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The Impact of Covid-19 on Merger and Acquisition

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ABSTRACT

"The majority of economic downturns have been caused by systemic inefficiencies."

A critical analysis on the effect of Covid-19 pandemic in the field of Merger and Acquisition (M&A) with regard to its impact on the entire globe's business transactions and describing its aftermath which either affected the world in positive way or negative way or both. Initially, the paper portrays a brief description on the various factors that have impacted the M&A market with respect to the buyers and sellers and their response to the consequences of Covid-19 pandemic. Further, it aims at describing the impact of Covid-19 on M&A in different parts of the world such as USA, Asia Pacific, Europe and specifically China and India. The later and the final half of the paper is mostly concerned with the trends and graphical representation on the M&A deals in various way, which took place in the midst of Covid Pandemic, pre-covid pandemic and post-covid pandemic. However, a full-fledged pandemic effect cannot be concluded at this moment (2021) because nobody knows how long it'll last.

Keywords: *Merger and Acquisition, Covid-19, Pandemic, transactions, novel virus, business environment, Due diligence, Negotiation, Recession, Cyber Security, IT Act, Deal Volume.*

I. INTRODUCTION

The susceptibility to epidemics or pandemics has been on a constant increase due to the combination of a growing population and better connectivity. This could be one of the major reasons why despite having enough warnings of the risk it may cause, we failed to set up enough defenses against the Covid-19 virus. When the first case of Covid- 19 was reported in Wuhan, China in December,2019[3], no one knew that such a small virus will spark a pandemic and would bring our lives to a standstill. Not only did it had a drastic effect on human life, a significant commercial impact was also seen globally. As the confirmed cases of these diseases

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[3] Caroline Westbrook, when was the first case of COVID-19 in the world? available at: https://metro.co.uk/2020/11/18/when-was-the-first-case-of-covid-in-the-world-13614796/ (accessed on 15th October 2021)

escalated, the world witnessed a decline in the global share markets, businesses, irrespective of their size were forced to shut down, resulting in thousands of employees being laid off, consumer's demand and spending capacity plummeted, and the supply chains were disrupted.

The spread of this deadly virus had a discernible impact on almost every industry, including the Merger and Acquisition world. In the wake of the novel virus the market of M&A contracted rapidly. The M&A world has dealt and recovered from a number of economic crises in the past, be it the dot-com bubble in 2000-2002 or the Great Recession of 2007-2009. In the past whenever a financial crisis struck the world, uncertainties in the business and the capital markets made the buyers to delay or cut back off their acquisition plans. But in the current scenario where the world was going through a pandemic, the situation was completely different. The virus didn't only affect the financial market in general but also a multitude of other factors affecting M&A transactions.

These factors included the terms of M&A deals, the new due diligence issues that have arisen and the manner in which due diligence is be conducted, significant changes in consumer behavior, pricing and other terms of deal financing, act of complying with new sanitization standards, government restrictions, and the time required to get regulatory and third-party approvals for such transactions. Unlike the past, this covid crisis brought numerous changes in the manner in which M&A transactions are negotiated. There were some changes that were temporary while some will never be the same again, the "new normal" will never be normal.

Currently every business is on a witch hunt for finding near term actions for stability along with some strategic moves that will create new and better future for their companies. In this novel environment, an effective use of new technologies, tools, and techniques is a key tool for the buyers, sellers, consumers and providers of M&A financing, including their legal and financial advisors, to adjust to this changing business environment. This will not only help them to deal and survive the uncertainty but also outperform those who will not be well prepared.

Through these pandemic years some companies were fortunate enough to profit from the weakening economy while others were fighting to survive. On one hand, there were companies who used this unfortunate situation to diversify their business through Merger and Acquisition while on the other hand, there were some companies who had to divest their business to reduce the excess burden. Even though this deadly virus slowed down the M&A market but it could never bring it to a zero-deal volume. Throughout this paper, Merger and Acquisition is used to refer a general term that describes the consolidation of companies or assets through various types of financial transactions, including mergers, acquisitions, consolidations, tender offers, purchase of assets, and management acquisitions[4].

To be more particular, “mergers” adverts to a combination of two or more entities into one; the desired effect being not just the accumulation of assets and liabilities of the distinct entities, but organization of such entity into one business[5] whereas “acquisitions” refers to a situation when one company purchases most or all of another company's shares to gain control of that company. Purchasing more than 50% of a target firm's stock and other assets allow the acquirer to make decisions about the newly acquired assets without the approval of the company’s other shareholders. Even though the terms of deal of M&A are all unique in their value and types, but their main aim is to meet the vision and mission of the parties involved.

This part of the paper, will discuss **how various factors have impacted the M&A market and how they will keep impacting it for some time to come, including how buyers and sellers will deal with the changed dynamics of the M&A deals.**

1. M&A Deal and Activity: Global Merger and Acquisition were already on a fall due to corona virus, but it almost came to a standstill by the end of March, 2020. M&A level in the United States fell by more than 50% in the first quarter to $253 billion compared to 2019[6], but most of these transactions were entered into before the virus spread worldwide. However, in India, despite the uncertainty because of the Covid-19 crisis, the M&A deals stood at USD 42.24 billion, amounting for 17% increase as compared to 2019’s USD 35.9 billion[7].

Among various other things, the executives of the companies, who would have been significant buyers had to redirect the focus and energy of their teams towards the immediate health of the company, putting aside the future goals which included growth of the company through, Mergers and Acquisition. Similarly, the financial sponsors had no choice but invest an increasing amount of time and efforts to strengthen their existing portfolio companies, at the cost of new deal transactions.

Like every other business M&A deals also suffered an alarming dip during the covid times. According to the Bain & Company’s 2021 global M&A report, the deal value and volume for

[4] Adam Hayes, Guide to Merger and Acquisition, available at: https://www.investopedia.com/terms/m/mergersandacquisitions.asp (accessed on 15th October, 2021)

[5] Adam Hayes, Guide to Merger and Acquisition, available at: https://www.investopedia.com/terms/m/mergersandacquisitions.asp (accessed on 16th October, 2021)

[6] Richard D. Harroch, David A. Lipkin, and Richard V. Smith, The Impact Of The Coronavirus Crisis On Mergers And Acquisitions, Forbes, available at: https://www.forbes.com/sites/allbusiness/2020/04/17/impact-of-coronavirus-crisis-on-mergers-and-acquisitions/?sh=1de70774200a (accessed on 16th October 2021)

[7] Sumes Deewan, Merger and Acquisitions Laws and Regulations 2021, available at : https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions-laws-and-regulations/india (accessed on 17th October 2021)

the full year dropped 15 per cent and 11 per cent, respectively[8]. A number of parties abandoned some significant M&A deals, such as Xerox dropping its $34 billion offer for HP, after having postponed meetings with HP shareholders to focus on coping with the coronavirus pandemic. SoftBank terminating its $3 billion tender offer for WeWork shares, citing the coronavirus impact together with the failure of a number of closing conditions. Not to forget the much-hyped AstraZeneca–Zeneca talks of a merger that never happened.

While the first half of 2020 was in a steady state, marked by distressed deals as a direct consequence of the pandemic, the next half did show quite a momentum which is in a go in 2021 as well.

2. Timing and delay in M&A deals: for each, the deals that were able to survive the pandemic environment, and the new deals that were signed during the Covid times, it is expected that the timelines for such deals will be significantly extended. Each stage of a general M&A transaction, from preliminary discussions to negotiation of letter of intent or term sheet, to negotiation of agreements, every step will require long researched, scientific discussion to survive post pandemic, which will anyhow take a much longer time than usual. Therefore, in case of earlier agreements, the time clause in the agreements needs to be rephrased and in case of new agreements being entered into, these aspects will have to be looked upon.

Various pandemic related factors that will result in such delays are as follows**:**

- The new challenges in the due diligence, developed due to this covid situation will take a longer time to be addressed and worked upon.
- Financing required to carry on with the M&A deals will be pretty difficult to find because of the unsettled state of market and available liquidity. The M&A lenders may seek much more stringent conditions than those sought by the buyers, increasing the risk for both buyers and sellers, resulting in taking longer than before.
- Negotiations will take much more time than before since getting every person involved in the deal under a same roof, is quite a tedious work in such situations.
- Getting third-party consents such as from landlords, customers, licensors, etc. will require much longer period.
- Buyers and the board of directors will be much more cautious, internal justifications and long scientific discussions, for dealmaking to survive in this pandemic struck world will be more compelling and time taking.

[8] Prasanth Prabhakaran, How Covid-19 disruption created a blue sky of opportunities for M&As, available at: https://economictimes.indiatimes.com/markets/stocks/news/how-covid-19-disruption-created-a-blue-sky-of-opportunities-for-mas/articleshow/81690715.cms?from=mdr (accessed on 18th October, 2021)

- Obtaining approval from various regulatory authorities, including various government regulations will take more time than usual.
- Buyers will struggle about their ability to value or trust a seller in this pandemic situation. Proper valuation from various transactions will no longer be seen as a trustable option.

3. Impact on letter of intent: Before investing a huge sum into a deal, and negotiating a proper transaction document, the buyers and sellers generally employ these documents, to commemorate their mutual understanding of some or all terms of the deal.

Traditionally these documents were used to nail down the terms of the deal, but in this pandemic hit world, the buyers and sellers would refrain themselves from entering such traditional Letter of Intent, until the buyer has performed significant due diligence on how the seller's business was affected by the Covid-19, financial condition of the buyers and sellers and the current situation of the market, customers capacity to buy, issues faced by the suppliers, the challenges of the workforce, and various other business prospects. The total length of this period of due diligence, will largely depend on the seller's circumstances and the relative bargaining power of both the parties.

Pertaining to such conditions the Letter of Intent is most likely to modify. The sellers would ask to address the closing risk while on the other hand the buyers would demand a longer period of exclusivity because of the covid challenges. Until now the sellers, in many instances had been successful in keeping exclusivity periods to 30-45 days or so but now, it will be more common to see buyers insisting upon at least 60-75 days, with the ability to extend, in anticipation of coronavirus fallout interfering with or delaying the buyer's due diligence investigation[9].

4. Availability of funds for acquisition: since the very beginning, a huge percentage of M/A deals are financed, more particularly in in the private equity sectors. The flakiness that this deadly virus brought to the markets has created a lot of challenges for the transactions that are largely dependent on third party finance. The lenders have become more stringent in respect to the terms and conditions of such financing, are increasing prices and are asserting upon more due diligence. The remedies available to buyers in such a situation are very less. It is quite evident that such challenges have made buyouts an easy option to inject than debt leverage.

5. Effect on M&A Deal terms: whenever any economic uncertainty struck the world of M&A deals the leverage shifted away from sellers to the buyers. This was certainly the case in the

[9] Richard D. Harroch, David A. Lipkin, and Richard V. Smith, The Impact Of The Coronavirus Crisis On Mergers And Acquisitions, Forbes, available at: https://www.forbes.com/sites/allbusiness/2020/04/17/impact-of-coronavirus-crisis-on-mergers-and-acquisitions/?sh=1de70774200a (accessed on 18th October 2021)

situation of dot-com bubble and during the great recession. The situation during the covid crisis was no different. Just as in past crisis the effect on deal pricing will not be uniform. The sellers of the industries such as retail, hospitality, travel, coworking spaces, have been significantly more impacted than the sellers of the industries such as cloud computing, video conferencing, other online technologies, food delivery, online shopping, which were comparatively less affected or have thrived, using the challenges developed by the covid pandemic in a profitable manner.

The havoc brought by the Covid-19 pandemic was not foreseeable while the M&A deals were being entered into before or in March 2020, but it has not only become foreseeable but a critical factor to be kept in mind while entering into deals since then. An increase in leverages for buyers in M&A deals doesn't mean that buyers will be more likely to negotiate each and every term of the deal.

Sellers would be sterner while deciding the terms of the deals, to protect themselves from the closing uncertainty. However, in respect to the deals that were entered into before the pandemic hit our lives, the

buyers might have a leverage seeking to terminate or renegotiate the terms of the deals, because of the ability of the sellers to perform the buyer's closing conditions being affected by the pandemic.

Following are a number of M&A deal terms that have already been implicated due to the corona virus crisis, and are likely to be impacted by the crisis:

- "**Material adverse effect" provision:** Traditionally, most of the M&A agreements included the term 'material adverse effect (MAE)' definition. This definition had its most critical use in the closing conditions, making the buyer unobligated to close the acquisition if the seller suffered any MAE, since the signing of the agreement. This provision apportions between the parties the risk of any uncertainty occurring or existing during the deal period[10]. The question of whether the corona virus pandemic would come under the umbrella of MAE's definition depends on the contractual language used in the clause as well as the impact it has had on the seller's business. Thus, the effect of Covid pandemic may constitute an MAE depending upon its duration and the tenacity of its effects on the seller involved in the deal. Prior to the outbreak of this deadly virus, if an MAE provision included a carve out referring to 'epidemic' or 'pandemic' or any other similar event, then the corona virus would clearly not

[10] Richard D. Harroch, David A. Lipkin, and Richard V. Smith, The Impact Of The Coronavirus Crisis On Mergers And Acquisitions, Forbes, available at: https://www.forbes.com/sites/allbusiness/2020/04/17/impact-of-coronavirus-crisis-on-mergers-and-acquisitions/?sh=1de70774200a (accessed on 19th October 2021)

constitute an MAE. But during or after the pandemic, one of the most reconsidered term in M&A deals is likely to be MAE. After covid hitting the M&A market, the buyers are seeking to include specific contractual language, mentioning that Covid-19 pandemic is in itself an MAE. Just like them, sellers are of the view that the pandemic is a known risk and the buyers should have taken it into account while valuing seller's business.

- **Pre-closing Business Covenants:** Certain M&A deals require a regulatory approvals or third-party consent and hence the parties are provided with a period of time between signing and closing during which such approvals and consents are obtained. During, such period, the sellers are obligated to continue to operate in a manner which is commercially reasonable. These are some permitted deviations from the covenants in order to let the seller comply with the applicable law, M&A agreement, or to carry out the pre-approved actions by the buyer. For the M&A deals been entered into before Covid pandemic became a known problem in the market, the novel environment may result in the seller being incapable of complying with one or any of these covenants, such as restriction on workforce, workforce reduction, restrictions on expenditures, changes in personnel policies, changes in compensation policies, etc. in the light of the pandemic hit world, the performance of the seller's pre-closing covenants may be excused. The non-performance by the seller of these covenants would not amount breach of the acquisition agreement. To avoid misunderstanding and disagreements on this topic, the buyers must pre-approve seller's plans in response to the pandemic.
- **Representation or Warranties:** Due to the havoc brough by the Covid-19 crisis the buyers are likely to demand a number of additional representations and warranties from sellers focused around the effects and consequences brought by this deadly virus on the financial condition of the seller, the seller's compliance with various governmental orders in the view to control the covid pandemic, the pandemic's effect on the seller's ability to perform the contract, his workforce, inventory, etc.

The purpose of such enhanced representations and warranties, is likely to assist the buyer to effectively integrate its own operations with that of the seller's, which would include the new issue of understanding on how the seller has responded to the difficulties caused by the pandemic.

- **Alternative form of consideration:** the financial instability brought about by the pandemic resulted in downward pressure on M&A deal values, and a larger focus on the use of stock consideration in place of buyer's cash. Traditionally, whenever any financial crisis hit the markets, a fundamental disconnect was created between the buyers and sellers, that's when these alternative forms of consideration became prominent.

For the buyers who have seen the covid pandemic reduce their market capitalization, the use of their stock as a consideration for M&A deals would definitely help to bring the parties together from a valuation point of view.

II. Impact of on M&A in different parts of the worlds

As the Covid started in the month of December 2019, it was in no time that it broke out like a fire in entire Europe, Africa and Middle East. Surprisingly, it was just the initial 3-4 months of this pandemic and got spread in more than half of the entire world. On the other hand, due to low business confidence and optimism there happen to be almost negligible M&A activity. Fortunately, several schemes and programs were there as a blessing that was implemented by the government to promote these activities more and more in the affected areas. This little ray of hope which supported the payroll and employees helped numerous companies in managing and getting through 2020.

Talking further about the government aid, it was very generous step that was taken by the government to uplift the M&A activities which was on the verge of massive downfall. In addition, there were many IPO that came into picture which showed the financial availability in the market and the investors are in the search of opportunities in any particular firm. Activities were mostly dealing with the defensive strategies such as asset sales and avoiding other strategies. Another observation was regarding the parties who were willing to invest but were looking for warranties and proper representation so that they are insured in a better way. This was all becoming so lengthy because of the uncertainty prevailing in the market. It was due to this same pressure that the deals were closing at slower momentum that too with a stricter due diligence process.[11]

Amidst lockdown, there were obvious reasons why business activities were at halt but in the second half of 2020, starting from September, there was a significant downfall in the covid cases which resulted in the withdrawal of government aid which supported and subsidized many small and big companies in the initial stages of the covid-19 pandemic. Due to this very reason, the struggle for several companies started again as the second wave smite the world with its full pace. Consequently, the recovery of these businesses will totally rely upon duration of economic aftermath of the Covid-19. As a return to some form of pre-COVID normalcy which takes longer to materialize, the number of essential restructuring transactions and insolvencies is anticipated to rise. In 2021, a considerable increase in semi-distressed M&A

[11]. Amrish shah; *How covid-19 has impacted global M&A activity*. Deloitte. International Tax Review, available at https://www.internationaltaxreview.com/article/b1q8zg4dh6ck6z/how-covid19-has-impacted-global-mampa-activity (accessed on 22nd October 2021)

activity is projected, particularly transactions fueled by enormous sums of unspent private equity ‘dry powder' hunting for bargains, as well as industry consolidations and Asian investment into Europe.

(A) America

Many companies in the country with the biggest market were on the verge of shutdown, basically they were on survival mode in mid-2020. Debt restructurings, defensive M&A transactions like liquidity planning, and other transactions to bolster balance sheets were all common in distressed transactions. This was due in large part to apprehensions about the pandemic's progression and the degree of government support.

As the summer progressed, deal market activity picked up, and the presence of impatient private equity capital became apparent. This is due in part to the availability of low-cost borrowing and the stability of the banking and lending institutions. Another US-specific aspect has been the presidential election, which has raised the likelihood of higher tax rates and a rollback of several of the 2017 tax reform initiatives in 2021 or later. As a result, there has been a rise in the sale of tightly held firms, corporate divestitures, and public company deals, as well as consolidation in various industries to save costs, generate synergies, gain market share, and recruit new consumers and otherwise likely to strengthen the market position.[12]

In the M&A Trends Survey: The Future of M&A, published by Deloitte in October 2020, US dealmakers described their M&A strategy in response to the current climate as: Responding to structural sector disruption by accelerating long-term transformation to other business models (33 percent), using M&A and other investment activities to capture unassailable sector and market leadership (24 percent), maintaining parity with the competition (23 percent), and preventing mergers and acquisitions (23 percent) (20 percent).

The M&A market has been driven by a mix of full private equity coffers, strong financial systems, and the possibility of tax rises in the United States, and it continues to do so. Most aspects of the deal market have been quite active and deal volumes have increased since the third quarter of the year. Non-traditional transactions such as alliances and ecosystem partnerships, joint ventures, and so on are becoming more popular, as are IPOs, including acquisitions through special purpose acquisition companies (SPACs).

Finally, increasing technology, changing financial services and oppressed energy sectors have

[12] Amrish shah; *How covid-19 has impacted global M&A activity*. Deloitte. International Tax Review, available at https://www.internationaltaxreview.com/article/b1q8zg4dh6ck6z/how-covid19-has-impacted-global-mampa-activity (accessed on 22nd October 2021).

enhanced the activities related to corporate transaction. Therefore, it is providing us clear picture about the lists of companies that are likely to strive in these scenarios hence providing us much accurate valuation of asset of the companies for the transactions going to take place in future.

(B) Asia Pacific

Even though constituted with many big countries, the major player in this region (Asia-Pacific) is undoubtedly China.

China recovered from covid and the pandemic very quickly in the early months of 2020. So, there happened tremendous acceleration in M&A activity in 2020.

More accurately it can be studied by dividing 2020 into two halves. In the initial half, the country faced the consequences of Covid-19 in disastrous way. However, in the later half a significant growing trend was witnessed in the M&A activity be it through new opportunities or restart of potential deals.[13]

According to the statistics, M&A deals in China increased by 30% to $734 billion in 2020, which is highest ever since 2016. The ground reason behind the same was because of the resilient government schemes and investments on the domestic M&A transactions. Inversely on the other hand there was decrease in the cross-border M&A as expected.

The global semiconductor industry in China was also proved to be successful in 2020. Between July to October in the same year, five very important M&A deals were made, out of which three can be put in the top five semiconductors deals in the world. The deals include Analog Devices (ADI) acquisition of Maxim for $21 billion and NVIDIA's acquisition of Arm for $40 billion.

Distressed activity is projected to increase after assistance measures are phased out. M&A activity in China, India, Japan, and Singapore has been slowly expanding in the second half of 2020, albeit each nation is on a slightly different track, and deal activity in several countries is still below forecasts.

Similar to the EMEA and Americas areas, more organizations in Asia-Pacific are seeking efficiency, scale, and cost savings by combining professional service providers or bringing more transactional work in-house.

[13] Carl Li; M&A Report 2021: China, available at https://www.iflr.com/article/b1qxjdbpgyf24l/mampa-report-2021-china (accessed on 23rd October 2021).

(C) India

1. Change in FDI policy: Press Note 3

An important action undertaken by the Indian Government (the 'Government') to address the issues and threats posed by Covid-19 was Press Note 3 of 2020, which represents the Government's policy of restricting investment from firms based in neighboring countries.

The intention behind the press note was to control opportunistic acquisitions of Indian companies due to the covid 19 pandemic. So, it regulates deals from all countries that are India's neighbor i.e., sharing geographic boundary. The key motive behind was to curb investments from China. It felt by the Indian Government that effect of covid-19 must not be used as an opportunity by some foreign entities to access control to Indian companies. The time when press note 3 was not in picture, investments from foreign was regulated only by sector and not by region except for Pakistan and Bangladesh.[14]

The restriction applied not only to new investment, but also to entities with existing investment, it raised substantial worry among stakeholders. Prior to the adoption of Press Note 3, investment from China and other nations, such as the United States, was subject to the automatic route, with the exception of a few sensitive industries. As a result, Indian enterprises having such investors as stakeholders faced a double jeopardy: not only were they barred from obtaining investment from China at a critical time, but they were also confronted with a position in which several clauses of the agreements appeared impossible. The import of Press Note 3 was far wider, and it also covered indirect transfers and investments.[15]

2. Effect under the IT Act 2000

The government, through the Ministry of Information Technology, has blocked several apps, citing the "emergent nature of threats" and the fact that "based on information available, they are engaged in activities that are prejudicial to India's sovereignty and integrity, defense, security, and public order."

The order was issued using the authority granted under section 69A of the Information Technology Act 2000, in accordance with the relevant provisions of the Information Technology (Procedure and Safeguards for Blocking Public Access to Information) Rules

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[14] Raj Ramchandra; Post-covid-19 implications for India's M&A transactions and structures. International Bar Association, available at: https://www.ibanet.org/article/4CAE8A1A-16DA-458A-9182-415B1F95F88C (accessed on 26th October 2021).

[15] Raj Ramchandra; Post-covid-19 implications for India's M&A transactions and structures. International Bar Association, available at: https://www.ibanet.org/article/4CAE8A1A-16DA-458A-9182-415B1F95F88C (accessed on 26th October 2021).

2009. The declared goal is to protect Indian mobile and internet users' interests, as well as to preserve the safety and sovereignty of Indian cyberspace.[16]

The prohibition of several of these apps, combined with the impact of Press Note 3, has already caused some delays and worries for foreign investment in India, and the M&A transaction landscape will continue to adapt to handle the current circumstances and the ongoing uncertainties.

III. DUE DILIGENCE AND M&A PLANNING AND TAX

Due diligence and planning are being considered as major factors for the companies who maintained a stronger position as compared to others in this pandemic. It was all based on the accurate pondering through different scenarios and presence of alternatives in front of them which further leads them in deciding the strategy that need to be implemented. Irrespective of the defensive and offensive nature along with the tax risks, future business state tax modelling and opportunities.

For a successful due diligence and M&A planning, it’s important for the companies to be very precise and should prepare their merger and acquisition goals adequate time before getting into any kind of deal.

In a deal, tax can be a large source of synergy and have a big and positive impact on enterprise value. As a result, any pre-deal discussion and ultimate structuring and integration work should include an integrated strategic tax review powered by new technology, with a focus on identifying risks and opportunities, listing priorities, setting timelines, and laying out how execution will bring synergies to light in the near and long term (e.g. through value chain alignment, efficient financing, utilization of tax attributes, legal entity integration and simplification, refund and incentive opportunities domestically and across the globe, etc.). Companies that employ M&A to digitize their own operations can reinforce and bolster their supply chains and product innovations, as well as access new markets, new consumer bases, and new data.

Consolidating professional service providers should also play a role in lowering costs, decreasing risks, and increasing efficiency, as well as speeding up execution. Companies can drive automation, efficiency, and cost management into the process by leveraging and integrating the parties that execute legal, financial, commercial, and tax due diligence.

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[16] Raj Ramchandra; Post-covid-19 implications for India’s M&A transactions and structures. International Bar Association, available at: https://www.ibanet.org/article/4CAE8A1A-16DA-458A-9182-415B1F95F88C (accessed on 26th October 2021).

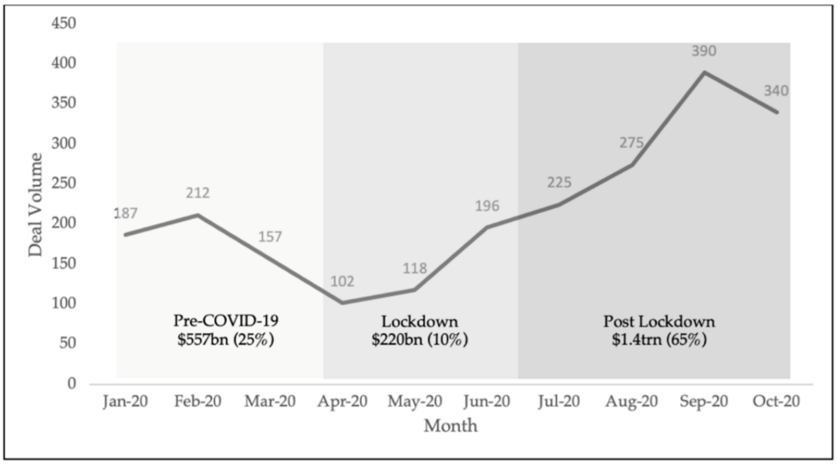
(A) Trends in M&A during the COVID-19 Pandemic

1. Volumes of Deals during the different waves of Pandemic

As of mid-February 2020, when the World Health Organization proclaimed a global outbreak, the global volume of M&A agreements had dropped by nearly half. This fast downward trend was produced by an unstable economic environment marked by stay-at-home directives, competition for new government regulations, and ambiguous forecasts of the COVID-19 virus's magnitude.[17] The gradual lessening of lockdown restrictions, as well as vaccination announcements, propelled M&A discussions in the months that followed. As a result, between January 2020 and October 2020, the total value of declared trades reached USD 2.2 trillion, which was an all-time high.[18]

It can be observed in the graph below:

Graph 1: Deal Volume in each phase



In the second two quarters of 2020, the deal market recovered in a V-shape pattern, thanks to a reduction in virus-induced uncertainty, hope for geopolitical stability following a Biden-Harris victory, and financiers' readiness to make up for lost time at the start of the year. The fourth quarter of 2020 has been dubbed the “third best for mergers and acquisitions in two decades.” "Since the beginning of October, $612 billion in deals have been agreed," according to the Financial Times, "up from $461 billion in the same period last year and $491 billion in

[17] Jacobs, B. COVID-19 Uncertainties Slam Brakes on M&A Activity. *Rochester Bus. J.* Available online: https://rbj.net/2020/04/07/covid-19-uncertainties-slam-brakes-on-ma-activity/ (accessed on 20th October 2021).

[18] Macmillan, I.; Purowitz, M. M&A and COVID-19: Charting New Horizons. Deloitte. Available online: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/COVID-19/gx-COVID-19-Mergers-Acquisitions-Charting-New-Horizons.pdf (accessed on 18th October 2021).

2018."[19]

(B) Deal by industry

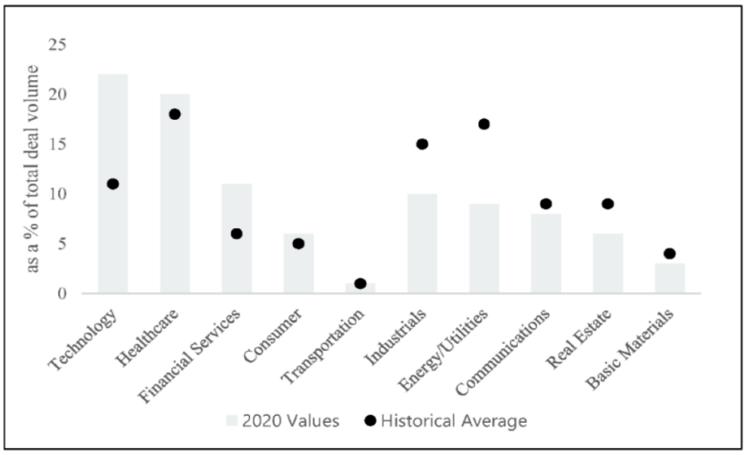
The 2020 economic crisis was a global health tragedy linked with supply and demand suppressions, as opposed to earlier economic downturns that were caused by the financial system itself. As a result, its impact on many industries has been uneven. Consumer behavior has been profoundly impacted by the pandemic, as seen by shortages of toilet paper on shop shelves, rapid uptake of telemedicine, and decreased long-haul travel.

A new normal is forming in the midst of the pandemic's "valley of death". New business models are challenging industries that were once deemed durable and important. As a result, "we're currently experiencing unprecedented Schumpeterian Creative Destruction".[20]

We can observe (with the help of graph 2) that the industries that were least affected by COVID-19—those that were either regarded "vital" or able to quickly adapt to the new normal—were more active in the M&A space. During the financial crisis, for example, the technology and healthcare industries witnessed high uptake and surpassed their historical average number of deals as companies continued to develop organically through mergers and acquisitions.

Many industries that had previously been resistant to the pandemic due to high M&A deal volumes were, however, harmed by the virus's limits. In 2020, they saw a decrease in the number of M&A transactions. As a result, the M&A playbook was heavily influenced by the predictability and prognosis of the industries.

Graph 2: M&A activity by industry

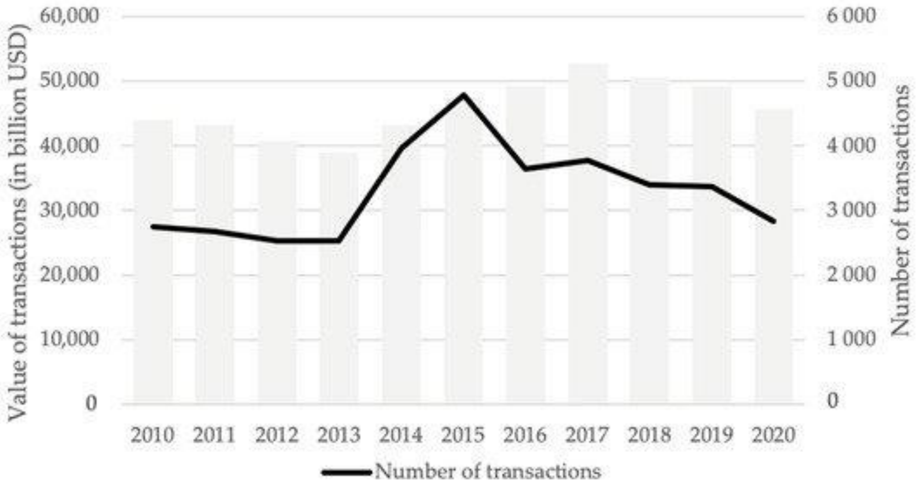


[19] Massoudi, A. Global M&A Recovers on Vaccine Hopes and US Political Stability. *Financial Times*. Available online: https://www.ft.com/content/b1935f10-d1b2-4920-ab76-0a2dff670556 (accessed on 19th October 2021).
[20] Strauss, S. Some emerging hypotheses on the economic opportunities and challenges of the post-pandemic world. *SSRN Electron. J.* 2020. [Google Scholar]

(C) Deal Size

In 2020, the year-over-year change in deal volume was roughly 7.5 percent, but the overall value of deals fell by 16 percent.[21] PwC's insights into global M&A industry trends, as shown in Graph 3, demonstrate that, despite a dramatic drop in the first half of 2020, global deal value and volume climbed by 94 percent and 18 percent, respectively, which were both higher than the last two quarters of 2019. In 2020, there were 56 megadeals in the past two quarters, compared to 27 megadeals in 2019.

Graph 3: M&A deals world wide



The increase in transaction value can be linked to an increase in the number of megadeals, as shown in Figure 4. (That is, deals that are greater than USD 5 billion). Megadeals were more common in the technology and telecom sectors, where M&A activity increased by 118 percent and 300 percent, respectively. The spike in megadeals in the third and fourth quarters of 2020 demonstrates corporations' desire to take advantage of low financing rates and "scale amid the slump."[22]

Graph 4: Global Deal Volumes and Values

[21] IMAA. M&A by Industries. Institute for Mergers, Acquisitions and Alliances (IMAA). 2020. Available online: https://imaa-institute.org/m-and-a-by-industries/ (accessed on 19th October 2021).

[22] Wittmer, C.; Potter, J.; Marshall, J. Deals Industry Insights. PwC. Available online: https://www.pwc.com/us/en/services/deals/industry-insights.html (accessed on 20th October 2021).

(D) Factors that encouraged M&A activity amidst the Covid-19 Pandemic

A number of microeconomics (internal) and macroeconomics (external) determined a firm's ability and willingness to pursue the M&A deals and compete with the challenges brought about by the Covid-19 pandemic into the world of M&A market. In terms of macroeconomics factors, the firm's capacity is determined by the health and context of industry, the economic environment and the socio-political factors that the firm operates which help to encourage or discourage the M&A deals.

1. Divestitures: Just like any past economic crisis, one can expect a large number of divestitures due to this covid pandemic. As the BCG'S report[23] illustrate in the first 12 months of the pandemic, many companies looked internally and or into traditional routes such as increasing debt capacity to keep a decent operational capacity. As the markets become more suitable to this pandemic situation more companies will opt for disinvestments. In a survey conducted by the M&A Leadership Council, 23% of the respondents were considering divestitures to raise capital for debt service or to plan for future strategic growth[24]. Hence, in 2021, divestments may increase in volume a little further into the bust.

1. Digitalization of M&A Activity: Before the covid-19 struck the world, most of the M&A transactions were mostly physical and were largely dependent on relationship-building. But just like every other industry, the pandemic has forced the firms to search for strategies to do M&A transactions remotely. With more preference being given to hybrid work schedules, M&A processes are likely to adopt more technological tools to ensure problem free transactions. For example: due diligence in the virtual world, better cybersecurity requirements to allow safe transaction between various parties to the deal. Though some aspects of the physical transactions might not completely disappear but the firms must cope up with the rapid digitalization of global society.

2. Increased focus on scope: before this pandemic situation, a number of companies were partially implementing new technologies, but on the other hand there were various others that prioritized other ongoing concerns over the techno demands. The Covid-19 pandemic showed hoe crucial it is for the firms and the world at large to adopt new technological and cybersecurity resilience in the workplace irrespective of it being hybrid or fully remote. Therefore, most of the companies will utilize M&A as a tool to accelerate the process of

[23] Kengelbach, J.; Keienburg, G.; Degen, D.; Söllner, T.; Kashyrkin, A.; Sievers, S. The 2020 M&A Report: Alternative Deals Gain Traction. BCG Global. Available online: https://www.bcg.com/publications/2020/mergers-acquisitions-report-alternative-deals-gain-traction

[24] Herndon, M.; Bender, J. What M&A Looks Like During the Pandemic. *Harvard Business Review*. Available online: https://hbr.org/2020/06/what-ma-looks-like-during-the-pandemic

acquisition of relevant skills and knowledge to meet the requirement of their technological capabilities.

3. Cross- border M&A: despite the slump created by the pandemic the world can expect a slight increase in the international M&A activities in the near future. This will be supported by a low travel restriction after the deployment of the vaccines. Organizations interested in solidifying their supply chains or looking to expand in emerging markets will seize the opportunities presented by greater geopolitical stability and a low-interest market to venture out in other countries to scale their company's operations[25]. Despite of the vulnerabilities of the interconnected economies caused due to the pandemic, a number of companies would reinforce their local operations to prevents halts to their supply chain caused by cross- border transportation.

4. Consolidation of Industries: in the near future, the M&A world would see further consolidation of industries, in order to create efficiencies through synergies, less constraints on their supply chain and a greater market share. In industries such as health and technology, major consolidations are expected to take place after the pandemic is over.

IV. CONCLUSION

In the near future, M&A space is expected to see a wave of optimism. With a shift in firm's priorities in response to the various changes brought by the Covid-19 pandemic, M&A can act as a key tool in supporting companies to stimulate growth in long and short term. The seller's and buyer's responsibilities in relation to the M&A deals haven't changed significantly. A number of changes that have taken place or are expected to take place as a result of this novel virus must be taken into account in order to make the M&A world adapt to the pandemic situation. It will be a duty of the Board of Directors to take into consideration various M&A opportunity while taking care of the new clauses being added, new technologies being introduced, and while dealing with the new due diligence issues.

One of the most important lesson that this Covid pandemic has taught the business world is that the firms should never but the technological changes in the back burner, rather it should treat such changes as a priority. It is quite evident after the research that the M&A market had a V-shaped growth despite the ongoing concerns of the corona virus. even in the near future the M&A markets are expected to grow with such momentum as more and more firms opt for it in order to meet the growth expectations of the company. As the business world embraces

[25] Healy, B. M&A in 2021: Recovery and Acceleration. Morgan Stanley, 2021. Available online: https://www.morganstanley.com/ideas/mergers-and-acquisitions-outlook-2021-rebound-acceleration

the digital world, people all around the world should also embrace new technology and innovation, while keeping in mind the cybersecurity risks that come hand in hand with the integration of technology in the M&A deal world. Even though physical contact will still play a crucial role while doing M&A transactions, technology will help to bridge the gap helping the firms to gain more benefits in terms of relationship building, time and productivity.

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