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Strategic Alignment With Collaboration Partners Is Essential to a Successful Life Sciences M&A Exit

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In the midst of shifting political headwinds and a tight funding market, many life sciences companies are considering their M&A exit. Potential acquirers (both strategic and private equity) have plenty of dry powder and are ready to drive transactions to the finish line. However, in positioning themselves as acquisition targets, life sciences companies must carefully consider the impact of their existing strategic collaborations on any potential deal. Often, an existing collaboration can be a strong driver of M&A interest and value, but these relationships can also introduce complexities — making alignment with collaboration partners crucial for a seamless transaction.

Potential Restrictions on Sale

When a life sciences company becomes the target of a potential acquisition, it must consider whether any of its collaboration partners have direct or indirect influence over the transaction. Often, collaboration partners — entities or organizations that work jointly with the target company on specific projects, programs, or initiatives — enter into the collaboration as a preview of the target company, with the intent of later acquiring the subject asset or even the target company if the collaboration is successful. As a result, companies may first want to talk with their collaboration partners about their interest in making the acquisition. This can be challenging for a company that has multiple collaboration partners or that wants to test the market for an acquisition without signaling to its partners that a deal may be in the offing.

If the collaboration partner is not a potential acquirer (or is one of several potential acquirers), the target company will need to look at the underlying collaboration agreements for restrictions on any potential sale to a third party. In particular, lock-up periods and consent requirements may be stipulated in existing collaboration agreements. Lock-up periods may restrict the sale of the target company for a specified duration, while consent requirements may necessitate obtaining approval from the collaboration partner before proceeding with the acquisition. Additionally, the acquisition could trigger other penalties or give the collaboration partner a right to terminate the collaboration arrangement. This could be a particular concern if the collaboration is a significant factor in the acquiring the company’s interest in the target.

Collaboration agreements may also grant the collaboration partner representation on the target company’s board of directors, potentially influencing the acquisition process through voting rights or other abilities to affect significant transaction decisions.

Therefore, it is essential for the target company to thoroughly review its collaboration agreements to assess the extent of the collaboration partner’s influence on the potential transaction and to identify potential sale restrictions.

If such restrictions exist, the target company should consider proactively negotiating with the collaboration partner to obtain consents, waive penalties, or determine whether the arrangement will remain post-closing. It is also important to engage collaboration partners in open communication to ensure interests are aligned.

Confidentiality and Information Sharing

To ensure a collaboration partner is aligned with a potential acquisition, information must inevitably be shared. Relevant information should only be shared on a limited, strategic basis, and the target company must carefully consider its confidentiality obligations to both its collaboration partner and the potential acquirer.

It is not uncommon for the potential transaction and related discussions to be considered confidential information of the acquirer. Therefore, when negotiating initial confidentiality agreements and the letter of intent with the acquirer, the target company should evaluate if there are any collaboration partners that are essential to the transaction outcome and reach an agreement with the acquirer as to how much information can be shared with those partners.

Similarly, during the due diligence process, the potential acquirer will assess the target company's operations, financials, and IP and may also seek information about the collaboration — which is likely confidential under the collaboration agreement. Therefore, it is essential to work closely with collaboration partners to ensure they are aligned with respect to the transaction and are willing to permit such disclosures.

IP Considerations and Valuation

Collaborations bring strategic value, such as providing access to new markets, technologies, or expertise, and they almost always involve the creation and sharing of IP. Because IP is typically the key asset for a life sciences company, the existence of a strategic collaboration can significantly impact the valuation of a target company, and is frequently a decisive factor in an acquirer's decision to proceed with a transaction. Therefore, understanding the potential positive and negative impacts of the collaboration on the target company's IP rights and overall valuation is essential for negotiating a fair acquisition price and ensuring the deal closes.

Since IP is often the value-driver of a life sciences transaction, it can create the most opportunity for valuation issues and deal roadblocks. The target company must understand its ownership and use rights with respect to IP created and shared in its existing collaborations, and how that IP may be later accessed and used by the acquirer. For example, the target company may have exclusive rights to certain collaboration IP, but the collaboration partner may be the ultimate owner. This may not affect deal value if the exclusive rights are sufficient for the strategic goals of the acquirer, but to avoid deal roadblocks, the target company will need to give the acquirer assurances that those assets will continue to be available post-closing.

Licenses granted to or obtained from the collaboration partner, and related royalties and milestone payments, can also affect the target company's operations and revenue streams. It is important to review these licenses and assess their continuity and related economics post-acquisition. Discussions with the collaboration partner to ensure the seamless transfer or continuation of licenses can prevent disruptions and preserve the value of the target company's IP portfolio.

Conclusion

Preparing for an acquisition while managing an existing collaboration requires careful planning and strategic decision-making. By addressing potential restrictions on sale, maintaining confidentiality, and considering IP implications, life sciences companies can ensure a smooth and successful acquisition transaction.

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