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Your Dentons Europe
Private Equity Trends Monitor

Fourth edition: May 2021

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The Dentons' Europe Private Equity team is delighted to announce the launch of the fourth edition of our **Private Equity Trends Monitor**, which provides you with an up-to-date overview of the latest and anticipated trends across the European private equity sector in the wake of the COVID-19 pandemic.

Dentons' Europe PE group continues to closely follow the development of COVID-19 and its impact on PE deal activity. Our lawyers on the ground in each of our core markets regularly monitor and assess the situation and report on trends and developments as the situation continues to evolve.

We have asked our teams to respond to the following four questions:

1. *How has COVID-19 impacted deal flow in the European private equity sector?*

2. *Do any particular industries seem to be insulated from the adverse economic effects of the pandemic?*

3. *Are downward economic protection clauses/ measures (including MAC clauses) becoming more prevalent in transaction documents?*

4. *Are you seeing any distressed deals so far?*

This is the first update of 2021. The team plans two more during the rest of the year.

Country	How has COVID-19 impacted deal flow in the European private equity sector?	Do any particular industries seem to be insulated from the adverse economic effects of the pandemic?	Are downward economic protection clauses / measures (including MAC clauses) becoming more prevalent in transaction documents?	Are you seeing any distressed deals so far?
Benelux	In the Benelux, PE dealflow continues to increase and is close to the level prior to COVID-19, especially deals with a value between €5 million – €50 million. There have also been a couple of transactions at the top of the market with a value of over €1 bn (e.g. the sale of UNIT4, the sale of GE Capital Aviation Services and the acquisition of Philips' domestic appliances business).	Given the tight housing market in *inter alia* the Netherlands, online housing advertising platforms seem very interesting for PE funds. After the Spanish real estate platform Idealista was acquired by EQT last year, various PE funds are now expressing their interest in acquiring Funda, a Dutch online housing advertising platform. In Belgium, industries that continue to be attractive targets for private equity investment during the pandemic continue to be those engaging in smart living, life sciences, and industry 4.0. Sectors that did well during the first and second wave continue to do well now, like the tech/medtech industry, renewable energy, holiday parks and life sciences. Recently, Vivera, a meat replacement market leader, was sold by PE. The deals in the following months will determine whether this will be a trend in the food industry.	We note that pre-pandemic PE terms are re-emerging, including acquisition financing. As noted earlier, we also continue to see a rise in earn-out arrangements. Also, we see specific COVID-19 clauses still being included in transaction documentation (e.g. clauses preventing parties from backing out of a deal because of COVID-19 by explicitly stating that COVID-19 was considered when entering into the transaction documents). In deals without specific COVID-19 wording, parties appear to continue relying on MAC-clauses for the purposes of mitigating any COVID-19 concerns.	It is said that somewhere in the second quarter of 2021 we might see more bankruptcies. The number of bankruptcies is still not rising, although a recent bankruptcy in the Netherlands that is feared to have serious broader consequences within the leisure industry is the bankruptcy of Dutch tour operator D-Reizen. The same is true for Belgium, where the expected economic fallout has not yet occurred due to the continued application of government support measures. On the other hand, positive news around vaccines continue to give corporates and entrepreneurs hopeful perspectives. With that perspective, businesses are slowly speaking with their vendors and banks about their future plans again.
CEE	PE and other deal flow has accelerated in Q1 2021, particularly in the mid-market segment. PE and founder-owned businesses that have been resilient during the pandemic are being put up for sale.	Technology, FMCG, online and traditional food retail and education are among the sectors attracting the most interest. Also, alternative energy and infrastructure continue to draw significant interest from infrastructure funds and asset managers.	In the mid-market segment, MAC clauses or other CPs protecting against significant economic deterioration, and completion account adjustments protecting against less significant economic deterioration, are more prevalent than in pre-pandemic times. In the larger, competitive auction processes or transactions involving global PE players, as usual there are fewer downward economic protections.	There have been some distressed deals, but so far there has been more talk about distressed deals than actual distressed deals. This may be a result of the legal systems in CEE, which generally make it difficult for lenders to move quickly and effectively in distressed situations.

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France	The French PE market has remained very active in Q1 of 2021 and we see many highly competitive auction processes with high valuations / Ebitda multiples. The level of dry powder remains high, which should positively affect deal flow in the next few months. Financial sponsors remain keen on investing in sectors seen as resilient, notably infrastructure and life sciences, including an increasing interest in the healthtech sector.	The sectors we have seen to be less affected include infrastructure, renewable energies, telecoms and life sciences. Infrastructure funds are increasingly present. Life sciences is very active in all segments, with increased investments in healthtech.	Competitive PE deals are still based on locked box mechanisms, no conditional prices and limited guarantees. Earn-out structures are increasingly used in transactions involving strategic players and often cover fiscal year 2021 only, which shows the level of uncertainty.	Together with our restructuring team, we see an increasing number of distressed deals and deals driven by debt renegotiation. We see a lot of amicable bankruptcy proceedings set up to facilitate distressed deals. So far the number of actual bankruptcies has been limited by French state protective measures and notably bank loans guaranteed by the French state.
Germany	M&A deal flow (involving by PE funds) is picking up again. There is a lot of dry powder in the market and many PE funds are currently looking for opportunities. However, corporates have also resumed their M&A activities, so PE funds are facing increased competition. New PE funds are closing following a period of virtual fundraising. Even though Germany appears to be on the peak of the third COVID-19 wave, the PE industry seems to be more and more back at normal, with various sources of acquisition finance available. Valuations have increased and there is a stiffer price race in all segments of the PE industry (from small to large cap). The PE industry is now less concerned about COVID-19, but has to deal with increased compliance work (in addition to AML, FDI and merger control rules, the funds now have to deal with DAC6 reporting obligations) and a not-so-favorable legislative environment in Germany. This includes discussions on granting VAT relief to PE funds for administrative services provided to their portfolio companies –it seems the legislator plans to grant such relief only to certain types of VC funds, but not to the PE industry.	The winners of the COVID-19 crisis still seem to be the most attractive targets for PE. This includes services, software and IT, pharma, healthcare and tech/medtech, as well as trade and ecommerce. On the other end, targets in textiles, energy and automotive remain somewhat unattractive. While IPO activities are on the rise globally (including the use of SPACs), this has only lightly spurred the equity capital markets in Germany.	While valuations are starting to rise (some PE professionals have already started complaining about exaggerated prices), uncertainties remain as regards future turnover. It is yet not clear how much potential targets will remain affected by the COVID-19 crisis. However, instead of downward protection, the parties to a PE transaction rather look at deal security. This includes excessive use of MAC clauses. The parties' common ground rather seems to be that risks may be shared by bridging valuation or financing gaps through vendor loans or continued participation of the sellers in the target. While minority tickets were down in 2020, we also see a tendency for joint deals and minority investments – but it is not yet clear that this will become a new fashion.	While a number of firms have applied for insolvency protection – some of which were in distress even before the crisis – we have seen only few distressed deals involving PE (e.g. Cartesian Capital Group acquiring the insolvent Arlington Germany automotive supplier). Some managers of PE portfolio companies hope to buy out some of their competitors in the course of 2021. But there is also a certain fear that the number of insolvencies will surge in 2021, in particular if suspensions of parts of the Insolvency Act are lifted again.

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Italy	Private equity activity in Italy is experiencing growth in the first quarter of 2021, as some confidence is back in the market after the challenges posed by COVID-19 in 2020. On the one hand, some exit processes that were put on hold in 2020 are now (re-)starting. On the other hand, however, valuation gaps between sellers' and buyer's expectations is still an issue in some cases. In some sectors, consolidation among operators has accelerated amidst the pandemic, thus increasing the number of transactions.	PE funds are particularly active in the food, sport (e.g. sale of Inter football club and acquisition of a minority stake in Serie A's media rights) and healthcare sectors. Other industries that seem less affected by the pandemic so far in the Italian market are technology, media and telecoms (TMT), renewable energies/utilities and infrastructure assets. Within the real estate market, new investment opportunities are being targeted in the logistics business as well as in the student housing and education industries. Finally, as China is somewhat ahead compared to Europe and the US in managing the COVID-19 outbreak, we are seeing some new interest from Chinese investors in the Italian market.	Since the pandemic has been going on for more than a year, it is now becoming harder to qualify it as a MAC event. Rather than leading to the inclusion of MAC clauses, the duration of the pandemic is postponing some deals, in sectors whose revenues have been negatively affected by COVID-19. Vice versa, in sectors which have been positively impacted by the COVID-19 outbreak (e.g. the diagnostic industry), battles among operators to acquire well performing targets have led to a sharp increase in valuations and multiples applied.	So far the number of distressed deals has not increased to a substantial extent compared to pre-COVID-19 levels, although the general feeling remains that they are very likely to rise in the near future (in particular, for those players operating in B2C retail sectors and/or when certain protective measures adopted by the Italian government, such as the ban of dismissals, will cease to be effective).
Spain	Activity levels are back to normal with telecoms and energy & infrastructure leading the charge. The only difference between Q2 2021 and the pre-COVID situation is that Real Estate seems to be less active as a sector, arguably due to the implantation of remote working as a permanent change.	Telecoms and technology have emerged as the more resilient sectors and investors are doubling-down on those industries.	MAC clauses have not made their way to transaction documents, although we have seen one in a recent major deal on the retail sector. We have also seen a proliferation of price-adjustment mechanisms (e.g. earn-outs), particularly in small deals, that aim to protect investors addressing uncertainty in terms of valuation of target businesses.	So far we see distressed deals only in hotels, restaurants and tourism. In other sectors, there have been distressed deals for companies that have either been hit hard by COVID-19 and gone into insolvency, or ones that have circumvented the crisis on their own, with the support of state measures such as temporary redundancy (ERTE) and soft loans collateralized with state Bonds (ICO).
Turkey	Traditional PE deal flow is still low; however, we continue to see strong interest in gaming and mobile app companies. The IPO market is strong and we see private equity funds taking advantage of the strong IPO market to exit. Strategic investors remain active but deals go at a slower pace. Despite this, our team continues to see some activity, with three PE-related IPO deals taking place within the first four months of 2021 and two deals closing in April in the mobile technology software sector.	A number of industries continue to be affected by the pandemic and are granted certain type protections. Amongst these are the construction, tourism, agriculture, automotive, logistics and hospitality industries. The healthcare industry is – not surprisingly – more resilient. Other resilient businesses include online shopping and gaming and renewable energy.	MAC clauses including COVID-19 provisions are decreasing in PE deals and private equity firms are adjusting to the new reality. Earn-out and deferred payment structures are prevalent in the market.	There are a number of classic liquidation or restructuring transactions, in particular around the restructuring framework agreements signed by banks as part of a larger regulatory effort.

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UK	The UK PE sector has started 2021 in buoyant mood. As the pandemic's effects become less severe, most PE firms are increasingly optimistic and shifting their focus from downside protection and portfolio management to new investment opportunities. Taking advantage of surprisingly benign market conditions, they are engaging in a broad range of transactions, spanning traditional buyouts, strategic investments in listed companies, rescue financings, co-investments, add-on acquisitions, non-core asset disposals and acquisitions and late-stage venture and growth equity investments. With many PE investors expecting a 'U-shaped' or 'V-shaped' recovery, deal volume and value are expected to remain robust in 2021, although resilience, versatility and creativity will remain key to successful deal making. TMT (particularly software), healthcare (including healthtech) and consumer sectors attracted significant levels of investment in 2020. These sectors are expected to remain popular in 2021 and beyond as technological innovation and disruption continues to drive deal activity. Two interesting trends to emerge in 2020 and Q1 of 2021 have been the rise of European SPAC IPOs as an alternative route to public markets for PE and other private capital investors and the dramatic increase in sustainable or impact fundraising and investing, including ESG-linked financings. Both trends are expected to intensify as the year unfolds. However, intervention from regulatory authorities in the US and Europe could either boost or stymie the former, whilst new legislation designed to scale sustainable investment and increasing adoption of international sustainability standards are likely to add further impetus to the latter.	As expected, countercyclical or acyclical industries have proved more resilient in withstanding the adverse economic effects of the pandemic and are therefore garnering attention from private capital. These sectors include technology (including biotech, medtech and cybersecurity), pharmaceuticals and healthcare, consumer products, infrastructure (as long-life PE funds target infrastructure-like assets), energy (primarily renewable energy, power, cleantech and energy innovation and transition projects), and e-commerce and logistics. Unsurprisingly, PE firms with investee companies in the real estate, leisure, hospitality, travel and retail sectors have been most affected by the impact of the pandemic. Many UK businesses will likely be impacted by the recent termination of the Coronavirus Business Interruption Loan Scheme (the "CBILS") and the Bounce Back Loan Scheme (the "BBLS") in the coming months. Hopefully, the prompt vaccine rollout, the extension of the Coronavirus Job Retention Scheme until 30 September 2021, the gradual reopening of businesses and the UK playing host to the G7 Summit and COP26 later this year will help to temper some of the economic headwinds.	MAC or MAE clauses remain very uncommon in private acquisitions in the UK. In the limited number of cases where MACs are included in English law governed SPAs, buyers generally struggle to invoke them since they often contain carve-outs for macroeconomic, industry-wide and force majeure events. Given the difficulties in obtaining and enforcing MAC or MAE clauses, buyers often prefer to seek specific contractual protections against the most material risks affecting the target group or business. The UK High Court recently considered issues concerning the construction of an MAE clause in a sale and purchase agreement in *Travelport Ltd and others v Wex Inc*[1]. In reaching its decision, the High Court considered that: i. there is no presumption that an MAC/ MAE clause should be narrowly interpreted and its words should generally be given their natural and ordinary meaning; ii. a buyer is required to discharge the burden of proof as to whether a MAC/ MAE has occurred or been suffered; iii. a seller is required to establish whether and to what extent a particular change or effect falls within a carve-out in order to prevent the buyer from invoking the MAC/MAE clause; and iv. where the seller establishes that a particular change or effect does fall within a carve-out, the buyer must prove whether and to what extent an exception to such carve-out is applicable.	Other than the administration of Greensill Capital and restructurings and distressed sales of traditional retail businesses, hotels, shopping centres and aviation businesses, we have not yet seen the significant increase in the number of distressed deals in the UK that was widely expected as the pandemic's ill-effects endured. This is partly explained by unprecedented fiscal and monetary support from the UK government and the Bank of England and the ability of UK listed companies to deploy over £26bn of fresh capital (the highest amount raised since 2009) to repair their depleted balance sheets whilst weathering the storm. However, the number of UK company insolvencies increased in March for the third month in a row and the recent termination of the CBILS and the BBLS are likely to lead to a further uptick in the coming months. In Q1, we have continued to see opportunistic plays and speculative bids for targets, particularly those considered to be in distress, debt-laden or undervalued. In recent months, PE equity investors have reported seeing an increase in distressed investment opportunities in Europe and have indicated greater willingness to pursue them. This may be explained by the fact that distressed and turnaround strategies have fallen back into favour with LPs. An anticipated wave of corporate insolvencies and defaults across Europe, particularly among SMEs, is expected to drive European distressed fundraising to a record level in 2021, which should also lead to increased activity in distressed M&A.

1 [2020] EWHC 2670 (Comm).

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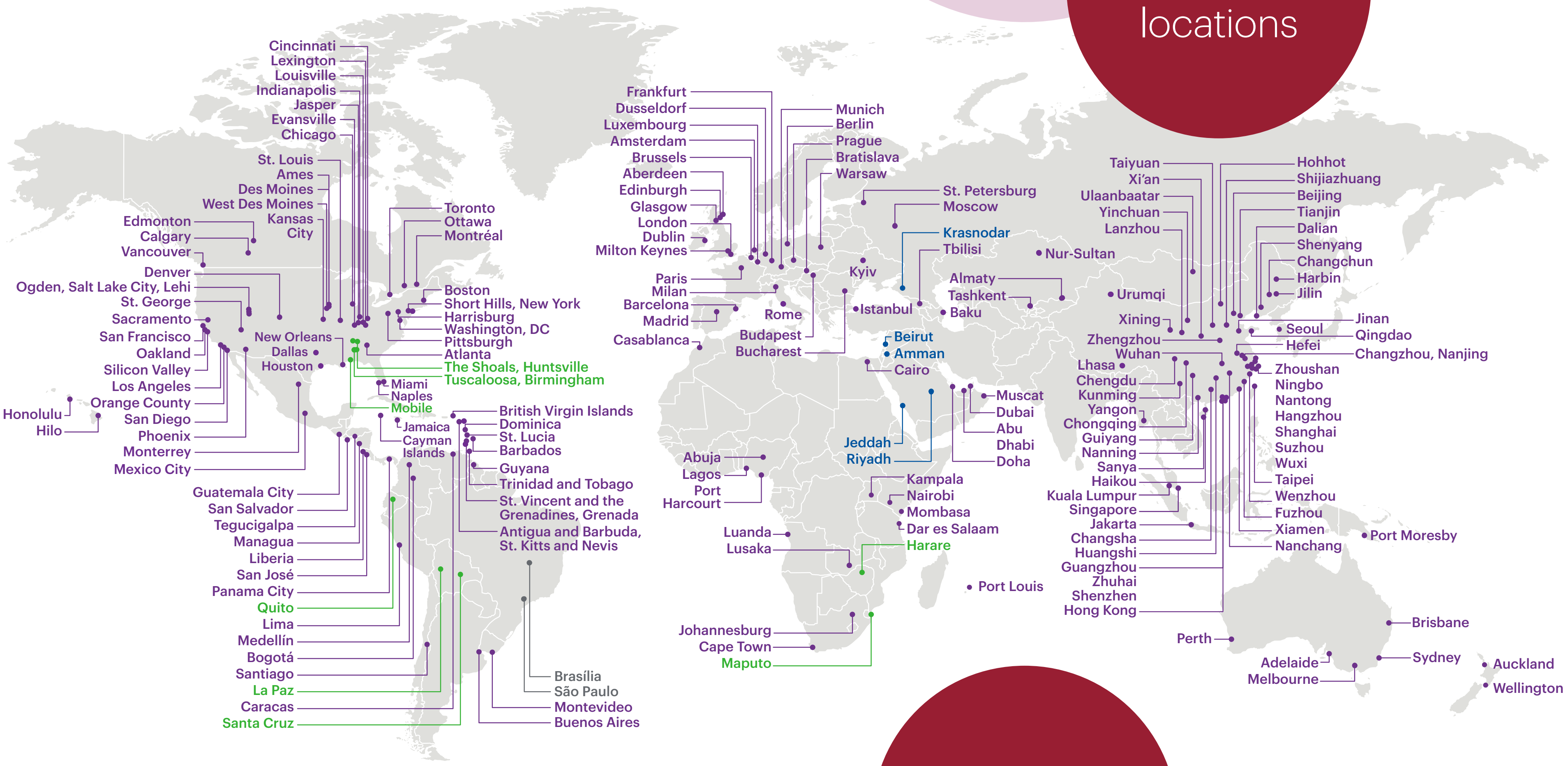

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