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M&A Record Smashed In Third Quarter

*420 deals worth \$90 billion tops mid-2000's high
Canada called more open to hostile takeovers*

By Tara Perkins, Business Reporter

Mergers and takeovers have smashed a record set during the technology boom six years ago, as 420 deals were announced in the most recent quarter worth more than \$90 billion. The total eclipses the previous high of \$79 billion set during the second quarter of 2000.

“We are in a white-hot M&A market that is broadly based and would appear to have very strong legs going into the fourth quarter,” said Colin Walker, managing director at Toronto-based investment bank Crosbie & Co., which released the figures yesterday.

The total for the third quarter of \$90.3 billion compares to \$68.9 billion in the previous quarter, when there were 517 deals.

A year ago there were 398 deals worth \$53.7 billion.

Mega-deals drove the latest quarter, which ended in September. Eighteen transactions worth more than \$1 billion were announced, representing a total of \$69.8 billion.

That's up from 10 mega-deals worth \$45.2 billion in the previous quarter.

A foreign appetite for big Canadian companies was evident as five of the 10 biggest deals were foreign acquisitions, valued at \$36.3 billion, Crosbie said.

Those included Companhia Vale do Rio Doce's \$19.9 billion takeover of Inco Ltd., California's Advanced Micro Devices Inc.'s \$5.4 billion (U.S.) takeover of Toronto's ATI Technologies, and American drug store giant Rite Aid Corp.'s \$3.4 billion takeover of Jean Coutu Group USA, which was owned by the Quebec-based Jean Coutu Group Inc.

In the first nine months of this year, about one-third of all deals have been cross-border, and they have made up about 80 per cent of the total value of deals.

There were 501 cross-border transactions totalling \$150.2 billion in the first three quarters of 2006, up from 371 deals worth \$81.9 billion in the same period last year.

Canadians bought 363 foreign companies this year worth \$59.25 billion. About half of the targets were American.

Meanwhile, foreigners bought 138 Canadian companies in deals worth about \$90.91 billion.

The biggest foreign buyer was the United States, which was home to 61 of the acquirers.

Some lawyers say Canada's system is more open to hostile takeovers than many other countries.

“I think there is a general view — and a correctly held view — that the regime in Canada is more welcoming to takeover bids than the regime in the States, for example,” said Sharon Geraghty, a Toronto mergers and acquisitions lawyer with Torys LLP.

“In the U.S., there are quite a few more types of defensive tactics you can use to ward off an unwanted approach,” she said.

As an example, she notes that in the U.S., companies can put poison pills in place “in theory, permanently.”

In Canada, regulators have a history of forcing companies to drop their poison pills, or shareholder rights plans, about 45 to 50 days after a hostile bid if no new bid has been received.

The hostile bid is then forced to go to shareholders for a vote, Geraghty said.

As another example, she notes that “here, if you have a majority, there's a statutory right to remove a board. If someone acquires half the shares, that's it, they control the company.

“In the U.S., in some jurisdictions, that's not true.”

“In Canada, it isn't really possible in any real way to just say `no,“ she added. “If someone makes a proposal to the company at an attractive premium, it's very difficult for a board to ignore that and just sit on that proposal.”

Canadian regulators have generally pushed for shareholders' right to ultimately decide the fate of their company.

Richard Willoughby, a merger and acquisitions lawyer with Torys in New York, said Canadian companies have been subject to numerous hostile takeover bids recently. Statistics show that of the hostile bids made for Canadian companies between the start of 1998 and the end of this past July, 82 per cent resulted in a change of control, Willoughby said. The hostile bidders themselves were successful in half of those cases, while a white knight stepped in the other half.

In Canada, “it has been relatively rare for the target company to remain independent once a hostile bid has been launched,” Willoughby wrote in a recent legal article.

Inco is an example of a Canadian firm that was scooped up after a hostile bid.

“If we had the statistics, you'd likely see a lower percentage of change in control transactions resulting (in the United States),” Willoughby said in an interview. And “you would certainly see the time frame over which the events unfolded to be extended in the U.S. relative to Canada.”

Canada's apparent reputation for easy takeovers does not prompt American companies to look at Canadian firms, he said, but once they've decided to look at something in Canada for strategic or investment purposes, “there's a reality of the Canadian landscape that Canadian directors are perceived to always have an obligation to maximize shareholder value in the context of a hostile bid,” he said.

Crosbie said big deals were by no means confined to the resource sector. Media, energy and real estate all had their share of deals as well.

The second-biggest was Goldcorp Inc.'s \$8.7 billion (U.S.) takeover of Glamis Gold Ltd.