

Q1/2019

M&A AND CORPORATE FINANCE UPDATE

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RECENT ASSIGNMENTS FROM 2018

DECEMBER 2018

TRUST. advised Nexstim Plc, a company listed in both OMX Nasdaq First North Helsinki and First North Stockholm, in their reverse split arrangements

DECEMBER 2018

TRUST. advised SkenarioLabs and its owners in a venture capital investment by Innogy

NOVEMBER 2018

TRUST. advised Mash Group in a 50-100MEUR equity issue and STO issuance

SEPTEMBER-NOVEMBER 2018

TRUST. advised a large institutional investor in real-estate funding facilities exceeding 100MEUR

AUGUST 2018

TRUST. advised public-sector healthcare organization in their data protection and privacy and IT system reorganization project with the Finnish municipalities

We published the first M&A and Corporate Finance Update approximately five years ago. Needless to say, we and our clients have seen a plethora of transactions after that and we have been fortunate to have worked with some of the most challenging Finnish transactions.

This update is a part of our on-going service to keep our clients and contacts informed about the most relevant developments in our key practice areas.

In this update, we focus on recent trends in M&A deals, particularly in the fields of technology, media and telecom, deal drivers, trends in corporate and financial law, as well as topics raised by leading Finnish general counsels in our International Bar Associations Event in Rome last October.

Our staff has grown last autumn and, as a result, we have moved into new larger premises too. Our new address is Erottajankatu 13, Helsinki. We will be arranging a housewarming party to celebrate moving to new premises during this spring, so the invitations will be sent in the near future. Looking forward to seeing many of you here.

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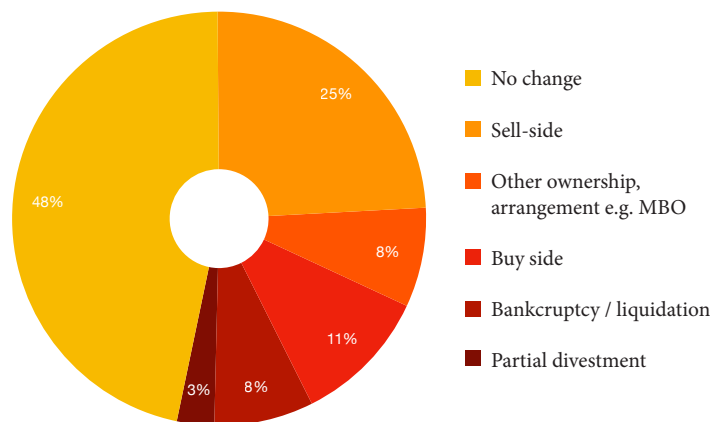
The views expressed in this market update are of general nature and should not be considered legal advice or relied upon in a specific situation. Any actual situations should be evaluated legally on a case-by-case basis.

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RECENT STUDY REVEALS HIGH NUMBER OF TECH M&A ACTIVITY DURING 2015 - 2018

In the recent study conducted by **Wolfcorner Oy** and its partner **Jarmo Kuusivuori** in January 2019, transaction and organisational restructuring activity was investigated among small-sized Finnish tech companies (65 firms, turnover less than €25M) in 2015 - 2018. As an outcome, it can be argued that the deal activeness has been very high.

As the chart indicates, more than 50% of the companies have undergone transactional or organisational transformations during the course of the study.



Insights to tech M&A activity during 2019 and deal drivers

There are various reasons behind this activity, and we estimate that the same deal drivers will continue to be present during 2019 despite Brexit, global political turbulence and, for example, Chinese-US tariff discussions. Many of the deals are still based on the same reasons as in the telecom sector (outlined in further detail below), such as continued consolidation needs, need to expedite growth in strategic business areas, lack of skilled resources.

However, there are also other drivers present, such as in-bound out-bound internationalization and strategic IP asset acquisitions. In any case based on this study, we do not see that the deal volumes are decreasing but if and when interest rates pick up, valuations will certainly be affected.

CORPORATE AND FINANCIAL LAW TRENDS

Despite the discussions concerning Brexit, our estimate is that a large number of financing transactions we see in the financial markets will continue to be carried out through London and by London-based investors and law firms.

The same applies to larger equity issues for Finnish growth companies, which have and will likely continue being carried out through UK investment banks and funds. Similarly to the broader European and US trend, the covenant protections in mid-cap and large financing transactions have been deteriorating for the last two or three years.

However, in our discussions with larger Finnish investors it appears that in a number of new deals the contractual protections are already deterring certain investors from committing to funding.



TRENDING

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Our view is that the rise in loan margins seen during the last few months will continue. Having analysed a large set of Finnish and crossborder financing arrangements and their contractual protection, we consider that the investors, whether in senior or junior debt, should be mindful of the following five general trends in leveraged finance deals:

- The interest rates have remained low, but the margins are picking up.
- Event-of-default triggers have continued deteriorating, which is a problem for triggering prudent restructuring procedures.
- Covenant lite term loans may be preferred over High-Yield - similar pricing and covenant flexibility, but High Yield brings about prepayment premiums
- Change-of-control clauses may not necessarily lead to a prepayment obligation anymore
- The scope of transaction security has become key as the markets have seen also more limited security packages in LBOs - this has an impact on possible restructuring

In addition to the above, a number of larger investors are putting more and more resources in ensuring that the security and contractual protections in syndicated loan facilities and especially in intercreditor agreements are clear, enforceable and robust in distressed scenarios.

We expect that intercreditor negotiations between banks, subordinated creditors, high-yield and the funds will become pronounced during 2019 and the on-coming restructuring 'wave' (due to high leverage on all levels of funding) will mean that the investors will have to (already now) start committing resources and planning negotiation strategies against the other shareholders in waiver, amendment, restructuring and enforcement negotiations.

M&A TRENDS – PUBLIC M&A PREMIUMS FLUCTUATING, CONVERGENCE TO BE EXPECTED IN THE TECH SECTOR

In general, the active industry sectors have been cyber security, telecom and ICT services with a wide variety of acquisitions relating to digitalization and acquisition of new competences. We see that this trend continues as described below.

In light of the premiums from completed public tender offers in Finland, the median premium is approximately 30% (announcement day -1 closing) the lowest being in Turvatiimi transaction in 2015 and the highest in the Terveystalo transaction of 2009. While the top and bottom places remain intact, we have seen quite a bit of deviations, such as with Kotipizza approx. 39%, Amer Sports approx. 14% and Pöyry approx. 46%.

If, for example, we focus on telecom, the Finnish market is currently very competitive with convergence between telecom and AV media distribution.

There are many drivers behind this convergence, such as the need to seek new growth areas to complement the traditional telco business, changing media consumption

habits and increased competition from large-scale international players in the content sector.

According to a study (DNA 2018), some 58% of the respondents said they still have traditional TV sets but their usage of VOD services such as Netflix, HBO and Finnish streaming services such as Yle Areena and Viaplay is increasing. Thus, we estimate we will continue to see deals such as the one recently announced by Telia in which they bought a Finnish commercial television station, MTV3, as well as other parts of MTV Ltd and Mediahub Helsinki Oy from Bonnier Ab, to bolster the company in the fast-growing area of video content. The transaction is subject to regulatory approvals and is expected to be completed during the second half of 2019.

In addition to the content and broadcasting businesses, we expect that cyber security and the internet of things (IoT) companies are in particular potential M&A targets for these Finnish telecom companies.

NEGOTIATION POINTS IN PRIVATE EQUITY AND PRIVATE DEBT

We have seen an expansion in the scope and nature of private equity and private debt funds either incorporating in Finland or offering funds in Finland.

Below, we list certain recent negotiation points that emerge increasingly in fund negotiations:

1. Some of the LPs tend to consider fund fee misalignment in large PE funds as an important factor in considering committing to the funds (i.e. the management fee amount may in some cases been seen as too high in absolute monetary terms). This may put pressure on lowering of management fees.
2. Alternatively, this may lead to larger share of co-investment rights to certain LPs, which may increase misalignment of the LP base of the fund.
3. Although the question of GP investment in the fund is always on the table, LPs may be attentive on also whether the funding will come from the GP's own balance sheet or, e.g., from retained management fees.

4. LPs are more and more attentive to the succession planning and mechanics in the funds. Therefore, the parties should also address this issue in addition to the general provisions concerning replacing key persons.
5. The conflict issues between different funds managed by the same management company/GP are pronounced. The terms are drafted often as general allocation rules among funds, which may have to be regulated more specifically due to risk/hurdle rate and fee differences between the funds.
6. Discussions between LPs and GPs concerning hurdle rates have emerged more and more. If a bull market, with ample liquidity a 5-7% hurdle rate may prove to be a low requirement. However, the parties have perhaps been not as mindful of the specific clauses in the LPAs in relation to investment performance in the bear market. Therefore, the usual negotiations about hurdle rates are changing their nature.
7. We expect that the 'no fault divorce' provisions in the LPAs applying to LPs will gain more attention in the future. As we've understood, these questions have previously been agreed voluntarily between the parties. A clear signal from the LPs is that the transparency and communication of the fund is a key matter and more and more resources should be allocated to monitoring of the funds – also the underlying investments. As we see it, this might increase the comfort of the LPs in investing even more in more risk-taking and exotic funds.

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HOT TOPICS FROM GENERAL COUNSELS OF SUUNTO, MARIMEKKO AND HUHTAMAKI

Last autumn we organized our first event at the International Bar Association (IBA) conference in Rome. More than 60 people were present when we interviewed top Finnish General Counsels Sami Pauni of Huhtamaki, Tiina Lencioni of Marimekko and Eki Korpiola of Suunto.

The topics varied from M&A deal activity to corporate responsibility themes, ICT acquisitions and data protection and financing. It is impossible to fully summarise the discussion but some general trends can be drawn from the discussion:

Regarding deal activity, there is plenty of surplus liquidity and strong competition for deals (tightening of pricing, erosion of covenant protection and (perhaps) lower credit quality). Naturally there are some target and market specific differences. Generally it was discussed that law firms could have more to give in corporate responsibility themes which seem to be topical in all of the firms.

While GDPR has now been implemented, there is still lots of work to be done in that respect, e.g., with local data storage requirements in regimes such as China and Russia. In particular it was emphasised that European companies should develop GDPR solutions in a manner that makes it as a competitive advantage over US and Asian firms.



Jan Lindberg from TRUST, (left), Sami Pauni from Huhtamaki, Eki Korpiola from Suunto and Tiina Lencione from Marimekko discussed e.g. corporate responsibility, data protection and finance at IBA Rome.

Regarding intellectual property rights it was discussed that the post-Nokia era, as we call it, has been a very fruitful environment for the establishment of many new small IP and IT companies, as the know-how from larger technology companies going through economic difficulties has been transferred to a number of smaller ones. Most of these start-ups are very IP-driven and will, hopefully, follow the great success of our gaming companies, such as Rovio and Supercell, having introduced blockbuster games including Angry Birds and Clash of Clans. Their success in an otherwise anaemic economy is a natural inspiration to many creative individuals wishing a similar breakthrough in various other fields, from fintech to bio-IT.

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