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Melanie Shishler Shares Her Perspective on 2021 Deal Flow and COVID-19 Implications with *Mergermarket*

With deal-making in Canada roaring ahead after a brief stall last year, Davies partner [Melanie Shishler](#) spoke to [Mergermarket](#) on the outlook for M&A activity in 2021 and the key considerations for buyers and sellers.

Melanie said she has seen inbound investment reviews take longer in Canada as the government applies heightened scrutiny on national security grounds. She cautions that parties pursuing cross-border transactions in sensitive industries or near strategic locations need to develop a government relations strategy early on.

Speaking on the Delaware and Ontario court rulings last fall, which found that the pandemic did not constitute a material adverse effect (MAE) despite not being specified as a carve-out, Melanie said the decisions reinforce that it is unnecessary for sellers to add numerous carve-outs to MAE clauses to exclude specific events.

With the expectation that buyers and sellers will focus on interim operating covenants given the different approaches taken in Delaware and Ontario, Melanie pointed out that a buyer may have a different view from that of a seller on how to adjust business operations to deal with extraordinary events in the interim period between signing and closing. At the same time, if a seller seeks latitude to adjust its operations, this may be seen as an admission of breaching the ordinary course covenant. Melanie said one way to address that concern would be for an agreement to offer a way to permit a seller to consult with the buyer on interim operations without that consultation constituting such an admission.