Mergers and Acquisitions Report 2015

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1. REGULATORY FRAMEWORK

1.1 What legislation and regulatory bodies govern public M&A activity in your jurisdiction?

Public M&A activity is primarily governed by the corporate law of the target company's state of incorporation; general corporate law of the French Commercial Code; the Takeover Directive 2004/25/EC; articles L433-1 to L 433-5 of the French Monetary Code, which provide the general framework for takeover bids; and the general regulation of the French financial markets authority (*Autorité des Marchés Financiers* or AMF).

The primary regulatory bodies are the AMF, the French Competition Authority (*Autorité de la concurrence* or FCA) and the French Ministry of the Economy.

1.2 How, by whom, and by what measures, are takeover regulations (or equivalent) enforced?

The AMF is the supervisory authority for takeover bids, reviewing filings and enforcing takeover regulations. Euronext Paris monitors trading on the French Stock Exchange as regards all existing regulated markets. The *Cour d'appel de Paris* has exclusive jurisdiction for appeals against AMF decisions in the context of takeover bids.

2. STRUCTURAL CONSIDERATIONS

2.1 What are the basic structures for friendly and hostile acquisitions?

Generally, a hostile acquisition of a French public target is structured as a tender offer by the bidder to all of the target's shareholders at the same price, in cash and/or in shares.

A friendly public acquisition is often preceded by the purchase of one or several blocks of shares. If the acquisition is paid in shares, it may be structured as a merger approved by the extraordinary general meetings of the two companies by a two-thirds majority.

2.2 What determines the choice of structure, including in the case of a cross-border deal?

For a cash deal, it must be structured as a tender offer, often preceded by an acquisition of share blocks, when friendly, to secure the transaction (see 5.1)

For a share deal, the acquirer may structure its acquisition either as a public exchange offer or a merger. Merging is a way to squeeze out minority shareholders at the level of the target (see 2.5), and is less likely to be postponed by legal proceedings than exchange offers However, mergers with a non-French company may raise difficulties.

2.3 How quickly can a bidder complete an acquisition? How long is the deal open to competing bids?

For a tender offer, there is approximately three to six weeks between the filing of the offer and its opening, and an additional five weeks until the closing of the offer, reduced to two weeks if the bidder already holds 50% or more of the shares and voting rights.

A higher offer or a competing offer may be filed with the AMF up to five trading days before the closing date of the previous offer. A counter-offer resets the offer period.

The timeline may be extended when regulatory approval or antitrust proceedings are required or a judicial action against the AMF decision relating to the offer is filed. A law dated December 30 2014 now provides that when an action is brought against an AMF decision, the court must rule within five months from the notice of appeal.

2.4 Are there restrictions on the price offered or its form (cash or shares)?

The consideration for a public offer may be, in principle, cash, shares, or a combination of both. However, if the shares exchanged are not liquid securities listed on an EU or EEA regulated market, the offer must include a cash option. This also applies should the bidder purchase, alone or in concert, shares in the target in cash exceeding five percent of the share capital or voting rights during the 12 months preceding the offer.

As a general rule, the mandatory offer price must equal to at least the highest price paid by the bidder for the target's shares over the 12 months preceding the offer.

The price of voluntary offers is freely determined.

2.5 What level of acceptance/ownership and other conditions determine whether the acquisition proceeds and can satisfactorily squeeze out or otherwise eliminate minority shareholders?

Since law dated March 29 2014, a 50% mandatory threshold condition applies to both mandatory and voluntary offers. If this threshold is not reached, the offer lapses and, in some circumstances, the bidder can be deprived of its voting rights above 30%. A voluntary offer may be subject to a higher threshold condition.

For a controlling shareholder to implement a squeeze-out following any public offer, shares of the target held by minority shareholders should represent not more than five percent of the shares or voting rights.

A merger between the bidder and the target may also squeeze out minority shareholders.

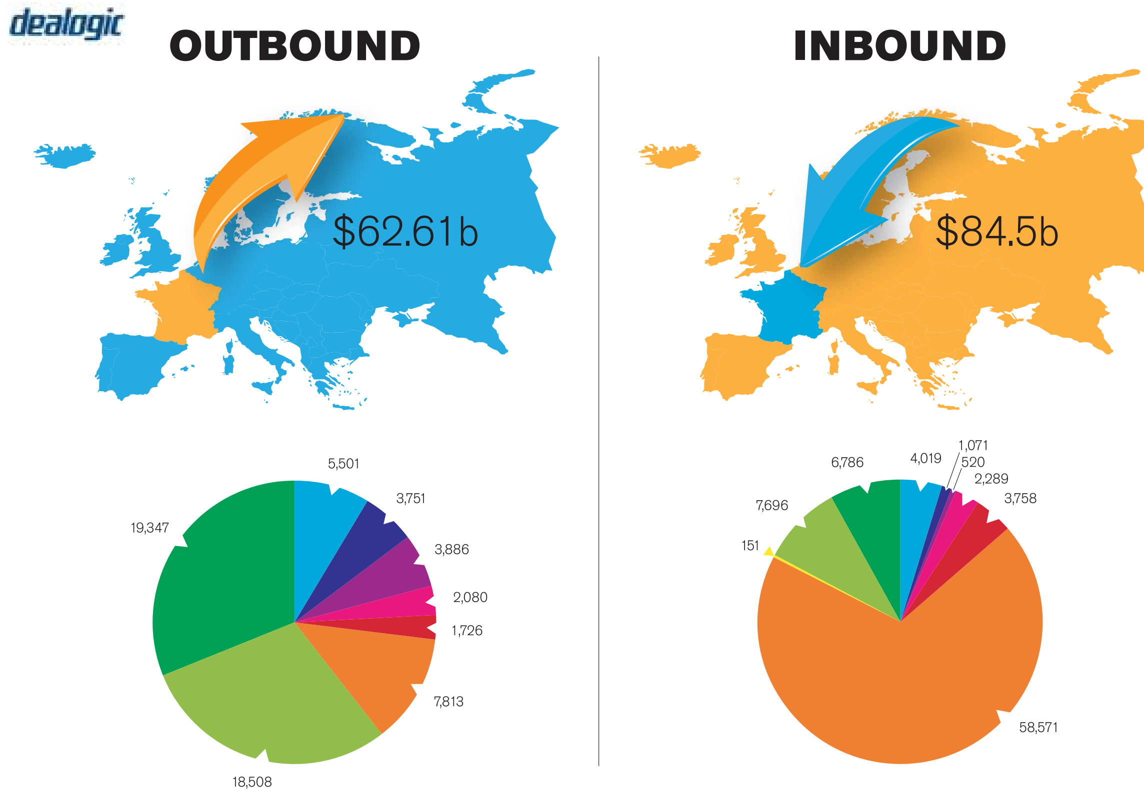
2.6 Do minority shareholders enjoy protections against the payment of control premiums, other preferential pricing for selected shareholders, and partial acquisitions, for example by mandatory offer requirements, ownership disclosure obligations and a best price/all holders rule?

Any person who, alone or in concert, exceeds (even unintentionally) the 30% threshold of the shares or voting rights in the target must file an offer for 100% of the target's share capital and equity-linked securities.

A mandatory offer is also required when a person who already holds between 30% and 50% of the target, increases its shareholding in the target by over one percent of the total capital or voting rights within 12 months.

The price offered must be the same for all shareholders. Partial offers are possible only to reach 10% or less of the target's share capital.

In certain cases, the target must appoint an independent expert to provide an opinion regarding the transaction's fairness.



NB only deals with publicly disclosed values are represented in the charts and infographics

- Consumer products
- Energy and natural resources
- Financial services and investment management
- Healthcare
- Leisure and hospitality
- Industrial goods
- Professional services
- Infrastructure and public services
- Telecoms, media and technology

2.7 To what extent can buyers make conditional offers, for example subject to financing, absence of material adverse changes or truth or representations? Are bank guarantees or certain funding of the purchase price required?
Except for certain limited conditions for voluntary offers, such as approval from competition authorities, public offers cannot be conditional upon any factor and are, in principle, irrevocable upon filing.

A bidder may withdraw its offer with the AMF's prior approval, if the target adopts measures modifying its substance during the offer period.

Payment of the price is guaranteed by the banks filing the offer on the bidder's behalf.

3. TAX CONSIDERATIONS

3.1 What are the basic tax considerations and trade-offs?
A tax-neutral regime is available if the acquisition is structured as a share-for-share exchange. This also applies when such a deal is combined with a cash payment, provided such payment does not exceed certain limits (for example, 10% of the par value of the shares exchanged for the target's shares). Under this regime, the latent gain is rolled over but the tax basis for the target's shareholders is not stepped up as a result of the exchange.

Should the acquirer use debt finance to purchase the target's shares, the tax deductibility of interest generally determines part of the structuring, given the complex French rules limiting such tax deductibility.

3.2 Are there special considerations in cross border deals?
The different tax regimes applicable to the target and acquirer will drive most tax-structuring considerations, with respect notably to the possible relocation of the target's strategic assets. Cross-border deals also raise certain technical tax considerations, including compliance with the specific conditions of the merger roll-over regime, or constraints on debt push-down of acquisition debt.

4. ANTI-TAKEOVER DEFENCES

4.1 What are the most important forms of anti-takeover defences and are there any restrictions on their use?
Further to the new law dated March 29 2014, the target company can now take any defensive measures that could jeopardise the offer without the prior approval of the shareholders' meeting (unless otherwise provided by the target's by-laws), provided that it does not infringe on shareholders' powers and does not act contrary to the target's corporate interest.

Measures including disposal of assets, capital increase, launching a tender offer, issuance of warrants (*bons Breton* similar to US right plans issues), may therefore increase in the future.

4.2 How do targets use anti-takeover defences?
The target company may use anti-takeover defences to thwart a transaction, but more generally will use such defences to negotiate a higher price or to postpone an acquisition attempt until competing bidders are involved.

4.3 Is a target required to provide due diligence information to a potential bidder?
The target company may (but is not obliged to) permit due diligence and open a data room provided that the potential acquirer has: (i) expressed a real interest (*intérêt sérieux*) in implementing the contemplated transaction; and (ii) signed a confidentiality agreement. The existence of the due diligence as well as any privileged information disclosed through the due diligence must be disclosed in the offer prospectus.

There is no possibility to file an offer that is conditional upon the findings of a due diligence review.

If a bidder had access to a data room, any other bidder or serious potential bidder should have access as well.

4.4 How do bidders overcome anti-takeover defences?
A bidder may try to overcome anti-takeover defences by challenging their validity in court, offering a higher price and negotiating with the board to obtain its approval.

4.5 Are there many examples of successful hostile acquisitions?
Hostile tender offers rarely fail, but the legislative reform gives new rights to management and the board of the target to defend against hostile bids.

In some cases in recent years, a white knight has filed a counter bid and won the bidding process.

In most recent hostile offers, the offer price was eventually increased.

5. DEAL PROTECTIONS

5.1 What are the main ways for a friendly bidder and target to protect a friendly deal from hostile interloper?
Under French law, it is impossible to prevent someone filing a competing offer.

A friendly acquirer aiming to lock up its planned acquisition of the target can secure it by purchasing blocks of shares before the offer rather than obtaining the agreement of significant shareholders to tender their shares, as French law provides that contribution commitments lapse should a competing offer be made. The acquirer may also use break-up fees and undertakings from the target not to actively seek counter bidders.

5.2 To what extent are deal protections prevented, for example by restrictions on impediments to competing bidders, break fees or lock-up agreements?
General principles on directors' duties (to act in the target's interests) make break-up fees payable by the target rare and limited in amount.

6. ANTITRUST/REGULATORY REVIEW

6.1 What are the antitrust notification thresholds in your jurisdiction?
Below the EU thresholds, concentrations should be notified to the FCA if all three conditions below are met (subject to limited exceptions where lower thresholds apply):

- the combined aggregate worldwide turnover (excluding tax) of all the companies or of all the natural persons or legal entities involved in the concentration exceeds €150 million (around $159 million); and
- the combined aggregate turnover (excluding tax) achieved individually in France by each of at least two of the companies or groups of natural persons or legal entities concerned exceeds €50 million; and
- the operation does not fall within the scope of the European Commission's jurisdiction as determined by Council Regulation (EC) 139/2004 relating to the control of concentrations between undertakings.

6.2 When will transactions falling below those thresholds be investigated?
Transactions below the notification thresholds cannot be investigated by the FCA. However, should the parties subsequently be found to have abused a dominant position created by the transaction, the FCA may order the parties to modify, complete or terminate within a fixed time limit, all agreements and actions resulting in the merger of economic power enabling the abuses.

6.3 Is an antitrust notification filing mandatory or voluntary?
Pre-merger filing is mandatory when a transaction falls within the thresholds.

6.4 What are the deadlines for filing, and what are the penalties for not filing?
There is no compulsory deadline for filing.

If the tender offer is preceded by the acquisition of a controlling block of shares, filing and merger control authorisation must be obtained prior to the closing of the block purchase.

If the tender offer is directly launched without prior acquisition of controlling blocks, the FCA filing can take place as soon as the offer is publicly announced. A tender offer may be closed before the FCA approval is obtained but the acquirer cannot exercise its voting rights until such approval.

Should the parties involved fail to file, they incur penalties of up to five percent of their French pre-tax turnover during the last closed financial year. In addition, the parties will be ordered to file a notification under a periodic penalty payment (up to five percent of their daily French turnover for each day of delay), failing which they can be ordered to reverse the transaction.

6.5 How long are the antitrust review periods?
From the receipt of a complete filing, the Phase I review period lasts up to 25 working days. This is automatically extended by 15 working days if the FCA receives commitments from the parties.

Should serious doubts of anti-competitive effects persist after the Phase I investigation, the FCA will initiate a Phase II (in-depth) investigation subject to a 65-day review period from its opening. Should the parties submit commitments within 20 working days of the end of the Phase II review period, the period is extended by 20 working days.

Specific procedures are provided allowing the parties or the FCA to suspend the waiting periods in either Phase I (up to 15 working days) or Phase II (up to 20 working days). Further, an ongoing legislative reform will introduce a stop-the-clock mechanism allowing the FCA to suspend the Phase I review period if the parties fail to provide requested information within the allocated timeframe.

6.6 At what level does your antitrust authority have jurisdiction to review and impose penalties for failure to notify deals that do not have local competition effect?
French merger control rules are procedural and apply irrespective of local competition effects.

6.7 What other regulatory or related obstacles do bidders face, including national security or protected industry review, foreign ownership restrictions, employment regulation and other governmental regulation?
An acquirer may also have to obtain regulatory approvals for its acquisition if the target engages in regulated activities (such as banking or insurance). Prior authorisation by the French Ministry of the Economy is required in a limited number of highly sensitive sectors for foreign investors (such as national defence, energy, health, or water).

The rights of the target's works council in case of a public offer have been recently strengthened through the establishment of a mandatory information and consultation procedure on the contemplated public offer. The procedure should take place within a one-month period after the filing of the offer (law of March 29 2014). The opinion issued by the target's works council is not binding and cannot block the public offer, but may slow its timetable.

7. ANTI-CORRUPTION REGIMES

7.1 What is the applicable anti-corruption legislation in your jurisdiction?
In France, anti-corruption in the private sector is treated by articles 445-1 to 445-4 of the French Criminal Code. Similar provisions exist for persons vested with public authority and foreign public officials.

7.2 What are the potential sanctions and how stringently have they been enforced?
Any private individual or legal entity responsible for corruption may be subject to a fine of €500,000 (which may be increased to twice the proceeds from the offence, and five years imprisonment. Private individuals may also be deprived of certain civil rights.

National and foreign public officials are subject to similar but more severe sanctions (a fine of €1 million which may be increased to twice the proceeds from of the offence and 10 years imprisonment).

8. OTHER MATTERS

8.1 Are there any other material issues in your jurisdiction that might affect a public M&A transaction?
Not applicable.

8.2 What are the key recent M&A developments in your jurisdiction?
The key recent developments are those involving the laws of March 29 2014 and December 30 2014 described above.

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