M&A IN THE LIGHT OF **THE NEW TRUMP ADMINISTRATION**

Faced with the series of big announcements from the new President Trump, the new global geopolitics and the customs barriers beginning to appear, companies and investors will have to adapt their strategies for the coming years at high speed. With inevitable consequences for M&A market. Winston & Strawn partner Jérôme Herbet explains.

Since the US presidential elections, markets across the Atlantic have suffered a severe slowdown. This is due to the Trump administration's policies on customs duties, part of which have already come into force. How are American and European M&A players reacting?

US stock markets reacted on March 4 to the Trump administration's announcements in customs matters, but also in the field of defense, whether the position on Ukraine (and NATO more broadly), or the desire regarding Greenland, a Danish territory. Over one month, according to Bloomberg data, Nasdaq lost 6.5% and DJIA 4.77%. European markets also fell on March 4, but seem to be holding up relatively better over time.

In the United States, the strategic M&A market is heavily impacted by government announcements.

In 2024, we had already observed an expectation effect, a consequence of the result of presidential elections. But the recovery, at the beginning of 2025, is still a long way off because the situation is no more reassuring. According to Dealogic data, only 1,603 transactions were signed within the US states in January and February 2025, representing the lowest level over the period since 2009 and a year-on-year drop of 19% in number and 29% in value to $248.78 billion.

In Europe, the market was already soft before the US presidential election. The likelihood of it picking up again in the current context seems remote, since the various announcements from President Trump, which are difficult to read, are only reinforcing the wait-and-see attitude of companies.

The global environment is not very buoyant.

Large caps have been slowing down in France for several months now. But what about midcaps?

The midcap market is often less exposed since companies are less international. Because they are less international, they operate in more regional markets, and are therefore in a position to remain active in their local markets.

In this complicated economic and geopolitical climate, M&A transactions are still longer to resolve. What options are there for securing negotiations?

There is no magic bullet, but we can see that intermediated processes are evolving, because it is now more difficult to close deals. Due diligence times are getting longer, and some bankers are arguing in favor of longer due diligence times to achieve better negotiation on deal fundamentals. The more transparent a process is, the more time a buyer has to get a specific idea of the target's situation, the less likely it will be to ask for and obtain extended guarantees.

In Anglo-Saxon countries, liability guarantee insurance is fairly widespread. It is developing in France, but I do not think it is really going to help make negotiations more secure in the current context. It is true that funds in particular, but also certain strategic players wishing to protect their balance sheets from potential liabilities, are becoming increasingly interested, as the nature of the products offered evolves to cover broader areas such as the environment and tax risk.

Could Trump's election and the announced deregulation create new opportunities for French companies looking to expand in the US?

It is indeed likely that, in order to get around the customs duties that the Trump administration might be tempted to impose on European products, some European companies will decide to establish themselves in the United States. Some major names in the luxury goods industry have already indicated that they intend to develop their core businesses and production capacities in the United States. The closeness of the entrepreneurs at the head of these companies to President Trump himself is perhaps no stranger to the process, but it is also a question of rational decisions in a context of increasing customs duties. Other European groups, such as Holcim, have opted to spin off their US activities and then to list them on the New York Stock Exchange. But a sufficiently strong local business base is needed to justify this economic strategy, which is the case, for example, in the cement industry.

Against a backdrop of mistrust towards Europe on the part of the Trump administration, how attractive is the French market today for American investors?

American investors are becoming increasingly pessimistic, as revealed by the recent AmCham-Bain & Cie barometer: the country's NPS (Net Promoter Score) as an investment destination for a US company is 22 points lower than in 2023 and 45% of American investors anticipate a negative economic outlook for France in the next two to three years.

The next report from France's Foreign Trade Advisors on the country's attractiveness should not produce a different result.

Do you think American funds will continue to invest in Europe?

Private equity funds have an often opportunistic investment strategy, with a relatively short investment horizon. They rarely favor buy-and-hold strategies, but, to increase the value of their holdings, they often favor external growth.

So we can only hope that American investment funds with cash to invest will continue to look at European targets, particularly French ones. It will all depend on the business sectors. But if relations continue to strain with President Trump, perhaps the Europeans will decide to react by further tightening their control over foreign investment, particularly from the United States.

The scope of foreign investor control has already been significantly extended in France. Is this currently an obstacle for these investors?

Tighter foreign investment controls are observed across Europe, not only in France. The United States has identical regulations (CFIUS - Committee on Foreign Investment in the United States), so American investors are not particularly surprised by the current European and French framework in particular. Indeed, President Trump recently announced that he would instruct his administration to make it more difficult for states that are not partners of the United States to pass CFIUS.

In France, a larger number of transactions are subject to foreign investment control notifications. Some 309 applications were submitted in 2023, of which 255 were approved. Not all applications are therefore eligible for control. In 2023, 135 transactions of foreign investments in French companies were authorized, and of these, 44% were subject to conditions. This means that 120 transactions were not authorized.

In the Opella case, we even saw the Minister for Economy and Finance intervene, before Minefi, to set conditions. What do foreigners think of this state intervention?

This is the very essence of foreign investment control: State controls transactions it deems to be in the national interest. Of course, politics has its place in this control. So it is hardly surprising to see the Minister's statement, in parallel with the investigation of the case by state services. In the case of Opella, the Minister has set conditions: maintaining R&D in France, production and jobs. These are political announcements. And behind them, Minefi instructs on the basis of reading criteria that are sometimes not public. On major cases with jobs at stake or certain aspects linked to sovereignty, the political voice has always been heard. Just think of the Alstom / General Electric case in 2014, or the Couche-Tard / Carrefour case in 2021.

If we look at the figures published by Bercy, in 2023, 21.5% of authorizations were for activities that are sensitive by nature (defense and safety, in particular), 63.7% concerned infrastructures, goods or services considered essential (energy, networks, public safety or food safety, for example), and 14.8% concerned mixed fields, falling into the first and second categories (e.g. manufacturing of aeronautical parts for both civil and military applications). Once again, the United States has equivalent regulations, so this state intervention, in the name of protecting national interests, does not come as a surprise.

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