

Efficient (and Creative) Deal Making

How to Get It Done

**Presentation at the
European Business Development Conference
Antwerp, Belgium
November 23, 2015**

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How to find the best opportunity

- Strategic fit?
- Funds available?
- Lign up sponsor early, get support
- Selection criteria: the 5 Rights
 - Target -Tissue - Safety - Patients - Commercial
- Thorough Due Diligence
 - Don't hide weaknesses – propose mitigations
- Clinical challenge meeting



Scoring chart to identify the best partner (illustrative)

Candidate	Wtd. score	General Cap 10%	US Mktg* 35%	EU Mktg 5%	Financials** 30%	People / Alliances 5%	Regulatory 5%	Development 5%	Ops / Manu- fact. 5%
A	90%	9	9	9	9	9	10	9	7
B	77%	8	8	7	8	6	8	6	7
C	53%	9	6	5	3	7	8	8	2
D	51%	7	4	8	4	8	5	6	8
E	48%	4	5	0	5	5	6	5	6
F	42%	6	3	6	3	7	7	5	7
G	38%	5	5	5	1	5	4	6	5

*: Differentiating Strategy, positioning against other compounds of the same MoA, driving category growth, launch plans, speed to market

** : Sales forecasts, credibility of forecast sensitivities, brand P&L, proposed deal structure and terms



Capabilities presentations: key learnings

Do:

- Make commitments
- Create great materials
- Show energy of presenters
- Balance senior leaders and passionate subject matter experts
- Show cohesive unit of presenters
- Rehearse, leave nothing to chance
- Great story
- What is unique about you
- Break up presentation
- Research your assessors

Don't show:

- Poor quality
- Late pre-read
- Aggression/arrogance or lack of team interaction
- Lack of understanding of the brand, looking to partner to help build strategy
- Boring presentation
- Description of advertising campaigns, mock up instead!
- Lack of emotional connection
- Lack of attention to detail
- Hold back value – no second chance



How the internal deal team should proceed

- Spirit of cooperation/shared interest
- Focus on delivery of results
- Split responsibilities
- Get critical insights from key functions
- Decide on best offer; leave space for increased bid
- Go for speed
- No leaks!
- Share analyses but verify independently
- Don't panic
- Keep sponsors and stakeholders tightly informed



Successful Negotiations

- Negotiation Style
 - Establish relationship
 - Respectful
 - Trustworthy
 - Keep commitments
 - Deliver when promised
 - Don't backtrack and reopen
 - Empowered
 - Be open and upfront with issues
 - Revisit later if solution is not straightforward
- Find concessions valuable to the counterparty
- Package concessions
- Balance between internal/external negotiation
- Simple decision making; resolving all details?
- Keep in mind the deal has to live after signature



Negotiating the contract: Financial considerations

- Acquiring business or asset?
 - Tax considerations
- Structure of upfront, milestones, sales-related payments
 - Pay aggressively for the right assets
 - Money at risk
 - Performance incentives
 - Contingent value rights (consider their valuation for accounting purposes)
- P&L
 - Who takes on the P&L
 - Whoever has control must bear it
- Tax
 - IRS meaning of the word "partnership" for European companies
 - Profit share or royalty?
 - Control
- eIRR / eNPV / % share of NPV
 - Appropriate share is based on stage of asset – how much has the licensor done before?
- Payback period
- Co-funding arrangements
- How to react to (alleged) higher offers from third parties



Negotiating the contract: Non-financial considerations

- Governance/Control
 - During Development and Commercialization
 - Impact on other assets or territories of buyer/seller
 - Escalation and arbitration
- Performance: commercially reasonable efforts
- Continued supply
- Intellectual property
 - Right to exclude others
 - FTO vs. exclusivity of assets
 - Who pays for prosecution, litigation
- Length of term and termination (for convenience, performance, and breach)
- Transitional services
- Change of control



HR considerations (asset purchase or M&A)

- Taking over employees
 - Scope of people transfer
 - E.g., people spending >50% of their time in the business or with the asset
 - Transfer date preferably at closing - necessary work can be done under services agreement
 - Automatic Transfer vs. Offer and Acceptance
 - Check for legislation in each country
 - Generally, if business transfer is a share purchase, automatic transfer
 - Terms and conditions
 - Substantially similar salary, cash incentives and benefits in aggregate (be fair and reasonable opposite existing employees)
 - Who pays for bonuses, commissions and other performance payments pre- and post-closing
 - Pension liabilities
 - Relocation terms (better of the two companies' schemes)
 - Who pays for terms and cost associated with decline of relocation
 - Guarantee of employment for a period of time?
 - Employees under investigation
 - Non-solicitation



HR considerations (cont'd)

- Retain people
 - Existing equity schemes
 - Vesting of existing options, restricted stock units etc.
 - "single trigger" vs. "double trigger"
 - Sr. mgmt and staff, if shareholders, may benefit from upfronts and CVRs
 - Existing scheme may provide focus on achievement of milestones
 - Acquirer should ensure that schemes pay out from milestones and are not additional to milestones
 - Beware of potential of conflict over earn-out distribution schemes
- To be a good seller
 - Identify "in scope" roles and be fair
 - Providing employee information to buyer at the right time
 - Communicate with employees
 - Initiate consultations in a timely manner
 - Plan communications with buyer
 - Retain appropriate employees to support transition, long-term services



Hart Scott Rodino filing

- HSR filing is required if
 - Transaction affects US commerce, **and**
 - Value of acquired assets/equity is >\$76.3m. **and**
 - Annual sales or total assets of the acquired/acquiring party is >\$152.5m./\$13.5m. **or**
 - The acquired asset/equity is value is > \$305.1 m.
- Required documentation
- All analyses/reports/emails etc. prepared for officers/directors of the acquiring company for the purpose of evaluating the acquisition
- Waiting period rules
 - Review takes 30 days but can be quicker or longer. Do not integrate businesses until HSR clearance is obtained
 - Parties need to remain separate entities during waiting period
 - Planning for post-closing integration ok, but **not**
 - exercising control over the acquiree, excessive coordination of businesses, integrating infrastructure or personnel, sharing competitively sensitive information
 - Negotiating/contracting with acquiree's suppliers, CROs, third parties



Activities before, at and after deal signing:

- Plan ahead for press release
 - Joint or each party separately
 - Coordinate text between both parties
- Prepare internal Q&A document
 - Decide what can be said to journalists and analysts
- Sign the deal
- Hold kick-off meeting
- Be prepared for intense but enjoyable work after closing
- When appropriate, submit SEC filings and other IR communications



Take-home messages:

If you follow these points you will be well positioned to create significant value:

- **Select the right product**
- **Select the right partner**
- **Focus on capabilities**
- **Design the optimal deal structure**
- **Be upfront on any issues**
- **Negotiate with respect and commitment**
- **Be creative to find alternative solutions if needed**
- **Employees created the value - treat them fairly**



Thank you for your attention!

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