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Corporate & Finance Alert

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M&A outlook — What to expect in 2023

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We examine recent trends in M&A activity, upcoming legislation, and how companies can position themselves for greater success in 2023.



What's the Impact?

- / Despite a downturn in 2022, M&A activity is expected to pick up in 2023
- / Increases in both enforcement and legislation could impact how companies enter deals
- / Opportunities can still be seized in the face of economic volatility

Corporate buying and selling requires more agility now than ever before. In 2020, we changed the way we conduct business in response to a global pandemic. The “meme stock” economy exploded in 2021, but optimism fell in 2022 when global conflict and ongoing supply chain issues strangled growth.

2023 doesn't have to be a wild card—here, we explore how your company can position itself for growth and success in the new year.

M&A activity by the numbers

Worldwide M&A activity decreased in 2022 across industries:

- / 37% decrease from 2021
- / Largest year-over-year percentage decline since 2001
- / Largest second half percentage drop since records began in 1980ⁱ

Some factors that hindered dealmaking in 2022 included high inflation, rising interest rates, and geopolitical uncertainty.ⁱⁱ Across industries, lower share prices, driven by a selloff in stock markets throughout 2022, made it more difficult for acquirers to pay for acquisitions.

However, M&A activity is expected to pick up in 2023:

- / 72% of tech CEO respondents plan to pursue M&A in the next 12 months
- / 59% of CEO respondents across all other industries are looking at M&Aⁱⁱⁱ

Legislation and enforcement pitfalls

Businesses must be ready to navigate governmental challenges in 2023. More mergers are entangled in US antitrust litigation now than ever, and antitrust watchdogs are undaunted by losing battles in court.^{iv}

FTC's proposed ban on noncompetes

The FTC recently [proposed a ban on nearly all noncompetes](#), arguing that current rules hamper competition in the labor market, suppress wages, and hold back innovation and entrepreneurship. And many states have already taken action to limit use of the clauses, limiting employers from imposing them on people earning under a particular wage threshold or for certain types of workers.

While a ban would weaken employer retention of talent, trade secrets, and proprietary information, employers have other avenues for retention, including nondisclosure agreements, employment rewards for longevity, compensation (including deferred compensation), and retention bonuses.

The Final Rule is still up in the air during the 60-day comment period. If enacted, it will likely be challenged by businesses.

New HSR filing fee structure for 2023

President Biden recently signed the Fee Modernization Act into law as part of the \$1.7 trillion omnibus government spending bill. The Fee Modernization Act substantially [increases HSR filing fees](#) for large transactions (particularly those in excess of \$2 billion), and also creates new disclosure obligations for entities that receive economic support from certain foreign states.

For 2023, the minimum size-of-transaction threshold for reporting proposed mergers and acquisitions will increase from \$101 million to \$111.4 million.

Size of Transaction (\$USD)	Filing Fee
< \$161.5M	\$30,000
\$161.5M–\$499.999M	\$100,000
\$500M–\$999.999M	\$250,000
\$1B–\$1.999B	\$400,000
\$2B–\$4.999B	\$800,000
\$5B	\$2,250,000

Additionally, the omnibus spending bill includes increases to enforcement budgets of the FTC and the Antitrust Division of the DOJ.

2023 outlook

We predict that in 2023, many deals will be structured differently in order to sidestep market volatility and minimize financing costs.

- / **Valuations will reset**,^v and we see the availability of capital and increased competitiveness from corporates providing openings for dealmakers, while lower valuations will create opportunities for acquirers. For both sides, plummeting public markets could provide opportunities once boards get comfortable with their new valuations.
- / **Capital discipline** will be a prime factor in M&A activity. Interest rates are still far from historical highs, but still make debt service more costly. Companies with healthy balance sheets and a strong strategic vision can leverage their solid position by using deals as a path to business transformation and increased shareholder value, while growing companies will have to be more reliant on innovation and strategic prioritization to adapt to tougher conditions.
- / **Carveouts** will be on the rise, as large corporates sell assets that are non-essential during market volatility
- / **Minority stake investments**^{vi} will pick up in an effort to avoid legal change of control and/or debt refinancing with current high interest rates
- / **Refinancing, dealmaking, and liquidity raising** could carry the US blue-chip corporate loan market in 2023. Investment-grade companies raised about \$1.2 trillion in revolving credit facilities, term loans, and other syndicated loans in 2022^{vii}
- / **Banks** will have to exercise caution when evaluating to whom they lend, as capital requirements reinforced by stress tests earlier in 2022 put a focus on returns
- / **Term loans** may be more prevalent. In 2022, high-grade companies used term loans in more ways than usual—this could lead to less bridge loans, which are later replaced by permanent

financing, typically in the form of investment grade bonds.

- / Finally, **small M&A transactions** will continue to increase. In 2022, M&A for small companies worth between \$100 million and 500 million increased by 27 percent,^{viii} and we expect that trajectory to continue to rise in 2023.

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ⁱ Refinitiv (formerly Thomson Reuters) Full Year 2022 Global Mergers & Acquisitions Review/ Ranking.

ⁱⁱ Dealmaking Slips by Almost a Third in 2022 Marked by Volatility, Inflation, *Mergers and Acquisitions*, December 21, 2022.

ⁱⁱⁱ *EY report predicts appetite for tech deals will return in 2023, despite adverse conditions*, EY Press Release, December 8, 2022.

^{iv} Dealmakers grapple with unprecedented U.S. challenge to mergers, *Reuters*, December 27, 2022.

^v PwC US Deals Outlook 2023.

^{vi} M&A Is Expected to Pick Up in 2023 as Companies Adapt to Tougher Conditions, *Wall Street Journal*, January 5, 2023.

^{vii} Bankers See \$1.2T Blue-Chip Loan Market Reviving in 2023, *Bloomberg*, December 22, 2022.

^{viii} Small Deals will Be a Bright Spot Heading Into 2023, *Mergers and Acquisitions*, December 22, 2022.