

M&A WATCH:
Felice Maranz and
Gelu Sulugiuc

GE AGREES TO BUY CONVERTEAM STAKE FOR \$3.2 BLN. The company is purchasing the 90 stake in the electrical equipment maker from Barclays Private Equity Ltd. and LBO France.

COSTA TO LEAVE LAZARD THIS MONTH. Ken Costa is stepping down as chairman of Lazard International, the bank said.

EBAY BIDS \$2.4 BLN FOR GSI. The acquisition drew the attention of law firms, as many as 10 of which are investigating whether GSI got the best deal for shareholders.

RIO SAID IN RIVERSDALE SHARE TALKS WITH CSN. Rio now owns 41.04 percent and declared the bid unconditional.

NEWS CORP SAID TO PITCH MYSPACE JOINT VENTURE WITH VEVO.COM. News Corp. may exchange the Myspace social network for a stake in the new venture, according to three people.

SPRINT ASKS GOVERNMENT TO BLOCK AT&T'S BID. Sprint said the industry would be dominated by two carriers, the combined AT&T-Mobile and Verizon Wireless.

LLOYDS HIRES JPMORGAN, CITIGROUP FOR BRANCHE SALES. The sale may raise 2 billion pounds (\$3.2 billion) to 3 billion pounds, a person familiar with the talks said.

PHILIPPINE LONG DISTANCE BIDS FOR RIVAL. Philippine Long Distance Telephone offers about 74.1 billion pesos (\$1.7 billion) for Digital Telecommunications Philippines.

CREXUS REJECTS STARWOOD OFFER. Crexus opened a share sale that could preclude the \$254 million buyout proposed by Starwood Property Trust.

Oracle May Bid for Lawson Software

BY TARA LACHAPPELLE

Traders that profit from mergers and acquisitions are betting the \$1.8 billion takeover of Lawson Software will get trumped by a higher offer, with Oracle the most likely bidder.

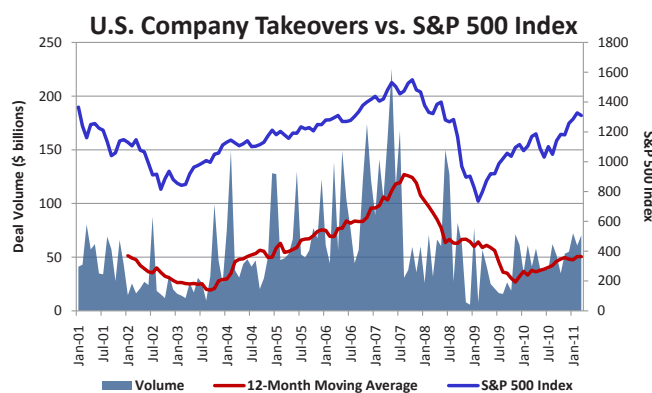
Lawson Software, which counts billionaire investor Carl Icahn as one of its biggest shareholders, has risen 4.4 percent above the offer of \$11.25 a share from Infor and Golden Gate Capital disclosed March 11, according to data compiled by Bloomberg. That's more than any U.S. deal over \$500 million. Oracle, the second-biggest seller of business applications software, may buy Lawson, whose clients include Safeway and Volvo, Soleil Securities and Cross Research said.

Oracle stands to profit from Lawson

continued on next page

Daily Data Comparisons

SUMMARY	TOTAL	YEAR TO DATE	PRIOR YTD
Number of Announced Deals	40	5,232	6,208
Volume (\$)	6.0 billion	586.1 billion	503.3 billion
Avg Disclosed Deal Size (\$M)	251.8	211	159
Average Premium	26	19%	22%



Breaking Deals

TARGET NAME	ACQUIRER NAME	TOTAL VALUE (\$M)	TARGET PRICE/EBITDA
Converteam Inc	General Electric Co	3,200	-
Digital Telecom Philipp.	Philippine Long Dist. Teleph.	1,592	2.23
Chemgenex Pharma.	Cephalon Inc	146	-
Thomassen Compr. Sys.	Charter International PLC	141	-
Digital Telecom Philipp.	Philippine Long Dist. Teleph.	113	2.23
Idemitsu Kosan Co Ltd	Panasonic Corp.	90	2.47
China Satellite Mobile	Armarda Group Ltd	60	-
Land & Building	Unnamed Buyer	50	-
Seoul Mutual Savings	Woongjin Capital	45	-
Venture Drilling AS	Petrolia ASA	34	-

Yesterday's Deals

TARGET NAME	ACQUIRER NAME	TOTAL VALUE (\$M)	TARGET PRICE/EBITDA
GSI Commerce Inc	eBay Inc	1,909	20.6
Anholt Offsh. Windfarm	Multiple acquirers	1,130	-
GTCS Holdings LLC	Walter Investment Mgmt	800	-
Rural/Metro Corp	Warburg Pincus LLC	676	6.1
Vector Aerospace Corp	EADS Co NV	630	8.9
Spectrum Control Inc	API Technologies Corp	262	9.2
CreXus Investment Corp	Starwood Property Trust Inc	252	12.7
Moon Ocean Ltd	Chinese Estates Holdings	205	-
Metlife Taiwan Insurance	Chinatrust Financial Holding	180	-
San Diego Hotel	Pebblebrook Hotel Trust	110	-

Oracle Seen Buoying Icahn With Lawson Software Offer

continued from page 1

Software's medical records and supply-chain management businesses, which analysts estimate will help push the company's earnings to a record this year. A bidding contest would also increase Icahn's windfall from his 10.9 percent stake in Lawson Software, which currently represents a 51 percent gain, data compiled by Bloomberg show.

"You have the possibility of an increase from Infor or the possibility of a competitor coming in," said Abigail Hooper, a managing director at Havens Advisors. "There's been speculation from the beginning that Oracle may be interested."

Lawson Software, which jumped 15 percent in the week ended March 11 on speculation it was putting itself up for sale, closed at \$11.75 yesterday. That's higher than the all-cash offer of \$11.25 a share from Infor and buyout fund Golden Gate Capital.

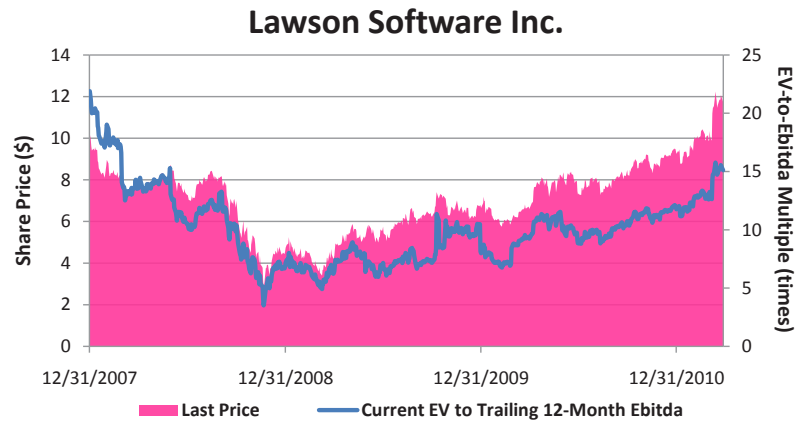
The bid represented an 8.4 percent premium to Lawson Software's average price in the 20 days prior to the offer, data compiled by Bloomberg show. Including net debt, the takeover valued Lawson Software at 14.8 times earnings before interest, taxes, depreciation and amortization, the data show.

By both measures, the price for Lawson Software is lower than other acquisitions in the industry. The average premium for so-called enterprise software and services takeovers of more than \$500 million equaled 41 percent, according to data compiled by Bloomberg. The median Ebitda multiple for deals in the industry has been 20.2 times, the data show.

Oracle, with \$24.4 billion in cash and equivalents, has historically offered a median 22.3 times Ebitda in takeovers and only paid less than 20 times once -- when it agreed to buy Sun Microsystems for 8.3 times Ebitda in April 2009. Oracle is rated A2, the third-highest investment grade, according to Bloomberg's Company Credit Ratings.

"There's a sense that if Oracle puts in an offer, then Infor will ultimately have to pay more," said Neil Herman, an equity analyst at Soleil Securities.

Oracle may bid for Lawson Software because of a U.S. law



that now requires hospitals and other providers to adopt electronic medical records and billing systems to receive higher payments for patients enrolled in federal health care programs, according to Richard Williams, an analyst at Cross Research. Lawson Software's unit that targets customers in the health-care industry had an operating margin of 23.8 percent in the three months ended November, an SEC filing showed. That compares with 7.4 percent for the division that sells software to manufacturers.

Analysts estimate that Lawson Software will earn \$85.3 million in net income before abnormal items in its fiscal year ending May, an increase of 24 percent, data compiled by Bloomberg show. Earnings may top \$100 million next fiscal year before jumping 38 percent in 2013, the data show.

Shares of Lawson Software have climbed 77 percent in the past year, bringing its market value to \$1.92 billion.

Even without a competing offer, Icahn still stands to gain from his stake in Lawson Software.

The 75-year-old investor reported an 8.54 percent stake in Lawson Software in May and said he intended to seek talks with management to boost shareholder value.

He owned 17.85 million shares as of March 14, which he acquired for about \$139 million, or \$7.79 a share, according to an SEC filing and data compiled by Bloomberg. Icahn said in the filing that he

supports Lawson Software's "strategic process" and that the company should be sold at the highest price.

Based on the original \$11.25 offer price, Icahn would make \$62 million, or a profit of about 44 percent, from his Lawson Software stake. At yesterday's closing price, his windfall would increase to about 51 percent, the data show.

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PEOPLE WATCH

■ **Liam Beere** and **Cary Kochman** were named joint heads of mergers and acquisitions for global **UBS** banking operations to replace the vacancy created by **Piero Novelli's** departure in 2008. **Alison Harding-Jones** and **Jonathan Rowley** will oversee European M&A.

■ **Sonjoy Chatterjee** will lead **Goldman Sachs's** banking expansion on the subcontinent as India chairman, and will continue serving as co-chief executive of **Goldman Sachs India**. Chatterjee was formerly an executive director at **ICICI Bank UK**.

■ **Josh Connor** was hired by **Barclays** to oversee services for transportation companies. He previously worked at **Morgan Stanley** as co-head of transportation and infrastructure.

■ **Pat Guerin** was hired by **Citi-group** to advise clients on asset sales. He previously was hired co-head of European mergers at **UBS**. He reports to **Wilhelm Schulz**, co-head of European M&A.

■ **Glenn Schiffman** plans to step down as head of Americas investment banking at **Nomura**. **James DeNaut** will replace him.

■ **James Hambrick**, chief executive of **Berkshire Hathaway** takeover target **Lubrizol** will receive approximately \$97 million in stock and performance-share units when he resigns at the completion of the merger.

■ **Alasdair Haynes** will leave **Chi-X Europe** following its pending merger with **Bats Global Markets**, according to the Financial News. A Chi-X spokesperson declined to comment on the chief executive's plans.

— Brandon Hamilton

E-mail people news to mergerbrief@bloomberg.net.

THE WIRE BLOOMBERG NEWS

EBay Aims at Big Brands With \$2.4 Billion GSI Bid

EBay Chief Executive Officer **John Donahoe** is stepping up an effort to woo big retailers and challenge **Amazon.com** through the \$2.4 billion acquisition of **GSI Commerce**, his largest takeover yet.

GSI investors will get \$29.25 a share in cash, EBay said yesterday in a statement. That's 51 percent more than GSI's closing price on the Nasdaq Stock Market on March 25. EBay plans to finance the deal with cash and debt.

The acquisition agreement drew the attention of private securities-law firms, as many as 10 of which said yesterday that they were investigating whether GSI's board considered other buyers and got the best deal for shareholders.

The acquisition is the largest for a U.S. online-services provider in the past five years, according to Bloomberg data. The buyers of more than 300 similar companies during that period paid a premium of 44 percent compared with the target's average price over 20 trading days before the announcement.

EBay's announced premium is about 53 percent on that basis, according to Bloomberg data. EBay is paying about 21 times GSI's trailing 12-month earnings before interest, taxes, depreciation and amortization, close to the median of eight similar deals, according to Bloomberg data.

—Joseph Galante and Alex Sherman

Rio Said to Talk to CSN about Riversdale Shares

Rio, seeking to buy **Riversdale Mining** for A\$3.9 billion (\$4 billion), is in talks to buy shares in the coal company from **Cia Siderurgica Nacional**, two people with knowledge of the matter said.

They declined to be identified because the discussions are private. CSN owns 19.9 percent of Riversdale, according to data compiled by Bloomberg. Tata Steel owns 27 percent, the data shows. It wasn't clear how many shares Rio would buy from CSN.

Rio, still about 9 percent short of a controlling stake, confirmed it's in talks with a major shareholder after Riversdale halted its shares from trading in Sydney, citing notification by the London-based company of discussions. Rio said it would raise its offer to A\$16.50 a share from A\$16 should more than half of Riversdale's holders accept the proposal. Rio now owns 41.04 percent of its target and today declared the bid unconditional, revising the terms to enable payment of the A\$16.50 should the company raise its stake beyond 47 percent by April 6.

A record \$30 billion in deals may be completed in the coal industry this year as acquirers pay an average 33 percent premium, the highest in at least a decade and double the historical average, according to Bloomberg data.

—Angus Whitley and Elisabeth Behrmann

News Corp. Said to Approach Vevo.com on Myspace

News Corp. is in talks to hand over control of **Myspace** to **Vevo.com**, the online music website partly owned by the world's biggest record companies, according to three people with knowledge of the situation.

The talks are preliminary and an agreement may not be reached, said the people, who weren't authorized to speak publicly. Under the scenario being discussed, News Corp. would exchange the Myspace social network for a stake in a new venture, the people said. Vevo.com is one of several parties looking at Myspace, two of the people said.

News Corp. hired Allen & Co. to evaluate offers for the social-networking website, with a goal of concluding a deal before the fiscal year ends in June, the people said.

—Andy Fixmer

PRIVATE EQUITY

■ **Mvelaphanda Group** rose the most in four months after **Avusa**, the media company in which Mvelaphanda has a 25.5 percent stake, received a takeover bid. Avusa, which runs a publishing venture with Pearson in South Africa, said it received an unsolicited offer for a group represented by **Capitau Holdings**, **RMB Ventures** and some unidentified investors. The company has a market capitalization of 2.6 billion rand (\$378 million).

■ The deadline for second-round bids for Polish mobile-phone operator **Polkomtel** has been pushed back to May 6, Dow Jones reported, citing people close to the matter. Polkomtel has shortlisted seven bidders, including **TeliaSonera** and possibly Norway's **Telenor**. **Bain Capital**, **KKR** and **Providence Equity Partners** remain in the process. Providence is talking to other parties about a joint bid.

■ **TPG Capital** and **VTB Capital**, which control 30.8 percent of **Lenta**, challenged rival shareholder **August Meyer** to an auction to end their dispute over management, **Vedomosti** said. TPG and VTB want to bid against Meyer, who owns about 41 percent of Lenta, for all the shares held by the three entities, the Moscow-based newspaper said today. The auction would go in steps of \$50 million, with a starting price based on a \$2 billion valuation for the whole company, **Vedomosti** said.

■ The private-equity industry could face a challenge to its business model with the coming U.S. tax code rewrite. The preference of debt over dividends is being studied. Carried interest now considered a capital gain and taxed at 15 percent could be taxed as ordinary income, or 35 percent. Firms also would be affected if Congress redefines how non-corporate businesses are taxed.

THE WIRE

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Sprint Asks U.S. to Block AT&T's Bid

Sprint Nextel said **AT&T Inc.**'s planned \$39 billion takeover of **T-Mobile USA** will damage industry competition and called on the government to block it.

"We think the anticompetitive nature of the transaction simply will not allow it to pass," **Charles McKee**, a Sprint vice president of government affairs, said.

Sprint said in a statement that the industry would be dominated by two carriers, the combined AT&T-T-Mobile and Verizon Wireless. AT&T said March 20 it agreed to buy T-Mobile from parent **Deutsche Telekom**, pending government approval. The deal would combine the second- and fourth-largest U.S. wireless providers.

Sprint had also held talks with Bonn-based **Deutsche Telekom** to buy T-Mobile, people with knowledge of the matter said this month.

McKee said Sprint would voice its objections throughout the regulatory process, which AT&T said could take 12 months. AT&T expects regulators will require it to divest wireless spectrum and subscribers to win approval for the acquisition, a person with knowledge of the situation said.

—Greg Bensinger

Lloyds Hires JPMorgan, Citigroup for Branch Sales

Lloyds Banking Group said it hired **Citigroup** and **JPMorgan Chase** to oversee the sale of 600 branches as required by European Union regulators.

The units account for about 5 percent of the U.K. checking account market. Lloyds said. The sale may raise 2 billion pounds (\$3.2 billion) to 3 billion pounds, according to a person with knowledge of the talks.

Lloyds, 41 percent owned by the U.K. government, has to sell the branches by the end of 2013 to comply with EU state aid rules following its bailout.

NBNK Investments may buy the branches, two people briefed on the plans said in July. **National Australia Bank** may also bid for the branches, the **Sunday Times** reported earlier this month.

The government is likely to start selling the taxpayer's 20.3 billion-pound stake in Lloyds next year, four people familiar with the talks said last week.

—Ambereen Choudhury and Gavin Finch

CreXus Rejects Starwood's \$254 Mln Offer

CreXus Investment rejected a \$254 million buyout offer from **Starwood Property Trust** and proceeded with a share sale that may preclude a deal.

CreXus's board voted against the bid, valued at about \$14 a share, the New York-based company said in a statement today. It sold 50 million shares for \$11.50 a share to fund the purchase of a real estate loan portfolio from **Barclays**.

Starwood, the real estate investment firm founded by **Barry Sternlicht**, planned to withdraw its proposal if the stock sale occurred, according to a statement today. Its offer was about a 20 percent premium over CreXus's share price before the bid was announced.

CreXus plans to pay \$586 million for the Barclays real estate loan portfolio. Starwood is making loans and buying debt tied to offices, shopping centers, apartments, warehouses and hotels as U.S. commercial property prices are 43 percent below their 2007 peak, according to **Moody's Investors Service**.

—Brian Louis

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Deal Roster

Rob Pierce, an energy banker considered a specialist in master limited partnerships at **Barclays Capital** who advised **Enterprise Product Partners LP** on its \$5.9 billion purchase of **Teppco Partners LP** in 2009, is counseling **Louis Dreyfus Highbridge Energy LLC** in its \$1.9 billion sale of **LDH Energy Asset Holdings LLC** to a joint venture formed by **Energy Transfer Partners LP** and **Regency Energy Partners LP**.

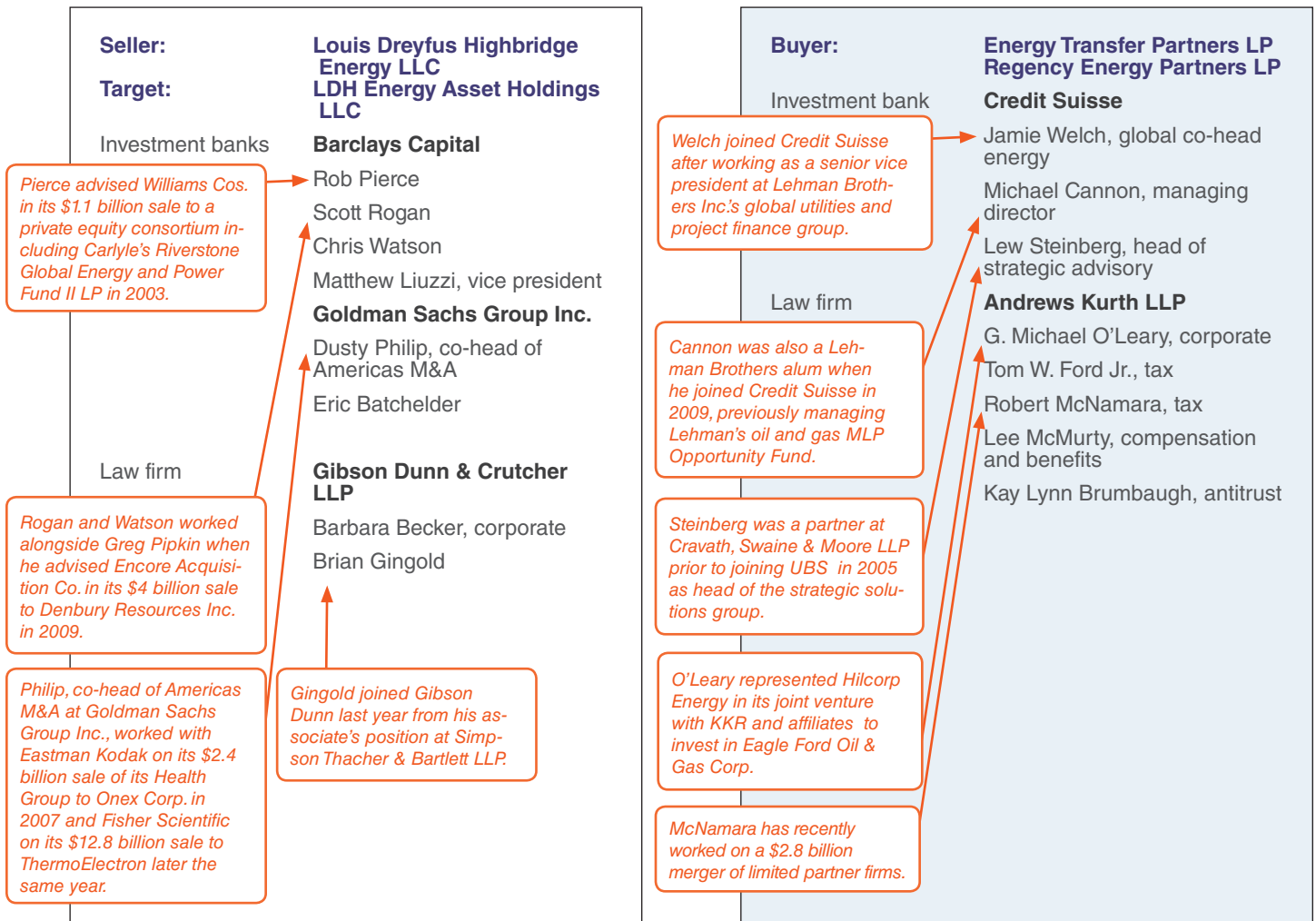
Barbara Becker, who represented **Kraft Foods Inc.** when it acquired **Cadbury PLC** for \$21 billion last year, is leading **Louis Dreyfus's** legal team at **Gibson, Dunn & Crutcher**. Becker was named "Dealmaker of the Week" by The Am Law Daily for her role in the Kraft deal.

Jamie Welch advised **NiSource Inc.** on its \$8.7 billion acquisition of **Columbia Energy Group** in 1999, and is working with the

joint venture on the deal as global co-head of energy investment banking at **Credit Suisse**. Welch also helped **Westcoast Energy Inc.** in its \$7.7 billion sale to **Duke Energy Corp.** in 2001.

G. Michael O'Leary of **Andrews Kurth** is providing legal counsel to the energy buyers, two years after representing **BJ Services Co.** in its \$5.5 billion merger with **Baker Hughes Inc.**

— Brandon Hamilton



ARB ANALYSIS

BY TOM BURNETT, GUEST COLUMNIST

Deal Disclosures Have Treasure Trove of Industry Analysis, Insights

Investors can find a lot of useful information about a company or industry from disclosures filed during a proposed acquisition.

Securities and Exchange Commission rules require an acquisition target's board of directors to disclose to shareholders a recommendation of acceptance or rejection of a proposed merger or tender offer. These recommendations are included in the merger proxy material, or the Schedule 14D-9 Recommendation Statement.

In most cases, a target's board will disclose its financial adviser's conclusions, along with summaries of data used in the analysis. Often, the target company will include a set of financial forecasts that were prepared to help the board and its advisers in the recommendation process. Rarely are these forecasts made public except in the context of an active merger or tender offer proposal.

Useful Comparables

In addition to the financial forecasts, tender offer and merger proxy filings contain useful comparative data on companies that compete with the target. This information is the core of the "peer" group analysis that target boards use in deciding to accept or to reject a change-of-control proposal.

This information is difficult to find in the world of ongoing investor disclosure practices, where no special event is forcing target boards to justify important

corporate control recommendations.

Danaher Corp.'s bid for **Beckman Coulter Inc.** is an excellent example of the value provided by forecasts and peer comparisons. Danaher on Feb. 15 offered \$83.50 a share for Beckman, which had traded in the range of \$57-\$58 in December.

Beckman's Schedule 14D-9, also dated Feb. 15, had detailed information not previously available to the public markets. These forecasts, summarized in Table 1, are part of the statement recommending that Beckman holders accept the \$83.50 cash offer.

The table indicates that Beckman expects strong earnings growth through 2015, after flat performance in 2011 with earnings per share increasing 2.5 percent. By 2013, Beckman anticipates EPS of \$4.96 and Ebitda of \$918 million, well above the \$3.90 and \$806 million of 2010. It appears that Danaher is willing to pay nearly 21 times the projected Beckman 2011 EPS.

Investors who own shares of Beckman's competitors can use this information in many ways. First, they can compare the estimated Beckman growth rates with growth forecasts of the competitors. This Beckman information may persuade such investors that these competing companies are not "measuring" up and taking advantage of the opportunities seen by Beckman over the next few years. On the other hand, certain competitors may

even face brighter prospects as their management estimates are compared to Beckman's. The Beckman forecasts can be used as an industry "benchmark" for the evaluation of competitors and should not be seen as limited only to the pending Beckman offer.

The Beckman disclosure has several relevant competitors — **Alere, Bio-Rad, Gen-Probe, Hologic, Immucor, Bruker, Mettler-Toledo, Perkin Elmer** — whose operations and expectations can be compared for performance measurement purposes. Investors in these competing companies would benefit from studying the Beckman data and comparing its Beckman expectations with those of other public competitors. Competitors that don't measure up are candidates for weeding out of an investor's portfolio.

Measuring Stock Values

Table 2 compares the Beckman deal at \$83.50 per share with precedent transactions prepared by Beckman's financial adviser, **Goldman Sachs Group Inc.** Danaher is paying a lower multiple of Ebitda than these transactions reported, even though, as previously noted, the offer's price earnings ratio is a relatively high 20x. Investors in competing companies can use this information to help measure whether those stocks are "cheap," reasonably priced or expensive.

If Perkin Elmer shares were to trade above 20 times 2011 EPS forecasts and 8.5 times Ebitda, the stock would appear to be overvalued unless the company attracted a takeover offer.

Of course, other factors must be considered before an investor takes action, but this valuation hint could be a useful starting point. The value to investors is that comparisons can easily be made against fresh data, filed by targets that only make the information available in takeover situations.

This information can be easily utilized by investors whether they own the target stock or not. Often, data mining in these takeover documents will reward investors who own shares of competing companies.

Tom Burnett, CFA, is the director of research at Wall Street Access, an NYSE firm.

Table 1: BEC Financial Forecasts

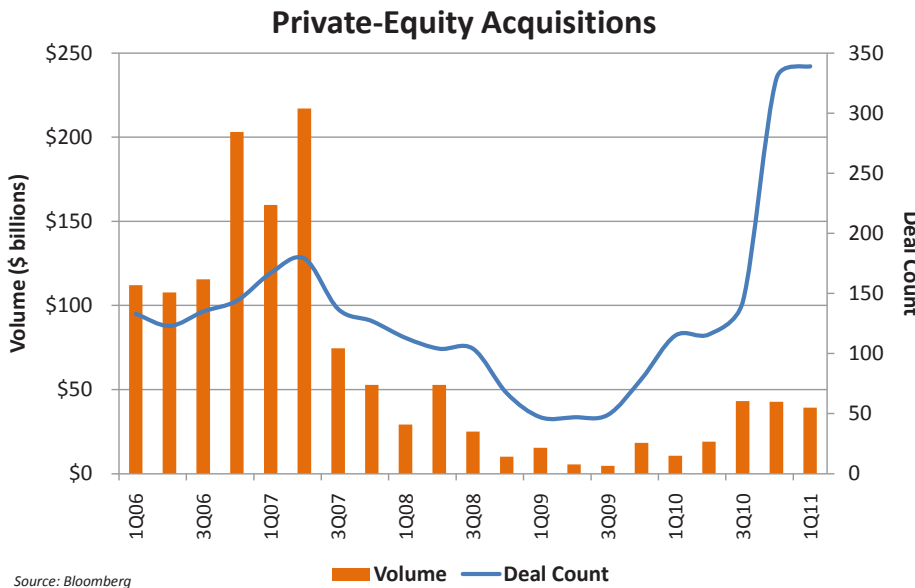
	2010	2011	2012	2013	2014	2015
Revenue (\$ million)	\$3,663	\$3,916	\$4,213	\$4,547	\$4,919	\$5,325
Diluted EPS	\$3.90	\$4.00	\$4.49	\$4.96	\$5.64	\$6.31
EBITDA (\$ million)	\$806	\$823	\$862	\$918	\$987	\$1,067

Table 2: Enterp. Value as Multiple of Most Recent 12-Month Data

SELECTED TRANSACTIONS	SALES	EBITDA
Median	3.0x	14.3x
Low	1.4x	10.8x
BEC @ \$83.50 in cash	1.9X	8.5x

Source: Beckman Coulter's 14D9 filing (Feb. 15)

Snapshot



Private-equity firms in the first quarter have announced deals with an aggregate volume of more than \$39 billion, representing a more than twofold increase from the same period last year. Deal counts have also surged, from 115 transactions in first quarter 2010 to 339 this year, potentially signaling an increased appetite for deal-making by financial sponsors. Average premiums paid have remained flat year over year.

— Pratik M. Patel, Data Analyst

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M&A LAW BY NANCY BELTON, BLOOMBERG LAW ANALYST

Director Independence Crucial in Determining Deal Approvals

Martin Lipton, a founding partner of law firm **Wachtell, Lipton, Rosen & Katz**, wrote a memo this month highlighting an issue relevant to many M&A deals: Does a director lack independence because he or she is selected by, or a friend of, the company's CEO?

In the memo titled "Corporate Governance Adrift," Lipton criticizes proxy adviser **Institutional Shareholder Services Inc.** for telling its clients to vote against three **Hewlett-Packard Co.** directors at the company's March 23 shareholders meeting because the directors earlier permitted CEO **Leo Apotheker** to participate in the selection of new directors, several of whom had ties with Apotheker.

ISS was concerned that directors with ties to the CEO might be less likely to act independently and hold management accountable. Lipton countered that such participation didn't taint the process.

Although Hewlett-Packard's selection of directors wasn't deal-related, the issue of director independence has significant application for M&A.

M&A Significance

Under Delaware law, a board's decision to enter into a M&A transaction generally will be entitled to the deferential business judgment presumption only if a majority of the directors are disinterested and independent. If not, any special committee created to vet the transaction must be comprised solely of disinterested and independent directors. Accordingly, the concept of director independence is relevant to two important M&A determinations:

- whether a majority of the directors are disinterested and independent.
- if not, which directors qualify to be members of any special committee formed to cleanse the transaction.
- An understanding of the circumstances under which a director will or won't be deemed independent is critical to these determinations.
- For a director to be independent, his or her decisions must be based solely on the corporate merits of the transaction. Even if not financially interested in the transaction, a direc-

tor will lack independence if he or she is so "beholden to [an] interested [person] that his or her discretion would be sterilized." *Beam v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004). Delaware courts apply a subjective "actual person" standard in making this determination.

Director Independence?

Certain ties to an interested person have been found insufficient to establish a lack of independence:

■ **Mere Social or Professional Relationship.** An allegation that a director has a social or professional relationship with an interested party, without more, is insufficient to show that the director lacks independence. In *Beam v. Stewart*, the court held: "Allegations that [chairperson and CEO **Martha**] **Stewart** and the other directors moved in the same social circles, attended the same weddings, developed business relationships before joining the board, and described each other as 'friends,' even when coupled with Stewart's 94% voting power, are insufficient, without more, to rebut the presumption" that the directors were independent of Stewart. Similarly, in *In re Dow Chemical Co.*, 2010 BL 6758 (Del. Ch. Jan. 11, 2010) the fact that directors of one company were colleagues at another entity was insufficient to establish a lack of independence.

■ **Director Fees.** The receipt by a director of director fees, absent a showing that such compensation is material to the particular director, is insufficient to establish that the director is beholden to a person upon whom such payment depends (e.g., a controlling shareholder). See *Selectica Inc. v. Versata Enters. Inc.*, 2010 BL 65838 (Del. Ch. Feb. 26, 2010).

■ **Nomination by Interested Director.** The mere fact that an interested director participated in nominating a director to the board doesn't establish that the nominated director is beholden to the interested director. See *Dow Chemical*.

■ Establishing a lack of independence requires showing ties that are material to the director:

■ **Family Relationship:** A close

familial relationship can be sufficient to establish a lack of independence. See *Harbor Fin. Partners v. Huizenga*, 751 A.2d 879 (Del. Ch. 1999). Thus, a father-son relationship, a spousal relationship, and a brother-in-law relationship have each been found sufficient to establish a lack of independence.

■ **Social and Professional Relationship Worth Risking Reputation.** A social or professional relationship can establish a lack of independence if it can reasonably be inferred that, "because of the nature of [the] relationship or additional circumstances other than the interested [person's] stock ownership or voting power," the director would be "more willing to risk his or her reputation than risk the relationship with the interested [person]." *Beam v. Stewart* at 1052. In *In re Primedia Inc.*, 910 A.2d 248 (Del. Ch. Nov. 15, 2006), for example, the court found, for purposes of a motion to dismiss, that directors were beholden to the company's controlling shareholder, **KKR**, because they had substantial business and personal relationships from which the court could infer a "sense of owingness" to **KKR**, or they possessed ownership or managerial ties to **KKR** that "overshadowed their fiduciary responsibilities to **Primedia**."

■ **Material Compensation.** A director may be beholden to an interested person who has the unilateral power to decide whether the director continues to receive a benefit that is significant to the director. Thus, for example, directors have been found to be beholden to an interested person where the interested person had the ability to fire them from their full-time jobs.

Whether a director is independent is a fact-specific determination of potentially significant consequence. By assessing the foregoing factors when determining whether a special committee is needed for your transaction and, if so, which directors should be on that committee, you can increase the likelihood that the transaction will survive judicial scrutiny in any subsequent shareholder litigation.

This report was edited and condensed. The complete version is available at {MALR <GO>} or bloomberglaw.com.

Deal Data

BY BLOOMBERG NEWS

EBay Agrees to Buy GSI in Biggest Online-Services Deal of Past Five Years

EBay Inc. agreed to buy **GSI Commerce Inc.** for about \$2.4 billion to add services that help retailers with marketing and distribution. The acquisition is the largest for a U.S. online-services provider in the past five years, according to Bloomberg data.

The buyers of more than 300 similar companies during that period paid a premium of 44 percent compared with the target's average price over 20 trading days before the announcement. EBay's announced premium is about 53 percent on that basis, according to Bloomberg data. EBay is paying about 21 times GSI's trailing 12-month

Ebitda, close to the median of eight similar deals, according to Bloomberg data.

GSI has 40 days to solicit offers from other potential bidders, the companies said. EBay has a right to match any better proposal.

EBay said the purchase will result in savings of about \$60 million by 2013. The acquisition is expected to cut 30 cents to 34 cents a share from EBay's forecast earnings for 2011, including costs for divesting the GSI businesses, the company said.

EBay plans to divest 100 percent of GSI's licensed sports-merchandise business, and 70 percent of online-retail sites ShopRun-

ner and Rue La La. **Michael Rubin**, GSI's founder and CEO, will head a newly formed holding company with the divested firms.

Goldman Sachs Group Inc. and **Peter J. Solomon Co.** are acting as financial advisers to EBay, and **Dewey & LeBoeuf LLP** is providing legal counsel. GSI Commerce is receiving financial advice from Morgan Stanley, while **Morgan, Lewis & Bockius LLP** is its legal adviser. **Davis Polk & Wardwell LLP** is giving legal counsel to a special committee of the GSI board, the companies said.

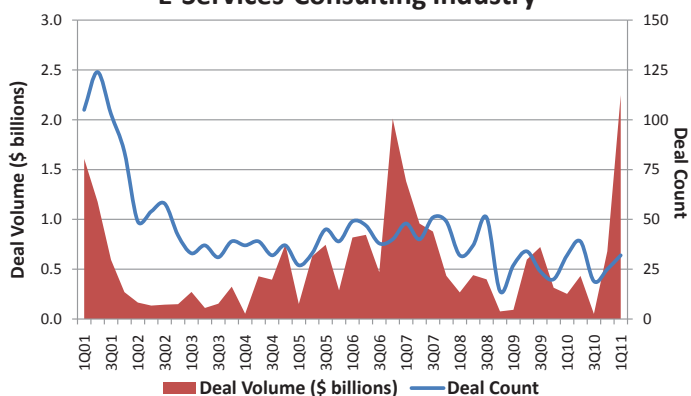
— Alex Sherman

Deal Sheet by Liga Eglite, Data Analyst

Target:	GSI Commerce Inc.
Acquirer:	EBay Inc.
Announcement Date:	03/28/11
Total Value:	\$1.91 billion incl. net debt
Target Net Debt:	-\$75.33 million
Announced Premium:	53%
Multiples	
EBITDA:	20.4x vs. 27.4x industry median
Revenue:	1.4x vs. 2.7x industry median
Cash Flow from Operations:	13.6x vs. 29.5x industry median
Enterprise Value:	1.3x vs. 1.6x industry median
Analysis:	

» The largest acquisition by EBay in the past 12 months and the second-largest acquisition by the company in the past 10 years.

E-Services-Consulting Industry



Target Name	Announced Date	Announced Value (\$ millions)	Deal Multiples (times)							
			EBITDA	EBIT	Revenue	Net Income	Net Income + Depreciation	Income before XO	Cash Flow from Operations	Free Cash Flow
GSI Commerce Inc	03/28/11	1,909	21.2	197.7	1.5		42.0		14.2	28.7
Comp Deals Median			32.2	27.7	3.0	44.0	48.9	44.0	35.5	61.1
Digital Insight Corp	11/30/06	1,221	22.1	31.6	5.5		101.1		19.7	355.3
Proxicom Inc	05/07/01	326			2.1					
Niku Corp	06/09/05	271	42.3	55.2	4.7	67.1	48.9	67.1	77.3	
Corillian Corp	02/14/07	212	133.7		3.9		98.0		158.9	
ECS Holdings Ltd	08/08/07	177	5.5	6.0	0.1	11.1	9.5	10.1	12.4	
Marimba Inc	04/29/04	176	101.1	380.1	5.9	157.2	73.4	157.2	51.3	
Research Now PLC	10/23/09	122	9.5	14.3	2.0	21.9	12.4	21.9	8.2	8.7
Exchange FS Group PLC	09/19/01	115			5.6					
IXI Co Ltd	07/15/05	104	14.8	23.7	1.9	44.0	20.7	44.0	53.2	55.2
SumTotal Systems Inc	04/06/09	92	51.6		1.3				11.9	67.1
Comp Deals Min			5.5	6.0	0.1	11.1	9.5	10.1	8.2	8.7
Comp Deals Avg			47.6	85.2	3.3	60.2	52.0	60.0	49.1	121.6
Comp Deals Max			133.7	380.1	5.9	157.2	101.1	157.2	158.9	355.3

Source: Bloomberg

COMMENTARY BY RAY MURPHY, GUEST COLUMNIST

Justice Department Likely to Demand Viable Cellular Competitors

The proposed acquisition by **AT&T Inc.** of **T-Mobile USA Inc.** has led to speculation about its regulatory prospects at the Justice Department and the Federal Communications Commission.

The speculation is warranted and is likely to endure for two key reasons:

First, the current structure of the industry dictates that there will be no other major consolidations after this proposed deal. Verizon Wireless and AT&T dominate the wireless markets while Sprint and T-Mobile are the only other significance competitors. Because regulators are likely to insist that there be at least three major players in all wireless markets, AT&T's proposed deal likely represents the final word on consolidation in this industry.

Predictable Outcomes

Second, regulator opinions are likely to change as they review the details of the transaction. The proposed deal comes at the end of a long period of industry consolidation that has a detailed record of Justice Department opinions. That background makes regulatory approvals more predictable. Regulators are still likely to be exhaustive with their research, data-testing and customer questioning.

The deal also requires a **Federal Communications Commission** review. While the respective agencies use their own standards of review, the outcomes of the reviews typically synthesize at the end. The Justice Department reviews the deal from a perspective of any "substantial lessening of competition" while the FCC employs a broader "public interest" standard.

Relevant Product Market. This is not likely to be an area of dispute because

the Justice Department has been consistent with its approach to wireless product markets. In a series of transactions, the agency has found "mobile wireless telecommunications services" to be a relevant product market for antitrust purposes. The market includes voice and data services provided over a radio network and the key feature is mobility. Fixed wireline services are not seen as reasonable substitutes due to the mobility feature.

Relevant Geographic Market. Again, this is not likely an area of much contention, as the Justice Department and FCC have been historically consistent with their approach to the geographic markets. These markets are defined by FCC spectrum licensing areas and are very specifically and narrowly defined.

Barriers to Entry. The Department of Justice has firmly concluded throughout its precedents that entry conditions are quite difficult in this arena. In the Centennial Communications transaction, the department said, "Entry by a new mobile wireless services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring spectrum licenses and the build out of a network."

Core Issues

On all of the above elements, there is not likely to be much disagreement among the parties. AT&T and the DOJ are thoroughly experienced with these issues. The parties should be able to move past these questions and proceed promptly to the core issue:

Concentration Levels & Competitive Effects – As with the elements above, regulators already have a pic-

ture of the relevant markets. An FCC Market Report, issued in May 2010, established that many markets are already "highly concentrated." The overriding conclusion from the FCC report is that the industry has become highly concentrated. The FCC report highlighted the dominance of Verizon Wireless and AT&T, which have 60% market share. The report also notes that industry concentration has increased by 32% since 2003 and by 6.5% in the most recent year for which data were available. Justice Department precedents also have consistently depicted wireless markets as highly concentrated during its recent merger reviews.

Regulators are thus likely to approach the deal with a general goal of maintaining existing levels of competition in all localized markets. The vast number of local markets and the differing competitive picture in each makes it impossible to itemize all of the potential outcomes. Generally, the Justice Department is likely to demand that at least three or, in some markets, four major players remain viable after the merger is completed.

Reflecting the market granularity is the companies' merger agreement, which is extraordinarily detailed on the scenarios for divestitures in order to secure regulatory approval. The agreement has multiple definitions for divestiture sales that AT&T is obligated to undertake for regulatory purposes. This flexible approach by the companies seems wise as they enter a long and detailed negotiation process with regulators.

Ray Murphy is owner and editor of ArbJournal. Reach him at raymurphy@arbjournal.com.

DEAL	TIMELINE	DOJ OUTCOME	FCC OUTCOME	COMMENTS
Centennial Communications Corp. / AT&T Inc. (2008)	364 days	Divestitures in eight markets	Divestiture in seven markets as well as behavioral conditions	A smaller acquisition by AT&T but still a one-year timeline
Dobson Communications Corp. / AT&T Inc. (2007)	140 days	Divestitures in three markets	Divestitures in four markets plus behavioral conditions	Another smaller deal with only targeted overlaps
BellSouth Corp. / AT&T Inc. (2006)	299 days	Unconditional clearance	Behavioral remedies only	Very limited overlaps; more of a vertical integration
AT&T Wireless / Cingular Wireless (2004)	252 days	Divestitures in 13 markets	Divestitures in 22 markets	FCC approved the deal first, followed by the DOJ
Nextel / Sprint	240 days	Unconditional clearance	Unconditional clearance	No major overlaps presented
Telecorp PCS / AT&T Inc.	130 days	Unconditional clearance	Unconditional clearance	Unconditional clearance

Source: ArbJournal and company filings

Deal Arbitrage

Spreads for select M&A deals with U.S.-listed targets

TARGET	ACQUIRER	DEAL SIZE (\$M)	ANNOUNCED DATE	EXPECTED COMPLETION DATE	OFFER PER SHARE	ANNOUNCED PREMIUM IN %	LAST TARGET PRICE	CURRENT PREMIUM %	SPREAD	LAST SPREAD MOVE
Family Dollar Stores Inc	Triam Fund Management	7,710	02/15/11	-	60.00	39.28	51.40	16.73	8.60	0.62
Talecris Biotherapeutics Holdings	Grifols SA	3,902	06/07/10	06/30/11	30.29	53.94	26.20	15.63	4.09	0.16
Massey Energy Co	Alpha Natural Resources Inc	8,277	01/29/11	-	70.21	30.56	67.19	4.49	3.02	-0.30
Citadel Broadcasting Corp	Cumulus Media Inc	1,720	12/17/10	12/31/11	37.34	35.16	34.40	8.55	2.94	0.60
Alcon Inc	Novartis AG	11,743	12/15/10	04/11/11	168.00	4.45	165.95	1.24	2.05	0.44
Progress Energy Inc	Duke Energy Corp	25,531	01/10/11	12/31/11	46.66	6.13	45.50	2.55	1.16	-0.05
TMX Group Inc	London Stock Exchange Group	1,941	02/09/11	06/30/11	25.48	8.06	24.38	4.53	1.10	-0.04
Lubrizol Corp	Berkshire Hathaway Inc	9,218	03/14/11	09/30/11	135.00	24.17	133.95	0.78	1.05	-0.20
Hughes Communications Inc	EchoStar Corp	1,824	02/14/11	-	60.70	3.96	59.77	1.56	0.93	-0.01
Bucyrus International Inc	Caterpillar Inc	8,609	11/15/10	06/30/11	92.00	31.29	91.19	0.89	0.81	-0.04
Duncan Energy Partners LP	Enterprise Products Partners	1,004	02/23/11	-	40.70	27.10	40.02	1.70	0.68	0.09
Nicor Inc	AGL Resources Inc	3,138	12/07/10	06/30/11	53.90	17.61	53.27	1.18	0.63	0.08
Dionex Corp	Thermo Fisher Scientific Inc	2,068	12/13/10	04/07/11	118.50	27.60	117.87	0.53	0.63	-0.06
Beckman Coulter Inc	Danaher Corp	6,965	02/07/11	04/27/11	83.50	15.23	82.91	0.71	0.59	0.06
Emergency Medical Services Corp	Clayton Dubilier & Rice LLC	2,987	02/14/11	06/30/11	64.00	-5.22	63.42	0.91	0.58	0.00
Western Coal Corp	Walter Energy Inc	3,928	11/18/10	06/30/11	12.35	55.94	11.77	4.94	0.58	0.03
RehabCare Group Inc	Kindred Healthcare Inc	1,277	02/08/11	06/30/11	36.76	40.26	36.32	1.22	0.44	0.02
Atheros Communications Inc	QUALCOMM Inc	2,917	01/05/11	06/30/11	45.00	26.55	44.60	0.90	0.40	0.02
Pride International Inc	EnSCO PLC	8,466	02/07/11	06/30/11	43.03	23.61	42.67	0.84	0.36	0.02
AirTran Holdings Inc	Southwest Airlines Co	1,015	09/27/10	06/30/11	7.75	67.51	7.40	4.73	0.35	0.04

League Tables

Global Financial Advisers

FINANCIAL FIRM	2011 Year-to-Date			
	RANK	MKT SHARE	VOLUME USD (Mln)	DEAL COUNT
JP Morgan	1	29	162,696	68
Morgan Stanley	2	26	146,097	73
Goldman Sachs & Co	3	21	119,533	81
Credit Suisse	4	19	103,903	55
Deutsche Bank AG	5	18	103,209	49
Bank of America Merrill Lynch	6	14	79,782	61
Barclays Capital	7	13	74,518	26
Lazard LLC	8	11	60,128	26
Evercore Partners Inc	9	10	56,103	8
Citi	10	10	54,576	41
UBS	11	9	49,583	40
Greenhill & Co	12	7	40,444	5
Rothschild	13	6	31,959	39
Perella Weinberg Partners	14	5	26,404	7
RBC Capital Markets	15	3	18,532	21
Jefferies Group Inc	16	3	16,128	32
Wells Fargo & Co	17	3	14,074	8
HSBC Bank PLC	18	2	13,943	14
Nomura Holdings Inc	19	2	13,474	46
Moelis & Co	20	2	13,156	9

Source: Bloomberg
Excludes terminated deals.

As of: 03/28/2011

Global Legal Advisers

LEGAL FIRM	2011 Year-to-Date			
	RANK	MKT SHARE	VOLUME USD (Mln)	DEAL COUNT
Wachtell Lipton Rosen & Katz	1	23	126,909	17
Simpson Thacher & Bartlett	2	16	89,109	39
Sullivan & Cromwell	3	14	77,573	27
Cleary Gottlieb Steen & Hamilton	4	13	74,115	24
Skadden Arps Slate Meagher & Flom	5	13	72,318	45
Shearman & Sterling LLP	6	12	65,631	33
Latham & Watkins LLP	7	11	60,377	53
Allen & Overy LLP	8	9	50,626	46
Greenberg Traurig LLP	9	8	45,030	18
Freshfields Bruckhaus Deringer	10	8	41,921	50
Arnold & Porter	11	7	41,891	7
Davis Polk & Wardwell	12	7	41,632	17
Crowell & Moring LLP	13	7	39,000	1
Wiley Rein LLP	13	7	39,000	1
Dewey & LeBoeuf LLP	15	6	32,732	16
Jones Day	16	5	27,278	85
Weil Gotshal & Manges LLP	17	5	26,229	31
Cravath Swaine & Moore	18	5	25,984	11
Linklaters LLP	19	5	25,696	26
Hunton & Williams	20	5	25,531	1

Source: Bloomberg
Excludes terminated deals.

As of: 03/28/2011

Calendars

To submit an event email mergerbrief@bloomberg.net

Anticipated Approvals

DATE	TARGET	ACQUIRER	DEAL VALUE (\$M)	TYPE
3/30	Cedyna Financial Corp.	Sumitomo Mitsui Financial Group Inc.	570	Target shareholders
3/30	Pride International Inc.	Enscoc PLC	8,466	Expected HSR expiration
3/30	Fronteer Gold Inc.	Newmont Mining Corp.	2,020	Target shareholders
3/30	Hughes Communications Inc.	EchoStar Corp.	1,824	Expected HSR expiration
3/31	Sued-Chemie AG	Clariant AG	2,352	Acquirer shareholders
3/31	Valley High Ventures Ltd.	Levon Resources Ltd.	113	Target shareholders
4/4	Lundin Mining Corp.	Inmet Mining Corp.	4,153	Target, acquirer shareholders
4/9	RC2 Corp.	Tomy Co.	587	Go-shop period ends
4/11	System C Healthcare PLC	McKesson Corp.	65	High Court
4/11	Seven Media Group	West Australian Newspapers Holdings Ltd.	4,121	Acquirer shareholders
4/20	PTT Aromatics & Refining PCL	PTT Chemical PCL	5,506	Acquirer shareholders
4/21	PTT Aromatics & Refining PCL	PTT Chemical PCL	5,506	Target shareholders

Calls and Meetings

DATE	TIME	COMPANY	EVENT	RELEVANCE
3/30	Before market open	Family Dollar Stores Inc.	Quarterly earnings	Nelson Peltz's Trian Fund Management on March 14 urged Family Dollar to reconsider its rejection of a takeover offer of \$55 to \$60 a share.
3/30	10 a.m.	Phillips-Van Heusen Corp.	Telsey Advisory Group Consumer Conference, New York	On March 2, closed on \$1.96 billion of loans to refinance debt used to acquire Tommy Hilfiger BV in May.
3/30	10:15 a.m.	Range Resources Corp.	Howard Weil Energy Conference, New Orleans	Range agreed on Feb. 20 to sell 52,000 acres in the Barnett Shale in Texas for \$900 million.
3/30	12:30 p.m.	Life Technologies Corp.	California Biotech CEO Conference, San Francisco	In 2010, Life Technologies acquired more than \$400 million of other companies, according to data compiled by Bloomberg.
3/30		BJ's Wholesale Club Inc.	Telsey Advisory Group Consumer Conference	Shareholder Leonard Green & Partners is considering an offer for the retail chain, according to a March 22 regulatory filing.

Conferences

DATE	EVENT	FEATURING	LOCATION	CONTACT / REGISTRATION
March 29	Securing Growth in 2011: Turkey - Discussing M&A Deal Drivers	Energy sector has led deal flow, but other niches could be a boon.	Sheraton Istanbul Maslak Hotel, Turkey	mergermarket.com
March 29-30	Alexander Watson Associates' Mergers & Acquisitions Executive Forum 2011	Resin and Fiber Based Packaging, Coating, and Converting Conference.	Hyatt Rosemont, Chicago	awa-bv.com
March 30-April 1	BioWindhover/Pharmaceutical Strategic Outlook	"The partnering conference for decision makers on biopharma deal structure and strategy."	Grand Hyatt, New York	biowindhover.com
March 31	M&A Insight 2011: Bridging the Gap & Strategic Alternatives	M&A panel will explore current trends, future outlook	Haynes and Boone LLP, Houston	trmoore.com
March 31	Private Equity Investing In Canadian Companies	Master class chaired by Morty White, Wynnchurch Capital Ltd.	New York	capitalroundtable.com
April 1	8th MIT Private Equity Symposium	"Life After Leverage"	Charles Hotel, Cambridge	mitpesymposium.com
April 4-5	2nd Annual Medical Device Mergers and Acquisitions Conference	"Overcoming Challenges to Secure Successful Coverage and Reimbursement for Medical Device Products in the European Market"	Brussels, Belgium	q1productions.com/eventcalendar.php
April 7-8	The Thunderbird 7th Annual Global Private Investing Conference	"Industry leaders shed light on global private equity's most relevant issues."	Thunderbird Campus, 1 Global Place, Glendale, Arizona	thunderbird.edu
April 13-14	2011 Southwest M&A Conference	Deal of the Year Award	Westin Kierland Resort & Spa, Scottsdale, Arizona	acg.org/arizona/
April 27-28	Southern Private Equity Conference	"Brings together over 100 middle-market practitioners to facilitate deal flow."	Hermitage Hotel, Nashville	nasbic.org
May 10-12	AM&AA and Primerus Third Global M&A Symposium	The New Economics for the Private Middle Market	Thistle Marble Arch, London	aamaonline.com
May 25	Private Equity Software & Services	"Brings together many of the major private equity suppliers for a day of presentations, information sharing and networking."	New York Hilton	pessnet.com/newyork/