The Deal

VIDEO ROUNDTABLE 2017

HOW PROTECTIONIST ATTITUDES IMPACT THE M&A MARKET

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Trade and economic protectionism is rearing its ugly head in countries around the globe. And that includes the U.S. However, with some notable exceptions, these protectionist sentiments and populist rhetoric have yet to seriously impact cross-border dealmaking. Indeed, a country like Great Britain, in light of Brexit, appears ever-more welcome of investments from abroad.

A high-powered panel explored the global investment environment in light of populist outpourings during a recent roundtable "How Protectionist Attitudes Impact the M&A Market." The Deal and Intralinks co-sponsored the Webcast.

Panelists included **Paul Downs**, partner at **Hogan Lovells**; **Curt Moldenhauer**, partner and U.S. leader acquisitions practice at **PwC**; and **Mark Brady**, managing director and global head of M&A at **William Blair**. **Matthew Porzio**, vice president of strategy and product marketing at **Intralinks**, served as moderator.

"I'm very, very bullish on cross-border deals," Moldenhauer said. Drivers for these transactions, including technology and availability of information "transcend national regimes," he added.

"I don't think we're going to undo the global economy as a result of protectionism," Downs added. "People are pretty good at recalibrating and working these things out."

Increased deal flow is a global phenomenon. From 1985 until 2012, global trade liberalized and trade volumes were in excess of GDP growth, Moldenhauer explained. Since then, he said, global "trade has gone down, GDP growth is still going up." The conclusion: "Cross-border M&A is going crazy."

Historically, protectionism is more related to trade, Downs explained. "What we're talking about here in this context is slightly different," he said. "It has more to do with the influx of foreign ownership into the economy, the influx of foreign capital, so instead of tariffs and quotas and so forth, we're talking about maybe subtler tools for the government to play with."

The U.S. is still the preferred venue for global dealmaking, the panelists agreed. "It's the destination of choice these days," Moldenhauer said. "Safe market, a lot of good assets."

But what some buyers see as opportunity, others see as unsettled. Take all the anti-immigration sentiment. "If you're going to be buying a company in the U.S., you might want to send somebody over to run it," Downs explained. With the chaos that took place after Trump initiated his travel bans, Downs said he believes, "that may cause some pause as you sort of think, 'well, how it going to sort out? Maybe I don't put the money on the table right now.' "

Domestically, one of the biggest concerns is with the Committee on Foreign Investment in the U.S. CFIUS involves a voluntary filing by a foreign investor who is buying an American asset that may have security or infrastructure concerns. Of the perhaps 2,000 inbound deals, about 5% get reviewed under CFIUS. However, "these are rather slippery concepts so people get concerned," Downs said. "If you don't file, you're at risk that the deal could be undone by presidential tweet," he said. "There's a lot of concern about what actually is going to happen behind the screen here," he said, calling the process "opaque."

As Downs explained, "if you're buying a simple manufacturing facility somewhere that's not near a military based, you're probably not really going to worry about CFIUS, that won't be an issue. But with technology increasing the focus in M&A, that maybe changed the flavor and changes the game."

Political fallout, whether it be CFIUS or, say, Congressional tongue-wagging, can discourage several categories of foreign buyers, including sovereign wealth funds from the Mideast and elsewhere.

Then there's the issue of Mexico and whether the Trump administration would tax Mexican goods entering the U.S. Brady described a "German client that has a significant facility in Mexico" that is exporting to the U.S. "That's giving buyers some pause because it's very hard to value that business when you don't know what the rules of engagement are going to be," he explained.

Panelists expressed concern about Chinese buyers in the U.S. but not because of anti-China rhetoric coming from Washington. Rather, it stems from Beijing's on-again, off-again attempts at reining in offshore spending by Chinese companies. "We can expect continued controls around capital flight in China, in general, so that's going to affect the deal flow," Moldenhauer said.

China's Dalian Wanda Group, for example, in March was forced to terminate its $1 billion purchase of Dick Clark Productions after failing to secure Chinese regulatory approval.

"Chinese buyers are going to have a harder time," Brady said. "There's so much skepticism out there about whether or not the Chinese bidders are going to be able to complete" a deal.

American buyers abroad may have a different issue to deal with, when it comes to imagery. "If I were advising the CEO of a U.S. company on a policy, I would not say to go public on pushing for a U.S. investment abroad," Downs counseled. It "begins to look like they're exporting jobs, exporting investment. and you would not want to be the subject of a presidential tweet."

He advised a kind of a "general public relations outreach strategy of how you're going to sell your deal because there are so many players who can come in on a regulatory or government side and create problems for you."

Populism elsewhere is muddying the waters when it comes to M&A.

The British, for their part, according to Downs, "want to put up a sign, 'open for business, come invest,' at this point to allay fears about what happens at Brexit, although there's still a lot of things up in the air."

While British authorities may be welcoming investors, Britain's place in the investment sun is far from certain, after the Brexit referendum. "It's a little bit like the U.S. election, [where] you have to wait and see what [are] the actual policy outcomes of some of the rhetoric that was taking place in the buildup to the actual election," Brady said. He concluded, however, that Britain is "going to remain a great place for free and open M&A activity." And, he added, "Some European companies may need to set up UK assembly post-Brexit."

On the other hand, some Continental Europe countries, such as France, may not be such a great place for dealmaking, despite governments that may embrace investments. That's because of "a worsening of the labor hurdles that you have to go through in a lot of European countries," Moldenhauer explained. He cited not only national policy, but also "rules at the provincial level and even at the city level."

Brady cited a business his company helped to sell that had a facility in France. "The current owner was on a plan of trying to take those jobs to Guangdong, China, and ultimately just no one could get comfortable with the exit liabilities and just how difficult in France especially it is to fire people and restructure."

In China, a multilevel approval system can be a major hindrance as well, the panelists said. In addition, some 60 sectors continue to be highly regulated, Moldenhauer said. "Sometimes it's a national security standard, sometimes it's a local standard, but just assume that a deal in China needs to be approved by somebody," he explained, adding that "foreign clients are increasingly frustrated by other issues in China" as well. These included "very, very opaque" licensing procedures.

Add to that the competitive nature of the Chinese marketplace itself. "This is not China of 30 years ago where you basically could go in and take over a [joint venture] once it was profitable," Moldenhauer warned. Chinese partners may be helpful in overcoming regulatory and other hurdles, but "whether it's papered that way or not, the Chinese actually want the asset at some point."

The Indian business environment, on the other hand, is really improving, Moldenhauer said, with reforms on several fronts. He cited two: A now-unified bankruptcy code, and a goods and services tax that is replacing a complicated system of indirect taxes.

What's more, Moldenhauer added, while certain sectors in India require formal government approval, most deals are now automatically approved. However, he cautioned, "It's not a perfect story by any stretch."

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