M&A monitor

Q1 2019 results

Freshfields Bruckhaus Deringer

Hostile bids, CFIUS readiness, Asia tech and family succession

In this quarter's M&A monitor we focus on four themes influencing global deal activity: the rise of hostile bids, why the reach of the Committee on Foreign Investment in the United States (CFIUS) may extend further than you think, how Asia's tech giants sustain their phenomenal rate of innovation and why the region's family-owned businesses are set to spark a deal-making frenzy.

Activity in Q1 was down on Q4 2018, with transaction values 16 per cent lower at $655bn and volumes dropping 37 per cent to 7,525. Tech assets continue to be the most heavily targeted, comprising 22 per cent of total value ($144bn) and 26 per cent of total volume. Despite the overall fall there were some blockbuster deals announced in the quarter from Bristol-Myers Squibb/Celgene ($93.4bn) to Fidelity National Information Services/Worldpay ($42.7bn) and Fiserv/First Data ($38.7bn).

Robert Ashworth, Partner, discusses Q1 trends.

Sector		Value $bn	%
1	Consumer*	43	7
2	Energy and power	41	6
3	Financials	115	18
4	Healthcare	153	23
5	Industrials and materials	87	13
6	Infrastructure and transport	12	2
7	Real estate	59	9
8	TMT	144	22
Total		**655**	

*Includes retail

Sector		Vol	%
1	Consumer*	1,693	22
2	Energy and power	449	6
3	Financials	782	10
4	Healthcare	534	7
5	Industrials and materials	1,364	18
6	Infrastructure and transport	224	3
7	Real estate	560	7
8	TMT	1,919	26
Total		**7,525**	

*Includes retail

Is M&A becoming more hostile?

Whether it's the now-resolved tug-of-war between Barrick Gold and Newmont Mining or the battle of the sub-prime lenders Non-Standard Finance and Provident Financial, aggressive approaches have dominated the headlines in recent weeks. If it seems like deal-making is getting progressively more rancorous, that's because it is (at least in the West – hostile takeovers are very rare in Asia).

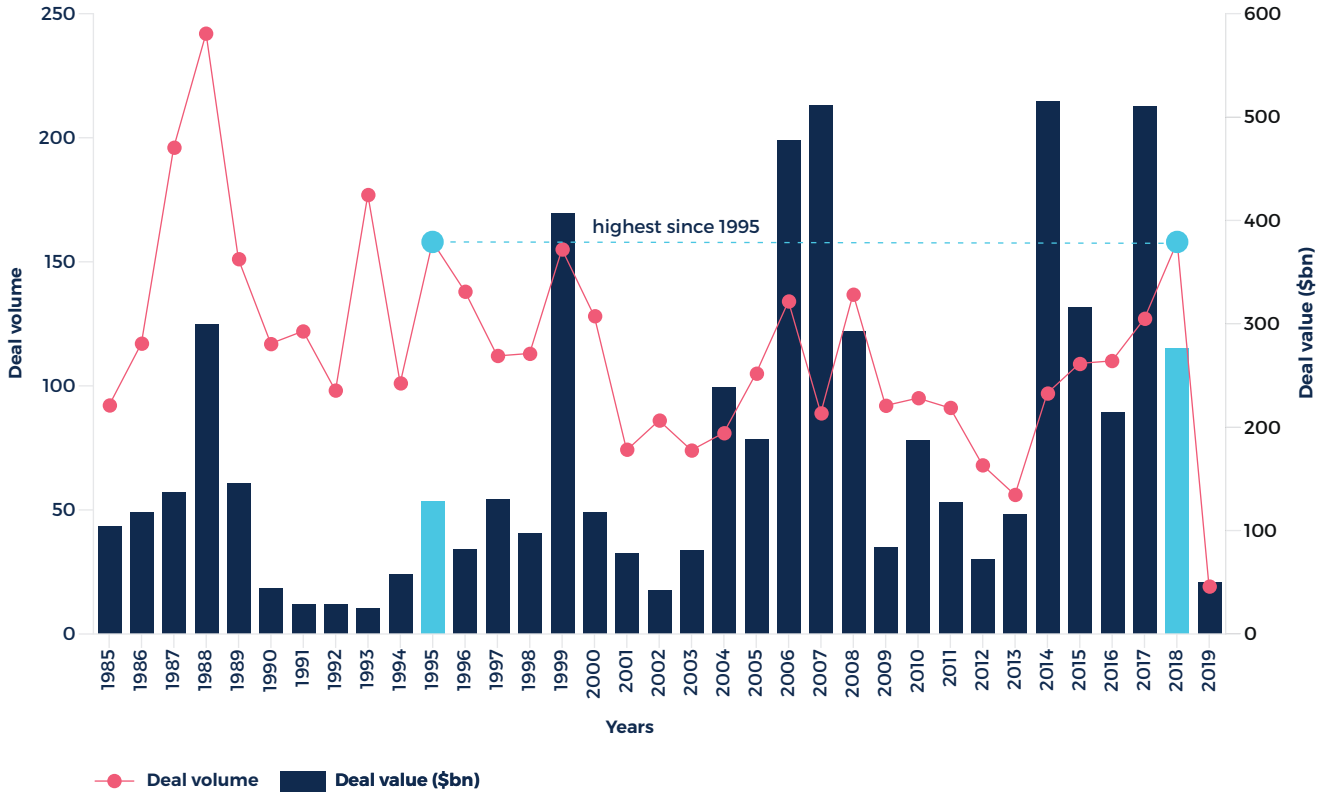
Global data shows that the number of unsolicited and hostile bids (where the bidder fails to take a target's initial 'no' for an answer) has risen for six successive years, hitting a near 25-year high in 2018. While it's true that the percentages don't change significantly from year to year – and nearly all approaches end in a negotiated solution – there is clearly a lot of this type of activity around.

One explanation could be the volume of funding looking for opportunities; after the available targets have been picked off, the more challenging assets are next in line.

It could also be a sign that potential buyers are feeling emboldened by market dynamics. The recent success of activist investors proves that aggression can yield results, and in a world of stagnant valuations, shareholders may be increasingly disinclined to side with a board's recommendation to reject. The fact that recent market volatility has left many actively managed funds looking to recoup their losses could be another factor; short-term investors can quickly change the composition of a shareholder register to the point where a deal may be more likely to win support.

With many analysts predicting continued choppy waters ahead, we can expect further hostility to follow. But any board thinking of following this path needs to be aware of the downsides. Kraft/Heinz has also been in the spotlight recently after unveiling a massive loss, slashing its dividend and announcing that the SEC is investigating its accounting practices. Many reports pegged the start of the slide to its failed hostile bid for Unilever in 2017, since when its shares have slumped by more than 60 per cent.

Hostile and unsolicited bids – 1985–2019



Foreign investment regulators get a little help from their friends

As readers of the M&A monitor know, many jurisdictions have recently tightened their investment review laws to limit the number of national businesses falling into foreign hands. The Committee on Foreign Investment in the United States (CFIUS), one of the highest-profile regimes, is now joined by the European Union, which has recently approved legislation enabling each member state to raise concerns about new investments in any other EU country.

Aimen Mir, former head of CFIUS who has joined Freshfields as a partner in Washington, believes that beyond this expansion is an equally important development – increasing international co-operation between authorities. 'The EU legislation confirms that the European Commission and individual member states can co-operate with countries outside the EU, mirroring recent legislation in the US that authorises CFIUS to share information with allies,' he says. 'As a result, it is no longer feasible to think about deal reviews solely on a country-by-country basis.'

The most obvious consequence is that the acquisition of a company with cross-border operations may not only be reviewed in each of those countries simultaneously, but that regulators may also be sharing information about the deal and their concerns with each other. It is therefore essential – in much the same way that sophisticated dealmakers began to assess antitrust risk over the last two decades – that companies are co-ordinated in their representations to regulators, and think about how to ensure complementary outcomes across jurisdictions.

'A less obvious consequence is that concerns may be raised by countries that have no direct review authority over the deal,' Aimen adds. 'For example, if an Asian company seeks to acquire a French manufacturer of a widget used in a defence system sold to the US government, the US may seek to have its say on the deal even if the target has no physical presence in the United States. Dealmakers, therefore, will need to have a sophisticated understanding of their target's customers, the potential uses of its products and services – and who may have a security interest in the success or failure of the acquisition.'

Minority report – feeding Asia's giants

Instances of Asian companies taking minority positions in other businesses in the region have grown sevenfold over the past decade, from 1,198 deals in 2008 to 7,689 last year.

In the last edition of the monitor we looked at how buyout funds are embracing their VC roots, with Warburg Pincus's subscription to Ant Financial's record-breaking funding round a prime example. For private equity, minority investments in Asia's tech titans offer the prospect of outsize returns purely because they are growing so fast (rather than via PE's usual tools of significant financial engineering and strategic reform). Ant's value has more than tripled since 2015 and fellow platforms such as Tencent, Go-Jek and Grab have followed similar trajectories.

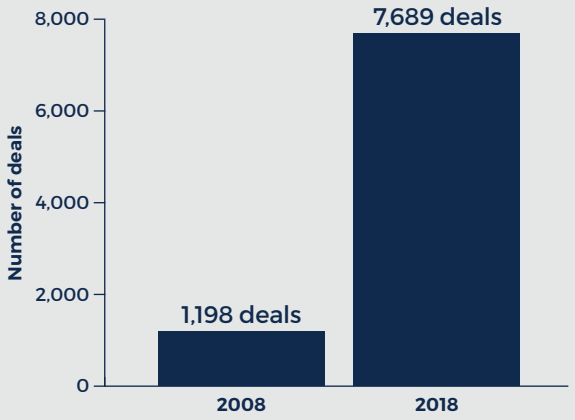
To sustain this level of growth, the platform giants have to innovate – and their deal activity shows how they are effectively outsourcing this effort to the market through a string of similar non-controlling, growth capital-style investments. Instances of Asian companies taking minority positions in other businesses in the region have grown sevenfold over the past decade, from 1,198 deals in 2008 to 7,689 last year. Much of the focus has been on tech, with volumes rocketing from 134 to 1,720 transactions over the same period.

Asian software and internet platforms are a primary driver, taking more minority positions last year than ever before. And China is the dominant investor, with more than a third of these deals involving PRC buyers (notable examples include Tencent's investments in Go-Jek, Momenta and Voyager Innovations, and Alibaba's stakes in the 1919 Wines & Spirits platform and Beijing Shengwei Times Technology). The trend shows no signs of slowing – in the first two months of 2019, more Asian software and platform businesses took minority stakes in the region's tech companies than in the entirety of 2008, 2009 or 2010.

The story in four charts

Minority investing between Asian companies is growing

Asian intra-regional minority investments, 2008–2018



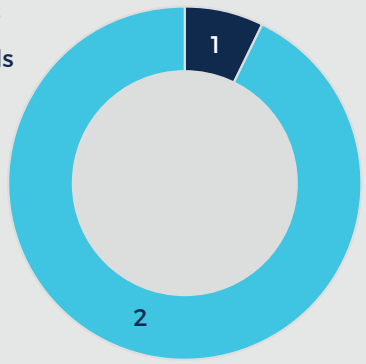
Deal value ($bn)	2008	2018
	66.7	349.6

The tech sector is a prime target

Asian intra-regional minority investments in the tech sector, 2008–2018

1 2008 – 134 deals

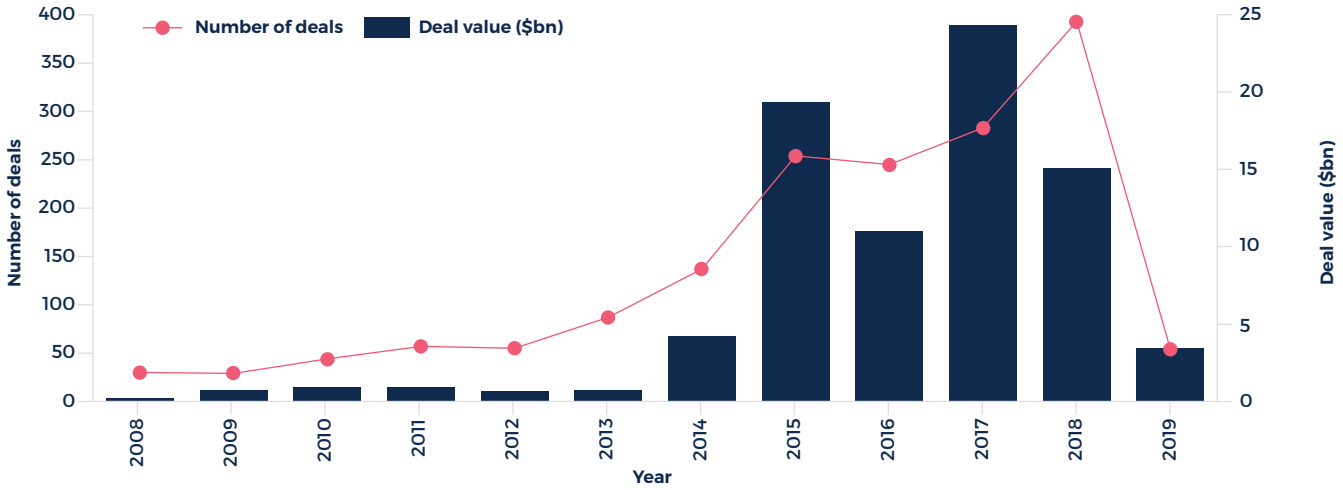
2 2018 – 1,720 deals



Deal value ($bn)	2008	2018
	1.3	54

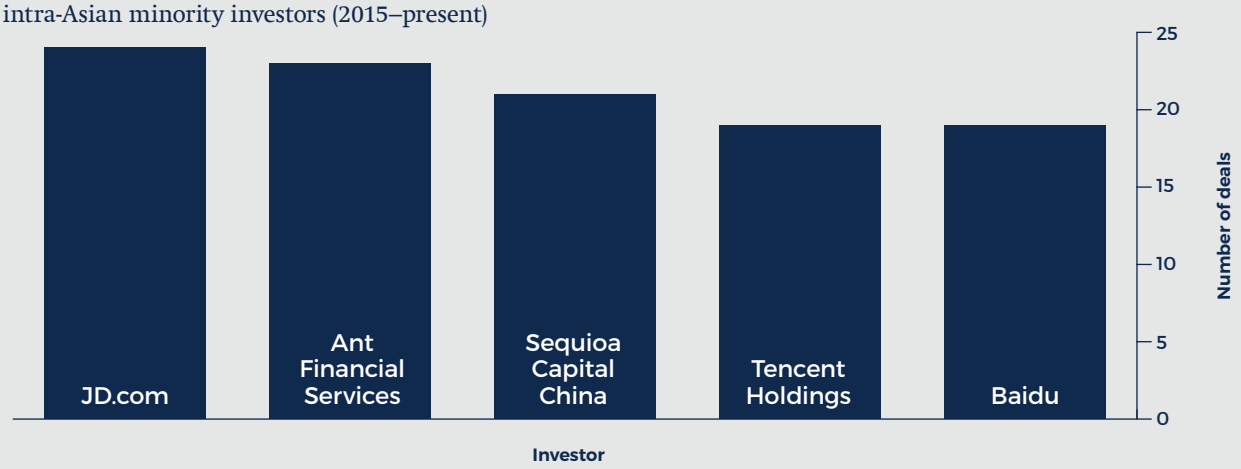
Software and platform businesses are driving much of the activity

Minority investments by Asian software/platform businesses in Asian tech sector



Chinese companies are leading the charge

Top intra-Asian minority investors (2015–present)



When M&A is a family affair

Asia's family-owned businesses are another asset class primed for investment. Wealth in the region reportedly exceeds $20tn and is rising faster than any other global market. Many of Asia's first wave of entrepreneurs are approaching the end of their working lives (one study suggests that in China alone more than three million will retire within the next decade), yet they often have no plans to hand the reins to the younger generation. This is either because the thinking has not been done (just 39 per cent of family offices in Asia have a succession strategy in place, according to UBS), because families don't possess the talent (a legacy of programmes such as China's one-child policy), or because the desire simply isn't there (children of Asia's wealthiest families are often educated overseas and are choosing to pursue their own careers).

While demographics make this a particular issue in Asia right now, it is not a new phenomenon – analysis shows that few family-owned businesses remain that way beyond a third generation. In Europe, family owners are increasingly selling stakes to private equity in return for strategic impetus (a potential solution to the succession challenge), financial firepower and valuable connections that can help take the company global. Swiss-headquartered Wild Flavors, maker of Capri Sun, is one such example. After owning the business for 80 years the Wild family sold a 35 per cent stake to KKR in 2010, using its new partner's expertise to launch a buying spree and institute operational and financial reforms. The combination ended with a $2.3bn sale to Archer Daniels Midland four years later – a deal that tripled KKR's money. Other examples include German prosthetics maker Otto Bock, which has formed a partnership with EQT; industrial gases manufacturer Messer, which has a joint venture with CVC; and the Holzbrinck publishing family, who have joined forces with BC Partners.

For private equity, one of the attractions of family-owned businesses is that they are the product of decades of specialisation – they are often well-run, generate good returns and have management teams who know their industries inside out. For families, PE investors looking for co-investments (eg minority stakes, JVs or club deals) can help them diversify their wealth without ceding control of their life's work and provide additional financial muscle. If Asia's succession issues play out in a similar way to Europe's, we could be at the start of a new M&A wave. Many such partnerships leverage the combination of family expertise and PE nous to do more deals together (see BDT Capital Partners and the Koch and Pritzker families in the US). And PE's investment horizons mean that any tie-up will typically come with an exit built in – be that a buyout from the family, a sale to a strategic or a listing on the public markets.

Cigna/Anthem – health insurance required...

When deals fail, the fallout can be ugly – see the recent Fuji/Xerox case. Exactly how ugly this can get is currently visible in the Delaware Chancery Court, where US health insurers Cigna and Anthem are slugging it out over who's to blame for the collapse of their $49bn tie-up in 2015. The case is testing the scope of the merger agreement's 'best efforts' clause and once the judges' cards are in we'll be dissecting what the result means for deal-making.

Fuji–Xerox: don't copy this

The recent Fuji–Xerox deal made headlines for all the wrong reasons. In our latest podcast, we take a look at what happened – and what the takeaways are for your next major transaction.

Cigna and Anthem are slugging it out over who's to blame for the collapse of their

$49bn

tie-up in 2015.

Global M&A – value and volume

(Company nationality is determined by HQ location.)

Global

M&A value
$655bn

M&A deal volume
7,525

Top 3 deals this quarter

1	Celgene/ Bristol-Myers Squibb	$93.4bn
2	Worldpay/Fidelity National Information Services	$42.7bn
3	First Data/ Fiserv	$38.7bn

Inbound: most targeted markets

USA 1,855 deals	$375.5bn
China 880 deals	$50.8bn
UK 460 deals	$32.9bn

Outbound: most acquisitive markets

USA 1,825 deals	$395.2bn
China 864 deals	$47.9bn
UK 490 deals	$37.1bn

USA*

M&A value
$375.5bn

M&A deal volume
1,855

Top 3 deals this quarter

1	Celgene/ Bristol-Myers Squibb	$93.4bn
2	Worldpay/Fidelity National Information Services	$42.7bn
3	First Data/ Fiserv	$38.7bn

Inbound: markets investing into US companies

USA 1,478 deals	$341.6bn
Canada 74 deals	$9bn
Japan 18 deals	$8.6bn

Outbound: markets US companies are investing into

USA 1,478 deals	$341.6bn
Canada 53 deals	$17.4bn
Germany 23 deals	$10.1bn

Europe*

M&A value
$99.3bn

M&A deal volume
2,305

Top 3 deals this quarter

1	Scout24/ Pulver BidCo	$6.5bn
2	UPC Schweiz/Sunrise Communications Group	$6.3bn
3	RPC Group/Berry Global International Holdings	$5.7bn

Inbound: markets investing into European companies

UK 430 deals	$33.6bn
USA 167 deals	$19.1bn
Switzerland 46 deals	$12.7bn

Outbound: markets European companies are investing into

UK 378 deals	$29.7bn
USA 86 deals	$12.7bn
Switzerland 54 deals	$11.8bn

Asia-Pacific*

M&A value
$122.8bn

M&A deal volume
2,708

Top 3 deals this quarter

1	Ascendas-Singbridge/ CapitaLand	$7.9bn
2	Beijing Easyhome Home New Retailing Chain Group/Wuhan Zhongnan Commercial Group	$6bn
3	Gruh Finance/ Bandhan Bank	$3.2bn

Inbound: markets investing into Asian companies

China 832 deals	$47bn
Japan 474 deals	$14bn
Singapore 100 deals	$13bn

Outbound: markets Asian companies are investing into

China 849 deals	$48.9bn
Singapore 83 deals	$13.5bn
South Korea 282 deals	$10.5bn

*Includes domestic deals

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