

M&A MVP: Latham & Watkins' Mark Gerstein

By **Pete Brush**



Mark Gerstein
Latham & Watkins LLP

Law360, New York (November 19, 2013, 1:12 PM ET) -- In a flourishing climate for deals, Latham & Watkins LLP's Mark D. Gerstein led legal teams that made front-page headlines, including advising Omnicom Group Inc. in its \$35 billion tie-up with fellow advertising giant Publicis Groupe SA, work that earned the global mergers and acquisitions team leader a spot on Law360's list of M&A MVPs.

With U.S. antitrust clearance out of the way — but with competition review in other jurisdictions and shareholder approval still to come — the "merger of equals" between the New York-based Omnicom and the Paris-based Publicis has yet to be signed, sealed and delivered. It is planned to close early next year.

"The transaction demonstrates the value of a true cross-border platform," Gerstein said. "The transaction involved U.S., French and Dutch tax, securities law and governance matters, and the ability to handle most of that work within the firm allowed us to provide timely and seamless legal advice to the client."

While some doubt there ever is a true "merger of equals" the terms of the massive advertising industry agreement suggest the companies will see their leaders work together as co-CEOs during an initial window of 30 months. The tie-up also leaves shareholders of the two giants with roughly equal equity, once special dividend payments are factored in.

"A merger of equals is at its core very different from a typical M&A acquisition. Governance, equity capital markets and tax considerations play a significant role and often present complex problems in

need of solutions that are workable as a commercial matter for the combined companies going forward," Gerstein said.

"This is not our only significant cross-border transaction this year, as we advised on the Actavis-Warner Chilcott merger and the BC Partners acquisition of Allflex Holdings," he added.

The advertising deal marked the first time Latham worked with Omnicom, a decadelong client on other matters such as governance and securities, on a large merger.

Latham also deepened its M&A ties this year with another long-standing client, Koch Industries Inc., as it made a move to buy Illinois-based Molex Inc. for \$38.50 per share in cash. A team led by Gerstein advised billionaire brothers David and Charles Koch in their \$7.2 billion plan, a deal that marked Koch Industries' first foray into fiber optics.

Molex investors very recently signed off on the offer by overwhelming margins in a strong show of support.

"We have worked for Koch Industries for more than a decade," Gerstein said. "We were originally brought in to handle some of the conglomerate's commercial matters in 2000. Our transactional work for Koch Industries started off in 2003 with the company's \$4.4 billion purchase of the DuPont textiles unit Invista. We subsequently advised Koch Industries on its \$21 billion purchase of Georgia-Pacific."

Gerstein said the Koch brothers' are very serious about analytics, among other considerations, as they scout for acquisitions and — as such — they represent a unique client that can be a pleasure to work with.

"One of the things that Koch brings to the table and which makes their transactions easier to execute is its ability to fund many of its own deals. It avoids the complexities often present in the negotiations and structuring of transactions that rely on a buyer obtaining deal financing," Gerstein said.

Latham also guided paper products giant Georgia-Pacific Corp., owned by Koch, toward a \$1.5 billion takeover of pulp miller Buckeye Technologies Inc. using a unique variation on the "Burger King" structure — usually intended to handle a tender offer that comes up short of the required number of shares — to iron out a regulatory snag that presented itself when antitrust regulators made inquiries.

In the Buckeye deal, a shareholder vote locked down the target's shares, leaving the merger on track despite initial concerns expressed by regulators, who ultimately cleared the deal in August.

"The agreement contained a 'Burger King' tender-merger structure but tied to antitrust matters rather than financing matters. It was the first time this was done," Gerstein said.

Gerstein, who has taught as an adjunct faculty member of the Northwestern University School of Law, currently serves on the boards of the Chicago Symphony Orchestra and the Ravinia Festival and serves as board president of Youth Guidance, helping at-risk children in Chicago's public schools.

--Editing by Katherine Rautenberg.