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Corporate M&A

UK: Trends & Developments

Colin Rodrigues and Harminder Sandhu
Hawkins Hatton Corporate Lawyers Ltd

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Trends and Developments

Contributed by:
Colin Rodrigues and Harminder Sandhu
Hawkins Hatton Corporate Lawyers Ltd see p.4

Corporate M&A Trends and Developments in the UK
The M&A market in the UK ended on an eleven year high in 2018 and, as a result, 2019 had a hard act to follow. In the first half of 2019 the volume of M&A transactions dropped to 15,400 deals, 3000 less than 2018 (Boston Consulting Group 2019 report). The M&A market in the Asia/Pacific area experienced a sharp decline in deal volumes across all industries compared to 2018. Thereafter, M&A activity in 2019 stabilised, especially in North America, fuelled by a number of notable megadeals including United Technologies' bid for Raytheon (USD87 billion), Celgene's takeover by Bristol Myers Squibb for USD79 billion and the acquisition of Petrochemicals Group Sabic for USD69 billion.

Overall, despite global political issues including trade wars and domestic uncertainty surrounding the UK's departure from the European Union (Brexit) and increased regulation, the M&A market showed real resilience in 2019, both globally and in the UK. Technology, media and telecoms (TMT) remained the leading sector for M&A in 2019, as evidenced by the merger between Disney and 21st Century Fox which completed in March 2019 for USD71.3 billion, the largest media merger ever recorded. This trend is likely to continue into 2020 as the phenomenon of streaming films online and online television, is ever growing.

Low interest rates and high levels of liquidity encouraged acquisitions in 2019. Weaker sterling, due to the uncertainty of Brexit, also made more assets in the UK affordable, especially to the USA as the USA was supported by the strength of the dollar and its recent tax reforms.

UK public M&A continued to present opportunities for private equity investors with schemes of arrangement being the preferred deal structure for bidders. Of the offers made in the first half of 2019, 25 of the 33 were schemes. Schemes are popular given the lower approval threshold (75%) compared to contractual offers. Deal values in the public sector and private sector were, however, lower than in 2018. Two industries, energy and power and industrial, showed an increase in deal value.

Convergence
Convergence continued to energise deals in 2019 as increasingly distinct business sectors concluded deals to gain access to specialist talent or technology to advance development. Cross industry transactions are taking the form of joint ventures or alliances. These deals have an added layer of complexity requiring careful post completion integration. An example of this in 2019 was Toyota participating in Uber Advanced Technologies funding round for a self-driving car unit. Convergence will remain key in 2020 especially for telecom and media companies given the imminent launch of 5G across the globe. It is expected deal activity in telecommunications will increase as network operators actively pursue acquisitions to acquire talent, knowledge and infrastructure. Consolidation in this industry is also anticipated in 2020.

Cybersecurity threats and online security issues also drove deal volumes in the Infrastructure Services Market during 2019 take by way of example Orange's acquisition of SecureLink for 15 million Euros, one of the largest cybersecurity service providers' in the UK. This shows the significance placed on data protection and the demand for specialists in this field.

Activism
Lazard's Shareholder Advisory Group (Lazard) reported that approximately 46% of all activist campaigns in the first half of 2019 had an M&A angle in comparison to the years 2014 to 2018, where M&A featured in only one third of all activist campaigns. Further, Lazard reported that in approximately 65% of these M&A focussed activist campaigns during 2019 the aim was the sale of the company.

In contrast, other activist campaigns steered companies to contest a proposed M&A transaction, which Lazard reported was the case in roughly 35% of campaigns in the first half of 2019. This activity is referred to as "bumpitrage", with the aim being to secure improved offer terms. This form of activist opposition was evidenced in the Bristol-Myers Squibb-Celgene deal in February 2019 and United Technologies-Raytheon merger.

Activism remains common globally and is becoming an acceptable practice. Increasingly, activists make their demands public by way of open letters, white paper reports, shareholder proposals and proxy contests. The general aim being to focus on issues relating to corporate governance, such as replacing the management team, level of dividend pay-outs, appointment of new directors and executive compensation.

Disruptive Technologies
New technology companies are key targets for acquisition given the pace of growth in this sector. Businesses want to buy into these new technologies and processes to bolster their proce-

dures. Previously, social media, analytics and cloud (SMAC) were relatively new technologies and the onus was on companies to innovate or to acquire these digitisation processes by acquiring companies specialising in these technologies.

Now, the new trend is DARQ technology, comprising the following emerging technologies: distributed ledger technology; artificial intelligence (AI); extended reality; and quantum computing. The influence these new technologies will have on how companies relate to their staff, consumers or client base will be significant. Companies need to stay ahead of the game on these either by way of capital investment in modernisation or the acquisition of companies who specialise in DARQ.

Companies will have an appetite for the latter, which will fuel further M&A activity is this sector. Given the complexity of these new technologies, transactions will be equally complex, particularly the due diligence process. Foreign takeovers in this sphere are under increased scrutiny due to national security concerns and the expectation is regulation in this field will continue to become more stringent. Globally, almost USD300 billion worth of deals were withdrawn in 2018 due to heightened regulatory requirements.

Divestitures

EY reported in 2019 that 88% of UK companies intend to divest within two years, which will promote deal activity through 2020. The key question is the reason why so many UK companies want to divest. The explanation appears to lie in the need to generate capital in order to be able to invest greater amounts in new technologies, or to shed obsolete technology given the ever-changing technology landscape.

Regulation

The Foreign Investment Risk Review Modernization Act (FIRRMA), which, in August 2018, expanded the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS), has impacted Chinese investments in the USA, especially in the technology sector, and this is likely to continue in 2020. Given the tensions between the two nations, the expectation is China will also take a stricter approach.

In relation to antitrust, the Federal Trade Commission (FTC) and Department of Justice (DOJ) have sought greater enforcement in 2019, especially in relation to vertical mergers. The DOJ was unsuccessful in its attempt to stop the merger of AT&T and Time Warner.

Looking Ahead

Any forecasts with regards to M&A activity are likely to be misguided in light of the shock waves currently affecting global markets amidst fears of the coronavirus (COVID-19) pandemic. The extent of the global economic fallout due to COVID-19 is, at this stage, unknown, save that in a relatively short period the markets have experienced unprecedented losses akin to the financial crash in 2008. What this means is that the fall out will be significant and far reaching.

With this caveat, the general expectation is that technology and financial technology will continue to lead deal activity. PWC reported in its M&A forecast report that 40% of healthcare executives expect they will be acquiring companies in 2020 to partner or collaborate across healthcare sectors in order to access technology. The other key deal driver will be intangible assets such as talent, capabilities and leaders in particular given we operate globally with a more diverse and mobile multi-generational work force.

Domestic struggles with regards to the shape of the UK's relationship with the European Union will also continue to impact transactional activity as uncertainty remains until a final deal is agreed. Further afield, there is uncertainty surrounding the 2020 presidential elections and what changes, if any, this will bring to US tax laws, regulation of foreign investment and the US trade relationship/tariffs with China and the rest of the world. The USA does, however, have low interest rates and low unemployment which may encourage deals although, inevitably, there will be a decline in cross boarder deals not least due to geopolitical tensions.

Companies with a clear outlook of their future industry needs are more likely to make strategic and innovative decisions to survive the increasingly changing world. Whilst a global recession appears inevitable in light of COVID-19, there are higher levels of capital than during the 2008 crash and private equity firms are more willing to deploy capital in new creative ways such as hybrid funds. Hopefully, this will provide a level of resilience to the M&A market throughout 2020.

The global outlook for 2020 is economically uncertain and bleak due to factors which are unpredictable and unnerving. This uncharted territory is being navigated somewhat blindly, and our final destination is impossible to analyse, especially given the globalisation of markets over the last 12 years.

Hawkins Hatton Corporate Lawyers Ltd is a niche corporate law firm based in Dudley and London, dealing primarily with corporate and commercial work and commercial property and litigation. Clients include European and Anglo-US companies, regional and national clients and individuals, and includes a number of banks, notably RBS, Lloyds, HSBC and Santander, and a large number of small and medium-sized enterprises. Hawkins Hatton provides a full range of company and commercial services. It is known for private equity work for management teams, management buyouts, sales, mergers, acquisitions and disposals for shareholders of small and medium-sized enterprises, and a broad range of corporate work, including restructuring of companies and related tax issues. Services include, but are not limited to, drafting of sale and purchase agreements, tax deeds and ancillary matters. Commercial contract expertise includes, among others, agency and distribution, franchises, guarantees, joint ventures, partnerships, shareholder agreements, terms of business and mortgage securitisation.

Authors

Colin Rodrigues is founding partner and head of corporate at Hawkins Hatton. He has over 20 years' experience in M&A work. Colin manages the department on a day-to-day basis and is responsible for business development. In the last 12 months, Colin has completed multimillion-pound corporate transactions in an array of industry sectors, including manufacturing, engineering, pharmaceuticals and healthcare, pest control and IT. This year he successfully won a large US-based client from a large City of London practice. Colin's client base is national and international and has grown in stature year on year. He is widely published.

Harminder Sandhu is managing director of the firm and heads its dispute resolution department, acting exclusively for SME clients. With more than 20 years' experience of conducting and advising on high-value and complex commercial disputes, Harminder adopts a commercial and pragmatic approach to dispute resolution. The department undertakes litigation arising from a variety of commercial/corporate contracts, including shareholder agreements, share purchase agreements, asset purchase agreements and security documents on behalf of its diverse client base across a wide sector including manufacturing, engineering, aerospace, hospitality, insurance, pharmaceutical, social care, IT, waste recycling and professional services.

Hawkins Hatton Corporate Lawyers Ltd

Unit 3 Castle Court 2
Castlegate Way
Dudley
West Midlands
DY1 4RH

Tel: +44 (0) 1384 216 841
Fax: +44 (0) 1384 216 841
Email: crodrigues@hawkinshatton.co.uk
hsandhu@hawkinshatton.co.uk
Web: www.hawkinshatton.co.uk

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