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2019 Midyear M&A Trends

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Although the U.S. M&A market has remained relatively strong by historical standards so far in 2019, activity has softened compared to the higher levels in 2017 and 2018, continuing a trend that began in the second half of last year. The pace of overall deal count in the U.S. has decreased from the past two years, with the U.S. having its slowest first quarter by deal count in five years, according to figures from Mergermarket. However, overall deal value in the U.S. remained high in the first quarter of 2019 at $414 billion, falling just below 2018's first-quarter record high of $415 billion and representing over half of global deal volume. Seven "megadeals" (*i.e.*, deals valued at $10 billion or more) have been announced in the U.S. in the first quarter, one more than in the first quarter of 2018.

Like much of the rest of the world, the U.S. continues to confront economic and political uncertainty, and dealmakers have taken different approaches in response. For instance, although some dealmakers have been restrained, others—including in the biopharmaceutical and financial services industries—have remained active. While the three largest U.S. deals of 2019 thus far have been between strategics, financial sponsors also have been active in the first half of this year.

Selected 2019 Midyear Trends

Regulatory Developments

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), is already impacting U.S. M&A activity. Notably, interim regulations released by CFIUS in October 2018 have added to the chilling effect on Chinese investments in the U.S., particularly in the technology sector. At the same time, escalating trade tensions with China have led to concerns that Chinese authorities may take stricter stances on approving transactions involving U.S. firms, although this situation remains fluid.

The interim CFIUS rules require mandatory filings for certain (even noncontrolling) foreign investments in areas for which filings were previously voluntary, including those involving critical technology and infrastructure and sensitive personal information, as well as certain real estate transactions. The U.S. government's determination of these critical technology areas is expected to encompass a much wider scope of transactions than before FIRRMA's enactment and is likely to further affect how sellers evaluate the competitiveness of foreign bids, especially when considered in conjunction with mounting trade tensions.

On the antitrust front, the Federal Trade Commission (FTC) and Department of Justice (DOJ) have continued to pursue vigorous enforcement in 2019, including a focus on vertical mergers, undeterred by the DOJ's failed attempt to block the vertical merger of AT&T and Time Warner. The FTC and DOJ also have continued to scrutinize deals where larger, established companies are perceived to be acquiring nascent competitors, especially in the technology industry (an area where Congress also has recently announced its intention to investigate the competition practices of some of the largest U.S. companies) and health care industry, even if such transactions are nonreportable under Hart-Scott-Rodino. Further, the FTC has shown continued interest in investigating consummated transactions and in conducting merger retrospectives to guide future policy.

Announced transactions have tended to include longer termination periods in order to allow for potentially protracted regulatory reviews. Also, regulatory break-up fees have been smaller and in certain cases have excluded more "high-risk" jurisdictions, reflecting concerns over global political uncertainties. Although the data may be skewed somewhat as a result of the U.S. government shutdown earlier this year, FTC and DOJ investigations in 2019 have taken longer than in prior periods, but the total number of investigations continues to decline.

Private Equity

Financial sponsors continue to play an active role in U.S. M&A, with U.S. private equity transactions comprising a significant percentage of global private equity activity. Overall, private equity activity represented approximately 30 percent of total U.S. deal activity measured by value in the first quarter, according to figures from Mergermarket. An active initial public offering market has provided financial sponsors with optionality with respect to planning and timing their exits, with "dual-track" processes remaining a credible exit strategy.

Shareholder Activism

Shareholder activists continue to make M&A a core theme of their campaigns. While the number of U.S. companies targeted by activists in the first quarter of 2019 fell below first quarters in previous years (particularly in 2018, which set a record high), the percentage of activism that pushes or opposes M&A activity remains elevated, according to Activist Insight. The first quarter featured 18 public activist campaigns advocating for M&A transactions, while 11 public campaigns opposed them. An additional seven public campaigns focused on potential spin-offs and break-ups. Approximately 35 percent of such campaigns targeted companies with a market capitalization of $10 billion or more, showing again that no company is safe from an activist campaign.

Sector Highlights

2019 has been notable so far for megadeals in certain sectors, some of which have been relatively dormant in the recent past. For example, BB&T's $28.1 billion bid for SunTrust is the largest bank merger since the Great Recession. There also has been a wave of consolidation in the financial technology and payments space this year, led by Fidelity National Information Services' $42.6 billion purchase of Worldpay, Fiserv's $38.4 billion acquisition of First Data, and Global Payments' acquisition of Total System Services in a $21.5 billion all-stock deal. Outside of the financial sector, Bristol-Myers Squibb's bid for Celgene continues a trend of megadeals in the biopharmaceutical space.

Looking Forward

Coming into 2019, dealmakers were cautiously optimistic about U.S. M&A activity despite concerns over mounting headwinds. Almost six months into the year, this cautious optimism seems justified, with activity levels relatively strong on a historical basis, supported by an accommodating environment of economic growth, generally stable equity markets, liquid debt markets, record amounts of "dry powder" and a steady stream of new megadeals. At the same time, a sense of uneasiness has crept into the M&A market as a result of concerns over fully priced assets, monetary policy, trade tensions, market volatility and regulatory uncertainty.