

Delaware Court of Chancery rejects transaction price as best measure of fair value

September 28 2016 | Contributed by [Ropes & Gray LLP](#)

Introduction

Decision

Comment

Introduction

On May 31 2016 the Delaware Court of Chancery released its post-trial opinion on the closely watched appraisal action that arose from the buy-out of Dell Inc(1) by Michael Dell, its founder, along with a private equity backer. Despite finding that the transaction had resulted from a disinterested, fair and robust process that would have "sailed through" a traditional fiduciary duty review, Vice Chancellor Laster nonetheless held, after a four-day trial featuring 1,200 exhibits and extensive witness testimony, including from five experts, that the \$13.75 per share transaction price did not provide Dell stockholders with fair value for their shares.

Decision

The *Dell* opinion is notable in that, contrary to the recent trend in Delaware, the court did not accept the transaction's market price as presumptively representative of fair value. The vice chancellor refused to view the market price as determinative for a number of reasons, including:

- the fact that the transaction was a management buy-out;
- evidence showing a gap between Dell's intrinsic value and its share price; and
- certain limitations in the transaction process, including the lack of meaningful pre-signing price competition and the limitations of the go-shop provision.

The court instead employed a discounted cash flow (DCF) analysis to render an independent conclusion. Interestingly, the court rejected the company's internal projections as overly optimistic and instead focused on projections prepared by the special committee's financial adviser, the Boston Consulting Group Inc, in connection with the transaction, as well as projections provided to the buy-out group's lenders. The court also rejected many of the conclusions offered by the parties' experts concerning the proper DCF inputs, seeing them as litigation-driven. Ultimately, the court selected different inputs from each of the experts and valued Dell at \$17.62 per share – an approximate \$6 billion increase from the total consideration paid. However, because so few stockholders participated in the appraisal action, Dell will likely pay former stockholders only \$35 million in additional consideration.

Comment

The *Dell* opinion reminds merger parties that although deal price may be the best indicator of fair value in most instances, it is not determinative. The Delaware Court of Chancery will scrutinise the transaction process to evaluate whether it is a reliable measuring stick for assessing fair value. Even if that process would pass muster under a traditional fiduciary duty analysis, it may not be deemed the best measure of value. Here, the contrast between the market's "myopic" valuation of Dell and management's long-view assessment of the company raised concerns that the transaction price was artificially low and resulted from asymmetric information. Mr Dell's role in the buy-out also raised

AUTHORS

[Martin J Crisp](#)



[Jason
Freedman](#)



concerns about conflicts of interest and fairness. While some may view this opinion as breathing life into Delaware appraisal actions, the facts and circumstances surrounding the Dell transaction suggest that it may be an anomaly confined to its particular circumstances. In a merger presenting none of these concerns, the Delaware Court of Chancery might very well follow its recent practice of giving substantial (often determinative) weight to a transaction price fairly and rigorously set.

For further information on this topic please contact [Martin J Crisp](mailto:martin.crisp@ropesgray.com) at Ropes & Gray LLP's New York office by telephone (+1 212 596 9000) or email (martin.crisp@ropesgray.com). Alternatively, contact [Jason Freedman](mailto:jason.freedman@ropesgray.com) at Ropes & Gray LLP's San Francisco office by telephone (+1 415 315 6300) or email (jason.freedman@ropesgray.com). The Ropes & Gray website can be accessed at www.ropesgray.com.

Endnotes

(1) *In re Appraisal of Dell Inc*, CA No 9322-VCL (Del Ch May 31 2016).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).