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# Infrastructure M&A

FW discusses infrastructure M&A with Elena Rubinov, Vinita Sithapathy, Michael Rodgers, David Martin and Michael Honan at Linklaters LLP.



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**FW: Could you provide an overview of market trends driving infrastructure M&A activity? How would you characterise current competition for infrastructure assets?**

**Rubinov:** Despite the challenging macroeconomic environment, including high interest rates and geopolitical concerns, deal flow in the infrastructure sector has been relatively less impacted, as

infrastructure assets with their steady long-term returns and higher barriers to entry have remained attractive to investors with significant dry powder. In 2024, the sector outlook for 2025 was

cautiously optimistic in anticipation of the change in administration in the US, resulting in potential deregulation, reduction in interest rates and stabilised inflation, although there were concerns regarding potential reversal of gains made under the Inflation Reduction Act of 2022 (IRA). However, in the first quarter of 2025, M&A in general and in renewable energy in particular has faced several headwinds that have contributed to less robust deal activity than predicted, including imposition of tariffs, expected increase in inflation, unsteady policy changes in the US and overall drop in investor confidence as a result.

**Sithapathy:** Given the current political and macroeconomic conditions, the outlook for global M&A is less predictable and investors will need to come to terms with the new economic realities. Despite that, we believe that M&A in infrastructure will be less impacted than other sectors due to offsetting factors driving activity in the infrastructure sector, including increasing demand for energy, artificial intelligence (AI) 'boom', demand for digital infrastructure, capital needed for upgrades to electrical grids, anticipated upswing in investment in conventional energy, including fossil fuels and natural gas, increased allocation of private capital to this sector and the need to deploy dry powder, and the sector continuing to provide steady, long-term returns. Core infrastructure assets with

their higher barriers to entry are typically resilient to inflation and macroeconomic conditions, as demand for assets that provide essential services such as water and electric utilities, roads, ports and transportation remains steady even in periods of downturn.

**Martin:** Digital infrastructure, notably data centres, fibre networks, 5G towers and satellites, has continued to see significant deal activity, with macro trends relating to highspeed data access, increased connectivity and data storage, super-charged by AI, expected to continue. Power demand for data centres is increasingly a political issue given the demands placed on domestic grids, with certain governments seeking to place greater restrictions on power access. These concerns are balanced against concerns of falling behind in the race for AI capacity. Given these power demands, nuclear energy is seeing a revival, and the US administration has signalled support for nuclear power. Recent transactions, including Microsoft's agreement with Constellation Energy that will result in reopening the nuclear plant on Three Mile Island, are contributing to optimism in this space. Advancement of nuclear technology, primarily small modular reactors with flexibility in size and sourcing of parts, is making nuclear power appealing to data centres.

**Honan:** Competition in the industry varies depending on

the asset class. Data centres are in demand, although there are questions regarding whether the scale of growth predicted in this asset class will in fact be achieved, with access to power being a potentially material constraint, and whether competition for these assets has impacted the attractive returns available. Ready built platforms – whether energy generation, storage or data centres – have higher competition than development stage assets, which require investors and buyers to take development risk and, therefore, attract only those investors who can tolerate such risk. Some of the more traditional core areas of infrastructure, including utilities, toll roads, airports and transportation, are not necessarily considered 'hot' but attract competition from core infrastructure funds and investors with a lower return hurdle.

**FW: What are some of the issues and features that make transactions involving infrastructure assets unique?**

**Honan:** Infrastructure assets have a reliable revenue stream through, for example, long-term revenue-generating contracts, regulated returns or government concessions, making them attractive to investors seeking steady returns. The predictable and steady performance of these assets draws institutional investors with lower risk tolerance and longer hold periods for



investments, including pension funds, sovereign wealth funds and insurance firms. The industry is capital intensive and often multiple investors pool capital, whether through joint ventures and consortium arrangements or co-investment transactions or by taking different pieces of the capital stack with different risk profiles and opportunity for returns. What is regarded as 'infrastructure' is also dynamic, with infrastructure investors investing in assets which might not be regulated, do not have long-term contracts or have development and construction risk attached. These have greater risk but the opportunity for greater return.

**Rubinov:** Transactions in the infrastructure sector typically involve increased interactions with regulators and require a deep understanding of the regulatory regime and associated risk. Infrastructure businesses can be owned and operated in a variety of ways, ranging from partnerships between government bodies and private entities – such as public-private partnership (PPP) transactions – for the development, financing and operation of a project and the sharing of revenue therefrom, to the development, ownership and operation of assets entirely by private entities but subject to regulatory oversight. The type and level of regulatory hurdles are often sector specific but in all cases require alignment with policy objectives among various

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stakeholders. Many countries, notably in Europe, have introduced foreign direct investment regimes and the US has expanded its foreign investment regime to require regulatory approval for certain foreign investments into critical infrastructure.

**Sithapathy:** There are different mechanisms for structuring purchase price for infrastructure assets that are not yet operational. Often for such assets, purchase price is split into an upfront payment and earnouts that are based on achieving certain development and operational milestones or the entry into key commercial contracts. Because earnout mechanisms depend on the nature of the asset and the stage in its lifecycle, earnout terms tend to be bespoke and heavily negotiated and need to be drafted precisely to ensure a clear understanding between parties and avoid any

ambiguity that may lead to disputes after the closing of the transaction. In addition, purchasers, when seeking to introduce parameters and controls in relation to such contracts, must ensure that any limitations are not in contravention of regulatory regimes – notably antitrust – and do not amount to 'gun-jumping' prior to obtaining regulatory clearances.

**Martin:** The need to meet the high demand for energy to power data centres is giving rise to innovative partnerships for co-locating data centres with sources of power generation. Hyperscalers are also investing in technology advancements, including nuclear technology, to power their data centres. Similar to the US, the UK is also seeing support for the growth of nuclear technology with the government intending to relax planning laws to allow developers flexibility on location of nuclear

sites with the aim of facilitating co-location with data centres.

**FW: In light of the current economic environment, what financing mechanisms and fundraising strategies are you seeing in infrastructure M&A?**

**Rubinov:** Globally, fundraising in 2024 by private equity (PE) firms was reportedly 30 percent below 2023 levels. Despite that, fundraising in the infrastructure sector was only 9 percent below 2023 levels for the same period, and funds dedicated to conventional power and energy, particularly in the US, raised 27 times more capital in 2024 than in 2023. In addition to equity capital, sources of financing for infrastructure M&A include both debt from large banks and private credit, which has grown significantly in recent years. In a high interest environment with limited access to capital, sponsors

often turn to private credit funds that provide alternative financing, which is consistent with what we have seen in the last few years.

**Martin:** Depending on the type of asset being acquired and its stage of development or operation, debt financing can take the form of project level debt or holdco level debt, including potentially maintaining, following closing, the pre-closing project-level debt of the business depending on its terms and change of control triggers. Asset-based financing, securitisation and bond financing are viable options for infrastructure assets as they generate steady, long-term cash flows to make required debt payments. These structured financing arrangements are becoming more common as investments, such as data centres, mature. A strategic acquirer may also be able to raise debt based on its own balance sheet.

**Sithapathy:** Equity financing can take the form of tax equity for investments in renewable energy projects and cash equity in the form of preferred or common equity from financial sponsors or strategic investors. On the cash equity side, we often see a consortium of financial sponsors and institutional investors, joining together to acquire big-ticket assets. We often see structures involving joint ventures between financial partners with the necessary capital and strategic companies with know-how and access to business opportunities. However, financial sponsors are increasingly focused on, and have become experts in, certain asset classes and provide high levels of asset expertise, negating the need for a strategic partner.

**Honan:** We are seeing a continued use of co-investment and direct investments by large pension funds, sovereign wealth funds and other institutional investors rather than, or in addition to, taking limited partner positions in PE and infrastructure funds. Given current market conditions and the favourable position of those sponsors providing capital funding, hybrid financing structures, including preferred equity, have been popular recently.

**Rodgers:** In the US specifically, renewable energy projects frequently involve ‘tax equity’ investments that allow project sponsors to monetise federal



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tax credits and allow tax equity investors – typically large banks or other entities with significant tax liability – to take advantage of tax incentives available for renewable projects. The IRA expanded the options for monetising tax credits by making the majority of renewable energy tax credits transferable. This has led to a robust market for tax equity investments and transfers. In 2025, while the tax equity and transfer markets are expected to continue steady growth, political uncertainty as to the future of the IRA could jeopardise such growth, particularly with respect to certain technologies the tax credits for which may face rollback. That said, a wholesale repeal of the IRA is unlikely as a disproportionate number of Republican states and Congressional districts benefit from clean energy investments resulting from the IRA.

**FW: What risks and challenges might buyers and sellers typically face during an infrastructure deal? How important is due diligence and transactional risk management to mitigating these issues?**

**Rubinov:** Risks and challenges in an infrastructure M&A transaction depend on the nature of the asset and the parties but typically include navigating regulatory approvals specific to the asset being acquired, such as the US Federal Energy Regulatory Commission and state public utility commission approvals for investments in the energy

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sector and approval of the Federal Communications Commission for telecom investments. In addition, if the acquirer is a non-US person, need for a potential filing with and approval of the Committee on Foreign Investment in the United States (CFIUS) must be assessed, as infrastructure assets could potentially fall within the definition of US critical infrastructure under the regulations, and an investment in such asset could, under specific circumstances, trigger a mandatory filing with CFIUS. Many European jurisdictions also have foreign direct investment regimes, and these are determined on a jurisdiction-by-jurisdiction basis, as opposed to a pan-European regime, such as the European Union's Merger Regulation.

**Sithapathy:** Extensive technical, financial, tax, environmental, operational and legal due diligence is critical to assess project viability and to identify and

mitigate liabilities. Environmental review is a significant part of infrastructure diligence, and resolution of potential environmental challenges is key. Environmental issues can include clean-up liabilities, disruption in the actual development of the land being utilised for a project and noise levels during operation. Environmental site assessments are crucial for addressing these risks. Investors will also need to review land use and emissions permits and assess any deal certainty risks resulting from consents required in connection with such permits. When acquiring development assets, navigating permitting requirements and zoning restrictions is important to the project's viability and ultimate success. Investors often retain engineers and technical experts to conduct required diligence.

**Honan:** It is crucial to understand the plan and regulatory

requirements for development of the asset to assess whether it would be bankable. Identifying present and future risks with the development process is key to valuation strategy. Risk mitigation for such assets often involves limiting the upfront payment for the asset and value being attributed to assets under development being paid in the form of earnouts that are triggered based on reaching certain developmental milestones. Greater diligence will be required to assess supply chain management with respect to infrastructure projects given tariffs and concerns regarding potential delays and lack of availability of inputs as a fallout of global trade wars.

**Martin:** Infrastructure assets are often reliant on a number of important legal arrangements that either underpin the revenue stream or are fundamental for value – for example, a regulatory pricing

regime, title documentation or lease agreements, critical power supply, long-term concessions, such as for airports or ports, and key customer contracts, including hyperscaler contracts and management service agreements. Analysis of this legal structure will underpin the investment thesis as well as the financial model, with a particular focus on change of law or regulatory risk, force majeure, counterparty consents, tenure and termination, service levels and current and future pricing.

**FW: In what ways is the current regulatory landscape affecting infrastructure M&A? What legislative changes or anticipated shifts might impact future deals?**

**Rubinov:** Regulatory challenges, especially policy uncertainty in the US, have impacted and continue to impact infrastructure M&A. On 20 January 2025, the

White House issued an executive order temporarily limiting wind energy leasing and restricting wind energy approvals, which have had a chilling effect on transactions involving wind energy investments. The imposition of tariffs by the US and reciprocal tariffs by other countries, together with restrictions on access to certain resources and technologies, have introduced challenges in pricing, availability and timelines of inputs and components in the supply chain of infrastructure projects, as well as in the overall valuation and risk assessment of infrastructure investments. This is impacting investor confidence and resulting in a less robust deal flow while investors generally await certainty and direction. We also expect potential repricing and delays in projects that are already in motion given the new economic environment.

**Sithapathy:** We expect to see more reviews of real estate transactions by CFIUS once the administration's memorandum from earlier this year that seeks to protect US farmland and real estate near sensitive facilities is implemented. This could affect investments in undeveloped energy assets. On the US antitrust front, new rules governing merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which went into effect in February 2025, have significantly expanded the information required to complete the notification form. As



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a result, it takes longer to complete the notification forms, although the US Federal Trade Commission is continuing to issue guidance relating to form preparation, which is helping to lessen the burden. However, parties to reportable transactions are generally agreeing on longer filing deadlines to account for the increased complexity of the form.

**Rodgers:** While the expectation is that the current administration will not engage in a broad, wholesale repeal of tax credit benefits under the IRA, there is some ambiguity as to certain provisions of the IRA that requires further actions from the Internal Revenue Service, the US Treasury Department and other federal agencies to provide clarity on their implementation. While the new administration may not repeal the IRA, it seems even more unlikely that in the near term it will prioritise the IRA over other initiatives by issuing the guidance necessary to clarify such ambiguity. This ambiguity may therefore stall some projects as investors remain hesitant to invest in projects without a clear understanding of whether and to what extent such projects will be eligible for tax credits.

**FW: What strategies are acquirers deploying to create value from their infrastructure investments? How do synergies, operational efficiencies and**

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### **strategic alignment factor into the process?**

**Sithapathy:** Acquirers use innovative and hybrid capital structures involving multiple parties investing in different levels of capital stacks ranging from debt capital to varying classes of equity capital, matching up their risk and return profiles depending on their objectives and rationale for the investment. Often, transactions are structured as a sell down of partial stake or involve rollovers or earnouts to ensure sellers maintain an interest in the success of the business following closing.

**Rubinov:** Strategic alignment plays an important role in enhancing value. We see strategic investors team up with financial investors that are experienced in the industry to acquire infrastructure assets or to operate either party's existing

infrastructure assets. In addition to bringing capital, this enhances the value and efficiencies that can be derived from the asset in a variety of ways, including by one partner providing industry expertise, operational experience, access to a mutually beneficial commercial arrangement or other benefit. Examples of strategic alignment include PPP transactions that allow a government agency and a private entity to team up in connection with the ownership and operation of an asset – allowing each party to play a specific role with respect to the asset and share revenue from the asset.

**Honan:** Other ways that acquirers use to enhance value include acquiring an infrastructure asset that requires significant work, upgrades or innovations and making those technology or other upgrades that create efficiencies and improvements in the operation

of the asset, reduce cost and enhance value. We are also seeing an increased use by investors of management incentive plans with financial performance as well as development or project metrics to align interests of the investors and the management, typically with a longer-term outlook.

**Martin:** Acquirers consolidate complementary assets under a single platform to minimise or eliminate overhead and other operating costs and take advantage of synergies, thereby driving efficiency and value. However, as these single platforms mature, financial sponsor owners have sought to split the platform in what the market has described as 'stabilised asset' transactions. In the context of data centres, fully leased 'yieldco' assets have been demerged from the platform to attract a pool of capital that wants to invest in long-term core type assets. The residual 'development' business has then attracted a different pool of investors, with these investors seeking to deploy material capex to build and lease out the development business in advance of a possible total exit or further stabilised structures.

**FW: What developments are set to impact the infrastructure M&A market in the second half of 2025 and beyond? How would you summarise evolving infrastructure demands?**

**Rubinov:** We are hopeful that we will see a more stable regulatory and policy framework with less uncertainty and volatility, as issues relating to policy changes will settle, allowing business and investment decisions to be made more confidently. Any upward changes to interest rates and tariffs coming into effect will impact deal flow and may result in delays. However, we expect that the resilience of the sector and the demand for core infrastructure, including transportation and utilities, will help the sector withstand and navigate uncertainty and negative macroeconomic factors. In addition, increased investment capital allocated to infrastructure and energy, as well as energy transition and environmental, social and governance and other tailwinds, are expected to result in deal flow and activity in the sector.

**Honan:** As the tariffs become effective and their adverse economic impact on project costs becomes evident and if high interest rates persist or increase further, we may see businesses struggle, leading to the need to restructure projects that are no longer economically viable and potential distressed M&A transactions. An increase in interest rates and the effectiveness of tariffs will impact both project costs and acquisition cost and lead to decreased activity and dealmaking in the sector.

**Martin:** Globally, the demand for digital infrastructure is expected

to continue and we anticipate an increased need for investment in the space given the significant capital expenditure requirements. The AI boom is causing a need to build and invest in data centre capacity around the world, with existing hyperscalers such as Amazon, Meta and others announcing plans to build significant data centre infrastructure, which will require significant investments in energy to provide consistent flow of power to electrify such data centres.

**Sithapathy:** There is expected to be a significant increase in demand for energy caused by increasing use of AI, a surge in new data centre construction, new manufacturing activity and longer-term electrification of transportation and heating, with some reports projecting energy demand to grow by 35 to 50 percent by 2040. In the short term, we may see increased investments in both renewable and conventional energy sources, with possibly less activity in wind energy due to unfavourable policies in the US. We expect that investments in solar energy and battery storage will continue to be in demand given the increased need for electricity and battery storage. The US Energy Information Administration has expressed high hopes for solar energy and batteries to lead new capacity installations on electric grids this year in the face of criticism from the new administration. ■