Why now is the time to get M&A-ready

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If the merger and acquisition (M&A) market of two years ago could be compared to a breathless sprint, today's deal-making environment is more of a stroll. The first quarter of 2023 saw deal volumes and values decline, and while Q2 marked an uptick, it was largely driven by several high-value transactions rather than signaling a true broader market resurgence. This was made apparent in Q3, which remained sluggish.

Yet, despite this slump in deal activity, there are still buyers and sellers eager to transact. So, what's going on in the current market?

Is it time, yet?

BLG's M&A advisory lawyers see one of the main hurdles to getting deals done in today's environment as agreement on valuations. Many sellers, having seen the prices paid for companies amid the pandemic, are not pleased that the heyday has passed and buyers and sellers seem to be further apart in pricing deals than ever.

Rising interest rates have introduced further complications, as the cost of debt mounts, making it more challenging for companies to transact. Add in the current inflationary environment, coupled with the risk of recession, and we end up with a climate of uncertainty that is stymying forward progress.

All of this has resulted in prolonged negotiation and due diligence periods, letters of intent that stand pending or under constant revision for more than a year and deals falling through at the eleventh hour. It seems harder than ever to get deals across the finish line and closing dinners and celebrations seem few and far between.

Reasons for optimism

That said, it is not all doom and gloom. With its stable economy and political climate, Canada remains a favoured destination for M&A. U.S. buyers, eager to stabilize their global supply chains, continue to look to their nearest neighbour for strategic acquisitions. Global companies in India, Australia, Europe and Asia are increasingly turning towards the Canadian markets as they seek out new pathways for growth. These trends have been predominantly welcome as, to date, they are bringing

complementary investment opportunities to the country, enhancing liquidity and augmenting the Canadian job market.

Certain industries have remained seemingly market proof and other industry-specific deals have also been on the rise. In a post-pandemic world, healthcare-related M&A remains robust with traditional organizations looking for ways to integrate biotechnology arms into their business models. Similarly, many private equity firms remain enthusiastic about emerging technology plays, particularly amid the current buzz around artificial intelligence (AI), agricultural technology and cleantech. There has also been a resurgence in the energy space as oil and gas companies take advantage of soaring prices to engage in acquisitions and consolidations.

This activity seems to suggest that while the M&A era that characterized the height of the pandemic may feel like a distant memory, it is bound to resurge. Although Q4 seems destined for more deal-discussion than deal-making, the transactional environment seems set to rebound late Q4 and early 2024 once interest rates settle (or are accepted as the “new norm” and integrated into strategic planning) and the pent-up demand dam bursts.

The case for advance preparation

So how can companies prepare for an eventual resurgence? BLG's M&A advisory lawyers would suggest—by being willing to think more creatively and lay the groundwork now, before the market once again takes off.

While many directors and corporate boards are cautious in the current economic climate and as a result recent developments in the Middle East, they cannot afford to sit on the sidelines for long. As the year comes to close without major announcements, boards may find themselves under pressure to return value to shareholders. By helping to get their companies M&A-ready, they can be well-positioned for an imminent purchase or sale once the time is ripe.

First off, management must be open to structuring deals differently than in the past if they hope to bridge the valuation gap. This likely translates into demonstrating a greater willingness to consider vender take-backs, earnouts and spin-offs. Similarly, private companies may need to get informed and comfortable with new deal terms and products that were once confined to the public company realm, including representation and warranty insurance and the potential for offering tax relief, liability relief, or indemnity claw backs. Aspiring buyers must continue to refine their M&A strategies, conduct sector screening and engage in due diligence now so they can move with speed once the market recovers. By identifying more dynamic ways to finance in advance, they can prepare themselves to act quickly, but prudently, as soon as opportunities arise.

In response, sellers must also prepare in advance. As due diligence becomes more rigorous, the expectations surrounding M&A transactions are mounting. Sellers who are not ready to provide fulsome and rapid responses to buyer queries may find themselves upstaged by better prepared competitors.

Companies will want to get their legal teams involved earlier in the process as well and rely on them for M&A advisory above and beyond pure legal advice. In fact, the best legal teams are strategic advisors too — helping clients set realistic expectations and get ready ahead of time so they will be fully prepared to transact once the market shifts.

The key right now is to remain patient. While the process has become extended and deals won't happen overnight, deals are still happening and the most resilient companies will likely be those capable of developing well-considered M&A strategies regardless of prevailing market cycles.

Your ambition. Our advice.

While the current M&A market presents its fair share of complexities, there is an undeniably optimistic undercurrent as companies remain focused in their pursuit of advancing their strategic goals and realizing their corporate ambitions. BLG is dedicated to being your strategic partner in achieving your business and growth objectives.

Rather than just bridging legal gaps, our multidisciplinary team has and continues to forge enduring relationships with both buyers and sellers, working alongside them in the long term to not only uncover opportunities, but also proactively manage potential risks. With our finger firmly on the pulse of ever-evolving market trends, we stand ready to provide you with the guidance necessary to unlock opportunities and position your enterprise for a future of success, today.

By

Graham King

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blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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