VIDEO ROUNDTABLE DISCUSSION
Presented by Donnelley Financial Solutions

Best Practices in Cross Border Dealmaking

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The global mergers and acquisitions landscape may have become a bit trickier with the unexpected British vote in June to exit the European Union. Still, cross-border M&A – deals that require sensitivity to other cultures and negotiating savvy, as well as astute number crunching – will continue to be a major force driving international business expansion.

A group of experts delved into many of the factors that make for successful multinational transactions during a recent roundtable panel, “Best Practices in Cross-Border Dealmaking.” The Deal and Donnelley Financial Solutions co-produced the Video Round Table.

Panelists included Lyle Wilpon, managing director and head of U.S. M&A for BMO Capital Markets, the investment-banking subsidiary of Bank of Montreal; Gregory Bedrosian, managing partner and CEO of investment bank Redwood Capital Group; and Michael Dorf, a partner in Shearman and Sterling LLP’s M&A group. Daniel Perez, director of business strategy at Donnelley Financial Solutions served as moderator.

“The things that oftentimes make or break those transactions are not just the numbers, but the way in which you get the deals done and the way in which you’re appreciative of your audience,” Wilpon stressed.

A cross-border transaction is “one part finance and traditional deal-oriented topics,” added Bedrosian. “It’s one part diplomacy to take into account some of the cultural elements and it’s one part social psychology to play into different negotiating styles.”

Just the way in which deals are hammered out can bedevil cross-border M&A. For example, Bedrosian noted that Americans “tend to negotiate in a more linear style, logical steps” as opposed to the French, who “will operate in a much more philosophical negotiating style trying to articulate why this should be rather than moving forward.” Then there are the Russians, he said, who negotiate “in extremes by design to try to flush out deal points.”

Dorf also cited what he called “market practice differences” pointing to the U.S. and U.K., where the language may be the same and cultures similar, but expectations differ. In the way deals get structured, the U.S. is extremely buyer-friendly, while Britain – along with most of the rest of Europe – is seller-friendly. That means levels of recourse and indemnities vary widely as well.

Term sheet markups, for example, can reflect those differences. “Your U.S. buyer client will say, ‘Those guys are nuts. Nobody ever does things this way,’ while the European seller will be thinking that the U.S. proposal is completely off market and unrealistic,” Dorf explained.

By the same token, the Chinese are moving more toward the West when it comes to commitment letters and term sheets, and away from the days when letters were eight-page documents “with really no teeth to it,” Dorf said. “That’s allowed Chinese bidders to come in with almost the same level of certainty that you have with a western bidder.”

What’s the deal with Brexit?

The Brexit vote hasn’t significantly altered the deal environment, panelists stressed. “It’s not like we’re seeing people pulling material adverse clauses and blowing up deals because of the vote,” Dorf said. “Your typical deal timeframe even with the regulatory view is going to be six to nine months. I think people are expecting that nothing is going to happen on Brexit before the end of 2018.”

He cited Japan’s SoftBank, which announced in July that it would pay a whopping $32 billion in cash for Britain’s highest market cap technology company, the chip designer ARM, based in Cambridge.

Dorf believes that London will continue to be a global center for cross-border deals that may have nothing to do with Britain, even after Brexit. He said his firm is working on a deal in which an Asian company is buying a “continental European” company and “the default is, OK, we’ll do it in London.” That won’t change.

But those looking at deals down the road should be aware of potential complications with acquisitions that include both Britain and the EU, panelists agreed. Dorf cited multiple antitrust provisions and a divergence of privacy laws as examples. He noted that English court judgments are enforceable in the EU – for the moment.

What happens after Brexit takes effect is unclear and financial services and insurance are two sectors that will be closely scrutinized. As Bedrosian pointed out, “London is potpourri of different nationalities. That’s one of the strengths of the financial community there.” But after Britain leaves the EU, he said, “there will be uncertainty of who can work in the U.K. easily and not.”

Wilpon added that more generally, human resources, “managing your people,” also will be weighed in a post-Brexit world.

For the time being, cross-border deal flow continues to be robust, and that includes Europe. Bedrosian cited the $1.2 billion acquisition in July of...
Odeon & UCI Cinemas Group by AMC Holdings Inc., the American theater chain controlled by Chinese behemoth Dalian Wanda Group Co. based in Britain, Odeon & UCI operates theaters across Europe.

Asia continues to be a major source of outbound deal flow, and in multiple directions. Chinese companies look to Africa, while Japanese businesses investigate South America, Wilpon suggested.

There’s a shift in the types of deals involving Chinese-related M&A, Dorf explained. For many years, Chinese companies were focused on acquiring natural resources and inputs that could feed China’s domestic economy. More recently, however, there’s been an attempt by many Chinese companies to move up the value chain and become more global. They want to use M&A to obtain technology and products, not only for their home market, but to sell offshore as well, said Dorf, adding that Chinese government policies encourage “Chinese buyers to kind of look around the world for assets.”

However, Dorf continued, Chinese buyers remain sensitive to U.S. regulatory hurdles, notably Committee on Foreign Investment in the United States, or CFIUS, an interagency panel that reviews acquisitions by foreign entities with security implications. “You’ll see particularly with the state-owned Chinese businesses, there’s been much more of a focus on the European market,” Dorf said.

**Canada and Japan Play Major Roles**

Japanese M&A is almost entirely outbound, Bedrosian noted. In 2015, outbound transactions totaled about $100 billion, while inbound totaled only a tenth as much. The reasons are obvious. Japan’s domestic economy has barely moved for years, so strong, well-capitalized Japanese companies look abroad for expansion. Bedrosian cited two $3 billion deals this year: the acquisition in May by NTT Data of Dell subsidiary Perot Systems and the purchase a month earlier by Asahi Group Holdings of Peroni, Grolsch and Meantime beer brands from Anheuser-Busch InBev.

Elsewhere, Canada is also a major force in cross-border deals, and “there’s been a lot of activity between U.S. and Canada, both northbound and southbound,” said Wilpon, with “currency and economic growth needs” driving that activity. He cited the $28 billion purchase of Houston-based pipeline company Spectra Energy Corp. by another pipeline operator, Calgary-based Enbridge Inc. The stock deal was announced in September.

But Canada-related M&A isn’t necessarily limited to U.S.-Canada transactions, Wilpon stressed. “We’ve got so much capital in the Canadian pension funds that is looking for acquisitions outside,” he said, calling this a “huge driver” of cross-border activity.

Elsewhere, Israel is a country “punching above its weight,” said Dorf, with a number of Israeli companies now listed on NASDAQ. And, Bedrosian added, the U.S. itself remains an enormously attractive market for cross-border M&A from companies all over the world.

All this points to the growing connectivity of the world’s economy. “Whether you’re dealing with a cross-border transaction involving companies in different jurisdictions or you’re dealing with a domestic transaction, you can no longer disconnect from the global economy in which you’re competing,” concluded Wilpon.