

**Baker
McKenzie.**



MERGERMARKET

CROSS-BORDER M&A INDEX

Q4 2016

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Cross-border M&A activity made up 39% of all deal value and 34% of all deal volume in Q4 2016, with deals from North America into the EU being the big story—US\$98.8bn was spent on 185 deals, including the largest deal of the quarter.

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There were 312 FMCG cross-border deals in 2016—down on 2014 and 2015, but up on every year between 2009 and 2013. Four of the top ten FMCG cross-border deals in 2016 featured European buyers, including the largest, which saw France's Danone buy US-based WhiteWave Foods for US\$12bn.

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In some jurisdictions, the "mandatory offer" rule could catch out those considering an acquisition of a public listed company—how do you avoid being caught in the trap?

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Q4 2016: IN NUMBERS

Q4 2016 TOTAL CROSS-BORDER DEALS

1,429 deals

VOLUME

6%
ON Q4 2015



Q4 2016 TOTAL CROSS-BORDER DEALS

\$388.2bn

VALUE (US\$)

37%
ON Q4 2015



Q4 2016 MOST ACTIVE SECTORS (CROSS-BORDER DEALS)

BY VOLUME

INDUSTRIALS

227 deals

(WORTH US\$19bn)



BY VALUE

TECHNOLOGY

US\$66.9bn

(177 DEALS)



CROSS-REGION

873 deals

VOLUME

2%
ON Q4 2015



WITHIN-REGION

556 deals

VOLUME

11%
ON Q4 2015



CROSS-REGION

\$326.4bn

VALUE (US\$)

18%
ON Q4 2015



WITHIN-REGION

\$61.8bn

VALUE (US\$)

72%
ON Q4 2015



1

CROSS-BORDER M&A INDEX

With global events remaining turbulent and unpredictable throughout Q4 2016, this quarter's M&A index dipped very slightly on the previous quarter but overall market conditions look good for long-term dealmaking.

Uncertainty in the aftermath of the Brexit vote and the US election result, ongoing political destabilization in Europe and slower deal activity out of China have had a downward effect on M&A year-on-year but the market has remained fairly resolute quarter-on-quarter. Buyers announced 1,429 cross-border deals worth US\$388.2bn, a 2% uplift in volume and only a 1% drop in value compared with the previous quarter.

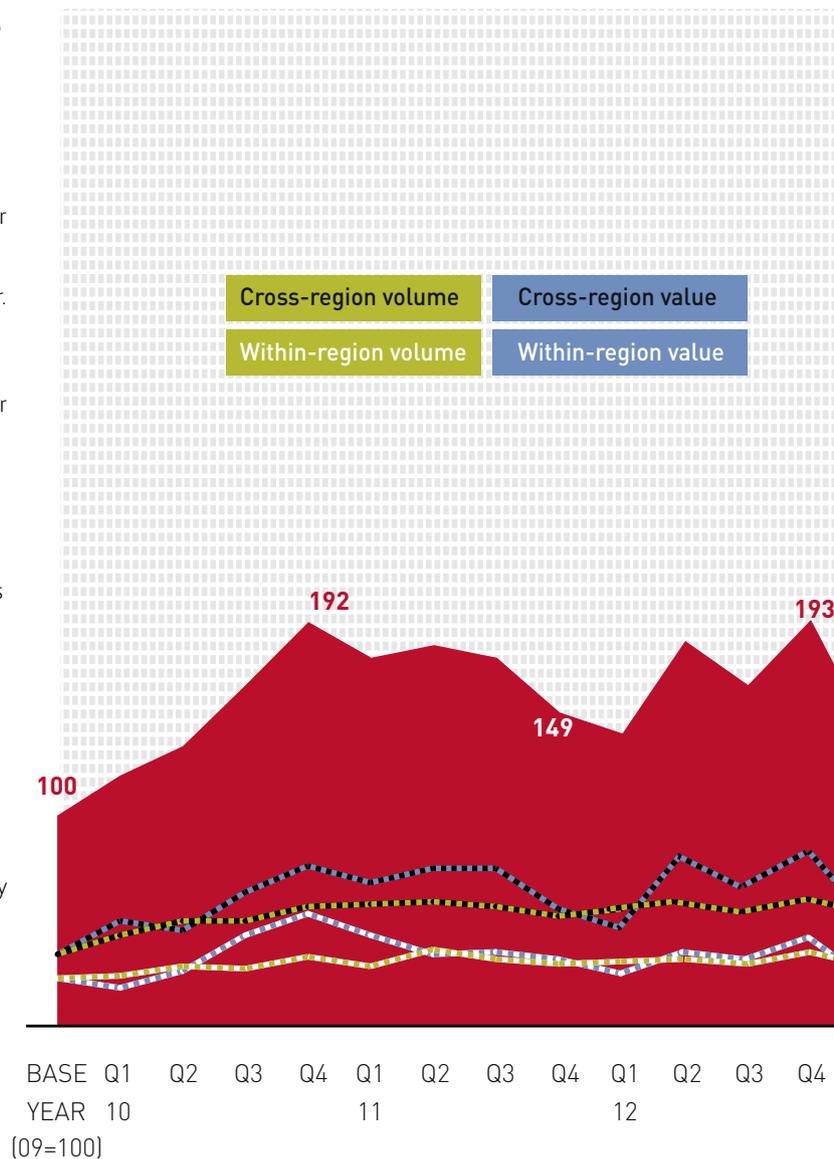
With the market stabilizing, it is not surprising that Baker McKenzie's Cross-Border M&A Index, which tracks quarterly deal activity using a baseline score of 100, dipped only very slightly to 249 in the final quarter of the year. This is down 1.5% from the previous quarter. However, it has fallen by 30% from 2015's record-breaking fourth quarter total of 358.

Despite the fall in dealmaking, the Index in Q4 remains higher than it was at its launch in 2009 through to 2013. And this is very much in keeping with cross-border M&A trends for the whole of 2016 – which has seen the value of deals fall when compared to the blockbuster years of 2014 and 2015 but rise above all other post-crisis years.

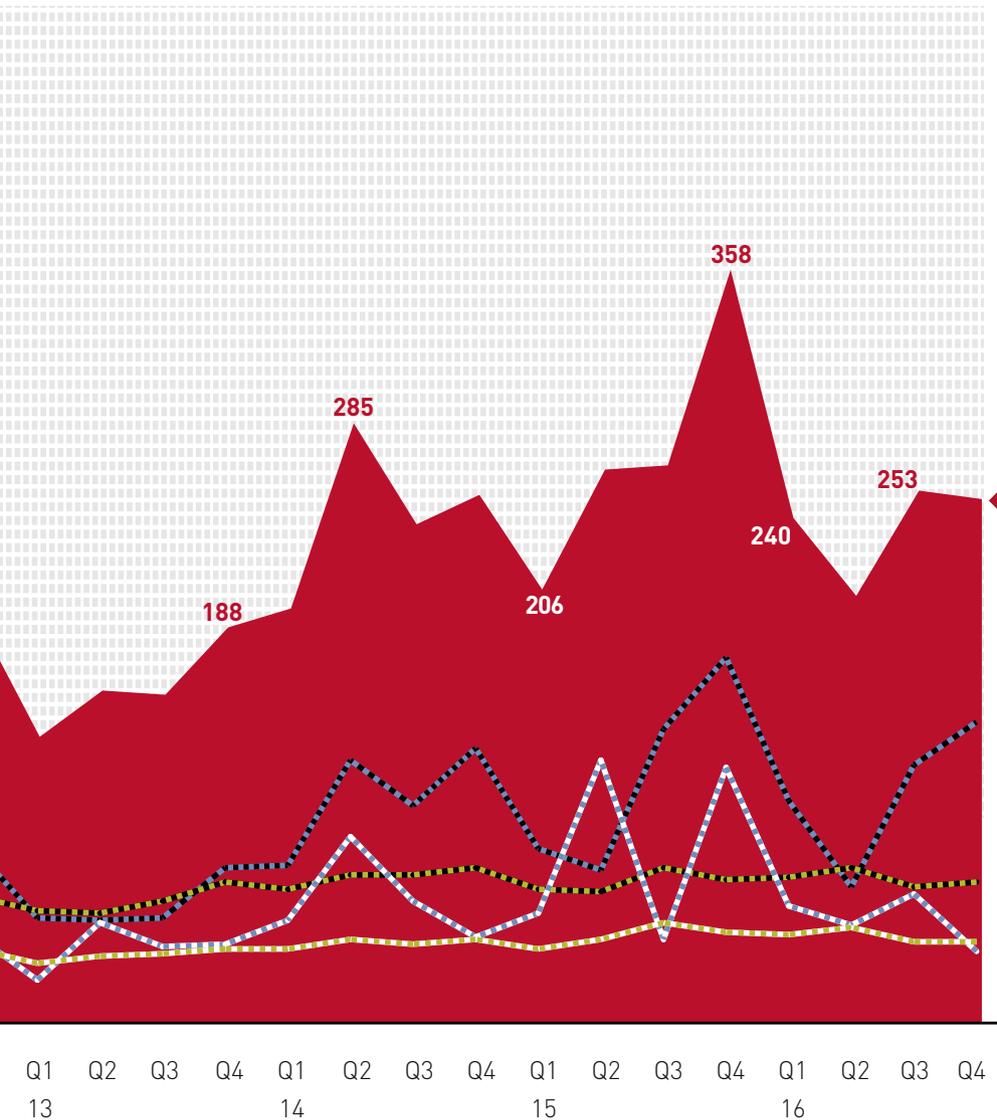
The year-on-year decline in M&A can be attributed to political and economic volatility coupled with a stricter regulatory environment, which has seen a record number of deals fail. However, strong sectoral performances, a rash of megadeals and increasing outbound deals from China and Japan have led to a robust, rather than a roaring, year.

On the sector side, industrials lead the way this quarter, with 227 deals worth US\$19bn (compared with 196 deals worth US\$29.1bn in Q3). Technology deals enjoyed the highest value with US\$66.9bn, followed by energy and utilities (88 deals worth US\$63bn). Half of the top ten deals of the year were either in the technology or energy and utilities sectors.

However, fourth quarter figures were bolstered by strong PE buyouts, which accounted for just under 20% of all Q4 activity by value (against an average of 13% since 2009). KKR picked up Japanese auto parts company Calsonic Kansei for US\$4.3bn, which suggests that buyout firms are taking advantage of current uncertainty and depressed activity, and snapping up attractive assets – activity that may well continue into 2017.



Cross-Border M&A Index Q4 2016 **249**



Methodology: Baker McKenzie's Cross-Border M&A Index assesses the strength of worldwide cross-border M&A activity in each quarter since Q1 2010. Based on a weighted average of cross-border deal values and volumes in each quarter, we calculate a score from a baseline figure of 100, which represents the level of activity in 2009. That score provides one easy-to-understand indicator of how cross-border deal activity changes from quarter to quarter, enabling viewers to identify patterns.

We define cross-border dealmaking as any M&A activity involving a bidder and target based in separate countries. The overall index score is comprised of four weighted subcategories, giving slightly more weight to more ambitious deals between parties in two different regions.

Data correct as of 3 January 2017

2

THE GLOBAL PICTURE

HEADLINES

1

Cross-border M&A activity made up 39% of all deal value and 34% of all deal volume in Q4 2016.

2

Deals from North America into the EU were the big story, with US\$98.8bn spent on 185 deals, including the largest deal of the quarter.

3

China continued its strong outbound deal activity with 92 deals worth US\$48.6bn.

4

Australia was the third most-active buyer in Asia-Pacific by value (after Japan and China), with 31 deals worth US\$20bn.

All eyes were on the United States in Q4 2016 as Donald Trump was elected president, following a contentious campaign season. Despite the uncertainty surrounding the results, the US was the biggest acquirer of the quarter, spending US\$121.5bn on 299 deals.

This was reflected at a regional level, with the EU accounting for 81% of North American acquisitions by value, by far its biggest target. Deals included substantial PE deals targeting Germany, with three valued at more than US\$1bn. The largest US-EU deal – and top deal of the quarter – was the acquisition of Netherlands-based NXP Semiconductors by US-based semiconductors company

Qualcomm, for US\$45.9bn. The largest inbound US deal came from Ireland, with aircraft leasing company Avolon Holdings acquiring the CIT Commercial Air leasing business from CIT Group in New Jersey for US\$10bn.

Asia looks outwards

Asia Pacific remained a strong performer for the quarter, as buyers pursued 203 cross-regional deals worth a total of US\$93.9bn. This represented 23% (volume) and 29% (value) of all cross-regional activity for the quarter.

Four of the top ten global cross-border deal values this quarter came from Asia-Pacific transactions. These include the acquisition

of US-based audio products and electronic systems specialists Harman International Industries by South Korea's Samsung Electronics for US\$8.7bn, and the purchase of a 25.01% stake in American hospitality company Hilton Worldwide Holdings from Blackstone Group by Chinese conglomerate HNA Tourism Group, for US\$6.5bn.

Outbound activity from Asia-Pacific has continued to be driven by China. The year saw a record number of cross-border deals (393) valued at an equally record-breaking US\$215bn. This is a dramatic increase on 2015. Year-on-year, deal value was up 100% while volume rose by 25%. The largest cross-border deal of the year saw the China National Chemical Corporation buy Swiss agribusiness company Syngenta for US\$45.8bn in February.

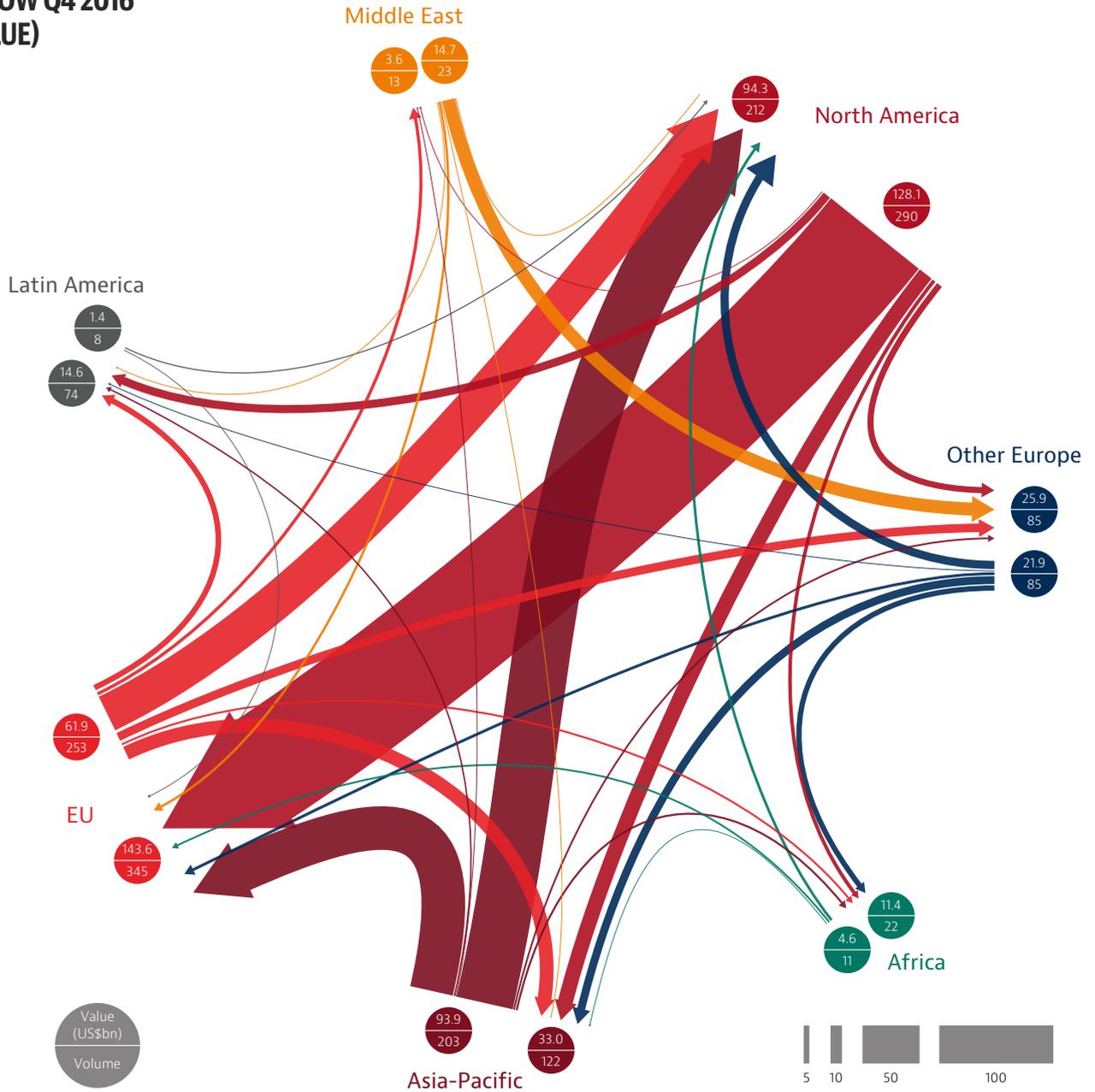
In the fourth quarter, there were 92 deals valued at US\$48.6bn – up 4.5% and 25.5% respectively on Q3. The largest cross-border deal of the quarter was the aforementioned HNA/Hilton stake.

Down under moves up

Australia also made waves in Asia-Pacific this quarter, with deals in Europe and the US. It was the third-most active buyer in the region by value, with 31 deals worth a total of US\$20bn.

A healthy percentage of the country's outbound value was taken up by the quarter's third largest acquisition, a 61% stake in National Grid Gas Distribution from National Grid plc in the UK. The deal, worth US\$14.5bn, was led by a consortium composed of Australian investment bank Macquarie Infrastructure, China Investment Corporation and the Qatar Investment Authority, among others.

GLOBAL CROSS-REGIONAL DEAL FLOW Q4 2016 (BY VALUE)



3

SECTOR FOCUS:

FMCG

HEADLINES

1 There were 312 FMCG cross-border deals in 2016, worth a total of US\$57.5bn – volume is down on 2014 and 2015, but up on every year between 2009 and 2013.

2 In the Home and Personal Care sub-sector, deal value is up 68% from US\$6.5bn to US\$10.9bn.

3 Four of the top ten FMCG cross-border deals in 2016 featured European buyers, including the largest, which saw France's Danone buy US-based WhiteWave Foods for US\$12bn.

4 In 2015-2016, the US was the most-targeted and the most-acquisitive market by volume.

Much like the overall M&A market, the fast-moving consumer goods sector (FMCG) is not moving quite as fast as it did last year. Year-on-year, volume is down 17% and value 68% (although this is very much due to the US\$122.8bn SABMiller/Inbev megadeal, which accounted for 66% of value in the sector in 2015). However, a closer look at the figures shows that, overall, M&A is up on every year between 2009 and 2013, with sub-sectors such as home and personal care showing a marked increase in year-on-year deal value.

Unlike a number of sectors such as pharmaceuticals or financial services, FMCG has delivered a steady flow of deals this year, in part since it has not been as susceptible as others have been to the regulatory or political upheavals that have characterized 2016. However, if the deal market is to thrive in 2017, the sector needs to continue building on three major shifts – healthier and premium products, digitalization and global brand building.

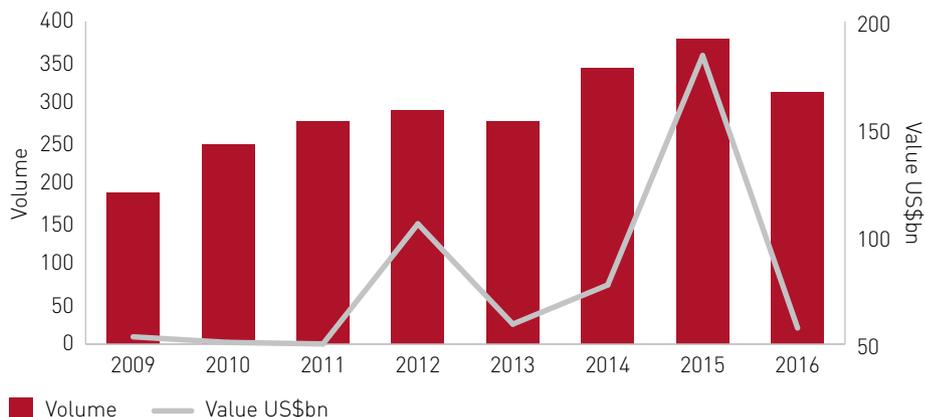
Health makes wealth

Organic, local, additive and cruelty-free are the labels that consumers crave – particularly millennials. And they are willing to pay a premium for them. "Healthier and premium products are driving, and will continue to drive, a lot of growth in FMCG M&A," says David Scott, corporate partner at Baker McKenzie. "And there are much bigger margins to be made in that sector."

This move to meet changing consumer demand has been a key factor in dealmaking in the FMCG market in 2016. The largest deal of the year saw French dairy giant Danone buy WhiteWave Foods, a natural, health-focused beverage business for US\$12bn in July. The purchase will not only build Danone's healthy product portfolio but will also help expand the business' footprint in the US.

US soft drinks company, Dr Pepper Snapple (DPS), had a similar rationale when it agreed

FMCG CROSS-BORDER M&A 2009–2016



to buy Bai Brands, maker of coconut water and antioxidant-rich fruit drinks, for US\$1.7bn in November.

In addition to higher margins, premium products can lift brand perception overall and give owners pricing power across their range. "This is why Unilever, for example, is moving into premium products in the personal care space, because it enables them to exert a bit more authority across the range," says Tim Gee, a partner in Baker McKenzie's London practice. The consumer giant recently bought Seventh Generation, an eco-friendly, "natural" home and personal care products company based in Vermont, US, to add to a number of premium personal care acquisitions made over the last couple of years.

Allying your business with healthier and more prestige product ranges can also help raise a company's standing among consumers. "Companies are looking to drive up their reputation. And they are using these types of products to do that," says Scott.

Digital drives deals

The inexorable march of technology has wired its way into every sector—and FMCG is no exception. New platforms, new models and new delivery systems are revolutionizing the industry and companies need to seize these opportunities now. In such a frenzied and fast-moving environment, building new digital platforms isn't always viable—but buying them often is. "FMCG companies are not good at developing their own technology platforms," says David Fleming, partner in Baker McKenzie's Hong Kong practice. "But there is a willingness to engage a different sales model using digital platforms. And this will drive M&A."

TOP FIVE FMCG CROSS-BORDER M&A, 2015-2016

Announced Date	Target Company	Target Country	Bidder Company	Bidder Country	Deal Value US\$m
11/11/2015	SABMiller plc	United Kingdom	Anheuser-Busch InBev NV	Belgium	122,834
07/12/2015	Keurig Green Mountain, Inc.	USA	Keurig Green Mountain consortium	Netherlands	14,261
07/07/2016	The WhiteWave Foods Company	USA	Danone SA	France	12,056
06/08/2015	Coca-Cola Iberian Partners, S.A.	Spain	Coca-Cola Enterprises, Inc.	USA	6,268
13/12/2016	Anheuser-Busch InBev NV (Central and East European Beer Business)	Czech Republic	Asahi Group Holdings, Ltd	Japan	6,117

Innovation is creating new types of transactions in the FMCG sector because deals are no longer about traditional supply change management but about digital capability. "There are many different models when selling over the internet," says Gee. "Transactions will cover a number of models. Clearly, online sales are going to be a big area of growth over the next period. All the big consumer companies are looking at how they can do that and this will promote deals."

One such deal was Unilever's reported US\$1bn acquisition of five-year-old start-up Dollar Shave Club (DSC), an online subscription service that delivers shaving products on a monthly basis. Innovative companies such as DSC are disrupting the FMCG sector and a wave of M&A could soon hit as corporates and buyout firms battle for the smartest new start-ups.

"You will see plenty of corporate venture transactions where the majors buy up recently established, blossoming micro brands and then see if they can globalize them," says Gee. "You'll also see a lot of competition between the private equity houses and the big corporates to get their hands on those brands that are just about to really lift off."

All around the world

For long-term success, companies in the FMCG sector need brands that are truly global—but products that work in one location often fail elsewhere. With that in mind, companies are searching for indigenous brands that can help expand their footprint worldwide. "It's all about coloring in the map," says Gee. "Companies want to create truly global brands."

This desire for worldwide recognition has driven a number of high-profile deals in 2016. One of the largest saw Japanese brewer Asahi acquire SABMiller's eastern European brewing assets for US\$7.8bn. The purchase of these premium beer brands will help Asahi extend its reach across Europe. In a similar deal in June, Germany's Henkel bought US laundry products company Sun Products for US\$3.6bn—putting it into second place in the laundry care market in North America.

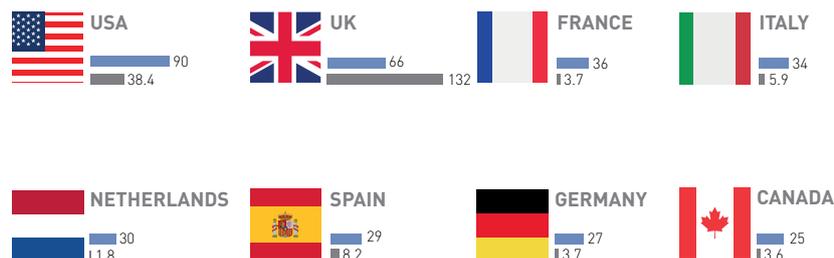
For companies expanding globally, Asia is crucial: "There are young mass populations across all of the geographies in the region, and a number of these markets spend or are going to spend a lot of money on premium products," says Scott.

"Pretty much all Asian markets are growing," agrees Fleming. "China and India, obviously, but Indonesia and Thailand are also interesting. There is a lot of food production in Thailand and I think that, as part of its growth phase, we are going to see their market change."

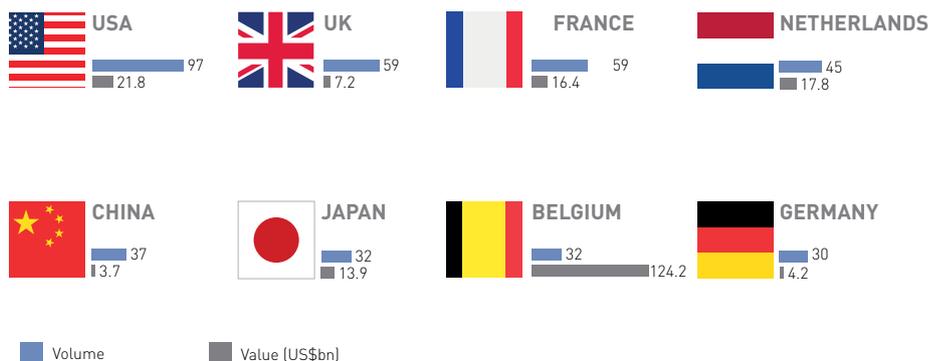
One deal that characterizes the importance of Asia is coffee empire Jacob Douwe Egberts' (JDE) US\$1bn bid for the Singapore-based beverage manufacturer, Super Group. At the time of the deal in November, Pierre Laubies, CEO of JDE, said: "As part of our global coffee strategy, we are excited to expand our footprint into the strategically important Southeast Asian growth region."

Baker McKenzie is optimistic about growth in the FMCG market in 2017: "Unlike other sectors, regulatory issues do not really affect the fundamentals of whether or how FMCG companies develop their business and products," says Gee. "It will be a very positive year for M&A in consumer goods next year."

MOST TARGETED COUNTRIES WITHIN FMCG 2015-2016



MOST-ACQUISITIVE COUNTRIES WITHIN FMCG 2015-2016



■ Volume ■ Value (US\$bn)

4

SPOTLIGHT: MANDATORY OFFERS

Traps for the unwary

In some jurisdictions, the "mandatory offer" rule could catch out those considering an acquisition of a public listed company—how do you avoid being caught in the trap?

The mandatory offer rule, relating to takeovers of public listed companies, is common across Europe and a number of other jurisdictions, including Hong Kong and Singapore, though not generally in the United States.

The fundamental common principle is that an acquisition of shares in a quoted company above a certain trigger threshold obligates the acquirer to make an offer to all shareholders to acquire their shares.

The trigger threshold varies but is often either 30% or one-third of the company's voting shares (although it can be lower—for example, it is as low as 15% in Argentina).

Even if not intended as such, mandatory offer requirements can serve as limited anti-takeover defenses since potential acquirers may be unwilling or unable to conduct a mandatory offer in accordance with legal requirements or at all.

Why does it matter?

Mandatory offers must generally be in cash at the highest price paid by the bidder for shares over the preceding period (typically 12 months).

In a number of jurisdictions, including the UK, they must also be unconditional, apart from a condition that acceptances result in the bidder holding more than 50% of the company's voting shares. For example, regulatory clearances or bidder financing conditions could not be included.

A regulator may allow a quick sale of shares to reduce the holding back below the trigger threshold, but this may still result in adverse consequences such as censure by the regulator, significant economic loss and reputational damage.

Trap 1: "Acting in concert"

Specific traps will to some extent be jurisdiction-specific; however, there are a few that should generally be considered. First, the trigger threshold may be met if, following an acquisition, the relevant percentage of shares is held by the acquirer (directly or indirectly) together with anyone "acting in concert" with them. Before buying quoted shares, it is therefore

important to understand those who may be considered to be acting in concert and whether any of them have acquired shares.

Persons may be treated as acting in concert where:

- under an agreement or understanding (however informal), they co-operate to obtain or consolidate control of a company; or
- they have any of a number of specified relationships with one another which may go beyond those expected (such as group companies or family members) and include, for example in the UK, common shareholders in a private company who receive quoted shares (such as on a share-for-share acquisition).

Trap 2: What are you buying?

The mandatory offer obligation may be triggered not only by the direct acquisition of shares but also by any "dealing" resulting in a person having an "interest in securities" of the relevant company.

These definitions may be broadly drafted to ensure that the rule cannot be circumvented and include a wide variety of instruments, e.g. derivatives, convertibles, options and a wide variety of transactions such as voting agreements, hedging transactions and even spread bets.

We recommend that acquirers, particularly those from jurisdictions where mandatory offers are not a feature of the regulatory landscape, such as the US, take the time to consider carefully the relevant rules before buying quoted shares.

Baker McKenzie's Global Public M&A Handbook focuses primarily on the practice of conducting a takeover of a publicly listed company with summaries of the general legal framework, takeover practices and tactics across 41 jurisdictions.

For more-detailed and jurisdiction-specific tips, request a copy of our Global Public M&A Handbook by contacting Carolyn A. Sandano at carolyn.sandano@bakermckenzie.com or visiting <http://www.bakermckenzie.com/en/insight/publications/2016/11/global-public-ma-handbook/>

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