M&A monitor

Q1 2020 – COVID-19 edition

Freshfields Bruckhaus Deringer

Navigating COVID-19

This quarter's M&A monitor focuses purely on COVID-19. Alongside the pandemic's effect on deal values and volumes we examine some of its broader implications, including how antitrust authorities are responding, governments are looking to protect domestic businesses from foreign acquirers and deal terms are adapting to heightened market risk.

This edition of the M&A monitor was published on 2 April 2020.

M&A in a time of crisis

Overall activity for Q1 was down 35.3 per cent by value on the previous three months, the biggest quarterly fall in seven years.

With global equities swinging more violently than at any point since the Wall Street Crash, public deal-making fell by 39 per cent to just $498bn. There was a brief flurry on 9 March, when Aon's $30bn acquisition of Willis Towers Watson and Tesco's $10bn disposal of its Southeast Asian stores were announced. However, both represented the drawbridge being raised rather than the start of a fightback.

Activity among financial investors was also down, although a 14 per cent drop (from $145bn to $126bn) shows that some financial sponsors will see opportunities in a crisis. It's notable that the last quarter saw one of the largest ever European sponsor-led deals – the €17.2bn buyout of ThyssenKrupp's lifts business by a consortium led by Advent and Cinven. But with the debt markets – and equity financing sources (including some fund limited partners) – reeling from the turmoil, a deal that has not yet closed is likely to be exposed to heightened risk.

M&A in a time of crisis (cont)

Longer term, the effects of COVID-19 on deal-making could be profound, and we'll share our thoughts on what they might be in the coming weeks. However, as businesses scramble to address the immediate consequences of the pandemic, we've collected the insights of our global teams by way of a guide.

- Many of the immediate challenges to **deal execution** stem from travel restrictions, which are impacting everything from negotiations to due diligence.
- **Merger reviews** are slowing down or even stopping altogether as authorities struggle to handle their caseloads amid widespread homeworking. Complex deals are being prioritised over no-issues reviews, with authorities expected to use their statutory maximum review periods for the foreseeable future.
- The US Federal Trade Commission and Department of Justice have moved to a **temporary e-filing system** until the crisis abates. However, the switch was accompanied by the FTC suspending parties' ability to request early termination of the Hart–Scott–Rodino waiting period, potentially extending the timelines of straightforward acquisitions.
- Governments are stepping in to **safeguard domestic businesses** left exposed by the crisis. Spain has suspended plans to liberalise its foreign investment regime, while the European Commission has encouraged member states to use their powers to ensure EU companies involved in healthcare are not targeted by overseas acquirers. On 29 March, Australia announced that all foreign bids – regardless of their size – would be scrutinised by its Foreign Investment Review Board for an undisclosed period.
- We are seeing greater focus on **contractual protections** in deal documentation, for example a shift towards valuation mechanisms (eg 'closing account' rather than 'locked box') that help parties manage heightened market volatility.
- M&A participants are paying closer attention to provisions allocating the risk of COVID-19 consequences, including in **material adverse event (MAE) clauses**. Representations and warranties insurance policies are likewise dealing with this risk allocation negotiation in agreements being finalised now.
- **Certain funds financings** look less 'certain' in a crisis, and more expansive financing outs are also being agreed.
- Where due diligence is possible, buyers are paying close attention to the target's litigation risk, including whether the virus represents a ***force majeure*** event in its material contracts.
- In the months to come, expect an **uptick in distressed M&A** as well as **'consolidation mergers' in hard-hit sectors**. As far as the former is concerned, structures such as debtor-in-possession financing (a key feature of the US bankruptcy system that allows a business to continue operating while in the Chapter 11 process) will be challenging. In the near term, buying out of court may therefore be more likely, which requires careful diligence around things such as fraudulent conveyance and successor liability.
- **Corporate boards** need to consider the entire playing field during times of extreme market and economic volatility; whether it's issuing debt or equity to a governmental entity in exchange for aid – or *failing* to act with defensive measures in the face of accumulations of control – the role of directors has never been more important.

The great unknown is how severe the outbreak could become and how long it could last. After the SARS epidemic in 2003, M&A surged beyond its pre-crisis level within months of the disease being brought under control.

This time the initial drop in activity has been deeper, not just because the outbreak has had a direct effect on the real economy in more countries, but because the global economy has become more interconnected in the intervening years. The longer the disruption continues, the greater the chance we could be looking at something more akin to a systemic dislocation like the global financial crisis.

Despite all this there are shafts of light among the clouds. In China, deals have now started to come back online as infection rates have slowed and people have gradually returned to work. The markets are eagerly watching to see whether this fragile recovery continues.

For more insights on the legal implications of COVID-19, visit our global and US coronavirus hubs.

Global M&A YTD activity by sector

Sector		Value $bn	%
1	Financials	166.3	26.8
2	TMT	109.7	17.7
3	Industrials and materials	107.3	17.3
4	Real estate	71.4	11.5
5	Energy and power	54.1	8.7
6	Consumer*	50.8	8.2
7	Healthcare	42	6.8
8	Infrastructure and transport	19.8	3.2
Total		**621.4**	**100**

* Includes retail

Sector		Volume	%
1	TMT	2,342	25.6
2	Consumer*	1,998	21.9
3	Industrials and materials	1,772	19.4
4	Financials	915	10
5	Healthcare	662	7.2
6	Real estate	657	7.2
7	Energy and power	511	5.6
8	Infrastructure and transport	285	3.1
Total		**9,142**	**100**

* Includes retail

Global M&A YTD – value and volume

Global*

M&A value
$621.4bn

M&A deal volume
9,142

Top 3 deals

1	Sberbank Rossii/ Russian National Wealth Fund	$39.6bn
2	Willis Towers Watson/Aon	$30.1bn
3	ThyssenKrupp – Elevator Technology Business/ ThyssenKrupp – Elevator Technology Business SPV	$18.7bn

Inbound: most targeted markets

US 2,469 deals	$205.4bn
UK 558 deals	$59bn
China 799 deals	$48.3bn

Outbound: most acquisitive markets

US 2,376 deals	$205.6bn
UK 542 deals	$72bn
China 759 deals	$44.4bn

USA*†

M&A value
$205bn

M&A deal volume
2,469

Top 3 deals

1	E*Trade Financial/ Morgan Stanley	$13.1bn
2	EQM Midstream Partners/Equitrans Midstream	$11.2bn
3	Hexcel/Woodward	$7.6bn

Inbound: markets investing into US companies

US 1,975 deals	$170.9bn
Germany 18 deals	$7.7bn
Denmark 4 deals	$3.9bn

Outbound: markets US companies are investing into

US 1,975 deals	$170.9bn
UK 72 deals	$12.9bn
Switzerland 8 deals	$7.6bn

Europe*†

M&A value
$222bn

M&A deal volume
2,767

Top 3 deals

1	Sberbank Rossii/ Russian National Wealth Fund	$39.6bn
2	Willis Towers Watson/Aon	$30.1bn
3	ThyssenKrupp – Elevator Technology Business/ ThyssenKrupp – Elevator Technology Business SPV	$18.7bn

Inbound: markets investing into European companies

UK 435 deals	$64.5bn
Russian Federation 135 deals	$40.9bn
US 217 deals	$25.5bn

Outbound: markets European companies are investing into

UK 401 deals	$44.6bn
Russian Federation 136 deals	$41bn
Germany 324 deals	$38.3bn

Asia-Pacific*†

M&A value
$149bn

M&A deal volume
3,003

Top 3 deals

1	Tesco Stores (Thailand)/ Investor Group	$9.9bn
2	CapitaLand Commercial Trust/CapitaLand Mall Trust	$8bn
3	Liaoning Zhongwang Group/CRED Holding Co	$6.6bn

Inbound: markets investing into Asia-Pacific companies

China 733 deals	$44.1bn
Japan 668 deals	$18.3bn
India 276 deals	$15bn

Outbound: markets Asia-Pacific companies are investing into

China 769 deals	$47.4bn
Japan 642 deals	$16.5bn
India 294 deals	$15.9bn

Financial sponsor M&A – top 3 deals with buyside financial sponsor involvement

1
$18.7bn
ThyssenKrupp – Elevator Technology Business/ ThyssenKrupp – Elevator Technology Business SPV

2
$6.1bn
IQ Student Accommodation Group/Blackstone Group

3
$5.3bn
Viridor/Planets UK Bidco

* Deal value includes net debt of target | † Includes domestic deals | Source: Refinitiv | Data correct to 26 March 2020