

A person in a dark suit and tie is shown from the chest up, holding a glowing digital sphere in their right hand. The sphere is composed of a network of white lines connecting bright yellow and orange points, resembling a molecular or network structure. The background is dark and out of focus.

THE PROBLEMS WITH A DUAL AGENT IN SELLING YOUR BUSINESS

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The problems with a dual agent in selling your business

Selling a business for most people is a major event and has a significant effect on their financial position. Given that the price a business is sold for can vary greatly, not only business to business, but throughout the negotiating process of a particular sale, it is important to have your business represented well. You want someone who has not got any personal interest or gain in another camp, who is going to work to their utmost to get the best deal possible for you and who is going to give you fair advice. However, when you have a dual agent you don't have any of these. The dual agent is there to represent opposing parties and by the very nature of this job has a conflict of interest. It is very difficult for a double agent to give unbiased advice, even with the best intentions. Even agencies that assign different personnel to each side of the transaction are not able to fulfill an unbiased stand. Big companies that have systems in place to enable an unbiased approach, rarely achieve this, let alone the smaller companies.

Here are the issues that cause problems with a dual agent in buying and selling a business :



1) Conflicting loyalties. It is difficult to see how a dual agent can serve the best interests of both parties of a business sale. The best interests of one party are by definition not in the best interests of the other, so there will always be this tension. How is the agent able to be loyal to both parties?

2) Lack of advocacy. An agent needs to remain neutral and not be on one side or the other when representing two conflicting parties. In order to do this the agent is restricted in what they can do in giving advice or advocating for either party. The result is that both sides lose the thing that they need most out of an agent, for the agent to be working for their best interests. It is very difficult for a dual agent to be entirely fair and even when they are neither side gets the support and advocacy that is most beneficial.

3) Breaching confidentiality. The dual agent can get to know confidential information over the time of the negotiations. This may even be personal information about the owner that, whilst not directly affecting the business and its value, may affect, for instance, the urgency of closing the deal by one party or the other. This sort of information would be harmful if disclosed, but also could affect the advice given to the opposing party. This makes it very difficult to share sensitive information when it could be used against you as well as for you.



In summary, it is very difficult for a dual agent to be entirely fair and represent the interests of both parties in the selling of a business and this can have a huge influence on the final deal. Even the most morally just agent is not able to give advice or be the advocate for one or other of the parties without there being some bias in what they say. So often, the agent is not able to be an advocate for either. A dual agent will often know information that is sensitive and which could affect the deal, for the advantage of one or other of the sides. In such a case it is impossible not to favour one side over the other and remain neutral.

Many things can change the price a business will sell for and the negotiations are crucial in coming to the right deal. A lot of hard work will have gone into building and growing the business and you don't want that thrown away at the end. It is, therefore, important to get an agent without mixed interests. If you want someone who will be loyal to your cause, be a strong advocate for you and with whom you can share sensitive information in order to get the optimum deal, then a dual agent is not what you need.



Our M&A Process

TARGET APPRAISAL	APPROACH	DUE DILIGENCE	NEGOTIATION & CLOSE	POST MERGER INTEGRATION (PMI)
Key Areas				
<ul style="list-style-type: none"> Target & market analysis; Initial assessment of synergies & value drivers; Indicative valuation; Go or No-Go decision; Preparation of transaction documents (NDA – Non-disclosure Agreement/LOI-Letter of Intent); Select Transaction team; Appoint advisors; Consider funding ability. 	<ul style="list-style-type: none"> Initial approach letter; Signing of NDA; Prepare & share initial information requests; Formulation of LOI (Letter of Intent) & possible negotiations; Initial meeting and Q&A; Circulate information on the Target to the Transaction team. 	<ul style="list-style-type: none"> Set scope of due diligence; Set up VDR (virtual data room); Coordinating of due diligence, further meetings and Q&A sessions; Consider points relevant to the Post-Merger (PMI) phase; 	<ul style="list-style-type: none"> Revisit indicative valuation & prepare detailed valuation based on due diligence findings; SPA negotiations with the seller; Development of final structure (share/asset deal) and final valuation; Approvals; Signing of SPA & Close. 	<ul style="list-style-type: none"> Consider the extent of integration; Development of 100 Day PMI Plan; Consider short & long term objectives; Estimate requirements to capture synergies; Determine resource needs & optimal allocation.
Parties Involved				
<ul style="list-style-type: none"> CFO; Head of M&A; Accountants; Corporate finance advisors; Consultants. 	<ul style="list-style-type: none"> Senior management; CEO, CFO, CTO; Strategy director; Head of M&A; Head of Business Development; Consultants. 		<ul style="list-style-type: none"> Company general counsel; Lawyers; Senior management. 	<ul style="list-style-type: none"> Company general counsel; Lawyers; Senior management/HR.

An overhead view of a business meeting around a wooden table. Several people in business attire have their hands stacked in the center of the table, symbolizing agreement or partnership. The table is cluttered with various items: a laptop, a calculator, a coffee cup, a glass of water, a pen, a notepad, and some documents. One document is titled 'INFORMATION'. The background is dark, making the wooden table and the white text stand out.

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