Baker & McKenzie

MERGERMARKET

CROSS BORDER M&A INDEX

Q3 2015

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1 CROSS-BORDER M&A INDEX

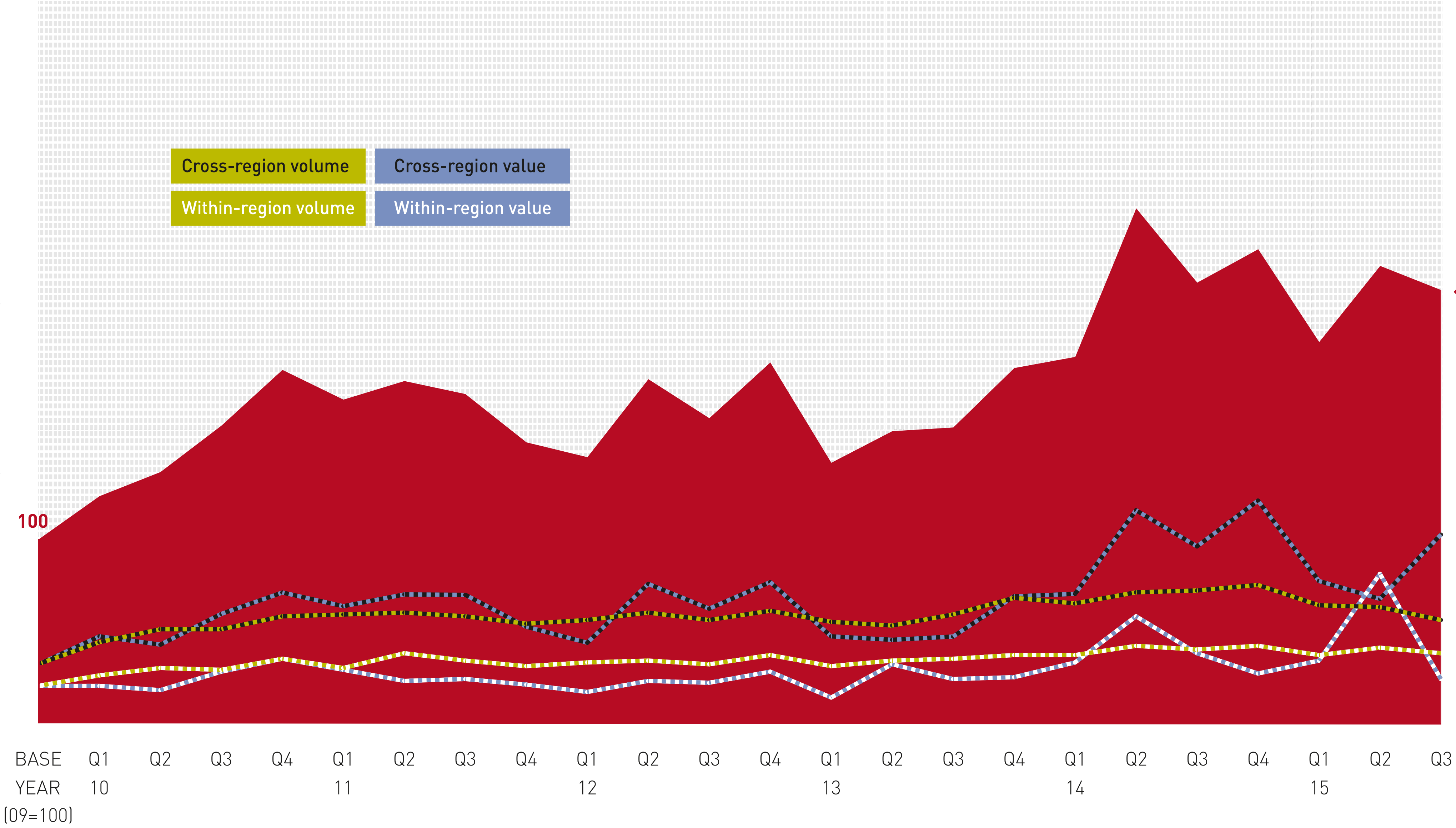
New Cross-Border M&A Index reveals sustained appetite for global M&A

The boundaries between domestic and cross-border M&A have become increasingly blurred as companies pursue a growing number of large overseas deals to remain competitive and fulfill their strategic objectives. The results of Baker & McKenzie's first Cross-Border M&A Index show this trend continues, with a score of 231 for the third quarter of 2015.

The Index, which tracks levels of cross-border M&A back to Q1 2010 and uses a baseline score of 100 (representing the level of activity in 2009), reveals that deal activity first broke 200 in Q2 2014 and has remained above that number for the past seven quarters. Although the factors underpinning this streak have varied, the latest score for Q3 2015 was driven by high-value deals between bidders and targets based in different regions.

Cross-regional activity totalled $309.8bn in Q3, up 87% from Q2 and 31% above the same period in 2014. The largest deal of the quarter was Israel-based Teva Pharmaceutical's $40.5bn purchase of Allergan's generic drug unit in the US, a merger motivated by Teva's strategy to increase scale in the competitive generic-drugs market. However, the value of cross-border deals within regions fell sharply in Q3, down 71% from the previous quarter – a period boosted by Royal Dutch Shell's $81.1bn acquisition of the UK's BG Group.

The volume of cross-border deals fell slightly in the third quarter. This downward trend can be largely attributed to a drop in the number of deals involving European targets (with 2,000 deals in the first nine months of 2015, compared to 2,218 in the same period in 2014) because of continued concern over Ukraine, economic instability in Greece and the slow pace of recovery in the EU.



Cross-Border M&A Index Q3 2015

231

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 sub-categories, giving slightly more weight to more ambitious deals between parties in two different regions:

- Cross-region value (30% weight): dollar value of deals between bidders and targets based in different regions
- Cross-region volume (30% weight): number of deals between bidders and targets based in different regions
- Within-region value (20% weight): dollar value of deals between bidders and targets based in different countries within the same region
- Within-region volume (20% weight): number of deals between bidders and targets based in different countries within the same region

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

Data correct as of 1 October 2015

Q3 TOTAL CROSS-BORDER DEALS

1,230 deals
VOLUME

16% ON Q3 2014

Q3 TOTAL CROSS-BORDER DEALS

375bn
VALUE (US$)

10% ON Q3 2014

CROSS-REGION

711 deals
VOLUME

22% ON Q3 2014

CROSS-REGION

309.8bn
VALUE (US$)

31% ON Q3 2014

WITHIN-REGION

519 deals
VOLUME

5% ON Q3 2014

WITHIN-REGION

65.2bn
VALUE (US$)

37% ON Q3 2014

Q3 MOST ACTIVE SECTORS

BY VOLUME

INDUSTRIALS

200 deals

(WORTH $17.9bn)

BY VALUE

FINANCIAL SERVICES

$95.6bn

(102 DEALS)

2 THE GLOBAL PICTURE

HEADLINES

1. Deals between EU and North America account for 35% of all cross-regional activity by volume and 38% of activity by value
2. Asia-Pacific businesses prove to be active acquirers, pursuing deals totalling $31.1bn in the financial services sector alone
3. However, cross-border M&A into the Asia-Pacific region dropped 20% in volume and 16% in value in the first nine months of 2015 compared to the same period in 2014

In the third quarter of 2015, cross-regional M&A activity totalled $309.8bn, with 711 deals – more than one-third of which involved transactions between companies based in the EU and North America. Dealmaking between these two regions stood at 252 transactions worth $119.2bn, representing a 10% decline in volume but a 34% increase in value from the previous quarter.

North American bidders pursued 154 EU-based targets, for a total of $40.6bn, primarily in the UK (67 deals), Germany (20) and the Netherlands (16). The industrials sector led the way in volume, with 32 deals worth $5.3bn, while the chemicals and materials sector led in value, with seven deals worth a total of $8.8bn.

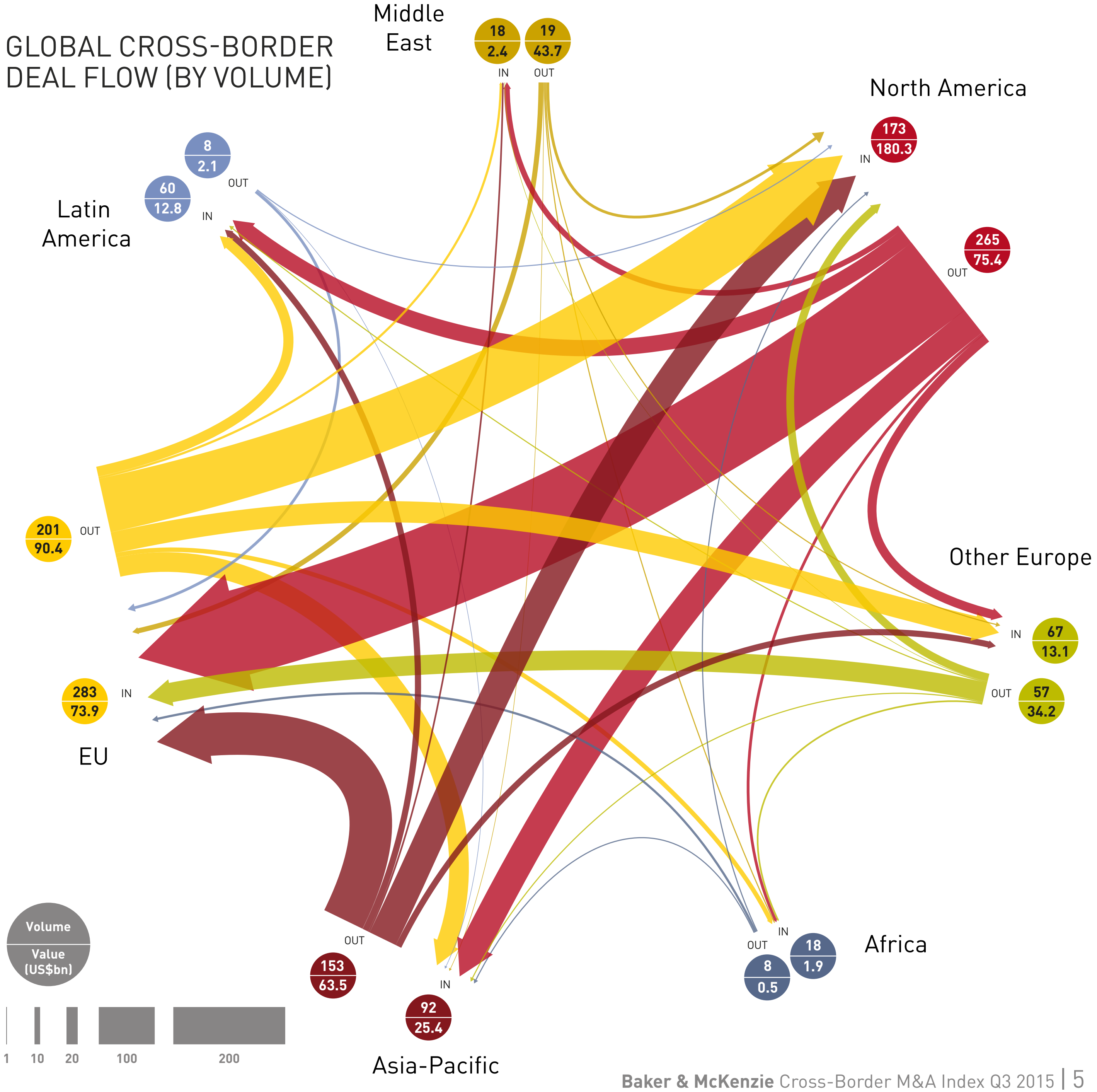
Deals with an EU bidder and North America target trailed in number compared to those with a North American bidder and EU target, with 98 transactions, but were worth nearly twice as much at $78.6bn. The business services sector had the largest number of transactions (17 deals worth $2.4bn) while the consumer sector ranked first for total value (11 deals worth $17.6bn).

Asia-Pacific companies were active acquirers during the third quarter, with a total of 153 acquisitions worth $63.5bn driven by companies based in Japan (43 deals), China (38) and India (17). Outbound activity from Asia-Pacific focused largely on the financial services sector, with 13 deals worth a combined $31.1bn representing nearly half of all activity by value.

Nearly half of outbound deal volume from Asia-Pacific targeted EU-based companies, with a total value of $26.7bn, while more than one-third of volume targeted North America with a total value of $28.5bn. In addition, Asian acquirers demonstrated an appetite for Latin American assets, with 11 deals in Q3, and 30 so far this year—up from 22 in all of 2014.

Asia-Pacific was also a popular target, with 92 deals totalling $25.4bn in the third quarter. North American bidders accounted for 55% of the number of inbound transactions, while EU bidders comprised 38%. In the last year, however, China's economic slowdown has begun to impact transactional activity throughout the region. In the first nine months of this year, inbound deal activity in Asia-Pacific fell 20% in volume and 16% in value compared to the same period in 2014.

GLOBAL CROSS-BORDER DEAL FLOW (BY VOLUME)



3 SECTOR FOCUS: HEALTHCARE

HEADLINES

1 Cross-border M&A in the healthcare sector hit a high of $259.7bn in 2014 and stands at $159.7bn so far in 2015, on the back of 334 deals. Trends suggest that the level of activity this year will be similar to last year and well-ahead of all other post-crisis years

2 The US is by far the most popular target, accounting for 59% of all dealmaking by value so far in 2015

3 The UK and Ireland are the top bidders on a value basis, together accounting for 42% of all activity

4 China and India are the only two emerging markets in the top ten most targeted countries. Neither appear in the most acquisitive top ten

Healthy returns for cross-border M&A

Cross-border healthcare* M&A is in peak fitness as we move into Q4 2015, with activity for the year as a whole looking likely to match that of 2014, which broke all post-crisis records for healthcare M&A. In general, consolidation and core competencies are driving deals; however, according to Jane Hobson, Chair of Baker & McKenzie's Global Healthcare Industry Group, each sector within the field has its own story.

"With pharmaceuticals, the big companies are still seeking to replace drugs that have gone off-patent, so they are re-trenching back to core businesses (and we have seen a number of spin-offs and transactions as a result), whilst exciting innovation in key therapy areas such as oncology are yet to come online," Hobson says.

Another trend which has seen a great deal of activity is in the generics space. "They have a different business model to innovators – low margins but high volume – and they are looking to create critical mass," she says. "We have seen, for example, a number of Indian generics companies looking for targets in the US, and again that is driving more activity."

As far as the medical device industry is concerned, fragmentation, new directives and increased regulation mean that, once again, there is a drive for consolidation. "The small players are struggling to keep up with the increasing regulation [particularly in Europe], and companies are likely to join forces to increase scale, in order to be able to respond to these new regulatory requirements," Hobson adds.

Developing gap

Unlike sectors such as technology and industrials, there is a definite gap between developed and emerging economies when it comes to deals in the healthcare sector. The US is the top target and bidder in volume. "There is so much activity and innovation there and it is such a large market that it is hard to see how it wouldn't be the biggest target," Hobson says.

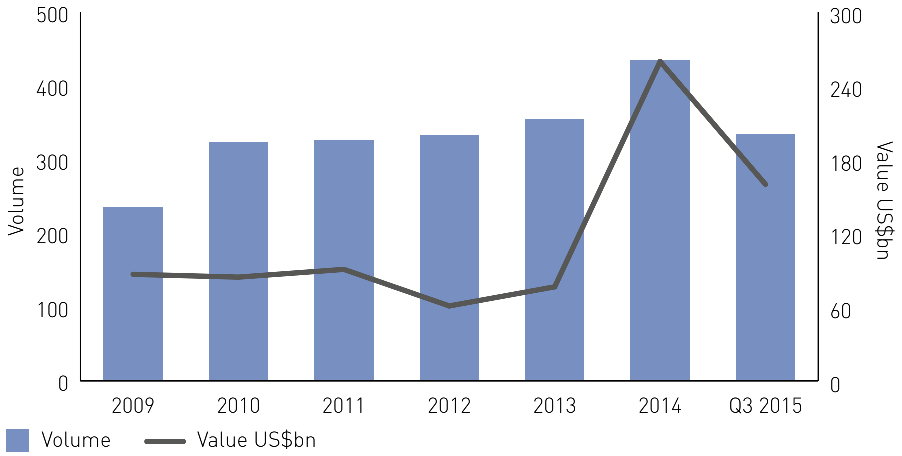
Meanwhile, no BRIC countries appear among the top ten acquirers, although this may not be the case for long, particularly in the case of China. "China is in the process of wanting to build its own innovative industry and the way to do that is to bring back technology into its own country for its market," Hobson says. "So the Chinese pharmaceutical companies will look very closely at US and European technology."

Tracy Wut, Co-head of Baker & McKenzie's Healthcare Industry Group in China and Hong Kong, who works closely with healthcare companies in China, also sees other trends emerging. "Chinese corporates are interested in the technology but also manufacturing," Wut says. "In general, Chinese players are still more interested in marketed products that they will be able to sell using their own networks in China."

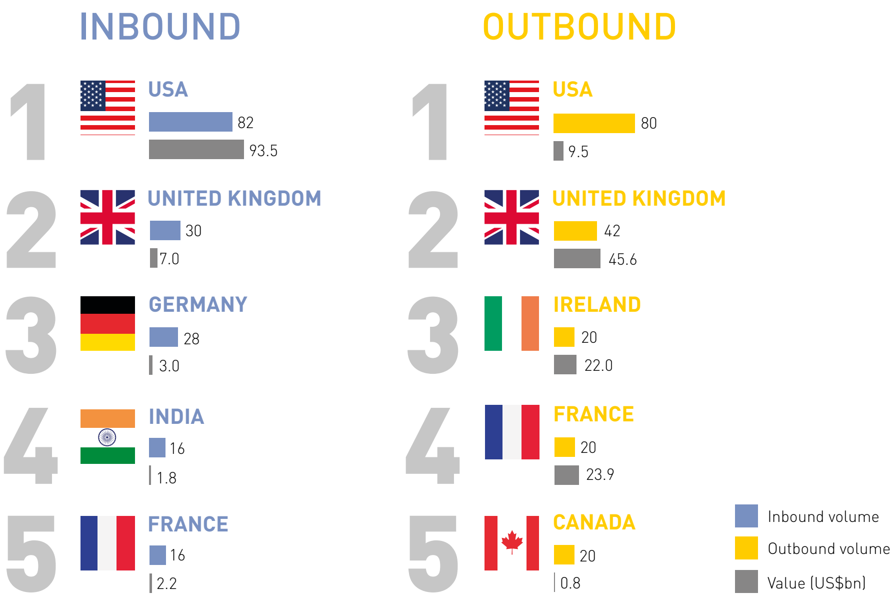
Despite the absence of the emerging market powerhouses, cross-border M&A in the healthcare industry shows little sign of slowing.

** Pharmaceutical, medical and biotech sectors*

HEALTHCARE CROSS-BORDER M&A 2009 – 2015



TOP 5 ACTIVE COUNTRIES WITHIN HEALTHCARE 9M 2015



EYE ON THE FUTURE

Three key trends to watch

Digital in the spotlight "In digital health, there are a lot of smaller players, and they will eventually have to consolidate to be attractive, to deal with regulation and to have the ability to scale up," Hobson says. "And the pharma industry is interested in big data. Players that can host, manage and provide that data in a way that's compliant with data privacy will also become very attractive to the industry. We also cannot ignore the non-healthcare players who are entering this space with innovative technology and seeking transactions."

Eyes on the UK and Ireland There has been a surge in cross-border M&A from the UK and Ireland and this looks set to continue. "There's just more funding available which has enabled the biotech industry to gain more momentum," Hobson says. "In addition, the UK has a difficult pricing environment for pharmaceuticals, so companies may look at ways to counterbalance these by seeking growth in overseas markets."

Clinical thinking In emerging markets and in China, in particular, hospital and clinic deals (both M&A and greenfield projects) will continue to be areas that generate a lot of interest, both domestic and foreign. "This trend will continue, particularly after the healthcare reforms since 2009, and given the need to upgrade the hospitals and services, and further relaxation in foreign equity restriction in this area," Wut says.

4 REGIONAL FOCUS: US M&A

HEADLINES

1 Current trends suggest that the total deal value of inbound M&A activity in 2015 will match or exceed last year's, while outbound activity will drop slightly

2 China, Japan and India rank among the top ten acquirers in the US market. China is now the fourth-largest buyer in the US market, up from the sixth last year

3 Technology is the top sector for both inbound and outbound US deals

A philosophical shift

Whether it is FedEx's $4.8bn proposed acquisition of Dutch TNT Express, or Swiss insurer ACE buying The Chubb Corporation for $28.3bn, cross-border M&A into and out of the US continues to gain momentum. Despite a slight drop from last year's post-crisis high of $305bn, US outbound M&A activity in 2015 appears poised to outpace every year since 2008, with 917 deals valued at $163.6bn through September.

The recent uptick in M&A activity has been largely driven by US companies seeking access to new customers, industries and markets as a strong dollar and optimism about the US economy has made dealmaking more affordable and attractive. Another factor is a transformation in how buyers view M&A.

"Many companies are not distinguishing between cross-border and domestic targets anymore as they become increasingly comfortable pursuing overseas targets," Baker & McKenzie M&A Partner Matthew Gemello says. "That's a fairly significant philosophical shift."

Coming to America

Inbound deal activity by foreign buyers seeking US assets is rising quickly. Deal value for 2015 through Q3 stands at $344.5bn, nearing 2014's full-year post-crisis record of $380bn. If the upward trend continues, it's likely that 2015 will become the biggest year for US inbound deals since the heady days of 2007.

"As the world gets smaller, people around the world have a broader knowledge of foreign markets and are more comfortable doing transactions in the US," says Michael DeFranco, Global Head of M&A at Baker & McKenzie. "While companies recognize that engaging in a cross-border transaction brings more challenges and complexity, they also recognize that being well advised will allow them to mitigate those risks and benefit from being engaged in expanded markets."

Asia inbound

Buyers from Asia-Pacific have been particularly active in the US market this year, a trend that appears to be sector and country specific. In the first three quarters of 2015, for example, Japanese acquisitions in the US financial services sector jumped to 10, up from only two deals in 2014.

Japanese buyers have also been active in the US insurance market, pursuing overseas acquisitions as a strategy to compensate for low growth at home. In July, Japan's Meiji Yasuda Life Insurance acquired US-based StanCorp Financial Group for $4.9bn.

"The recent spate of insurance deals from Japan illustrates the increased comfort of foreign buyers entering highly regulated US markets and industries," DeFranco says.

Overall, Japan has also maintained its position as the third most active buyer of US targets so far this year, with 53 deals totaling $29.5bn.

Following close behind, China is now the fourth-largest buyer in the US, up from sixth place in 2014. Chinese buyers are primarily looking to source technology from the US, such as Tsinghua Unisplendour's $3.8bn bid for a 15% stake in hard drive manufacturer Western Digital Corporation. If Tsinghua's bid is approved by US regulators, the deal will become the single largest Chinese investment in a US company to date.

Meanwhile, India jumped to 10th place this year, up from 12th in 2014, with 16 transactions valued at $1.7bn. The majority of those deals have been in the life science sector, with six transactions totaling $1.5bn, as Indian companies seek to increase their scale in the US generics market.

Tech takeovers

US deal activity in the technology sector continued where it left off in 2014, with 292 transactions in the first nine months of 2015, comprised of 179 outbound and 113 inbound deals. US tech buyers made the bulk of those cross-border acquisitions in the EU (82 deals), followed by targets in Asia-Pacific (35 deals). Buyers from the EU were the most active players in the US tech sector, accounting for 47 inbound deals.

Given that technology is a sector of rapid innovation and fierce competition, it is unlikely that deal activity will slow in 2016. Strategic acquisitions are often the quickest, most expedient way technology companies can acquire new technologies, products and service offerings, as well as high-performing talent. In the quest for innovation, it appears US tech executives are also becoming more comfortable with cross-border acquisitions.

"For the big tech companies in Silicon Valley, there has been a general easing of concern about managing talent and assets located out of eyeshot," Gemello says. "Our technology clients recognize that they have to go beyond domestic deals to find the game-changers for their businesses."

US OUTBOUND M&A VOLUMES BY TARGET REGION/SECTOR 9M 2015

0 5 10 25 40 55 70 85

	EU	Asia-Pacific	North America	Latin America	Other Europe	Middle East	Africa	**Total**
Technology	82	35	29	6	8	17	2	179
Industrials	84	15	22	6	4	3	1	135
Business Services	73	23	18	8	5	4	1	132
Healthcare	48	15	5	5	5	2		80
Consumer	42	9	13	1	4	3	2	74
Financial Services	31	12	8	5	1			57
Media	30	6	5	4	1			46
Energy & Utilities	12	10	7	9	2		1	41
Leisure	23	5	2	5		1		36
Chemicals and materials	19	6	2	3	1	1	2	34
Telecomms	10	1	3	4	2			20
Transportation	9	6	2	2	1			20
Construction	10	4	2	1	1			18
Automotive	8	5	3	1				17
Real Estate	10	5		1	1			17
Mining		1	1	4				6
Agriculture	1	2	1	1				5
Total	492	160	123	66	36	31	9	917

EYE ON THE FUTURE

Three key trends to watch

Indian summer Beyond 2015, India could become the new sweetheart for US dealmakers, much like China was three to four years ago, as the Indian government continues to pursue reforms to open the economy to foreign investors. "There is optimism and people are moving into India for that reason," DeFranco says.

Chinese slowdown In the past year, US outbound activity into China has cooled, with China dropping out of the top ten destinations for US investment. Both the number of deals and value of deals by US buyers in China is down significantly from prior years. "The economic slowdown in China has given US multinationals the opportunity to pause and evaluate their China expansion strategy without having to feel like they are losing ground to their competitors," Gemello says.

Potential risks Although global cross-border M&A shows few signs of slowing, risks always exist that could disrupt market activity, such as changes in the macro-economy. "If the US Federal Reserve raises interest rates faster than expected or China's slowdown is greater than anticipated, it could create uncertainty that gives dealmakers pause," DeFranco says. In addition, deals with European countries could slow if the UK decides to leave the EU or Greece exits the Eurozone.

US INBOUND M&A VOLUMES BY TARGET REGION/SECTOR 9M 2015

0 5 10 20 30 40 50

	EU	Asia-Pacific	North America	Other Europe	Middle East	Latin America	Africa	**Total**
Technology	47	36	19	5	4	1	1	113
Industrials	47	21	16	3				87
Healthcare	41	16	15	7	3			82
Business Services	39	15	13	3	1	1	1	73
Consumer	26	11	14	1	1	3		56
Financial Services	17	11	11	2		1		42
Energy & Utilities	7	6	11	2				26
Media	11	5	2	1	1	1		21
Chemicals and materials	8	6	1		1			16
Leisure	4	7	5					16
Construction	6	2	2	1		1		12
Telecomms	3	2	4	1			1	11
Transportation	4	2	4	1				11
Automotive	2	5	2					9
Agriculture	1	1	2				1	5
Mining		1	3	1				5
Real Estate		1	2					3
Total	263	148	126	28	11	8	4	588

5 SPOTLIGHT: RISK MANAGEMENT

Managing risk in cross-border deals

While most multinationals are comfortable with domestic M&A, cross-border deals require closer attention, increased vigilance and tested counsel

As cross-border deals have grown in scope and sophistication, it is even more important that global businesses and their counsel successfully manage the risks and opportunities cross-border M&A present. Helen Mantel and Duffy Lorenz, Partners in Baker & McKenzie's North American Corporate & Securities Group, explain three of their top tips for navigating this increasingly complex environment.

1. Take advantage of pre-signing
The pre-signing period is crucial to the success of any cross-border transaction because it is when a buyer can analyze key risks to deal certainty. It is also the best period in which to assess the company's ability to realize the full anticipated value of the deal.

It is critical to implement a cost-effective and risk-based approach in each jurisdiction to spot and resolve material cross-border issues early on. This also allows time to identify opportunities to supplement the data room with public information that may not be readily available in the client's home jurisdiction.

High-value diligence issues can delay or jeopardize closing if they are missed. Deferred closings are a common outcome of cross-border due diligence and must be managed appropriately in the purchase agreement.

It is also important to leverage the information gleaned from diligence to begin planning for post-closing integration well before signing. The real value of the deal is only realized after closing, in the post-merger integration phase. Issues identified during the pre-signing period that have the potential to erode post-closing integration success are sometimes important enough to be addressed in the purchase agreement itself.

2. Coordinate global closing
One risk management challenge that buyers and sellers must navigate is the implementation of "mini-deals" across the globe on the closing date. Cross-border transactions can – and often do – involve dozens of jurisdictions, all of which have their own local intricacies. By managing the deal from one central location, but with the appropriate local expertise, companies can close on time and minimize disruption of the business operations on Day 1.

3. Navigate the regulatory maze
In cross-border M&A, "regulatory" should be viewed as a broad term not limited to antitrust. The full spectrum of regulation needs to be explored, including foreign investment law approvals, exchange control approvals, works council consultations and other filings required to transfer a business or obtain a critical permit. These can have the same impact on timing as antitrust laws. Failure to identify applicable foreign regulatory requirements in a timely manner can result in delays and last-minute changes to the deal structure or, even, failed transactions.

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