Opportunities to Buy?

We have been approached over the past six months by huge numbers of prospective buyers of struggling competitors, who are asking about the potential to "bail out" these struggling competitors by merger or purchase. There are more companies today than in many years that are now thinking they might be stronger and better positioned to weather a sagging economy if they were a part of something larger and better capitalized. This can be a great time for opportune acquisitions, and today's article is written with the intent to help in those efforts.

The most common questions we hear are:

1. If I have a competitor who is struggling, how can I best approach them to pursue the possibility of acquisition?

This can be a great time to make a move toward potential additions, but the initial approach can be critical to the seller's receptivity toward putting something together. The initial call to a competitor should be only to the owner of the other entity, and should begin with the thought that the two entities combined could produce greater "staying power" for the future. It is usually gentler to begin such talks with mention of possible "merger" as opposed to direct "acquisition" discussion first thing. (Every merger is inevitably an acquisition by the controlling side to the deal, and yet considered attentiveness to retaining the best of both worlds can make an enormous positive impact in the relationship between parties.) You need to acknowledge that this is a highly sensitive and confidential subject, and that you will maintain confidentiality, and that you also want their commitment to be quiet and careful in any such discussions. You probably need to probe the seller's desires for longer term future employment in his current endeavor. If he mentions that he has considered or would consider retirement, and if you would want the company without that individual long term, be receptive. Mention that you could support such a move, as long as it wasn't too quick and had reasonable transition. Then, get a signed ND in place, and continue discussions. If the other owner makes it clear that he would only have interest if his role remained significant in the new combined entity, this is still worth continued discussion, if it's someone you think you could live with.

2. When should I discuss value issues with my prospective seller?

It is preferable to avoid value discussions at least until after you have seen financial data, and have had the opportunity to question the seller about recent trends and expected future prognosis. Sometimes the eager but weakened competitor may begin very quickly to probe about possible values, or even to indicate that they would only consider talking if values were at some specified level. Consider asking how the seller views his estimates of value, as a multiple of recent earnings. If the seller is one who views value based on an expected up-trending prognosis for the future, he may be receptive to being paid for such upturn as it is "proven" for the future. If the seller is silent about expected values, this is fine, and actually may be even better for you to begin discussions after you get a firm view of financial and operational histories. If the seller is losing money, or is making very little, the company's balance sheet will become far more critical in assessing potential value. Losing companies typically can command selling prices at something between liquidation value and book value of the entity to be sold. The more information you can get on real solid liquidation value of assets, the better for you to ascertain real market value of the entity, and for you to command reasonable financing from potential lenders for the transaction.

3. What are the earliest discussion points we should review in considering a combination of this type?

First, consider the relative cultures of the two entities to be combined. If one has long positioned themselves and the top quality force in their niche, and the other has long identified themselves as the lowest cost provider, you are likely to have difficulty blending the two.

Secondly, consider the role of the top executives as the entities move forward together. If there are strong second tier managers in the entity to be acquired, their enthusiasm about the combination is likely to be critical to the combination's success. Lobby to try to discuss the possible blend with those individuals before spending too much time or money on the potential combination.

Thirdly, consider the potential for combination of physical facilities. Often in smaller or middle market privately-held companies, either the owner holds real estate personally, which they lease to the company, or, at a minimum, the owner is likely to have personally guaranteed lease arrangements. It will be critical to be able to combine physical offices reasonably quickly, both to reduce costs and to blend cultures of the two entities into one stronger company going forward.

4. Are there M&A firms that are good at these sorts of transactions that might assist as we move forward?

The process of buying another company is one that really does, in every instance, create risk for the buyer. It is extremely valuable to have experienced help in assessing potential values, in devising solutions to the inevitable glitches that arise in discussions, and simply in spending the time necessary to do appropriate due diligence and ensure that you know what you are buying. Although many firms like ours spend most of their time representing sellers, they do also help with focused and well-directed buy-side engagements. Professional help reduces risk, and if done well, may also reduce net cost of the proposed acquisition.