Your Dentons Europe
Private Equity Trends Monitor

First edition: June 2020

Your Dentons Europe Private Equity Trends Monitor

The Dentons' Europe Private Equity team is delighted to announce the launch 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 is closely following the development of COVID-19 and its impact on PE deal activity. Our lawyers on the ground in each of our core markets will monitor and assess the situation every two months 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 edition in a series of four updates that will be produced between now and the end of the year.

	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	PE deal flow has been affected. Almost all deals that were in the pre-signing phase at the time of the global outbreak have been put on hold. Signed deals heading to closing were completed in a 'rush'. However, we have noticed that in the last few weeks PE funds have turned their attention to targets in certain industries. Another indicator is also the W&I insurance work at our firm, which had paused entirely but has picked up again in the last few weeks.	The industries that seem to be the least affected include services, software, tech/medtech and life sciences. In the leisure industry, a leading global investment firm acquired a PE owned holiday park provider in Western Europe and the largest in the Netherlands. Notably, we also see ongoing acquisitions by a PE-owned braintainment and puzzle book maker. Also, we see projects in the renewable industries continue at almost the same pace as before the pandemic. Interestingly, coffee maker JDE Peet's, parent company of Douwe Egberts among others, made its stock debut on Amsterdam's AEX at the end of May.	We have not yet seen the introduction of MAC clauses in transaction documents relating to the effects of COVID-19. We, however, do see the introduction of COVID-19 related gap control covenants for measures taken outside the ordinary course of business; in addition, warranties have been introduced in the absence of the use of relief measures that may impose restrictions on companies in the near future.	We have in general not yet seen any notable distressed deals involving PE. However, in the Netherlands, an iconic and highly leveraged retail group in distress and its creditors (including debt funds) reached agreement on a major restructuring resulting in a full takeover in return for a substantial haircut. Generally, the expectation is that PE portfolio companies might try to buy out some of their competitors in the second half of the year.
CEE	Deal flow has remained quite strong through H1 2020. Most transactions where negotiations commenced before the lockdowns continued unabated, albeit occasionally with revised pricing. For H2, however, while we anticipate a number of larger deals coming to market, we foresee a possible weakening of the mid-market and lower mid-market. It is also difficult to predict the effect on the CEE M&A market of COVID-19 related legislation passed or under consideration in many CEE countries requiring government approval of certain foreign investments.	Online retail, which was relatively underdeveloped as compared to Western Europe and North America, has been expanding exponentially. The more successful online food retailers are seeking growth equity to fund the geographic buildout of their operations. Also, alternative energy and infrastructure also continue to draw significant interest from infrastructure funds and asset managers.	It has really depended on the transaction. In competitive auction processes or transactions involving global PE players, as usual, there are no downward economic protection clauses. However, in semi-distressed transactions or transactions without any competitive tension, some buyers are able to elicit conditions precedent protecting them from significant deterioration in the target's economic position.	We are not seeing truly distressed deals yet. In fact, we have seen several distressed deals pulled from the market as government relief measures have afforded sufficient protection for the seller to pull the deal temporarily in order to take advantage of them. On the deals which were already being negotiated at the outset of the crisis, there have been some substantial price renegotiations reflecting the stress on (and in limited cases, distress of) the target.

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France	Most of the deals with well-advanced negotiations have not been affected. We have even seen acceleration in some transactions when the lockdown was announced, with huge pressure on advisors to complete as soon as possible. Some scheduled processes have actually been launched after the COVID-19 outbreak in sectors that are not affected by or even benefit from the crisis, such as TMT, pharma, healthcare and logistics. In other sectors, processes have been stopped or are slowing down (due diligence may continue but the moment of truth will be the valuation of the target). The real question that remains is the appetite of the banks to finance PE deals in these circumstances.	The sectors we have seen to be less affected include infrastructure, telecoms and life sciences. Life sciences is being very active on the market; we see several investment projects in biotechs/medical device companies and expect to see more interest in the whole industry and notably in pharma manufacturing. Until now, it was a very competitive market but we currently see that negotiation power has shifted from the company side to the investor's side.	We have not yet seen a move in M&A documentation. The issue is more crucial in financing documentation (availability of funds).	We do not see distressed deals yet. Our restructuring team is currently "hand holding" many clients in distressed situations but distressed deals are expected to come later in the month and more importantly in September.
Germany	Deal flow involving PE funds has been affected. Many PE funds are currently looking after their portfolio companies (and investors). It appears that small-cap and lower mid-cap transactions as well as add-on transactions are the least affected. The problem regarding new transactions is, in particular, insecurity about forward-looking valuations.	The industries that seem to be the least affected include services, software and tech/medtech. Reportedly, there is a fresh interest of PE funds in construction companies and related businesses. We recently also saw a series of add-on transactions in the fintech industry (payment services).	Our team recently discussed MAC clauses on two occasions. There is currently a certain fatalism about this, with PE professionals asking what is it good for, given that there is COVID-19 all around. We are now suggesting using a very limited MAC (which only looks at some essential assets and customer agreements). On the other side, purchase price elements are being discussed (such as earn-outs and vendor loans).	While a number of firms have applied for insolvency protection – some of which were in distress even before the crisis – we have not seen any notable distressed deals involving PE. Some managers of PE portfolio companies hope to buy out some of their competitors in the second half of the year. Distressed deals in Germany are usually only done by a few specialized PE funds (including HIG Capital, Triton and Aurelius).

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Italy	Many deals that were still in their early stage before we went into lockdown have been put on hold. The general feeling, however, is that the M&A market is still active, although PE funds are certainly more cautious and have slowed down investing.	PE funds are particularly active in the wine and spirits business. The logistics business seems also to be quite active (particularly in the B2C segment, while B2B is suffering). Other industries that seem less affected so far are telecoms, energy/utilities, food and pharma. Conversely, the real estate market is generally on hold, with very few exceptions where deals already signed have been expressly secured against COVID-19's effects with a reduction of the purchase price.	It is still too early to predict the evolution of downward economic protection clauses post-COVID-19. Deals that were already in an advanced stage before the lockdown have been secured against a reduction of the purchase price. Some clients are looking at MAC clauses in SPAs that have already been signed, but more to negotiate a reduction of the purchase price rather than with an actual view to an exit.	We do not see distressed deals yet but they are very likely to come in the coming months.
Spain	Almost all private equity deals have been put on hold. Some industrial purchasers in sectors not severely affected by COVID-19 (e.g. foodstuffs, IT and media) have progressed with ongoing transactions.	Most deals involving operating businesses have been put on hold, mainly due to the difficulties attached to valuations. The COVID-19 crisis is also threatening energy and real estate, because the Spanish government has enacted moratoria on certain lease payments and has suggested nationalizing energy operators to guarantee supply. In addition, a newly enacted foreign investment regulation requires prior authorization of non-EU / non-EEA investments into Spanish critical sectors including utilities, health and transport.	MAC clauses have never been common in private equity deals. In an auction scenario they are unthinkable or a deal breaker. However, they can be seen in financing facilities (LBOs). Interestingly, we have identified COVID-19 exceptions in W&I insurance policies.	We do not see distressed deals yet. We expect those to come up after the summer. These will probably be pursued by both Spanish investors and foreign funds (London-based teams), as the latter have a greater track record on distressed transactions.

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Turkey	PE deal flow is low, though strategic investors remain active but deals go at a slower pace. Despite the general slowdown, our team continues to see some activity, with two deals closing in May and the first week of June in technology and healthcare devices, including the sale of the first Turkish unicorn Peak to Zynga for a total consideration of US$ 1.8 billion, a record for a Turkish tech start-up. Our teams from Turkey and the US advised Hummingbird Ventures on the sale.	A number of industries have been declared by the government to be affected by the pandemic and granted certain *force majeure* type protections. Chief amongst these are the construction, tourism, agriculture, automotive, logistics and food and beverages industries. The healthcare industry is – not surprisingly – more resilient. Other resilient businesses include online shopping and gaming.	COVID-19 based MAC discussions are on the rise, with EBITDA or turnover reductions being proposed as new MACs. There have been confirmatory due diligence reviews and an increase in warranties and indemnity insurance. Investors are yet to reject transactions that are already in negotiation phase but there is a trend to slow down deals.	There have been no distressed deals so far, though there are a number classic liquidation or restructuring transactions, in particular around the restructuring framework agreements signed by banks as part of a larger regulatory effort.
UK	At the outset of the pandemic, many deals at an early stage were put on hold, whilst others were aborted. A small number of deals that were very close to signing were accelerated. Deals in counter-cyclical or acyclical sectors and deals driven by defensive strategies are more likely to proceed. Transactions that do not lend themselves to remote due diligence are more likely to be mothballed. The current inability to price deals accurately and the significant gap between buyer and seller pricing expectations are likely to suppress deal activity.	Those industries which are expected to prove more resilient in the face of the pandemic include infrastructure (including data centers), energy (primarily renewable energy, power and energy transition projects), pharmaceuticals and healthcare (including biomed, biotech and cleaning products), technology (including cybersecurity and data privacy) and e-commerce and logistics. We expect to see PE firms investing heavily in these and other counter-cyclical or acyclical industries.	MAC clauses remain very uncommon in private acquisitions. In the limited number of cases where they have been included in sale and purchase agreements, buyers are likely to experience difficulties in invoking them since they often contain carve-outs for macroeconomic, industry-wide and *force majeure* events. Accordingly, a reluctant buyer will likely need to consider alternative ways of extricating themselves, e.g. where possible, seeking to terminate for material breach of pre-completion undertakings by the seller.	We have already seen some distressed deal activity, primarily in the real estate, retail, leisure and financial sectors. In anticipation of a busy period ahead, certain distressed debt funds in London are raising new funds and bolstering their deal teams. Some of these new funds have been rebranded, whilst others have amended their terms to enable fund capital to be used for opportunistic investments in new sectors, asset classes or geographies.

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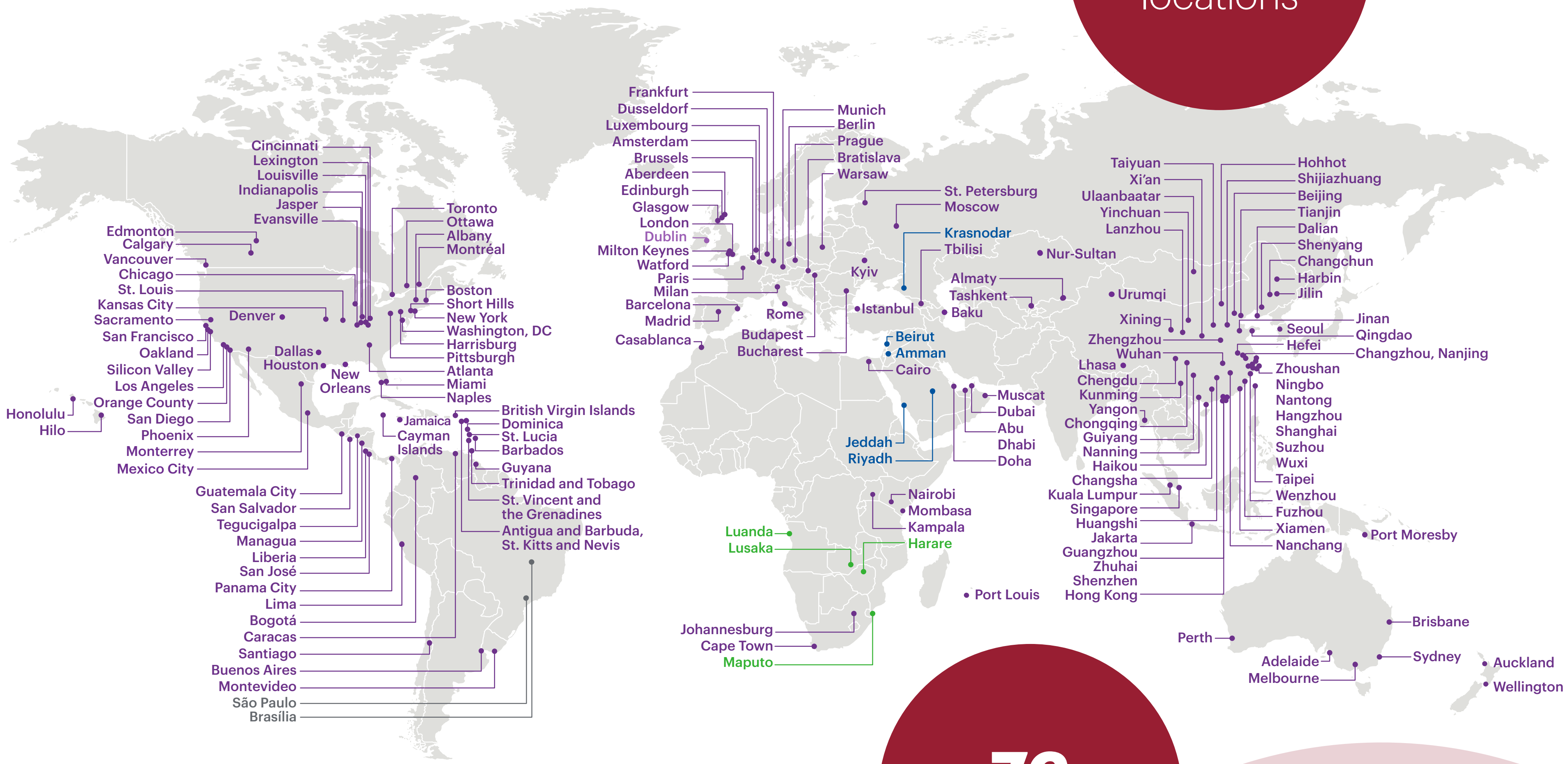
184
locations



76
countries

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