The CFO Leadership Council

Authored by Joseph Feldman

Key Success Drivers In Deal Negotiations: Part III in Acquisition Strategy Series

Posted by [John Gimpert](#) on Wed, Jun 06, 2018 @ 09:57 AM

This article is part of a series dedicated to acquisition strategy, and authored by Joseph Feldman, President of Joseph Feldman Associates. More info on Joseph can be found by scrolling below.

Plenty of ink has been spilled on negotiation strategy. Some useful, some less useful (or simply not my style). “Getting to Yes” by Roger Fisher and William Ury is a personal favorite, though experience probably remains the most valuable resource.

As such, this blog post will be limited to negotiation-related observations and recommendations useful to a CFO specific to business acquisitions, particularly private transactions in the middle (or lower middle) market. We’ll consider the following:

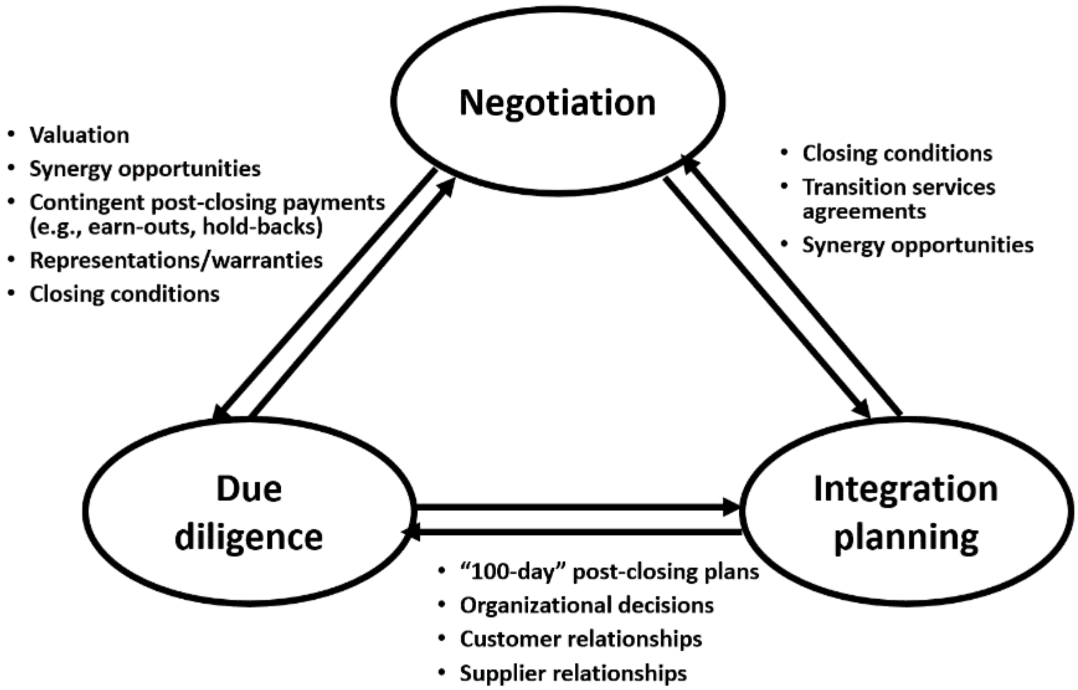
- Deal negotiation vis-à-vis due diligence and integration planning
- More than just a purchase agreement
- The typical phases of business acquisition negotiation
- Courtesy

Deal negotiation vis-à-vis due diligence and integration planning

Key success drivers of deal negotiations will include the following:

- Price and other financial terms enabling a value-enhancing outcome
- Avoidance/mitigation of post-closing surprises to extent possible
- Groundwork established for post-closing relationships between buyer and seller
- Validation of investment thesis and go-forward operating plan

With these drivers in mind, negotiation should be an effort well-coordinated with due diligence and integration planning… the triumvirate of an acquisition campaign.



Consider synergy opportunities as an example of the inter-relatedness of negotiation, diligence and integration planning. Synergies refers to the potential for a deal to drive incremental revenue, improved production/sourcing, and reduced expenses. These possibilities for value must be clarified through the course of assessing any particular deal, hopefully evolving from an idea of what's possibility to a plan for realization.

- Due diligence analyses can provide a range of inputs to confirm, refute, modify or otherwise shed light on potential synergies.
- These diligence findings may inform numerous aspects of the deal negotiation, including valuation, representations/warranties, contingent post-closing payments, documentation of company agreements, among others.
- Similarly, diligence findings may inform specific action plans to be implemented post-closing, whether related to personnel decisions, third-party relationships, or prioritization of post-closing goals.
- Negotiation of representations and warranties may identify additional questions or analyses that merit a second look at complete diligence, if not new areas of diligence not previously considered.

- Integration planning for synergy realization may identify certain risks or uncertainties appropriately addressed in deal negotiations, such as closing conditions, financing-related performance commitments.

CFO can and should be the advocate for investing in diligence and integration planning coincident with negotiation. This is not to suggest that all these efforts are "fully" resourced throughout the effort; varying level of emphasis and some dependencies will dictate otherwise.

The temptation to array things sequentially (i.e., diligence, then negotiation, then integration planning) risks lost opportunities for the iterations described above. Or said differently:

- "Due diligence is never done"
- "Can't start integration planning too soon"

Deal negotiations: more than just a purchase agreement

Concurrent with negotiation of the acquisition deal with the would-be seller, there are multiple other potential negotiations that will require attention and resources from the CFO and the deal team, for example:

- New sources of financing, whether equity or debt
- Employment agreements with key executives
- Approval/consent from buyer's owners, lenders
- Internal alignment of the management team to pursue the deal at the valuation and on the terms and conditions available

As with the negotiation of the business acquisition, these related negotiations will influence and be influenced by due diligence and integration planning efforts, with the fundamental economics of the transaction never far from view.

The typical phases of business acquisition negotiations

For the uninitiated, it's tempting to think of acquisition negotiation as basically about price and that other aspects of a deal are simply steps to be completed and boxes that need to be checked (e.g., due diligence, legal documents, shareholder approvals). To be sure, agreement on price is central to a deal, though the processes from introduction to a completed deal may be better prepared for as a courtship.

And that courtship will involve a series of defined phases, often defined by milestone documents indicating provisional agreements between the parties, such as the following:

- Indication of interest (IOI)– provisional statement by the would-be buyer regarding valuation and their financial and other qualifications to engage in negotiations; an IOI may be prompted by an investment banker or business broker representing the seller, or may be initiated by the would-be buyer to indicate serious desire to explore a deal.
- Letter of intent (LOI) – More formal and more definitive (though typically non-binding), a letter of intent serves to further validate interest in a deal and the

primary terms and conditions for proceeding, as well as key conditions that will need to be resolved in ongoing negotiation

- Definitive purchase agreement – final documents for transfer of ownership, payments to be made and numerous other terms and conditions essential to the agreement
- Closing documents – When time is required between the signing of the definitive purchase agreement and the transaction becoming effective, there may be additional "closing documents" that confirm the completion of those required activities. These could include, for example, financing documents, regulatory approvals, approvals from current lenders or owners, and operational matters to be dealt with by the seller.

In the case of transactions involving privately-owned firms, it's important to recognize that the above "formal" negotiation processes are complemented by "informal" interactions between buyer and seller that often prove make-or-break for a deal. As such, here are some notable "informal" negotiation phases in an acquisition process:

- Every interaction between a prospective buyer and a prospective seller, including interactions involving their representatives (e.g., lawyers, third-party experts for diligence, investment bankers)
- Yes, that includes casual interactions with management
- Yes, that includes dinner with senior executives or management team
- Yes, that includes interactions with the maintenance staff or customer service representatives during a facility visit

Courtesy

Some final words of wisdom from an experienced deal attorney:

> *"The use of politeness, graciousness (towards the other side) and humor are greatly undervalued in acquisition settings. If [an M&A team] can relax and be polite and gracious towards the other side, it will achieve a lot more of its goals."*

About The Author

Joseph Feldman is President of Joseph Feldman Associates (www.josephfeldman.com), a Chicago-based corporate development consulting firm founded in 2003. The firm provides acquisition and other strategic transaction consulting for growing companies and their investors.

Contact Joseph at jf@josephfeldman.com.