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GLOBAL SHIFT: M&A PREDICTIONS FOR 2022

– THOUGHT LEADERSHIP

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M&A deals reached a record-breaking US$5.1 trillion last year and that looks set to continue in 2022 despite continued uncertainty around COVID-19. Clifford Chance experts examine the global shifts that will influence the market in the year ahead.

Guy Norman, Global Head of Corporate, says: "Deal-making hit new highs in 2021 and we expect the strong deal pipeline to continue into the new year as businesses learn to live with the pandemic and adjust and grow in its wake.

M&A in 2022 will continue to be shaped by the accelerating transformation of businesses by technology, but this technological revolution will meet stronger regulatory headwinds as governments seek to shape and control its impact.

A plentiful supply of cheap debt and private equity funding should fuel another year of intense deal-making, but we will also see two newer forces shaping the M&A landscape: businesses' need to respond to the ongoing disruption of their pandemic-stricken supply chains and shareholder, and calls by activists and other stakeholders for accelerated green and governance change that are driving M&A strategy across a broad range of industries."

Erik O' Connor, Senior Associate in our London Corporate practice, adds: "As we emerge from two years of the pandemic, some of the uncertainties affecting valuations and risk appetite, as well as the capacity of businesses to focus on strategic M&A, appear to be fading, but increased antitrust scrutiny and a potential market correction may place strain on deal timing and deliverability."

1

CLIMATE AND ESG WILL BECOME AN M&A OPPORTUNITY

The 'wisdom of the crowd' has been only half-right. Instead of treating climate and other ESG considerations as pure risks to M&A transactions, 2022 will see a shift to viewing these as compelling M&A opportunities.

Richard Kim, Counsel in our Düsseldorf M&A practice, explains: "According to conventional wisdom, climate and ESG considerations are simply another layer of risk in M&A, and the vast majority of investors, companies and lawyers have approached these as they would any other transactional risk. An additional set of due diligence questions, a dash of disclosures, documents in a data room, and voilà: either the boxes are ticked or they are not.

While it is certainly true that both climate and ESG issues can pose real risks, a better way of looking at transactions will be to treat climate and ESG as opportunities. This is not simply about doing the right thing, this is now a business imperative. In the past couple of years, we have seen vast amounts of capital come together for financing (US$130 trillion pledged under the Glasgow Financial Alliance for Net Zero alone) and profound business cases for companies pursuing climate- and ESG-driven strategies. These strategies, when executed well, can and will have an outsized impact on a company's bottom line.

Some level of a market correction may be on the cards in 2022, and this would put climate- and ESG-driven companies to the test. As the tides of investor exuberance pull back across international markets, companies that are not the 'real deal' on these issues will be penalised, while those that are will be winners. We expect a flight to higher-quality, and more climate and ESG forward assets and that, as a result, these considerations will increasingly become drivers of more M&A market activity."

Christine Kim, Associate in our New York Corporate practice, adds: "In the United States, when companies and investors pursue and evaluate potential partnerships or acquisitions, or consider potential divestitures, the anticipated impact on a company's ESG proposition will feature prominently in M&A decision-making.

Notwithstanding the focus on ESG among boards, management, shareholders, stakeholders, and regulators, there are still fundamentally diverging views on ESG: not only what it is but also why, how, and when to, and who should, address related challenges. This divergence impacts ESG data and disclosure. In the M&A context, those companies and investors that are aware of this potential ESG disconnect will be better positioned to seek alignment with counterparties on, for example, how ESG-adjacent practices, activities, and risks are assessed in due diligence, how ESG performance is factored into valuation and pricing, and how ESG integration issues are managed and synergies are captured post-close."

EARLY-STAGE TECH INVESTMENT WILL MAKE NEW CONVERTS

2

While the volume of investment in technology start-ups continues to grow, early-stage investments are also attracting an ever-broader range of investors. On the financial investor side, venture capital funds are competing with private equity houses, sovereign wealth funds, hedge funds, mutual funds and pension funds for stakes in hot start-ups, attracted by sometimes excellent returns. Cash-rich, established tech companies that have traditionally invested in early-stage technology for strategic growth are increasingly acting like financial investors. In addition, SPACs are offering new opportunities for exits, and more non-tech corporates are being drawn to investments in technology to open up new digital channels or embrace emerging opportunities such as NFTs and the metaverse.

Brian Harley, Technology M&A Consultant in our Hong Kong practice, explains: "The diversification of investors in technology start-ups not only means more investors to drive up valuations — it also changes the dynamics of investments in emerging technology firms. Founders have a greater range of options, which improves their bargaining power. The availability of financial investor funding means more opportunities to grow without being 'gobbled up' by big-tech firms, although foregoing the mentoring opportunities provided by specialist VC firms or the commercial opportunities provided by strategic investors also comes at a cost.

For more traditional VC investors, the competition from new classes of financial investors means a greater need for them to differentiate themselves and emphasise what they bring to their investees beyond their cash investment.

For the new entrants, technology investments offer an attractive asset class, but they need be wary of entering a high-risk game, where the established players are on their home turf—especially in a world of sky-high valuations where pricing can be driven more by future opportunities, rather than current fundamentals.

In 2022, we predict that early-stage technology will continue to go from strength to strength in attracting this broad range of investment, as an asset class that has truly come of age."

3

INCREASED REGULATORY SCRUTINY WILL HAMPER MORE DEALS

Obtaining merger control and FDI clearances on international M&A deals is becoming increasingly complex and uncertain. Many governments saw the COVID-19 pandemic as a reason to expand the scope of existing FDI regimes, and antitrust agencies are going further than before in looking for reasons to block deals or impose remedies.

Chandralekha Ghosh, Senior Associate in our Global Antitrust practice, explains: "We are now seeing competition authorities across the world heavily scrutinising deals involving nascent or potential competitors. The recent decision by the UK Competition and Markets Authority to unwind Facebook (now Meta)'s acquisition of Giphy is a sign of things to come. The trend will likely be reinforced by the European Commission's recently adopted policy of accepting jurisdiction over deals not notifiable in any EU member states, which caught 2021's acquisition by Illumina of pharma business GRAIL, another business with no European sales.

There has also been explosive growth in the number of FDI screening regimes in recent years—most recently the UK's new national security regime, which came into force this month. In addition, the focus of existing regimes is expanding significantly, with deals running into trouble on new grounds like access to personal data (ByteDance/TikTok in 2020) and food security (Couche-Tard/Carrefour in 2021). As a result, deals now face many more FDI reviews, and those reviews are less predictable than they were a couple of years ago.

This year, we expect that as more filings are required and more issues are being scrutinised, clearance timetables will extend, which will impact long-stop dates and overall deal timelines. Businesses will need to consider deals from the increasingly multifaceted point of view of antitrust and FDI regulators, which will need to guide the careful tailoring of regulatory conditions precedent and risk-shifting provisions in M&A agreements."

4

SUPPLY CHAIN FORCES WILL DRIVE INVESTMENT STRATEGIES

The supply chain crisis resulting from COVID-19 disruption, together with a boom in demand and a shortage of workers, equipment and space, are being experienced around the world. This crisis is now driving re-shoring deals and supplier M&A across many sectors, including consumer products and industrial materials, as businesses seek out greater operational resilience. One example from 2021 is Intertape Polymer Group Inc.'s acquisition of Nuevopak Global Limited. As well as enhancing its protective packaging business and strengthening its product bundle, the deal aimed to secure dispensing machine supply, vertically integrate its paper converting operation, and expand market share.

Jay Liang, Counsel in our Shanghai Corporate practice, says: "In the past couple of years, we have seen companies trying to strengthen their global supplier footprints and attempting to ensure greater supply chain security through M&A transactions. The integration of vertical links in the supply chain is a means to improve certainty of delivery and reduce production costs. In 2021, we saw the considerable impact that supply chain constraints had on downstream industries such as the global semiconductor industry. 2022 could be a hot year for supply chain deals as more companies aim to gain greater control over operations."

5

DIGITAL INFRASTRUCTURE WILL GO FROM STRENGTH TO STRENGTH

In the past year, we have seen supply-side M&A being driven by traditional telecoms providers continuing to free-up their balance sheets and bring in new sources of funding. On the demand-side, financial investors are increasing their exposure to assets that will underpin society's digital future but that also have strong infrastructure-like characteristics.

Jonathan Dillon, Senior Associate in our Infrastructure team in London, says: "Digital infrastructure deals are booming, driven by the rapid acceleration of changes in how we live and work. However, investors face scrutiny from governments and regulators who increasingly view such assets as critical national infrastructure. Newly introduced national security and FDI regimes will need to be carefully navigated by investors seeking to expand in this space. In 2022, we expect that we will see deal sizes increase as early movers cash-out from their initial growth and ownership of towers, data centres and fibre networks is aggregated to create cross-border regional portfolios. We could see more deals like American Tower's 2021 partnership with CDPQ and Allianz to create ATC Europe."

Michael Ng, Senior Associate in our Singapore Corporate practice, adds: "The burgeoning middle class in the Asia Pacific region, coupled with the social restrictions brought in as a result of the pandemic, are contributing to increased consumer and business demand for online and digital services. Many businesses have been quick to respond to this change in consumer and business preference and investors are similarly catching on to the advantages of assets in this sector, which combine the stable returns associated with infrastructure assets and the potential upsides that come with a flourishing industry."

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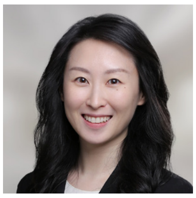

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