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M&A

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Contributing Editors

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Simpson Thacher & Bartlett LLP

Panoramic Next: M&A explores the most impactful recent developments in global mergers and acquisitions and how legal practitioners have responded to them. Through a series of interviews with seasoned experts in key jurisdictions, it offers useful insights across all stages of M&A transactions.

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USA

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ABOUT

Eric Swedenburg is a partner at Simpson Thacher & Bartlett LLP, where he is the global head of the firm's mergers and acquisitions practice and a member of the executive committee. Eric focuses on representing companies in a wide range of mergers, acquisitions and divestitures, spin-offs, joint ventures and other significant corporate transactions. He also regularly counsels clients on shareholder activism, corporate governance and general corporate and securities law matters. In addition to his work with public companies and special committees of boards of directors, Eric has extensive experience in advising non-public corporations, private equity firms and financial advisers in both US domestic and cross-border M&A transactions across a number of industry verticals. Some of his recent transactions have included representing Paramount Global in connection with its merger with Skydance Media, LLC at a combined company enterprise value of approximately US\$28 billion, Beacon Roofing in its sale to QXO for approximately US\$11 billion, Karuna Therapeutics, Inc in its acquisition by Bristol-Myers Squibb Company for approximately US\$14 billion, Change Healthcare in its US\$13.8 billion sale to UnitedHealth Group, SiriusXM in its US\$3.5 billion acquisition of Pandora, Mars in its strategic partnership with KIND, Genesee & Wyoming in its US\$8.4 billion sale to affiliates of Brookfield Infrastructure and GIC, and The Mosaic Company in its US\$2.5 billion acquisition of Vale Fertilizantes. Other clients of his have included Ingersoll Rand, AGCO, BellRing Brands, TransUnion, McKesson and Vodafone Group. Among other recognitions of his work, in 2009, *The American Lawyer* named him 'Dealmaker of the Year.' He is a frequent commentator on M&A issues.

Q&A

WHAT TRENDS ARE YOU SEEING IN OVERALL ACTIVITY LEVELS FOR MERGERS AND ACQUISITIONS IN YOUR JURISDICTION DURING THE PAST YEAR OR SO?

With a total of US\$857.5 billion deals involving a US target announced, the first half of 2025 is the strongest period for US deal-making in the past three years and a 13 per cent increase compared to year-ago levels (US\$813.1 billion). Coming into the new year from a relatively quiet second half of 2024, the prevailing market sentiment was exceptionally optimistic. That optimism quickly gave way to concern, largely as a result of tariff announcements that marked a sharp change in the prevailing global trade environment. Deal activities immediately fell flat: during the first quarter of 2025, a combined value of US\$386.2 billion deals announced involved a US target, a 14 per cent dip from the 2024 level and the slowest opening quarter for US M&A in two years. Yet stillness didn't last. Businesses soon re-emerged with an emboldened willingness to deal with global economic uncertainty. Rather than retreat, they leaned in. The second quarter of 2025 saw a rebound of 22 per cent in the total value of US deals quarter-to-quarter, with the number of total announced deals also increasing by 16 per cent. Despite continued headwinds such as tariff escalations, some renewed inflationary concerns and geopolitical tensions, total deal value in the second quarter surged 51 per cent compared to year-ago levels. Yet overall, US deal-making accounted for 43 per cent of worldwide M&A activities

during the first half, down from 51 per cent a year ago and the lowest percentage for US deal making since the first half of 2022.

One highlight in the first half of the year is the prominence of blockbuster deals (ie, deals with over US\$10 billion). These large-scale transactions have been on an upward trajectory in the past few years and in 2025, they are officially back to the forefront. This is evidenced by the decreasing number of deals that accompanied a rising level of deal activities: the number of deals in the first half of 2025 (5,982 deals announced) decreased by 13 per cent from the first half of 2024 (6,899 deals announced), underscoring the strong performance of mega deals. Eight out of 10 top global announced M&A deals involve a US target or a US acquiror, and as the antitrust enforcement environment continues to shift back to what practitioners were used to before the changes unleashed during the Biden administration, these mega deals will continue to drive up M&A activity levels in the US.

WHICH SECTORS HAVE BEEN PARTICULARLY ACTIVE OR STAGNANT? WHAT ARE THE UNDERLYING REASONS FOR THESE ACTIVITY LEVELS? WHAT SIZE ARE TYPICAL TRANSACTIONS?

In the first half of 2025, the technology sector emerged as a frontrunner. A total of 1,889 deals were announced, amounting to US\$221.9 billion in total deal value. While the number of deals remained roughly the same compared to the latter half of 2024, deal value in the technology space soared by 75 per cent, reflecting the revival of headline technology M&A deals. On a year-over-year basis, technology M&A activities increased by 14 per cent in volume and 27 per cent in value, which appears largely driven by a surge of interest in AI infrastructure, cybersecurity, and cloud-based enterprise solutions. The arms race for AI capabilities has created immense pressure on incumbents and challengers to expand their presence in AI quickly, and as a result, many are turning to acquiring over building as the preferred strategy.

Financial M&A also delivered impressive results. In the first half of 2025, a total value of US\$327.9 billion of financial deals was announced. As bank regulators like the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency both demonstrated somewhat more receptiveness towards bank deals, more and more regional banks are looking at consolidation as the path to achieving operational efficiency. Compared to the first half of 2024, the total value of bank M&A deals rose by 46 per cent, with the total number of deals up by 9 per cent.

Energy and power deals remained strong. With US\$176.5 billion of deals announced in the first six months, energy and power deals increased by 53 per cent compared to the latter half of 2024. Federal initiatives supporting LNG exports and natural gas infrastructure, coupled with heightened attention to energy security, have spurred activities in oil and gas. Further, we have seen an increasing appetite for power companies as generative AI and data centres have significantly driven up electricity demand. Flush with US\$334 billion of infrastructure-focused dry powder at the end of 2024, private equity sponsors have been actively pursuing energy assets, further fuelling the growth in M&A activities within the sector.

By contrast, deal activities in the healthcare space remained relatively low in the first half. As pharmaceuticals and equipment suppliers were deterred by federal spending cuts and

tariff impacts, healthcare deals decreased by approximately 16 per cent in both total deal value and number of deals compared to the first half of 2024.

WHAT WERE THE RECENT KEYNOTE DEALS? WHAT MADE THEM SO SIGNIFICANT?

Recent deals to note during the first half of the year include: Charter Communications' announced acquisition of Cox Communications for US\$35.3 billion in stock and cash, Holcim's completed US\$33.7 billion spin-off of its North American business Amrize and Alphabet's all-cash acquisition of Wiz for US\$32 billion, SoftBank's US\$30 billion follow-on investment in OpenAI, and Constellation's announced acquisition of Calpine for US\$27.3 billion in stock and cash. Three of these five large deals were landmark technology transactions, with two aimed at bolstering AI capacity. These transactions illustrate how AI has evolved into a critical catalyst for M&A activities, drawing attention from strategic acquirers, private equity sponsors and foreign investors.

IN YOUR EXPERIENCE, WHAT CONSIDERATION DO SHAREHOLDERS IN A TARGET TEND TO PREFER? ARE MERGERS AND ACQUISITIONS IN YOUR JURISDICTION PRIMARILY CASH OR SHARE TRANSACTIONS? ARE SHAREHOLDERS GENERALLY WILLING TO ACCEPT SHARES ISSUED BY A FOREIGN ACQUIRER?

In the US, consideration can be composed of stock, cash or a combination of both, and which form of consideration shareholders prefer is very much dependent on the circumstances. For a target's shareholders, receiving cash has the benefit of locking in a value certain, often at a premium price to the current value. Obtaining shares as a portion of the consideration, however, allows the target's shareholders to benefit from any synergies resulting from the transaction. Additionally, if a majority of the consideration is composed of shares, then the receipt of shares may be free of taxes.

Acquisitions by non-US buyers of US public companies are generally entirely for cash. In situations where the non-US buyer is truly under non-US control, US shareholders may be reluctant or even not permitted by their investment guidelines to hold shares of non-US entities. Furthermore, under the US federal securities laws, public company shareholders in the US may only receive shares as consideration if the shares are issued by a company registered with the Securities and Exchange Commission (SEC) and that are publicly tradable. This means that a non-US company that is not already a SEC-registrant must become registered in the US prior to the closing of a purchase of a US public company if shares are used as part of its consideration. The time and expense of this process is a limitation on the ability and desire of non-US purchasers to use shares as consideration for purchasing a US public company.

HOW HAS THE LEGAL AND REGULATORY LANDSCAPE FOR MERGERS AND ACQUISITIONS CHANGED DURING THE PAST FEW YEARS IN YOUR JURISDICTION?

Key recent legal and regulatory developments in the US include:

- The 'America First Investment Policy' memorandum (the Memorandum) issued by the White House on February 21, 2025. This Memorandum expands the CFIUS regulation for both inbound and outbound investments. Specifically, it introduced a 'fast track process to facilitate greater investment in US businesses from ally and partner sources'. In the

meantime, the Memorandum signals a tightening of inbound rules for investors from 'foreign adversaries' [and forecasts restrictions on outbound US capital into sensitive sectors abroad](#).

- A new set of updates to the Hart-Scott-Rodino Form and Instructions went into effect in February 2025, [which increases the required disclosure for deals in the US that require an antitrust clearance](#); and

- The approach to antitrust review under the current administration. Unlike their predecessors, the two major antitrust regulators, the US Department of Justice (DOJ) and Federal Trade Commission (FTC), are both actively expediting faster merger reviews and emphasising strong divestiture standards. The regulators have also shown their willingness to accept structural remedies to resolve antitrust concerns and appear less prone to litigating novel antitrust theories.

DESCRIBE RECENT DEVELOPMENTS IN THE COMMERCIAL LANDSCAPE. ARE BUYERS FROM OUTSIDE YOUR JURISDICTION COMMON?

The US economy has shown remarkable resilience in 2025 while facing stagnant interest rates, ongoing trade frictions, and geopolitical uncertainty. While monetary policy has kept financing costs elevated, corporate earnings and consumer demand have remained relatively strong, supporting a healthy pipeline of strategic transactions.

Despite uncertainties regarding trade relationships and the expansion of CFIUS oversight, the US remains one of the most attractive destinations for foreign investments. Buyers from outside the US, notably from Canada, Europe, Japan and selectively from China, have long been important participants in the American dealmaking scene. In particular, cross-border deals involving technology, energy and power, and healthcare sectors continue to gain traction, reflecting the potential of the US economy and foreign investors' confidence in the business environment in the US.

Looking ahead, federal government policy shifts are anticipated to recalibrate inbound investment flows, at least in the near term. While the government appears prepared to promote swift entry for investment from US allies and friendly countries, it has also pledged to intensify scrutiny over investments from some foreign jurisdictions, most notably China. Specifically, the Memorandum confirms that the US will keep itself open for foreign investments from allies and partners in AI and other emerging technologies, will expedite environmental review for inbound investment exceeding US\$1 billion, and will continue to welcome and encourage non-controlling passive investments from foreign persons, among others. On the other hand, the current administration intends to place broader restrictions on Chinese investments in US technology, critical infrastructure, healthcare, agriculture, energy, raw materials and other sectors. [It also calls for CFIUS to fortify its authority over greenfield investments by Chinese affiliates](#).

ARE SHAREHOLDER ACTIVISTS PART OF THE CORPORATE SCENE? HOW HAVE THEY INFLUENCED M&A?

Shareholder activism in 2025 remains a durable feature of the corporate landscape. Despite global economic uncertainty, a challenging M&A environment and an evolving regulatory landscape, [activists have been quite busy during the first half of the year](#), with 70 new campaigns launched across the country, representing a 13 per cent year-to-year increase.

Activism in the US takes a variety of forms, as is the case in other geographies, and the activist campaigns typically include one or more of the following themes: M&A actions, board representation, strategy and operations reviews, and capital allocation. With respect to M&A actions, one regular aspect of the activist playbook in the US is the urging of companies to put themselves up for sale or to put up for sale portions of their business. In addition to the transactions directly stimulated by activists, many companies have engaged in transactions even before an activist has acquired a stake in that company to forestall such an appearance by an activist. Regardless of your view as to the tactics and merits of shareholder activists, they have certainly contributed to M&A activity over the years, and that is expected to continue in the US market.

Whereas shareholder activism has sometimes been deployed to achieve environmental, social and governance (ESG) objectives, we have seen activists dialling back ESG-related proposals in 2025, as such policies have at times come under a political spotlight. In May 2025, the FTC and DOJ filed a Statement of Interest backing the Attorney General of Texas's antitrust lawsuit that certain asset managers engaged in anticompetitive conduct [by virtue of their passive ownership of stock in coal companies](#). Wary of inviting heightened scrutiny, large institutional investors might increasingly opt to side with the incumbent rather than the dissidents, especially on ESG matters, [which might bring a chilling effect on shareholder activism related to the topic, at least in the near term](#).

TAKE US THROUGH THE TYPICAL STAGES OF A TRANSACTION IN YOUR JURISDICTION.

First contact regarding a possible transaction can either take place between intermediaries or from CEO to CEO. Who makes the initial approach really depends on the particular situation, the nature of the industry and whether there is a pre-existing relationship between executives of the two companies involved.

Diligence of non-public information is permissible if a confidentiality agreement is entered into between the parties. Typically under US law, no disclosure of discussions regarding a possible transaction needs to be made until a definitive agreement with respect to a transaction is executed by the parties, so long as the parties have maintained a position of not making any public comment about a possible transaction while negotiations were taking place.

One issue that often arises at the time of entering into a confidentiality agreement is whether the potential seller will agree to grant to a prospective buyer the exclusive rights to negotiate for a period of time. US sellers have the right to grant a period of exclusive negotiations. However, the boards of directors of most US public companies being sold have a fiduciary duty to show that they engaged in an appropriate process intended to obtain the highest price reasonably available for that company. Some kind of check of the market by the prospective seller is a common way to fulfil that duty. Thus, there is a tension

between granting an exclusive right of negotiation and being able to fully assess the market for potential purchasers.

Any potential purchaser of a US public company needs to be aware that lawsuits are frequently filed in connection with acquisitions of US public companies. These lawsuits can be filed in the court of the state where the company is incorporated to allege either that the target company's directors have violated their fiduciary duties in connection with agreeing to a sale of the company or, in the case of cash transactions, to initiate an appraisal action in which a shareholder seeks a judicially determined fair value for its shares. Alternatively, a lawsuit can be filed in a US federal court alleging inadequate or misleading disclosure in the documents concerning transactions that have been filed with the SEC. The majority of US companies are incorporated in the state of Delaware, and the Delaware courts have sought to severely limit the number of lawsuits filed making specious claims that directors have violated their fiduciary duties, as historically the overwhelming number of these suits were simply nuisance suits. Appraisal claims had risen sharply a few years ago, but recent Delaware court decisions have similarly curbed such suits.

ARE THERE ANY LEGAL OR COMMERCIAL CHANGES ANTICIPATED IN THE NEAR FUTURE THAT WILL MATERIALLY AFFECT PRACTICE OR ACTIVITY IN YOUR JURISDICTION?

While recent trade negotiations have the potential to reinvigorate cross-border deal flows, volatility in broader trade policies remains a prime concern. The increased use of tariffs for a number of policy objectives will continue to inject some degree of uncertainty and complexity into M&A transactions. While businesses are trying to minimise exposure to global trade friction, dealmakers have demonstrated a growing preference for deals with a regional focus.

With respect to antitrust, we have seen a noticeable shift towards a more commercially attuned enforcement environment. While still in its early days, the agencies charged with reviewing the competition impact of deals have evidenced more of a willingness to engage with businesses and negotiate settlements. An example would be the FTC's recent approval of the US\$35 billion merger between Synopsys and Ansys, [which is the first settlement of a merger-enforcement action by either anti trust enforcement agency under the current administration](#). This marks a departure from the posture of the previous administration, which was more prone to litigation.

Sponsor-backed buyouts are showing signs of recovery, but they have not yet returned to the post-pandemic levels. High interest rates and tepid capital markets remain a headwind to exit activities, although there is reason to believe that both headwinds will abate during the balance of 2025 and into 2026. In the meantime, private credit has been emerging as a critical force in providing acquisition financing. When traditional banks feel constrained in their underwriting capacity, private lenders have increasingly been stepping in to provide solutions, especially for middle-market deals. Private credit is expediting the execution of transactions and, more importantly, reshaping negotiation dynamics in M&A transactions.

WHAT DOES THE FUTURE HOLD? WHAT ACTIVITY LEVELS DO YOU EXPECT FOR THE NEXT YEAR? WHICH SECTORS WILL BE THE MOST ACTIVE? DO YOU FORESEE ANY PARTICULAR GEOPOLITICAL OR MACROECONOMIC DEVELOPMENTS THAT WILL AFFECT DEAL SIZES AND ACTIVITY?

The macroeconomic headwinds that weighed on dealmaking in 2024 are unlikely to vanish quickly, yet we are confident that M&A activity will keep building momentum in the year ahead. Trade negotiations remain front of mind, but monetary policy may prove to be the needle mover. If history is any guide, if and when the Fed begins to reduce rates that should provide a catalyst for deal activity.

On the regulatory front, we are seeing antitrust regulators are more open to resolving competition concerns with a transactional approach, which could unlock the next wave of blockbuster deals. In the meantime, private equity firms are sitting on record dry powder and sponsors are facing mounting pressure to put that capital to work. As borrowing costs are high, we expect to see more creative deal structures designed to spread the risks and bridge valuation gaps, such as minority investments. These tools also give sponsors liquidity options while the IPO market heals.

In short, the market is quickly adapting. Dealmakers have stopped waiting for perfect conditions and are now pricing volatility into their ticket for entry. The mindset shift, combined with ample capital and regulatory pragmatism, set the stage for a busier and bolder year ahead.

Sectors to watch include:

- **Technology:** AI will remain a driving force for M&A activities. Following headline deals like Alphabet's acquisition of Wiz, SoftBank's investment in OpenAI and Meta Platforms' acquisition of Scale AI, we expect more acquisitions of traditional tech giants expanding into the AI space as well as vertical integration between AI infrastructure providers and AI applications.
- **Financials:** the US banking industry remains among the most fragmented in the world. With regulators giving greenlights to combinations in this space, banks will likely pursue M&A as a means to tap into new markets and capabilities and to defy the pressure coming from fintech.
- **Energy and power:** activities in the energy and power space will likely increase as the administration prioritises energy security. As the ban on LNG has been lifted under the current administration, we will likely see more natural gas-focused M&A. The growth in demand from data centres also calls for reliable and scalable power solutions. While certain tax policies have impacted clean energy projects in the near term, dealmakers remain interested in renewable M&A and will continue to hunt for the right opportunities.

The Inside Track

WHAT FACTORS MAKE MERGERS AND ACQUISITIONS PRACTICE IN YOUR JURISDICTION UNIQUE?

The size and sophistication of the US market makes it a hotbed for a host of complex and large transactions. The US market is supported by a well-developed financial system that provides a variety of financing options for M&A, including PE, venture capital and debt markets. The presence of numerous large corporations with global reach and the high volume of PE firms contribute to a competitive environment that further contributes to the robust US M&A marketplace.

Another distinctive aspect of US M&A is the cultural approach to deal-making, which tends to be both aggressive and creative. The US market, for example, is known for its openness to hostile takeovers and shareholder activism, which can influence the direction and outcome of M&A deals. The litigious environment of the US, where there is the potential for lawsuits to arise from shareholders, regulatory bodies and other stakeholder challenges transactions also adds a degree of uniqueness to US M&A, including in the context of helping boards of directors properly fulfil their fiduciary obligations in connection with a sale of a company. Furthermore, the tax implications of M&A transactions are an important consideration, with US tax laws influencing deal structures and the attractiveness of certain transactions.

WHAT THREE THINGS SHOULD A CLIENT CONSIDER WHEN CHOOSING COUNSEL FOR A COMPLEX TRANSACTION IN YOUR JURISDICTION?

First, does the counsel listen and communicate well with the client? Given the often fast-paced environment of M&A in the US, the client should consider the counsel's willingness and ability to communicate effectively and rapidly. This includes the ability to explain complex legal concepts in an understandable way, so the client and counsel can execute on their objectives.

Second, is there a complete team of specialist and colleagues who work together seamlessly to help the client achieve its goals? Complex transactions require a team of specialists and strong corporate counsel to manage the deal accordingly.

Third, has the counsel demonstrated the ability to adapt and learn? While deep expertise is critical in M&A transactions, clients should also keep in mind that as industries evolve, so do the legal frameworks that govern them. This adaptability ensures that the company's legal strategies are always forward-thinking and aligned with current industry standards.

WHAT IS THE MOST INTERESTING OR UNUSUAL MATTER YOU HAVE RECENTLY WORKED ON, AND WHY?

Representing Beacon Roofing Supply in its US\$11 billion acquisition by QXO was a standout. This transaction started as a hostile tender offer by QXO, and it was heading towards a proxy contest before the parties chose to pursue a negotiated transaction. Additionally, we have recently closed Paramount Global's merger with Skydance Media, LLC; yet another example of how legacy media players are leaning on technology-driven M&A activities to stay competitive in today's changing world.

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