U.S. REVIEW

U.S. FINANCE: RECENT TRENDS IN INBOUND M&A INVESTMENT

The U.S. renewable energy market has proven to be dynamic and rapidly evolving over the last few years. The market for cross-border mergers and acquisitions (M&A) has regained vitality, and activity has increased substantially over the past 12 months. Foreign investors with strong balance sheets are finding increased opportunities for U.S. investment.

MARKET ACTIVITY: TRENDS & ANALYSIS

In the M&A area, renewable energy activity increased last year due to a renewed confidence in the market following the financial crisis of 2008 and 2009. Globally, deal volume increased by almost 66% in 2010, as compared to 2009, while total deal value declined slightly.[1]

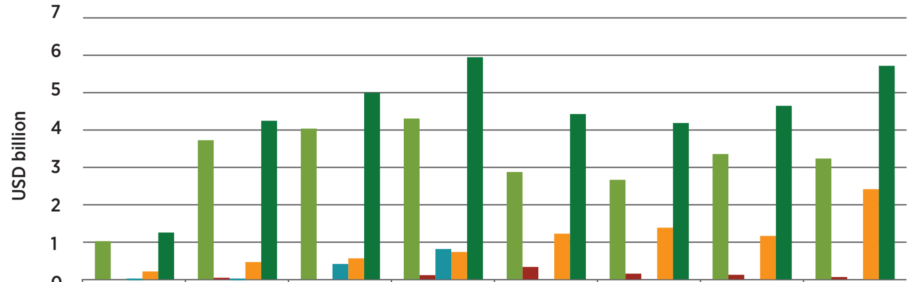
Figures 1–3 present data from the past several quarters for the U.S. renewable energy M&A market, displaying acquisition data for all renewables, then for wind and solar individually.

A significant trend in renewables M&A activity over the past few years has been foreign acquisition of renewable development companies and development projects. In many cases, the acquisition strategy of these purchasers has been to acquire projects and development pipelines that will use the technology or equipment of the acquirer. The trend has accelerated recently in part due to the expected expiration of the U.S. Treasury Department's Section 1603 Cash Grant Program ("Section 1603" or "Cash Grant") and the 100% bonus depreciation incentive at the end of 2011.[2] The availability of foreign investment in the U.S. is also increasing as a result of renewables investors based in Europe more frequently looking beyond the European markets for opportunities.

1 Bloomberg New Energy Finance. "Renewable Energy Deals Increase as Confidence Returns." March 2011.

2 Section 1603 provides a cash payment equal to 30% of a project's qualifying costs once the project is completed. Projects may qualify for the cash grant only if construction starts by the end of 2011. Current law also allows projects placed in service before the end of 2011 to qualify for 100% bonus depreciation. Projects placed in service in 2012 will be eligible for 50% bonus depreciation.

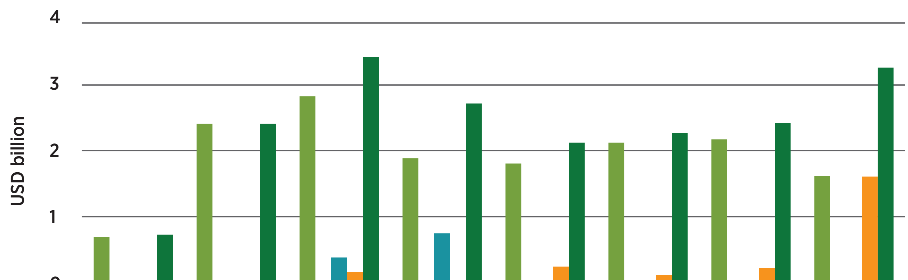
Figure 1: OVERALL ACQUISITION TRANSACTIONS IN RENEWABLE ENERGY, Q1 2009 – Q4 2010



	Q1 09	Q2 09	Q3 09	Q4 09	Q1 10	Q2 10	Q3 10	Q4 10
Asset finance refinancing & acquisitions	1.02	3.72	4.03	4.30	2.87	2.66	3.35	3.23
Public market: investor exits	0.00	0.04	0.00	0.11	0.33	0.15	0.12	0.06
PE buy-outs	0.02	0.02	0.41	0.81	0.00	0.00	0.00	0.00
Corporate M&A	0.21	0.46	0.56	0.73	1.22	1.38	1.16	2.41
Grand Total	1.25	4.24	4.99	5.94	4.42	4.18	4.64	5.71

Source: Bloomberg New Energy Finance. Data represents renewable energy acquisition transactions only. Energy efficiency, smart grid, carbon capture and storage, clean energy vehicles, and support transactions are not included.

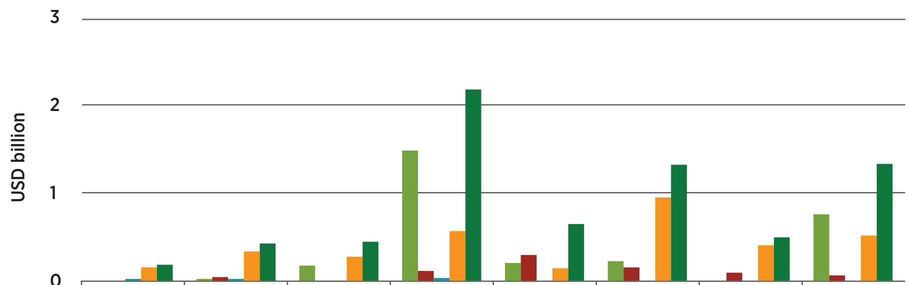
Figure 2: WIND ACQUISITION TRANSACTIONS, Q1 2009 – Q4 2010



	Q1 09	Q2 09	Q3 09	Q4 09	Q1 10	Q2 10	Q3 10	Q4 10
Asset finance refinancing & acquisitions	0.72	2.46	2.88	1.93	1.85	2.17	2.22	1.66
Public market: investor exits	0.00	0.00	0.00	0.00	0.04	0.00	0.00	0.00
PE buy-outs	0.00	0.00	0.41	0.78	0.00	0.00	0.00	0.00
Corporate M&A	0.04	0.00	0.19	0.06	0.27	0.14	0.25	1.65
Grand Total	0.76	2.46	3.48	2.77	2.17	2.32	2.47	3.32

Source: Bloomberg New Energy Finance

Figure 3: SOLAR ACQUISITION TRANSACTIONS, Q1 2009 – Q4 2010



	Q1 09	Q2 09	Q3 09	Q4 09	Q1 10	Q2 10	Q3 10	Q4 10
Asset finance refinancing & acquisitions	0.00	0.02	0.17	1.47	0.20	0.22	0.00	0.75
Public market: investor exits	0.00	0.04	0.00	0.11	0.29	0.15	0.09	0.06
PE buy-outs	0.02	0.02	0.00	0.03	0.00	0.00	0.00	0.00
Corporate M&A	0.15	0.33	0.27	0.56	0.14	0.94	0.40	0.51
Grand Total	0.18	0.42	0.44	2.16	0.64	1.31	0.49	1.32

Source: Bloomberg New Energy Finance

Foreign investors often want to make investments in development companies or in individual projects where a majority of the permitting work for the project or projects is completed, site control has been achieved, and an off-taker has been secured. This strategy enables investors to capitalize on attractive acquisition opportunities without having to devote significant time and resources to early development work which may prove to be unsuccessful and poses risks of delays and cost increases. However, recent trends suggest that, as the inventory of construction-ready development projects shrinks, interest in acquiring earlier-stage projects or development pipelines may be increasing, except in areas of the country where heavy market constraints exist.

The solar sector has been particularly active, and a number of solar startups are now seeking either strategic partners or sales of their development pipeline. Both strategies may appear to be more desirable than attempting to access the IPO markets, which can be difficult for a development company without a mature balance sheet. A few concentrated solar power (CSP) developers have sold projects to traditional solar PV players or converted CSP projects to PV projects, creating acquisition opportunities. There has also been a recent trend of traditional wind developers expanding into the solar sector through acquisitions. This trend is expected to continue, creating further M&A opportunity and competition.

Vertical integration is also a key trend as the solar industry matures. Between 2008 and 2010, a number of large solar project portfolios were sold to solar module manufacturers and other strategic buyers both within and outside the solar industry. One major benefit for the purchaser in a number of these transactions was to generate sales of their modules and engineering, procurement, and construction (EPC) services. Where long-term ownership has not been integral to the acquisition strategy, some purchasers have gone on to sell their previously acquired renewable energy assets. For instance, in December 2010, First Solar sold to NRG the 290 MW Agua Caliente solar project that First Solar acquired from NextLight in June 2010. This trend of vertically integrated project purchasers later selling development-stage projects creates opportunities for inbound investors to acquire solar projects with relatively low development risk.

Over the last year, M&A activity in the wind sector has been somewhat less active than solar in terms of volume, due mainly to the mature nature of the wind industry. The wind power purchase agreement (PPA) market is now more constrained in some areas of the country, which will have a direct negative impact on the number of available projects coming online in the near future and will factor into the analysis of potential investors when considering project-specific opportunities. Consolidation is continuing, however, as large conglomerates and turbine manufacturers are acquiring IT systems providers, O&M service companies, sub-component makers, and project companies that will use the acquirer's products and equipment. The fledgling U.S. offshore wind market is also beginning to attract foreign investment, although it is not yet clear how significant the market will become.

REGULATORY & POLICY CONSIDERATIONS OF FOREIGN INVESTORS

The U.S. maintains an official policy of welcoming foreign investment and remains one of the most competitive and attractive renewable energy investment destinations. Nonetheless, inbound investors in renewable energy find the need to take into consideration numerous political and regulatory considerations when evaluating potential U.S. investment opportunities.

AVAILABILITY OF TAX INCENTIVES

As with all participants in the U.S. renewable energy sector, foreign investors are confronted with an uncertain energy policy landscape, and, therefore, must assess whether current federal incentives for renewable energy projects will remain available.

Although the Obama Administration and Congress cooperated in December 2010 to extend expiring tax incentives for renewable energy projects and recently left renewable energy programs largely unscathed in a budget battle over funding for the remainder of fiscal year 2011, the future of these incentives remains highly uncertain.

CFIUS REVIEW

A second significant consideration for inbound investors is whether to make a voluntary filing with the interagency Committee on Foreign Investment in the United States (CFIUS) for review and approval of a contemplated acquisition. CFIUS is authorized to review transactions where a foreign entity acquires control of a U.S. company. CFIUS can investigate any transaction that threatens to impair national security or would result in control by a foreign government. Following a 30-day preliminary review period, if there is credible evidence that the transaction threatens national security, CFIUS may initiate further review or propose a mitigation plan, and may ultimately recommend that the President block the transaction. Although filing for CFIUS review is voluntary, CFIUS can initiate a review unilaterally, even after a transaction is completed.

Chinese investors need to be especially mindful of the concern over "foreign control" of U.S. entities. Given the landscape of the Chinese economy and the strong history of Chinese companies being at least partly owned by the government, Chinese companies can face increased scrutiny from CFIUS. In February of this year, CFIUS recommended that Huawei Technologies divest its interest in the cloud-computing technology company 3Leaf Systems. This was the third acquisition by a Chinese buyer that CFIUS declined to approve since late 2009. Two of the three failed transactions involved significant intellectual property (IP) acquisitions, and the third was based on the target's proximity to a naval air station.

Although transactions involving U.S. businesses in the energy sector may generally invite some scrutiny, most renewable investments should pose less risk because there is less potential for renewable investments to be perceived as critical infrastructure. Also, CFIUS precedent suggests that even large energy deals will be viewed as acceptable. In early 2010, CFIUS approved the sale of a 15% stake in AES Corporation, a U.S. power generation company, to the China Investment Corporation (CIC). In general, inbound investors need to evaluate the size and scope of a potential transaction and whether there is significant IP at issue to determine whether to voluntarily file with CFIUS.

ADDITIONAL CONSIDERATIONS

EXPERIENCE, PARTNERSHIPS & PUBLIC RELATIONS

In addition to the political and regulatory considerations outlined above, inbound investors to the U.S. are making forthright assessments of their previous experience in the U.S. when evaluating a particular investment. Given the complexities and level of competition in the U.S., many foreign investors have found the need to hire a management team with a history of successful U.S. renewable energy development and operational experience.

Facing potential regulatory risk and a dynamic U.S. renewable market, many new inbound investors have shown increased interest in partnerships or joint venture arrangements, and are often looking to find established U.S. partners or to invest in consortiums with other seasoned investors. This joint development strategy is an often-recommended strategic first step towards more substantial inbound investments, since a strong U.S. business partner can provide experience, opportunities, and capital, and often can serve as a strong advocate when faced with regulatory scrutiny.

Lastly, the politically-charged nature of foreign investment in infrastructure has prompted some investors to develop government and public relations strategies for any potentially controversial investment. Some firms have conducted successful campaigns involving exchanges with state and local officials whose constituents would benefit from the potential investment; outreach to trade and policy groups; and a coordinated media and public relations effort.