
M&A VAR/SMMNY: Covid-19 Premium Reflects Long-Term Market Uncertainty

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Takeaways

- Siemens Healthineers CEO Bernhard Montag said earlier this week that the merger includes a Covid-19-related premium “to really make sure that the Varian board is comfortable and to do such a transaction.”
- Although several attorneys said that deal premiums are unusual in the current M&A environment, a Covid-19 bonus may reduce the likelihood that Varian would walk away from the transaction even if it has reason to do so.
- Also this week, Montag noted that Varian has a strong position in developing markets. This creates additional business uncertainty. Developing countries are expected to face continuing challenges in controlling Covid-19 infections outside of principal cities, according to a physician who has consulted internationally on the pandemic.
- The companies have said they expect to close the transaction in the first half of 2021.

Siemens Healthineers AG’s inclusion of a Covid-19 bonus in its pending acquisition of Varian Medical Systems Inc. is likely an idiosyncratic development but could protect against long-term deal risk, according to antitrust attorneys.

During this week’s call to discuss the transaction, Siemens Healthineers CEO Bernhard Montag said the Covid-19 bonus was included “to really make sure that the Varian board is comfortable and to do such a transaction.”

Given the current M&A environment, several attorneys said the Covid-19 bonus is unusual. “I’m not seeing significant premiums as part of deal terms,” said Clyde Tinnen, a partner at Foley who works on cross-border transactions. Most mergers “seem to be on hold,” Tinnen said.

Similarly, Rebecca Farrington, a White & Case partner who has defended mergers before the FTC and DOJ, described the Covid-19 bonus as a “very interesting concept” but not something that antitrust attorneys are widely discussing in the context of potential transactions.

Still, Covid-19 bonuses could become useful if companies continue to face business pressure due to the pandemic, according to Pat Souter, counsel at Gray Reed and professor of healthcare studies at Baylor University School of Law. “It would make sense that an acquirer who recognizes the intrinsic long-term value of a target would want to incentivize the target not to walk the deal if it has the ability to do so,” he said.

Financial effects related to the pandemic have created deal uncertainty for several transactions. For example, Thermo Fisher and Qiagen are in the process of [renegotiating](#) a higher purchase price for Qiagen.

Souter said he was involved in two transactions that recently closed because the companies had been using financials from earlier in the year and had not suffered greatly from effects of the pandemic. “I could see that in the next month or two that would not be the case, and a Covid bonus may be an attractive way to keep the transaction together,” he said.

In the case of Siemens Healthineers and Varian, Covid-19-related risks affect both companies and are particularly difficult to assess for emerging markets. In addition to antitrust approvals needed in the United States and EU, Varian’s reported total revenue indicates that antitrust approvals will also likely be required in or from Australia, Brazil, Canada, China, India, Japan, Russia and South Korea, as [reported](#).

During the [deal call](#), Montag noted Varian's strong position in developing countries. Further, he said that "cancer is and will also become unfortunately a more and more dominating disease also in developing countries and, therefore, will generate a lot of growth potential also for Varian in those regions."

According to a physician who has consulted internationally on the pandemic, developing countries are expected to face continuing difficulties in controlling Covid-19 infections outside of principal cities. In areas outside capital cities and major commercial hubs, developing countries often lack the infrastructure to contain and manage the spread of the coronavirus, the physician said. Widely dispersed populations could create additional challenges for countries such as China, India and Brazil, which lead the world in the number of cities with more than 1 million people.

During the call, Montag essentially sidestepped an analyst question about how a prolonged pandemic would affect Varian's financials. However, he said that the combination of a Covid-19 bonus and the reverse break fee reflects the "special uncertainty" of the pandemic.

Siemens Healthineers will be required to pay Varian \$925 million if the deal fails because of regulatory issues other than CFIUS. If the transaction is terminated because the companies do not obtain CFIUS clearance, then Siemens Healthineers will owe Varian \$450 million.

Neither Siemens Healthineers nor Varian provided comment by press time. The companies have said they expect to close the transaction in the first half of 2021.

--Ryan Lynch

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