

Market Intelligence

M&A 2020

Global interview panel led by
Simpson Thacher & Bartlett LLP

Publisher

Edward Costelloe
edward.costelloe@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Business development manager

Dan Brennan
dan.brennan@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

Cover photo: shutterstock.com/g/
photofriday

This publication is intended to provide general information on law and policy. The information and opinions it contains are not intended to provide legal advice, and should not be treated as a substitute for specific advice concerning particular situations (where appropriate, from local advisers).

No photocopying. CLA and other agency licensing systems do not apply. For an authorised copy contact Adam Sargent, tel: +44 20 3780 4104.

© 2020 Law Business
Research Ltd
ISBN: 978-1-83862-417-0

Printed and distributed
by Encompass Print
Solutions

M&A 2020

Global Trends	3
Africa	9
Argentina.....	25
Austria.....	37
Czech Republic.....	51
Egypt	65
Germany.....	77
Japan.....	93
Mexico	107
Netherlands	119
Norway.....	129
Russia	147
Switzerland	167
Taiwan.....	181
United Kingdom.....	199
United States.....	211



Switzerland

Christoph Neeracher specialises in international and domestic M&A transactions (focusing on private M&A and private equity transactions, including secondary buyouts, public-to-private transactions and distressed equity), transaction finance, corporate restructurings, relocations, corporate law, general contract matters (eg, joint ventures, partnerships and shareholders' agreements) and all directly related areas.

He is experienced in a broad range of national and international transactions, both sell and buy side (including corporate auction processes), and in assisting clients in their ongoing corporate and commercial activities. Additionally, he represents clients in litigation proceedings relating to his specialisation.

Philippe Seiler has broad experience in M&A transactions in various industries (inter alia, manufacturing and engineering, IT, watch, real estate and logistics). In addition to large-scale transactions and takeovers, he focuses on small and medium-sized M&A transactions, private equity transactions, management buyouts and outsourcing projects. Furthermore, he specialises in regulatory matters in the fields of life sciences and healthcare.

Raphael Annasohn has broad experience in international and domestic M&A transactions in various industries focusing on private M&A and private equity, corporate reorganisations and restructurings as well as corporate law and general contractual matters, in particular shareholders' agreements. Furthermore, he specialises in the fields of venture capital and start-ups and assists clients in their ongoing commercial activities.

1 | What trends are you seeing in overall activity levels for mergers and acquisitions in your jurisdiction during the past year or so?

The overall Swiss M&A market saw strong activity in 2019 despite the ongoing economic and geopolitical uncertainty. In our view, the following were the key factors for this positive trend:

- first, Switzerland's stable political and regulatory environment with barely any investment restrictions in combination with a high number of potential investment opportunities;
- second, low interest rates and generous borrowing conditions facilitating the funding of acquisitions; and
- third, transformation and portfolio reshaping generating substantial M&A activity.

Although deal pipelines promised a solid start to 2020, the covid-19 pandemic has impacted the Swiss economy as elsewhere (Switzerland's GDP fell by 8.2 per cent in the second quarter of 2020, after decreasing by 2.5 per cent in the previous quarter), alongside the Swiss M&A market, bringing many planned and ongoing transactions to a halt and causing a decline in both the number of deals and the overall transaction volume. In the first half of 2020, the number of M&A deals with Swiss involvement (130 deals during the first half of 2020) decreased by 28 per cent when compared on a year-on-year basis to the figures in 2019 (180 transactions) and so did the overall transaction volume, which dropped by 68.2 per cent to US\$27.7 billion (US\$87.2 billion in the first half of 2019).

The speed that the markets recover and activity is resumed will be crucial. Although an outlook is difficult, we are fairly optimistic that the Swiss M&A market will recover rather quickly for various reasons. To begin with, the foundation for the strong M&A activity in 2019 remains in place – particularly the stable political environment, the low interest rates and the high number of potential investment opportunities in Switzerland. Moreover, the industry structure of the domestic economy helped keep the decline relatively mild in comparison with other countries. The pharmaceutical industry, for example, even increased its turnover in the first two quarters of 2020. Finally, the trend of transformation and portfolio reshaping will most likely be accelerated due to the impact of the pandemic leading to substantial M&A activity.



“We are fairly optimistic that the Swiss M&A market will recover rather quickly.”

2 | Which sectors have been particularly active or stagnant? What are the underlying reasons for these activity levels? What size are typical transactions?

As 2020's best-performing industry in Europe, technology, media and telecommunications (TMT) has been seeing very high levels of M&A activity, accounting for a fifth of all Swiss transactions in the first half of 2020. The covid-19 pandemic has also seemingly only accelerated the general digitalisation trend. Most companies have digitalised at least part of their business, more and more people are using digital channels and will probably keep doing so after the pandemic, and remote working has become customary.

Another industry that stands out is the healthcare sector, where M&A activity levels remain at a high level thanks to the attractiveness of growing revenues in the Swiss healthcare sector and the many buy-and-build opportunities providing for interesting investment opportunities.

3 | What were the recent keynote deals? What made them so significant?

Insight Partners, a private equity firm, purchased Veeam Software AG from the Canada Pension Plan Investment Board in March 2020 for US\$5 billion, which was Switzerland's largest transaction in the first six months of 2020. Further noteworthy examples in the past year underlying the predominant M&A activity in the TMT industry include La Mobilière's acquisition of a 25 per cent stake in Ringier AG, a Swiss media group founded in 1833, which took place in February 2020, and the sale of the Swiss broadcasting group 3 Plus Group to CH Media, one of the largest media companies in Switzerland (October 2019).

Another standout transaction in the Swiss private M&A was the sale of the department store operator Magazine zum Globus AG, alongside eight associated prime real estate properties by Migros-Genossenschafts-Bund, to a joint venture of SIGNA and CENTRAL Group for over US\$1 billion.

4 | 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?

Generally, consideration may either consist of cash, shares, securities or a combination thereof. Cash settlements tend to be more frequent, as share deals are usually only accepted by the seller if the shares given as consideration are readily



marketable, as is the case especially for listed companies. Tax considerations also typically play an important role in determining the type of consideration that is eventually agreed upon.

The type of consideration accepted will, in each case, largely depend on the shareholders involved and their intentions, as well as on the specific transaction type and process.

5 | How has the legal and regulatory landscape for mergers and acquisitions changed during the past few years in your jurisdiction?

In the past few years, regulation has become a central strategic aspect of M&A deals. The complexity of the regulatory environment – and thus the requirements and costs for market participants – are increasing, while the strategic scope is getting smaller. Even if Switzerland is not a member of the European Union, EU directives play an important role.

An important amendment in Swiss corporate law implemented in November 2019 concerns the regime for the disclosure of the beneficial owner of shareholders

“Even if Switzerland is not a member of the European Union, the GDPR is directly applicable to all Swiss-based companies doing business in the EU.”

acquiring, alone or together with third parties, more than 25 per cent in a Swiss Company. These amendments removed some of the uncertainty surrounding the old rules regarding the reporting on beneficial ownership, which were introduced as part of the global effort to combat money laundering and the financing of terrorism as well as to facilitate international processes for the automatic exchange of information among tax authorities. Specifically, the amendments clarify that, where there is no beneficial owner (ie, no natural person exercising direct or indirect control over the acquiring shareholder by analogy with the consolidation rules of Swiss accounting law), which is frequently the case in private equity structures, the shareholder must make a negative declaration to this effect. Also, the new rules bring along a de facto abolition of bearer shares. After a transitional period and subject to a few exceptions, Swiss stock corporations will no longer be permitted to issue bearer shares and any bearer shares still outstanding by the end of the transitional period of 18 months will be converted into registered shares *ex lege*.

An example of EU regulations affecting the regulatory landscape in Switzerland is the General Data Protection Regulation (GDPR). Even if Switzerland is not a member of the European Union, the new guidelines are directly applicable to all Swiss-based companies doing business in the EU. In addition, EU companies are asking its Swiss business partners to be GDPR-compliant. Therefore, the GDPR has an impact on numerous Swiss-based companies. Accordingly, the Swiss lawmaker is already working on a reform of the Federal Act on Data Protection.

Two new acts addressing the financial markets regulation have entered into force in January 2020: the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA). Although primarily addressing the financial services industry, the FinSA in particular has become relevant in the context of certain M&A transactions, as it sets out rules regarding the duty to publish an issuance prospectus in the case of a public offering of securities. It specifies the required content of prospectuses, bringing the requirements in line with international standards and those already applied by the SIX Swiss Exchange for listing prospectuses and replacing the outdated rules of the Swiss Code of Obligations, which only required very limited disclosure. If, in the context of a public tender, securities are offered as consideration, this constitutes a public offering under the FinSA and generally requires the offerer to publish a FinSA compliant prospectus.

6 | Describe recent developments in the commercial landscape. Are buyers from outside your jurisdiction common?

Switzerland remains highly attractive for inbound investment with plenty of opportunity – notably small and medium-sized enterprises, which will need to deal with

succession planning over the coming years (estimated to be approximately 80,000), serve as particularly attractive targets for investors. The most active foreign investors in these transactions were from Germany and the United States, followed by the rest of Europe.

Specific restrictions that apply to foreign buyers are only limited. One such restriction is the Federal Law on Acquisition of Real Estate in Switzerland by Non-Residents (Lex Koller), which restricts the acquisition by foreigners of real estate properties that are not used for the permanent establishment of a trade, production or other businesses run in a commercial way, a craftsman's establishment or a free profession (non-commercial properties). In particular, residential properties and unbuilt land and generally properties not used for commercial purposes are subject to the Lex Koller.

7 | Are shareholder activists part of the corporate scene? How have they influenced M&A?

Traditionally, shareholder activism has not been a part of Switzerland's corporate scene, due to the rights of minority shareholders being quite limited. However, in recent years, there has been a significant trend of growing shareholder activism in Switzerland, as reflected globally and, especially more recently, in Europe. Compared with other jurisdictions, particularly the United States, the number of activist campaigns involving Swiss companies is still moderate. However, with more than 35 shareholder actions since 2010, Switzerland is a key European target for activist shareholders. Examples include:

- the settlement of the board of directors of gategroup Holding AG with RBR Capital Advisors during a proxy fight where the parties agreed on the composition of the board of directors;
- the involvement of Cevian Capital Ltd (5.34 per cent) and Artisan Partners Ltd (5.3 per cent) in ABB Ltd, which urged ABB Ltd to sell its power grid business to Hitachi Ltd, one of the largest transactions in 2018; and
- Knight Vinke, which plans to sue Alpiq Ltd over its payout to minority shareholders following the proposed squeeze-out merger with Schweizer Kraftwerksbeteiligungs-AG in June this year.

To sum up, shareholder activism is still a rather new phenomenon in Switzerland that primarily affects listed companies and is faced with numerous barriers by Swiss regulation. Companies at risk of becoming a target may nevertheless be well advised to implement a number of structural defences, as the adopted corporate law reform could further increase shareholder activism.



8 | Take us through the typical stages of a transaction in your jurisdiction.

The general procedure, as well as the different stages, vary substantially from one case to another, depending on, inter alia, the seller, the purchaser and the legal form of transaction envisaged (share deal, asset deal, mixed share and asset deal or statutory merger). Generally, however, a typical Swiss M&A transaction consists of the following stages.

In the preparation phase, the seller and its advisers prepare the sale documentation and marketing materials. This is followed by a marketing phase in which the seller's financial adviser, or less often the target's executive management, initiates first contact with potential bidders. The latter are then required to execute a non-disclosure agreement in order to receive further information in the form of an information memorandum. Thereupon, bidders may decide to make a non-binding offer, which is followed by the due diligence phase for selected bidders. In this stage, in addition to document review, usually management presentations take place and expert sessions are set up.

“In June 2020, the Swiss parliament passed a bill modernising Swiss corporate law.”

In a fourth phase (the negotiation, signing and closing phase), the parties negotiate and finalise the transaction agreement, which is usually drafted according to international standards. Upon completion of this process, the parties will sign the transaction agreement. As the closing of a Swiss transaction agreement depends on, among other things, the presence of the necessary governmental approvals and third-party consents, a certain lapse of time will normally pass between signing and closing, during which time the parties have to fulfil certain obligations and follow specific rules of conduct as set out in the transaction agreement. The form of the closing itself varies depending on the legal form of the target business and the form of the respective transaction.

Concerning the last phase (post-closing phase), the parties may have agreed on a non-compete clause for the seller or certain other obligations, such as the continuation of the business of the purchaser.

9 | Are there any legal or commercial changes anticipated in the near future that will materially affect practice or activity in your jurisdiction?

In June 2020, the Swiss parliament passed a bill modernising Swiss corporate law, which we expect to enter into force in 2022. The corporate law reform seeks to modernise corporate governance by enhancing shareholder rights and promoting gender equality in boards of directors as well as in senior management. It also replaces the provisions of the Ordinance on Excessive Compensation with only a few changes. Furthermore, it aims to facilitate company formation, makes capital rules more flexible and reforms the rules on corporate restructurings. Finally, it introduces certain disclosure requirements for commodity firms. The reforms concern Swiss corporate law in many areas, although most changes are modest. Nevertheless, Swiss companies should review these amendments in order to identify required changes in their governance. Also, they should assess whether they may benefit from the flexibility under the corporate law reform (eg, under the more flexible capital provisions or modernised decision-making by way of a virtual shareholders' meetings and written or electronic shareholders' resolutions).

Separate to the corporate law reform, but on the same date, the Swiss parliament adopted a counterproposal to the popular initiative on responsibility of corporations having their seat in Switzerland for violations of internationally recognised human rights and environmental standards.

10 | **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?**

Surrounded by the uncertainty of additional economic impact of covid-19 and with second waves of the pandemic emerging globally, it remains unclear how quickly markets will recover. But, although an outlook is difficult, we are fairly optimistic that the Swiss M&A market will recover rather quickly.

Christoph Neeracher

christoph.neeracher@baerkarrer.ch

Philippe Seiler

philippe.seiler@baerkarrer.ch

Raphael Annasohn

raphael.annasohn@baerkarrer.ch

Bär & Karrer Ltd

Zurich

www.baerkarrer.ch

The Inside Track

What factors make mergers and acquisitions practice in your jurisdiction unique?

Switzerland's stable political system, globally-orientated and liberal economy, highly skilled workforce and efficient legal environment, as well as a traditionally mild tax regime and relatively low bureaucracy, create an excellent environment, not only for private equity, but also for business in general.

What three things should a client consider when choosing counsel for a complex transaction in your jurisdiction?

Competence, deal experience and accessibility are certainly the most crucial for successfully completing complex transactions.

What is the most interesting or unusual matter you have recently worked on, and why?

Every deal naturally raises interesting and unique questions. We are very happy to have been involved in most of the private M&A key deals in Switzerland in 2019 such as:

- the purchase of Nestlé Skin Health by EQT;
- the purchase of Tertianum Group by Capvis;
- the sale of 3 Plus Group to CH Media;
- the purchase of 2'800 Telecom Towers from Salt by Cellnex;
- the purchase of 25 per cent stake in Ringier by Schweizerische Mobiliar; and
- the sale of Magazine zum Globus AG to a joint venture of SIGNA and CENTRAL Group.

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

Led by Simpson Thacher & Bartlett LLP, this *M&A* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most significant cases and deals.

Covid-19 response
Sector focus
Shareholder activism
2021 outlook