



Latest Developments in International Corporate Transactions and Antitrust/Competition Law

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International M&A Market Overview

Global M&A in first quarter of 2018 totaled \$1.2 trillion in value (strongest start since 2000)

- M&A volumes doubled in Europe in the first quarter, while the United States was up 67% and Asia was up 11%

Economic Drivers:

- U.S. tax reform
- Faster economic growth in Europe unleashed many companies' dealmaking instincts
- Continued strong equity and debt markets and swelling corporate balance sheets

Corporations seeking transformative mergers, in light of increased competitiveness and relative high cost of organic growth

Technology acquisition is huge driver

Divestitures also equally strong as corporations shed non-core assets

Still uncertainty around regulatory risk (China-CFIUS, US antitrust)

Interest in Canada, UK, China and Japan remain strong, but seeing increased interest in Central America and Australia



Deal Terms Overview

In broad terms, there is some alignment between major jurisdictions For example:

- Process (e.g. LOI, diligence and documentation)
- Deal structures (e.g. stock, assets or merger)
- Deal protections (e.g. reps and warranties)

Key drivers for a flatter deal world

- Use of English language
- Technology
- Globalisation of banks and professional service firms
- Inter-governmental decisions (e.g. EU directives)

Some recent developments (whether in law or practice) show a greater alignment between major jurisdictions and some do not



Practice Developments

- A key development is the use of W&I insurance (RWI), which is becoming increasingly widespread in Europe and the US
- Increasing trend in deals (especially auctions) outside of the US is to use the so called 'locked-box' method to calculate the purchase price (whereas US deals will tend to use a WC adjustment mechanism)
- Use of break fees is becoming more common for a range of issues (shareholder approval, anti-trust approval and other key consents)



Practice Differences

A US buyer will have certain expectations about what a deal will look like (e.g. protections it may enjoy)

Whilst protections can be the same (e.g. reps and warranties), they may be different:

- European deals are often more seller friendly than US deals
- Disclosure is sometimes treated differently from the US
- Indemnification

Negotiating culture



Legal Differences

Type of legal system

- Common law or civil law
- Use of a notary

Specific types of laws often catch people out:

- Employment. For example:
 - many jurisdictions outside of the US do not have employment at will
 - European asset deals will ordinarily be subject to the 'TUPE' rules
 - French deals will often require the workforce to be 'consulted' before an SPA can be signed

Some 'universal' legal concepts have different applications in different jurisdictions. For example:

- Good faith
- Reasonable endeavours



Legal Developments

Brexit

National Security

- CFIUS
- EU member state rules

Data Protection

- GDPR

Anti-corruption

- UK Bribery Act

Anti-money laundering laws

Export control law

- Application of US and EU sanctions



Brexit

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"Brexit means Brexit"

- Theresa May, June 2016





Antitrust / Competition Law Developments



Antitrust – Current Themes

Multi-jurisdictional merger principles

Particular concern around big data?

Policy context – EU's Digital Single Market



Merger Review Principles

Substantive analysis is only relevant if jurisdictional thresholds are satisfied

Jurisdictional thresholds can be VERY low for certain transactions

One stop shopping

Facebook/WhatsApp



Big data – substantive review

Market definition

Horizontal assessment

Vertical assessment

Privacy Issues

Algorithms and Artificial Intelligence



E-Commerce Sector Inquiry – May 2017 Report

Potential Barriers to Competition

- Selective distribution
- Price comparison tools
- Pricing restrictions (e.g., RPM and dual-pricing)
- Restrictions on use of marketplaces
- IP licensing of digital content





Geo-Blocking

- Geo-blocking:
 - practices whereby businesses either deny consumers access to website based on their location
- Geo-filtering:
 - re-route consumers to "local" website, often with different content, offerings and prices
- Investigations into geo-blocking practice
- New EU legislation for geo-blocking





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Thank You