Deal Price Less Synergies Drives Fair Value Determination in Appraisal of Sponsor-Led Acquisition Target

August 2018

Authors: Oliver Brahmst, Andrew Hammond, Jordan Kobb

In *In re Appraisal of Solera Holdings, Inc.*, the Delaware Court of Chancery rejected petitioners' argument that the fair value of their Solera shares should be calculated solely using a discounted cash flow analysis, and, relying on recent Delaware Supreme Court precedent, concluded that the deal price, which was achieved in an arm's-length and open sales process, after adjusting for synergies, was the most reliable evidence of the fair value of petitioners' shares as of the date of the merger. This decision confirmed that, in appropriate circumstances, courts will recognize synergies claimed by financial buyers in appraisal proceedings, allowing financial buyers to argue that the fair value of a petitioner's stock in an appraisal proceeding is less than the deal price.

Background

After Vista Equity Partners ("Vista") acquired Solera Holdings, Inc. ("Solera") at a price of $55.85 per share, certain of Solera's stockholders exercised appraisal rights requesting the Chancery Court to determine the fair value of their shares of Solera. Solera's stockholders argued that the fair value of their shares was $84.65 based on a discounted cash flow analysis, which represented an approximately 51.6% premium above the deal price. During the trial, Solera contended that the Chancery Court should be guided by the deal price less synergies to determine fair value, which would equate to a price of $53.95 per share. In early 2018, Solera filed supplemental briefing arguing that, based on the *Aruba*[1] decision, the fair value of its stock was the unaffected stock price of $36.39 per share, approximately 35% below the deal price.

The Chancery Court's Decision

Following a five-day trial, the Chancery Court held that the fair value of the stockholders' shares was the deal price less synergies, which amounted to $53.95 per share. In so holding, the Chancery Court relied heavily on two recent Delaware Supreme Court decisions relating to appraisal proceedings: *DFC Global Corporation v. Muirfield Value Partners, L.P.* and *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.*

---

[1] *Verition Partners Master Fund Ltd. v. Aruba Networks, Inc.*, 2018 WL 922139 (Del. Ch. Feb. 15, 2018), *reargument denied*, 2018 WL 2315943 (Del. Ch. May 21, 2018).

In *DFC*, the Delaware Supreme Court held that the Chancery Court erred in its finding that the fair value of DFC's shares should be determined by equally weighing three measures of value: a discounted cash flow, a comparable company analysis, and the transaction price. The Delaware Supreme Court held that, while there is no presumption that the deal price is the best indicator of fair value, the deal price in the *DFC* case was reflective of fair value because it resulted from "an open process, informed by robust public information, and easy access to deeper, non-public information in which many parties with an incentive to make a profit had a chance to bid." The Supreme Court noted that, while the market price is not always correct, it is often superior to other valuation techniques in that "it distills the collective judgment of many based on all publicly available information about a given company and the value of its shares."

Similarly, in *Dell*, the Delaware Supreme Court rejected the Chancery Court's reliance on a discounted cash flow analysis to determine the fair value of Dell's shares and held that the Chancery Court abused its discretion by not giving any weight to market data because "the market for Dell's shares was actually efficient and, therefore, likely a proxy for fair value." The Supreme Court found that the sales process in *Dell* canvassed every logical buyer there as an open and flexible go-shop process, and that "the world was put on notice of the possibility of a transaction" so that "any interested parties would have approached the Company before the go-shop if serious about pursuing a deal." Given this evidence, the Supreme Court in *Dell* concluded that "the deal price has heavy, if not overriding, probative value."

In concluding that the deal price less synergies was the appropriate method of determining the fair value of Solera's shares, the Chancery Court found that the Solera transaction resembled the Dell and DFC transactions in that there existed robust public information concerning the company (including the views of analysts, buyers, and debt providers), a deep base of public shareholders, easy access to non-public information for potential buyers, cooperation from management, a robust market check, a special committee composed of independent and experienced directors which had the power to say "no," advised by competent legal and financial advisors, and the sale was achieved in an arm's-length transaction with a third party.

First, the Chancery Court found that Solera contacted many potential buyers during the sales process. In addition to the 18 potential bidders that were directly contacted and made aware of the sales process, the market was put on notice that Solera was considering a sale multiple times during the months leading up to the sale. The Chancery Court dismissed the fact that only one strategic bidder submitted a bid as insignificant, pointing out that none of the six strategic bidders that were approached during the sales process expressed enough interest to even sign a non-disclosure agreement. As noted in *Dell*, "if a company is one that no strategic buyer is interested in buying, it does not suggest a higher value, but a lower one." Furthermore, the Chancery Court concluded that all bidders had been provided with access to the same non-public information throughout the process.

Second, the Chancery Court found that Solera's special committee was independent, competent, and effective. The members of the special committee were informed, experienced, and actively engaged with all bidders. The special committee rejected two bids (one of $53 per share and one of $54 per share) that it considered inadequate. Before ultimately accepting Vista's bid of $55.85 per share, the special committee considered the advice of its financial advisor, that it was uncertain that rejecting Vista's bid and extending the process would result in a higher offer. The Chancery Court did note that the special committee could have more diligently policed contact between Solera's CEO, Tony Aquila, and certain of the bidders, but ultimately concluded that such interactions did not compromise the effectiveness or integrity of the sales process. Given the importance of Mr. Aquila to Solera's business and that each bidder expected Mr. Aquila to continue to play a significant role with the company following the sale, the Court found that it was important for him to be involved and engaged with bidders throughout the sales process.

Finally, the Chancery Court determined that the equity and debt markets corroborated the deal price as reflective of Solera's fair value. The Chancery Court based this conclusion on several factors, including that Solera's stock was actively traded on the New York Stock Exchange, the stock had a bid-ask spread in line with, and had a short interest ratio that was better than, a number of S&P MidCap 400 and S&P 500 companies, that the stock price moved sharply as rumors of the sales process were leaked, and that a number of equity analysts were covering the stock in the year leading up to the sale. Additionally, the Chancery Court observed that Solera's falling credit rating and the difficulty it faced in securing debt financing served as further evidence that Solera was not as valuable as the petitioners contended.

The Chancery Court rejected Solera's argument that, based on the Chancery Court's decision in *Aruba*, the fair value of Solera's shares was the unaffected trading price of Solera's stock—$36.39 per share. The Chancery Court found Solera's argument unconvincing, in part, because Solera had every opportunity to present this argument before and during trial but failed to do so.

With respect to the synergies, the Chancery Court held that a financial buyer, like a strategic buyer, could realize synergies in connection with a transaction. In estimating the synergies that would result from the acquisition of Solera, the Chancery Court credited the unrebutted evidence presented by Solera that portfolio company revenue synergies, private company cost savings, and tax benefits associated with incremental leverage could be realized if Vista acquired Solera. Accordingly, the Chancery Court subtracted the estimated synergies of $1.90 from the deal price of $55.85 per share in reaching its conclusion that the fair value of Solera's stock was $53.95 per share.

Conclusion

The Chancery Court's decision in *Solera* is in line with a growing number of cases giving significant weight to deal price in determining the fair value of stock in appraisal proceedings. This decision should provide increased comfort to financial buyers that the deal price achieved in an arm's-length transaction from a fair and open sales process will be given significant deference by Delaware courts in appraisal proceedings. As the Chancery Court observed, stockholders in appraisal proceedings "are only entitled to the fair value of [a company's] stock at the time of the merger, not the best price theoretically attainable had market conditions been the most seller-friendly." Additionally, the Court explicitly found that, in appropriate circumstances, the Court will credit synergies identified by financial buyers. Accordingly, in certain circumstances, financial buyers can argue that the fair value of a petitioner's stock is less than the deal price based on the synergies that the financial buyer expected to achieve in connection with the transactions.

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020-1095
United States

T +1 212 819 8200

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.