

Public mergers and acquisitions in Ireland: market analysis overview

Connor Manning and John Barrett
Arthur Cox

global.practicallaw.com/w-012-8158

TRANSACTIONS

1. What have been the largest or most noteworthy public M&A transactions in the past 12 months?

There have been a number of high profile and innovative public company M&A transactions over the last year. These transactions include the:

- Merger between Praxair and Linde AG to form a new US\$73 billion Irish holding company which will be listed on the New York Stock Exchange and the Börse Frankfurt.
- Merger of Kennedy Wilson Europe Real Estate with Kennedy-Wilson Holdings to create a US\$8 billion global real estate company.
- Acquisition of Fleetmatics Group by Verizon Communications for US\$2.4 billion in cash.
- Acquisition of Fyffes by Sumitomo Corporation for EUR750 million in cash.
- Acquisition of Nexvet Biopharma by Zoetis and Zoetis Belgium SA for US\$85 million in cash.

Deal structures

2. What have been the major trends in the structuring of public M&A transactions?

The last 12 months has seen a continued trend towards more normalised public M&A activity with international buyers undertaking strategic acquisitions of indigenous Irish companies, including the acquisitions of Fyffes and Fleetmatics Group (see *Question 1*).

Acquisitions and takeovers of publicly-listed Irish companies can be effected either by way of a scheme of arrangement, tender offer or merger (either domestic or EU cross border).

The current trend in Ireland is for public company takeovers/acquisitions to be recommended by the board of the target, meaning that the scheme of arrangement is the favoured transaction structure. This is due to its well-established framework and the advantage of acquiring 100% of the shares in the target on completion, including from minority dissenting shareholders (if any). Schemes of arrangement were used in the Fyffes/Sumitomo, Nexvet/Zoetis and the Fleetmatics/Verizon transactions (see *Question 1*).

A tender offer which is made by a buyer to the target's shareholders is more commonly used in hostile or competitive situations. As part of this structure, a buyer can use a statutory "squeeze-out" procedure to compulsorily acquire the shares of dissenting shareholders. If the target is listed on a regulated

market in any EC or EEA member state, the buyer must have obtained acceptances from the holders of 90% of the issued share capital not owned by the buyer in order to avail of the squeeze-out. The acceptances threshold is reduced to 80% for Irish incorporated companies with a public listing outside of regulated markets in the EC/EEA (for example Irish incorporated, NYSE listed companies).

Where applicable, the Irish Takeover Rules regulate the timetable, documentation, conditions, break-fees and use of frustrating actions (such as poison pills) in relevant transactions.

Private equity

3. What has been the level/extent of private equity-backed bids in the past 12 months?

The private equity sector remains buoyant in the Irish public M&A market, typified by Gurnet Point Capital's acquisition of Innocoll Holdings for EUR71 million in April 2017. This was a transaction regulated by the Irish Takeover Rules and implemented by way of a scheme of arrangement.

Finance

4. How were the largest or most noteworthy public M&A transactions financed?

Most large transactions have been for cash consideration.

Regulatory clearances and other authorisations

5. Please briefly outline the approach of the competition regulator(s) in the past 12 months. Were any public M&A transactions blocked by a regulator, or cleared subject to specific remedies, conditions or restrictions?

The enforcement of the Irish merger control regime is the responsibility of the Irish Competition and Consumer Protection Commission (CCPC).

According to the CCPC's Annual Report for 2016, of the 70 merger determinations (including both public and private M&A) issued during the course of the year, 65 were cleared following a standard 30 working day Phase I examination, with just four cases requiring an "extended" Phase I assessment. Only one transaction was subject to a full Phase II review. The CCPC did not prohibit any transactions during the course of 2016, and they have not prohibited any transactions to date in 2017.

Future developments

6. What will be the main factors affecting the public M&A market over the next 12 months, and how do you expect the market to develop?

A federal (district) court in the US recently ruled that the US Treasury Rules restricting inversions, introduced in 2016, are unlawful. Inversions had been very popular until the introduction of the Treasury Rules, with many pharmaceutical companies benefiting from the "inversion to Ireland" structure in recent years. It is not expected that this ruling will re-ignite inversions. However, it will be interesting to see if there are any further developments in this area in the coming months.

At EU level, a new market abuse regime was introduced on 3 July 2016 comprising of:

- Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) which sets out the revised market abuse framework.
- Directive 2014/57/EU on market abuse (MAD II) which sets out minimum rules for the criminal sanctions that member states, including Ireland, must impose for breaches of the new market abuse framework.

The authors believe that there will be significant M&A activity in Ireland over the coming 12 months. There continues to be material amounts of interest from potential buyers for quality businesses. US and UK investors continue to be active in the Irish M&A market, despite there being some uncertainty around US tax reforms and the UK's decision to leave the EU.

ONLINE RESOURCES

Takeover Panel

W <http://irishtakeoverpanel.ie/>

Description. This is the official website of the Irish Takeover Panel and contains a list of companies to which the Irish Takeover Rules apply, as well as up to date copies of the Irish Takeover Rules and Substantial Acquisition Rules.

Competition and Consumer Protection Commission

W www.cpc.ie/

Description. This is the official website of the Competition and Consumer Protection Commission and contains information regarding competition law in Ireland.

Practical Law Contributor profiles



Connor Manning, Partner

Arthur Cox

T +353 1 920 1040

E connor.manning@arthurcox.com

W www.arthurcox.com



John Barrett, Partner

Arthur Cox

T +353 1 920 1027

E john.barrett@arthurcox.com

W www.arthurcox.com

Professional qualifications. Ireland, Solicitor, 2002; New York, US, Attorney, 2001.

Areas of practice. Corporate law; mergers and acquisitions (public and private transactions such as mergers, acquisitions, reorganisations and joint ventures, both domestic and cross border and in various industries); corporate finance (representation of issuers and underwriters in public and private offerings including IPOs and secondary offerings).

Non-professional qualifications. LLM (European Law), University College Dublin, 1997;

BCL, University College Cork, 1996

Professional qualifications. Ireland, Solicitor, 2008.