Daniel Kretinsky’s £3.6 billion Takeover of Royal Mail.

By Hasti Mozhdehi

What is the Context?

Who is Daniel Kretinsky?

Daniel Kretinsky is a Czech billionaire - often referred to as the “Czech Sphinx” due to his enigmatic nature - who runs and owns the biggest energy group in Central Europe, Energeticky a prumyslovy holding (EPH or EP Group). In the UK, Mr Kretinsky owns 27% of West Ham United Football club, and 10% of Sainsbury’s supermarket chain. The Sunday Times Rich List estimates his net worth to be around £6 billion and Forbes estimates his net worth - as of 22/12/2024 - to be $9 billion.

(Image Credit: Jasper Jolly, ‘Mystery shopper: the elusive West Ham investor Daniel Kretinsky’, The Guardian, November 18 2021)

The Royal Mail and International Distribution Services

(Image Credit: Hazel King, 'Royal Mail likely to accept new takeover bid', Parcel and Postal Technology International, May 16 2024.)

(Image Credit: International Distribution Services, Wikipedia)

Royal Mail is a British postal service in the UK. Prior to the privatisation of Royal Mail in 2013, the Post Office was a subsidiary of Royal Mail. The former provided over the counter services, while the latter was responsible for the delivery of letters and parcels. Since the privatisation, the Royal Mail (a) listed on the London Stock Exchange (LSE) in October 2013, (b) changed its name from Royal Mail Group to International Distribution Services (IDS) in October 2022, and (c) has recently been fined £10.5 million by Ofcom for failure to meet delivery targets for first and second class mail (the second fine after Royal Mail's £5.6 million penalty in 2023).

What is Happening?

Daniel Kretinsky is expected to be the owner of IDS after a successful £3.6 billion takeover where he acquired the remaining share capital - of the 27.6% that was already owned by EP Group - following approval from the UK government earlier this month. The deal, which is expected to be completed in Q1 of 2025, will value the company at around £5.3 billion, and will mark the first time that Royal Mail has been controlled by an overseas owner in its more than 500 years of history.

Since Royal Mail was listed publicly on the LSE, it was subject to takeover offers like any other company. But, the transaction required further review by the UK government on national security grounds because Royal Mail is considered vital national infrastructure. The National Security and Investment Act allows the government to scrutinise and intervene in such acquisitions, where there are potential national security concerns.

The takeover was approved after EP Group agreed to various legally binding undertakings. These include:

1. The UK government will retain a golden share in IDS that will require approval for any major changes to Royal Mail's ownership, HQ location, and tax residency. Mr Kretinsky has agreed to keep the brand name and Royal Mail's HQ and tax residency in the UK for the next five years.

2. The EP Group will maintain the *'one-price-goes-anywhere'* Universal Service Obligation (USO) which will ensure that letters are delivered six days per week (Monday - Saturday) and, parcels delivered five days per week (Monday - Friday).

3. The EP Group has confirmed that an agreement has been reached with the Communication Workers Union (CWE) and Unite to recognise and negotiate with the unions that represent the frontline staff and managers at Royal Mail. As such, the workers will receive a 10% share of any dividend - a distribution of earnings by a company to a shareholder - to Daniel Kretinsky. There will also be a formation of a workers group that will meet monthly with the Royal Mail directors to ensure that employees have a voice in how it is run.

EP Group was advised by Kirkland & Ellis, and Paul, Weiss.

(Image Credit: Paul, Weiss, Website)

(Image Credit: Kirkland & Ellis , Twitter)

IDS was advised by Slaughter and May.

(Image Credit: Slaughter and May, LinkedIn)

The UK government was advised by Hogan Lovells.

(Image Credit: Hogan Lovells, Wikipedia)

What is the Impact on Commercial Law Firms?

(Image Credit: Entrepreneur Handbook)

What is a Takeover?

A takeover or acquisition refers to the process by which one company - the Acquirer (often a larger company) - assumes control of another company - the Target - through a successful bid. In this case, EP Group is the Acquirer and IDS is the Target. On the other hand, a merger refers to the consolidation of two firms or companies to form a single new entity. For example, the merger of Allen & Overy and Shearman & Sterling to form A&O Shearman. A takeover can either be friendly - where the board of directors for the Target agree to the acquisition - or hostile - where the Acquirer takes control without the knowledge and/or permission of the Target's management. In the case of EP Group, and IDS, the board of IDS agreed to the takeover in May 2024.

What Role Do Commercial Lawyers Play?

A transaction that is structured through a Mergers & Acquisitions (M&A) can be highly profitable for commercial law firms. Since these transactions are often complex, they require comprehensive and multidisciplinary legal expertise which therefore makes them high-value for a commercial law firm.

Step 1: Acquisition Planning, Identification of Target and Financing

At this stage, commercial lawyers on the buy-side - representing the Acquirer - must advise on developing and structuring an acquisition strategy based on the acquirer's motivations for the takeover (i.e. is it to expand or access new markets?), and identify and evaluate Target companies based on the Acquirer's criteria (i.e. is it based on a particular customer base or profit margin?). Once the Target is identified, the commercial lawyers on the buy-side will need to review the Target company's financials and advise the client accordingly as to the profitability of the acquisition.

In addition, commercial lawyers will also need to work with the client to consider and structure an appropriate method to finance the acquisition. This may be through cash, loans, bonds, equity, or a combination. At this point, the Capital Markets teams may be called in to advise where shares and bonds are involved, and the Tax team will be heavily relied on to consider the tax implications of the transaction.

In instances where the transaction has the propensity to reduce competition in the market - through a monopoly per se - the anti-competitive nature of the transaction may see that it is blocked or subject to certain conditions. Here, the Antitrust and Competition teams will be needed to ensure that the relevant parties secure the competition clearance to proceed with the transaction.

Step 2: The Offer, Negotiation of Contractual Terms

If the client seeks to acquire the Target after *Step 1*, the commercial lawyers will be integral to negotiate and draft the key terms for the deal (i.e. structure, timing, price, conditions etc.) in a Letter of Intent or Heads of Terms.

This will likely include various clauses to protect the respective parties. For example, there may be an 'exclusivity clause' whereby the parties agree to contract exclusively with one another (i.e. the seller would be required to exclude any other potential buyers from the process during an agreed period). There may also be a ‘non-disclosure’ or ‘confidentiality’ agreement (NDA) which restrict one party’s access to and use of certain confidential information about the other party.

Step 3: Due Diligence

A due diligence (DD) is an investigation or review performed to confirm the facts or details of a particular matter. Once an offer has been accepted, commercial lawyers must undertake DD on the Target company in relation to its financials, assets and liabilities, and even customer base etc. to identify potential risks, liabilities or legal issues which may need to be negotiated to ensure any risk is mitigated for the client.

Step 4: The ‘Legals’, Drafting and Negotiating Final Contract

The commercial lawyers draft and negotiate the terms for a final contract of sale. For example, a Share Purchase Agreement (SPA) must be drafted, which outlines the terms and conditions relevant to the sale and purchase of shares in a company (this is a vital document). At this point, commercial lawyers will also ensure that all relevant clauses are included within the final contracts (i.e. change of control clause, non-solicitation clause, NDA, exclusivity clause etc.) and that a final plan for the financing of the deal is established.

Step 5: Completion, Post-Acquisition

Upon completion, commercial lawyers must ensure that all documents are in order to ensure that the transfer is legally effective.

If there has been a merger, the commercial lawyers will advise on merger-integration. This is where the management of the Target and the Acquirer work collectively to ensure a smooth integration in regards to operations, employees, customers etc.

In addition, commercial law firms that advised on the transaction may continue to advise the respective parties on legal issues that arise in the future. This can depend on the firm’s relationship with the client and the firm’s expertise in regards to the future matter that may arise. If the firm has established a long-term relationship with the client, and has a proven expertise in the relevant legal matter, the client may return to the firm for future legal issues, therefore increasing that firm’s client retention capabilities, and by extension making them a strong competitor within the market.

Commercial Word of the Article

What is Leverage?

The term ‘leverage’ is an important factor when considering the operational efficiency of a firm. It often refers to a ratio that compares the number of partners vs. the number of associates available to work on a client matter.

For example, a low-leverage firm will have more partners that work on a deal whereas a high-leverage firm may have more associates that can support the partners to carry out the lower level, or ‘grunt work’ work, while the partners can focus on the more complex aspects of the deal. The latter means that work is delegated and distributed effectively across the firm, which thereby allows the firm to engage in more activity in terms of volume.

Sources

Jasper Jolly, *‘Royal Mail takeover by Czech billionaire Daniel Kretinsky approved’*, Guardian, December 16 2024.

(https://www.theguardian.com/business/2024/de mail-takeover-daniel-kretinsky-uk-ids).

Holly McKechnie, *‘Kirkland, Paul Weiss and Slaughters lead on £3.5bn Royal Mail takeover bid’*, Legal Business, May 17 2024.

(https://www.legalbusiness.co.uk/blogs/kirkland paul-weiss-and-slaughters-lead-on-3-5bn-royal-mail-takeover-bid/).

Eleanor Butler, *‘Billionaire Kretinsky’s Royal Mail takeover bid gets UK stamp of approval’*, Euro News, December 16 2024. (https://www.euronews.com/business/2024/12/1 kretinskys-royal-mail-takeover-bid-gets-uk-stamp-of-approval).

Simon Jack & Nick Edser, *‘Royal Mail takeover by Czech billionaire approved’*, BBC

News, December 15 2024.

(https://www.bbc.co.uk/news/articles/ckg93390

Tom Cox, *‘Hogan Lovells joins top firms in £3.6bn Royal Mail takeover as UK govt approves bid’*, Legal Business, December 19 2024.

(https://www.legalbusiness.co.uk/blogs/hogan-lovells-joins-top-firms-in-3-6bn-royal-mail-takeover-as-uk-govt-approves-bid/).

Holly Williams, *‘What has been agreed under the Royal Mail takeover and what are the next steps?’*, Independent, December 16 2024.

(https://www.independent.co.uk/business/what-has-been-agreed-under-the-royal-mail-takeover-and-what-are-the-next-steps-b2665095.html).

Royal Mail , About Us.
(https://www.royalmail.com/about-us).

Will Kenton, *‘What is a Takeover? Definition, How They’re Founded, and Example’*, Investopedia, November 24 2020.
(https://www.investopedia.com/terms/t/takeove

Adam Hayes, *‘Mergers and Acquisitions (M&A: Types, Structures, and Valuations)’*, Investopedia, July 12 2024.
(https://www.investopedia.com/terms/m/merge

Adam Kudryl, *‘The M&A process: the seven steps of an M&A transaction and what to expect’*, Harper James, April 9 2024.

(https://harperjames.co.uk/article/the-merger-and-acquisition-process/).

‘Mergers Acquisitions M&A Process’, CFI Team.
(https://corporatefinanceinstitute.com/resources acquisitions-ma-process/).

Jake Rickman, *‘Mini Series: Business of Law Firms - Leverage’*, TCLA, October 7 2022.
(https://www.thecorporatelawacademy.com/for series-business-of-law-firms-leverage.332/).