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Global M&A Insights

Deal-making predictions for 2024

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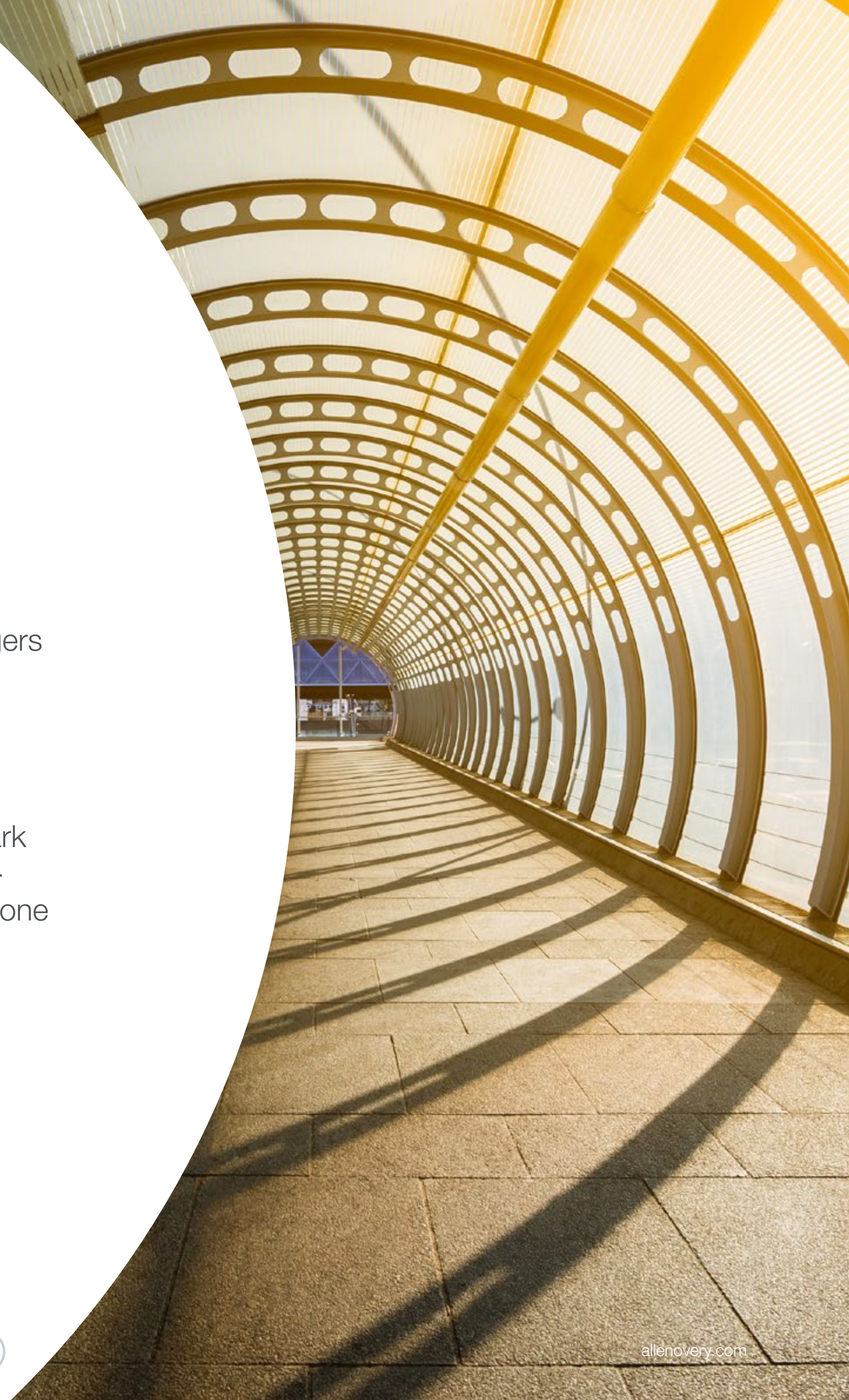

Deal-making predictions for 2024

Welcome to our year-end edition of M&A Insights, where we preview some of the themes we expect to shape deal-making over the next 12 months.

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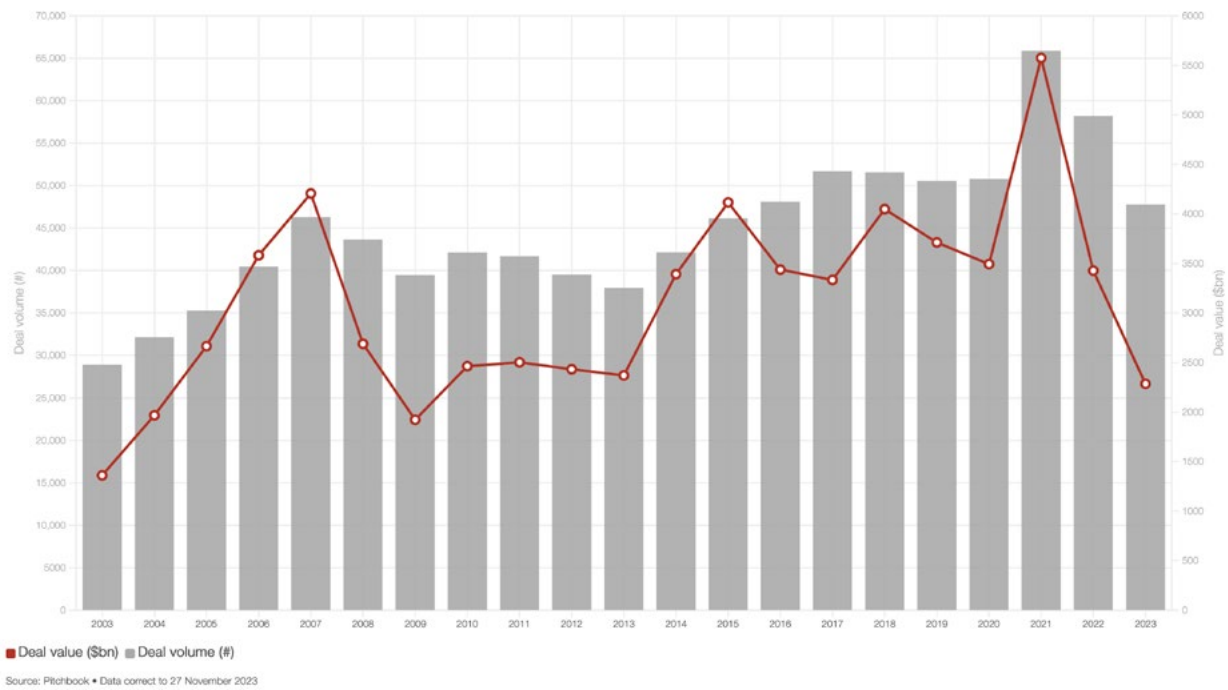
Continued volatility in the debt markets has resulted in another subdued year for M&A, with global deal value and volume down 33% and 18% respectively compared with 2022. However, Q2 was the strongest quarter for M&A in 12 months – and October the biggest month by value and volume since May 2022 – as inflationary pressures finally started to recede. If this dynamic is sustained, we expect the upward trajectory to continue.

Another subdued year for M&A

Annual deal value and volume. 2003-present

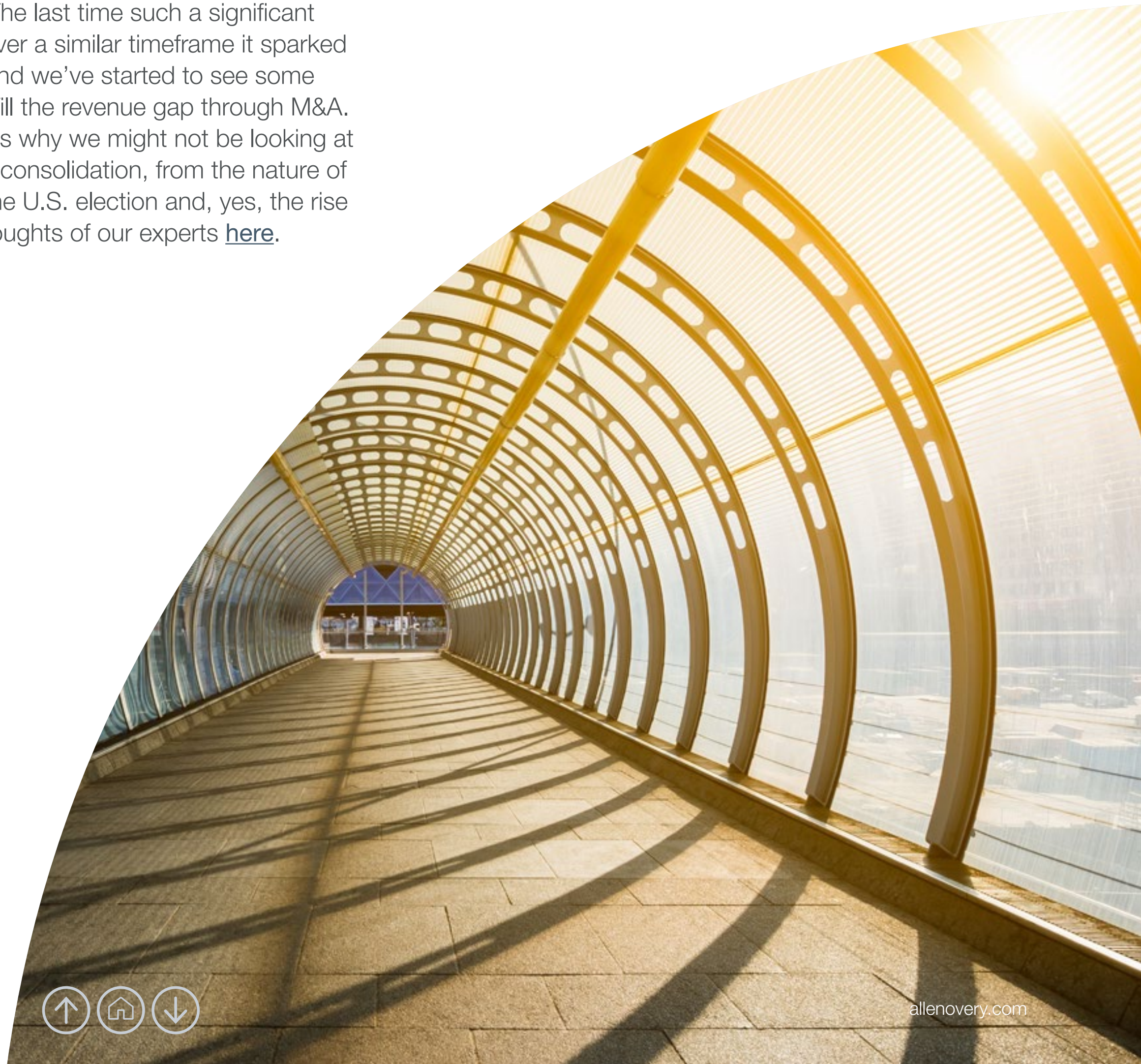


Our first theme for 2024 is the growing interest among financial sponsors in the upside of artificial intelligence. It's no surprise that private capital is flooding into a technology that has become the biggest investment priority for global businesses according to a recent survey by KPMG, but how sponsors are looking to seize that opportunity is perhaps less expected. We examine their desire to target proprietary data sets in order to create new businesses harnessing pre-trained AI models and explain some of the ways these tricky deals can be de-risked.

After signs of an uptick in European public takeovers during the second half of the year, our partners highlight the prospects for further public-to-private transactions in the months to come – and highlight some of the subtle nuances in how successful P2P deals are constructed across a variety of European markets.

Then, in the first of two sector-focused stories, we assess the likelihood of M&A activity among asset managers. Challenging market conditions are driving listed and private managers alike to seek protection in scale, while private firms are also targeting boutiques in hot areas such as private credit as they look to diversify their asset focus. With the value in these deals largely resting on the retention of key individuals and assets under management, we explain how to preserve both through the deal process.

Finally, we share our expectations for an uptick in life sciences M&A. The sector is staring at its biggest patent cliff for more than a decade, with protections on drugs that generate sales of more than USD200bn set to lapse between now and 2030. The last time such a significant portfolio went off-patent over a similar timeframe it sparked a run of big-ticket deals, and we've started to see some significant players look to fill the revenue gap through M&A. However, there are reasons why we might not be looking at another period of industry consolidation, from the nature of the drugs themselves to the U.S. election and, yes, the rise of AI. You can read the thoughts of our experts here.



Desire to harness potential of generative AI drives rising interest in data as an asset

Investors are targeting AI developers and buying proprietary data sets to build new AI businesses. Here we explain how to manage risk in this fast-evolving space.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When MIT named generative AI as one of its breakthrough technologies of 2023, it couldn't have predicted that less than a year later the technology would be the top investment priority for global businesses. More than 70% of respondents to KPMG's most recent CEO survey said they were already investing heavily in generative AI as a source of future competitive advantage, with more than half expecting a return on their outlay within three to five years.

That investment is not only coming from corporates – financial sponsors are also targeting companies for the data they hold in order to build new AI-driven businesses. Looking ahead to 2024 we expect a rising proportion of deals across all sectors to have proprietary data as a strategic driver.

This is not necessarily about building large general purpose AI models from scratch, which in most cases will be prohibitive for a variety of reasons, including cost. Instead, many investors are looking to harness proprietary data to develop smaller, more specialised AI systems, or more commonly to customise pre-trained AI tools.

There are many ways to do this. At a high level, the two most common involve fine-tuning (taking the model weights for a pre-trained AI system and refining through further training on a smaller dataset) or retrieval augmented generation (effectively connecting the AI model to a proprietary database from which the AI model can "look up" and return outputs). The latter is the more common approach particularly where the pre-trained system is a closed commercial model such as GPT-4, Claude or Gemini. In both cases, a target's proprietary data can provide a valuable competitive advantage.

Due diligence of generative AI deals starts with the use case

From a due diligence perspective, the risk assessment for deals involving the development or deployment of generative AI starts with the use case. DD needs to be more strategic and forward-facing and be carried out with a sophisticated technical understanding of how any new or customised model will be developed as well as its potential commercial applications.

– There are a host of risks associated with the selection of data on which to train generative AI models, including from a data privacy, IP and regulatory perspective. When acquiring data for building or customising AI, it's important to ascertain how that data was collected, where is has been stored and how it has been processed.

– If any of the data includes personal data (i.e. information relating to an identified or identifiable individual), this could raise potentially significant privacy law compliance issues. Some of the key principles underpinning these obligations include fairness and bias (broadly speaking, not using personal data in a way that could have an unjustified adverse effect on individuals), transparency (informing individuals that personal data concerning them is being collected, used, consulted or otherwise processed), data minimisation (any use of personal data being adequate, relevant and limited to the purposes for which it was collected), data security and privacy by design.

Although data privacy compliance is typically not within the scope of a legal due diligence exercise (as this would require an on-the-ground audit, beyond a desktop review of policies and procedures), a purchaser should seek to identify any potential indicators of deficiencies in the target's approach to data privacy as well as understand how those might impact its ability to comply with personal data obligations when using the target's data to develop AI models. As an example, it will be significantly more challenging – if not technically impossible – to meet data privacy requirements when using personal data that has been scraped from the internet without permission. A risk assessment will then be required. The regulatory environment is only moving in one direction – in recent months we have seen high-level political focus on the privacy impacts of AI through initiatives such as the draft EU AI Act, the London AI Safety Summit and President Biden's Executive Order on Safe, Secure and Trustworthy AI, which calls for Congress to pass data privacy legislation in the U.S.

– Due diligence is also needed to assess **IP infringement risk**, particularly the possibility that copyright or other IP rights would be infringed: (a) if the purchaser were to use the data to train an AI model, or (b) by a subsequent user of the AI in generating an output. This risk would arise where the target does not own the IP rights in the data or does not have the necessary rights to use the data to train an AI model or, critically, to allow users of the AI model to use outputs generated by it. This risk chiefly arises in relation to data that the target may have scraped from the internet and is the scenario that underpins many of the recent infringement allegations that have been brought against AI developers. If the target's data includes scraped information, the purchaser would need to conduct a risk/benefit analysis as to whether to use that data in its AI development. The nature and extent of any IP infringement risk is a complex, jurisdiction-specific question, and one that varies depending on a multitude of factors associated with how the model is trained, what it is used for, how the outputs from the model are deployed, any guardrails around its use, and relevant contract terms. Due diligence in this area requires a detailed assessment of likely future risks based on current or historical data collection practices and assumptions around future use cases.

- Beyond scraped data, IP infringement risk may also arise in relation to data the target has in-licensed from a third party. Any due diligence exercise should assess the terms of those licences against anticipated AI use cases, which are unlikely expressly to allow use of the data for AI development, for instance. Indeed, they may contain specific restrictions that would prohibit some of the technical steps involved in developing AI models, such as consolidating that data with other datasets. The ownership and licensing provisions relating to improvements and derivative works require particularly careful consideration, as they may provide the data licensor with an argument to asset ownership.
- More broadly, due diligence needs to be informed by, and test the target's approach to, the evolution of AI-related laws around the world. The proposed EU AI Act for example – which is due to be adopted in early 2024 – is set to adopt a use case-based approach that will apply a separate set of laws to distinct types of AI use. Investors will want to consider (and test whether the target has considered) which of those categories its proposed AI model development would fall into.
- **IP ownership** is another area of focus. Crudely speaking, an AI system is composed of the model (the weights representing the learned values derived from the training process), the source code for the system, and the data used to train the model (albeit the training is not stored by the model and therefore not an ongoing part of the system as such). As a result, any buyer looking to protect the commercial value of the acquired data that it will use to develop or customise an AI model will want to understand how that data is currently protected from an IP perspective. In addition, in many countries, the output generated by AI is not protected by copyright, which may diminish the value of content generated by AI. These will be jurisdiction-specific questions, will be specific to the type of data (eg images, text, video and audio) and may not be straightforward.

No AI investment is without risk, and mitigating potential issues may not be possible using traditional deal protections such as warranties.

For instance, if the investor is made aware through the due diligence process that certain parts of the target's data has been scraped, that knowledge is likely to preclude warranty claims that the scraping breached laws or infringed IP rights. It may be possible to obtain an indemnity from the seller for specific instances of non-compliance, but this is likely to be strongly resisted. Certainly, the seller would be unlikely to agree to extend any indemnity to losses flowing from the purchaser's future use of the data to build new AI models.

On that basis, investors are likely to need to rely on non-contractual protections as they use the acquired data to build or customise AI. There are steps that can be taken at any stage of the AI lifecycle to mitigate the risks arising from developing AI models. The appropriate risk mitigants always depend on the particular use case, but broadly they are likely to relate to the design of the use case (both for the training process and for the ultimate intended use of the AI model), internal governance controls to reinforce that use case, operational and infosec safeguards, and contractual protections.

Contractual protections vital where pre-trained models are being customised.

The latter will be relevant where the investor is taking a pre-trained foundation model and customising it using the acquired data. Here, the investor will have a choice between licensing a closed AI model on commercial terms or using an open-source AI model subject to the relevant open-source AI licence. The question of whether to work with closed or open-source models is central to the broader philosophical questions around AI safety, but that debate notwithstanding, any use of open-source AI should be undertaken with extreme caution. "Open source" has a range of connotations in an AI context, both in relation to what is actually made available on an open-source basis (typically only the weights for the model) and to the applicable licence terms (many of which restrict commercial usage).

Contractual protections will also be important where the purchaser ultimately seeks to commercialise the developed AI model through arrangements with its customers. It may be possible to agree an allocation to the customer of some of the risks associated with developing the AI model, which is an area of rapidly evolving market practice.

Mitigating risk in AI-ready data-driven deals requires a three-pronged approach. First, the target's data should be assessed against the proposed **use case** for developing or customising a future AI model, which can be adapted to mitigate risks as appropriate. Appropriate **governance** can help reduce any residual risk during development of the model and once it is in use. Finally, **operational** guardrails such as data encryption, model filters to prevent infringing outputs, and ongoing monitoring of training and performance provide an additional layer of protection.

Europe's listed companies see brighter prospects away from public markets

Amid tough market conditions public takeovers are on the rise. So, what do potential bidders need to know about the nuances of P2P deals across different jurisdictions?

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Life for many European public companies has been tough in recent years. Between 2003 and 2007, the MSCI Europe index (which comprises large- and mid-cap stocks across 15 markets), outperformed the S&P 500 by a factor of two. But since 2008, the eurozone crisis, austerity cuts and the impact of the Ukraine war have flipped this on its head. S&P 500 returns began to outstrip those of the MSCI Europe in 2011 and are now 2.5 times higher.

The volume of European public takeovers has fluctuated through this period, peaking in 2021 before falling back in 2022. However, although not showing in the public data, there were signs of activity starting to rise again in the final six months of 2023, including among sponsors looking to buy back businesses they themselves had previously listed. We expect the trend for more public-to-private (P2P) M&A to continue as we head into 2024.

European equities lag behind U.S.

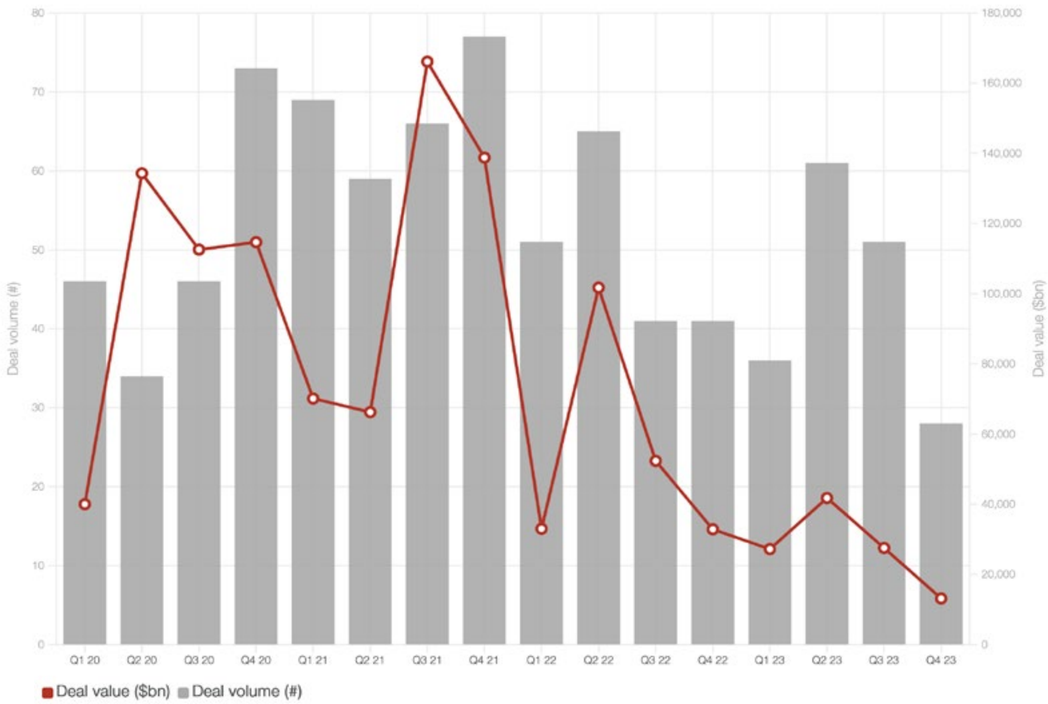
Performance of S&P 500 vs MSCI Europe, 2003-present

Source: Pitchbook

After outperforming U.S. equities between 2003 and 2007, European stocks fell behind in 2011. Since then the gap has grown and today the S&P 500 tracks 2.5 times higher.

Public takeovers primed for a rebound?

European public M&A value and volume, Q1 2020-present



Source: Refinitiv • Data correct to 27 November 2023

The volume of European public takeovers peaked in 2021 but has since fallen back. While not yet showing in the data, there were signs of an uptick in activity towards the end of 2023.

Uptick in public takeovers involving small- and mid-cap businesses

While there have been some large public takeovers over the past 12 months – including some logical big strategic deals – we are seeing more activity among mid- and smaller-cap targets, many of whom are out of the analysts' spotlight and struggling to access liquidity with their stock trading at a discount. Here a delisting can provide a better route to growth, either via a strategic combination or a private equity investment or buyout. PE deals were more common before interest rates rose – particularly in 2021 – but higher rates and a reduction in the availability of syndicated bank loans has given strategics an advantage because they can fund deals (in whole or part) with shares.

Clubs of private debt funds are stepping into the financing gap, but the higher cost of borrowing relative to recent years makes it more challenging for PE firms to generate the returns they have achieved historically. That said, we have seen PE investors have success with buy and build strategies, where several businesses are bolted together to create a larger and more valuable whole.

Executing transactions successfully requires an understanding of the nuances of public M&A markets and regimes across different European jurisdictions. While every deal is unique, below are 11 key features that you should be aware of.

1. Secrecy is critical in all European markets. Buyers must limit the number of insiders and use codenames and passwords to preserve confidentiality, while NDAs and standstill agreements with the target are usually needed before non-public information can be shared. Even in the earliest stages, any leaks or even general market rumours can trigger a requirement to formally announce under market abuse regulations or specific takeover rules (eg the Takeover Code in the UK) – and in some markets can cause the bidder to lose control of the process. In the UK for example, media rumours or speculation (even very early in the process) can cause the Takeover Panel to force an announcement and impose a 28-day "put up or shut up" deadline on each identified bidder. In Germany, a share price rise after a leak increases the mandatory minimum price the bidder must offer if it proceeds with its interest.
2. Due diligence is shorter and more limited than in private M&A deals, which helps to reduce the risk of leaks. Price-sensitive information should already be in the public domain due to MAR requirements, meaning targets typically see the DD process as more an exercise in confirmation than discovery. In some jurisdictions including the UK, Spain, France and Belgium, targets are required to share the same diligence information with all bidders, which can cause some to withhold information in case any of their competitors emerge among the potential buyers. In the Netherlands, Germany and Italy, asymmetric disclosure is permitted.
3. It's common for buyers to seek early engagement with senior management (and in Germany possibly the chair of the supervisory board) before making a formal approach. Managers may – and sometimes in some jurisdictions should – brief their directors but could initially maintain confidentiality; if PE bidders jump the gun on discussions around topics like management incentives and/or equity rollovers it can jeopardise the deal and, in the UK, trigger disclosure requirements.
4. In jurisdictions including the Netherlands and the UK, it's standard practice to submit a non-binding offer to the target board that includes, among other things, details on price, strategic rationale, financing and high-level plans for management and employees. In these markets, unilateral engagement with shareholders may be viewed as hostile and may be restricted under the terms of the NDA. Spanish and German public companies typically have a controlling shareholder; here it's common for the buyer to make a direct approach to them either before, or alongside, any talks with the target board.
5. Some degree of certain funds financing is required in all European markets before launching a cash bid, but there is variation among regulations and market practice in relation to the level of certainty of funding, the timing and the evidence required. For example, bank guarantees/ letters of credit are required in France, Spain, Italy and Germany (although funds can be placed in a blocked account in Germany as an alternative).

6. The most common way for a bidder to achieve control is via a tender offer recommended by the target's board. However, depending on the jurisdiction, different levels of shareholder acceptance are required to delist the target and execute a squeeze-out to reach 100% ownership. In the UK, a scheme of arrangement is commonly used instead of a tender offer as it delivers 100% of the target's shares if the scheme is approved by a majority (in number) of target shareholders holding 75% in value of the shares voted at the relevant meeting. In France and Germany, the threshold for squeezing-out minorities is 90%. In the Netherlands – where public takeovers are executed via so-called "pre-wired back end" structures – the market practice acceptance threshold is 80% (you can read more about trends in Dutch public M&A here).
7. Directors' fiduciary duties play a critical role in negotiations, and again vary across borders. The German and Dutch legal systems operate a stakeholder model whereby directors must consider a broad range of interests, including what's best for the business in the longer term. In the UK, target boards must also take into account a range of factors, but maximising shareholder value is the most important.
8. Takeover regulators are equally important to the process, although at what level varies from market to market. The UK Takeover Panel, Spanish CNMV and Italian CONSOB are heavily involved from the outset and throughout. By contrast, the Dutch AFM and sector authorities such as Germany's BaFin are more reactive.
9. Interloper risk is significant, particularly in the UK and Italy where many deal protections for the bidder (including break fees, "no shop" clauses and exclusivity) are prohibited. In other jurisdictions, including the Netherlands, meaningful no-shop and break fees are seen.
10. Buyers have limited ability to walk away from a deal post-announcement. In some markets, many types of condition (for example, material adverse change (MAC) conditions) are either prohibited or not invocable except in extremely limited circumstances.
11. Deal timetables are similar across Europe given they are largely driven by regulatory processes (eg merger control, foreign direct investment and financial regulatory).

Search for scale and specialist expertise point to increased dealmaking among asset managers

A combination of defensive and offensive M&A is set to reshape the asset management industry. Here we explain what's behind the trend – and outline the nuances of these often tricky deals.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Fundraising challenges, higher financing costs, market volatility and an ever-tighter regulatory environment are upping the pressure for M&A among asset managers. Those drivers, however, apply differently depending on which segment of the market you're looking at.

For many large, listed managers there is an imperative to build scale. Here, a general stagnation in asset performance is squeezing returns, with merger synergies one way to offset the associated fall in fee income. According to a recent PwC survey of 500 asset managers and institutional investors, 73% are considering an acquisition or merger over the next 12 months primarily as a defensive play.

Asset managers in the private markets are similarly looking to increase their assets under management (AuM) and protect fees, which are under increasing scrutiny from both regulators and investors. Among this group, however, we are seeing more focused M&A. Over the past decade, private capital has been gravitating towards a smaller number of multi-strategy mega firms, and in response many managers are looking to move into this bracket by building out their asset focus via acquisitions of boutiques that specialise in high-performing or niche classes such as private credit, infrastructure and secondaries.

Private managers behind some of year's biggest deals

There were some significant acquisitions in this space during 2023, with CVC taking a majority stake in DIF Capital Partners, Bridgepoint acquiring Energy Capital Partners (two deals we explore in more detail here), and Man Group pushing into private credit via its purchase of a controlling interest in Varagon Capital. In addition, some of the better-known PE firms that focus on financial services (such as Reverence Capital and Apollo) have also acquired asset management platforms in recent years.

Looking ahead to 2024 we expect further deal-making across all segments of the market. We are not alone in this prediction; Partners Group CEO David Layton recently told the Financial Times that the current landscape of roughly 11,000 private asset managers could shrink to "as few as 100 platforms" over the coming decade. Ardian president Dominique Senequier is not predicting such an extreme period of change, but still thinks a 50% reduction in the number of players isn't out of the question. Brookfield CEO Bruce Flatt, however, goes further, suggesting the industry could eventually coalesce around just 10 global giants.

There are some interesting nuances to asset manager deals that buyers should consider – from ways to protect fragile sources of value to the importance of preparing an existing platform for the deal. Here are some of the most important.

1. The value in asset manager acquisitions depends in large part on AuM, which can be vulnerable during an acquisition. Investors in open-ended funds can redeem their capital at short notice, and if a deal has the potential to shift the fund's risk/return profile they may choose to take their money elsewhere. LPs in closed-ended funds do not have the same ability but may have change-of-control clauses that limit or block the general partner's ability to make capital calls following a sale. Buyers in private market acquisitions will often look to protect against capital flight by building retention of AuM (or the fees generated from AuM) into deal terms as a condition precedent or price adjustment mechanism where the fall is assessed at closing. (Alternatively, where the assessment is carried out post-close, the protection may come in the form of an earn-out or deferred consideration). In U.S. private fund transactions, a change of control of a registered investment advisor is a deemed assignment of the advisor's investment advisory agreements, meaning that some sort of client consents are required. Again, this typically leads to conditions precedent relating to obtaining fund and/or client consents, as well as price adjustments and earn-outs. For deals involving U.S. public funds, a change of control of the investment advisor would result in the termination of the investment advisory agreement with the public fund entity; a new agreement would require the purchaser to seek the approval of both the fund board and the public fund shareholders through an SEC proxy process.
2. If the acquiring fund is a financial buyer and its limited partners (LPs) include institutional investors such as pension funds, regulatory restrictions - particularly in Europe - could impose limits on the target firm's investment approach if it falls outside their risk parameters.
3. Retaining key investment managers is important in all deals and can be critical in some. The best individuals are essential to both investment performance and distribution, and in an acquisition may be a flight risk as rival firms look to seize on any doubts over the deal.
4. In some fund structures, LPs may have "key man" clauses that prevent further capital calls if particular managers leave.
5. Top managers will typically benefit from the performance of the investments they manage via carried interest, share awards or bonuses, which may include revenue- or profit-sharing arrangements. These structures encourage retention but may be impacted by an M&A transaction. For buyers and sellers, it's crucial to understand the contractual and incentivisation arrangements for key managers so that they can assess flight risk and the need for additional retention or other bonuses, which may impact valuation.

6. In all deals it's important to diligence the employment terms of these individuals, particularly any termination and post-termination provisions such as gardening leave and restrictive covenants. The UK government has proposed banning the use of non-competes that last longer than three months beyond the end of an individual's employment (a similar debate is taking place in the U.S., where states including New York have either banned or limited the lawfulness of non-competes). In response, we are seeing some firms looking to negotiate longer notice periods and/or make greater use of gardening leave provisions to boost the longevity of their teams (you can read more here). If the changes go through, buyers and sellers may want to consider updating employment contracts to protect their businesses using such alternatives.
7. As a more general point, in the war for talent it's possible to use guaranteed bonuses in the first year of employment to entice managers to move to a new platform and offset incentives they might leave on the table with their existing employer. As a defence, firms looking to keep key individuals may offer retention or other bonuses to incentivise continued employment post-completion. However, in the UK and Europe, firms subject to any of the FCA remuneration codes (and equivalent European rules) should be careful to navigate the regulatory rules on these payments.
8. Sellers will typically try to put the risk of key managers leaving onto the buyer, who in turn may press for a condition precedent linked to retention rates and/or the agreement of new contracts (while a formal condition precedent is relatively rare, it's more common that the buyer simply will not sign until they are satisfied they have reached agreement with management). As a result, buyers will often have to enter into parallel negotiations: with the seller for the business, and with key managers to agree new employment terms and remuneration deals.
9. The asset manager's client contracts will require careful diligence, not least in light of recent SEC rule changes designed to ensure more robust disclosure in relation to fee structures and the use of side letters, among other things. Another important issue to assess here is whether a negative consent process could be used to seek any necessary investor consents.
10. The scope and terms of current licences and permissions will similarly need reviewed as they may not transfer in a sale (or indeed a carve-out pre-sale reorganisation). Likewise, the buyer may need to extend its existing licences to match the transferring business or retain the target as a standalone entity within the group. Any regulatory DD will need to be forward-looking and consider the potential consequences of recent thematic reviews or market studies, as well as enforcement activity against peers.

USD200bn patent cliff set to spark new wave of life sciences M&A – but it might not look like the last one

Patents on a series of blockbuster drugs are due to expire between now and 2030. Last time this happened it sparked a wave of industry consolidation – but today we expect a different type of deal-making.

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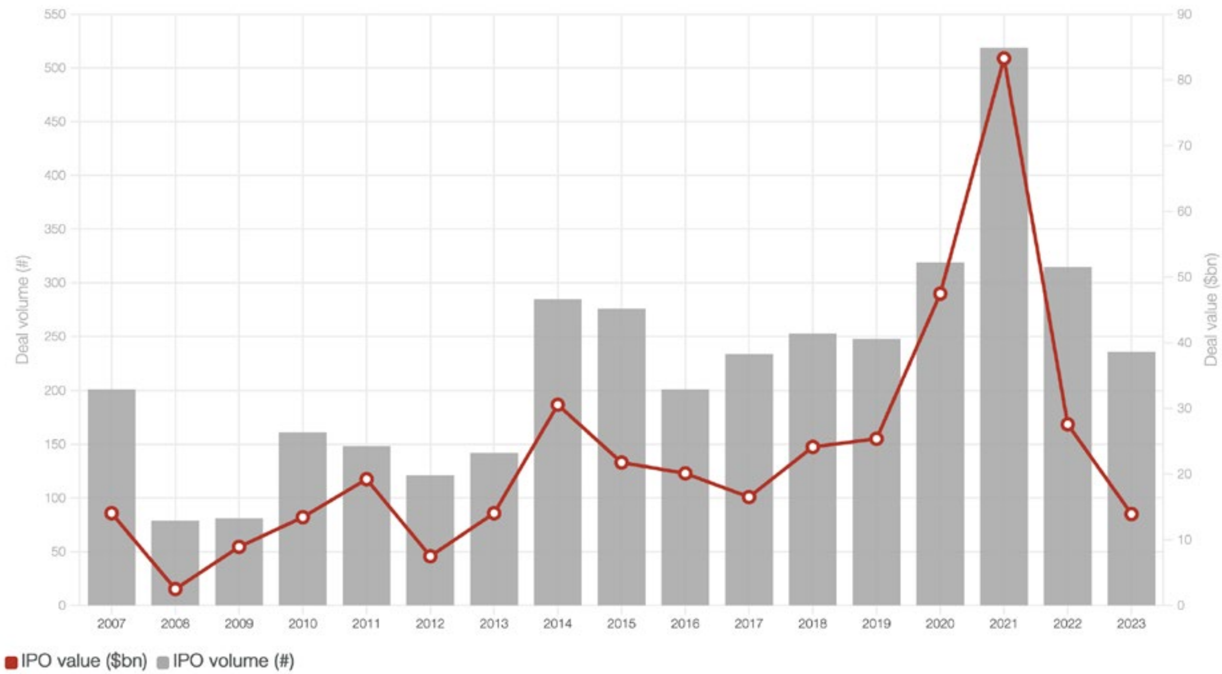
After a muted 2022 there was hope for a rebound in healthcare M&A in 2023. However, deal data for the year showed a continued decline, with M&A values and volumes, IPO activity and private investment all down year-on-year.

Healthcare listings fall from 2021 peak

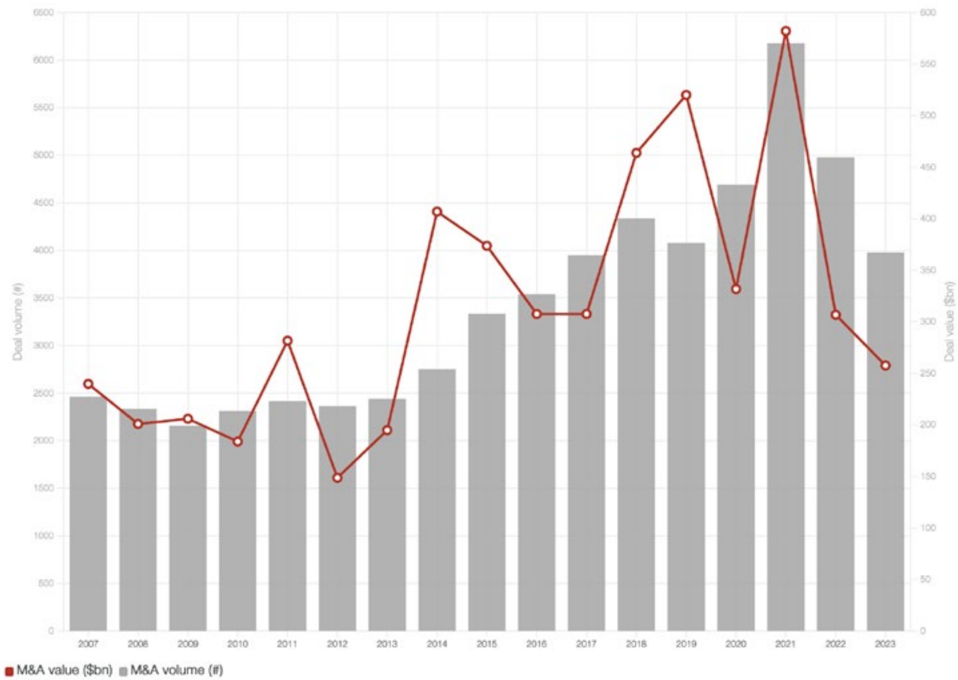
Healthcare IPO value and volume, 2007-present



Source: Pitchbook • Data correct to 27 November 2023

M&A activity also in decline

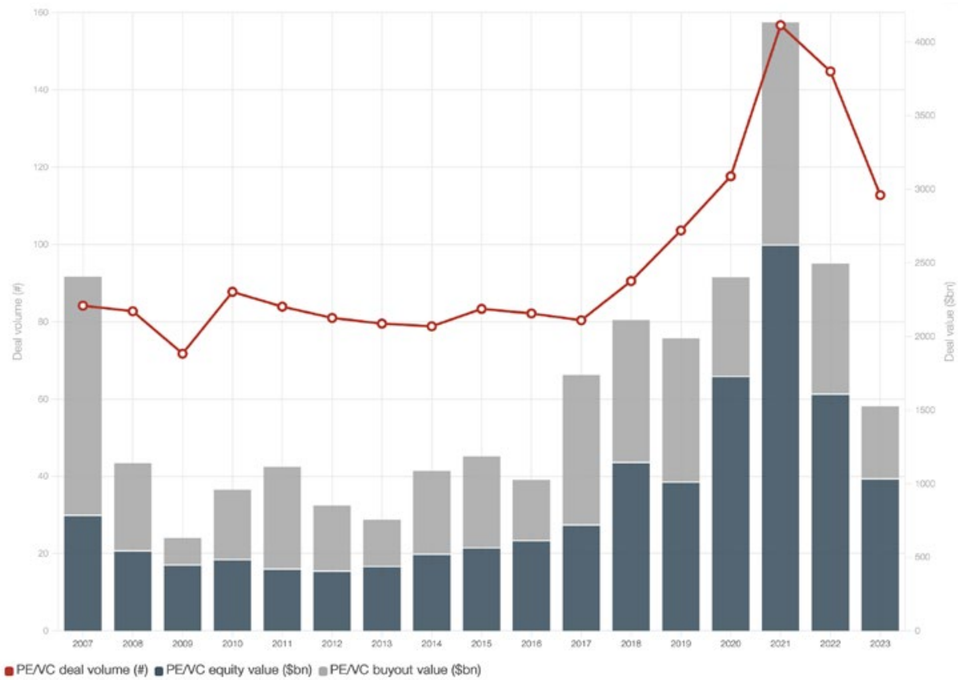
Healthcare M&A value and volume, 2007-present



Source: Pitchbook • Data correct to 27 November 2023

Private investment activity also drops

PE/VC equity and buyout value (USDbn), and deal volume, 2007-present



Source: Pitchbook • Data correct to 27 November 2023

Within the numbers the picture is more nuanced, with the value of pure-play pharma M&A higher than at any point since before the COVID-19 pandemic. Some of this is the result of the patent cliff that's set to wipe more than USD200bn in annual sales off the P&Ls of many of the world's largest drug-makers between now and 2030, with M&A one way to offset the hit to revenues. The last time such a significant set of drugs came off-patent over a similar timeframe was at the turn of the last decade, when a wave of ever-larger deals followed. Average M&A values rose 62% between 2015-2019 compared to the previous five-year period, with Pfizer/Wyeth and Merck/Schering Plough among the most notable transactions.

Life sciences M&A – average annual deal value (USDbn)

Period	Average value
2010-2014	243.2
2015-2019	394.6

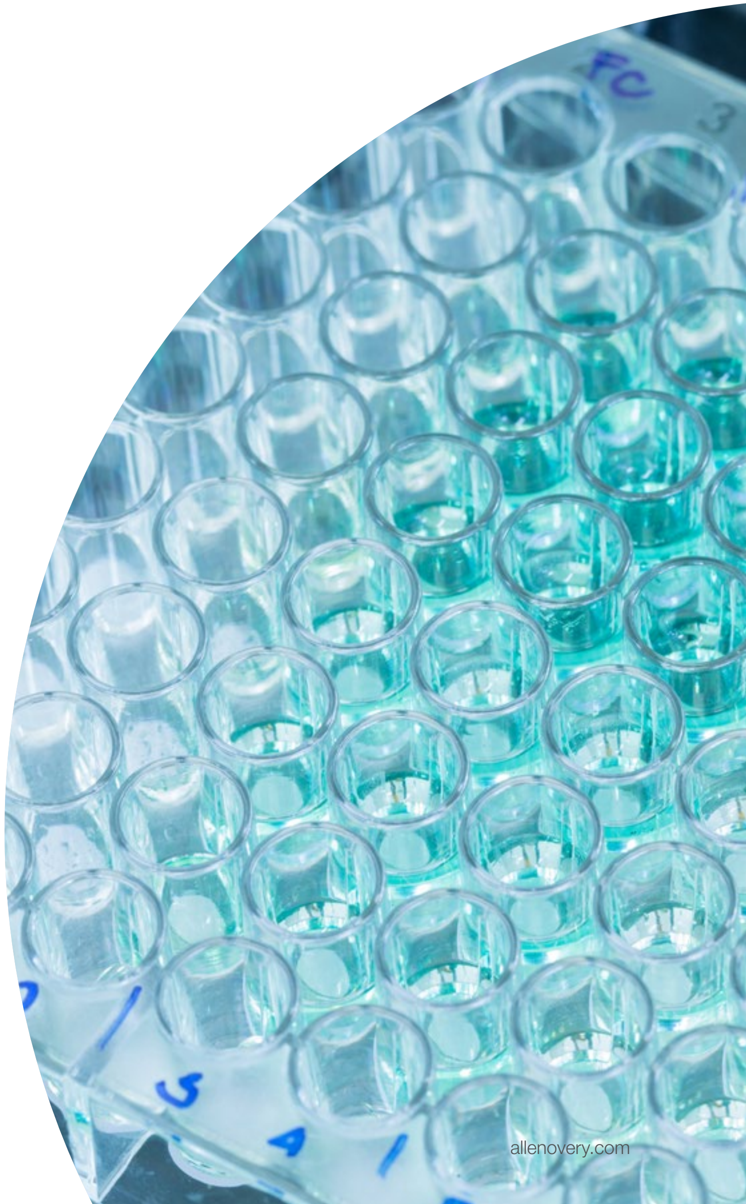
Source: Refinitiv

There are equally compelling reasons why the recent pharma buying spree may not foreshadow another wave of industry mega-mergers, however. For a start, many of the sector's biggest names are facing the cliff together, meaning there's a dearth of obvious peers with whom to attempt a revenue-protecting merger. As a result, forthcoming deal activity is more likely to involve big players bidding for biotechs and mid-tier companies.

Healthcare spending set to be U.S. election issue

The patented products themselves are also different – in the 2010s, the cliff mostly related to chemical drugs that were quickly replaced by generics, whereas this time there are more biologics involved. Biosimilars may not be as easy to substitute for existing products, meaning the revenue hit on patent-holders may not be so immediate or so catastrophic.

The effect of the U.S. Inflation Reduction Act and President Biden's broader policy agenda to reduce drug prices must also be taken into account. The cost of prescription drugs is 2.5 times higher in the U.S. than in other advanced economies, and the issue is set to play a leading role in the upcoming presidential election. Developing biosimilars is an expensive process, and the likelihood of any future administration negotiating hard over payments for new therapies may result in less willingness to enter the space.



Antitrust environment more hostile to large-cap deals

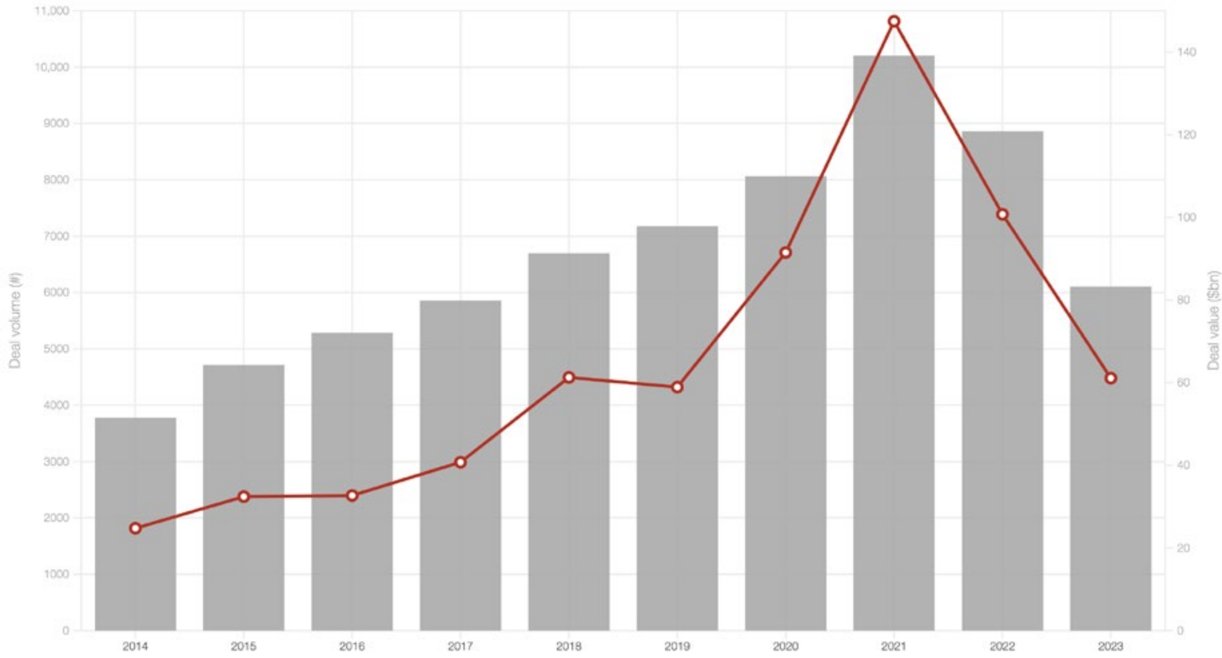
The deal environment, too, has changed. Today the U.S. antitrust agencies are more hostile to large-cap M&A than they were a decade ago. The Federal Trade Commission stepped in to challenge Pfizer's USD34bn acquisition of Seagen and litigated to block Amgen's USD27.8bn deal for Horizon Therapeutics. The former remains in limbo, and while Amgen's purchase was approved, the prospect of a lengthy regulatory battle may cause potential acquirors to consider options further down the food chain. Here, though, there is another cloud on the horizon. VC funding, the lifeblood of smaller innovators, has been falling over the past couple of years, potentially limiting the pipeline of businesses able to grow into viable acquisition targets.

On a more positive note, technology may provide the solution. One of the biggest health-tech funding rounds of the year – a USD60m Series B – involved the UK's Causaly, which harnesses AI to speed-read scientific literature, regulatory documents and clinical trial data. AI offers the prospect of faster, cheaper and more accurate drug development, potentially meaning less investment is needed to bring new drugs to market in the future. Amid the general risk-averse sentiment that currently pervades the sector, life sciences companies continue to pursue strategic collaborations with AI developers as they search for ways to increase the efficacy of their R&D efforts.

Looking ahead, the safety net that protects life sciences companies from falling off the current patent cliff may come from these sorts of deals – rather than the sorts of multibillion-dollar acquisitions that were sparked by the last one.

Healthcare VC funding drops

Annual capital raised and deal count, 2014-present



Capital raised ($bn) Deal volume (#)

Source: Pitchbook • Data correct to 27 November 2023

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