

MERGERS & ACQUISITIONS

# Dealmaker's Digest

A Top 10 Bulletin

June 2024

**ROPES & GRAY**



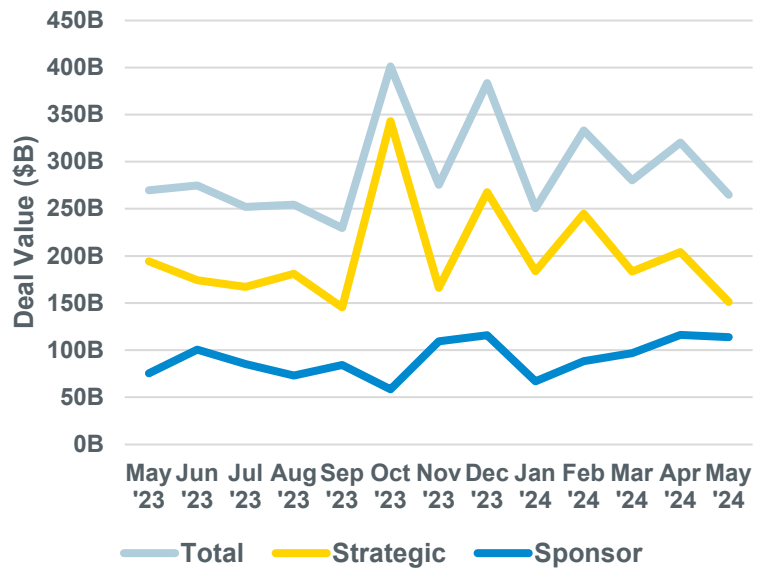
In this edition of *Dealmaker's Digest*, we bring you the latest transactional developments to keep you in the know.

GLOBAL M&A ACTIVITY	BLOCKBUSTER DEALS	CROSSBORDER ACTIVITY
ACTIVE INDUSTRIES	JAPAN SPOTLIGHT	JUDICIAL UPDATE

## GLOBAL M&A ACTIVITY UPDATE

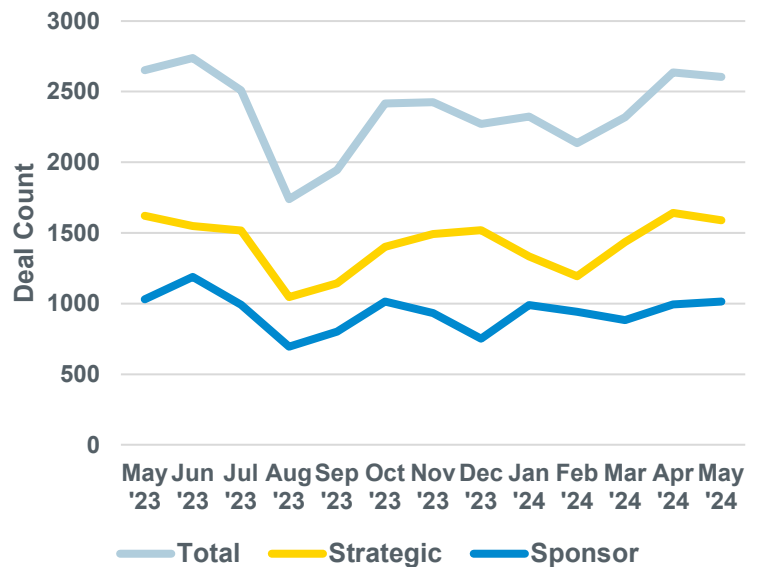
### 1 Deal Value Trends

- ▼ Aggregate global monthly deal value<sup>1</sup> fell to \$265 billion in May, down 17% from April and 2% year-over-year (vs. May 2023).
- ▼ Transactions involving strategic buyers in May decreased 26% from April and continued a 10-month streak of month-over-month volatility. Strategic deal value in May decreased 22% year-over-year (vs. May 2023).
- ◀ Financial, or sponsor, buyer transactions remained steady in May, ticking down 2% from April. However, sponsor buyer deal value increased more than 50% year-over-year (vs. May 2023).



### 2 Deal Count Trends

- ◀ Global deal count held steady in May, decreasing just 1% from April and 2% year-over-year (vs. May 2023).
- ◀ Strategic buyer deal count in May also remained relatively steady, decreasing only 3% from April and 2% year-over-year (vs. May 2023).
- ◀ Rounding out a month of stability for M&A deal count, sponsor buyer deal count in May increased 2% from April and declined 2% year-over-year (vs. May 2023).

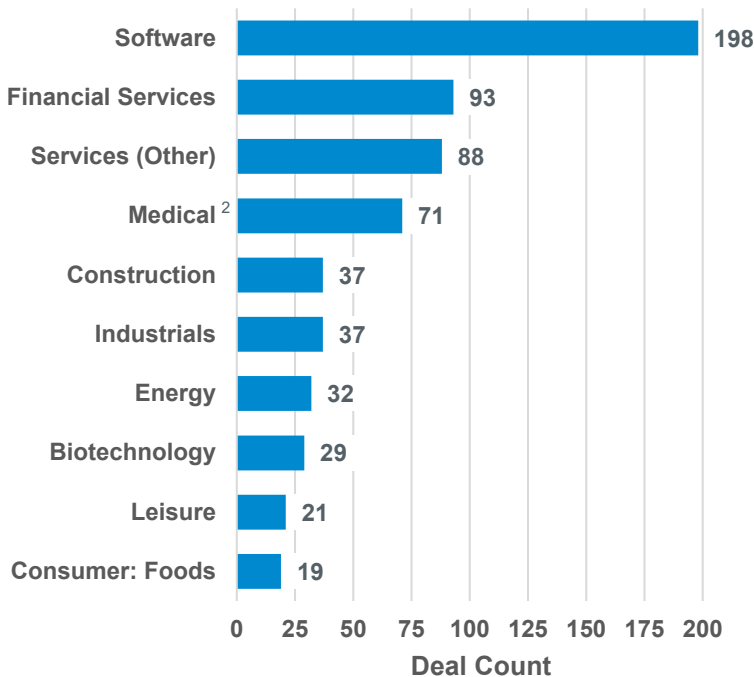


<sup>1</sup> Unless otherwise noted, charts compiled using Mergermarket data for May 2024 as of June 5, 2024. Aggregate deal values by dollar amount are calculated from the subset of deals with disclosed values.

## ACTIVE M&A INDUSTRIES (U.S. TARGETS)

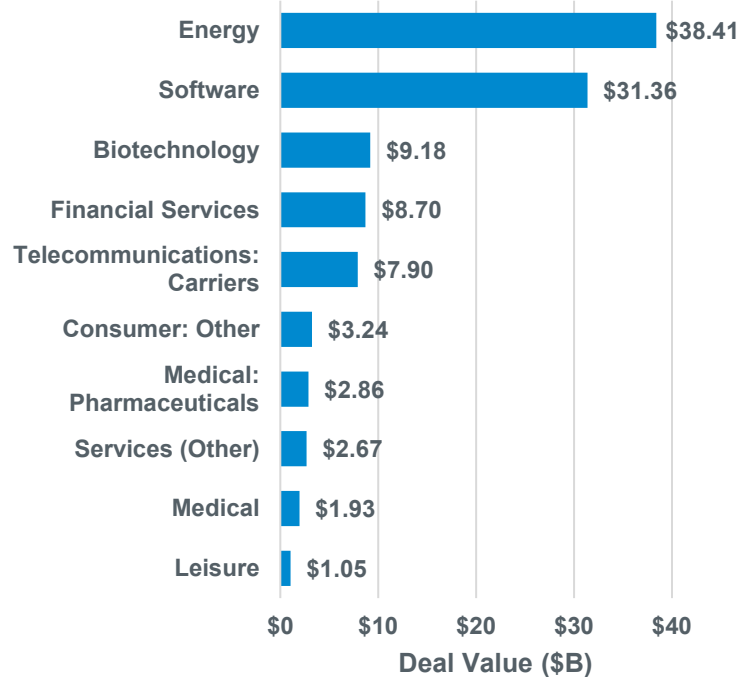
### 3 By Deal Count

- The software industry once again topped the list of U.S. M&A activity by deal count in May, continuing its streak as the leading industry by volume.
- Services-based industries remain active, with financial and other professional services rounding out the top three sectors in May by deal count.



### 4 By Deal Value

- The energy sector was the leading industry by deal value in May, bolstered by multiple billion-dollar+ deals.
- The software industry was the second most active by deal value in May, with biotechnology transactions rounding out the top three sectors by value.



## Blockbuster Deals

5

Largest U.S. Strategic Deal

**ConocoPhillips**  
agreed to acquire  
**MarathonOil** in an  
all-stock transaction with  
implied equity value of  
approximately **\$17.1 billion.**

6

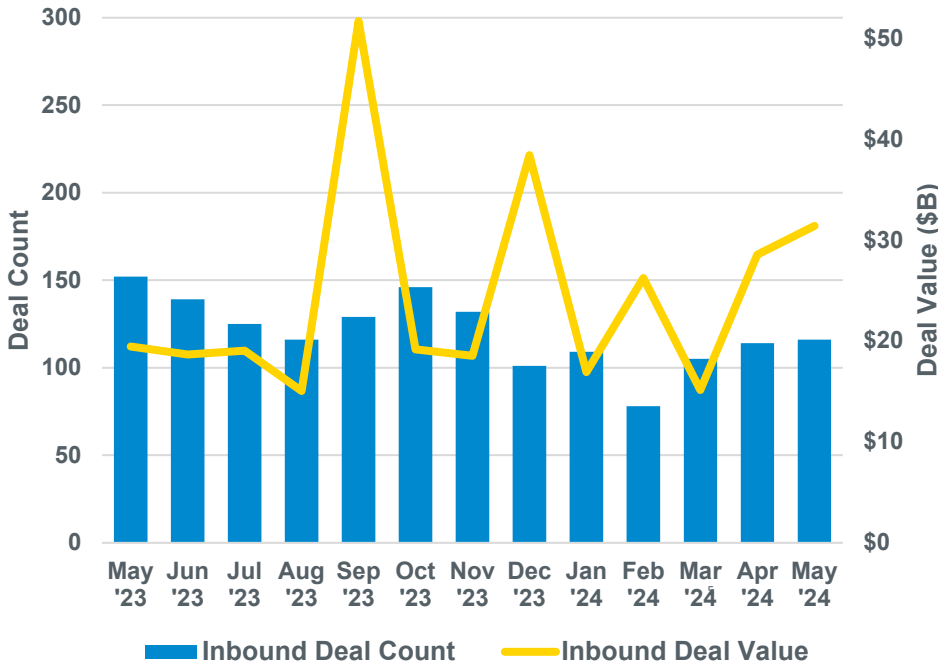
Largest U.S. Sponsor Deal

**PERMIRA**  
agreed to acquire  
**SQUARESPACE**  
in an all-cash take-private  
transaction with implied equity  
value of approximately **\$6.6 billion.**

<sup>2</sup> Medical industry classification principally includes medical devices/technology/services, excluding biotech and pharmaceutical deals.

CROSSBORDER CORNER

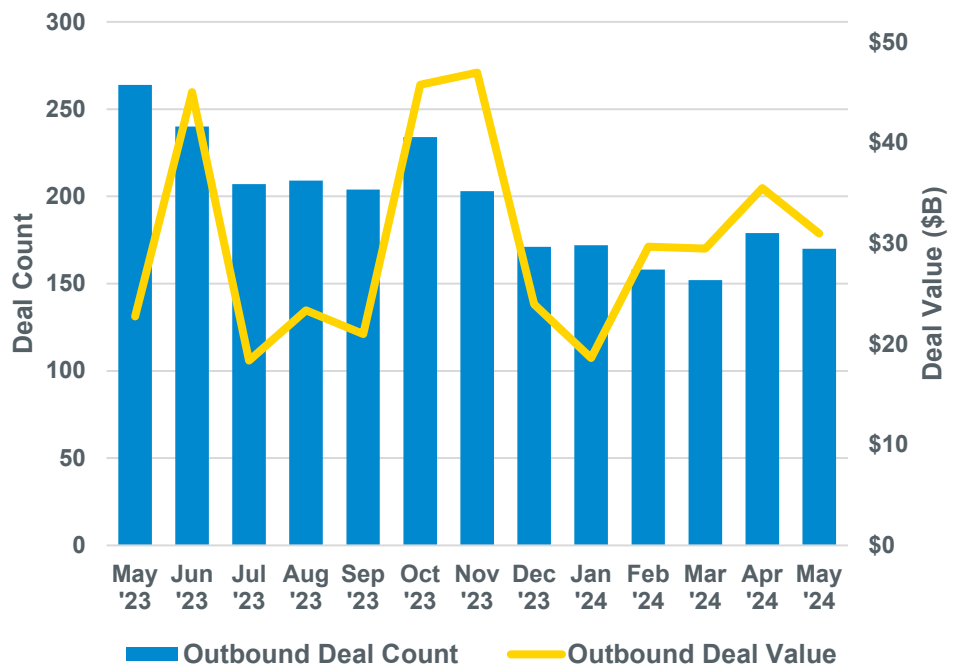
7 Inbound U.S. M&A Activity



- Acquisitions of U.S. targets by non-U.S. acquirers remained steady in May, increasing by just 2 deals from April and marking a 6-month high.
- By deal value, inbound U.S. activity increased 10% in May to just above \$30 billion, marking the highest value YTD.
- Canada-based acquirers led the most inbound deals in May (with 24 transactions), followed by the UK (21) and Japan (12).

8 Outbound U.S. M&A Activity

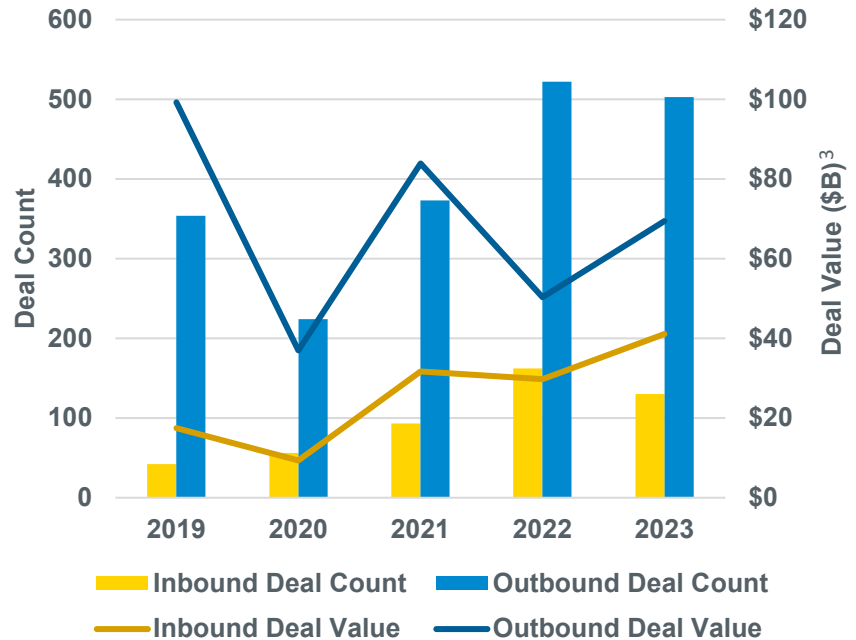
- By deal count, acquisitions of ex-U.S. targets by U.S. buyers decreased 5% from April to May.
- By deal value, outbound activity decreased 13% from April to May.
- U.S. acquirers most frequently looked to targets in the UK during May (at 38 transactions), followed by Canada (24). Germany and Australia, each at 16, tied for third for ex-U.S. target countries.



9

MARKET SPOTLIGHT:  
JAPAN

- 2023 outbound Japan M&A activity increased 38% from 2022 by deal value to nearly \$70 billion.
- By deal count, outbound activity decreased marginally (4%) in 2023 but remained substantially more active when compared with 2019-2021.
- YTD 2024, outbound deal value is up 20% from the comparable period in 2023, with announced transactions exceeding \$30 billion.
- 2023 inbound Japan M&A activity increased 38% from 2022 by deal value to \$41 billion. By deal count, inbound activity decreased 8% in 2023.
- YTD 2024, inbound activity has decreased significantly from the comparable period in 2023, with announced transactions falling short of \$4 billion YTD.



10

JUDICIAL UPDATE:  
Royalty Obligations in Bankruptcy

- The Third Circuit recently affirmed<sup>4</sup> that future royalty payments arising from a decades-old drug acquisition could be discharged in bankruptcy. The decision illustrates the importance of deal structuring by sellers where contingent payments are contemplated.

*Background:*

- In 2001, Sanofi sold Mallinckrodt intellectual property (IP) relating to a therapeutic product in exchange for a \$100,000 up-front payment and a perpetual royalty of 1% of all net sales exceeding \$10 million per year.
- Sanofi took a security interest in the up-front payment but not the royalty. By 2019, product sales hit nearly \$1 billion.

*Bankruptcy Proceedings:*

- Mallinckrodt filed for bankruptcy protection in 2020. It sought to discharge future royalty payments and to keep selling the drug royalty-free, leaving Sanofi with only an unsecured claim.

- The bankruptcy court approved Mallinckrodt's discharge: Sanofi had fully performed by transferring ownership outright decades earlier, and its right to royalties arose before Mallinckrodt filed for bankruptcy. The Third Circuit ultimately affirmed.

*Structuring Takeaways:*

- In asset sales that incorporate royalties, sellers should consider retaining some form of property or security interest in the asset.
- For instance, if IP were out-licensed to a buyer, the failure to pay royalties would allow a licensor to terminate the license. Other structuring options sellers might consider include retaining a security interest in the divested IP or setting up a joint venture to retain partial ownership.

<sup>3</sup> Shown in U.S. dollars.

<sup>4</sup> *In re Mallinckrodt plc, et al.*, Case No. 23-1111 (3d Cir. April 25, 2024).



## About our M&A Practice

Ropes & Gray's award-winning M&A practice is regularly ranked among the world's leading practices by *Chambers*, *The Legal 500* and *U.S. News*, among others. With over 250 M&A attorneys located in the United States, Europe and Asia, our practice offers global scope and on-the-ground service where and when needed. In 2022-2023, Ropes & Gray navigated more than 600 M&A transactions with an aggregate deal value of \$340+ billion.

## RECENT RECOGNITION

THE  
AMERICAN LAWYER

**The American Lawyer**  
"Law Firm of the Year" (2022)



**U.S. News and World Report**  
"Law Firm of the Year" for private funds, leveraged buyouts and private equity (2023)



**Law360**  
Eight-time winner of "Private Equity Group of the Year"

**Chambers**  
AND PARTNERS

**Chambers USA 2023**  
Nationwide Band 1 Private Equity Buyouts, Mid-Market Ranking  
New York Band 1 Corporate / M&A Highly Regarded Ranking  
Massachusetts Band 1 Corporate / M&A Ranking



**LMG Life Sciences**  
2022 Impact Deal of the Year (Pfizer's \$11.6b acquisition of Biohaven Pharmaceuticals)  
2022 M&A Firm of the Year

## DEPTH OF EXPERIENCE

**600+**

Signed transactions in 2022–2023

**\$340b+**

in total transaction value in 2022–2023

**80+**

Industries and sectors

## Our Commitment

**350+**  
Specialty-support lawyers

**250+**  
M&A lawyers

**150+**  
Years of practice history

**14**  
Offices to support deals

These materials are proprietary to Ropes & Gray LLP and may not be reproduced, transmitted or otherwise utilized in any media, in whole or in part, without the prior written authorization of Ropes & Gray LLP.

This publication is a service to our clients and friends of the firm. This publication is not intended to be comprehensive or to provide financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, and it should not be acted on or relied upon or used as a basis for any investment or other decision or action that may affect you or your business. Before making any such decision you should consult a suitably qualified professional adviser. While reasonable effort has been made to ensure the accuracy of the information contained in this publication, this cannot be guaranteed and neither Ropes & Gray LLP nor any other related entity shall have any liability to any person or entity that relies on the information contained in this publication, including incidental or consequential damages arising from errors or omissions. Any such reliance is solely at the user's risk.

For more information, please contact your usual Ropes & Gray attorney or reach out to a member of our M&A team below.



**Michael Beauvais**

Partner, Boston  
Michael.Beauvais@ropesgray.com  
+1 617 951 7601



**Stephanie Lapidus**

Partner, Boston  
Stephanie.Lapidus@ropesgray.com  
+1 617 951 7212



**Zachary Blume**

Partner, Boston  
Zachary.Blume@ropesgray.com  
+1 617 951 7663



**Michael Littenberg**

Partner, New York  
Michael.Littenberg@ropesgray.com  
+1 212 596 9160



**Matt Byron**

Partner, Boston  
Matthew.Byron@ropesgray.com  
+1 617 951 7836



**Arthur Mok**

Partner, Shanghai / New York  
Arthur.Mok@ropesgray.com  
+86 21 6157 5288 / +1 212 596 9009



**Jackie Cohen**

Partner, New York  
Jackie.Cohen@ropesgray.com  
+1 212 596 9296



**Emily Oldshue**

Partner, Boston  
Emily.Oldshue@ropesgray.com  
+1 617 951 7241



**Christopher Comeau**

Partner, Boston  
Christopher.Comeau@ropesgray.com  
+1 617 951 7809



**Suni Sreepada**

Partner, New York  
Suni.Sreepada@ropesgray.com  
+1 212 596 9960



**Ariel Deckelbaum**

Partner, New York  
Ariel.Deckelbaum@ropesgray.com  
+1 212 596 9742



**Eric Wu**

Partner, Shanghai  
Eric.Wu@ropesgray.com  
+86 21 6157 5212



**Tara Fisher**

Partner, Boston  
Tara.Fisher@ropesgray.com  
+1 617 235 4824



**Sarah Young**

Partner, New York  
Sarah.Young@ropesgray.com  
+1 212 596 9710



**Thomas Fraser**

Partner, Boston  
Thomas.Fraser@ropesgray.com  
+1 617 951 7063



**Marko Zatylny**

Partner, Boston  
Marko.Zatylny@ropesgray.com  
+1 617 951 7980



**Paul Kinsella**

Partner, Boston  
Paul.Kinsella@ropesgray.com  
+1 617 951 7921