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# M&A Group Of The Year: Latham & Watkins

By **Chelsea Naso**

*Law360, New York (January 08, 2014, 2:49 PM ET)* -- Latham & Watkins LLP's mergers and acquisitions attorneys channeled industry experience and teamwork to ink some of 2013’s largest and most complex deals, including the $35.1 billion merger of Omnicom Group Inc. with Publicis Group SA, earning the team a spot on Law360’s Practice Groups of the Year.

The more than 450 attorneys in Latham’s mergers and acquisition practice represent public and private companies ranging from Fortune 100 and multinational corporations to newly emerging companies, private equity sponsors, boards of directors and financial advisers on a global basis to assist with negotiated acquisitions, strategic mergers, cross-border deals, take-private transactions, unsolicited bids, activist investor defense and joint ventures, explained Mark Gerstein, the firm’s M&A global co-chair.

“Our M&A lawyers are keenly focused on the commercial objectives of our clients, and all of our efforts are driven toward accomplishing those goals. While we pride ourselves on being strong advocates for our client’s positions, we believe the market views our M&A attorneys as the kind of lawyers who get deals done,” said Gerstein.

Being able to advocate on a global basis helped the group close a complicated, cross-border merger of the public relations company Omnicom Group Inc. with Publicis Group for $35.1 billion dollars, explained Gerstein, who headed the transaction.

That deal, which was 2013’s fifth largest merger globally, was unique because both companies wanted the emerging communications group to be listed in New York and France, which required Latham’s attorneys to develop a Dutch holding company structure and a two-step merger that allowed for a stock-to-stock merger that offered fair tax treatment to investors, explained Gerstein.

“We worked with the firm’s capital markets experts in NY and London to craft the novel dual listing and related securities law reporting structure which seeks to minimize undesirable ‘flow-back’ and afford the new global company the best opportunity to include its shares in leading global stock indices,” he said.

That deal, as well as the $11 billion merger of US Airways Group Inc. with bankrupt American Airlines parent company AMR Corp., also relied heavily on a culture of teamwork established between all of Latham’s practice groups around the globe, explained partners Tony Richmond and Peter Kerman, who led the unprecedented airline merger.

“We work in a place where whenever we need help in a subject area, you can pick up a phone and call one of your partners and they say, ‘Great, I’m happy to help,’” said Kerman. “Latham’s got incredible scale, across geographies here and in Europe and Asia. It’s a complete global platform. The reason that matters in today’s market is that size brings you experience. It brings you number of transactions; it brings marketplace practices. At Latham, there’s a teamwork culture that allows us to access all of that experience and information.”

The all-stock deal, which closed on Dec. 9, was unique in that one public airline was merging with another public airline while it was reorganizing under Chapter 11 of the bankruptcy code. To successfully lock in the transaction, Latham attorneys had to navigate laws and regulations governing corporations, taxes, bankruptcy, employment, securities and the environment and simultaneously work to reorganize American Airlines in bankruptcy and merge it with US Airways, explained Richmond.

“This was a very tax complex transaction,” said Kerman, adding that the firm also had a team in Brussels clear the merger with competition authorities in Europe.

Industry-specific knowledge and experience was key to successfully closing the deal, explained Richmond. Latham has represented the most airlines in the U.S. and has also represented airlines based in Singapore and Hungary, he said.

The Latham team also used its industry-specific knowledge and its culture of teamwork to structure an unprecedented merger of two real estate investment trusts, Spirit Realty Capital Inc. and Cole Credit Property Trust II. The deal was particularly challenging because both REITs had been set up for an eventual cash sale or initial public offering, explained Gerstein, forcing the team to maneuver through an “imperfect” set of charter documents and loan agreements while anticipating shareholder reactions.

“There were several times in the course of the deal that the team went to bed thinking that the deal was dead because there were no answers to the problems that had arisen. Ultimately we were successful because we believed that ‘no’ was not an acceptable answer,” Gerstein said. “The ultimate structure required compromise on the part of every party as well as out of the box creative structuring by the corporate and tax teams.”

When all was said and done, the $7.4 billion transaction created the second largest publicly traded triple net lease REIT in the US. The emerging REIT, which kept the Spirit Realty name, owns an interest in more than 2,000 properties across 48 states.

The year was also marked by Georgia-Pacific LLC’s novel $1.5 billion acquisition of Buckeye Technologies Inc., which repurposed the dual track structure, known as the Burger King structure, to protect itself from possible antitrust delays, explained Gerstein. Under the terms of the deal, Georgia-Pacific started the transaction using a tender offer structure but reserved the right to nix the offer in face of an antitrust delay and instead finish the deal with a long-form merger.

“This deal marks the first time the Burger King structure was repurposed to handle regulatory risk, and the first time it had actually been implemented,” said Gerstein.

Latham’s mergers and acquisitions group was not the only area to have a standout year in 2013. The firm’s other winning practice groups for Law360’s Practice Groups of the Year include bankruptcy, appellate, securities, competition, project finance, environmental, hospitality and privacy.

“To serve clients in a market in which every deal now has global implications, a law firm must have 'best in class' capabilities in not only M&A, but in the key related practice areas — antitrust, employee benefits, securities regulation and tax, among others — and it needs to provide this advice in the form of comprehensive transaction planning across borders,” said Gerstein.

--Editing by Stephen Berg.