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March/April 2014 A publication of Beard Group

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A New Merger Model

SuperMedia & Dex One Prepackage Their Combination

By Randall Reese

The 2013 Chapter 11 filings of SuperMedia Inc. and Dex One Corporation were unique. While the filings represented each company's second trip through bankruptcy court, the coordinated filings also represented the first ever merger of two public companies through parallel Chapter 11 cases, according to Sean O'Neal, a partner at Cleary Gottlieb Steen & Hamilton LLP who represented SuperMedia in its bankruptcy filing.

Sean O'Neal
Cleary Gottlieb Steen & Hamilton LLP

Each company was separately one of the largest yellow pages directory publishers in the United States, as measured by revenue, and also offered its customers various other local marketing solutions, such as digital advertising products. SuperMedia, which was formerly known as Idearc Inc., became an independent public company in November 2006, when Verizon Communications Inc. completed the spin-off of Idearc's shares to Verizon's stockholders. In March 2009, the company filed its first Chapter 11 case, from which it emerged on December 31, 2009. Somewhat similarly, Dex One was formerly known as R.H. Donnelley Corporation and was the result of a June 1998 spin-off transaction from The Dun & Bradstreet Corporation. R.H. Donnelley filed for Chapter 11 protection for the first time in May 2009 and emerged as Dex One on January 29, 2010.

It would be an understatement to say that SuperMedia and Dex One found themselves in a challenging business environment. According to a Local Search Association Industry Usage Study, references to print yellow page directories in the United States declined from 14.5 billion in 2005 to 5.5 billion in 2012. That steep decline is reflected in both companies' revenues from print and direct sales, and the decline is expected to continue unabated. According to financial projections filed with the bankruptcy court, at the time of the merger each company expected its respective revenues from print and direct sales to decline between 18 percent and 21 percent annually between 2011 and 2016 – from pro forma combined revenues of over $2.7 billion in 2011 to expected 2016 revenues of less than $1 billion. While the companies project annual growth in excess of 20 percent over the same period for revenue coming from their digital offerings, even that is insufficient to offset the declines from the much larger print business.

Strategic Decisionmaking

Against that backdrop, SuperMedia and Dex One agreed to merge in August 2012, with Dex One being the acquiring company. In December 2012, the companies entered into an amended and restated agreement and plan of merger, which maintained the same basic economic terms of the August agreement. The amended agreement also provided that if either company were unable to obtain the requisite consents to the merger from its shareholders and to contemplated amendments to its respective financing agreements from its senior secured lenders to consummate the transactions on an out-of-court basis, the mergers could alternately be effected through voluntarily prepackaged plans of reorganization under a Chapter 11 proceeding.

After entry into the amended and restated merger agreement, both companies undertook the process of soliciting the consents necessary to effectuate the necessary transactions. An important strategic decision was made to simultaneously solicit consents necessary to complete the merger outside of a Chapter 11 filing and votes on the potential prepackaged plans of reorganization which would be used if a Chapter 11 filing for either or both companies was necessary. O'Neal notes that there were multiple benefits to utilizing this approach. "It is a time-saving measure because you solicit votes only once, but it also encourages acceptance," he says. "If you receive something in the mail that says 'we can do this transaction even if we don't get a 100% vote,' then you are more incentivized to go along with it."

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Dual Pre-Packs

Ultimately, neither SuperMedia nor Dex One was able to obtain the requisite unanimous consents to the contemplated amendments to their respective financing agreements to effectuate the merger outside of bankruptcy court. Therefore, on March 18, 2013, each company, along with its respective subsidiaries, filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the District of Delaware. "We had to utilize the bankruptcy court because the Bankruptcy Code allows debt to be amended with less than 100 percent approval of the lenders," notes O'Neal. "In SuperMedia, we had bank lenders who did not consent to the extension of the maturities under the credit agreement that were required to allow the merger to proceed." Concurrently with the bankruptcy filings, the companies sought confirmation of their prepackaged plans of reorganization with the support of over 90 percent of both companies' senior secured lenders and shareholders.

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Less than two months after the Chapter 11 filings, the companies emerged from bankruptcy and the merger was consummated on April 30, 2013. The combined company is Dex Media, Inc. and its common stock began trading May 1, 2013 on the NASDAQ stock exchange under the symbol DXM. Former SuperMedia shareholders received approximately 0.44 shares of Dex Media common stock for each share of SuperMedia common stock they held, while former Dex One shareholders received 0.2 shares of Dex Media common stock for each share of Dex One common stock they held. "This process was very beneficial to shareholders because it allowed the shareholders to retain the exact value in the in-court solution that they would have obtained in the out-of-court solution," O'Neal says. All creditors also received 100 percent recoveries under the prepackaged plans.

Synergies and Benefits

In an investor call regarding the merger, Dee Jones, Dex Media's Chief Financial Officer, highlighted some of the key anticipated benefits of the merger. "This transaction will bring annual cost synergies of $150 to $175 million by 2015," said Jones. "Second, extensions to the debt terms to all silos will provide us more time for our transformation. Third, the tax aspects and construct of the deal will allow the company to maintain and take advantage of its tax attributes and assets."

"I believe the creation of Dex Media is good for shareholders, lenders, employees and clients," said Dex Media's Chief Executive Officer Peter McDonald. "It took many people and significant effort to complete our transaction. We benefited from having experienced teams at both companies, as well as at our financial and legal advisors."

"One of our main goals was not only to allow the merger to go ahead with less than 100 percent creditor support, but also to make it a quick, controlled process that would not get side-tracked by litigation," says O'Neal. "Of course, the side benefit to that is that it becomes a much less costly bankruptcy."

He also suggests that these transactions set important precedents to be considered in the future. "For industries where there is distress, this process presents a good alternative for accomplishing a merger of two distressed companies without having to satisfy the normal consent requirements imposed outside of bankruptcy. I could see this being replicated for public and non-public companies in distressed industries where a merger makes sense and you have creditors or shareholders who are either recalcitrant or are simply unable to give the requisite consents." ¤