


MERGERS & ACQUISITIONS PRACTICE AREA REVIEW

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MAJOR RECENT ACTIVITY

2014 was an exceptionally active M&A year, both in Switzerland and worldwide, with a striking number of large, strategically driven deals. Following a relatively calm year in 2013, confidence returned to the boardrooms and executives are again focusing on company growth. Interest rates at record lows, the growing US economy as well as high cash reserves at companies had a stimulating effect on global M&A markets. Continued confidence among investors, companies' high liquidity, the resulting increase in the attractiveness of IPOs as well as public takeover bids are just some of the factors that invigorated Switzerland's M&A market.

The Swiss economy continued to accelerate during 2014: an anticipated GDP growth of 1.8 per cent suggests that, as in preceding years, the Swiss economy may again outperform its larger European counterparts.

For the sixth consecutive year, Switzerland topped the Global Competitiveness Index in 2014, according to the World Economic Forum's Global Competitiveness Report 2014/2015. Switzerland's stable political system, liberal economy, top-notch academic institutions, highly educated workforce, sophisticated and efficient legal setting, and traditionally mild tax regime all contribute to an excellent business environment and provide a competitive edge over other economies. Switzerland's macroeconomic environment is among the most stable in the world at a time when numerous European countries continue to struggle in this area.

The Swiss Market Index (SMI), Switzerland's blue-chip stock market index, closed the year at 8,983.4 points (+9.5 per cent versus end-2013), climbing to a seven-year high of 9,212.85 on 5 December 2014. Over the year, the SMI gained 11.3 per cent, showing positive performance across all sectors with the exception of Energy and Utilities.

SIX Swiss Exchange and SIX Structured Products Exchange reported a year-on-year increase in trading activity with the trading turnover growing by 14.3 per cent to 1,148.1 billion Swiss francs, while the number of trades rose by 12.6 per cent to 38,832,343. Driven by stock market confidence and the market upswing, IPOs have become increasingly attractive for Swiss companies and with Thurgauer Kantonalbank, Bravofly Rumbo Group NV, SFS Group AG, HIAG Immobilien AG, Glarner Kantonalbank and Molecular Partners AG, 2014 saw six IPOs, the highest level since 2008.

The Swiss M&A landscape witnessed a series of major mergers and acquisitions. 2014 was predominantly driven by high-volume transactions, with the number of transactions with disclosed deal volume above 1 billion Swiss francs increasing from two to 30 deals compared with 2013. The total volume of M&A transactions with Swiss involvement increased by $155 billion to reach a total of $188 billion, according to KPMG. In terms of deal volume, the Swiss M&A market surpassed all previous years since 2007. The volume of each of the top 10 deals in 2014 was considerably higher than the largest Swiss deal 2013. Three of them even saw prices between $16 billion and $40 billion. Perceived with particular interest were the merger between Holcim and Lafarge and the portfolio transformations at Novartis, which consisted of a three-part transaction with GlaxoSmithKline, as well as the sale of the groups' animal health business of Eli Lilly valued at $28.5 billion. KPMG reports the number of transactions to have increased by an impressive 33 per cent year on year.

LEGAL AND REGULATORY FRAMEWORK

The ordinance against excessive compensation in Swiss listed corporations (VegüV) entered into force on 1 January 2014. The ordinance brings far-reaching new rules on the corporate governance of Swiss public companies with direct effects on executive management, shareholders, pension funds and independent proxies. The ordinance provides for the annual election of the chairman of the board, any of the other board members as well as the members of the compensation committee by the shareholders meeting, a compulsory one-year term of office for board members, and, starting from 2015, a binding say-on-pay vote by the shareholders' meeting on the compensation of the board and executive management. Moreover, the role of the independent proxy has been reinforced. As of 2015, pension institutions are subject to certain voting and disclosure obligations regarding the shares held by them in Swiss public companies. The ordinance also introduced new criminal offences with regard to certain unlawful compensation payments.

Switzerland's revised Collective Investment Schemes Act brought new rules on foreign investment fund distribution and asset managers as well as revisions of the guidelines of the Swiss Financial Market Supervisory Authority (FINMA).

With a series of new laws and regulations on the horizon or already in force (eg, Basel III, AIFM, MiFID, FATCA, FINFRAG), the finance industry, and more particularly the Swiss asset management and banking field, has to deal with a significant increase in costs for running its business.

Further regulatory developments likely to affect M&A are reported with the amendment of the Code of Obligations for companies limited by shares and accounting as well as anti-money laundering/compliance (with modifications of several Federal Acts).

The planned revision of the Cartel Act (CartA), meant to improve the rule of law of the existing system, fell through after the Federal Council's bill was finally rejected by the Swiss National Court in September 2014. The core aspect of the revision was the institutional restructuring, providing a better legal basis for decisions made by the competition authorities and accelerating procedures. At the same time, it was expected that certain central provisions of the substantive law would be amended.

INDUSTRIES AND CLIENTS ACTIVE IN THIS SECTOR

2014 yielded significant transactions. The top 10 Swiss M&A transactions of the year were as follows:

- *Lafarge SA/Holcim Ltd*;
- *Alliance Boots GmbH/Walgreen Company*;
- *Oncology Products (GlaxoSmithKline PLC)/Novartis AG*;
- *InterMune Inc/Roche Holding AG*;
- *Share Buy-Back L'Oréal/Galderma*;
- *Vaccines Division (Novartis AG)/GlaxoSmithKline PLC*;
- *Las Bambas copper mine (Glencore International AG)*;
- *Animal Health Division (Novartis AG)/Eli Lilly & Co*;
- *SIG Combibloc Group AG/Onex Corporation;* and
- *MultiPlan, Inc/Partners Group Holding, Starr Investment Holdings, LLC.*

Valued at $40 billion, the merger between Lafarge and Holcim was the year's biggest transaction, concurrently representing one of the largest deals ever seen in Switzerland. The deal involves a sequence of disposals and restructurings and illustrates the trend toward bundling core competencies and winning synergies.

While activity boomed in sectors as pharmaceuticals, insurance and private banking, it remained mostly calm in other areas (eg, chemicals and energy). A high level of activity was seen in the pharmaceutical industry where five deals ranked among the top 10. The health-care sector accounted for 12 per cent of all announced transactions, the highest value since 2009, and stood out for its remarkable deal volume of 75.9 billion Swiss francs.

Amid Eurozone uncertainty, six of the 10 largest Swiss deals involved counterparts in the UK or North America. Both inbound and outbound deal values rocketed.

Strategically driven efforts to streamline asset portfolios seem to evolve as a new M&A trend, exemplified by Novartis. The divesture of its Animal Health Division to Eli Lilly for $5.4 billion, the sale of its vaccine division to GlaxoSmithKline for $7.1 billion and the company's stronger focus on pharmaceuticals – with its acquisition of GlaxoSmithKline's oncology division for $16 billion – are some of the significant transactions conducted during 2014.

Also worth mentioning is the increasing confidence of Asia-Pacific investors pursuing inbound transaction into Switzerland, including their interest in acquiring strategic Swiss assets. Consolidation in Swiss private banking continued in 2014, and Brazil's BTG Pactual acquired BSI for $1.7 billion.

The number of deals involving private equity reached 2007's record levels. A series of substantial deals dominated deal-making, including the acquisition of SIG Combibloc Group AG by Onex Corporation.

Enabled by easier access to bank finance, successful fundraising rounds were seen at many private equity houses. Tough competition for assets is meanwhile compelling some Swiss houses to expand their search abroad.

FUTURE DEVELOPMENTS

In December 2014, the Swiss State Secretary of Economic Affairs (SECO) published its growth forecast for the Swiss economy, predicting a positive development assuming the euro region continues its gradual recovery. In its forecast, the Federal Government's Expert Group projects a GDP growth in Switzerland for 2015/2016 that continues to be relatively high compared with other European countries, with a slight increase in Swiss GDP growth from 1.8 per cent in 2014 to 2.1 per cent in 2015 and 2.4 per cent in 2016.

Market participants' confidence remains high; however, diverse economic surveys indicate a higher degree of uncertainty among businesses and households regarding the outlook. These lower expectations reflect in part the riskier global environment in 2014 (fragile economic activity in the euro region) and in part the more uncertain political framework conditioning the relationship between Switzerland and the EU (immigration regime, bilateral agreements and tax policy). Respondents to the World Economic Forum's Global Competitiveness Report 2014/2015 Executive Opinion Survey 2014 named the difficulty of finding qualified workers as the single most problematic factor for doing business in Switzerland. The recent acceptance by Swiss citizens of an initiative aimed at limiting the ability of European Union workers to immigrate by reinstating quotas could aggravate the problem and pose a potential threat to Switzerland's competitive edge. While the clear rejection of the "Ecopop Initiative" might have reduced some risks, it remains to be seen whether the negotiations on an EU-compatible immigration regime will ultimately lead to a successful outcome. Substantial restrictions in the workforce or restricted access to the EU markets or any other additional uncertainty surrounding the relationship between Switzerland and the EU would have detrimental effects on corporate investment policy and on the outlook for 2015 and 2016, according to the Expert Group.

The Swiss M&A market is expected to continue its strong performance, while surpassing the record performance of 2014 will be a difficult task. The fact that many Swiss corporations have accumulated healthy cash reserves and have completed, or are reaching completion of, portfolio optimisation programmes will drive valuation and transaction activity even further in 2015, according to KPMG. In February 2015, Sunrise Communications Group AG launched the biggest European telecom initial public offering seen in recent years and observers expect at least five IPOs for 2015.

It is important to note that all forecasts were made unaware of the Swiss National Bank's change of heart in early 2015. The abrupt ending of the euro cap on the franc on 15 January 2015, initially introduced on 6 September 2011 to fight recession and deflationary pressures, sent the Swiss franc soaring by almost 30 per cent, threatening Swiss companies' exporting power. Frantic trading drove Swiss stocks down almost 9 per cent, the biggest one-day percentage fall in 25 years. The Swiss SMI index dropped 10 per cent. A sharp move in stock prices could impact mergers and acquisitions activities in 2015. However, globally acting manufacturers are likely to be in a position to spread costs and revenues in different currencies which should alleviate the impact of a surge in the Swiss franc.