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# Managing the Merger Process

2012 was a buoyant year for law firm mergers. The level of activity was high – particularly internationally but also nationally in a number of jurisdictions. Beyond the numbers, and more significant, is the likely market impact of some of these mergers. The emergence of new international firms will add to the choice for clients seeking advisors which can provide services across multiple jurisdictions; and through their very existence these firms will likely stimulate additional demand. In parallel, at a national level significant combinations have occurred in a number of jurisdictions that have the potential to change the competitive landscape materially: mergers creating dominant firms focused on particular market sectors or geographic locations and also the emergence of new regional and national firms – each with considerable scale and reach compared to existing competitors.

Given the likely market impact of some of these mergers we expect a heightened focus on mergers in 2013 as more firms recognize that realizing their strategic aspirations will require greater capability, scale and reach than they can realistically build organically. Against this background we thought it timely to share some of the key principles of managing merger discussions. While many initial discussions between firms rightly do not progress very far, a large number of potentially very good mergers are also not completed and the reasons for this frequently lie in inadequate management of the merger process.

In particular, we would highlight five aspects of the merger process where breakdowns occur and which are avoidable:

## Articulation of Strategic Rationale

Clearly if the strategic rationale for a merger is weak discussions should not proceed. In our experience, however, the business case is often inadequately developed. In other words, there is a stronger rationale for a merger than ever gets adequately articulated. Without a strongly articulated rationale discussions are much more likely to break down – particularly at the almost inevitable points when difficult issues arise; there needs to be an aspirational upside to motivate the development of solutions to such challenges. Furthermore, without a strongly articulated business case, the almost inevitably skeptical partners within one or both firms are more likely to find voice and support. And the business case needs to provide a rationale from multiple perspectives: client, market, partner, financial, etc. The cardinal principle here is to ensure that the business case is well articulated before starting to tackling the detail.

## Process Planning

Merger discussions and negotiations should only proceed in earnest once the strategic rationale has been clearly demonstrated and quantified. (It would be wrong to consider that the business case is necessarily finalized at this point since it will likely be developed and refined as discussions proceed.) At this point it is critical to develop a comprehensive plan and indicative timetable for future discussions. This is in part to ensure that all involved recognize at the outset the scope and scale of the issues that need to be agreed and in part to manage expectations and ensure realism – among both those directly involved in the discussions and other partners. Discussions rarely go entirely to plan but this does not take away from the value of planning – with the resulting plan providing the vital framework against which progress can be managed. Planning also helps ensure that both firms have similar expectations of timing. If one has a greater sense of urgency than the other both will likely be

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frustrated. Again the principle here can be easily stated: develop and agree to a plan and timetable for managing the discussions - there is no substitute for effective project planning and management.

## Effort & Resources

In our experience there is an almost universal under-estimation by firms of the effort and resources required to complete a merger. This can be in part related to the time required to resolve unanticipated issues but in the main tends to be related to the underlying complexity of merging law firms and the breadth of issues that need to be addressed. Of course many such issues do not have to be resolved prior to merger - they can be left to be resolved after the merger has taken place. But the drawback with such an approach is that the merged firm starts life with an overly introverted focus – addressing internal issues of organization and structure or profit sharing or management roles or approaches to client relationship management and business development or the role and performance expectations of partners or technology and accounting integration – rather than being focused on the far more important issues of improving service to existing clients and winning new clients. The time and commitment required to complete an effective merger are considerable. Those involved must be able to give sufficient priority to the role or there is a high risk that the talks will drag on too long, enthusiasm and momentum will be lost and eventually the process stall entirely.

## Hurdles

Both unanticipated and expected hurdles and challenges are likely to arise during merger discussions. The stronger the business rationale and the relationship between the two firms the more likely it is that solutions will be found. As with all aspects of negotiations the primary consideration in addressing such challenges should be maximizing the competitiveness of the new firm rather than adopting the approach or proposals of one firm or the other. And considerable value may be derived from involving independent expertise – in part to help ensure that this principle is followed but also because of the fresh perspective and wider experience that this can bring. In particular, this is of value if the merged firm will be competing in a market position and be of a scale very different from that of either legacy firm.

## Informed Partnership

Considerations such as the scale of a firm, its culture and the impact of the potential merger will influence the level and detail of communication between a firm's management and its partnership during merger discussions. Experience, however, demonstrates that in most circumstances it is more effective to keep a partnership informed of progress as discussions proceed and seek partners' input, endorsement and commitment on a step-by-step basis rather than attempting to 'sell' what may be regarded by partners as a done deal. Mergers should not fail at the final hurdle of partnership endorsement but that is where rather too many still do (or alternatively the potential merger never gets proposed to the partnership because Management recognize there is insufficient support or a risk of a partnership split). Keeping the partnership informed and consulting as appropriate requires time and energy but it results in the case for merger being tested throughout the process, allows Management to maintain a close sense of the mood of the Partnership and, most significantly of all, builds commitment and reduces the risk of failure at the final stage.

A poorly managed merger process carries a high opportunity cost - it risks failing to realize an opportunity, wastes time, frustrates partners, compromises the chances of a future merger, saps energy and is a dangerous distraction from the all-important task of servicing clients. It will either deliver nothing as the merger simply doesn't occur or, if it does, result in the new firm not starting from as strong a position as it might with too much resource, time and goodwill drained during the discussions and the new firm not being launched with the energy, enthusiasm and excitement it should.

Our experience is unequivocal: ensuring that merger discussions are effectively planned and managed has a significant impact on their outcome. The worst is to merge when one shouldn't. Not far behind is to fail to merge

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when there is a strong opportunity to be realized or to manage the merger process ineffectively so that the full potential of a merger is compromised.

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