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Sector specific M&A on the rise

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M&A in the retail and consumer products industry – How to deal with high costs, low margins, market power and third parties?

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Topics to be discussed

1. Introduction
2. Why is retail M&A interesting?
3. Data protection and cyber security
4. Living / minimum wage
5. Change of control
6. Property / Finance
7. Tax
8. Auction / sale process



Introduction

- Introduction to panellists
- Case study overview

Why is retail M&A topical/interesting?

- Mr and Mrs B
- Significant changes in retail businesses
- Changing customer attitudes and expectations
- Online retailers v traditional retailers
- Retail can be tough

Data protection and cyber security

- Value of target's data
- Clients Perception
 - Trust (reliance) on cyber security systems – enabling clients to provide data = increasing business
- Data protection/data room issues for sellers and advisers
- Transferring data out of the EEA
- Consequences of data breach by R
 - Mandatory communication of data breach to clients and regulators (all regulators in all countries?)
 - Clients indemnities / (huge) fines paid to regulator – new GDPR fines framework – up to 4% of Groups revenue or a total amount of €20.000.000;
 - Minimize damages to client's perception – Public Relations / Communication
 - SPA – Reps & Warranties / Price Mechanism

Data protection and cyber security

- GDPR - Forum shopping
- Cyber Security
 - Compliance with GDPR – improving internal procedures and organization of data protection policies
- What about Brexit?



Living / Minimum Wage

- Compliance with (local) Labor provisions:
 - Working conditions on site – Health, Safety and Hygiene framework, adequate personal accidents insurance policies;
 - Minimum wage – mandatory minimums, social security registration and discounts, mandatory social benefits and pension plans.
- Temporary workers and visa issues – Compliance with visa requirements – EU citizens / Non-EU citizens – Schengen / Brexit;
- Modern Slavery – equivalent situations – proper registration of labor contracts with full rights – site inspections from regulator/government – Reputational Damages;
- SPA – Reps & Warranties/Price Mechanism – Prescription of Labor rights.



Change of Control

- Step 1: find it; step 2: deal with it
- Transaction type (asset deal vs share deal)
- Red flag issue or «cash is king»
- Key agreements vs «regular» agreements
- Condition precedent or action prior to closing or ...

Property and finance

- Property often key in traditional retail deals
- Property as deal driver
- Diligence of real property
- Restructurings and insolvency situations



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Tax

- Transfer pricing
 - Franchise models
 - Royalty payments
- VAT

European Commission investigates the Netherlands' tax treatment of Inter IKEA





Auction / Negotiated Sale

- Same same but different?
- Which process is better depends on the situation
 - Auction: larger, well-known companies, premium
 - Negotiated sale: smaller companies, companies with losses or thin profits
- Danger of harm to business during long process



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Thank you !

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Thank you !

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