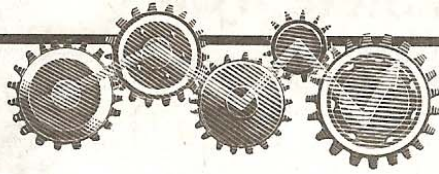


BUSINESS | *By George Anders*



Memo: Do Your M&A Before November

HURRY, HURRY, hurry to carry out corporate acquisitions before the November elections, some attorneys and investment bankers are telling their clients. That is because they think a Democratic presidential victory could create more roadblocks for takeovers.

Guessing what political-office seekers might do if elected is never a sure thing. Some stances taken on the campaign trail have a way of fading from sight once the election is over. Other positions prove impossible to implement.

Furthermore, the likely Republican nominee, John McCain, hasn't signaled his views on antitrust policy. Mr. McCain is known for his willingness to break with party orthodoxies, particularly when it comes to business. On many issues, he has taken a harder line against corporations than President Bush and the Republican leadership in Congress.

Both Sens. Barack Obama and Hillary Clinton cranked up populist, anti-business themes in the just-finished Democratic primary battles in Ohio and Texas. A widely watched gauge of national sentiment, the University of Iowa's Iowa Electronic Markets, now puts the prospect of a Democrat winning the White House this year at about 60%.

Either Sen. Obama or Sen. Clinton "might take a more aggressive approach toward antitrust," says David Robbins, a Los Angeles attorney who is co-leader of the mergers-and-acquisitions practice at law firm Bingham McCutchen. "Democrats traditionally are seen as more of the trustbusters than Republicans."

Airline consolidations are one area that might come in for tough scrutiny. There has been speculation about possible tie-ups involving so-called Big Six domestic carriers. Such deals could allow the airlines to cut costs, streamline routes and build market share, helping an ailing industry get more profitable. But anticompetitive worries about any airline mergers are bound to come up.

Even during the Bush administration,

big airline-merger plans have met mixed fates. In 2001, the Justice Department blocked a proposed merger of United Airlines parent **UAL** and **US Airways Group**. More recently, regulators let **US Airways** and **America West** combine. New variants, such as a possible **Delta Air Lines-Northwest Airlines** tie-up or a **United-Continental Airlines** combination would test regulators' attitudes.

AT FIRST glance, **Microsoft's** bid to buy **Yahoo** for more than \$40 billion might also be a target for Democratic scrutiny. But antitrust attorneys say that is unlikely, because proponents of the deal can argue that the combination helps create a stronger rival to **Google** in the online-search business. **Yahoo** is resisting the deal; it's unclear how long the matter might take to be resolved.

Higher capital-gains taxes could also jolt the takeover market, though getting congressional approval for such changes won't be easy. In Senate votes in the past few years, both Sen. Obama and Sen. Clinton have voted for ending the current 15% capital-gains rate and returning to higher levels.

Mr. Obama told the TechCrunch Web site in November that he favored capital-gains tax rates close to 28%, where they were under the Reagan administration, though not quite that high. Mrs. Clinton hasn't been as specific.

For individual shareholders, a higher capital-gains rate would mean keeping less of the proceeds from selling a company. That could be a particular sore point for owners of closely held companies, who may have personally built up the value of such companies over decades. As a result, some private-equity firms are urging potential sellers of companies to act fast, while the 15% capital-gains rate still applies.

Transactions in which the sellers get stock, instead of cash, generally aren't taxable. So some M&A experts speculate that if the capital-gains rate were to rise sharply, that could benefit suitors—typi-

cally large corporations—that can pay in stock. It would disadvantage other bidders, notably private-equity firms, that don't have an easy way of offering stock and instead generally pay in cash.

MEANWHILE, shareholder activists might welcome a Democratic administration. A wide range of proposals are before the U.S. Securities and Exchange Commission, aimed at making it easier for holders to demand votes on issues that concern them, even if corporate management doesn't support such steps. Such steps could make it easier for dissident holders to put a company in play.

Sens. Obama and Clinton haven't opined on every such issue. But in at least some cases, they have supported pro-shareholder measures.

While Washington's policies can affect takeover prospects in many ways, the biggest swing factor in coming months is likely to be the status of lending markets. Last summer's credit crunch hasn't abated much, and as long as financing remains hard to line up, deal flow will be attenuated.

But uncertainties about a new administration's priorities could also slow takeover activity for at least a brief period, says Hamilton Loeb, a Washington partner in the law firm of Paul, Hastings, Janofsky & Walker.

Top-level political appointments in the Justice Department will take a while to be confirmed, he explains. Civil servants may be reluctant to make tough decisions until their new bosses are in place. Deal-making companies and their attorneys may hesitate about pressing ahead in such circumstances. "It's always easier when you know who's making the decisions," Mr. Loeb says.

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