

Maximizing Value During Divestitures

Pursuing an acquisition is an exciting time for an organization’s leadership team. The anticipation of making an impactful move that will help the company’s competitiveness can be exhilarating.

A divestiture, on the other hand, is often seen as a necessary evil – part of doing business, certainly, but uncomfortable nonetheless.

That difference in mindset can cause executives and M&A teams to approach a divestiture from a position of weakness. While they want good value in the sale, they often fail to approach the deal with the same rigor and focus that they do an acquisition.

In the energy and petrochemical industries, this often results in transactions that leave the seller at a significant disadvantage, especially with regard to environmental or operational liabilities that may linger for decades, cost substantial amounts to mitigate, or require lengthy legal battles to settle.

Companies that rarely divest of assets typically lack the experience necessary to develop the strategic plan critical to prepare for effective negotiations. Conversely, companies that have frequent asset sales can grow complacent while trying to minimize their upfront investment in the process – only to find that their lack of due diligence is costly in the end.

The best approach to a divestiture is to treat it as seriously as an acquisition, and perform the same level of strategic thinking and due diligence as you would when buying an asset.

Due diligence for the seller

Pilko & Associates assist both upstream and downstream companies take a strategic, thoughtful approach to asset divestitures.

Our services are designed to 1) maximize value by providing a process that accelerates the sale process; 2) help companies protect themselves throughout the sale process; 3) ensure they reach an agreement that delivers long-term protection after closing from any potential environmental and operational liabilities that may be present; and 4) design and implement a

seamless transition effort that ensures an effective change of control for the benefit of both the seller and the buyer.

We start with the vendor’s due diligence (VDD), in which we study the asset or business unit to be sold as an independent third-party. Our experienced, knowledgeable advising team digs deep to identify and quantify the strengths, weaknesses and potential vulnerabilities that will ultimately impact the final agreement. We deliver a thorough, unbiased report that helps both the seller – and if desired, potential buyers – better understand the asset or business unit and how it can be expected to perform in the years to come, with a special emphasis on operational and environmental risk.

A thorough VDD delivers a significant return on investment by helping the seller better understand what to expect before negotiations begin and prepare accordingly. It often compresses the time required to close the deal; mitigate unforeseen or unpleasant surprises that can impact the final offer; and limits value erosion tactics by bidders. In that regard, the VDD often pays for itself many times over.



Preparing for bidders

Pilko & Associates also assists sellers in preparing for and conducting the transaction process. In this role we serve as an advocate for the seller.



This can take many forms:

- Assisting in the structure of the bid process and preparation of the data room
- Helping senior management prepare for interactions with bidders
- Coaching site management in advance of bidder visits
- Working with legal staff to develop strategic approaches to handling risk and liability issues

Our overarching goal is to help sellers de-risk and control the sales process. Having experienced counsel that can help get ahead of the major issues –even before the transaction is announced – can give sellers more confidence in their offering and help them achieve the highest possible value.

This type of preparation equips sellers to gain leverage during negotiations. For example, providing full disclosure up front – with the proper context – helps diffuse difficult issues and creates a valuable level of trust with potential buyers.

Our depth of experience in downstream M&A, provides important insights from a prospective buyer’s point of view, which helps the seller’s executive team understand how their asset will be viewed by those on the other side of the table. This insight is vital in determining how to best position the asset’s strengths for maximum return, and developing an internal consensus on a negotiating approach.

A smooth transition

The period of time after an agreement is reached and before the deal closes is critical to the overall success of the transaction. We help sellers and buyers develop a “fit for purpose” transition that enables the buyer to properly prioritize its first 90-120 days and ensures that the change of control is properly planned and executed.

Our advisors’ in-depth knowledge of the asset or business unit and the industry itself enables us to give targeted counsel that can help the buyer achieve its strategic objectives quickly and with a minimum amount of disruption in operations.

Minimizing Operational Risk

In downstream transactions, it is critical that strategic health, safety, security and environmental (HSSE) issues are not lost at a technical level, but are fully understood and accounted for from a commercial and transactional perspective.

At many sites, environmental liabilities have existed for years and don’t typically affect ongoing operations. As a result, most buyers strongly resist accepting liability only to find that it delays or prevents the successful completion of the transaction.

A negotiated allocation of liability – with all legacy risks properly accounted for in the transaction price – can create value for both the seller and the buyer. Identifying those risks up front, understanding their potential impact to the eventual buyer, and communicating them clearly to bidders is the first step in ensuring a successful negotiation.

When the seller makes the strategic decision to provide full disclosure of material risks and liabilities upfront and within context, it mitigates the buyer’s tactic of negotiating a price deduction when due diligence uncovers potential issues. By quantifying material risks and liabilities within a reasonable range, sellers can then allow the buyers to adjust their valuation in turn.

In short, taking a proactive approach to managing operational and HSSE risks in a divestiture can help sellers unlock maximum value in their assets and protect the company over the long-term.

If you would like more information on how Pilko & Associates can help you achieve your strategic goals with your next divestiture, please contact:

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