Growth by acquisition: Strategies for improving transaction success

February 06, 2020

In today's business market, acquisition opportunities remain highly sought after, both by strategic buyers looking to grow and by private equity firms looking to establish new platforms or strengthen their portfolio companies. Low interest rates are driving already-hot markets and, even with a potential downturn looming, acquirers with strong balance sheets will likely be able to continue pursuing opportunistic deals. This is especially true in slower markets, such as the oil and gas sector, where sellers are seeking a much-needed capital infusion.

However, as with all growth opportunities, acquisitions can present significant risk. To mitigate it, you need a strong plan. This includes developing a strategy that ensures the deal makes sense, anticipates the unexpected and adds real organizational value. Here are five steps to follow to begin establishing such a plan:

1. Start with the end in mind

Before thinking about acquisition as a growth opportunity, you need to determine your overall business goal – whether the aim is to grow, diversify revenues or something else entirely.

With those acquisition goals firmly in place, it becomes possible to assess acquisition targets more selectively. One way to approach this step is by envisioning the eventual post-closing integration. This exercise allows companies to fast-forward into the future and explore how the merging companies will ultimately fit together. If you cannot reconcile what a particular target offers with your acquisition goals, this could be an indicator that the deal is not an ideal fit.

2. Assemble a strong team early

Once you determine that growth through acquisition should be a pillar of your business strategy, the next step is to assemble an acquisition team. This team should be comprised of two camps: internal stakeholders (subject matter experts) and external advisors (outside counsel and financial advisors).

The internal team members will be able to offer their particular operational expertise to a specific deal area. Conversely, your external team will provide guidance on how those issues need to be addressed in an acquisition context. For instance, where an internal manager flags potential supply chain issues in relation to a target company, an external professional team will help determine how to address those supply chain challenges as part of the deal documentation process.

When working through this stage, organizations would be well served to identify their internal team before getting the transaction underway. This way, you can make sure the internal stakeholders understand the deal process and their responsibilities within it. This will also position you to identify the role your external advisors should play – from identifying potential targets, helping to value a target company or conducting due diligence to documenting, negotiating and executing the transaction.

3. Clarify the risks

Before entering any deal, it is important to have a firm understanding of your organization's risk tolerance. If a potential target presents inherent risks, you are not confident you can mitigate, or if it does not fit into your overall strategy and could damage your reputation – these challenges need to be identified early.

Notably, no transaction is without risk and that risk should not necessarily impede an acquisition. Your internal deal team and external advisors can work together to identify and allocate risk between vendor and purchaser in the deal terms. Perhaps by requesting specific indemnities or negotiating an earn-out structure.

4. Pay attention to transaction structures

From a legal and tax perspective, companies should determine whether their intention is to acquire some or all of the assets of the company, acquire the shares of an existing entity or amalgamate. This can help determine how the post-closing risks and rewards will play out.

This exercise can also help you better evaluate an impediment in your own structure. For instance, if there is a debt covenant that restricts acquisitions or a contractual term that requires your company to obtain consent before doing a deal, it is imperative to be aware of the need for those waivers or consents before deal negotiations begin so you can consider alternatives to structure around those issues.

5. Keep reputation front-and-centre

How an acquisition team conducts itself matters as this conduct can dramatically affect an acquirer's reputation. For instance, it is considered poor form to offer a sky-high purchase price just to secure exclusivity on a transaction and then, after negotiations begin, dramatically lower the price after rethinking the numbers.

To prevent these types of missteps, advance preparation is key. Sellers, and their advisors, try to avoid bidders that appear disorganized. Even if the deal goes forward, your disorganization could end up affecting the deal structure to your detriment.

Preparation pays off

While these steps are by no means comprehensive, they do represent some important considerations to keep in mind if an acquisition is in your future. Beyond making it easier to close a transaction, they can help ensure that you pay the right price for a target and avoid assuming more risk than intended.

By conducting thorough due diligence up front and determining how that plays into the transaction, your company will be more aware of what it is getting into and what you are paying for. This will also allow you to implement the proper processes and establish appropriate expectations for future acquisitions so next time around it will seem much less daunting.

By

Peter A. Bryan, Andrew Hennigar

Expertise

Private Company, Private Equity, Corporate Commercial, Mergers & Acquisitions, Capital Markets, Tax

---

BLG | Canada’s Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749