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Key Trends in European Private Equity M&A

Despite the subdued nature of Global M&A in 2023 — with commentators observing that activity levels are the lowest they have been for a decade — there remain some discernible key trends in European private equity M&A — particularly around the theme of consolidation. Many of these trends will echo those in the USA, but Europe does come with a different set of challenges. The Fried Frank M&A team in London is exceptionally well placed to guide private equity clients through the nuances of executing sophisticated M&A transactions in Europe. Here are some of the current trends we have seen from working on transactions with our clients across Europe.



James Renahan
Partner, London
M&A and Private Equity
james.renahan@friedfrank.com
T: +44.20.7972.9603



Ian Lopez
Partner, London
M&A and Private Equity
ian.lopez@friedfrank.com
T: +44.20.7972.9178



Andrew Rearick
Partner, London
M&A and Private Equity
andrew.rearick@friedfrank.com
T: +44.20.7972.9608



Rachel Wolfenden
Partner, London
M&A and Private Equity
rachel.wolfenden@friedfrank.com
T: +44.20.7972.9201

#1 The Return of the Public to Private

Traditionally, the private equity community in Europe has been cautious about public to private transactions (particularly for London listed businesses where the regulatory framework can create significant deal uncertainty for sponsors). At the moment, listed assets are generally considered to be undervalued and attractive to US-based sponsors, particularly those who can make the most of the strength of the dollar. While there may still remain a gap between the premium PE sponsors are willing to pay and what target boards are willing to accept (as seen in Apollo's unsuccessful approaches to both THG Plc and John Wood Group Plc in the first half of 2023), sponsors seem to be increasingly emboldened to at least try.

A trend throughout the first half of 2023 has also been for lower value public to private transactions to be executed by mid-market sponsors (such as the take private of the law firm DWF by Inflexion and IK Partner's investment in the radiology and pathology business Medica), although appetite for larger transactions remains (as evidenced by the bid by EQT for Dechra Pharmaceuticals).

#2 Increased Governmental Scrutiny

As is the case in the US, Europe is seeing increasing government intervention in cross-border transactions. The UK's National Security & Investment Act — which entered into force in January 2022 — is now a significant consideration for investors looking to acquire UK-based assets, and is just one example of the new foreign direct investment regimes that have become applicable across the European Union (the expansion of which is being actively encouraged by the European Commission). Similarly, the EU rules on foreign subsidy regulation — aimed at preventing non-EU investors (including those in the US and UK) from distorting competition in the internal European market through the provision of subsidies — came into force in October 2023. In addition, merger control

authorities are taking an increasingly broad view of their remit in Europe, similar to the US. The UK CMA is increasingly creative as to how it exercises its discretion to scrutinise transactions (recently, PE buy and build strategies in sectors such as veterinary practices, dentists and elderly care have come under the CMA microscope). Similarly, vertical mergers in sectors such as technology and healthcare are now in the sights of European merger control authorities (such as Microsoft/Activision in the UK and the EC prohibition, and the subsequent record fining, of the Illumina/Grail merger). We have also started to see divergent outcomes from the UK, EU and US merger control authorities when considering the same merger.

#3 Strategic M&A Amongst Asset Managers

There is currently a general theme of consolidation in European M&A (which has also led to some of the increased governmental intervention referenced above), but this is especially visible in the asset management industry. Some of the most significant private equity M&A deals over the last 12 months in Europe have been between asset managers (such as the acquisition of Kreos Capital by Blackrock and the recent investment in IK Partners by the French headquartered Wendel Group).The drivers for this M&A include acquiring greater AUM, diversifying strategies and gaining access to broader geographies.

#4 Alternative Routes to Liquidity

With slow IPO markets and difficult conditions for general M&A activity, European sponsors are, in keeping with the trend in the US, using a variety of alternative routes to achieve liquidity. As in the US, the most common liquidity solution pursued by sponsors is a GP-led secondary transaction involving the sale of one or more asset to a continuation vehicle controlled by the same sponsor. However, we are also seeing NAV loans and preferred equity structures gaining increasing "market share" among fund liquidity structures to return funds to investors and/or provide capital to their underlying assets.

#5 Mind the Gap

Europe remains a popular investment geography for US capital and, in the long term, the increasing presence of US deal makers on the continent may lead to a shift in transaction terms. However, for a US investor looking to do deals in Europe, the long-standing differences in M&A deal terms remain something to be acutely aware of.

European M&A terms with an emphasis on pre-signing buyer due diligence, 'locked box' pricing mechanisms, deal certainty (for example, no MAC provisions or other walk away rights) and limited post-completion recourse for the buyer are usually considered to be more seller friendly than those on equivalent US transactions. Translating US deal structuring and terms into a concept that is recognisable in the European market is something that takes considerable experience in transatlantic M&A. Whilst, the differences in certain geographies within the continent of Europe require M&A advisors steeped in cross-border European M&A such as the Fried Frank M&A team in London.

A legal partner such as Fried Frank who truly understands deal terms on both sides of the Atlantic and is experienced in guiding clients through the ever-increasing regulatory environment is key to smoothly executing transatlantic M&A.