

M&A Group Of The Year: Morrison & Foerster

By Karlee Weinmann

Law360, New York (January 09, 2014, 1:38 PM ET) -- Morrison & Foerster LLP mergers and acquisitions attorneys harnessed technology, media and telecommunications expertise to seal several recent high-profile deals, including a pair of showstoppers for Japanese telecom giant SoftBank Corp., earning it billing as one of Law360 M&A Practice Groups of the Year.

With 200 attorneys spread among 17 outposts around the world, and a particularly strong alliance between its West Coast base and Asia, MoFo leveraged its global reach over the past year to nail down around a dozen transactions with disclosed values of more than \$1 billion — some markedly bigger.

The firm's marquee work over the past 12 months centered on its representation of SoftBank Corp., a Japanese telecom firm aiming to grab a majority stake in Sprint Nextel Corp. worth \$21.6 billion as well as full control of broadband servicer Clearwire Corp. in a related transaction.

Given existing ties between Sprint and Clearwire, the deals hinged on each other. Devising the terms was already a complicated process when satellite operator Dish Network Corp. stepped in with an unsolicited rival bid for Clearwire, giving way to one of the thorniest transactions of the year.

“[Dish's] Charlie Ergen created a three-ring circus that we had to manage,” said Robert Townsend, co-chair of MoFo's global M&A practice group. “We used difficult tactics in a difficult deal.”

When Dish's involvement appeared to threaten a speedy completion of SoftBank's purchase of Clearwire, the MoFo attorneys steering the negotiations took an unusually cooperative approach to redirect the transaction in their favor — a rare defensive maneuver that wound up giving SoftBank a distinct advantage.

With the clock ticking down on the regulatory approval process of SoftBank's bid, Townsend's team didn't want any more delays — especially not ones caused by Dish. So to speed up the deal-making process, the attorneys conceded Clearwire breathing room to evaluate the rival offer by loosening certain restrictions on a previously drafted agreement.

In exchange, the attorneys imposed a timetable for the review that virtually eliminated any chance that slow-moving Dish could stymie SoftBank's offer by taking too long to firm up one of its own.

“We were in essence doing two things,” Townsend said. “One, we were cooperating with the special committee to pursue their fiduciary duties. And two, we were looking for a way to help them, and

ultimately us, put discipline in the process in the form of a timeline for Dish.”

The complicated transactions had two vital pieces in motion at the same time — SoftBank needed to win approval from Sprint shareholders for its takeover of that company, as well as a go-ahead from Clearwire's stockholders for that part of the deal.

Having both campaigns play out in unison added another layer of complexity. Investors in each company closely watched SoftBank's dealings with the other, waiting to see if the Japanese company caved to offer a higher purchase price.

“It was a very complicated and delicate balancing act between moving to get closure on one deal [so] that it did not become economically difficult for the other transaction,” Townsend said. “It was one of the most exhilarating and challenging, and in the end exhausting, experiences.”

The process of negotiating and nailing down approvals for the transaction lasted nearly a year. SoftBank first tapped the MoFo team to steer the deals in September 2012, but it wasn't until July that the transactions closed on back-to-back days.

“Deal-making is a lot about facing really difficult problems and being forced to find solutions to them really fast, and that's a hallmark of that transaction,” said Larry Yanowitch, who along with Townsend co-chairs MoFo's M&A practice. “The complexity was at a 10 and being in that trench day to day, trying to get through that, that's pretty exceptional.”

In addition to deal-specific challenges, the attorneys have had to tweak their processes to stay atop competitors as the marketplace in general demands quicker turnarounds. Particularly as tech companies try to stay current and keep pace with competitors, company clients want acquisitions buttoned up faster than ever before.

“The velocity of transactions has consistently increased over the last two or three years,” Yanowitch said. “It's a pretty complicated management challenge, and if you're not effective at coordinating your piece and a very large team that includes your clients and their financial advisers, it just doesn't work very well.”

Part of acting fast comes down to a deep understanding of the subject matter.

For decades, MoFo has carved out a place for itself in the TMT sector — one that has boomed over the past few years and continues to be one of the most promising corners of the marketplace. Though M&A activity overall stayed relatively flat last year, the firm's attorneys parlayed their long-standing expertise into some of the most notable transactions of the year, in or out of the sector.

Aside from its SoftBank work, the firm in the past year alone also helped China's Fosun International Ltd. swallow a piece of Focus Media Holding Ltd. in a \$3.7 billion take-private deal — one of the largest ever for a Chinese company.

The firm also steered market researcher Arbitron in its \$1.3 billion sale to Nielsen Holdings NV, and represented cybersecurity software provider Sourcefire Ltd. in its acquisition by tech giant Cisco Systems Inc.

“We understand what the business is. Having done so many transactions in the space, [we] have seen a

lot,” Yanowitch said. “In M&A transactions, challenges are thrown at you every day and if you've been there and seen that, you just have a really good sense of how to work through it.”

Beyond its work on the bread-and-butter TMT deals, MoFo attorneys also played a pivotal role in two of the biggest gambling transactions of the past 12 months.

In August, the firm helped Pinnacle Entertainment Inc., the Nevada-based casino and racetrack owner, to a \$2.8 billion deal that doubled its properties to 16. Four months earlier, a MoFo team helped an independent committee formed by the board of sputtering casino operator Caesars Entertainment Corp. create a \$1.2 billion entity aimed at improving its capital structure and supporting new projects.

--Editing by Stephen Berg.

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