

FROM THE EDITOR

COVID-19 and M&A: The Crisis In Its First Weeks

In March 2020, the world changed. In the time between the previous issue of *The M&A Lawyer* and this one, the COVID-19 pandemic caused much of North America and Europe to go into lockdown. Whatever plans that companies had for acquisitions in spring 2020 are all up in the air.

During late March, *The M&A Lawyer* talked to lawyers in the U.S., Canada and the UK to get a sense of how the pandemic was affecting such areas as M&A, corporate governance, and antitrust. The lawyers said they were both heartened by signs of perseverance and cooperation but they also felt as if an ice age had hit without warning.

Grant McGlaughlin, a partner in the Toronto office of Fasken, described the mid-March period as “the brakes getting put on—becoming difficult to do negotiations and due diligence. Sellers are not going to come to market right now, and there are a number of deals are close to the finish line where buyers are having second thoughts, or using this time to renegotiate.”

“A lot of legal diligence can be done remotely but there’s still a lot of on-site diligence for a lot of companies, depending on the nature of the company,” he added. “A buyer may need to determine if there are environmental issues with a seller’s properties: there’s a bunch of different things they have to assess.”

In the first days of the crisis, when states and cities started issuing stay-in-place orders, “there were a number of deals in the pipeline and on the buy side where we had 30 to 40 person virtual due diligence calls,” one head of an M&A legal prac-

tice said. “Then everything basically came to a halt in the middle of last week [March 18-20]. That said, it’s a bit surprising there are still a fair number of deals out there, with term sheets being discussed. For many companies with deals in progress, the situation is currently similar to the 2008 financial crisis, in that there is now a tremendous focus on the ability or rights of parties to terminate a deal.”

Michael Sirkin, a partner at Ross, Aronstam & Moritz in Wilmington, DE, said he thought “one real challenge to come is, if as expected, a lot of parties that are currently negotiating transactions, who are between signing and closing, are now looking at their MAE provisions. Those are the kind of cases that, if they get litigated, they have to be litigated really fast. Determining how that kind of case could be accommodated right now could put some stress on the system. But it likely could be done—doing many depositions by video, for example, or having a skeleton crew [of lawyers] show up at the courthouse and talk to witnesses by video.”

Valuations and financing are now potentially deal-killing variables. “The leveraged loan markets and high-yield markets have dried up, so unless you’ve got a buyer with a significant amount of cash, or a private equity buyer, it’s going to be hard to pursue a deal at this point,” the M&A practice head said. “Most of those companies who are still engaged in discussions appear to hope that we will hit a peak in the next month and then there will be some greater sense of order in the capital markets.”

“There’s a significant focus on liquidity and for companies being able to forecast, if possible, what the liquidity needs of their business will be. My sense is the level of preparedness among compa-