

SHEARMAN & STERLING

NEGOTIATION: New Era, New rules

March 24, 2021

A Chief Executive Exclusive Event

MANUFACTURING M&A: DEALMAKERS FORUM

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New Era

- Technology and data at our fingertips have increased the pace of dealmaking exponentially
 - Pandemic forced everyone to use and rely on **technology** more than ever before
 - **Communication** has been instantaneous, video brought it to a new level
 - **Data** is more available than ever before
 - DD, valuation, background checks
 - **Leaks** have also become instantaneous
 - Rumors are picked up and widely spread in shortest possible time
 - Any news leads to an immediate market reaction, often without human involvement
- **Pressure on buyers** to get things right and make an acquisition work
 - Valuation
 - Regulatory approvals
 - Cultural and ESG fit
 - Integration
- **Pressure on sellers** to get the best deal
 - Highest price
 - Deal certainty
 - Limited post-closing value impact



New Era (cont.)

- **Search for growth** opportunities together with **globalization trends** made the **world a global market place for M&A**
 - **Cross-border M&A** activity totaled **\$1.3 trillion** (out of total volume of \$3.6 trillion) during full year 2020, a **12% increase** compared to a year ago and the strongest full year period for cross-border M&A since 2018
 - **Global market place** creates a particular dynamic
 - **Regulatory** hurdles
 - **Currency** issues
 - **Cultural** differences and expectations misalignment
 - **Logistics**, location and time difference



Why do we negotiate?

- If **we** and our counterparty **have the same view** on the terms of a proposed transaction, we **would not have to negotiate** - the buyer pays the price the Seller asks and agrees to the other terms and the deal is done
- Our **interests** and our counterparty's interests are **not aligned** though
 - **Buyer** wants to pay less and get more
 - **Seller** wants the opposite
- **Key** to successful negotiations is **clearly defining our interests** and goals and **even more** clearly understanding our **counterparty's interests**
 - **"Listen more talk less"** allows us to truly understand the other side's issues
 - They **may be looking for less** than we are willing to give
 - They also **may not be focused on** the issues we think they are focused on
- If we **show that we understand the counterparty's issues** and are **trying to address** them, **they are more likely** to try to **do the same**
 - **Let them "win"** some points so that we can **"win"** where it matters most to us
- Asymmetry in **leverage/market power**
 - Typically, **buyer** has **leverage** both in commercial and M&A negotiations
 - The leverage **shifts to the seller** if
 - In **commercial** negotiations, there is **scarcity** of the product (demand significantly exceeds supply)
 - In **M&A** negotiations, when the **seller can create competition** among buyers for the asset
 - **Auction** is a "seller's best friend"



Watch [video](#)

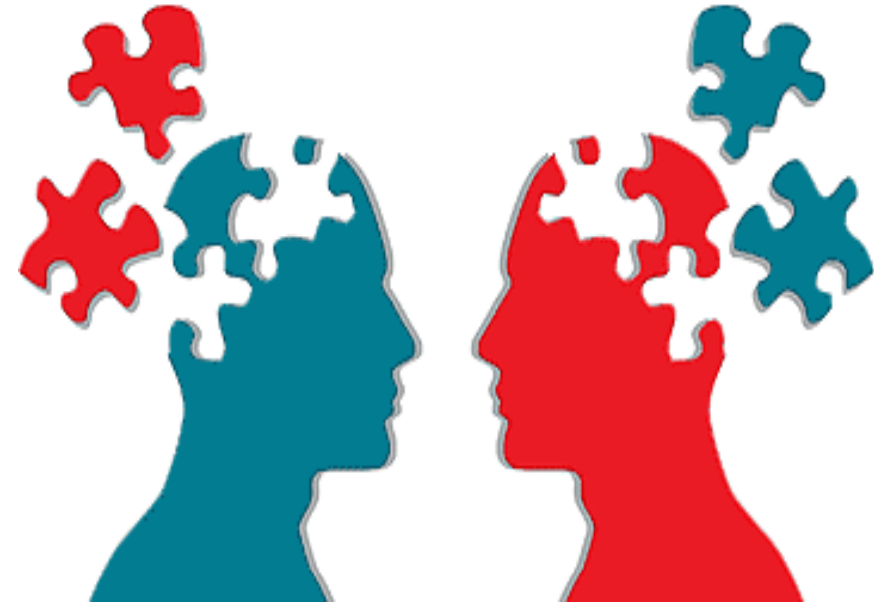
What do we negotiate?

- **Holistic approach** to determining **value** and **risks**
 - Upfront purchase **price** is but **one element** of value
 - A long-term **supply agreement** that is deemed ancillary to the M&A deal **may have value** several times **higher than** the purchase **price**
 - A **liability** exposure (e.g. environmental or product) **may destroy** both the **value** of the asset being bought and the buyer itself
- **Beware of a “salami-slicing”** approach by the counterparty
- **Incremental loss** of value is a **loss** – every time it happens, **reassess** if the deal still makes sense
- Work through **diligence** and look at the **results objectively**
- Is there a **“must-do”** deal - **do not fall in love with the asset or the deal**
- The **deal** is good only when it **makes sense** and only **at the right price**



Psychology of Negotiations

- **No negotiation** is the **same** as the **previous one**, even with the same counterparty
- **Reading body language** and **signaling** with our own
- “**Poker face**” when we are **not playing poker** may turn us into a “robo-negotiator”
- **Emotional vs calm** demeanor – what allows us to be in control?
- **Assertiveness** and **charisma vs aggressive** or **submissive** behavior
 - **Aggressive** behavior **backfires** while **submissive** behavior signals a **weakness**
 - Building **rapport and trust** with the counterparty is **key to success** – being assertive and charismatic helps us get there
 - How to deal with **counterparties projecting** aggressive or submissive **behavior**
 - **Cultures** define behavior
- Be an **observer** and be **aware of psychology** **but don't play a psychologist**
 - **Honesty and integrity** beats **gaming**



How to organize ourselves for negotiations?

- Have the **best team** for the job – internal and external
- **Check** on the team's **progress**
 - Ask for a **realistic assessment** of
 - the open **issues**
 - **timing** of solving them
- **Don't hold the team in fear** – people will not be open about real issues and will have hard time making decisions if they are not empowered
- **Trust and delegate** to the team, agree on positions and do not get directly involved unless and until needed
- When getting involved **in negotiating key aspects** of the transaction with the direct counterparty
 - **Get briefed** by the negotiating team
 - Prepare to **address key issues** but being **cognizant of other issues** that are open
 - **Have** the negotiation **team leader and your counsel with you** for the meeting
 - Often **miscommunications** happen if CEOs meet just by themselves
 - Your **counterparty** can **“play games”** if there is no one else in the room
 - **Stick to the agenda** and discuss the **key issues** and **let the negotiation team work out the details**
 - **Do not assume that the deal is “done” after that meeting**
 - Is there such a thing as **“details”**?



Identifying our ultimate goals and tactical goals

- **Ultimate goals:**
 - Total **maximum value** we are prepared to allocate to the asset
 - Cash or stock
 - **Upfront** purchase price
 - How will it be **financed**
 - Purchase price **adjustment**
 - **Liabilities, risks** and potential **value exposure**
 - **Deal risks** – what may derail the deal
 - What is the “**regulatory price**” for doing the deal?
- **Tactical goals**
 - **Buyer without an auction**
 - Buyer in an **auction**
 - **Seller without an auction**
 - Seller in an **auction**
- **Don't let momentum** take hold and **shift you away from the ultimate goals**
- On the other hand, **focusing too much on tactics** to take advantage on the counterparty **may backfire** long-term



Cultural gaps: expectations (“mirroring”) and reality

- **Be patient** and try to **understand** the **culture** we are operating in and **learn**
 - Do not “mirror”
- “**Negotiations is life**” in some cultures
- “Nothing is final until the **boss approves**” in other cultures
- “Being **on time**” or “ok to be **late**”
- “Coming across as **polite** does not mean your counterparty is **weak**”
- **Body language** is part of the **cultural** background
 - **Be mindful** about reading body language in an unfamiliar culture



What successful negotiators have in common

- Focus on the overarching/ultimate **goals**
- Stay **organized** and well **coordinated** with the team “in the trenches”
- **Measure** the **outcomes** as negotiations progress
- Don’t lose sight of the **big picture** while remembering that the “**value is in the detail**”
- If a **buyer**, don’t fall in love with the business you are evaluating
- If a **seller**, trying to take the last penny may cost you a pound
- “**Win-win**” is always better
- Build **bridges**, don’t widen **gaps**
- **Emotion** is not our friend, use it consciously only when you need it – **cool heads prevail**



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