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MANAGEMENT VIEWPOINT SAMUEL PASSOW

Catalyst for unlocking value from decisions

Mediation is much more than a mechanism for dispute resolution – it can also be a valuable decision management tool

One of the more interesting, though less publicised aspects of the proposed \$181.9bn merger of American Online and Time Warner is the level of financial risks the players are willing to assume if the deal does not go through.

Each side has agreed to pay the other a penalty fee of between \$4bn to \$5bn if either the management of each company cannot convince its shareholders to approve the merger or if they are gazumped by a better offer.

The prospect of a rival bidder is real enough, as British Telecom realised when it was pipped at the post by WorldCom in its "friendly" takeover bid for MCI Corp in October 1997.

Last year, mergers and

acquisitions reached a record \$3.3tr. Europe alone accounted for \$1.2tr of that business.

With deals such as last week's \$198.9bn takeover of Mannesmann by Vodafone AirTouch, those figures are sure to be eclipsed this year.

Confidence in mergers and acquisitions as a way to drive business growth has never been higher, but there is substantial evidence that 83 per cent of mergers between 1997 and 1999 did not unlock expected value or produce promised benefits to shareholders.

In a two-year study* of 107 companies around the world, KPMG, the international accounting firm, found that companies which achieved long-term success had focused on three key activities: synergy

evaluation, integration project planning and due diligence.

It looked at the common requirements for these activities. In most cases it found that success was predicated on selecting the right management team and resolving cultural issues and communications.

Independent mediation enables companies to develop the disciplined approach needed to focus on these three critical areas.

The idea that mediation is simply a mechanism for dispute resolution is outdated.

Mediation can be used more effectively as a decision management tool. In the past consultants have acted as advisers or advocates, but mediators can facilitate negotiation or act

as catalysts for alternative solutions.

In *International Mediation, the Art of Business Diplomacy***, the authors

outline a strategy for setting up "facilitated negotiation" in companies to deal with the complexities of commercial disputes and M&As. The mediation procedure requires parties to talk within a structure and time limit, offering a face-saving device when there is a stalemate and allowing layers of management not involved in the conflict to contribute.

This raises a number of useful points about mediation as a decision management tool:

- Decision-makers must be at the negotiation table. Companies that prioritised the selection of the management team at the pre-deal planning stage were 26 per cent more likely to

have a successful deal.

- One in four deals were more likely to succeed if acquirers focused on identifying and resolving cultural issues.

- If the project plan and contract do not respond to the way the project is developing, redesign them, protecting the original document and framework until the new plan emerges.

- Brainstorm with both sides' teams to find solutions to problems. Companies that prioritised communications were 13 per cent more likely to be successful than average.

- Maintain relationships and work at problem-solving as a team.

As the Greek tragedians knew, nemesis follows hubris as surely as night follows day.

Powerful organisations that try to build superpower brand names are just as

vulnerable as powerful individuals who are carried away by their vision for the company. Public companies, which once saw themselves as invincible, are vulnerable.

It is often the personalities involved or the details of the project that result in a failure to create shareholder value. Examples can be seen in the first merger attempt between Glaxo Wellcome & SmithKline Beecham in February 1998 and the BP Amoco acquisition of Atlantic Richfield which is currently being blocked by the government.

The use of mediated decision management as an active management tool is rare. A notable example is Royal Dutch Shell's four-year "Way Forward" programme for decommissioning its Brent Spar oil rig in 1995.

There was a public relations debacle when the

group tried to sink the North Atlantic rig, but the programme served as both an external confidence-building exercise and an internal policy review.

Correctly used, then, mediation is a proactive approach to information sharing about risk, benefits and operational issues.

It is not just about learning how to live with the decisions we make, but how to get the most value out of them.

Samuel Passow is Head of Research at the London-based Centre for Dispute Resolution
 * *Unlocking Shareholder Value: The Keys to Success in Mergers & Acquisitions.*
 KPMG, Tel: +44-171-311 1000
 ** *By Eileen Carroll and Karl Mackie. Kluwer Law International, London, 1999. Price \$45*