

The Merger Business Case

By [Michael D. Short](#) on April 17, 2014

I want to continue with the [merger theme](#) that Joe Altonji and I have been focusing on over the past few months by diving into some related details, particularly around the evaluation process itself.

Once two interested – or, at least, “receptive to the discussion” – parties actually reach the stage of evaluating a potential combination, the success or failure of the deal should be based on a compelling and achievable business case. This business case can be used to test-sell the combination to the owner groups of both law firms and, of equal importance, to key clients and prospects of the combination to determine if the proposed merger actually elevates both firms to a new competitive level by creating some new value propositions that would be impossible absent the combination? This last checkpoint – the value proposition for clients – is completely missed in a surprising number of merger evaluations. If the deal is evaluated solely in terms of the people inside the firm, the evaluation is incomplete.

The business case and related documentation for each combination is unique. There is no standard, fill-in-the-blanks checklist. There are, however, a number of evaluations, discussions, and negotiations common to many well-considered mergers. When these are documented into a deal prospectus, the table of contents often includes some combination of the following:

- **Primary due diligence**
 - Appropriate alignment across the basic elements of any combination – Typical reviews cover economics, cultural compatibility, the client conflicts check, practice alignment and compatibility, common clients, and basic philosophies on governance, compensation, and practice management, etc.
- **Client services capabilities**
 - A basic evaluation of the benefits of the combination for current and/or prospective clients – Does the combination’s practice result in a broader collection of complementary strategic practices? Deeper key practice groups? More sophisticated deal capability? New service models that create value and/or efficiencies (better, faster, and cheaper?)
- **Strategic vision**
 - A statement regarding the future direction of the combined firm – What is that vision? Is there basic agreement concerning the vision? Does the combination result in something that can then be advanced further? What should happen as a result of the combination? Are there “next steps” to be taken and, if so, what are they?
- **Defensive posture**
 - A statement related to how the combination protects or advances the firm in relation to external forces – Will the new firm be better positioned against key competitors’ strategic moves, future changes in client demand levels and/or buying patterns, or other potential law firm combinations? While this element requires some “future-think” and hypothetical scenario development, the process and the discussions can be quite useful. The key question here is, “what will happen if we don’t do this deal?”
- **Pro forma economics**

- The financial plan for, and expected results from, the combination for the next several years – What level of short-term investment of time and money will the new firm require? Will it generate a suitable return to the owners? Are the assumptions upon which the model is built achievable yet sufficiently conservative?
- **Results from Practice Group Meetings**
 - Summary level reports from practice area meetings – Meetings between respective practice area partners are typically among the first held after preliminary conversations are done and both Partner groups are notified of the developing opportunity. Many deals either advance significantly or die when these partners meet to discuss practice approaches, new opportunities for existing clients, and opportunities with prospective clients. (If it gets to the prospectus point, it's obviously the former!)
- **Key Clients' Opinions**
 - The oft-missing link – When all the internal measures suggest that the deal should move forward, one final piece of due diligence makes sense – with those who will, in theory, benefit *most* from the combination –the clients. Why is this important? First, the key clients should hear about the pending combination from their firms...not from the press. Second, you need to know whether the combination will deliver new “value” to the clients that neither firm could deliver independently. Who is better positioned to address that question?
- **Final recommendations**
 - The last element – A unanimous endorsement for the proposed transaction from (formally) both management teams AND (informally) the key Partners on both sides.

All mergers represent significant change for at least one party to the transaction. Support for change from very bright, and sometimes very comfortable/set-in-their-ways lawyers requires a compelling business case. A complete business case requires the voices of both those most affected *and* those who will benefit most. Don't forget the clients!