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2023 DEALMAKERS OF THE YEAR

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When a consortium led by Elliott Management and Brookfield sought to jointly acquire Nielsen Holdings, the list of obstacles was long—from the sheer size of the deal to the multijurisdictional contractual arrangements and a blocking shareholder that resulted in a rejected first offer.

But the $16 billion acquisition was ultimately closed through the help of careful communication and bringing an opposing shareholder into the consortium.

Richard Birns of Gibson Dunn led for Elliott, along with Mark Bardell and Gavin Davies from Herbert Smith Freehills in the U.K., while Len Kreynin of Davis Polk helmed the ship for Brookfield's U.S. team, working alongside Will Pearce in the U.K. The result of the coordinated effort was to close the second-largest leveraged buyout of 2022. The consortium equity commitment of $5.7 billion contributed to the acquisition's fully committed financing.

"It was a good example of how teamwork and communication really helps advance the collective clients' interest during complex situations," Birns says. "Everybody got along, everybody was rowing in the same direction and everybody was communicating with one another. It really led to an optimal environment for putting good strategies before the client so that they could make important decisions about how best to proceed."

With Nielsen Holdings being U.S. listed, and therefore falling outside of the scope of the U.K. takeover code, the firm needed to follow a U.S.-style implementation agreement for the acquisition, which was governed by U.S. law.

But with Nielsen being U.K. incorporated, it also meant the deal was subject to U.K. court approval pursuant to a scheme of arrangement. Pearce says that "schemes of arrangement of U.K. companies listed in the U.S. always raise some interesting corporate law issues as a result of the way U.K. shares are held and traded in the U.S." Navigating these complex contractual arrangements proved a significant challenge for the firms to overcome.

Birns notes the structure basically required a supermajority vote, so when a large shareholder publicly threatened to block the deal, the consortium needed to figure out a way to proceed.

After one failed bid, the team negotiated the intricate situation and rewrote the offer terms at the last minute to overcome the opposition from the activist shareholder. Afterward, the blocking shareholder moved to join the consortium and voted to approve the deal. Pearce affirms "the deal closed on a consensual basis allowing all investors access to the premium bid price."

Like Birns, Pearce also notes the benefits of the firms working together, citing the interesting work they did "engaging in the game theory with our consortium partner and their counsel" on the approach the opposing shareholder might take, as well as considering "the tools available to the consortium and the target under U.K. law."

While the multijurisdictional deal presented some challenges, Pearce says the deal "afforded advisers a little more creativity to use tools from both markets."

For Birns, Nielsen was one of two major deals he helped Elliott secure in 2022 alone (the other being Vista and Elliott's $16.5 billion purchase of Citrix). These deals follow a string of transactions Birns has guided Elliot through since the company announced its private equity initiative.

—Charlotte Johnstone