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2022 DEALMAKERS OF THE YEAR



Ting Chen

Cravath, Swaine &
Moore

IN A YEAR WHEN REGULATORS AROUND THE GLOBE

stepped up scrutiny of pharmaceutical M&A, Cravath, Swaine & Moore partner Ting Chen led a six-person team in counseling lab equipment provider Thermo Fisher Scientific through its \$17.4 billion acquisition of PPD, a provider of clinical research services.

Closed in early December, the merger opens the door for Thermo Fisher to expand its pharmaceutical services business, the company has said. It was Thermo Fisher's largest acquisition to date and the first time Cravath represented the Waltham, Massachusetts-based company.

Negotiating the deal, from first offer to signing in April 2021, took less than two months, with dealmakers haggling over the purchasing price in the hours before parties entered the definitive merger agreement, Chen says. Thermo Fisher's closing risk was minimized by structuring the transaction such that written consent from PPD's majority shareholders approving the transaction was delivered shortly following the signing.

"Our client and the target were very focused on this transaction, so it was a very intense and focused 50 days," Chen says.

The deal took place against a backdrop of an "unusually dynamic regulatory environment," Chen says, which created uncertainty for pharma acquirers and targets. In March 2021, the Federal Trade Commission announced the formation of an international task force to scrutinize pharma mergers for anti-competitive behavior.

Globally, countries were expanding their foreign direct investment regulatory regimes—a trend that was accelerated by the pandemic, according to Chen. This introduced questions for Chen and colleagues about how to approach filing obligations for jurisdictions where regulators' approach to pharma M&A was in flux.

"It was clear from negotiating the transaction that countries had already announced they were considering a wider range of businesses that could be critical or sensitive because of the experience from the pandemic," she says.

The moving target of shifting regulatory regimes required a "surgical" approach to structuring closing conditions to account for any potential regulatory developments between signing and closing, Chen says.

The Cravath team addressed the risks, in part, by including conditions for specified jurisdictions, so that, given certain regulatory triggers, merger control clearance in those jurisdictions would be a closing condition. For a global business like Thermo Fisher, Chen says, it was "critical to ensure the merger agreement thoughtfully contemplated and addressed the various regulatory developments that could come up before closing."

—Justin Henry

Cravath, Swaine & Moore LLP