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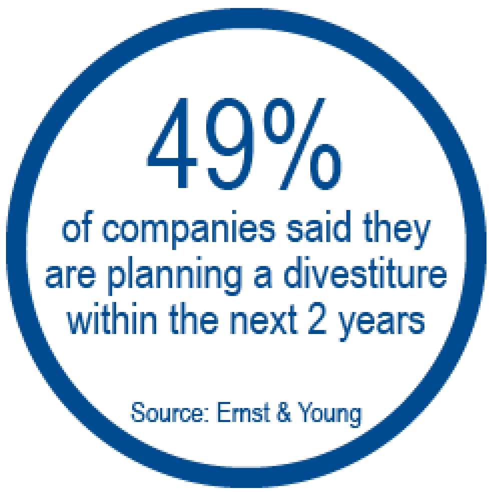
Desire To Divest Hits New Heights Amid Hunt For Growth

By **Chelsea Naso**

Law360, New York (January 29, 2016, 7:12 PM ET) -- A growing number of companies are eyeing divestitures as slowing organic growth, antitrust concerns and shareholder activists prompt more boards to take a closer look at their noncore assets, experts say.

A recent Ernst & Young LLP study found that 49 percent of companies are considering a divestiture within the next two years, a sharp jump from the 20 percent of companies in 2014 that indicated a divestiture was coming.



Underlying the uptick is the heightened push for portfolio review that stems from the hunt for inorganic growth, the need to clear competition hurdles following a record year of megadeals, and the pressure to appease shareholder activists.

"Companies are doing portfolio reviews at a level that they never have before," said Paul Hammes, Ernst & Young's leader of global divestiture advisory services.

Here, Law360 outlines the main trends fueling interest in divestitures.

Divestitures Seen as Gateway Toward Growth

Building off a record year for mergers and acquisitions, 2016 is expected to be another busy one for deal-making as companies continue to hunt for growth through acquisitions.

But sellers are likely to look inward before snapping up new businesses, to evaluate their current portfolio to determine their core assets, Hammes noted. Those that fall outside the core are prime for a divestiture.

"Given where we are in terms of low oil prices, slow growth in China, a strong U.S. dollar — companies are not getting growth on their core assets today. So they are stepping back now and looking at their portfolios of business and defining their core assets," Hammes said.

Stripping away noncore assets is also another way to boost capital, which can then be used to fund a future acquisition that fits into a company's narrowed focus, explained Proskauer Rose LLP partner Daniel Ganitsky.

"As they do strategic evaluations of where they are and where their businesses are going, they are very focused on what they see as their core focus, what they see as their engine for growth," Ganitsky said. "They often think of the ability to divest a division and get some capital and invest it in what they see as their strategic or financial core."

Of the 49 percent of companies that said they are planning a divestiture within the next two years, about 70 percent indicated that they would use the additional capital for investments and acquisitions, the Ernst & Young 2016 Global Corporate Divestment Study found.

Record Year of Megadeals Prompts Antitrust Concerns

Deal-making hit record highs in 2015, fueled by the 69 deals worth $10 billion or more each — including 10 worth $50 billion or more apiece — that were unveiled during the year, the largest amount of megadeals on the books for any single year, according to Dealogic.

With a historic number of big-ticket, strategic corporate mergers looking to close in the coming two years, many buyers are likely aiming to part ways with certain assets in an effort to clear antitrust hurdles, according to Phillip Torrence, a Honigman Miller Schwartz and Cohn LLP partner.

"There could be remnants from other deals or other business units within some of these bigger companies that are not central or key to the core of what they have," Torrence said. "It's having a sizable impact on this."

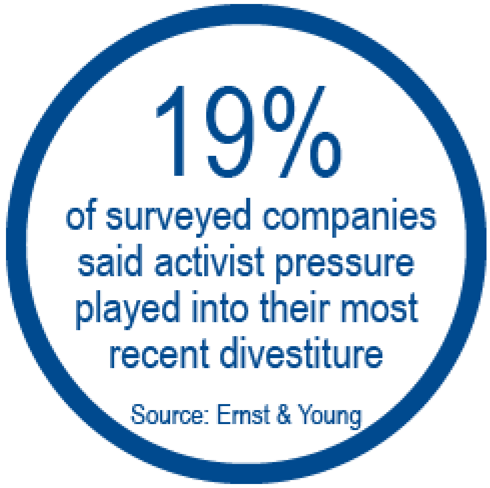
This will especially ring true for some of the most active industries for M&A in 2015, including health care, technology, oil and gas, and food and beverage.

Two of the largest deals announced during the year — U.S. pharmaceutical giant Pfizer Inc.'s combination with Allergan PLC, and brewing behemoth Anheuser-Busch InBev SA/NV's merger with No. 2 rival SABMiller PLC — have both confirmed they are mulling divestitures to ease competition regulators' concerns.

Activists Push Companies to Slim Down

Shareholder activism is on the rise, and with divestitures ringing in as their second-most common request, it's no surprise that they are behind some of the many asset sales and spinoffs on tap in the coming years.

"Some of it is 'follow the leader.' There were a lot of divestitures last year pressed by companies that were influenced by activist shareholders,” said Mayer Brown LLP partner Kevin Sheridan.



Of the companies surveyed, 19 percent said activist pressure had played into their most recent divestiture, while 11 percent attributed shareholder activism as the main driver behind their most recent divestiture, according to Ernst & Young.

The trend has already started to carry over into 2016, with insurer American International Group Inc. recently unveiling plans to divest two units, streamline its remaining assets and return $25 billion in capital to shareholders after activist investor Carl Icahn turned up the heat on the insurer.

And, as activist investors continue to lobby for growth at flagging corporations, even more are expected to pinpoint actual or perceived activist pressure as a catalyst behind the decision to ditch noncore assets.

"Divestments are the second-most thing that [shareholder activists] drive," Hammes said. "That's second only to governance, and governance can drive a divestiture."

--Editing by Katherine Rautenberg and Edrienne Su.