

Less Than Strategic Reasons for Merger Discussions

By [Michael D. Short](#) on March 20, 2014

There are a lot of merger discussions going on these days, and by “merger discussions” I mean potential combinations where both parties have a substantial number of lawyers...not the myriad deals where a 5 lawyer firm is acquired by a 1,000 lawyer firm and the transaction is considered a “merger” by the various deal counting sources.

We see or hear about many mid-sized firms or boutiques that used to be on our *Don't Bother* list that are now receptive to inquiries or discussions. The reasons for the current volume of interested parties vary, but we see some new, consistent themes in rationales behind these discussions that go beyond “acting proactively to implement a strategy.” These less than strategic themes include:

- **Frustration with old tactics** – Standard operating procedure for many firms is to “maintain control of the firm and its culture” by pursuing eager laterals with big books of portable business, small groups with experience in practices that support relatively higher billing rates, and small firms/boutiques with major reputations in corporate transactions, IP, or high end litigation that will obviously benefit from simply being in a larger platform. Given that the odds of success with these types of transactions start at “low” and decrease from there, the frustration level within some firms is compelling them to look for larger transactions and be receptive to the commensurate cultural and operational changes in order to get something done.
- **Keeping up with the Joneses** – Pressures from other nearby firms doing deals and gaining competitive advantages (particularly in smaller markets) is very real. While most partnerships prefer remaining independent, once one law firm in any market merges into a larger, more diverse practice and/or dispersed platform, the pressure mounts on competitors to either a) implement a strategy that negates the perceived depth, breadth, and excitement/curiosity of the new competitor (a difficult and risky proposition), or b) create even *better* depth and breadth to counteract the threat by combining with another firm.
- **Aging partnerships with no futures** – There are many small to mid-sized, first generation firms that are simply not positioned to continue into a second generation on their own. This is typically due to senior management hanging on too long and/or a compensation system that cannot support transitioning client relationships. Regardless of the contributing factor(s), when the seniors realize that the clients and the junior lawyers need a future and it isn't possible with the firm's current structure and approach, they tend to start accepting calls from potential suitors. (For the potential acquirers – beware demands for goodwill payments and opportunities to “buy a practice.” This remains a people-based, relationship-driven business!)
- **Competitive intelligence** – More firm leaders understand that it is better to be “in the game” and part of the related conversations than to be on the outside and wondering what everyone is up to. Firms that do not engage in discussions when approached, due to the old-fashioned fear of being perceived as “for sale” or “in play” are typically operating at a competitive disadvantage. Occasionally, a viable deal develops for firms that weren't really looking because the approaching party comes with a compelling business case that makes great sense.
- **A lack of strategic options** – An increasing number of firms are concluding that their abilities to make major moves forward – anything beyond staying the same size via lateral hiring – is not possible without a significant transaction. These firms are usually in smaller markets that are not growing. They tend to find a similar firm in a similar situation in a comparable city that is reasonably close, combine to create a regional firm, and then proceed with a whole new outlook on their combined future.

It is impossible to directly link these factors to the current volume of discussions, but I absolutely see their presence and impact in deals that are coming to us.

I have also seen very good deals come from these less than strategic discussion drivers. Remain open, objective, careful, and always remember that there are not degrees of business case development and due diligence. This work must always be excellent to identify and structure a good combination and compel two partnerships to vote for it. Always do that extremely well and your decisions will be sound and justified.