Abernathy MacGregor

When Deals Hear from Congress

"I write to express my concern..."

Following a successful transaction announcement, management teams and boards often breathe a sigh of relief. Intense negotiations and late nights working to sort out terms, financing, governance and all the rest then leads to a whirlwind of attention once the deal is announced. It's tempting to think the work is over.

Then a letter from a member of Congress arrives. A stark reminder that there's a lot that can happen to a deal after announcement. A congressional letter can be the most jarring post-announcement challenge for management teams and boards. It comes with unwanted public attention, investor worries about ability to close and the introduction of volatile politics into the corporate narrative.

While political scrutiny of M&A is not a new concept, it is increasingly a topic of interest in Washington D.C. For dealmakers, that calls for a close look at the real impact congressional letters have on transactions. What implications does receiving a congressional letter actually have on the outcome of a transaction? Is it a death sentence or a nuisance for a deal? Is it an expanding trend for dealmakers or a persistent reality for a select few deals?

To answer these questions, Abernathy MacGregor reviewed 301 publicly available congressional letters regarding 42 deals announced between December 2009 and May 2020 alongside data from our transaction database that follows media coverage trends, leaks and other communications impacts on deals. Armed with this data, we sought to answer a few key questions:

How many deals attract congressional letters?

What impact, directly or indirectly, does a letter have on a deal?

What characteristics make a transaction more likely to receive a letter?

Does a letter increase the likelihood of a congressional hearing?

Who's sending these letters and what does that say about the future?

Letter writing has held steady the past decade.

301 letters in 10 years touching just 6% of all[1] deals.

Letters make the journey longer...and riskier.

Deals that attract letters have almost 2x the timeline to close.

36% don't close.

More letters, more problems.

Deals that got a hearing often got more letters.

10 letters is a tipping point.

A low profile won't help.

No correlation between announcement day media volume and letters.

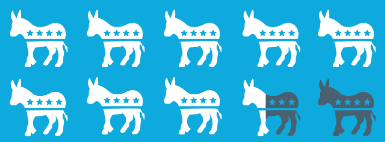
Industry may matter most.

70% of deals under scrutiny came from four industries:

Telecom · Pharma · Media · Airlines

Democrats write the most.

88% of signatories are Democrats.



[1] Transactions universe is the "AMG Deal Database," a specific set of transactions for which Abernathy MacGregor has compiled related communications data. The database includes transactions announced between December 2009 and May 2020, with an announcement value of $5bn or greater in enterprise value as recorded by Mergermarket and where at least one party (buyer or target) is based in the United States

Letter writing has held steady the past decade.

A swift and successful transaction closing is the number one goal post-announcement. Does receiving a letter throw this process off course, and how likely is that to happen? Our study showed that receiving a letter is a rare occurrence in M&A, with only 6% of all transactions over $5 bn in the past 10 years receiving a letter.[2]

Over the last 10 years, 42 transactions received at least one congressional letter, with a total of 301 letters sent on these transactions. Over the last couple of years, media attention on the intersection of M&A and politics has grown to a fever pitch, with media mentions of "M&A" and "politics" increasing over 125% since 2010.[3] But in reality, the number of congressional letters sent on transactions has not increased year over year, and has instead held relatively steady over the last 10 years.

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[3] Source: Factiva. Review of top-tier articles mentioning both M&A and politics in 2010 vs. 2020.

Letters make the journey longer… and riskier.

We found that deals that receive a letter take almost double the average amount of time to close. Since 2010, the average time for transactions to close is 169 days.[4] For deals that received letters, our research shows that it took 318 days on average to close – almost double the amount of time to close for deals that didn't receive letters.

Receipt of a letter also correlates closely with a substantially decreased likelihood of a successful closing, with 36% of deals studied failing to close. Still, catching a letter isn't a death knell for a transaction: 64% of the deals studied still closed despite attracting congressional attention.

36% of deals that get a letter fail to close.

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More letters, more problems.

Unsurprisingly, deals that received a high volume of letters were very likely to have a subsequent congressional hearing on the transaction. Consistent and broad congressional interest can naturally lead to the desire for a public forum. Of the deals that received 10 or more letters, 88% of them became the subject of a congressional hearing. Notably, of these deals, 63% still closed despite a congressional hearing. This means a transaction that has a congressional hearing is equally likely to close as a transaction that only receives a letter.

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63% of deals that had a hearing still closed.

64% of deals that got a letter still closed.

A low profile won't help.

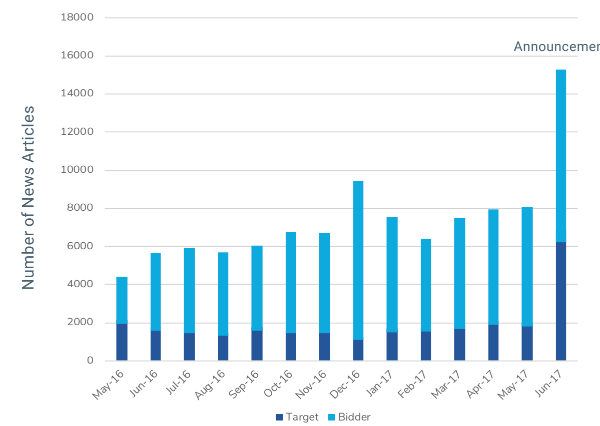
The conventional view is that media attention on announcement day drives congressional attention. It is easy to think that members of congress simply react to the headlines and send their letters to the deals that catch the most attention, which if true would make it smart to limit public visibility around announcement day. Our research shows that the common wisdom is wrong. We found that deals with the highest media volume on announcement day were no more likely to receive a letter than those with less announcement day coverage. Our prior research has also shown that all deals over $5bn in enterprise value create massive spikes in media attention, regardless of tactical approach. Our study showed that a major transaction announcement, on average, creates a 292% increase in media attention for bidders and 552% for targets. Put simply, a deal is likely the highest profile news event of the year for any company and creates an extraordinary moment of attention for the target company.

Increase over 12-month AMV for all deals leaked and not leaked:

BIDDERS
+292%

TARGETS
+552%

Average Monthly News Volume vs. **Announcement Month** Volume*



*Companies represented: Whole Foods and Amazon

Industry may matter most.

Our research showed that all transactions – regardless of size or sector – are at risk of receiving a congressional letter but some sectors and larger deal sizes are more at risk than others. Mega deals (over $50 bn) attracted the most letters with over a third of them receiving congressional attention – but size didn't always matter as a quarter of the deals (26%) that attracted letters were valued at $5 bn and under. Deals valued between $5-24 bn received the fewest number of letters.

Size ($bn)	# of letters	% of letters
Under 5	11	26%
5 to 9	1	2%
10 to 24	4	10%
25-49	10	24%
50+	14	33%
Undisclosed	2	5%

Although letters were sent on transactions across 20 different sectors, 70% of letters were sent to companies in only four industries: telecommunications (35%), pharmaceuticals (15%), media (11%) and airlines (9%). Deals in the telecom industry are also most likely to result in a congressional hearing: of the transactions that received letters resulting in a congressional hearing, 40% were in the telecommunications sector. But across all sectors, the size of the transactions has no correlation to hearings, with transactions that had congressional hearings ranging in value from $4 bn to $109B.

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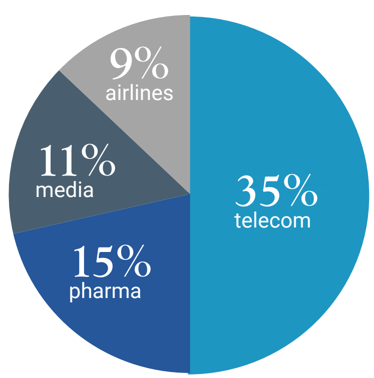

Democrats write the most.

We found that 88% of signatories were Democrats, with 55% of those signed by Senate members. Just 9% of all letters written were signed by members of both parties. However, despite a lack of bipartisan letter writing, the majority of transactions ultimately received attention from both parties with 52% of deals attracting letters from signatories of both parties.

Overall, there were 731 signatures from 229 individuals. Sen. Amy Klobuchar (D) is the most prolific letter signer in Congress having signed 47 letters on M&A, followed by Sen. Mike Lee (R) with 34 letters. Both Klobuchar and Lee are members of the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights with Klobuchar the top Democrat and Lee the chairman. Because of their posts, they are obligated to provide oversight of M&A, and letters are one of the tools they use to do so.

Just 9% of all letters written were signed by members of both parties.

There were **731 signatures** collectively from **229 individuals.**

52% of deals attracted letters from **both parties.**

9% were **bipartisan** signed.

60% sent by **Senate members.**

How to Prepare: Our Recommendations

Shift to a campaign mindset

One of the biggest mistakes companies can make is viewing announcement day as the end of a transaction, rather than the beginning of a long-term communications campaign across stakeholder groups to get the transaction approved and complete.

Build relationships early and often

All stakeholders matter in a transaction, and all are able to drive congressional interest, so companies should engage with them throughout the entire transaction lifespan. Be sure to conduct outreach to the committees of jurisdiction and the congressional delegations to build goodwill and trust before the transaction is announced. Identify and prepare third parties to advocate for the transaction in advance of the deal hitting a potential roadblock.

Communicate stakeholder value

Transaction announcements typically focus on addressing value created for investors. For transactions concerned about political risk, companies should consider how best to also communicate value to other key stakeholders. Help these key constituents understand specifically how the combination will create value for them.

Don’t overreact

Letters present complications for a transaction but are not a death sentence. Be prepared for a letter but don’t overcorrect if you receive one. Track and monitor sentiment and volume about the transaction from announcement day onward to create a benchmark. Know what represents real shifts in sentiment versus momentary reactions.

Make the most of announcement day

Don’t shy away from making a big splash on announcement day out of fear of arousing political attention. Announcement day remains by far the biggest media moment in a transaction – so make the most of it by going big and speaking directly to the company’s stakeholders. It is the optimal time to clearly and aggressively establish a positive narrative about a transaction.

About Abernathy MacGregor

Abernathy MacGregor is a leading strategic communications advisor. The firm provides communications, engagement and advocacy expertise that helps clients build and preserve value, seize opportunities and solve problems in today's highly complex, dynamic and interconnected world. Since 1984, the firm has brought to every engagement superior, customized strategies and an intensely collaborative and high-energy commitment to its clients.

Abernathy MacGregor operates from offices in New York, Houston, Los Angeles, San Francisco and Washington, D.C. and is a founding member of AMO, which is the leading international network of strategic communications consultancies.

#1

*Ranked adviser based on average size of transaction in 2019**

1000+

*Transactions advised on in the past decade**

A recognized leader in M&A communications

Abernathy MacGregor consistently ranks as a top adviser in M&A in the U.S. and globally. With a distinctive data-driven practice and a tailored approach that incorporates a focus on all stakeholders, the M&A team has established itself as the leader in transformative transactions. The firm ranked #1 in 2019 worldwide deals based on average transaction size and has advised on more than 1,000 transactions in the past decade. The firm offers comprehensive transaction communications services reaching all stakeholder groups across all channels. The team supports clients prior to announcement, on announcement day, in securing key approvals and through integration.

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*Source: Mergermarket

Key Definitions and Methodology

Deal Criteria

Period of Analysis: 12/1/2009-5/1/2020

Geographic Consideration: Data set includes transactions where at least one party (buyer or target) is based in the United States

Volume of Letters: 301
"Regulatory issues" and "Regulatory concerns": For the purposes of this study, "regulatory issues" and "regulatory concerns" were defined as transactions that were either blocked by the Department of Justice or faced severe regulatory pushback/hurdles making the deal no longer attractive

Media Coverage Methodology

Source: Factiva
Search string incorporated merger- and acquisition-related terms in combination with bidder and target company names

Congressional Letters Methodology

Source: ProPublica's Represent database
Search string for any public statement or press release issued by members of the House of Representatives and the Senate with bidder and/or target company names

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