

MERGERS & ACQUISITIONS

Merger control trends and the wider M&A landscape

BY FRASER TENNANT

Following years of false dawns and stymied transaction, in which the global M&A dealmaking landscape could best be described as stagnant, 2014 saw a resurgence with CEOs and boards launching deals on a scale unseen since the pre-financial crisis days. Deal value in the US alone in the first three quarters of 2014 was almost \$1 trillion.

Major announced deals included Comcast's \$70bn offer for Time Warner, AT&T gaining DirecTV Inc in a \$67bn deal, and the procurement of Allergan by Actavis PLC in a \$66bn transaction. These represent the top three announced M&A deals of 2014, according to Thomson Reuters 'Mergers & Acquisitions Full Year Review 2014'.

According to Phil Isom, KPMG's global head of M&A, 2014 was the year in which the lingering effects of the financial crisis were finally shaken off. "Mergers and acquisitions are once again serving as a key strategy to spur growth in almost all global economies. In 2014, we saw a reversal in the previous downward trend for both completed deal volumes and deal values worldwide. This re-emergence of the global M&A market is being driven by favourable economic and financial market conditions, and growing confidence among CEOs after years of organisations cutting costs and focusing on organic growth strategies," he says.

Resurgence

In its '2015 M&A Report', released in March, WilmerHale puts forward a review of the key M&A trends and developments seen in 2014 and insights and analysis of the year so far. "Fuelled by improvements in macro-economic conditions, high levels of cash among strategic acquirers and low interest rates, the global M&A market produced record or near-

record results across most geographies and sectors in 2014", states the report. "The total number of reported M&A transactions worldwide increased 17 percent, from 26,939 in 2013 to 31,427 in 2014 – just shy of the number of deals in 2007, when the market reached its post-2000 peak. Global M&A deal value surged 57 percent, from \$1.87 trillion to \$2.94 trillion – the highest level since at least 2000. The number of worldwide billion-dollar transactions increased 39 percent, from 343 in 2013 to 477 in 2014. Aggregate global billion-dollar deal value grew 74 percent, from \$1.12 trillion to \$1.95 trillion."

The volume of global M&A activity in 2014 followed two consecutive years of contraction which saw many a deal falter and die. One of the most high-profile of these was the aborted \$9.7bn bid by América Móvil for the Dutch telecommunications company, KPN.

Satisfying merger control regimes

The WilmerHale report also highlights issues surrounding merger control. A raft of measures have been introduced in recent years which have had a significant impact on the M&A landscape. These include the revisions made annually by the Federal Trade Commission (FTC) to its thresholds for merger control filings and the streamlining of the European Commission's (EC) merger control procedures in January 2014.

Currently, there are approximately 90 jurisdictions that practice some form of merger control – typically mandatory and suspensory. Satisfying the regulatory requirements of these regimes, which are usually focused on the local effects of a transaction, is essential before a transaction can be considered complete.

"Merger control is an increasing

part of the M&A landscape", observes the WilmerHale report. "It is more important than ever that companies and their counsel be aware of the potential impact of merger control requirements on their transactions and, particularly in strategic and multijurisdictional transactions, take into consideration the timing and valuation implications of those requirements.

"In any deal, it is important to understand what filing requirements might be triggered and what impact those requirements will have on deal timing, and in strategic deals it is more important than ever to understand the risks merger control imposes. The earlier the parties have information on these two aspects, the more effectively they can address them before merger control becomes a crisis."

Conclusion

With M&A activity in 2015 following on from the resurgence of 2014, the outlook remains positive concludes the WilmerHale Report: "M&A activity in 2015 will depend on a number of factors including the economic conditions, the impact of private equity and the venture capital pipeline. Economic challenges remain, but these factors encourage favourable expectations for the global M&A market over the coming year."

Mr Isom's also believes the outlook for mergers and acquisitions is very positive as we approach the second half of 2015. "To realise the lasting results stakeholders expect from M&A, investors must recognise the need for superior strategies, comprehensive due diligence and well-developed integration plans. Doing so will better manage the deal process and make investments a viable and promising growth opportunity," he says. ■

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