International Deal Makers: The Art of the Deal

A large body of literature has emerged in recent years to help executives in their negotiations to navigate possible differences in corporate protocol. Equally treacherous deal making, that's often overlooked in this body of literature, is the process involved in negotiations. Irrespective of whether you're a shipper growing your practice in a global context, or an executive at an expanding 3PL, this article offers advice on how to mitigate possible hurdles on the road to yes.

by Jim Davidson

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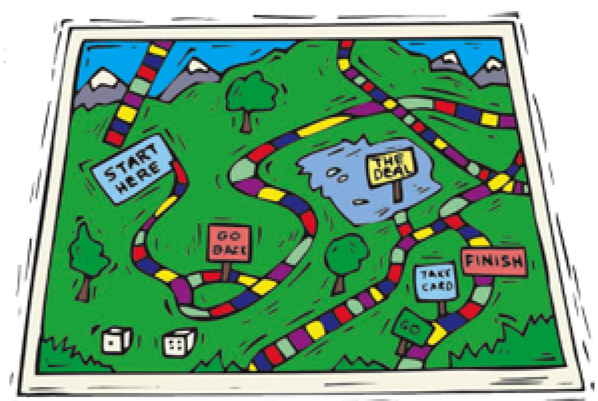

Now that the dust has settled and the ink is dry on the contract, I'm sure you'd like to read the gory details of how Wheels Group acquired the Chicago-based Clipper Group. After all, corporate acquisitions can be bloody affairs with plenty of pain and carnage, particularly for unsuspecting employees. This isn't one of those times. The negotiations went very well and everybody won. In fact, this happens to be a very positive story about the benefits of vision, hard work and perseverance.

Our company was created nearly twenty years ago from a then visionary idea that logistics was more than just procurement of transportation services and it needed to be a top-level strategic consideration. We've built our company on that belief, while constantly containing and reducing costs and improving corporate service and performance. As a result, we became expert problem-solvers, a go-to company with no debt. We improved our own business practices by making our customers' businesses run more effectively. We were often of interest to others as a potential acquisition, but we had no ambitions ourselves to acquire another company. That is, until recently.

So what changed? An opportunity arose that we couldn't refuse, which represented significant value to our customers, employees and shareholders.

When we first entered into acquisition mode several months ago it was primarily with our customers in mind. Our objectives were to acquire a stronger U.S. presence, increase coverage and buying power, and further enhance our capabilities as a North American logistics provider. We were very fortunate to acquire a viable but under utilized U.S. subsidiary that specialized in temperature-controlled intermodal and highway logistics.

Unlike most executives, who may never know firsthand the challenges of a corporate merger, this wasn't my first encounter with business consolidation. During my forty some years in transportation and logistics, I've been involved in four acquisitions, two inter-company mergers and two start-ups, all at the executive level. From gun-toting Teamsters to back room bankers ready to squash the deal, I've seen it all. While every merger is unique there's one common challenge - the bargaining process. In my experience, the hardest part of doing any deal is actually doing the deal. Everything rides on your ability to negotiate. The more skilled you are as a negotiator, the more successful you will be at achieving winning results.

Plenty of business consultants will offer advice by emphasizing other concerns. Pick an appropriate target. Don't overpay. Have a clear vision of integration. Manage change. Provide highly visible, strong leadership. Don't lose sight of your customer. These are significant aspects of corporate mergers. However, if the buyer lacks the ability to hammer out a comprehensive deal that ends with their money in the seller's bank account, then they have failed on all counts.

The paramount key to negotiating is establishing trust between the buyer and seller.

Simply put, trust is the ability to have confident reliance on the integrity of everyone involved in the deal. It means knowing that financing is in place and won't disappear, and that you can take people as saying what they mean and meaning what they say. That you can take them at face value and not be constantly looking over your shoulder. It comes from possessing accurate, up-to-date information, having dependable financial backing and, most importantly, establishing and maintaining open and honest communications.

What makes trust so important is its impact on the bottom line. Without trust the deal will cost more money, time and resources.

The process of consolidation through negotiation is all about satisfying the interests and rallying the efforts of everyone "at the table". Not an easy task when you consider the number of people involved in a corporate merger. It's not just the buyer and the seller. It's all the other interests that are present and must be accounted for.

The first group of people you need to satisfy are your lenders, many of whom you won't even lay eyes on. It's as if you're in an automobile showroom attempting to buy a car from a salesman who constantly needs to consult with his manager. As the car purchaser, you never get to see the manager. Risk approval is one-way communication. The decision makers at the bank hate uncertainty and loathe risk. They tend to remain hidden in the background, often mumbling, preferring to communicate through their lawyers. Accept it. You're in the land of OZ and you never, ever get to see the wizard.

Whatever you do, make sure all the financial details are worked out in advance and be confident of your financial backing before you reach your closing date. Otherwise you can be in for a big surprise: namely, bankers refusing to lend the money necessary to complete a deal.

At the bargaining table getting consensus can be extremely frustrating when you have to talk through a team of lawyers and accountants on both sides. Everyone has their own agenda and crowded discussions make it easy to lose sight of your objectives and fall prey to clouded vision. But wait. It gets better.

While the process for merging corporate entities has remained basically the same over the years, e-mail and instant text messaging have dramatically changed the way buyer and seller communicate with each other.

> "The point of the negotiations is to use every opportunity, every life experience to improve the game and increase the chances of winning."

Gone are the days of buyer and seller staring at each other across a table. While the occasion will arise for at least one sitting at the table, conversation isn't what it used to be now that questions can be asked and answered via personal communication devices. I can remember a time when you kept an eye on what you knew to be a gun in your adversary's breast pocket. Now intimidation comes from another source as eyes are not-so-discreetly drawn to Blackberrys and cell phones. Everyone is either reading or writing their latest text message in a long line of overlapping electronic conversations that take place even as person-to-person communications continue across the table. A lawyer clandestinely asks the client if they agree with what has just been stated before saying anything more out loud. The client answers back with a few key strokes. All while sitting in front of opposing counsel and their client. Never has communication been better and in such a mess.

Conference calls were no different. While sitting in my office on a call with our lawyers, the seller and the seller's lawyers, I knew that text messaging was moving at breakneck speed. Only now the flurry of e-mail activity need not be cloaked.

Electronic communications made negotiations infinitely more complex and impossible to contain within traditional business hours. In our case, principal players were scattered across North America in offices in Dallas, Atlanta, Chicago, Fort Smith, Arkansas, Mississauga and downtown Toronto. We were totally dependent upon electronic links 24/7.

Never has the sound of my Blackberry beeping been more persistent. Yes, you can turn it off but you can never escape the e-mails, the voice messages, or the rising lawyers' fees based on round-the-clock activity. If you were on the master contact list, you were hooked. E-mails kept arriving well after midnight.

Unfortunately, in a corporate merger you can't cut the clutter of electronic communications. And, as the buyer, we got to pay for the privilege of keeping everyone in the loop.

Which leads me to an important point to remember. Be mindful of keeping tabs on all of the lawyers' fees, particularly the lawyers representing your bank.

As I mentioned earlier, bankers often speak through their lawyers, even after the deal is done. Sometimes the exchanges are extraneous and needs to be curtailed.

It is also important to note that often the lenders, lawyers, and consultants have differing agendas during these transactions and theirs could pertain to a significantly shorter-term view than that of the buyer.

My final observation is two-fold. First, there's nothing like the sigh of relief and sense of accomplishment that comes from a well-executed, artfully-negotiated corporate merger. Second, by looking at the bigger picture it's easy to conclude that life is a negotiation. Whether it's staying on a diet, navigating through traffic or acquiring a company, we are constantly bargaining for results. The point of the negotiations is to use every opportunity, every life experience to improve the game and increase the chances of winning.