KURMANNPARTNERS

M&A Toolbox

How to sell a pharma brand

Selling and buying established products has long been a standard part of the business development of Pharma companies. What changed in the last years is the intensity: Transactions involving established products or even product portfolios have become bigger and more frequent. We now see large product-centered business disposals (see Table 1). Smaller but significant product sales have also become more frequent. Here we look at what drives these transactions and how they are structured, and how advisors can support the process.

Target	Buyer	Announced	Size
Merck & Co.'s OTC drug portfolio	Bayer	May 6, 2014	US$ 14.2bn
Boehringer's OTC drug portfolio	Sanofi	Dec 15, 2015	US$ 6.7bn
Novartis' OTC portfolio	GSK (in a JV with NVS)	April 22, 2014	US$ 22bn (100% of JV)

Table 1: Product centered business disposals

After the big merger wave…

Serial acquisitions have left some of the large Pharma companies with big, complex product portfolios. These portfolios often contain products which are cannibalizing each other, or simply are non-core to the buyer. During post-merger integration, such products are sold (or silently terminated). This sets the supply for Pharma product deals.

On the other hand, medium-sized Pharma companies with a point-of-call specialization (see our 4 Archetypes Model here) are interested to obtain additional products fitting their specialization. Portfolio complementation motivated by the need to consolidate and strengthen a position in a market segment creates the demand for product deals.

Element	Comment
Marketing Authorization	Seller notifies authorities on transfer of MA, post-closing
Dossier	The information which is the basis of the MA; is sold as "intellectual property"
Trademarks / trade names	Seller notifies trade registry on transfer of brand
Pharmacovigilance data	Seller either transfers the data, or gives buyer access to the data
Historical financials	To be transferred in an appropriate format
Stock	Sold separately; question of relabeling

Table 2: Elements to be transferred in a product sale

What 's in the package? All the strings attached

When selling a Pharma product, the object of sale is not as clear cut as when selling a company – the content of the package needs to be clearly defined.

What is a given is that the buyer will purchase all rights and IP related to the product and the existing inventory (see Table 2). However, to enable a smooth transfer of the product, the seller needs to agree to provide multiple transitional services from the date of the actual sale until the buyer can perform the functions: warehousing, logistics, invoicing, regulatory correspondence for example. The commercial conditions of these transitional services (duration, resources made available by the seller, risk allocation, compensation) can alter the attractiveness of a deal for both seller and buyer.

Quite often, the seller will continue to transitionally or permanently manufacture the product. The terms of the related manufacturing and sales agreement (MSA) substantially co-determine the long-term commercial value of the product for the buyer.

How to wrap it - complexities of the transaction

Once the package is defined, the actual deal needs

to take into consideration constraints in various dimensions (see Figure 1). Legally, the transaction is typically implemented as an asset sale, or more precisely, as several asset sales implemented in parallel.

Almost always, contractual relationships with third parties pertaining to the products need to be transferred from the seller to the buyer. Such agreements include supplier contracts (particularly third-party CMOs), or contracts relating to market access such as co-marketing, distribution or logistics agreements. Typically, transfer of these contracts to the buyer requires the approval of the third party. If the respective contracts cover other products which are not included in the sale, new contracts may need to be put in place. In both cases – transfer of existing and establishment of new contracts – the third party may try to exploit the situation to alter contractual terms. Often, such situations lead to 11th-hour changes in the deal between buyer and seller.

Discussions on the tax structure (taxes on profit, and VAT) have their own dynamics and can unintentionally derail the timeline of a transaction or even the commercial understanding. It is important to involve the tax experts from both sides early enough, and to keep them focused on the commercial goal.

Last but not least, the implementation of the product sale involves the transfer of marketing authorizations (MA) from the seller to the buyer and hence requires the involvement of regulators. Normally, this is a mere formality. But if the product is old, a change of the MA holder may spur a review of the dossier and lead to regulatory requests. Moreover, in certain emerging markets, there is a significant risk that the change of the MA holder is subject to delivering new clinical data.

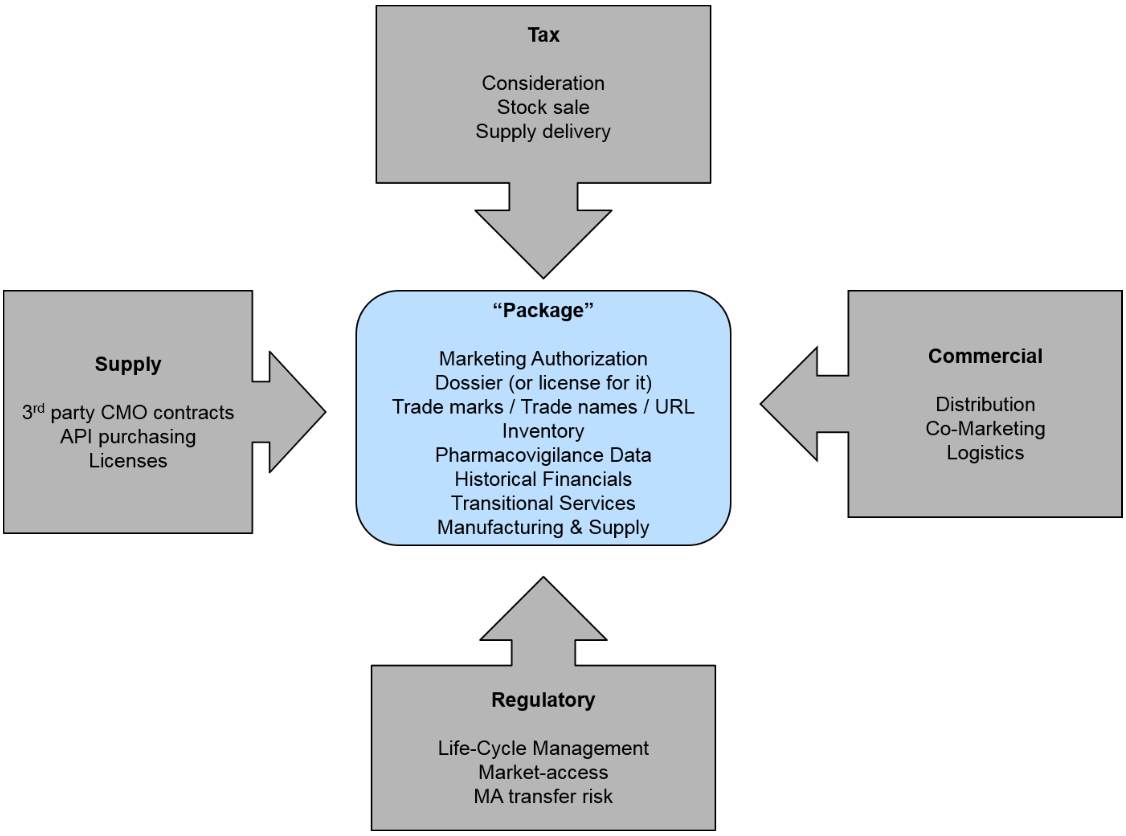

Figure 1: Factors affecting the transaction

How to set it up?

The sale of a Pharma product is complex and requires a cooperative spirit between seller and buyer both during the negotiations and while implementing the transaction. For a seller to achieve an optimal outcome in the M&A process, it is important to strike a balance between competitive pressure and hard bargaining versus maintaining a good working relationship and motivating a buyer to do their best.

For the sale process, the details of the "package" should be precisely determined before entering the price-setting phase (i.e. auction). The heads of terms of the MSA including the financial conditions, should be pre-defined, and for the transitional services a general framework should be set out.

Ideally, all the elements proposed for the MSA and the transitional services agreement (TSA) are pre-approved by the respective stakeholders of the seller. In most cases, this is not practicable, and the deal team of the seller will have to use their knowledge of the organization to propose terms which they believe the organization's stakeholders will agree with. In terms of process planning, we recommend that in a first round, all buyers should make the offer based on the same, detailed basis (package and boundary conditions) to make the offer comparable. This is necessary to be able to create a real "auction". The details of the package are, if at all, amended after the initial price level has been set, and may then take into account the buyer's specific requirements, to improve the deal value for both sides.

External advisors can help both buyers and sellers to find middle ground, de-personalize contentious discussions, and to remove roadblocks along the journey. In particular, they can help to overcome obstacles which result from failed alignment between the many stakeholders of both buyer and seller who need to agree on the final deal.