

Bristol-Myers' \$74B Celgene Buy Gives 2019 M&A Fast Start

By **Chelsea Naso**

Law360 (January 3, 2019, 7:16 PM EST) -- Deal-making roared just three days into the New Year as Bristol-Myers Squibb's \$74 billion cash-and-stock megadeal for biopharmaceutical company Celgene carried a price tag bigger than last year's largest deal despite recent market volatility.

The deal, announced Thursday, will see Bristol-Myers Squibb, represented by Kirkland & Ellis LLP, snap up Celgene Corp., advised by Wachtell Lipton Rosen & Katz, in an effort to build a top cancer, inflammatory and immunologic disease and cardiovascular biopharmaceutical player.

Under the terms of the transaction, each Celgene share will be swapped for one Bristol-Myers Squibb share, \$50 in cash and one tradeable contingent value right tied to future regulatory milestones. Celgene investors are expected to hold about 31 percent of the combined company.

The mammoth tie-up — valued at \$89.4 billion including net debt — eclipses last year's Japan-based Takeda Pharmaceutical Co. Ltd.'s \$79.7 billion, including net debt, acquisition of Dublin-based rare disease-focused drugmaker Shire.

The Takeda-Shire deal, signed in May, was the largest tie-up of 2018. Takeda's acquisition came after several earlier bids were snubbed for undervaluing Shire's drug pipeline and future prospects.

The Celgene takeover also stands out as the largest deal announced since AT&T Inc. announced an acquisition of Time Warner Inc. in October 2016 for \$105 billion, including net debt.

The big-ticket biopharmaceutical deal follows a year that was somewhat muted in comparison to previous years, according to data tracked by Mergermarket. The overall global deal count in 2018 fell for the first time since 2010, landing at 19,232 transactions.

Deals have been challenged by a variety of geopolitical factors throughout the year, with volatility rocking the stock markets at the end of the year. Deal-making has had to grapple with uncertainty surrounding the U.K.'s anticipated exit from the European Union, as trade tensions persist, and amid increasing concerns about global growth.

While fewer deals were announced, deal value still rose. The average deal size hit \$384.8 million, just behind the record \$400.3 million per deal seen in 2015, Mergermarket found. The growing deal values lifted the full-year activity in 2018 to \$3.53 trillion, making it the third-largest full year value in

Mergermarket records.

It also comes as M&A advisers are predicting large, transformative plays among companies looking to find growth and stay competitive in evolving industries in spite of the recent rockiness that has troubled the markets.

With acquisition of Celgene, Bristol-Myers Squibb expects to gain a leading position in the cancer, inflammatory and immunologic disease and cardiovascular spaces. In particular, the combined company will boast a top five immunology and inflammation franchise and the top cardiovascular franchise, according to a Bristol-Myers Squibb statement.

The deal is also slated to bolster Bristol-Myers Squibb's pipeline of products, where it estimates that the combined company's near-term launch opportunities represent more than \$15 billion in revenue potential.

In terms of early-stage products, Bristol-Myers Squibb expects to leverage both companies' innovation capabilities to advance their roughly 50 combined high-potential assets that delve into areas like solid tumors and hematologic malignancies, immunology and inflammation, cardiovascular disease and fibrotic disease.

Bristol-Myers Squibb Chairman and CEO Giovanni Caforio said in a statement that the deal stands to create "an innovative biopharma leader, with leading franchises and a deep and broad pipeline that will drive sustainable growth and deliver new options for patients across a range of serious diseases."

Combining the two biopharmaceutical companies is also slated to cut about \$2.5 billion in costs by 2022, Bristol-Myers Squibb said.

Bristol-Myers Squibb said it plans to finance the deal with a combination of cash on hand and debt financing. It has already locked down fully committed debt financing from Morgan Stanley Senior Funding Inc. and MUFG Bank Ltd.

The deal, which is not subject to a financing condition, requires approval from both companies' shareholders as well as regulatory approval. Bristol-Myers Squibb expects the deal to close during the third quarter of 2019.

Bristol-Myers Squibb is represented by a Kirkland team led by corporate partners Daniel Wolf, Jonathan Davis and Ryan Brissette along with David Fox, capital markets partner Sophia Hudson, debt finance partners Linda Myers and Jessica Woolf, intellectual property partner Lisa Samenfeld, antitrust partners Matthew Reilly and Paula Riedel, tax partners Dean Shulman and Sara Zabloutney, and executive compensation partner Scott Price.

Mayer Brown LLP also advised Bristol-Myers Squibb on intellectual property matters with a team led by partners Lisa Ferri and Brian Nolan and associate Elliot Choi.

The Bristol-Myers Squibb in-house legal team is led by Sandra Leung, executive vice president and general counsel, and Joseph Campisi, senior vice president and deputy general counsel, transactions.

Morgan Stanley & Co. LLC is acting as lead financial adviser for Bristol-Myers Squibb, with Evercore and Dyal Co. LLC also acting as financial advisers.

Celgene is represented by a Wachtell team led by corporate partners Steven A. Cohen, David K. Lam and Edward J. Lee and including corporate associates Oliver J. Board, Helen Diagama, Brian H. Junquera, and Michael Ye, executive compensation and benefits partner Andrea K. Wahlquist and associate Erica E. Bonnett, restructuring and financing partners Michael S. Benn and John R. Sobolewski, associate Benjamin S. Arfa and law clerk Elyssa Eisenberg, antitrust partner Nelson O. Fitts, counsel Franco Castelli and associate Emily E. Samra, and tax partner Joshua M. Holmes.

J.P. Morgan Securities LLC is acting as lead financial adviser for Celgene, with Citi also acting as financial adviser.

--Editing by Brian Baresch and Alanna Weissman.