



the global voice of
the legal profession®

ALLEN & GLEDHILL

CHIOMENTI

DARROIS
VILLEY
MAILLOT
BROCHIER



Freshfields Bruckhaus Deringer

MACFARLANES

OSLER

21st Annual International M&A Conference
International Bar Association

The Plaza Hotel

5-6 June, 2024



Developments in public company M&A and securities law

Presented by the IBA Corporate and M&A Law Committee

21st Annual International M&A Conference

The Plaza Hotel

June 6, 2024



Speakers

➤ Session chairs / Moderators:



- **Jenny Hochenberg**, *Freshfields Bruckhaus Deringer, New York, USA*



- **Bertrand Card**, *Darros Villey Maillot Brochier, Paris, France; Senior Vice Chair, Corporate and M&A Law Committee*

➤ Panelists:



- **Hilary Low**, *Allen & Gledhill, Singapore, Singapore*



- **Harry Coghill**, *Macfarlanes LLP, London, England; Secretary, Private Equity Subcommittee*



- **Carlo Croff**, *Chiomenti Studio Legale, Milan, Italy*



- **Emmanuel Pressman**, *Osler, Hoskin & Harcourt LLP, Toronto, Ontario, Canada*



Foreign markets competition and the Italian response

Attraction to US Listings: more liquid markets, favorable valuations, and diversified shareholder bases.

- Recent trend is to prefer exclusive US listing:
 - Zegna: Dutch NV and NYSE listing
 - Stevanato Group: Direct NYSE listing
 - CNH Industrial: left the Milan Stock Exchange, remaining listed on NYSE



EU Market Competition: relocating to the Netherlands for a flexible legal framework and better control protections



Capital Law (March 2024)

- **Multiple Voting Shares:** Voting power increased from 3 to 10 votes per share. Multiple voting shares may be only introduced before IPO.
- **Tenure Voting:** While before the Capital Law issuers could only provide enhanced voting rights up to 2 votes per share held continuously for at least 24 months, the new Law allows issuers to provide that an additional vote per share is accrued annually, up to 10 cumulative votes.



Attractiveness of Canada as a jurisdiction of formation

Benefits

Attractive as a jurisdiction of formation having regard for litigation risk, market integrity, flexible capital structures (including multi-class), regulated markets

Redomiciling

Unusual for Canadian companies to “switch” jurisdiction or “redomicile” upon IPO or midlife as a public company

Dual-listing

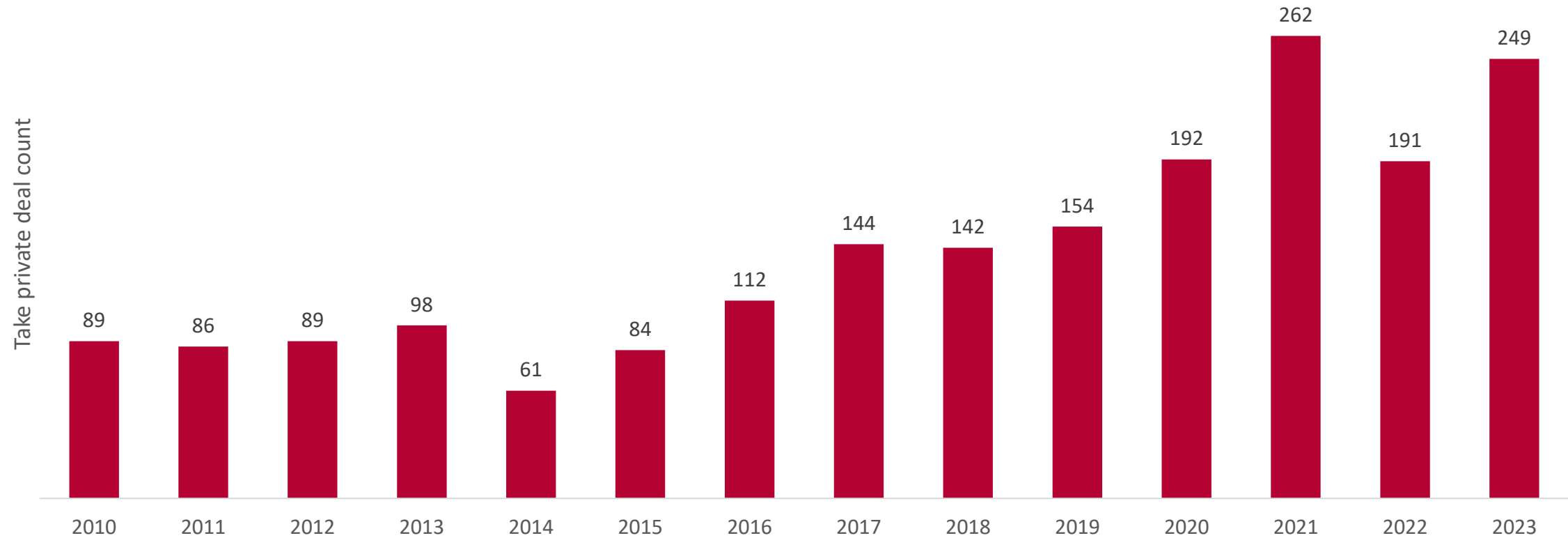
Canadian companies will often seek to list on more than one marketplace which is uncontroversial especially in tech sector where “unicorn” valuations are only achievable on the Nasdaq

Controlled companies

Canadian corporate landscape features many controlled companies – unwise to relocate to U.S. where greater litigation risk and less deference to controlled boards



Take private activity



Note: Dealogic as of 31-Dec-2023



- The proposals (which are all inter-conditional) comprise:
 - a **restructuring plan** under the Companies Act 2006 to compromise creditors (requires a creditor vote and court approval)
 - an **equity raise** structured either as:
 - » a £10m placing to Superdry's founder and CEO, Julian Dunkerton, at 5p per share (non-pre-emptive structure); or
 - » an €8m open offer fully underwritten by Julian Dunkerton at 1p per share (pre-emptive structure)
 - the **delisting** of Superdry's shares
- If both the placing and open offer are approved, the Superdry board will determine which to implement
- Julian Dunkerton currently holds 26% of Superdry's shares
- As a result of his participation in the open offer or the Placing, Julian Dunkerton's shareholding would increase to:
 - 76% if the placing is implemented
 - 91% if the open offer is implemented, assuming that no other shareholder takes up their entitlements in the open offer
- Shareholder resolutions required include:
 - **Open Offer**
 - » Ordinary Resolutions: authority to allot, Takeover Code waiver (JD cannot vote)
 - » Special Resolution: disapplication of pre-emption rights
 - **Placing**
 - » As per the open offer plus ordinary related party resolution (on which JD cannot vote)
 - **Delisting**
 - » Special resolution

Iliad Public to Private - Steps

Strengthening of Xavier Niel's stake (c.52%) through a share buyback at a high price financed by a capital increase

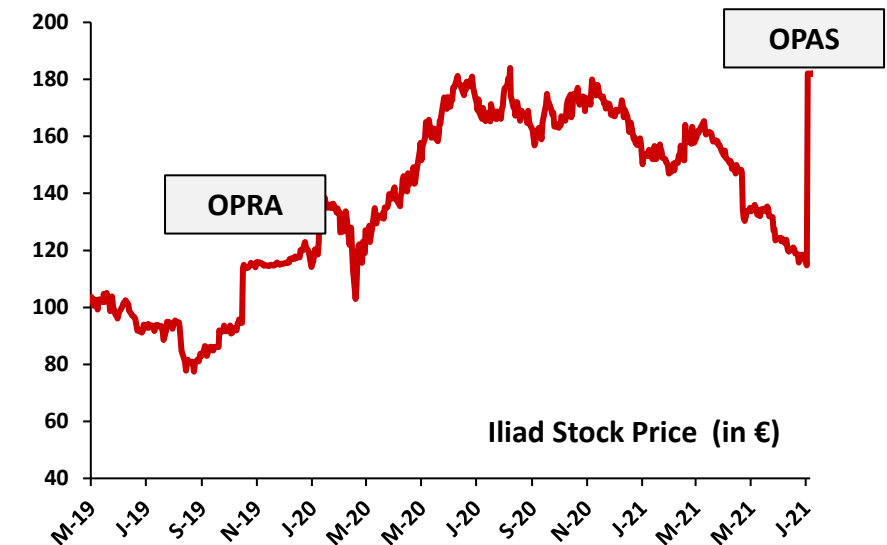
- In late 2019, **Iliad** launched a **public share buyback offer (OPRA)** for up to c.20% of its shares at a price of €120 per share (i.e. a premium of c.30% over the last share price)
- The share buyback offer was financed by a c.20% **capital increase** of Iliad (for the same amount required to buy back the shares) almost entirely subscribed by Xavier Niel from his own funds.

Launch of a simplified takeover bid by Xavier Niel (c.71%) with a high premium

- In 2021, **Xavier Niel** launched a bid to take Iliad – of which he owned c.71% - private, through a **simplified tender offer (OPAS)** at a price of €182 per share (i.e. a premium of c.61% over the last share price)
- At the close of the tender offer, Xavier Niel held c.96% of the share capital and voting rights

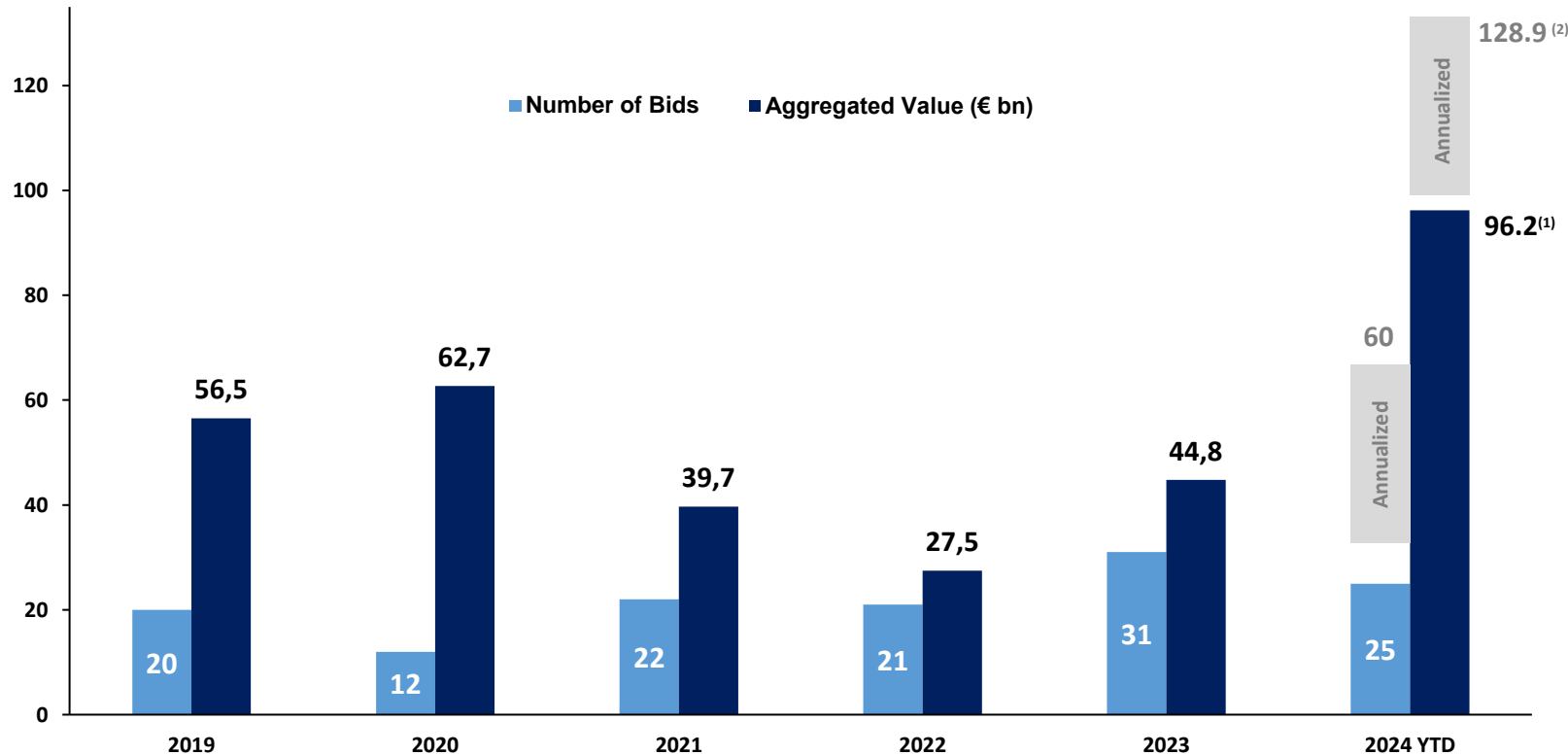
Squeezing-out of the minority shareholders and delisting of Iliad (Xavier Niel' shareholding being c.96%)

- In late 2021, the minority shareholders were **squeezed out** and Iliad was consequently **delisted** as per the French stock-exchange regulations



European Contested / Unsolicited M&A Bids

European Contested / Unsolicited M&A Bids since 2019



Notable Contested / Unsolicited Bids

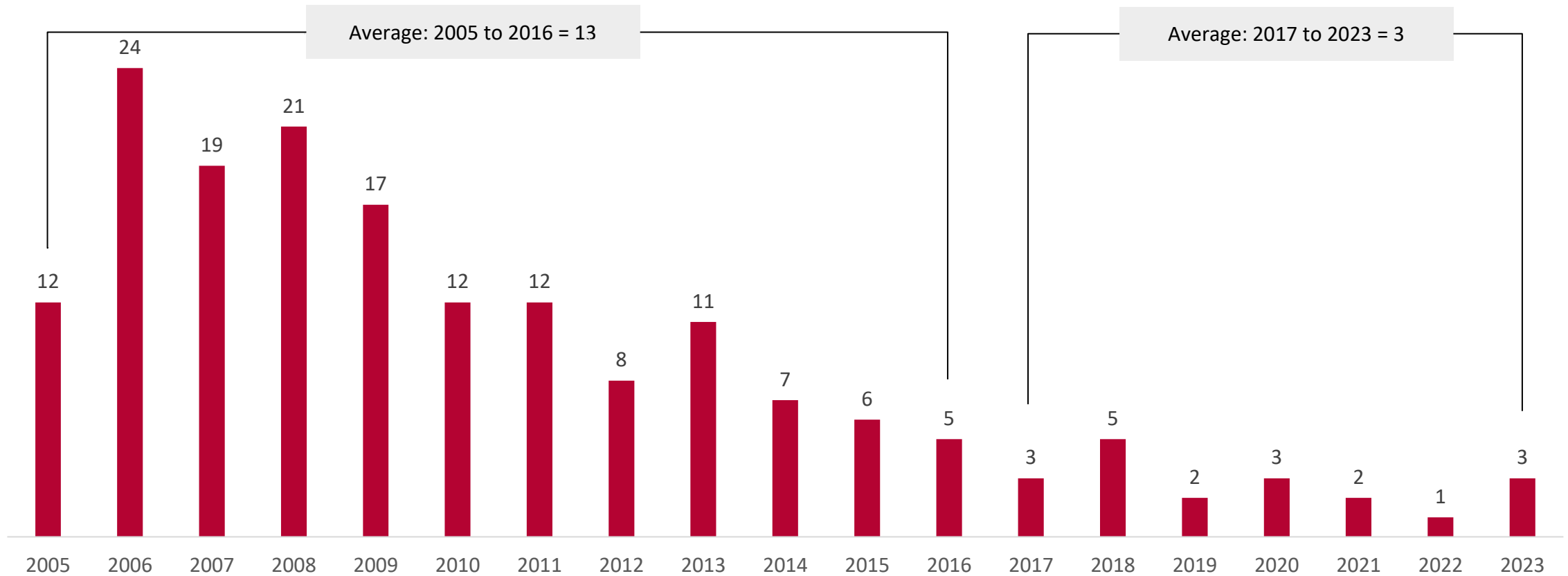


Source: MergerMarket

(1) Including the offer by BHP for Anglo American (c.€42.5bn)

(2) 2024 FY data annualized using 2024 YTD data and excluding the offer by BHP for Anglo American (c.€42.5bn)

Number of hostile bids in Canada



Note: Includes all hostile bids that targeted Canadian-listed public companies from January 1, 2005 to December 31, 2023. Data prior to 2017 drawn from Kingsdale Advisors.





the global voice of
the legal profession®