Timing is Everything

When It Comes to Negotiating, It Pays to Make Time Your Friend

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We all know that timing is critical to success in life. In business, we can create good timing and better deals. It's called planning ahead. And it can make an enormous difference – a difference between profit and loss or success and failure. But all too often, we see a lack of planning and the resulting problems. Understanding the advantage of making time your friend and employing techniques to win timing battles can bring tremendous advantages to your business.

Consider the following timing "tug-of-war." Some landlords will put off talking about the terms of a lease renewal – and some tenants will ignore the impending expiration of the lease – until the tenant has no choice but to renew with its current landlord. This cuts off the tenant's ability to consider alternatives and bargain for the best lease terms, whether at a new location or for a renewal of the current lease. Plenty of businesses have health insurance plans for their employees, but don't even consider bargaining for a better deal until they receive notice of the premium for renewal of their existing plans. By then, these employers have already lost much of the opportunity to shop around for a potentially better deal and use that information to extract the best terms from their current insurer. Many private equity firms seeking to buy a company will tie up the prospective business seller with a letter of intent that binds the seller to exclusive negotiations. But these buyers also put in place a strategy that slowly squeezes the seller over time. Specifically, the letter of intent (LOI) will lock the seller into a fixed price for the sale of the business. Moreover, the LOI requires the seller to keep all of its profits in the business while the parties negotiate the terms of the purchase agreement. Over time, if the seller is doing well, cash accumulates in the seller's bank account – and all of this money will be turned over to the buyer at the closing. But the price for the sale of the business does not go up. Most sellers, all too eager to sell at the outset, fail to think through the ramifications of this arrangement. As time goes by, the sellers realize they are parting with a business that is getting more and more valuable and yet the price is not going up. In fact, if the buyer stalls, the deal improves for the buyer: same price, better business. This dynamic pressures the seller to make concessions in the negotiation of the purchase agreement and cave in on deal terms. In short, the buyer makes time its friend by creating a deal structure that improves the buyer's bargaining power over time.

MAKE TIME YOUR FRIEND

The key to making time work for you is to establish a negotiating environment that improves your bargaining power as time goes by. In negotiating the sale of your business, you could counter the buyer's tactics by insisting on two key ingredients. First, establish your right to any cash accumulated by your company once you have set aside a mutually agreeable amount of funds – you, not the buyer, should get the windfall from superior performance by your company. This alone reduces both the buyer's incentive to drag out the negotiations and the buyer's leverage to extract concessions from the seller. Second, instead of agreeing to a fixed price, insist on a formula that adjusts the sales price of your business based on unanticipated improvement or underperformance of your company operations during the time period from signing the LOI to closing on the sale. So long as your business is doing well, this formula discourages the buyer from delaying the deal or trying to wear you down and get a better deal. It should be noted that if your business takes a turn for the worse during negotiations, buyers typically either walk away from the deal or renegotiate a lower price for the purchase anyway. So you bear little risk asking for a price that goes up or down based on the results of your operations between the time the parties sign the LOI and the close on the sale.

Identify long-lead items. Borrowing from the wisdom of the construction industry, you can manage time most effectively if you identify "long-lead" items at the outset of every deal. In construction, smart contractors know that they need to identify the materials and services that will take the longest to obtain and order them right away. For example, a contractor may place an order for the structural steel supports for the building because they know it will take many months to fabricate these items. Likewise, they may order lumber and other materials that could be in short supply in the future and thereby avoid paying a higher price later as costs increase. They may even quickly enter into subcontracts with certain subcontractors that could be in high demand and hard to hire later. By taking these actions, the contractor reduces the cost of projects and helps ensure that the building will be constructed on schedule.

Plan Ahead. The same strategic thinking applies to every business. Wherever your company relies on the goods and services of others, you will get your best deals and results if you start early, obtain bids from competing suppliers and then – with the power of having alternatives – negotiate for the best bargain deal. Critical to achieving this type of success is creating an early warning system. Each department of your organization that buys the services of others should have a calendar that provides reminders of current contract expirations well in advance of needing a new supplier. Depending on the size and importance of the product or service you are obtaining from others, you may want to start years in advance. Also, you should have repeated reminders at critical stages of the procurement process and a desired schedule of expected progress against which you can match your success in achieving procurement milestones. That way, if you are seriously behind, you get a warning that you need to accelerate the process.

Beware of traps**.** Watch out for traps that will sabotage using time to your advantage. A classic pitfall is an existing contract that contains an auto-renewal provision. Under such a contract clause, unless you provide advance notice to the other party, your contract with the other side automatically renews on predetermined terms. This deprives you of the opportunity to shop for a better deal. You want to make sure that you can take advantage of favorable pricing trends – so always strike auto-renewal provisions before you sign a contract. In fact, if you can, obtain the opposite: an undertaking from your vendor that they will provide you with written notice, well in advance of contract expiration, of the date your deal with them ends. Whenever you negotiate a deal, try to make time your friend. With that ally, you have the leverage to walk away from a deal, seek alternatives and greatly improve your ability to get the best bargain.