Quebec M&A Bucks the Trend

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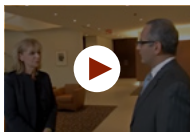
by Robert Yalden and Shahir Guindi

Quebec once again showed that it has a remarkable ability to surprise. While M&A volumes were suffering in many parts of North America, Quebec saw more significant M&A activity in 2012 than it has in some time, proving to be one of the busiest parts of Canada's M&A landscape. As the year closed, the provincial government was actively considering changes to its corporate law in response to concern regarding foreign take-overs of Quebec's most successful companies, notwithstanding that Quebec-based companies had themselves displayed a growing appetite for international expansion.

Hostile M&A was very much part of the story. As 2012 began, two Quebec-based companies, Canmarc REIT (Canmarc) and Fibrek Inc. (Fibrek), had recently adopted supplementary rights plans (over and above existing rights plans) in order to deal with shareholders that had established significant toe-holds in conjunction with launching unsolicited take-over bids. While Cominar REIT and Canmarc ultimately agreed to a merger (before Cominar's challenge to the Canmarc rights plan was heard), it took several rounds before Resolute Forest Products Inc. (Resolute) managed to disarm Fibrek's rights plan. Resolute was initially successful in challenging both the rights plan and a proposed issuance of Fibrek special warrants to a white knight (Mercer International Inc.) with whom Fibrek proposed to complete a friendly deal. When exercised, the special warrants would have meaningfully diluted the majority position that Resolute otherwise controlled through hard lock-up agreements entered into with three significant Fibrek shareholders. However, the decision of Quebec's securities law tribunal (the Bureau de décision et de révision (Québec)) to disarm Fibrek's rights plan and to put an end to the special warrants issuance was overturned by the Court of Quebec, only to be reinstated by the Quebec Court of Appeal. After months of dealing with one of the more vigorous defense strategies seen in some time in Canada, Resolute was ultimately successful in acquiring sufficient control of Fibrek to take it private by way of a second step arrangement.

In an equally complex series of developments, the retail hardware store chain Rona Inc. (Rona) (one of Quebec's largest employers) saw growing pressure from certain of its shareholders after it refused to entertain an informal take-over proposal from Lowe's Cos. Inc. (Lowe's) earlier in the year. Market disappointment with its results was followed by the departure of Rona's CEO and an attempt from one of Rona's more significant Canadian institutional shareholders (Invesco Canada Ltd.) to initiate a proxy fight to replace the board. With other institutional shareholders signalling their impatience, the situation at Rona demonstrated classic signs of a company in the eye of a mounting storm. In addition, the overture from Lowe's garnered considerable political visibility during provincial elections that saw a new minority nationalistic government elected in September. So much so that the Parti Québecois' Minister of Finance signalled in late November that the provincial government was giving serious thought to introducing legislation (modelled after legislation in certain U.S. states) that would give boards of directors of Quebec incorporated companies additional power to rebuff hostile bids.



OSLER REPRESENTED THE FOLLOWING CLIENTS IN 2012:

Gaz Metro Inc. in its $700 million acquisition of Central Vermont Public Service Corporation.

Toronto Stock Exchange in the Fibrek Inc. hearings.

Miranda Technologies in its acquisition by Belden Inc. for $345 million.

Fiera Sceptre Inc. in its acquisition of the Natcan asset management business from National Bank of Canada for $309.5 million.

WSP Group PLC in its acquisition by GENIVAR Inc. for $442 million.

CANMARC REIT in connection with the $900 million take-over bid made by Cominar REIT.

Adding to the excitement was a sizeable friendly "made in Québec" deal that soon had to navigate difficult regulatory waters. In March, BCE Inc. announced a proposed $3.4 billion acquisition of Astral Media Inc., a leading media company, only to face fierce complaints from competitors in the broadcasting sector (most notably Quebec-based Videotron). To the surprise of many, the transaction was initially vetoed by the CRTC (the industry regulator), only to be revived in a new form in November. Whether the transaction will withstand a second round of regulatory scrutiny remains to be seen, though the parties had clearly recut the deal with an eye to disposing of any assets that might have to be sold in order to secure regulatory sign-off.

The action in the province was by no means limited to the acquisition of Quebec companies. A number of notable deals showcased growing international ambitions on the part of important Quebec-based businesses. In June, Alimentation Couche-Tard Inc., Quebec's largest convenience store operator, completed its acquisition of Statoil Fuel & Retail ASA, the largest Scandinavian convenience and fuel retailer, in a deal valued at U.S. $2.8 billion. In July, Gaz Metro Inc. completed a U.S. $700 million acquisition of Central Vermont Public Service Corporation, the largest electricity distributor in Vermont. And in August, CGI Group Inc., a Quebec-based leading global provider of IT and business process services, acquired Logica plc, a major European business and technology service company, in a deal valued at $2.7 billion that more than doubled the size of CGI's work force, taking it 72,000 professionals.

Mid-market M&A was no less active. Important deals in the technology sector included Belden Inc.'s acquisition of Montréal based Miranda Technologies ("Miranda") in June for $345 million, after Miranda went through a lengthy series of courtships and dealt with agitation from the increasingly inevitable reality of a U.S. hedge fund threatening to call a meeting to replace members of the board. Other notable deals included GENIVAR Inc., a Montréal-based professional services firm, completing the acquisition of WSP Group PLC, a London U.K. based professional services firm in a deal valued at $442 million; as well as private equity firm Vector Capital's acquisition of 20/20 Technologies Inc., a Quebec-based provider of computer-aided design, business and manufacturing software for the home and office design market, in September in a deal valued at $77 million.

In short, Quebec covered the waterfront when it came to M&A in 2012. While the prospect floated by its Finance Minister at year-end, to the effect that he might introduce amendments to Quebec's corporate law to replicate features seen in U.S. style constituency statutes, was a reminder that deal makers need to be sensitive to Quebec's distinctive political realities, the breadth and scope of activity in 2012 made clear that Quebec remains an integral and vibrant part of Canada's M&A landscape.

Osler is proud to have played a critical role in many of these transactions, including acting for Gaz Metro, Miranda, Vector, WSP Group, the lender to CGI Group and the regulators in the Fibrek matter, among others.

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