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EXCLUSIVE REPORT

DEALMAKERS AND THEIR DEALS

Twenty Top Transactions

HOSTILE DEALS

Some of the most interesting tie-ups of the year started with an unwelcome advance.

Cheap Goods, Rich Bids, Big Fight

THE BATTLE of billionaire investors to control the fate of Family Dollar Stores Inc. raged for more than three years. But when the dust settled, Cleary Gottlieb M&A partner Ethan Klingsberg had helped the company fend off a hostile takeover from a deep-pocketed suitor.

As early as 2011, hedge fund investors had clamored for Family Dollar's quick sale after the company rejected a takeover bid by Triun Fund Management. Family Dollar went on to adopt two poison pills that blocked any single

investor from owning more than 10 percent of its stock before accepting a \$74.50-per-share bid from rival Dollar Tree Stores, represented by Wachtell, Lipton, Rosen & Katz, on July 28. No sooner was the agreement announced, however, than investor Carl Icahn and others complained that it wasn't good enough.

Enter Dollar General, represented by Simpson Thacher & Bartlett, with an unsolicited \$78.50-per-share offer, plus a \$305 million breakup fee for Dollar

Tree, on Aug. 18. Rebuffed, Dollar General upped the ante on Sept. 2 to \$80 per share and a \$500 million reverse breakup fee.

"So now you have [ev-

Ethan Klingsberg

Cleary Gottlieb Steen & Hamilton,
New York

THE DEAL: Dollar Store wars

everyone] fighting us, and shareholders' lawyers sue us in the Delaware Court of Chancery seeking to compel us to end the deal with Tree and pursue Dollar General," Klingsberg recalls. "And the worst part is, the market

buys in to what General is saying, and the price starts trading based on the price of the Dollar General offer."

But Klingsberg and Family Dollar general counsel Jim Snyder knew what the rest of the world did not: Family Dollar's board already had considered a merger with Dollar General and rejected it because of antitrust risks. "We knew Dollar General would have trouble with antitrust," he says. "So we locked into the deal with Tree in a very tight agreement that was very beneficial for us."

Dollar Tree, with more than 5,000 stores, said it



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Worldwide M&A value rose

47%

in 2014, making it
the best year since 2007.

Source: Thomson Reuters

would have to divest fewer than 300 to get Federal Trade Commission clearance. The number has since been revised upward but is still far less than the 1,500 Dollar General said it would shed of its more than 11,000 outlets in order to clear the FTC. Family Dollar CEO Howard Levine told shareholders in a letter Jan. 12 that an FTC economic analysis indicated that Dollar General probably would need to divest at least 3,500 to 4,000 stores postmerger and might need to litigate for FTC approval.

Despite Dollar General's richer offer, on Jan. 22 shareholders overwhelmingly approved the tie-up with Dollar Tree at \$76.85 per share, or

about \$8.7 billion in cash and stock. "It is hard not to take the financially superior deal," Klingsberg says. "It took a lot of anal-

ysis to realize the lower-priced deal was the better deal for the shareholders." With the FTC's review expected by the end of

April, it appears that peace may finally be at hand.



AXEL DUPEUX