Baker McKenzie.

CROSS-BORDER M&A INDEX

Q2 2017

Mergermarket
An Acuris company

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Mergermarket, an Acuris company, is an independent mergers and acquisitions (M&A) intelligence service, with an unrivalled network of dedicated M&A journalists based in 62 locations across the Americas, Europe, Asia Pacific, the Middle East and Africa. Unlike any other service of its kind, Mergermarket specializes in providing forward-looking origination and deal flow opportunities, integrated with a comprehensive deals database-resulting in real revenues for clients. Visit mergermarket.com.

Q2 2017: IN NUMBERS

Q2 2017 TOTAL CROSS-BORDER DEALS

1,368 deals
VOLUME

-15% ON Q2 2016

Q2 2017 TOTAL CROSS-BORDER DEALS

$345.8bn
VALUE (US$)

49% ON Q2 2016

Q2 2017 MOST ACTIVE SECTORS (CROSS-BORDER DEALS)

BY VOLUME

INDUSTRIALS

209 deals
(WORTH US$25.4bn)

BY VALUE

CHEMICALS & MATERIALS

US$60.4bn
(42 DEALS)

CROSS-REGION

787 deals
VOLUME

18% ON Q2 2016

WITHIN-REGION

581 deals
VOLUME

12% ON Q2 2016

CROSS-REGION

$236.9bn
VALUE (US$)

60% ON Q2 2016

WITHIN-REGION

$108.9bn
VALUE (US$)

30% ON Q2 2016

1 CROSS-BORDER M&A INDEX

As dealmakers adjust to a challenging M&A climate, they have reason to be positive, with cross-border deal value jumping 49% year on year while the Index is up 30 points on Q2 2016.

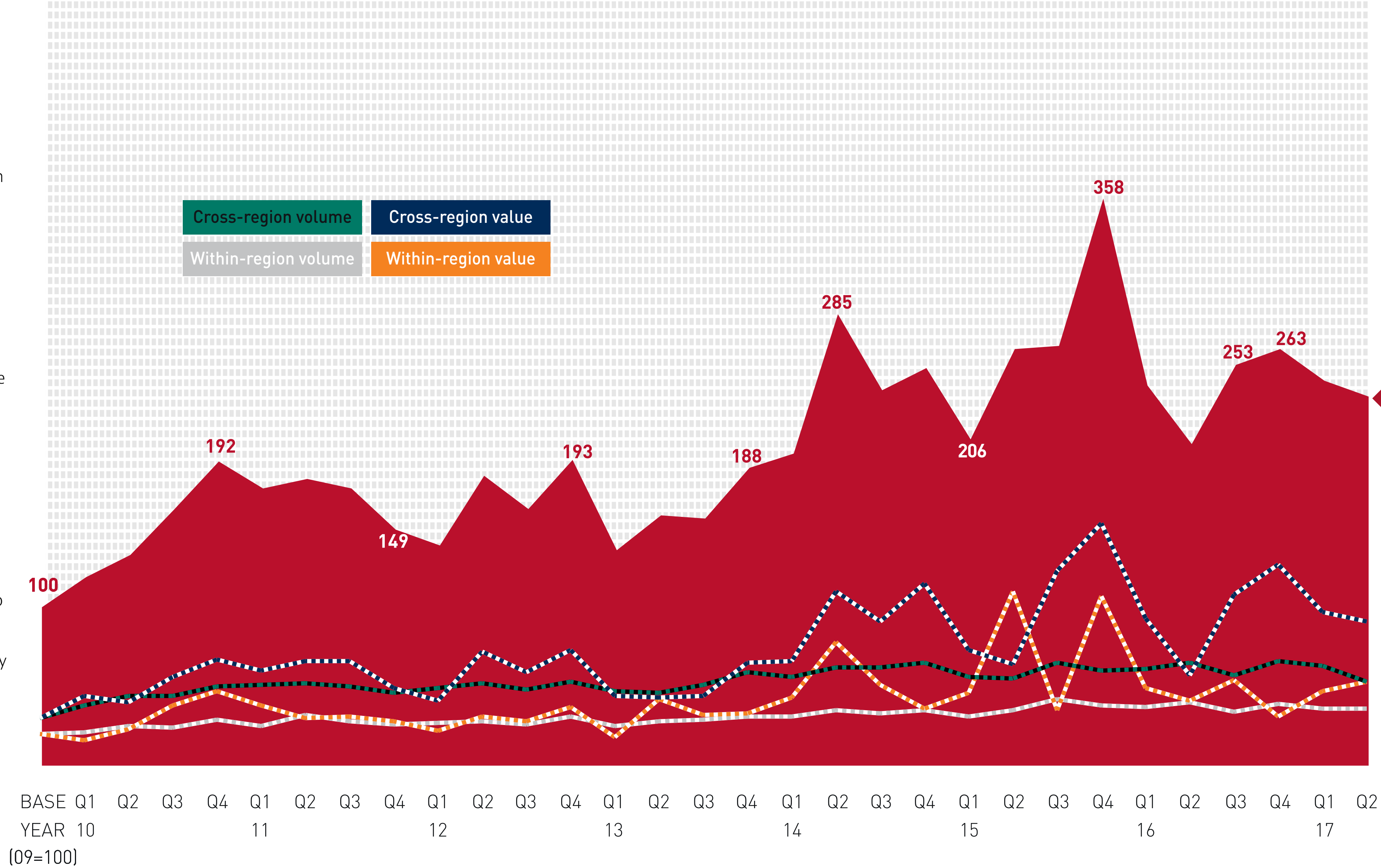
Global dealmakers faced a range of political challenges in Q2. The nature of the UK's exit from the EU is still unclear following a snap election which delivered more uncertainty. A cloud of doubt hangs over President Trump's ability to pass his pro-business agenda through Congress. In spite of this political volatility, M&A has remained stable.

There were a total of 1,368 cross-border deals valued at US$345.8bn announced during Q2, down a mere 1% by value compared to the previous quarter but up 15% year on year.

The EU proved a draw for cross-border dealmaking despite political volatility. The largest cross-border deal of the quarter saw US-based Praxair purchase Germany's industrial gas firm Linde for US$45.5bn. The deal pushed chemicals and materials into the top value slot for the quarter with US$60.4bn. Industrials led the way in terms of volume with 209 announced deals. This was despite the sector taking seventh place on the value table with US$25.4bn, highlighting a flurry of mid-market activity.

However, there was a quarter-on-quarter drop of 10% in volume and, as a consequence, Baker McKenzie's Cross-Border M&A Index, which tracks quarterly deal activity using a baseline score of 100, slipped to 233 in the first quarter of the year. This marks a 4% decrease on the previous quarter. As a result of the drop in volume but considerable rise in value, the cross-border deal average rose to US$477m in Q2—up 63% year on year.

For this quarter, it would appear that the increased risk and uncertainty facing cross-border transactions has led dealmakers to choose to invest more money in a smaller number of handpicked deals.



Cross-Border M&A Index Q2 2017

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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 composed of four weighted subcategories, giving slightly more weight to more ambitious deals between parties in two different regions.

Regions consist of Africa, Asia Pacific, the EU, Latin America, the Middle East, North America and Other Europe.

Data correct as of 3 July 2017

2 THE GLOBAL PICTURE

HEADLINES

1. Cross-border dealmaking accounted for almost half of global deal value (47%) and more than a third (36%) of all volume in Q2 2017

2. Cross-regional dealmaking value was up 60% year on year

3. The EU was the hot target location, accounting for the majority of cross-regional dealmaking by value

4. China climbed back up the acquisitions table from 7th in Q1 to 2nd in Q2

5. Middle-Eastern outbound value doubled on the back of two megadeals

The cross-border market has held strong in Q2 against a range of challenges. Uncertainty surrounding Brexit, European elections and President Trump's future policies are weighing heavy on dealmakers' minds. Cross-border dealmaking retained its dominance against this volatile backdrop, accounting for almost half (47%) of global value and 36% of volume. Driven by activity within the EU, cross-regional dealmaking was up 60% year on year.

EU on the rise

As the region gains relative stability in the wake of a fractious Brexit vote and a spate of regional elections, the EU has become a hub for M&A. It accounted for 41% of cross-regional volume and 58% of value, with 321 deals totaling US$138bn. North America was the major bidder into the EU, spending US$97.2bn on deals in Q2. Despite an upcoming election, Germany was the most targeted country in the EU and attracted the highest valued cross-border deal of the quarter globally – US Praxair's US$45.5bn purchase of industrial gas firm Linde.

In terms of total cross-border M&A, the EU accounted for 46% of cross-border deal volume and 56% of value. Highlighting the region's dominance in the global dealmaking scene, seven of the most targeted countries in Q2 by value were from the EU. This compares with only four in Q1 2017.

China returns, Japan marches on

Following a challenging first quarter where strict government legislation caused a sharp drop in overseas deals, Chinese investors have returned to the deal table. China was the second most acquisitive cross-border nation in Q2 with 94 deals valued at US$35.9bn compared with 74 deals valued at just US$11.5bn in Q1.

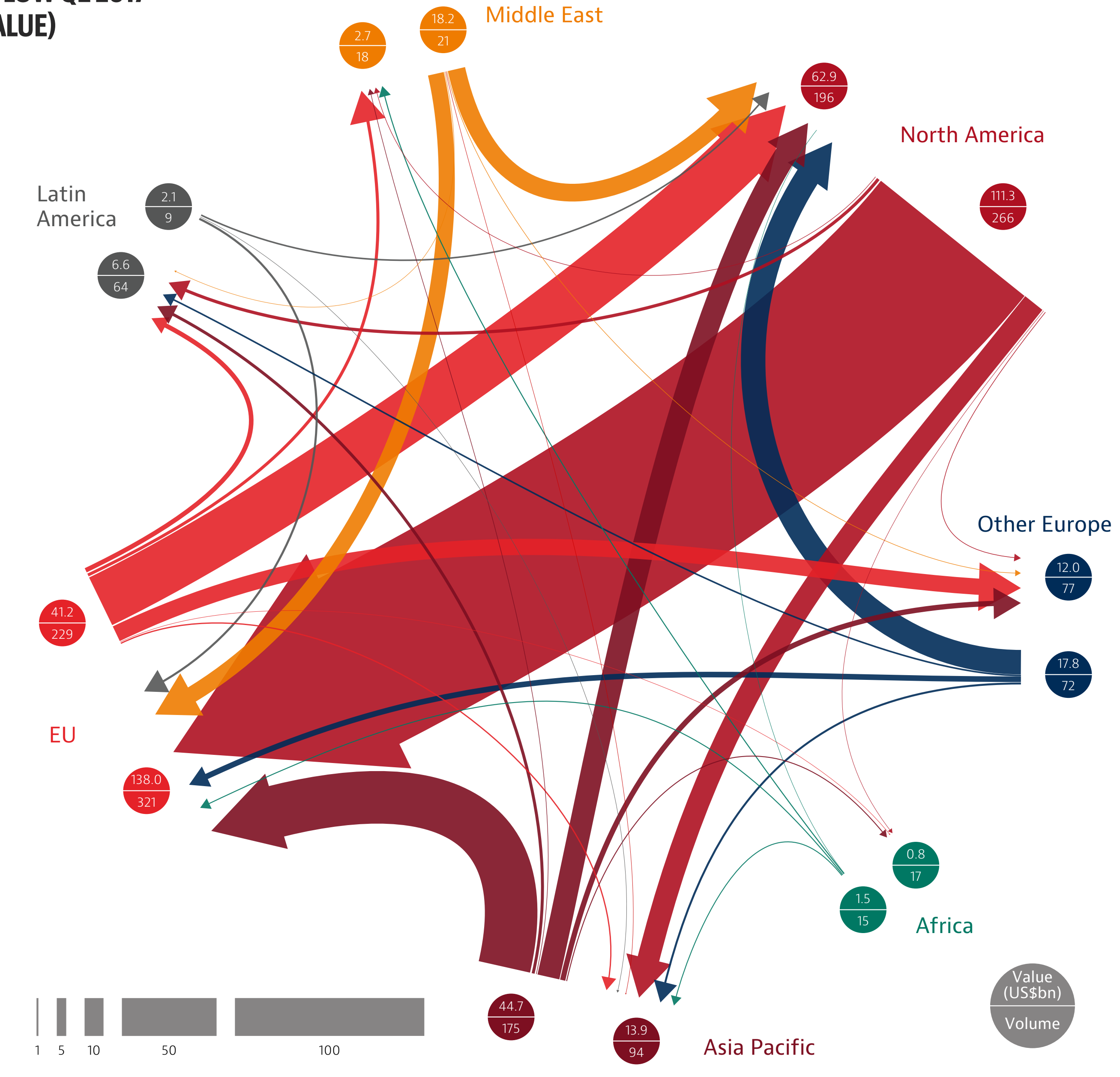
Meanwhile, Japan continues its outbound buying spree. The country carried out 66 deals valued at US$18.6bn in the second quarter compared to 63 deals at US$14.7bn in Q1. Many of the largest deals were focused on the technology arena and involved Softbank, which bought stakes in Chinese, Indian and UK tech companies in Q2.

Middle-Eastern promise

The UAE has emerged as a purposeful investor overseas having secured two of the top ten cross-border deals of Q2. The largest outbound deal from the Middle East saw the Abu Dhabi Investment Authority partner with Singaporean sovereign wealth fund GIC to buy US firm Pharmaceutical Product Development for US$9bn.

These outbound deals helped the overall Middle East cross-regional deal total rise by 167% quarter on quarter from US$6.8bn in Q1 to US$18.2bn in Q2. It is clear that the UAE has become a powerful force within the global cross-border deal market.

GLOBAL CROSS-REGIONAL DEAL FLOW Q2 2017 (BY VALUE)



3 SECTOR FOCUS: TECHNOLOGY

HEADLINES

1 In 2016, the number of cross-border tech deals rose to 787, reaching a post-financial crisis record. Total deal value also hit a post-crisis high at US$187.7bn

2 Technology transactions dropped 0.7% in volume and 17% in value in H1 2017, compared to the first half of last year

3 Besides H1 2016, the number of cross-border tech deals was higher in H1 2017 than in any post-crisis half-year period

4 Since the beginning of 2016 through the midpoint of 2017, the US has the most acquisitive and most targeted country in the tech sector

From "America First" to Brexit and China's economic slowdown, political instability has become the new normal. Despite this, cross-border M&A in the technology sector remained robust in 2016, hitting post-financial crisis highs in deal volume and value.

Although dealmaking slowed in H1 2017, the drop was less pronounced than experts predicted, bolstered by rising corporate cash levels, lower asset prices and global innovation. In fact, the second half of this year appears primed for more large-scale technology transactions given the combined US$500bn in cash that the top five US tech giants have amassed, according to Moody's.

"Many companies are sitting on significant cash piles" says Charles Whitefoord, an M&A partner in Baker McKenzie's London office.

"Technology companies need to deploy that money or return it to shareholders, and in some instances, there may be significant costs in trying to do that."

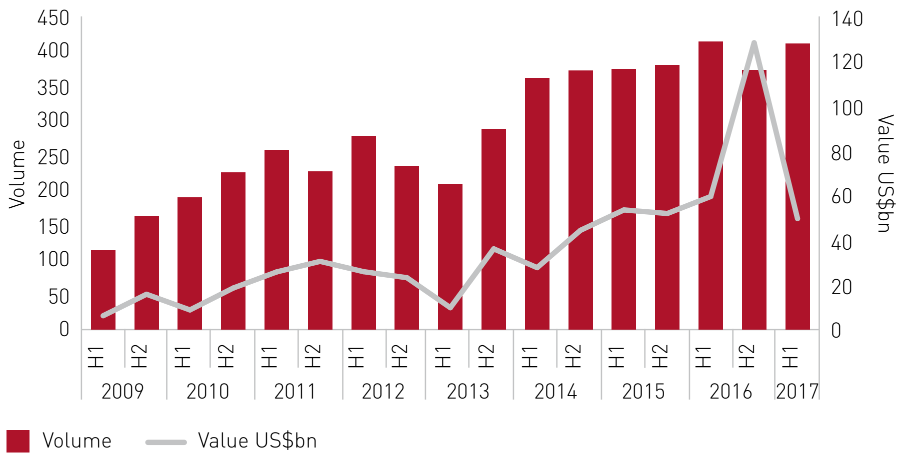
Currency fluctuations amid political uncertainty caused by events like Brexit have also made tech acquisitions more attractive.

"For US buyers, large parts of the world have become much cheaper," Whitefoord says. "If you were considering making an acquisition in the UK in late 2016 versus early 2016, you were getting a close to 20% discount."

Given the rapid pace of technological advancement, three trends will continue to drive technology deals in the coming months and beyond: convergence, customer-centric M&A and the hunt for talent.

Convergence
In the past five years, new sectors such as autotech and consumer-tech have moved rapidly from the fringes into the mainstream.

TECHNOLOGY CROSS-BORDER M&A 2009–2017 (YTD)



These hybrid sectors represent the growing convergence of traditional industries such as automotive and consumer with technology subsectors such as e-commerce and artificial intelligence. For example, Amazon entered the retail food market in June with its US$13.7bn purchase of grocery chain Whole Foods.

"The convergence of sectors and businesses will continue to drive deals," says Howard Wu, an M&A partner in Baker McKenzie's Shanghai office. "Fintech and healthtech are the most popular, but now any sector can have tech attached to it."

The battle for market dominance among more traditional enterprises and the big five technology firms could lead to a raft of megadeals.

"There will definitely be more moonshots given the cash the major technology players have," says Matthew Gemello, an M&A partner in Baker McKenzie's Palo Alto office.

"It wouldn't be surprising if another major technology player buys into an industry that is not on anyone's radar screen."

In certain markets, the hybrid model is still in its infancy, which could create opportunities for more adventurous businesses in regions like Latin America.

"In Brazil, fintech is quite advanced, but healthtech has not developed yet," says Alexandre Pinto, an M&A partner at Trench, Rossi e Watanabe Advogados, a Brazilian firm in cooperation with Baker McKenzie.

"There's a real opportunity there, especially because the Brazilian public health system is not particularly strong."

Super sectors

Within the technology industry, the rapid growth of certain innovations is fueling M&A investment in a growing number of subsectors, including:

Artificial intelligence: AI investment will rise by more than 300% from 2016 to 2017, according to research firm Forrester. This level of investment will spur even more M&A activity in this sphere, along with disruption, across a growing number of industries. "That's where we're really seeing activity," Gemello says.

Cloud computing: Worldwide spending on public cloud computing will double by 2020, rising from US$82bn currently to US$162bn, according to a recent IDC report. Meanwhile, the global cloud services market is estimated to grow from US$247bn this year to US$383bn in 2020, according to technology research group Gartner. All of this growth will continue to drive M&A activity.

Cybersecurity: Petya, SamSam and WannaCry may sound innocent enough, but they are actually forms of malware that are driving companies to distraction, and could kick off a wave of cybersecurity M&A. The average cost of a data breach to a large company was US$3.8m in 2015, according to the Ponemon Institute. "There is definitely the potential for a lot of dealmaking in the cybersecurity space because it's top of mind for the C-suite," Wu says.

Big data: Meanwhile, big data continues to be hot property as large companies increasingly scoop up targets sitting on significant amounts of high-quality information that can be analyzed to reveal insights into customer and business behaviors.

Customer-centric M&A
This convergence trend is closely tied with corporate desires to get closer to their customers, both consumers and other businesses. In the business-to-business context, this trend has been driven by conventional industrial companies such as heavy goods manufacturers buying software and data analysis firms that enable them to cut through the supply chain and position themselves closer to customers.

The hunt for talent
Building the technology platforms and running the applications that will bring companies closer to target customers requires a crucial ingredient: talent. In the technology world, this comes at a premium. The practice of "acqui-hiring," buying a company for the people rather than the products, may not be as prevalent as it was five years ago, but it's still one of the biggest deal drivers in the technology sector.

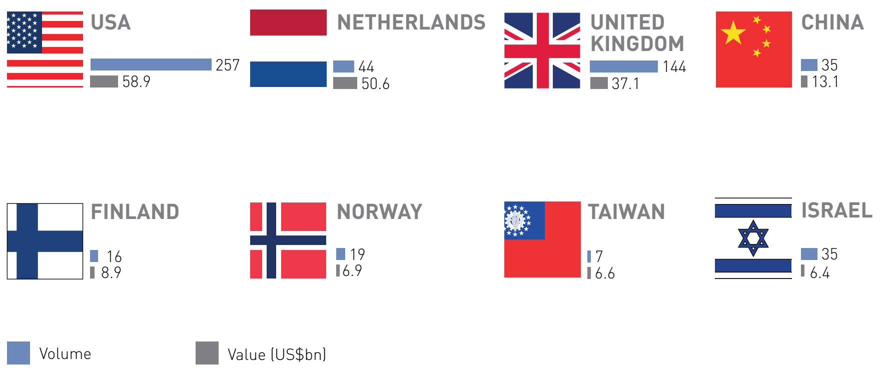
"Many companies are buying the people, the relationships and the network to be able to deploy the product or service," Wu says.

Few companies will describe their approach as acqui-hiring, but the practice continues in Silicon Valley and beyond. However, this trend could slow if the Trump administration passes the protectionist policies that he espoused during his campaign. This could lead to more companies setting up talent centers outside the US.

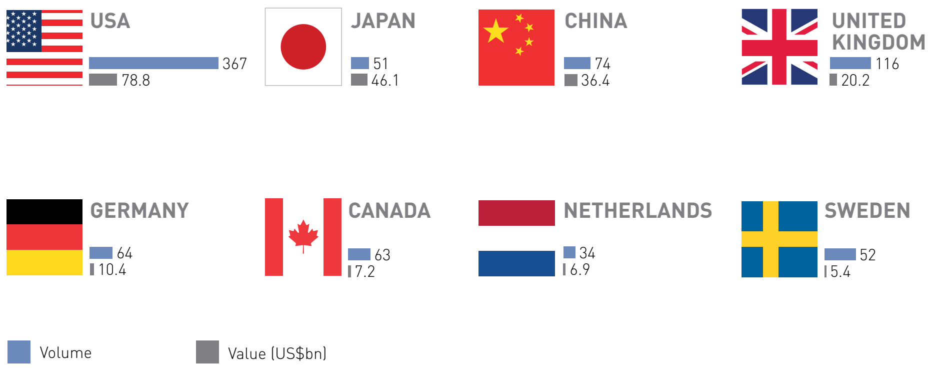
"The initial messaging from the new administration regarding the hiring of highly skilled foreign workers is causing clients to rethink their deal strategies," Gemello says. "Increasingly, protectionist immigration policies, if translated into law, would impact highly skilled foreign workers in the technology space more directly than in other industries."

Continued political uncertainty could unsettle executives as the valuation gap between buyers and sellers grows with the rising demand for quality start-ups. However, the triumvirate of corporate cash, convergence and customer-centricity are powerful forces likely to overshadow even the toughest of challenges in the burgeoning cross-border M&A technology market.

MOST TARGETED COUNTRIES WITHIN TECHNOLOGY 2016–2017 (YTD)



MOST ACQUISITIVE COUNTRIES WITHIN TECHNOLOGY 2016–2017 (YTD)



4 SPOTLIGHT: IMAGE RIGHTS

Protecting image rights in an M&A deal

Michelle Blunt (Partner, Baker McKenzie, Intellectual Property Practice, London) explains the practical considerations companies need to take to protect image rights in a deal.

At face value, image rights can seem fairly simple. They are anything but – especially in an M&A deal. Image rights refer not only to pictorial images such as photographs or video but can also mean a person's name or any other distinguishing feature such as their voice, gestures or body art. Most jurisdictions do not have a clearly defined or unique "image right." That absence means that there is a need to use a patchwork of intellectual property (IP) rights to try and protect a person's image. And, in the absence of care, this can result in gaps in protection.

Complexities of image rights
In an M&A context, image rights can be especially relevant if the target's value is connected to a personal or eponymous brand. Many eponymous brands end up being sold. Christian Dior, Jo Malone and Laura Ashley were all initially personal brands that are now owned by others.

This raises complex issues which can impact the deal structure. If the person's name has been trademarked, you take an assignment of the trademark registration but you can't stop them using their name altogether (unless they are willing to change it). You can acquire copyright in photographs or video footage of them but you can't stop them being photographed in future.

In the context of buying the rights to a "regular" asset, the seller no longer has the right to use it. However, on a practical level, this can be difficult when transferring image rights, particularly if the person is still alive – they will still need to use their own name.

Protecting image rights
There are a number of practical options that can be employed to secure rights for a buyer in respect of image rights:

- Define the rights as clearly and as broadly as possible. But if there are specific elements that are key such as a name, ensure they are specifically included.
- Define what can and cannot be done with any parts of the image that cannot be wholly transferred (e.g., a voice). For example, it may be reasonable to allow use in a personal, non-commercial context.
- Seek undertakings that the person transferring their image will not claim for aspects such as defamation or breach of privacy/human rights. Consider extending any restrictions to other family members if the surname is important.
- Carry out due diligence on the subject of the image rights to determine any risk to the value of those rights. For example, you might want to get representations and warranties around criminal behaviors and also set clear expectations about what behaviors you expect or would prohibit going forward.
- Consider whether image rights survive death and, if they do, what the law says about who inherits those rights.

The ability to effectively transfer image rights may be a key part of a transaction. Identifying the relevant IP rights and then legally transferring them is not straightforward. However, careful planning and deployment of pragmatic solutions can help with an effective transfer and, ultimately, a successful transaction.

Baker McKenzie is the No. 1 cross-border M&A firm. Over the past ten years, we have completed more cross-border M&A transactions than any other law firm. In addition, since 2007 the firm has been ranked No. 1 for deals involving emerging markets. With more than 1,400 M&A lawyers in 77 offices globally, we have one of the largest and most active M&A practices in the world.

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