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VALUED REPRESENTATION

NAVIGATING THE COMPLEXITY OF MERGERS AND ACQUISITIONS

By JoAnn Lombardi, President VR Business Sales / Mergers & Acquisitions

HOW TO LEVERAGE THE MANY MOVING PARTS OF A DEAL FOR MUTUAL SUCCESS

Mergers and acquisitions are rarely straightforward. Beneath the headline price lies a web of interconnected elements that can shape the trajectory of a deal. Understanding and managing these components is essential for reaching an agreement that satisfies both buyer and seller. Successful negotiators know that flexibility and strategic thinking across multiple dimensions are key to unlocking value.

BEYOND THE PRICE TAG

While price often dominates early discussions, it is just one piece of a much larger puzzle. Consider a scenario where a seller is asking for a premium valuation. A buyer might agree to the price but negotiate more favorable terms elsewhere, such as a lower down payment or extended payment schedule through seller financing. This allows the buyer to preserve cash flow while still meeting the seller's expectations.

Other negotiable elements include:

- Interest rates on seller loans: A lower rate can make a higher purchase price more palatable.
- Earn-out provisions: These tie part of the payment to future performance, aligning incentives and reducing risk.
- Non-compete agreements: These protect the buyer's investment by preventing the seller from starting a competing business.
- Employee retention: A seller may insist on keeping key staff post-sale to maintain continuity and protect company culture.
- Each of these factors can be adjusted to create a deal structure that works for both sides.

DEAL STRUCTURE MATTERS

The form of the transaction, whether it is a stock sale or an asset purchase, can have significant tax and operational implications. Sellers often prefer stock sales for tax efficiency and simplicity, while buyers may lean toward asset purchases to avoid inheriting liabilities and to benefit from depreciation.

For example, a buyer acquiring a manufacturing company might prefer an asset deal to selectively take on equipment and inventory while excluding legacy legal risks. Meanwhile, the seller may push for a stock sale to streamline the transfer and reduce their tax burden. Negotiating this aspect requires a clear understanding of each party's priorities and constraints.

TIMING AND TRANSITION

The timeline of the deal can also be a point of negotiation. A seller looking to exit quickly may accept a lower price in exchange for a fast closing. Conversely, a buyer who needs time to secure financing or conduct due diligence may request a longer runway, possibly offering a higher price to compensate for the delay.



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Exit or Transition planning is another critical layer. Will the seller stay on for a period to ensure a smooth handover? Will there be training for the new management team? These considerations can affect not only the structure of the deal but also its long-term success.

FLEXIBILITY AS A STRATEGIC TOOL

In complex negotiations, flexibility is not a weakness, it is a strength. When faced with a sticking point, such as disagreement over the valuation of intellectual property, skilled negotiators may temporarily set the issue aside and focus on areas of agreement. This builds momentum and trust, making it easier to revisit difficult topics later.

For instance, if the buyer and seller cannot agree on the value of a proprietary software platform, they might move forward by agreeing on the valuation of physical assets and customer contracts first. Once progress is made, they can return to the software valuation with a clearer picture of the overall deal.

CONCLUSION

Mergers and acquisitions are multifaceted by nature. Success depends on recognizing that every element, from financing terms to deal structure to transition planning, can be a lever for negotiation. By approaching the process with a flexible mindset and a strategic view of the entire landscape, both buyers and sellers can craft agreements that deliver lasting value.