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GLOBAL M&A IN 2024: FIVE TRENDS TO WATCH

– THOUGHT LEADERSHIP

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Following a challenging year for mergers and acquisitions (M&A), the macroeconomic climate is now stabilising, and confidence is returning to boardrooms. As a result, we expect the recent growth in M&A to gain momentum into 2024, with deal-making influenced by geopolitics, new technology, and the regulatory response to it.

Sarah Jones, Global Head of Corporate: "With more stable macroeconomic conditions, M&A activity will increase as corporates focus on their core businesses and supply chain security, the latter likely fuelling an uptick in cross-border activity. We also expect 2024 to be a more favourable year for private capital as financial sponsors clear a congested pipeline. Uncertainties caused by complex geopolitics and upcoming elections could put a dampener on this activity, however, so the full extent of the increase is hard to predict."

James Lloyd-Thomas, Senior Associate in the Corporate Transactions and Advisory practice in London: "The global trends of decarbonisation, digitalisation and deglobalisation will drive deal-making. Investors will aim to capitalise on supportive government policies and access emerging technologies. However, these trends are also driving the proliferation of new foreign investment regimes and increased regulatory scrutiny, which will contribute to deal uncertainty and increase execution risk.

The energy and healthcare sectors are ones to watch. Expect substantial M&A activity in these areas as the energy transition intensifies and drug patent cliffs encourage the pursuit of inorganic growth. Generative AI is also expected to bring about significant transformation in the tech sector."

1

Energy Transition: Shifting government policies drive M&A

Government policies and tax incentives are set to stimulate more investment in clean energy and decarbonisation projects in 2024. While COP28 resulted in the 'UAE Consensus' to transition away from fossil fuels, there should, nevertheless, continue to be consolidation in the oil & gas sector in 2024.

Jordan Mack, Associate in the Corporate practice in Houston: "Government policies and regulation are steering substantial investment towards green energy and infrastructure. In the US, the Inflation Reduction Act (IRA) and the Infrastructure, Investment and Jobs Act (IIJA) have expanded the capital pool for clean energy and driven foreign investment into the US, with over US$280 billion in investment publicly announced during the IRA's first year.

The US economy continues to show signs of a 'soft landing' from inflationary pressures, and, in 2024, the market for clean energy tax credits in the US is projected to take off. These will be two game-changers for the financing of clean energy projects. Side-lined cash from strategic investors, oil majors, and other large corporates will be mobilised, as they seek to acquire clean energy projects throughout the development cycle. All eyes are on the next US Presidential election, as investors may decide to expedite investments to the early part of 2024 to take advantage of IRA and IIJA incentives before potential phase-outs, revisions, or repeals."

Rizwan Butt, Senior Associate in the Corporate practice in Dubai: "The UAE Consensus is set to accelerate the phase-out of fossil fuels. Expect an increase in asset sales and spin-offs as energy players reposition their portfolios. There is already some evidence of consolidation within the oil and gas industry, and we expect this trend to continue. Oil majors, holding differing views of the pace of the energy transition, are likely to seize opportunities to access proven reserves, particularly in the core US basins, the Middle East and Central Asia."

Tech: AI in the M&A spotlight

2

AI is the great technological advance of our era. As governments and regulators respond, we expect tech M&A to continue to be in the regulatory spotlight. The fragmented legal landscape around AI, and related uncertainty, will impact business strategies, leading to M&A activity.

Brian Harley, Counsel and Tech M&A Leader (APAC) in Hong Kong: "The emergence of AI-specific regulation will shape the future of tech M&A. Rarely have we seen so much consensus about the need to regulate a new technology and so little agreement on how to regulate it. The EU AI Act, the most comprehensive attempt at general AI regulation to date, aims to set the global standard, but simultaneously raises concerns about stifling innovation and investment in AI in Europe. Divergent approaches will create a fragmented regulatory landscape, driving those tech firms who are leading the growth of AI to adopt targeted M&A strategies, pursuing deals aligned with the regulations in different markets."

Amy Ryan, Associate in the Antitrust practice in London: "Antitrust authorities have already proven their willingness to intervene in the tech sector. They are taking a growing interest in the competition implications of AI. The UK's Competition and Market Authority and the European Commission, have recently initiated reviews of the sector. We predict heightened scrutiny of M&A transactions with an AI angle in 2024."

Holly Bauer, Associate in the Regulatory/CFIUS practice in Washington DC: "AI technologies are increasingly seen not just as sensitive, but as technologies where global technological and strategic leadership is at stake. AI has extensive national security applications, including intelligence, surveillance, military, and cyber-enabled capabilities. As part of the US government's efforts to address this, the US Treasury Department has been tasked to establish an outbound investment regime (so-called 'reverse CFIUS'), which we anticipate will be implemented this year. Other countries are likely to follow suit, as governments seek control and oversight over AI technologies."

Antitrust: Extended timelines and closer scrutiny

3

As regulators increase their scrutiny of potential transactions in 2024, it will be more important than ever to have a coherent global merger control, FDI and EU Foreign Subsidies Regulation strategy to support investment decisions and deal execution. The rise of independent-minded regulators wielding increased powers adds unpredictability and risk to the process.

Michael Van Arsdall, Counsel in the Global Antitrust practice in Washington DC: "US antitrust filings will likely become more challenging and necessitate greater planning. Starting in 2024, the HSR process and paperwork is expected to expand significantly, resembling the EU's Form CO process. In addition, the US Department of Justice and Federal Trade Commission recently released Merger Guidelines, confirming that scrutiny will intensify, and more extended investigations are likely. Expect extended deal timeframes and additional costs. On the US side, you now need to be prepared for the long haul on far more deals than in the past."

Katharine Missenden, Counsel in the Global Antitrust practice in Brussels: "Globally, each stage of the regulatory review process is becoming more complex – from determining where you need to file at the outset, to identifying potential concerns which might arise during reviews, to planning coherent remedies where necessary. Companies need to brace for more expansive 'theories of harm' when potential combinations are assessed, as seen in the European Commission's block of Booking Holdings/ETraveli, and divergence between regulators, as seen in Microsoft/Activision. These factors introduce added uncertainty and execution risk into transactions.

Therefore, in 2024 it will be vital for dealmakers to consider the risks and timing implications strategically from the get-go, and to carefully plan a comprehensive strategy for merger control, FDI and FSR filings to achieve the swiftest possible closing."

4

Supply Chains: Pursuit of supply certainty fuels M&A

The quest to secure supply chains will drive M&A activity across various industries in the coming year, from automotive to retail and e-commerce, and healthcare. Expect vertical acquisitions, strategic alliances, and joint ventures to ensure access to scarce resources and stability in supply chains.

Tess Forge, Counsel in the Sanctions practice in Singapore: "Geopolitics, including the potential escalation of sanctions and export controls on China and possible Chinese countermeasures, are prompting companies to reimagine their supply chains. Many businesses are adopting regionalisation strategies to mitigate these risks. In 2024, we anticipate more M&A and investments in countries that bridge trading blocs, offer proximity to key raw materials, and are less restrictive on foreign investment (friend-shoring). While mitigating supply chain uncertainty by diversifying across jurisdictions can be beneficial, it can also introduce complexity due to the need to navigate multiple, evolving regulatory regimes. Businesses must remain vigilant to the continuous evolution of relevant regimes and prepare for enhanced assessments of export controls and sanctions risks on transactions."

Nicolas Cookson, Counsel in the Energy and Infrastructure practice in Düsseldorf and co-lead for Clifford Chance's Mining & Metals group: "The global race to produce EV batteries intersects geopolitics and supply chain certainty. We will see an increasing number of transactions to secure key components, from mine acquisitions to joint ventures for cathode and anode active material production and infrastructure assets all the way up the value chain to EV battery plants. This year we expect automotive manufacturers to look to continue securing their EV battery supply chain at all levels, including through contractual offtake arrangements and offtake-led acquisitions and investments. Trade policy, including EU regulation, will also prompt non-European suppliers to further establish greenfield plants in Europe, if only to ensure continuity of supply for European manufacturers.

Significant price volatility in some commodities, combined with various production, conversion and processing challenges outside of certain jurisdictions, will continue to make deal execution challenging."

Sabrina Vivekens, Senior Associate in the Consumer Goods & Retail practice in Düsseldorf: "After responding to severe supply shocks during the pandemic, European food manufacturers, retailers and ecommerce platforms sought greater control of their supply chains by acquiring suppliers or logistics companies, expanding their supplier platform or switching to more local suppliers. This trend is set to continue, driven by an increased focus on traceability, as exemplified by the EU Corporate Sustainability Due Diligence Directive."

Christine Kim, Associate in the Corporate practice in New York and a member of Clifford Chance's global steering committee for Healthcare & Life Sciences: "We can expect M&A activity in the healthcare & life sciences sector to be affected by continuing and new supply chain issues in 2024. These issues are resilient. They have broad applications, the limits of which we haven't yet encountered. We should watch for action in—and reaction to – the responsible procurement of medical supplies, intelligent data for demand–supply matching in the healthcare ecosystem, sustainable supply chains in a circular economy in a health context, and AI-enabled medical diagnoses and procedures."

Private Capital: Unblocking deal pipelines

5

Private capital deals will be a key component of the increase in M&A volume and value this year. Stabilising interest rates and inflation levels, combined with more widely accessible debt, will give dealmakers confidence in underlying valuations, paving the way for more transactions, although more expensive debt and increased scrutiny from buyers will put pressure on valuations, returns expectations and deal timeframes. Despite challenging market conditions, many GPs will be focused on ensuring liquidity and the return of capital to investors, which should necessitate a pragmatic approach to sell-side deals in 2024.

Jenny Han, Senior Associate in the Corporate practice in Tokyo: Private capital will play a pivotal role in unblocking deal pipelines, with investors adopting a pragmatic approach to sell-side deals. Deal volumes should see a significant increase, but transaction timelines will continue to be extended. Buyers are conducting more detailed up-front work, and sellers are recognising this need and building it into their processes. This, coupled with the likelihood that debt packages will take longer to put together, will result in lengthier transactions and few, if any, fast-paced auctions."

Raphaël Durand, Counsel in the M&A Private Equity / Infrastructure team in Paris: "While valuation certainty is improving, we expect continued use of structures to bridge any valuation gap, such as earn-outs, deferred consideration or, in the private capital space, some level of reinvestment by the exiting sponsor. The challenge of valuing full exits or agreeing on valuations will also present opportunities to provide primary capital through structured products with downside protection. These can get deals done, but also add complexity and uncertainty to the process. Interestingly, we have not observed the slower deal processes significantly affecting other market terms, which remain largely seller friendly, with warranty and indemnity insurance providing the primary recourse for risk allocation."

Oliver Clarke, Senior Associate in the Funds Group in London: "At a sponsor level, there will be a strong continued focus on returning capital to investors, to unlock commitments to sponsors' latest funds, and as prior vintages reach the end of their terms. Expect liquidity to be provided through continuation vehicles, cross-fund deals and asset-level financing. The maturing of asset classes within the scope of private capital – equity, credit, infrastructure, real estate, clean energy, growth, special situations, secondaries – and the continued growth of established multi-asset managers will continue. This trend, the drive for assets under management, and the tougher recent fundraising market will continue to lead to general partner consolidation and M&A activity in 2024, as seen in January's acquisition announcements by Blackrock of GIP and General Atlantic of Actis. We expect fundraising timelines to remain extended, and sponsors with strong track records of valuation creation likely to be best placed."

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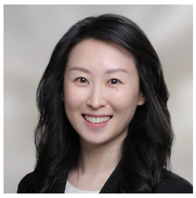

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