# Considerations When Timing a Transaction Announcement

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*Announcing a transaction can have a material impact on a business, one that both buyers and sellers want to be positive.*

Buyers and sellers in a transaction are complex counterparties. They are both adversaries—negotiating deal elements until the ink dries—and partners, with common interests. Announcing a private transaction to outside stakeholders, such as government agencies, customers, suppliers, employees, and the general public, can be a scenario where it is challenging to determine if the buyer and seller's interests are aligned or in opposition. As in almost every nuanced discussion, it depends!

The disconnect comes from the fact that each party has a unique set of stakeholders that need to be considered. Buyers and sellers will sometimes be aligned, but sometimes will not. For instance:

- The buyer in a transaction would typically prefer that an announcement doesn't occur until signing. The threat of competition in the process is significant, and informing the broader market that there is a pending sale that hasn't been consummated only incentivizes a possible unknown buyer to derail the process and submit an unsolicited offer for more than what is currently on the table.
- At the same time, a seller may want the market to know they are selling and to whom, for the precise reason a buyer does not: to see if there *is* a possible buyer that hasn't submitted an offer yet that might result in a better outcome.
- But disclosure for a seller is not without risk. A seller needs to be careful about messaging with employees, suppliers, customers, governments, and other parties who might view a change of control as destabilizing.

For both parties, an ill-timed transaction announcement can be disastrous. Poorly prepared messaging by the seller before a contract is signed (legally obligating the buyer to complete the transaction within set terms, and to be responsible for the outcome of the announcement) can result in a negative impact on the seller if the transaction is not completed as conveyed. Additionally, if the deal falls apart after an announcement but before closing, the company's standing in future transaction processes will almost certainly be harmed. Future buyers will ask, "What went wrong?" leading to significant anchor bias when reviewing the opportunity and completing diligence. In this case, valuation may be impaired if there isn't a deep enough market for the company. Given these scenarios, one might conclude that waiting until after closing is always the best time to announce a transaction—but as you'll see next, communicating about an impending transaction too late can have a destructive effect on the relationships the business needs for its future success.

## Differing Stakeholders

If "going public" about the transaction can cause trouble for both the buyer and the seller, why do it at all? Often, the parties don't have a choice. Legally, most businesses have contracts which require that counterparties are informed in the event of a transaction, including lenders, landlords, government agencies, and some customers. Navigating these change-of-control provisions and assignment restrictions is an important part of the job for the M&A advisors and transaction attorneys guiding the process.

Consider employees as an example. Obviously, they will want to know who their new boss is! Employees may worry whether they will have a job post-transaction, especially if the sale is to a strategic buyer that may attempt to find synergies by cutting costs (e.g., axing jobs).

Generally, employees want to be informed prior to the close of a transaction. Waiting until close may negatively affect employees, which may subsequently impact both the buyer and seller. At the same time, an announcement too early, without resolution, can also introduce uncertainty in employees, resulting in missed targets or higher turnover. But it doesn't stop at employees. Every stakeholder has a unique set of needs to be managed, and successfully meeting those needs often occurs on separate timelines.

### *Communities*

If a business is a major part of a local economy, communication with that region's governments and people will need to be carefully managed to ensure ongoing success under new ownership.

### *Customers*

If customers currently prefer the seller's business over that of an acquiring competitor due to a perceived difference in quality, that competitor will need a strong story to ensure customers stay post-close.

### *Regulators*

Some deals need government approval broadly to move forward; other times, only certain elements of a deal (like the transfer of a lease of government property) need to be approved. This can often be difficult because the approval needs to be of a finalized, fully-documented deal, which is often completed immediately before signing. This can be a reason to employ a sign-then-close format, instead of a simultaneous sign-and-close.

## Keys for Success

Inevitably, the buyer and seller need to work together to come up with a time (or times) to announce to these stakeholder groups that a transaction is occurring. Exact timing may change from transaction to transaction given the unique variables involved.

> In other transactions, it is not uncommon for non-legally binding stakeholders, such as employees and customers, to be the most important consideration. After all, without them there is no business.

Typically, the buyer and seller will agree upon the "long pole in the tent," that is, if a transaction is to close by a certain date, when does the earliest stakeholder need to be informed? Legally binding communications typically have the longest lead times. Government agencies may need to be contacted months before closing, and failing to line up with their monthly or quarterly review meetings can result in significant delays.

In other transactions, it is not uncommon for non-legally binding stakeholders, such as employees and customers, to be the most important consideration. After all, without them there is no business. We find that these parties are overlooked more often than they are considered appropriately. Smooth transitions are a fundamental key to successful M&A; the smoother the transition, the higher the likelihood of successfully hitting projected financial goals.

## Shared Goals

Although buyers and sellers can have competitive aims in the short-term, the successful performance of the business through the closing of a transaction is in everyone's best interest.

Since each group of stakeholders can materially impact the success of a transition, either legally or practically, communicating effectively and meeting stakeholder concerns on an appropriate timeline is something all parties can align on. An experienced transaction team should know how to look ahead and plan for these communications in the design of the process timeline before problems arise.

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