

Global M&A Trends that Could Propel the Robust M&A Market through 2019

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M&A Update

At a recent media roundtable in New York, partners from Hogan Lovells' global M&A and Regulatory practices outlined trends that could propel the healthy deal environment forward through 2019.

What's driving growth?

The strong global economy, access to capital at a modest cost, easing of corporate taxation in the US, changing consumer needs and the meshing of industry verticals globally have been strong factors propelling cross-border companies and private equity firms into executing acquisitions.

The general climate in the Eurozone is very strong and promoting steady M&A. In the U.S., France and Germany, bold mega-deals with healthy targets are making a comeback as companies look to make their products more accessible to consumers globally. In the UK, valuations and the lending environment are promoting positive deal flow, despite ongoing political uncertainty.

Industries that have become attractive to investors include defense, telecommunication, manufacturing, life sciences, energy and infrastructure.

Why is technology a top industry for acquisitions?

Technology has become a particularly attractive sector for acquisitions. Demand has increased in the tech sector and is consequently increasing valuations. Companies in all industries are buying tech companies as a means of growth and to improve services to consumers. Private equity remains interested in technology, as are cross border strategic acquirers. And, even though the capital markets are open, there are quite a few unicorns being bought globally.

Notably, Southeast Asia has become an attractive geography for investment in technology, and Walmart's acquisition of a majority stake in Flipkart is a great example. Countries in Southeast Asia have increasingly tried to remove barriers for foreign investments, and now that most restrictions have been eased, it has become more attractive for start-ups to target overseas markets for growth and for global businesses to make acquisitions to cross verticals and reach more consumers.

How has the political climate influenced global dealmaking?

The political and regulatory landscape is complicating some aspects of transactional activity, but not enough to have slowed the pace of non-organic growth. Investors are looking for alternative, and often disruptive, ways to make investments to keep up with changing regulations. For instance, Brexit in and of itself has not yet had a significant impact on the M&A market, and investors view the country's business infrastructure as more stable than its political infrastructure. There are some companies exploring options to move their headquarters to the EU, but few are considering the use of MAC clauses in deals, depending on the outcome of Brexit.

There has been greater foreign investment and deal flow in Germany and France, primarily from the US and Chinese investors rather than from the UK. Protectionist policies cannot be ignored in Continental Europe, as evidenced by two transactions by Chinese investors this year that were blocked by the German government. But these regulatory interventions are not expected to slow down investment overall.

How are national security impacting deal flow in the US?

CFIUS's continued scrutiny of Chinese investments in the U.S. likely has helped to slow the volume of such transactions, but otherwise CFIUS does not appear to have impacted overall deal flow. With the recent enactment of The Foreign Investment Risk Review Modernization Act (FIRRMA), CFIUS's jurisdiction will expand to capture certain non-controlling foreign investments in U.S. companies and the purchase or lease of certain U.S. real estate. FIRRMA also will mandate CFIUS filings for certain transactions, including foreign government-backed ones.

The most consequential expansion of CFIUS's jurisdiction will give CFIUS the authority to review *any* investment in a U.S. critical technology company, a U.S. critical infrastructure company, or a U.S. company that holds sensitive personal data of U.S. citizens that might be exploited in a manner that threatens U.S. national security, *if* the foreigner would (i) have access to material non-public technical information, (ii) have a board seat (or observer rights) or have the ability to appoint a member to the board, or (iii) have the ability to be involved in substantive decision making of the U.S. business beyond the voting of shares. FIRRMA provides a carve-out for certain indirect foreign investments in such companies if the investments are made through a U.S.-controlled investment fund. The most significant FIRRMA updates, including these expanding CFIUS's jurisdiction, are not yet in effect, though, so stay tuned.

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