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Selling your business to a competitor can fetch a better price

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For many owners, a company's value represents the accumulation of their life's work. Successfully capturing this value by selling the company for the greatest possible price is essential for owners to fund retirement and finance their life's dreams and goals.

One way to increase a company's sales price is to sell or merge the company with a competitor who believes that the combined value of the two enterprises will be greater than the sum of the parts. Competitors are interested in how the company's business dynamics and financial fitness will increase their own company's value. This can often result in a sale price at the higher end of the range of market values.

Such sales, however, are fraught with risks for the unwary, naive or legally ill-prepared seller and, if not completed, may result in significant damage to a company's ongoing business and even lawsuits.

The Strategic Buyer's Strategy

Competitors are often willing to pay a higher price for a company because they seek much more than a financial investment. Competitors are strategic buyers who seek immediate synergistic benefits.

In terms of markets, those benefits may include broader product offerings, expanded market share and new customers, and an expanded geographic reach and better distribution channels.

From a manufacturing perspective, synergistic benefits may include a trained workforce, expanded core competencies, sophisticated technology and other intellectual property. Also, buyers may gain access to better facilities and equipment, as well as gaining greater control and consistency in their supply chain.

Financially, strategic buyers may gain economies of scale resulting from combined purchase power and elimination of duplicate functions. Tax-saving strategies may emerge as well.

Other synergistic benefits include reduced competition and perhaps better pricing leverage; increased market visibility, branding or position; and diversification of products or services.

Strategic buyers are more likely to overlook weaknesses that would ordinarily reduce a target company's value because they may be able to address those concerns with an already-existing solution. After assessing the existing and potential synergistic benefits and discounting risks that might be daunting to other buyers, a strategic buyer is often able to offer a higher purchase price than other buyers.

Proceed with Caution

Selling your company to a competitor is not without risks. Negotiating with a competitor involves exchanging intimate details regarding the health and success of your company. While most companies conduct themselves with integrity, there is always a possibility that the deal will fall through, or worse, the competitor may enter into negotiations merely to exploit a company's vulnerability and gain market intelligence. In the end, a competitor remains a competitor until a formal agreement is signed – and, ultimately, until the deal closes.

Protect Yourself

Whether you are considering selling your business to a competitor or a competitor approaches you with a transaction proposal, you should develop a thoughtful strategy for approaching the courting process to protect your interests.

The best way to protect yourself is always to be ready for an unsolicited offer. Long before a competitor makes an offer to buy your company, make sure that you are prepared for a successful corporate event.

Keep these tips in mind:

• Know the value of your business. Competitors may start out low to obtain the best deal possible. Don't assume the first price is the best price.

• Get to know your suitor. Before revealing sensitive information, explore the buyer's intentions in a face-to-face meeting and ask lots of questions.

• Future business plans? Is the buyer's explanation rational and convincing?

• Examine the buyer's track record. Has the buyer purchased another company before? Do the principals have a reputable transaction history?

• Does the buyer have the financial strength to acquire your business? What acquisition structure does the buyer intend to use?

• What financing is available to the buyer? Does it cover your estimated value? Will the buyer provide documentation of potential financing?

• Do you agree with the buyer's valuation process? The answer may indicate whether a successful transaction can occur.

• Before you release confidential information about your company, require the buyer to execute a nondisclosure agreement and a confidentiality agreement complete with non-solicitation provisions to protect your company's valuable components – intellectual property, employees, customers, vendors/suppliers and proprietary procedures.

• The buyer's formal offer, contained in a letter of intent, may require you to decline to discuss any competing offers for a defined period. It is better not to agree to a no-shop clause, but if you must, require that the potential buyer deposit some earnest money.

• Reveal sensitive information incrementally. Begin by releasing a high-level set of business documents – just enough to whet the buyer's appetite. Withhold information regarding customer lists, employee names, supplier lists or detailed financial information until a formal purchase agreement is signed.

Most importantly, the best protection in any negotiation situation is the knowledge that you don't need to sell. Selling a company by choice provides flexibility and power for the seller.

Prepare Yourself for the Transaction

Your company is part of you. The sale of your company involves intangible attributes including loss of control in the company, a change in business culture and family culture, staff reductions and perhaps the end of a legacy. Selling to a competitor involves putting aside your competitive feelings and recognizing that the acquisition of your business could take your competitor's business to the next level (which could translate into financial gain for you and your company).

The sale of your business should be the rewarding culmination of years of your hard work. Strategic planning, thoughtful preparation and careful due diligence are essential to a successful sales transaction, especially with a competitor. An experienced attorney can help you design a thorough exit strategy and assist you in navigating the complexities of transacting with a competitor. Moreover, proactive planning will increase your confidence, certainty, and power in the negotiations process, subsequently providing greater opportunities to maximize your company's value and your satisfaction.

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