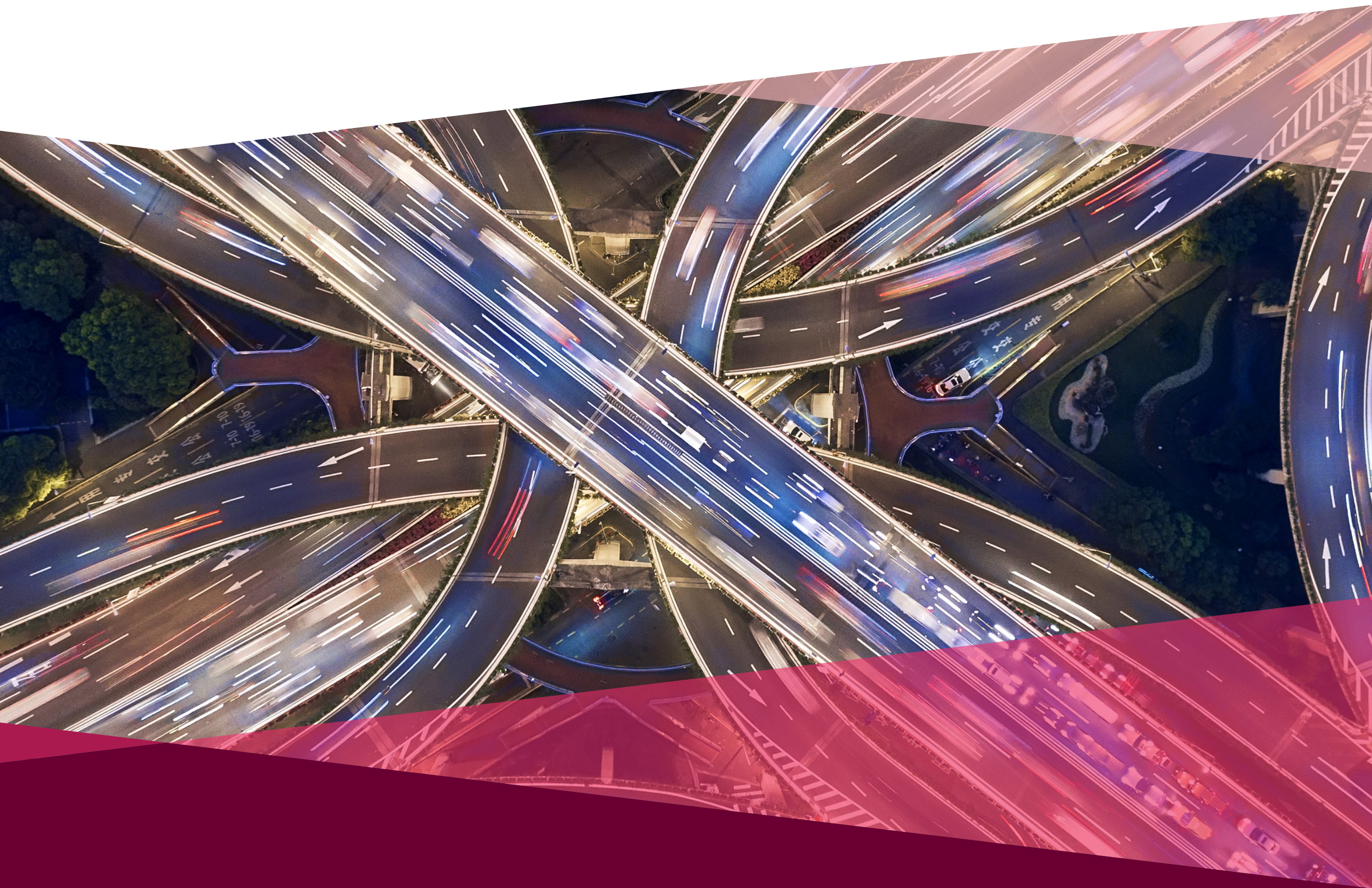
MARSH

COMMUNICATIONS, MEDIA, AND TECHNOLOGY PRACTICE – UK & IRELAND

Acquisitions, Mergers, and Divestments

Insurance Advisory and Transactional Services for Communications, Media, and Technology Companies



SOLUTIONS...DEFINED, DESIGNED, AND DELIVERED.

MARSH & McLENNAN COMPANIES

Contents

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Communications, media, and technology (CMT) companies are driving growth and developing and investing in new technologies in all sectors across the globe. As these new business models emerge, or technologies become available, CMT companies either look to consolidate through acquisitions of similar businesses or become targets for other organisations or investors. In this fiercely competitive industry sector, mergers and acquisitions (M&A) activity has become commonplace with European deal values reaching an all-time high in 2018.[1] This increase in deals is largely due to the increasing interest in emerging technologies, including Internet of Things (IoT), autonomous vehicles, over-the-top (OTT) broadcasting, and blockchain technologies.

For any transaction, it is critical to understand the risks which it might generate for the investor, be it a corporate or private fund. For CMT companies, there are key risk issues which need to be addressed as part of the M&A process. These challenges typically affect each sector in different ways, including:

Communications	Media	Technology (Hardware)	Technology (Software)
• Shift from tangible to intangible assets. • Increasing convergence of segments and technologies. • Increasing reliance on content ownership, distribution, and control. • Digitisation and virtualisation. • Non-damage business interruption. • Management liability.	• Shift towards digital and new media. • Increasing integration of advertising and technology. • Content production and distribution and adoption of new media channels. • Increasing digital content and technology risk profiles. • Intellectual property infringement risks.	• Significantly increasing adoption of artificial intelligence (AI), automation, and IoT to increase supply chain efficiency and speed. • Further integration and convergence of hardware, software, and network technologies. • Increasing reliance on outsourced manufacturing and service providers. • Increasing intangible risk complexity, interconnected liability, and first party exposures.	• Adoption of AI, blockchain, automation, and cloud computing to derive and enhance value. • Increasing reliance on intellectual property and other intangible assets. • Entrance into new sectors (e.g. auto, sharing economy) creating new regulatory and contractual risks as well as amplifying the severity and frequency of existing intangible risks.

[1] Deal Drivers EMEA 2018, Mergermarket.

Key Challenges for CMT Companies

What are the gaps in the target's insurance arrangements?

- A relatively small "bolt-on" acquisition can still result in a material uninsured loss or significant impact to the overall risk exposure of the existing business.

What are the potential post-completion insurance costs?

- These are often overlooked and are not factored into the insurance budget, especially where carve-out are concerned.
- One-off costs also need to be accounted for.

What protection is there for the seller and/or buyer against breaches of the warranties in the Sale and Purchase Agreement (SPA)?

- During share sales it is common for the seller to provide warranties to the buyer on a broad range of matters about the target including ownership (or title), accounts, tax, property, employees, litigation, contracts, etc.
- Buyers may be concerned by the strength of the seller's covenant.
- Buyers investing in new jurisdictions or technologies may require additional levels of comfort.

What are the potential deal-breakers which may result in price disputes, the deal not going through, or post-completion deal issues?

- The seller has to address any downside issues and be in an informed position to counter arguments from the buyer about reducing the purchase price on the basis of insurance issues.
- The buyer needs to understand whether or not to proceed and validate the purchase price based on all risk and insurance costs.

What We do

Marsh's Private Equity and M&A (PEMA) Practice provides insurance, advisory, and transactional placement services to companies who are looking to buy or sell either all or part of another company, or are undertaking a corporate restructuring. The global team is able to support CMT companies by identifying and evaluating potential risk issues and advising on and placing M&A insurance, helping our clients to structure a better deal and manage liabilities during and after a sale.

Transactions for buyers and sellers require careful due diligence and close consideration of the ways to transfer the risks associated with known or potential liabilities. We provide risk and insurance advice that complements the traditional financial, legal, and commercial due diligence provided by your deal advisory team.

M&A Services Include:

- Acquisition due diligence.
- Vendor due diligence.
- Vendor assistance, including identifying "red flag" issues at the outset; advising on the sale and purchase agreement; and, structuring a data room.
- Warranty and indemnity insurance.
- Specific tax insurance.

Value Enhancement

With Marsh's reliable expertise and experience, we can help you build the true picture of how risk and insurance issues can affect the transaction and price of a merger or acquisition.

BUYERS

When evaluating a potential acquisition, CMT companies need to be aware of, quantify, and make provisions for potential risk issues which can result in:

- Uninsured and underinsured pre-close legacy liabilities as a result of the seller's pre-transaction insurance policies not sufficiently protecting the buyer against post-transaction liabilities. For example, quality of coverage afforded, finite policy limits that have been impaired by other claims, insolvent insurers, etc.
- Inadequate or incorrect insurance costs in the financial model. The current costs may not reflect the cost to the buyer to insure the target post completion – for example, current costs may be premium allocations that do not reflect the risk exposures and may not include the cost of any "corrective insurances" to bridge gaps.
- One-off additional risk and insurance-related costs. These may include:
  - The price of any risk improvements required by insurers.
  - The cost of retrospective premium adjustments.
  - The cost of self-insured losses (losses below deductibles for incurred losses, reported or otherwise), including those unsettled by insurers (outstanding claims), and losses for which insurance has not been purchased.
  - The cost of administering legacy liabilities.
  - Any other one-off items requiring an insurance solution or other "fix", for example, the purchase of directors and officers (D&O) liability run-off cover.
- Environmental matters.
- Ambiguities in the sale and purchase agreement – indemnities, warranties, and disclosures relating to risk and insurance, the way that historic liabilities will be dealt with/funded going forward, and other insurance-related matters such as access to historic policies are often ambiguous or silent.
- Advise on and structure M&A insurance to facilitate transactions and transfer liabilities to the insurance market.

Being aware of, quantifying, and making provisions for issues such as those above, can result in:

- An improved ability to negotiate on price.
- An improved sale and purchase agreement.
- A smoother, faster integration.
- Cost efficiencies.
- Improved corporate governance.
- A reduced exposure to unexpected costs.

M&A insurance:

- Enhances a bid in a competitive auction.

SELLERS

Unexpected findings can result in purchase price disputes and therefore carrying out preparatory work at an early stage in the process gives the seller more time to develop potential upsides but also address any downside issues in advance of the transaction.

We can assist vendors in the following ways:

- Provide an initial value issues report identifying key issues.
- Prepare a comprehensive review of the current risk and insurance issues, provided in a report which can be relied upon.
- Advise and assist with the preparation of the project data room.
- Participate in Q&A sessions with potential bidders.
- Review risk and insurance provisions in the sale agreement and the transition services agreement.
- Advise on and structure M&A insurance to facilitate transactions and transfer liabilities to the insurance market.

Early identification of potential deal issues to give more time to develop potential upsides will help to:

- Maximise the value of bids (by avoiding purchase price disputes).
- Carve out and address potentially problematic issues.
- Increase the speed of a sale.
- Reduce the erosion of value, post completion (For example – the seller does not make a clean break and by default liabilities remain, example two – unforeseen warranty or indemnity claims).
- Reduce disruption to the seller and business being sold.
- Manage shareholder expectations.

M&A insurance:

- Gives the seller a clean exit from the sale.
- Maximises the bidder group and deal price.
- Facilitates a smooth process.

The key benefits of a vendor report are:

- All bidders have good quality and robust information.
- It adds credibility to the facts and numbers the seller presents to bidders.
- It enables all buyers to bid with confidence, minimising the potential for last minute issues to arise.
- The report can be relied upon by the ultimate buyer.

“Many of our CMT clients have successfully used M&A advisory and placement services to not only help them better understand and quantify the associated risks, but also to transfer a proportion of them externally to the insurance market”.

SAM TILTMAN, Senior Vice President
CMT Industry Practice, Marsh UK & Ireland

Risk Scenarios

The following scenarios are based on Marsh's recent experience.

Scenario One

"The transaction involved the carve-out of a smaller division from a large global CMT firm. No due diligence was undertaken, meaning that the transaction documentation had not been reviewed from an insurance perspective. A key provision of the sale and purchase agreement required the new owners of the acquired entity to provide D&O liability run-off to the same level as previously purchased by the vendor, who carried a significant limit which far exceeded the needs of the target and the go-forward level of cover they were seeking to arrange. This provision went unchallenged, resulting in a material one-off cost to the new owners – this could have been avoided had full due diligence been undertaken."

Scenario Two

"A recent deal related to a UK CMT business that had experienced significant growth in recent years. Now an attractive target for private equity buyers, the business had secured contracts with major players in the CMT space but their insurance arrangements fell well below expectations. Through a thorough due diligence exercise, Marsh worked with the prospective investors to identify that two key classes of insurance were not purchased – cyber and errors and omissions. By highlighting this and providing a proposed solution, the new owners were able to gain comfort that the target would be capable of meeting the expectations of customers and arranging a robust programme of insurances."

Scenario Three

"Our client was putting a prized asset up for auction and looking to achieve a clean exit from the transaction. With our help, it was able to present an insurance proposition to bidders which enabled it to exit the deal with a liability cap for breaches of warranties under the sale agreement of just GBP1. The seller introduced us to the successful bidder and we put a warranty and indemnity insurance policy in place for the buyer, with a limit of 20% and excess of 0.5% of the deal value. The buyer also identified a potential exposure in its financial due diligence relating to tax structuring that had been undertaken within the target by the seller. We structured a specific contingent tax insurance policy in the name of the target to address this exposure meaning the buyer had the confidence to proceed with the transaction without seeking an indemnity for the seller or adjusting the price paid for the business to reflect this risk.

Deal impact: The seller was able to achieve a clean exit from the transaction, with no liability for breaches of warranty and without the need to retain funds in escrow for the identified tax issue. The buyer achieved the level of recourse it was comfortable with to do the deal. The use of insurance also meant that the buyer didn't need to pursue the target's management team for breaches of warranties before seeking recourse against the insurance which benefitted its ongoing relations with the target's management."

Conclusion

Marsh M&A insurance, advisory, and transactional placement services for CMT companies can enable you to:

- Facilitate deals by transferring elements of the risk to the external insurance market.
- Understand the risk and insurance costs – thereby developing more accurate pricing models.
- Ensure any risk considerations are understood and addressed pre-M&A and can be mitigated immediately or post-completion.
- Better structure transaction documentation, including the sale and purchase agreement.

Our Credentials

Experienced Team

- Established for over **20 years**.
- We **know** and **understand** M&A risks.
- Significant industry-specific **expertise and knowledge**.
- We are used to working to **exacting timescales**.

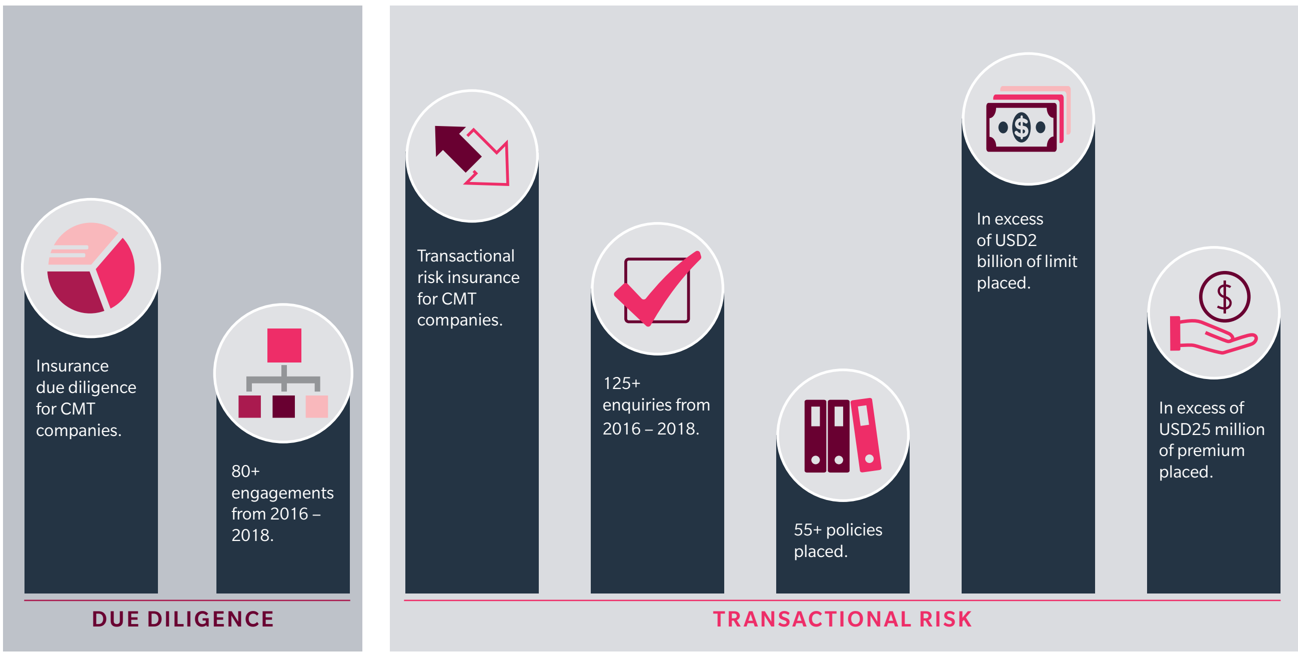
Global Capabilities

- Over **200 professionals** based in more than **30 countries**.
- We provide a **cross-border**, "on the ground", industry focussed team to reflect the geographical reach of a transaction.
- Our centralised operating model facilitates **consistent analysis** across geographic regions.

Statistics

- In the past five years we have provided due diligence services to over **5,000 transactions**.
- In 2018 in Europe, the Middle East and Africa (EMEA), we structured and executed **450 bespoke M&A solutions**, for an aggregate transaction value of **USD101 billion**.

Significant CMT industry-specific expertise and knowledge in the UK & Ireland



Who We Are

Marsh is the global leader in insurance broking and innovative risk management solutions. Our CMT Industry Practice is dedicated to helping you identify, quantify, manage, and mitigate your composite risks.

Most companies that operate in the CMT industry sectors are on the frontier of emerging risks, pushing boundaries with their business models and disrupting industries. This means they require tailored advice and customised solutions which go way beyond "standard". Our flexible approach combined with our significant human and knowledge resources enables us to advise across the entire journey of risk services, or advise on specific projects, risk categories, or challenges.

Marsh's Private Equity and M&A Practice draws upon our in-depth global knowledge to deliver specialist services to private equity, infrastructure, and corporate investors.

For more information on PEMA services, please contact any of the following:

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