The Global M&A Marketplace

Corporate analysis: The 2017 Lex Mundi Global Seminar on Cross-Border Transactions was held on 2 November 2017 in London, United Kingdom. The seminar brought together legal practitioners, financial institutions and advisers, commentators and market participants in the cross-border M&A sphere to discuss key trends and developments in cross-border transactions. This article summarises the discussions and conclusions in relation to global M&A trends which were considered in the first session of the conference.

Deal value and volume

The last four years has seen a boom in M&A transactions; however, the volume of M&A deals in 2017 has slowed down slightly, characterised by the reduction in the number of $US 10 billion plus value deals announced. The main factors behind this slowdown include the current political climate (eg, Trump in the US, Brexit in the UK, elections in Germany and France) as well as the fact that there has already been a substantial amount of consolidation across industries and further consolidation may not be possible.

2017 has witnessed an increase in the number of smaller deals and deals over $US 5 billion, but there have been a few large deals announced. The largest deal of the year took place in Europe in the form of the €30.9 billion offer by Italian Atlantia SpA for Spanish Abertis Infraestructuras SA.

Investment from China

Europe is also attracting a substantial amount of inbound investment from China: China invests more in Europe than in the US (which is a harder market to penetrate because of the regulatory landscape), and we can expect to see continued interest from China in the future given that M&A is a core strategy to strengthen China (as indicated by the recent Chinese Party Congress). Chinese bidders can be very competitive as, among other things, the cost of funding from the Chinese government is very low.

Drivers of M&A

Company valuations are at an all-time high but there have also been modest levels of growth. Factors contributing to this include:

- organic growth—companies and boards seek to increase company valuations which has resulted in consolidation to assist justifying such valuations – high valuations are generally well received if the management team can bring synergies through consolidation

- an increase in shareholder activism—activists are looking at inefficient balance sheets, overall set up costs of companies, and boards and activists and boards are open to separating/restructuring assets/companies to achieve greater value – while boards in the US have a wealth of experience with activist shareholders, their European counterparts are less familiar with activists, and therefore, less well equipped to deal with encounters with them
- advancement of technologies—many companies still need to "catch up" in order to remain profitable and competitive

M&A transactions are flexible and it is not uncommon to tailor such transactions to align with the culture and circumstances of buyers, eg, allowing a longer transaction timetable where there is a Chinese buyer involved or taking pre-emptive steps (such as making anti-trust filings or obtaining clearances where appropriate). Other things a seller might consider is whether there is a capital markets solution rather than an M&A one (ie, an IPO).

The current market

Generally, across Europe, Asia, Africa and the US, the current M&A market is a seller's market, the IPO market is very active, and there is plenty of access to capital.

Strategic buyers (rather than those offering the largest consideration amount) are most likely to win in a competitive auction scenario, in particular, buyers with a synergistic capability to complete a transaction (eg, where there are less likely to be anti-trust clearance concerns).

There have not been many (high deal value) hostile bids in 2017, save for a few exceptions, eg, American PPG Industries failed hostile offer for €26.9 billion for Dutch Akzo Nobel. Factors that go some way to explaining the low number of hostile offers include:

- that takeover activity in H1 and H2 2017 has been high in terms of volume, but smaller in terms of deal value, and valuations are expensive (which may deter bidders from making hostile offers)
- the changing political landscape — there are a greater number of political issues globally (eg, the rise in the populist/nationalist movements across Europe and the US and the increased scrutiny in foreign buyers) and on a country by country basis (eg, Brexit) and the issues are more complex than in previous years
- the changing regulatory landscape, eg, in the UK, changes to the UK Takeover Code in 2011 with the introduction of the 'put up or shut up' regime which has put an end to continuous virtual bids, and current proposed changes to the Takeover Code to further protect a target from a hostile bidder
- historically in the UK and Europe there have been fewer hostile M&A transactions, and unlike the US, there have not been many aggressive activist shareholders (but this is changing)

- there may be a greater risk of failure and public embarrassment (eg, the much publicised failed $US 143 billion bid by Kraft Heinz for Unilever – which was spearheaded by 3G Capital (a significant shareholder of Kraft Heinz) and backed by Warren Buffett (another significant shareholder of Kraft Heinz))

Across Europe, there has been an increase in shareholder activism. Steps companies can take to prepare for activism include:

- checking the share register (and any beneficial owner register such as the PSC register in the UK)—eg, is an investor slowly building up a stake or has a known activist / private equity fund acquired an interest
- communicating effectively with investors —ensure that there is a dialogue between management and key shareholders and listen to investor concerns
- evaluating the corporate structures in place to determine whether they make commercial sense — assess whether there are ways to make the business more streamlined/profitable or be able to justify market value

PE funds can bring about transformational changes to companies by engaging with the board and/or through shareholder activism.

PE involvement

There has been a notable uptick in PE funded transactions, demonstrating that PE firms are sufficiently confident about returns on capital. Banks are also happy to fund transactions in this period of globally low interest rates. Banks and PE firms are making a sufficient level of profits on lending (multiples are high). Examples include, in the UK, the offer for Paysafe Group plc by Blackstone Management Partners LLC and CVC Capital Partners Limited and in Germany, the offer for Stada Arzneimittel AG by Bain Capital and Cinven (note this deal is Europe's largest buyout in four years).

In terms of the amount of money available to fund M&A transactions, we have seen a number of 'jumbo' funds participating in public M&A deals and taking companies private, eg, the $US 93 billion Softbank Vision Fund (a technology investment fund) has recently embarked on various large transactions.

PE funds will generally seek to invest in sectors where there are high returns on investment capital and with synergistic capabilities. Some industries are therefore less likely to attract PE attention, eg, telecommunication networks in Europe or the USA which represent a decline on returns on investment of capital because of:

- the nature of the product —it is difficult to increase profitability of existing networks further – users pay a limited amount of money for accessing/using the network
- the regulation of the product —regulators have enforced accessibility to telecommunications networks

- the behavior/conduct of product owners — a defensive move by one party operating in such an industry will be met by defensive actions by other operators

There has been a growing trend recently of sponsors selling a minority stake to buyers to set the price / justify company valuations, particularly in Scandinavia.

Auction sales are also becoming more popular.

Anti-trust and regulatory concerns

Other issues that operators in the media sector (and other sensitive sectors) may have include anti-trust concerns, eg, the recent proposed merger in the USA between Time Warner and AT&T. Protectionism across the world appears to be increasing, with governments more willing to step in to 'defend' key sectors from foreign control (eg, consider Theresa May's speech when she launched her campaign for the Conservative party leadership and Prime Minister in which she confirmed her willingness to introduce new powers for the government to intervene in UK public M&A and be capable of 'stepping in to defend a sector', making express reference to US-bidder Pfizer's failed bid for AstraZeneca plc).

Advisers to the parties to a cross border transaction will need to be mindful of, among other things, regulatory bodies, anti-trust issues, and political issues.

The UK

For instance, a foreign buyer looking to acquire a UK company or assets should be aware of the remit of the Takeover Panel and whether the transaction could be subject to the UK Takeover Code. The buyer would need to take account of that in structuring the transaction and in estimating any timeframes for completion of the transaction.

The US

Likewise, a foreign buyer looking to acquire a US company or assets should (among other things):

- obtain local legal advice
- be aware of the CFIUS anti-trust regime, and
- consider obtaining political soundings on a proposed deal

early on in a transaction, so as to in-build sufficient time in the transaction timetable to restructure the deal if necessary.

The Middle East

More recently, the political tensions that have arisen between Saudi Arabia and Qatar (in relation to Qatar restoring diplomatic relations with Iran) may have repercussions on cross border mergers / investments in the Middle East region, ie, non-Saudis and non-Qataris may need to choose between the two countries.

It was thought that Qatar would have attempted to expand its investment portfolio but that has not happened (possibly because Qatar has an adequate level of wealth to contend with the blockade headed by Saudi Arabia).

Brexit

The expected impact on UK M&A of the Brexit vote has not materialised. The number of UK target companies within an offer period this year is consistent with what we have seen in previous years. While the volume of deals is consistent, we have not seen the large deals (in terms of deal value) that we have seen in previous years.

Part of the non-impact of Brexit may be explained by currency fluctuations which have made investing in the UK more attractive for foreign bidders. However, companies and funds are willing to invest where it makes sense to invest and where there are valuable assets at stake.

Predictions for 2018

In Europe, the sectors which are likely to be subject to a substantial amount of M&A activity include:

- energy – both renewable energy and traditional energy
- technology— since the global financial crisis, corporates have been investing more in research and development; however, despite this, such investment has not initiated or accelerated growth. We may therefore see more higher risk M&A transactions, with technology companies (with higher multiples) becoming more acquisitive
- financial institutions — there may be some further consolidation of financial institutions (eg, Germany's second largest listed bank, Commerzbank, is braced for a takeover bid from other European financial institutions, including France's BNP Paribas)

It is expected that there will be a move for greater regulation associated with new technologies such as blockchain because (among other things) of the high level of investment (billions of US dollars) globally. Fundraising structures used in such areas, such as initial coin offering (ICOs) are unregulated. There is also a belief that in Germany the government/relevant authorities may review the current laws/regulations in place which allow activist shareholders to benefit from arbitrage opportunities.