WTA TECHNOLOGY MERGERS & ACQUISITIONS

MARKET VIEW

TIPS FOR SUCCESSFUL M&A TRANSACTIONS

Introduction

How can you be more confident that your transaction will complete successfully; how will you achieve the best outcome on the best terms?

Here we identify how to be best prepare for M&A engagement. Although we primarily address those who run or acquire small and medium sized technology firms, these lessons can be applied to businesses of all types and scale.

Ten tips for successful M&A transactions

Rarely is a transaction an even sided negotiation. Almost all owner-managed sellers will be experiencing a once in a lifetime event, whereas most buyers have acquired previously, perhaps multiple times. Here are ten tips to keep in mind when conducting M&A activity:

1) Completing a transaction is not about winning at all costs. It is also necessary to understand the negotiation dynamics. If the parties wish to reach a successful conclusion there will need to be compromises by both sides. Even where it is necessary to concede, trade-offs may be possible. Be cognisant which side has the leverage on any specific issue. Try to establish rapport and always be courteous. Decide in advance what is important and be flexible, unless the item is truly a 'deal breaker'. Where the owner is joining the acquirer or if an earnout is included, goodwill is vital for both sides to preserve the future working relationships.

2) Some completed transactions, but by no means all, have earnout provisions (a practice most often used when the parties cannot agree a fixed price or the acquirer wants to move some of the value risk to the seller). Earnout agreements must be carefully negotiated and agreed for they are the most likely area for future conflict. Agreement needs to be reached on many items. Including, for example, the period of the earn-out and when payments are made, the financial targets which should be easy to measure and whether it is all or nothing or on a sliding scale, what happens if the buyer is subsequently sold, dispute resolution and the seller's rights for access to information.

3) Ensure that the lead negotiators on each side are experienced M&A negotiators. This is critical for each side's lead will be dealing with sophisticated parties on sometimes challenging issues. The buyer will most likely not want the CEO performing the role for they would not want the top person to be seen to be difficult when the seller's CEO (and top team) are wanted to stay on post-acquisition. The selling CEO may need to be supported by an M&A advisor.

4) Before getting into substantive due diligence and commitments to significant professional fees, insist on a written 'heads of agreement' that contains the key terms. Included in such an agreement, also known as a letter of intent or memorandum of understanding, should be the price and structure of payment, reference to working capital treatment, length of any exclusivity period (usually insisted upon by the buyer), non-disclosure, the non-contractual nature of the agreement, the parameters for any escrow should be there and anything else, either party considers relevant to the sale or purchase.

5) If a seller wishes for the best price on the best terms, whilst also experiencing the smoothest of negotiations, then preparation is essential and its better to be well advised. For most sellers putting their business up for sale is one of the most important events of their lives and one where they cannot afford for the process to go wrong. They will generally want to maximise the price.

6) Owners of businesses will want to receive the best offers. The is best achieved by creating competition and choice. Sellers will usually be able to improve both price and terms by leveraging competitive tension. Dealing with a single buyer will most likely be a disadvantage. Even the perception that there is multiple interest can strengthen the vendor's position. The most effective way to ensure competition and choice will be to appoint an experienced M&A advisor.

7) The appointed advisor should have familiarity with the sector in which your company operates and be able to produce a credible list of potential acquirers from their own knowledge, desktop research and consulting with their client. The advisor adds value in other ways too including preparing the necessary documentation, contacting all potential acquirers, advising on market comparable valuations and negotiating the key terms, structure and price. Ensure there's a clear and proper engagement agreement put in place which should cover the cost of any retainer and how long it is paid, the level of compensation when the business is sold known as a 'success fee', the length of any 'tail', i.e. the period after termination of the engagement letter that the success fee will be paid should the business be subsequently sold and the treatment of expenses incurred.

8) A buyer is no doubt interested in the history of the company, and will be even more interested in its current performance, but ultimately the price offered will be most influenced by the future performance of the business and how to maximise that value. The seller must be able to clearly and effectively communicate the company's vision and opportunities for significant growth. Try to make the buyer excited and articulate the vision, synergies and fit. Financial plans and projections must be credible. The buyer team will perform significant time consuming due diligence on the company's current financials and future projections so if they cannot be defended and explained and look unreasonable, the credibility of the management team will be diminished and the buyer will reconsider.

9) The buyer must fully understand what is being acquired and become aware of the risks and weaknesses as well as the strengths of the target company. Do not skimp on due diligence, which should cover not just financial information but all facets of the operation, infrastructure, customer and supplier contracts, partners and people. Understand working capital needs and exactly how and when profit turns into cash. Many companies have bought businesses they didn't understand or know the hidden risks and there are many well publicised examples which have lead to litigation and even criminal trials. Never be complacent.

10) The seller's ownership team having contributed to the success of the business and obtaining good quality executives is a useful benefit of making the acquisition but not all owners make good employees. Entrepreneurs can be a different type and the majority won't wish to be long term employees so plan for that. Many acquisitions do not deliver for the buyer and a key reason for that is Culture clash. Plan for this long in advance and make sure there is a good cultural fit.

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