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## THE DEALS ISSUE

IT SEEMS NO ONE IS WILLING TO PUT UP WITH  
A SLUMP IN DEALS FOR TOO LONG.

## 2023 DEALMAKERS OF THE YEAR



**WILL PEARCE**



**LEN KREYNIN**

## DAVIS POLK & WARDWELL

**W**hen a consortium led by Brookfield sought to jointly acquire Nielsen Holdings along with a fellow private equity firm, the list of obstacles was long—from the sheer size of the deal to the multijurisdictional contractual arrangements and a blocking shareholder that resulted in a rejected first offer.

With the odds stacked against them, Davis Polk & Wardwell attorneys took on the mandate and managed to successfully tackle the \$16 billion acquisition, with the consortium led by Brookfield Business Partners, along with fellow private equity firm Evergreen Coast Capital, an affiliate of Elliot Investment Management, jointly acquiring Nielsen Holdings.

Len Kreynin helmed the ship for the firm's U.S. team, working alongside Will Pearce in the U.K., teaming up to close the second-largest leveraged buyout of 2022. The consortium equity commitment of \$5.7 billion contributed to the acquisition's fully committed financing.

With Nielsen Holdings being U.S. listed, and therefore falling outside of the scope of the U.K. takeover code, the firm needed to follow a U.S.-style implementation agreement for the acquisition, which was governed by U.S. law.

But with Nielsen being U.K. incorporated, it also meant the deal was subject to U.K. court approval pursuant to a scheme of arrangement. Pearce says that "schemes of arrangement of U.K. companies listed in the U.S. always raise some interesting corporate law issues as a result of the way U.K. shares are held and traded in the U.S." Navigating these complex contractual arrangements proved a significant challenge for the firm to overcome.

Pearce says an interesting part of the deal emerged when "engaging in the game theory with our consortium partner and their counsel" on the approach the opposing shareholder might take, as well as considering "the tools available to the consortium and the target under U.K. law."

While the multijurisdictional deal presented some challenges, Pearce says the deal "afforded advisers a little more creativity to use tools from both markets."

Another obstacle came up by way of an opposing shareholder with a blocking position, resulting in a rejected first offer and making for complex negotiations to follow.

Pearce says that "the biggest obstacle on a public deal is usually a sizable target shareholder who opposes the deal, or an interloper at a higher price. We faced the former."

The firm negotiated the intricate situation and rewrote the offer terms at the last minute to overcome the opposition from the activist shareholder. Afterward, the blocking shareholder moved to join the consortium and voted to approve the deal. Pearce affirms "the deal closed on a consensual basis allowing all investors access to the premium bid price."

—Charlotte Johnstone