Bloomberg BRIEF

Mergers

1.23.12
MONDAY

Q&A Cravath's Hall Says Deal Financing Will Be 'Problematic' in First Half of Year

Richard Hall is a partner at **Cravath, Swaine & Moore LLP** and leader of its mergers and acquisitions practice. He spoke with **Will Robinson** about representing **Williams Cos.** on its failed takeover attempt for **Southern Union Co**. **Energy Transfer Equity LP** agreed to acquire the pipeline operator in July. Hall also worked with **Banco Santander S.A.** on the $1 billion sale of its interest in **Santander Consumer USA** to a group of private-equity buyers including **KKR & Co.**

Q: How was 2011 in terms of deal work and what is your outlook for the year?

A: My 2011 was a fair reflection of what the M&A space was like in the U.S. It was characterized by a number of broken transactions as buyers and sellers struggled to reach an agreement on price, as well as concern on the part of buyers about their ability to finance transactions.

Q: Any industry in particular?

A: The industries that were biggest for me, again, matched that of the general deals sector. They were the resources sector, gold, coal, oil and gas, oil and gas services, plus a little bit of telecom and a little bit of healthcare. Unlike a lot of people, my second half was perhaps busier than my first half.

Q: How so?

A: My second half was dominated by two transactions. One was the contested bid by Williams to break up a deal between ETE and Southern, in which Williams was unsuccessful. However, Williams wasn't unsuccessful for any of the traditional 2011 reasons. People really believe now that ETE significantly overpaid for Southern, and Williams just wasn't prepared to keep bidding. The second transaction was the investment by a group of sponsors in the Santander consumer finance business. That was a $1 billion private-equity investment. Although that transaction took up a lot of my time, I do view it very much as an outlier in 2011.

Q: Why was it so unusual?

A: It's an outlier first because it's a large private equity deal, and they were rare in the second half of the year. It was private equity going into financial services, which is also extremely rare after the losses that private equity took in the 2007 and 2008 timeframe. It was also non-distressed M&A in the financial services sector, which is again, a rare beast.

Q: What will 2012 be like?

A: At least for a while, 2012 will be a continuation of the second half of 2011. It will be difficult to get transactions done. Financing will be problematic. But I think we will continue to see activity in a handful of sectors in which long-term structural trends are driving consolidation. I would view those sectors as being resources, energy in the sense of oil and gas (not in the sense of electric power), technology, pharmaceuticals and medical products.

Q: What are the biggest lessons learned from the Williams deal that was terminated in July?

A: On the Williams side, I think they did it pretty much just right. They started with a very clear sense of where they wanted to end. They bid initially and in subsequent rounds, they were informed by that. Looking back on it I'm not sure that we would have done anything differently for Williams. I think the most interesting lessons are on the ETE side and the Southern side. It is now almost conventional wisdom that ETE has significantly overpaid. My instinct tells me that ETE didn't have at the beginning a clear sense of how much it was willing to pay and thus got caught up in the frenzy of an auction process.

Q: What about Southern?

A: On the Southern side, the most significant lesson comes from the fact that the Southern board approved a transaction with ETE, when as it turned out, ETE had over 30 percent more in its pocket. We talk as deal practitioners and we look at evidence and data and studies about what auctions do in terms of maximizing value for selling shareholders. It's simply remarkable that without the auction a deal would've been done at $33 a share when a deal was ultimately done at $44.

Q: Air Products & Chemicals Inc.'s failed hostile bid for Airgas Inc., which was terminated in February, has been singled out as a landmark legal decision. What effects has it had on anti-takeover defense measures?

A: By the time we cut through it all, what the two courts did in Air Products-Airgas was effectively emasculate the substantive review by the court of the merits of the board decision. There is almost no substantive review of the reasonableness of what the Airgas board was doing. It's all process. We may well have reached a point within the Delaware jurisprudence that the only difference between the standard level of process review and the enhanced M&A level of process review is the length of the hearings and the length of the opinions. I think the Airgas litigation is seminal.

Q: How is it affecting deals?

A: It is clearly chilling the willingness of hostile acquirers to move forward on a hostile basis.

Q: You represented Rosetta Marketing Group on its acquisition by advertising company Publicis Groupe for $575 million. How will social media and digital media M&A play out in 2012?

A: What I found most interesting about Rosetta was how social media advertising has now firmly gone into the mainstream. The potential bidders for Rosetta were all major public relations, advertising and marketing companies.

Q: What implications does this have for advertising companies' M&A?

A: The challenge for the big advertising and marketing companies in using M&A to penetrate in this sector is that historically they've used M&A as a way of getting client relations as well as a way of getting human beings. It's not clear to me they need the client relations. Maybe the only thing they need are the people.

Note: Vicki Granado, an outside spokeswoman for Energy Transfer Equity LP, declined to comment.

CRAVATH, SWAINE & MOORE LLP

Posted from *Bloomberg Briefs,* January 23, 2012, copyright by Bloomberg L.P. with all rights reserved.
This eprint implies no endorsement, either tacit or expressed, of any company, product, service or investment opportunity.
#C5001 Managed by The YGS Group, 800.290.5460. For more information visit www.theYGSgroup.com/content.