

Trump's 'Pro-Business' Agenda Could Be A Boon For M&A

By **Al Barbarino**

Law360 (November 12, 2024, 5:13 PM EST) -- President-elect Donald Trump's "pro-business" priorities and an anticipated relaxation of antitrust scrutiny are expected to boost mergers and acquisitions activity, but his tariff plan may have mixed results across sectors — and select deals could be subject to his "unpredictability," attorneys told Law360.

Trump's victory last week brought immediate optimism to financial markets, with major U.S. stock indices soaring. The state of the economy consistently ranked among voters' top concerns, and the controversial former president was perceived as the better candidate to address them.

His "pro-business" agenda, including corporate tax cuts that are expected to benefit businesses and the private equity industry, is being seen by some attorneys as a potential boon for M&A. They also expect a more relaxed antitrust environment that could bring a reexamination of burdensome policies that arose in the Biden era, along with a greater willingness from regulators to accept merger remedies.

"Overall, if you leave politics out of it, I do think from an M&A and business point of view, it's better to have a Trump win than a Harris win," said Michael J. Kendall, co-chair of Goodwin's global M&A group.

"The expectation is there will be less government spending, lower taxes and less regulation," Kendall said. "All of that stuff is better for business and the economy generally, and it would drive a market for people to [buy and sell] companies because they think they're going to do better."

Vice President Kamala Harris' plan included tax increases on high-earning individuals and multinational corporations, as well as new minimum taxes on unrealized capital gains, which could have been viewed as burdensome for businesses and M&A. On the other hand, her agenda included tax relief for more than 100 million middle-class and lower-income Americans, child tax credits, and credits for small businesses.

Kendall said Democrats may have argued that Trump's plans would "create a bunch of wealth, but it's going to the wrong people." But he added, "I think it's hard to argue that her policies were somehow pro-business. His clearly are."

While the president doesn't directly control interest rate changes, some attorneys say they think Trump will pressure the Federal Reserve to continue cutting rates, which would lower borrowing costs further for dealmakers after a 50-basis-point **cut** in September and an additional 25-basis-point cut Nov. 7.

"A lot of practitioners remember the M&A fervor of Trump's first term and think that the promised business-friendly and deregulatory agenda of Trump's second term could lead to another upswing," said Michelle Heisner, a partner in Baker McKenzie's global corporate and securities practice group.

"The expectation is that Trump will roll back much of the interventionist approach of the last four years, leading to more certainty about the executability of deals and therefore more willingness to pursue M&A as a growth strategy," she added.

However, Trump's tariff and immigration policies could have inflationary effects, making lower rates less likely and stunting dealmaking for some companies and industries, said Heisner. The former president has said he plans to implement a tariff of 10% to 20% on all imports, plus additional tariffs of 60% to 100% on goods from China.

Heisner said "old-line U.S. manufacturers," including steelmakers and mining companies, could gain a competitive advantage from higher tariffs and lower corporate income taxes, but others might be negatively impacted by the inflationary effects.

Tariffs are "inherently inflationary," while the deportation of migrants "and a further closure of the border would shrink the U.S. labor pool and potentially increase service costs," Heisner said.

"If Trump makes good on his trade agenda and his immigration policy promises, we could see rising prices across the board. And rising prices make lower rates less likely," she said.

"If free trade is eroded by tariffs, the impact will vary not just by sector, but also by company," Heisner added. "Businesses that manufactured abroad — or use goods that are manufacture abroad — could be hard hit. While that could open up opportunities for carveout divestitures and consolidation through M&A to build efficiencies, the reality is that when businesses are strained, they tend to be more focused on self-preservation than dealmaking."

A Return to Remedies

Tracy Belton, co-chair of Arnold & Porter Kaye Scholer LLP's global mergers and acquisitions practice, told Law360 it's possible some of the initial optimism from Trump's win that caused large stock market gains could trickle into M&A in the short term.

While no one is expecting "a 180" when it comes to the policies of the Federal Trade Commission under Trump, there are several potential changes coming that could also "help drive M&A forward" as the administration takes shape, Belton said.

"In theory, as time goes on, we could see an uptick in M&A activity," Belton said.

As the race to the White House warmed up late this summer, it became evident that Harris was expected to bring an antitrust strategy that would rival, if not exceed, that of President Joe Biden, who has been notoriously aggressive.

But the overall "posture" of the FTC under Trump is expected to be less aggressive, Belton said. She and several other attorneys said the commission could be more open to entertaining settlements on proposed mergers, accepting concessions and remedies — such as divestitures of assets. This would be a stark contrast to an FTC under Biden that has been emboldened to take battles to court, despite mixed

results, attorneys say.

In addition, regulators are likely to ease up on their recent scrutiny of private equity, helping to ease the flow of dry powder that needs to be deployed. So-called roll-ups are among the bread-and-butter private equity strategies that came under the scrutiny of the current FTC, Belton noted.

From a rule-making standpoint, recent merger guidelines from the FTC and U.S. Department of Justice — viewed on the whole as more stringent than prior guidelines — could also be re-examined, Belton and other attorneys said.

Jay Jurata, an antitrust partner with Dechert LLP, said he expects antitrust enforcement under Trump to be less "hostile," noting the FTC under Biden has been in "overdrive." But Jurata still anticipates a higher level of antitrust scrutiny under Trump than was seen in the Barack Obama and George W. Bush years.

"I don't think you're going to see antitrust fall off a cliff," Jurata said. "Antitrust was already starting to uptick under the first Trump administration ... The reality is that there's a receptiveness to some new economic theories surrounding vertical transactions, surrounding transactions involving potential future competition, and you now have some court cases embracing those theories."

"I also think you're going to see a continued emphasis on large technology companies," Jurata added, reflecting another broadly held sentiment among attorneys interviewed for this article.

In addition to a potential reexamination of the merger guidelines, a recent overhaul of U.S. merger notification and reporting requirements by the FTC could be reviewed under Trump, Jurata said. The final version of an FTC rule dialed back certain elements of an initial proposal to appease the two current Republican commissioners, but the new requirements are still expected to bring significant time and cost burdens.

"Those rules are going to significantly increase the paperwork associated with reporting a deal," Jurata said. "It will be interesting to see whether, once there are three Republican commissioners at the FTC, those rules may be revisited in order to not require an as extensive amount of information for deals that get reported — on the basis that the vast majority of deals are either competitively neutral or pro-competitive."

The "Consumer Welfare Standard"

Meghan Rissmiller, a partner in Freshfields Bruckhaus Deringer LLP's antitrust, competition and trade practice, agreed that the FTC under Trump could foster M&A growth, including through a return to remedies and less scrutiny of private equity.

There could also be a shift back to focusing on a more traditional economic analysis of deals, including a return to emphasis of the so-called consumer welfare standard, which has been subject to debate during Biden's antitrust regime, she noted.

Under this standard, a staple of antitrust regulation for decades, antitrust agencies would be expected to challenge deals only if the transactions might harm consumers. But critics have argued the FTC under Biden has abandoned this principle, challenging a wider range of deals to achieve broader social goals.

One of the major impacts of Biden-era enforcement has been "deterrence," Rissmiller said, noting some

dealmakers have been "afraid of having to go through a very long process" — potentially 18 to 24 months if a deal might be litigated — to get deals done.

"People were not as enthusiastic about undertaking that kind of risk over that timeline," she said. "Under Trump, I imagine you will see a lot more dealmakers come off the sidelines."

That said, Rissmiller cautioned that deals will not get "an automatic green light" under Trump.

The former president went after select sectors and deals during his first administration, she noted, and certain populist messaging from Trump and Vice President-elect J.D. Vance — including his statement that FTC Chair Lina Khan is "doing a pretty good job" — could entail a continued scrutiny of deals that could cause significant job losses, for instance.

Sector by Sector

Louis Lehot, a Foley & Lardner LLP partner whose focus includes venture capital transactions in the tech and healthcare spaces, said the Biden administration's antitrust and economic policies have hindered M&A activity, including by disrupting the venture capital growth cycle, and suggested that Harris' policies could have been even more prohibitive.

"We've been living in a very dark time for startups and the venture capital industry," Lehot said. "The industry requires and relies on M&A for exits that will return capital to investors, and so new capital can then be deployed into new startups. That whole flywheel of deploy, grow and then harvest, and then grow again, has been interrupted."

Some of the proposed Harris tax policies, had she been elected, could have been a "death knell for the private equity industry," but a Trump administration will bring lower corporate tax rates and reduced regulation, providing a boost for both private equity and venture capital, Lehot said.

"Trump has promised us lower taxes, which should increase the ability for private equity firms to make money," he said. "The change in leadership at the FTC will be transformational for Silicon Valley and the tech and life sciences industries."

But while some industries might benefit under Trump, others may not. Multiple attorneys also told Law360 they anticipate a rollback in Biden policies focused on renewable energy in favor of support for the oil and gas industry.

Trump, who has referred to climate change as "a scam," could attempt to claw back the landmark Inflation Reduction Act, which provides hundreds of billions of dollars in incentives for electric vehicles, batteries and other clean-energy technologies, attorneys said.

Heisner, the Baker McKenzie partner, said rolling back this law could result in potential new "winners" in the pharmaceuticals, healthcare and health insurance sectors.

The IRA has put pressure on some pharmaceutical companies through the price control of certain drugs, which could go away under Trump, Heisner noted. Meanwhile, Trump could increase profitability in the healthcare sector by scrapping policies that increase costs, including premium controls, Heisner said.

The agenda could also lead to further consolidation in the oil and gas sector, which has undergone a

remarkable transformation over the last year through a slew of large M&A deals — the largest being Exxon Mobil Corp.'s \$60 billion acquisition of Pioneer Natural Resources.

"We might see investments in energy transition lose momentum, but deals in traditional energy, such as oil and gas, benefit from deregulation," said Sergio Urias, an Akin Gump Strauss Hauer & Feld LLP partner who represents private equity funds.

Back in May, Trump was said to have held a meeting with 20 oil and gas executives in which he promised to do things like weaken climate regulations and increase drilling in exchange for \$1 billion in campaign contributions, according to reports.

The "Unpredictability Factor"

Jeane A. Thomas, a partner in Crowell & Moring LLP's antitrust and privacy and cybersecurity groups, said she anticipates a potential reversion to the DOJ and FTC agreeing to structural remedies, like divestitures, and potentially behavioral remedies as well.

Behavioral remedies can include commitments to provide certain goods or services under certain conditions, pledges to deal in a non-discriminatory manner, prohibiting bundling products, and certain pricing agreements.

During Trump's first term, there was speculation his close relationship with Fox News and dislike of rival CNN led him to personally request that the DOJ challenge AT&T's massive acquisition of Time Warner, a deal that ultimately went through.

Thomas participated on the trial team that successfully defended the DOJ's challenge to the AT&T-Time Warner merger. She was unable to comment on the deal, but she did note the first Trump administration was prone to selectively bringing certain cases "because companies fell out of favor with the administration."

"Some industries might be more of a priority or others," Thomas said. She noted major mergers in the cannabis industry drew scrutiny during the first Trump administration and agreed with other attorneys who said big tech might be a continued focus in Trump's second term.

By cutting regulatory "red tape" and reducing corporate taxes, the administration could bring a more "deal-favorable" environment, said Urias, the Akin Gump partner.

But Trump also brings elements of uncertainty and volatility, he said. For example, it's not clear how steep any tariffs will be. If his policies result in trade wars, that could result in higher inflation and thus higher interest rates, which will eventually stifle deal activity, Urias said.

He agreed there could be continued scrutiny of big tech companies under Trump, and also of cross-border transactions that could carry national security concerns, such as those involving critical infrastructure and technologies. In addition, there's an "unpredictability factor."

"In a Trump administration, I could see the FTC or DOJ go after certain companies or certain transactions that could be viewed as hostile to the Trump administration's views or agenda," Urias said.

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