



ALERT

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Delaware Supreme Court Endorses Deal Price Less Synergies In Statutory Appraisal Action

The decision makes clear that deal price is an appropriate indicator of fair value even where there is only one bidder.

In *Verition Partners Master Fund, Ltd. v. Aruba Networks, Inc.*, the Delaware Supreme Court reversed a trial court's decision that the 30-day unaffected market price was the best evidence of "fair value" of the target company as of the date of the merger.

Under Delaware's appraisal statute, a dissenting stockholder may ask the court to determine the stockholder's proportionate interest in the target company as a going concern. In *Aruba*, the Delaware Supreme Court unanimously endorsed the deal price as strong evidence of a company's fair value for purposes of an appraisal action.

In *Aruba*, the Court of Chancery relied exclusively on the preannouncement market price as the best measure of fair value at the time of the closing of the merger (the valuation date under the appraisal statute). Based on the 30-day average of the market price of Aruba's stock before news of the merger leaked (which occurred three to four months before closing), the trial court determined that the fair value of Aruba's stock was \$17.13 per share, which was substantially below the \$24.67 per-share deal price.

The Delaware Supreme Court reversed, finding that the fair value was \$19.10, which reflected the deal price less the value of synergies to the strategic buyer. The Court made clear that its 2017 decisions in *Dell, Inc. v. Magnetar Global Event Drive Master Fund Ltd.* and *DFC Global Corp. v. Muirfield Value Partners, L.P.* did not compel "rote reliance" on market price when calculating fair value. Rather, the Court clarified that those decisions support the idea that the market price is likely to be more informative of fundamental value when a market is informationally efficient. In addition, the Court emphasized the lack of a developed trial record as to whether the stock price was an adequate proxy for fair value.

With its decision in *Aruba*, the Delaware Supreme Court reiterated its previous statements in *Dell*, *DFC*, and elsewhere that the merger price is generally entitled to significant weight in an appraisal action involving the sale of a public company pursuant to a third-party, arm's-length bidding process. Though the Court again declined to create a presumption that the market-tested deal price is always the best evidence of fair value, its *Aruba* decision made clear that the deal price is a strong indicator of fair value even where there are few bids, or even just one.



Marjorie P.
Duffy
Columbus



Robert S.
Faxon
Cleveland



Michael J.
McConnell
Atlanta



Walter W.
Davis
Atlanta

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