M&A monitor

Q3 2019

Freshfields Bruckhaus Deringer

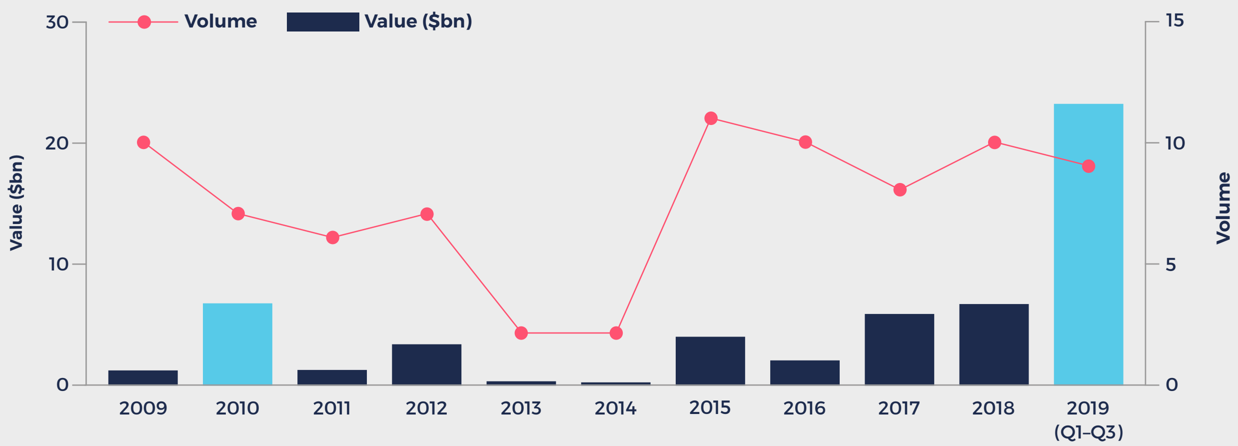
The Brexit effect, part one

UK public-to-private frenzy

Sometimes a spike in M&A activity is a sign of a healthy economy. But sometimes it's simply because market conditions throw off opportunities that are too good to ignore. So it is in the UK, where the pound's Brexit-driven collapse has had dealmakers raiding the public markets for bargains.

The main beneficiaries have been non-UK financial sponsors, whose acquisitions of UK-listed companies have accounted for a staggering $23.5bn-worth of M&A this year. To put this in context, over the past decade the previous high was $6.79bn (and that was for a full year). Overall, foreign buyers are behind seven of the 10 biggest bids for companies with a primary listing in London this year, six of which were announced in just eight weeks from the end of June.

Acquisitions of London-listed companies by foreign financial sponsors, 2009–2019



10 biggest announced acquisitions of London-listed companies, 2019

Date	Target	Bidder	Nation	Value ($bn)
11/9	London Stock Exchange Group	Hong Kong Exchanges and Clearing	Hong Kong	**37.26**
27/7	Just Eat	Takeaway.com	Netherlands	**6.07**
31/1	RPC Group	Berry Global International Holdings	USA	**5.71**
19/3	Inmarsat	Apax Partners	UK	**5.67**
28/6	Merlin Entertainments	Berkeley Bidco	Denmark	**5.66**
19/8	Greene King	CK Noble (UK)	Hong Kong	**5.56**
25/7	Cobham	AI Convoy Bidco	USA	**4.91**
18/7	Ei Group	TDR Capital	UK	**4.08**
22/8	Entertainment One	Hasbro	USA	**3.96**
20/6	BCA Marketplace	TDR Capital	UK	**2.90**

The Brexit effect, part two

Sterling leveraged market contracts

The pan-European leveraged debt market has remained supportive of large cap buy-out activity despite the continuing uncertainty around Brexit. Financial sponsors have been able to announce substantial underwritten LBO debt packages to support the take-private activity outlined above, including over £3.5bn for Kirkbi, Blackstone and CPPIB's consortium bid for Merlin, and £2.5bn each for Advent's bid for Cobham and the Apax Partners/Warburg Pincus offer for Inmarsat.

It is a notable feature of these financings, however, that they are not available to be drawn in sterling, which reflects a wider move towards euros and dollars as the 'reserve currencies' for funding large-cap LBO deals across Europe. While there are exceptions – over 50 per cent of the £1.25bn term debt supporting TDR Capital's bid for BCA Marketplace was raised in sterling – the UK's decision to leave the EU is hardly likely to reverse the trend.

The Brexit effect, part three

More complex merger control?

Finally, a no-deal exit has the potential to add a fresh layer of complexity to the merger control landscape. Any transactions that currently fall under the exclusive jurisdiction of the European Commission could face a parallel investigation in the UK if no final decision has been issued at the point the UK leaves.

After exit day, we can expect more transactions to be called in as the Competition and Markets Authority (CMA) flexes its muscles, particularly if those deals could affect UK consumers or involve key industries. The CMA has already shown its willingness to intervene in acquisitions involving tech and other strategic assets, while the difference in approach to merger reviews between London and Brussels will need to be carefully managed.

CFIUS publishes reform regulations

On 17 September the Committee on Foreign Investment in the United States (CFIUS), the interagency body charged with reviewing foreign investment for national security concerns, issued proposed regulations to implement the sweeping reform legislation passed by Congress last year. The move marks the beginning of a new era for deal-making in which CFIUS has significantly expanded authority, both in terms of the transactions it can reach and its ability to mandate filings.

Perhaps the most noteworthy aspect of the regulations is that they define the terms ‘critical technology’, ‘critical infrastructure’ and ‘sensitive personal data’. Consistent with the 2018 legislation, they would give CFIUS the ability to review *non-passive* investments in so-called ‘TID [technology, infrastructure and data] US businesses’, alongside its current authority to scrutinise any *controlling* investments even if they do not involve one of these companies. Among other things, the proposed regulations also define the circumstances in which a foreign government interest in a transaction will require a mandatory filing, and lay out a framework that will – at some point in the future – except certain investors from the committee’s expanded jurisdiction based on their country of origin. The proposed rules are now subject to a 30-day public comment period with the final versions due no later than February 2020.

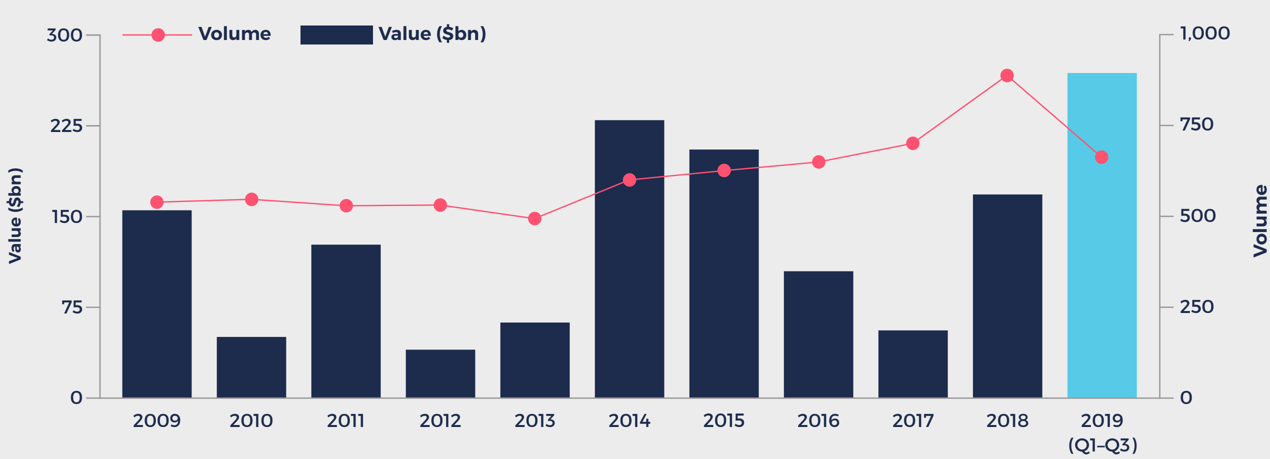
Pricing pressure drives pharma M&A

Q3 2019 saw yet another multibillion-dollar pharma deal, this time generics maker Mylan’s $24bn merger with Upjohn, Pfizer’s off-patent drugs division.

The value of pharma M&A through the first three quarters of 2019 already exceeds annual totals for any of the past 10 years, reflecting the powerful forces that are reshaping the industry. One of the strongest is President Trump’s pledge to cut the cost of prescription drugs for US consumers, who he argues have been subsidising healthcare provision in other countries for years. This pressure on margins – coupled with the high failure rate of R&D – is driving a wave of M&A as big pharma companies search for innovative new therapies to restock their pipelines.

At the other end of the market, manufacturers of generic and over-the-counter drugs are pursuing combinations that will drive efficiencies and expand their market share. Mylan/Upjohn is a good example of the latter, with Mylan seeking to use Pfizer’s Chinese distribution network to reach new consumers.

Pharma M&A – 2009–2019



GDPR brings cyber risk to the fore

When the EU's General Data Protection Regulation (GDPR) was introduced in May last year, commentators predicted the biggest headache for business would be in obtaining consumer consents. Now, almost 18 months on and with companies starting to be hit by significant fines for incidents involving customer data, the regulation's broader impacts are beginning to emerge.

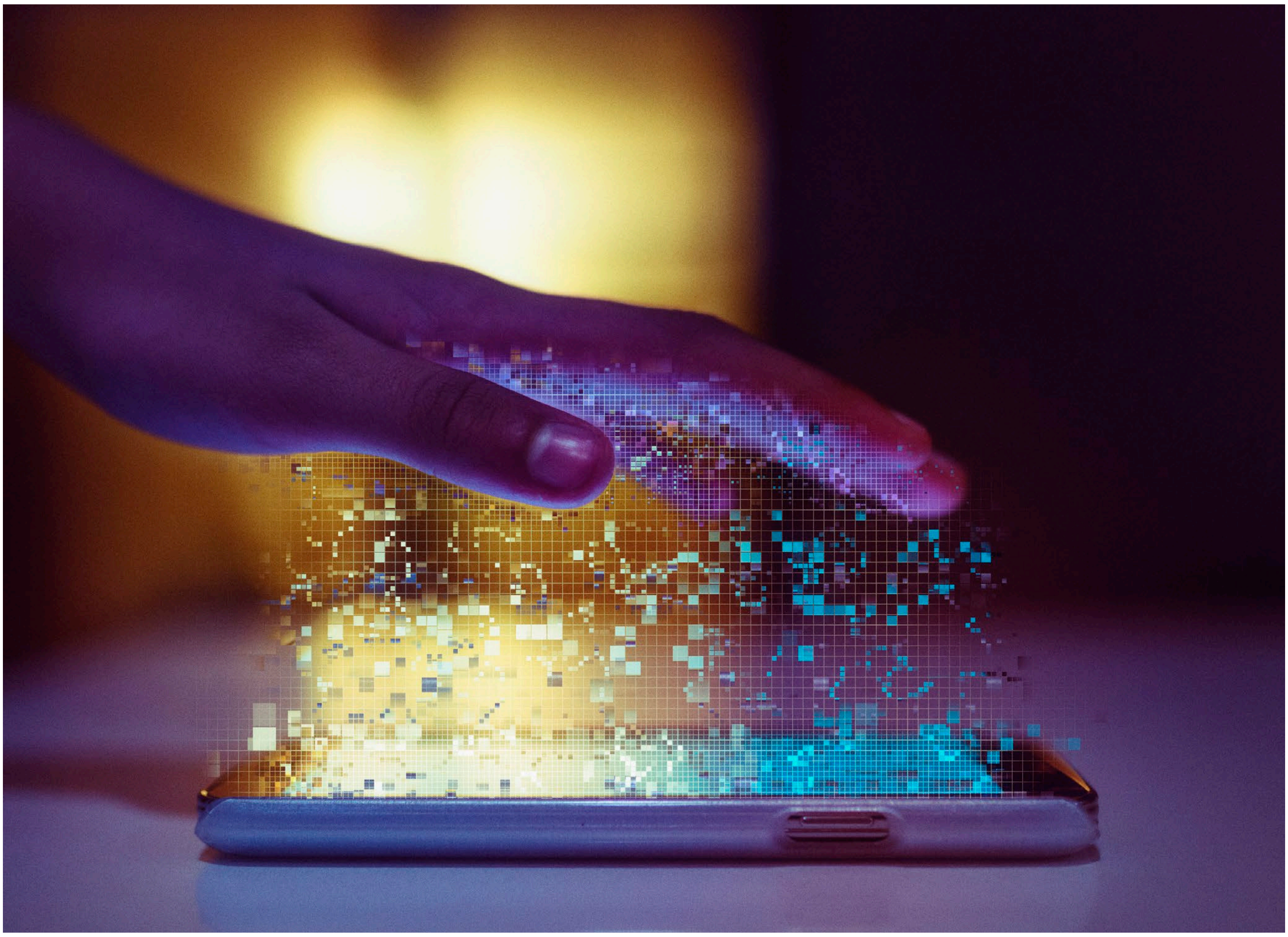
GDPR is all about making companies more accountable for the personal information they hold, and authorities including the UK Information Commissioner's Office have highlighted that this extends to conducting 'proper due diligence when making a corporate acquisition'.

But while companies are aware of their responsibilities under the new regime, actioning them can be a challenge. With data ever more valuable to profitable growth, competition for the best assets is intense. Auctions move at such speed that there is often little time to conduct forensic data privacy and cyber security checks. And in some cases, the sellers may not even know their systems have been compromised.

In response, deal terms are evolving to mitigate this risk. Buyers are seeking broader data and cyber warranties, and looking to allocate more of these risks to the seller in sale and purchase agreements. At the same time, new insurance products are coming to market that offer a degree of financial protection.

If a vulnerability is discovered before a deal is signed, it's possible to negotiate covenants requiring the target's shareholders to act before the transaction closes. However, buyers looking to fix problems in this crucial period must be mindful of 'gun-jumping' risk – antitrust authorities do not take kindly to companies exerting certain control over targets before regulatory approvals have been granted.

Once the deal closes, it's particularly important to ensure legal and IT security teams are working together to address any issues identified during the integration phase. A joint legal and technology taskforce can help manage cyber security and related regulatory and legal risks, while having an eye to avoiding a paper trail that could be used against the business if an issue arises further down the line.



Global M&A activity by sector, Q3 2019

Sector		Value $bn	%
1	Consumer*	112	17
2	Energy and power	68	10
3	Financials	90	13
4	Healthcare	68	10
5	Industrials and materials	71	11
6	Infrastructure and transport	31	5
7	Real estate	78	12
8	TMT	149	22
Total		**666**	

* Includes retail

Sector		Volume	%
1	Consumer*	2,169	21
2	Energy and power	655	7
3	Financials	1,115	11
4	Healthcare	730	7
5	Industrials and materials	1,969	19
6	Infrastructure and transport	250	3
7	Real estate	724	7
8	TMT	2,542	25
Total		**10,154**	

* Includes retail

Global M&A – value and volume

	Global*	USA*†	Europe*†	Asia-Pacific*†
M&A value	$666bn	$252bn	$202bn	$161bn
M&A deal volume	10,154	2,464	2,624	3,352

Top 3 deals this quarter

	Global	USA	Europe	Asia-Pacific
1	London Stock Exchange Group/Hong Kong Exchanges and Clearing $37.3bn	Upjohn/Mylan $24.6bn	London Stock Exchange Group/Hong Kong Exchanges and Clearing $37.3bn	CUB/Asahi Group Holdings $11.3bn
2	Refinitiv US Holdings/ London Stock Exchange Group $27bn	Viacom/CBS $19.9bn	Refinitiv US Holdings/ London Stock Exchange Group $27bn	UNIZO Holdings/Sapporo $5.2bn
3	Upjohn/Mylan $24.6bn	Celgene Corp – Otezla Product Line/Amgen $13.4bn	Bayer AG – Animal Health Business/Elanco Animal Health $7.3bn	Bitauto Holdings/ Hammer Capital Opportunities Fund and Tencent Holdings $3.9bn

Inbound

Global: most targeted markets	USA: markets investing into US companies	Europe: markets investing into European companies	Asia-Pacific: markets investing into Asia-Pacific companies
USA 2,464 deals $251.5bn	USA 2,015 deals $209.5bn	UK 581 deals $56.1bn	China 1,547 deals $61.2bn
UK 648 deals $103.0bn	UK 52 deals $9.9bn	Hong Kong 9 deals $37.3bn	Japan 559 deals $29.2bn
China 1,636 deals $68.3bn	Bermuda 1 deal $8.7bn	USA 225 deals $25.8bn	Hong Kong 204 deals $16.3bn

Outbound

Global: most acquisitive markets	USA: markets US companies are investing into	Europe: markets European companies are investing into	Asia-Pacific: markets Asia-Pacific companies are investing into
USA 2,484 deals $262.3bn	USA 2,015 deals $209.5bn	UK 519 deals $56.8bn	China 1,606 deals $67.8bn
UK 692 deals $71.8bn	Canada 86 deals $12.5bn	US 138 deals $16.6bn	UK 31 deals $40.6bn
China 1,598 deals $64.9bn	Germany 32 deals $8.3bn	Germany 271 deals $16.5bn	Australia 331 deals $22.7bn

* Deal value includes net debt of target

† Includes domestic deals

Source: Refinitiv