

Mergers & Acquisitions Group Of The Year: Cleary Gottlieb

By **Benjamin Horney**

Law360 (November 30, 2020, 7:41 PM EST) -- Cleary Gottlieb Steen & Hamilton LLP has had a significant role in many major deals over the past year, including the \$45.4 billion tie-up of fragrance giant IFF and DuPont's nutrition and biosciences business, and the \$6 billion private equity takeover of technology distributor Tech Data, earning the firm a spot on Law360's 2020 Mergers & Acquisitions Groups of the Year.

Cleary, like everyone else in the world, spent a major chunk of the spring grappling with initial fallout from the coronavirus pandemic. Deals the firm was working on got put on hold, and instead of providing counsel on mergers and acquisitions, lawyers at Cleary found themselves providing other advisory services, including on issues such as defending against activists and unsolicited takeover attempts.

The firm did not bend or break during that turbulent time period, however.

"What separates us from a lot of our competitors is the fact that we are such a cohesive group, and we work in such a collaborative, unified way, not just in the U.S., but globally," said M&A partner Paul Shim.

That internal cohesion is something Cleary has always defined itself by, although the benefits became even clearer in the wake of the coronavirus pandemic when the firm's lawyers were forced to do their jobs from home and didn't miss a beat going from in-person meetings and phone calls to video conferences with colleagues.

"That was an unanticipated side effect of the pandemic," Shim said. "Virtual meetings really brought [us] together even more tightly than before."

Not all of the major transactions Cleary worked on happened in the wake of the coronavirus. Two of the most significant matters the firm handled were actually wrapped up prior to the original outbreak. Among the highest-profile deals the firm had a hand in over the last 12 months was the \$45.4 billion megamerger between International Flavors & Fragrances Inc. and Nutrition & Biosciences Inc., the nutrition and biosciences business of DuPont de Nemour Inc.

Cleary served as legal counsel to IFF on that deal, which was inked after a competitive auction process



run by DuPont. Thus, Cleary was guiding IFF at first without knowing whether the client would ultimately become DuPont's preferred partner.

"This was a competitive process, and there were points where we were definitely behind other bidders," said M&A partner Benet O'Reilly. "It was quite uncertain whether or not we would have an opportunity to really be there."

The deal between IFF and DuPont was announced in December and used the relatively uncommon and tax-favorable reverse Morris trust structure. At its most basic level, the reverse Morris structure allows a company — in this case, DuPont — to carve out and spin off assets or a business unit, such as Nutrition & Biosciences, that is then merged with a similarly sized company — in this case, IFF — on a tax-free basis. In practice, such deals require a ton of nuance, and any misstep could potentially result in hefty tax consequences.

"Reverse Morris trusts are among the most complicated forms of M&A structures," Shim said. "Prior to 2019, it was the most talked-about but least executed form of transaction. In fact, back then you could count on your fingers and toes the number of deals that had actually been consummated using that structure."

About a month before the IFF-DuPont deal was announced, another Cleary client unveiled a significant transaction that would wind up featuring a litany of its own complexities. In November 2019, an affiliate of private equity firm Apollo Global Management agreed to take private Florida-based technology distributor Tech Data Corp. for \$5.4 billion. Cleary advised Tech Data.

Although the Tech Data board of directors had unanimously approved the deal, the merger agreement contained a go-shop provision that allowed the company to seek a superior proposal through Dec. 9.

"You seldom see action during the go-shop period," said M&A partner David Leinwand. "During ours, though, Berkshire Hathaway dropped in with a bid that was higher and had very few conditions."

Berkshire Hathaway, which is run by business tycoon Warren Buffet, was an intimidating rival bidder, and as a result of the competing offer Cleary had to get the board of directors for Tech Data together to go over the competing offer and potential next steps while taking care to adhere closely to the procedures laid out in the original deal agreement with Apollo.

"You certainly don't want to breach the original deal before you actually sign up a new deal," Leinwand said.

Ultimately, Apollo agreed to increase its own offer. In December, Apollo and Tech Data announced a beefed-up \$6 billion deal.

"Once Apollo upped its bid in excess of the competing offer, Berkshire dropped out," Leinwand said.

Cleary did more than just assist with the highest-profile transactions this year. It advised Google LLC, for instance, on multiple transactions, including the roughly \$2.1 billion acquisition of Fitbit Inc., as well as the \$2.6 billion acquisition of Looker Data Sciences Inc., which was completed in February of this year.

"Google is a long-term Cleary Gottlieb relationship that continues to thrive," Leinwand said.

Cleary also served as legal counsel to Schibsted ASA, the majority shareholder of Norwegian marketplace site Adevinta ASA, in Adevinta's \$9.2 billion acquisition of eBay Inc.'s classified ads business, announced in July, and represented private equity clients such as Warburg Pincus and TPG in multiple deals.

"That was a similar story to IFF, where there was a competitive process," O'Reilly said. "There was a private equity firm very much involved, and I think ultimately one of the things that eBay liked about the Adevinta proposal was that it had a big stock component. That was particularly attractive at that time given some of the uncertainties from COVID."

Leinwand said that going forward, one of Cleary's goals is to continue strengthening its ability to advise private equity firms on mergers and acquisitions, noting that the firm believes it is uniquely positioned to guide private equity clients on a global basis.

"Continuing to grow our private equity M&A practice is a strategic objective for the firm," Leinwand said. "It's something that we are going to be really focused on in 2021 and beyond."

--Editing by Jay Jackson Jr.