

## **Negotiations in the Narrower Sense - The Final Hurdle in the Acquisition Process**

**by  
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### **1. Success Factors in the Negotiation Process**

Reference is frequently made to the industrial logic and the concept presented by the party which took the initiative as important determinants of success in the acquisition and sale of companies. Examples are joint R & D, purchasing advantages, complementary product ranges, synergies in sales and marketing. Others view a systematic search for partners offering synergy potential as an essential factor. To this end, matrices are drawn up with criteria such as technology, innovativeness, production capabilities, market shares, etc. according to which potential partners are judged and on the basis of which a priority list in terms of suitability can be developed. Some potential buyers regard the technology used as all important. In such cases, profiles of relative strengths and weaknesses are established, positive and negative synergy effects are evaluated, extraordinary influences on profit levels are eliminated, the future cash flows discounted to their net present values, earnings are projected using the DVFA formula and finally reconstruction values are calculated in order to determine what it would cost to set up an equivalent operation. At the end of the negotiating process, those consultants advising on questions such as warranties, legal liability and share or asset transfer will also claim their reward for their contribution to the success of the negotiating process.

Most commentaries on advice in connection with the acquisition and sale of companies are confined to the above. It is certainly correct that the above-mentioned tools are important. They help to rationalise the issues and to avoid mistakes. We, too, therefore also use them.

What is often not given sufficient weight are the many pitfalls in the negotiation process. This is particularly the case for the sale of a private company. It is not so important for stock-exchange based transactions, be they friendly or unfriendly. One has to recall that 75 % of all companies in Germany are sole proprietorships, 12 % are partnerships, 11 % are limited-liability companies and 2 % have other legal forms, only one of which is that of a joint stock corporation. The tools used for listed corporations are invalid for privately-held companies. In the latter case, all transactions must, by definition, be friendly. Yet negotiations with such companies or more correctly with their owners are inherently strongly emotional. This makes them fascinating and difficult at the same time. The following section describes this critical hurdle on the way to the final goal.

## **2. Negotiations are Delicate and Sensitive**

Negotiations concerning the acquisition or sale of companies are extremely delicate and sensitive. The number of incompleting negotiations far exceeds that of successfully finalised ones. There can be rational reasons for this, when the aims of the relevant parties are just too different to permit an agreement, but there can also be reasons which could have been avoided as they were not crucial in terms of the overall transaction.

Negotiations are an integral part of our lives. Politicians negotiate at local, regional, national and international levels. Everyone experiences negotiations in their private sphere: the renting or purchasing of property or, to be candid, with one's spouse regarding the destination for the next vacation or with one's children on when the light should be switched off.

Negotiation is communication with the aim of reaching an agreement. Agreements only arise when purchaser and seller are each largely able to realise their wishes. The winner/loser scenario is inappropriate in an environment determined by freedom of decision and competition.

### **3. It is Important to Present Interests, not to Establish Negotiating Positions**

In the first phase of the negotiating process, it is important to present one's own interests and goals. This has to be done clearly. The same applies to the basic procedural structure, so that all parties understand the rules. An important interest in this connection is whether or not a seller wishes to sell the controlling majority and what are the parameters with which he will make his final decision at the end of the negotiating period. The rules also have to take account of expectations concerning the time required and the degree of confidentiality sought. Establishing the procedure secures rational negotiations and underlines at an early stage what is impossible and what is realisable. It permits those negotiations without any prospect of success to be ended before too much time and emotion has been invested by the key persons.

The establishment of tactical negotiating positions is neither necessary nor useful. This merely places too much emphasis on the individuals involved and thus permits personal behaviour and emotions to have an influence on negotiations at a point in time at which impassionate and logical discussions with the aim of reaching agreement should be dominant.

The preparation for the first meeting and thus the opening move is important. Who are the appropriate negotiators? The seller is represented by the private owner, but who should represent the potential purchaser? In most cases, the potential purchaser is a large joint stock corporation. In addition to the question of rank and divisional responsibility, the potential purchaser should be represented by an individual who is "suited" to his partner and thus possesses the natural authority. The first meeting is critical for the ensuing negotiations and the ability to tread softly is very important.

During the negotiations that follow, it is important to register and correctly

interpret opinions, loyalties and interests. The private entrepreneur and/or his adviser make acquaintance with very different personalities representing the potential buyer in the form of the respective individuals responsible for the product, the region, production and finance. He therefore has the difficult task, which can also represent a major opportunity, of determining and appropriately using those persons in each phase of the negotiations who have the greatest influence on decision making within the corporate structure of the purchaser. If he is sufficiently experienced, then he can very skilfully manipulate the negotiating partner.

#### **4. Alternative Options Help to Solve Difficult Problems**

It is perfectly natural that conflicting interests can jeopardize negotiations. As a general rule, alternative options need to be presented at this stage. Such conflicting positions are most common on the question of valuation. Even when a consensus exists on objective factors such as the secure level of future profitability, capital market interest rates and discount rates, there are still many potential routes open to the parties in order to reach agreement on the pricing issue. An example is appropriate consideration of material benefits such as the withdrawal of assets which are not essential to a company's operation, the waiver of invoices charged to or other liabilities of the private entrepreneur, the treatment of the seller's company pension entitlements or, at the more personal level, items such as residential rights, consultancy contracts, a company car etc. In order to reach an agreement, it is important that each of the parties respects the arguments and means of calculation adopted by the other. Each party should be tolerant with regard to the values of the other and should search for acceptable solutions against this background. Nevertheless, there can be no question that each side must endeavour to induce the partner to conclude an agreement which is only just acceptable to the partner. This is not always possible using the foil alone. Deep wounds, however, which only heal after negotiations have been terminated without an agreement are of no use to either party.

Where a consultant is commissioned to lead the negotiations, he has to use this position to its full extent. He must prepare himself intensively in order to make a competent contribution. During the negotiations themselves, he must advance and retreat, attack and defend, listen and then convincingly present alternative options. He must repeatedly underline the benefits which a transaction would generate for the other party and has to identify and formulate the common denominators between the two parties. He must be a catalyst and has to overcome difficult phases for the other party via an awareness of its concerns and needs. He has to determine at an early stage what are the key interests of the other party in order to react appropriately. At the same time, it is nevertheless important to remain reliable and consistent towards the other party so as not to lose its faith and trust.

Landmines exist throughout the negotiating process. They can have different locations every day. The experienced consultant has to identify and remove them. He has to take the right steps at the right time. When this is the case, then the private entrepreneur will be able to realise his main goals and the other party will still accept the result of the negotiations. The closing move is left to the principal himself: his signature of the contract.

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