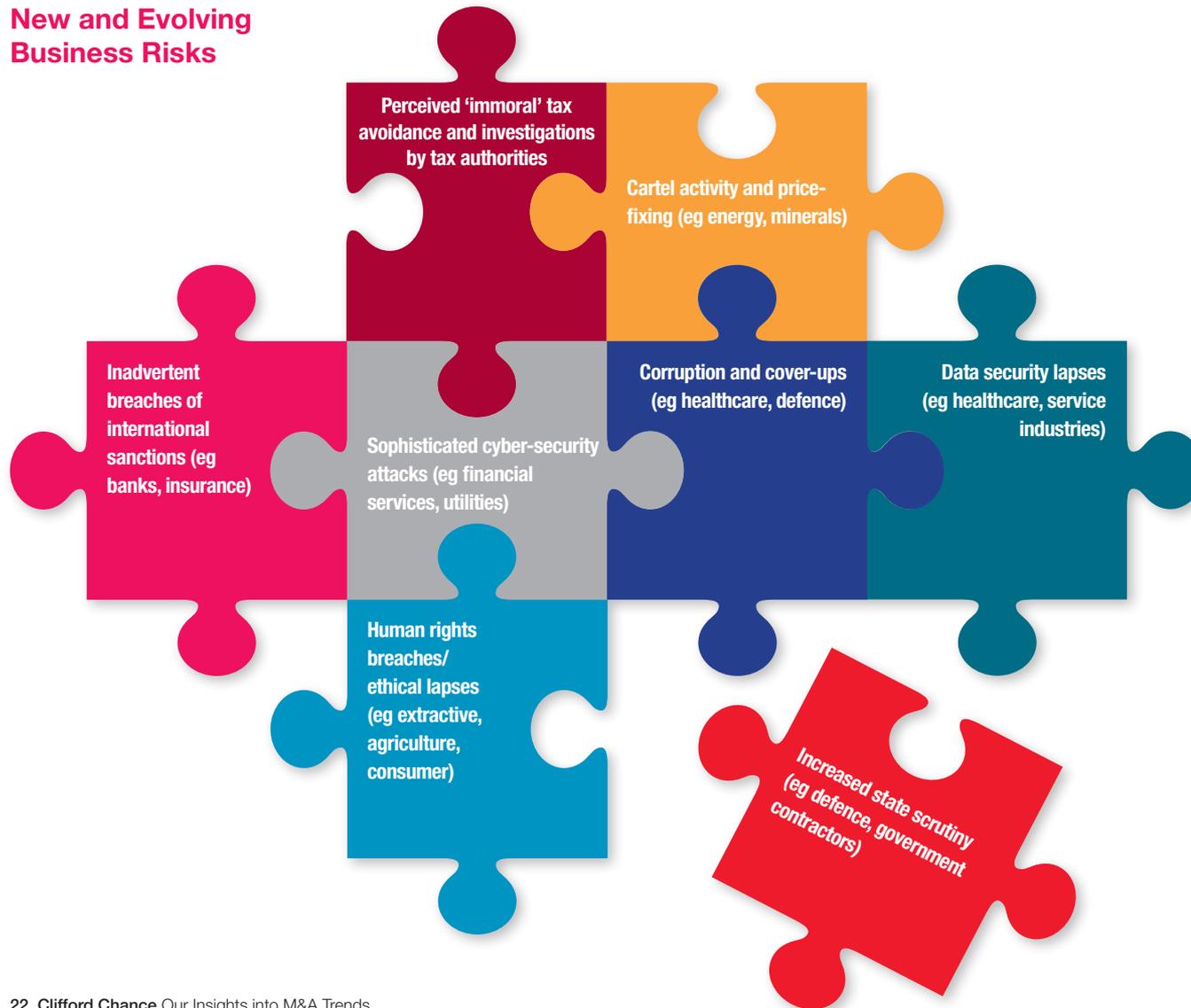


Note: Clifford Chance had an advisory role in relation to the Glencore/Xstrata transaction.
Time to clearance excludes pre-notification discussion periods

Challenges facing corporates

Nowadays global businesses face new and evolving risks to their corporate image and reputation. Accusations of misbehaviour can trigger scandals that are hard to shake off, and can ultimately impact the value of the business

New and Evolving Business Risks



Boards need to focus on:

- Investment in compliance programs
- PR strategy preparation
- Revisiting corporate 'culture'
- Employee awareness/training programs
- Corporate governance



"The media spotlight is firmly on companies' (and executives') behaviour and perceived morality. Infringements or lapses – or simply accusations of either – lead of course to bad headlines, but also in some instances to share price falls, consumer boycotts and calls for board-level resignations. Scandals break within minutes and infiltrate the world's media within hours, so it is no wonder that such risks are now a focus at the very highest levels within global businesses"

Guy Norman, M&A Partner, London

How we see these risks impact the M&A arena on buy-side and on sell-side



“We increasingly see clients target the growth market operations of US or European-based companies. This is, at least in part, because of the internal management and control systems they have in place thanks to their existing positions as part of an international group”

Amy Ho, M&A Partner, Hong Kong

Buy-side Trends

Longer and more in-depth diligence on target, with focus on corruption compliance, human rights history, political links etc

Diligence to check robust systems are in place to detect breaches, lapses etc

Non-financial audits on target company to better understand ‘culture’ and reporting lines

Diligence on practices and policies of 3rd parties (JV partners, distributors, suppliers, fixers)

Post-acquisition integration planning, with an increased focus on integrity, and political/corruption issues

Robust warranties relating to historical compliance

Managing/shifting risk

Purchase price reduction

Onerous open-ended warranties and indemnities, with monies held in escrow, to cover costs in the event of a claim or investigation against the target

Purchasers increasingly in favour of earn-outs instead of escrow arrangements, to allow for purchase price adjustment once the effect of any franchise/reputational risk is better known

Transaction structuring, eg asset deal/share deal/joint venture (JVs may lead to responsibility for violations of a JV partner)

In some cases, diligence red flags and a poor compliance culture leads the buyer to conclude the deal is too risky

Sell-side Trends

When preparing a business for sale we are seeing:

Pre-sale refinement of internal policies to meet highest standards of compliance (eg with anti-bribery legislation)

Risk assessment and monitoring of compliance

Pre-sale audits and 3rd party compliance certificates available to prospective buyers around corruption, human rights etc

Anti-bribery certifications and statements of commitment from key persons at target

Historic incidents, reputational damage addressed up-front

Reliance letters from seller’s advisor relating to risk areas, to assist with securing bid financing



“Reputational damage can stick. Occasionally the risk of contaminating the brand is so severe that the tainted business unit has to be closed or rebranded in order to draw a line under the scandal”

Luke Tolaini, Litigation Partner, London

Risks associated with political, media and stakeholder scrutiny

The outcomes of proposed M&A transactions are being influenced by the voices and actions of a broad spectrum of stakeholders – shareholder activism is at play, particularly in the US, and other stakeholders such as employees, JV partners, politicians and the media are becoming increasingly influential



Shareholders

Icahn and other institutional shareholders criticised the proposed management buy-out of Dell. After a go-shop period, a delayed stockholder vote, an aborted proxy fight and a lawsuit by Icahn, the offer was raised to US\$ 24.9bn, and finally approved by stockholders

Employees

Worker unrest in China and a successful challenge by Cooper's US unions contributed to the collapse of Apollo Tyres' planned US\$ 2.5bn takeover of Cooper Tires in 2013

JV partners

Chengshan Group, Cooper's Chinese JV partner, felt jilted by the announcement of the Apollo/Cooper Tires deal and asked a local court to dissolve the JV. The factory was seized, Cooper managers thrown out, and financial reporting to the Cooper Tires group was stopped

Media

Recent acquisitions of Italy's top brands show the extent of media influence – those positively hailed in the press (eg Ducati's acquisition by Volkswagen) have had an easy ride with the Italian public, whereas those strongly criticised in the media (eg the 'Made in Italy' initiative) have been difficult to get through

Politicians

France Telecom's plans to sell a majority stake in video-sharing website Dailymotion to Yahoo were derailed by the French government, which opposed one of France's most successful start-ups being purchased by an American suitor



"Assets under management at US hedge funds (the fastest growing asset class in the US) have increased to around US\$ 100bn – which can be leveraged when deployed. Activists are going after larger targets (Apple, Pepsico, Procter & Gamble) and are focusing on a wide range of issues: governance, underperformance, excess cash on balance sheets, divestitures of non-core businesses, strategic alternatives, sales of companies and criticism of announced deals. In dealing with activist investors, defining and communicating a company's strategic and financial message is key. Traditional legal defensive measures are no longer necessarily the best response"

Ivan Presant, M&A Partner, New York

Innovative transaction structuring – the rise of corporate inversions

As markets, risks and regulations develop, companies are always looking for innovative ways of structuring M&A deals. For US companies, 2013 was the year of the corporate inversion

WHAT AND WHY?

- As US companies are looking to invest overseas, some are choosing to re-domicile offshore to achieve operational and tax efficiencies, particularly to Europe, in conjunction with a merger or acquisition through a 'corporate inversion'
- The US Congress and Treasury Department could always introduce new rules to limit these transactions but, to date, no action has been taken
- US corporate tax rate is high at 35%
- Corporate tax is payable on a US company's own profits and 'repatriated' profits from subsidiaries outside the US, with credits for tax paid outside the US
- International strategic M&A by US companies can offer operational and tax efficiencies for the new combined group, with the parent being domiciled outside of the US
- The new jurisdiction would offer, amongst other things, status as an international business centre and a favourable tax regime

HOW?

- Typically requires merger or acquisition between a US and a non-US company
- The two companies' shareholders transfer their shares to a new non-US Topco in exchange for Topco shares and possibly other forms of consideration
- In order for US tax anti-avoidance rules not to apply, either:
 - the transaction must result in less than 80% (by vote and by value) of Topco being held by the US company's shareholders; or
 - at the time of the acquisition, the group under the Topco has 'substantial business activities' in the country of residence of Topco
- Topco's country of residence will generally have a corporate tax rate substantially below 35% and generally will reduce or exempt tax on dividends received from, and gain on sale of, subsidiaries
- Borrowings by the US company from Topco after the acquisition would result in a deductible interest expense for the US company

Company	Deal value (US\$ bn)	New domicile	Old domicile
Perrigo/Elan	8.6	Ireland	US
Omnicom Group/Publicis	35.1	Netherlands	US
Actavis/Warner Chilcott	8.5	Ireland	US
Liberty Global/Virgin Media	25	UK	US



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Global M&A Trends: Interactive investment flow maps

Our interactive maps show current M&A flows into and out of each major investment region of the globe giving you insights into the latest trends in cross-regional M&A. The maps are easy to use, simple and effective. Available through the Global M&A Toolkit at:

www.cliffordchance.com/GlobalM&ATrends

European M&A: On the road to recovery?

This is a multi-regional survey conducted in 2013 into how large corporates view Europe as an investment destination. The findings confirm that Europe remains very much on the radar for investors – including those from the US and Asia Pacific as well as from within Europe itself – and identifies specifically what makes Europe attractive.

www.cliffordchance.com/EuropeanM&AReport

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