NEGOTIATION UPDATE - Richard Searle

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There is money to be made through negotiation and doing deals. And there is money to be saved too in getting some good advice or education in how to craft and implement deals! It is not just senior managers who can prosper from it. Some of the most experienced and highly paid negotiators and business people make fundamental and costly mistakes in very important strategic deals!

Don’t believe me? Well consider these two examples.

For several decades in Australia Channel 7 had exclusive broadcasting rights for the Victorian Football League games and then the Australian Football League games. Kerry Packer and Channel 9 changed that – having previously revolutionised Cricket coverage, Packer made a successful raid in the 90’s on the coveted TV rights for the AFL. Packer succeeded in out bidding Channel 7 partly by submitting a shared bid with their common rival Channel 10.

When these broadcasting rights came up for renewal again, the AFL barely disguised their enthusiasm to continue the partnership with 9 and 10. They liked the money, they liked the broader coverage and the technological improvements, and they liked working with Eddie McGuire a prominent nine personality and President of the Collingwood Football Club.

For Kerry Packer and Channel 9 there was one small problem. In the original deal that they had done with Channel 10 they shared weekend game coverage, but Channel 10 had exclusive rights to broadcast the lucrative and prestigious last Saturday in September Grand Final. This condition irked Kerry Packer.

Kerry Packer had a fearsome reputation as a deal maker and negotiator. At one stage he sold his television network to newcomer Alan Bond for nearly $1 billion and then agreed to purchase it back from Bond in a later fire sale for less than $300 million. His famous saying at the time was along the lines that “only one Alan Bond comes your way in a lifetime”.

But Kerry’s street smarts deserted him in these high stake negotiations over the future broadcasting rights. Kerry let it be known through the media that he was looking forward to a continued partnership with Channel 10, but that they could expect a much tougher fight over the Grand Final coverage rights than in the previous arrangement. Silly mistake!

Channel 10 took Kerry’s threat very seriously. Secretly they negotiated an alternative partnership with Channel 7. It was shock all round when 7/10 emerged the winners of the new AFL broadcasting rights, a blow from which Channel 9 Sport has barely recovered!

Andrew Liveris is another Australian businessman who knows a bit about deal making. He has been the CEO since 2004 of the US based Dow Chemical Company, the world’s second largest, with 46,000 employees. In December 2007 Dow Chemical announces a joint venture with Kuwait Petrochemical Corporation. Dow will contribute half the shares in its Petrochemical business to the deal and in turn receive $9.5 billion in cash from KPC. The deal has been provisionally approved by the Emir of Kuwait, the Kuwait Supreme Petroleum Council and the Kuwait Parliament, but it is awaiting final approvals.

At the end of the 17 hour flight back to the US after doing the deal, Andrew Liveris agrees to be interviewed live on CNBC. Big mistake! Throughout the entire interview Liveris is wearing a huge, smug grin. He is asked why Kuwait has decided to go with Dow as their partner, and he says that it is because of relationships, and a ten year history where they now trust Dow. The journalists keep pressing Liveris on the terms of the deal where Dow is supposedly contributing half the value of Dow which has a current market capitalization of $US39 billion.

Liveris corrects the journalists and points out that it is only the Petrochemical part of Dow. They take the opening he gives and press further on exactly how much of the business that is. Finally the journalists conclude that Dow is actually putting up only one quarter of their business which they are citing in the deal as half the value of Dow. “We like the terms of this deal,” says a journalist. “Yep” says a grinning Liveris, “this is pretty good – enough said”. Subsequently another journalist opines publicly “Now I am wondering if these guys are suckers with all their petrochemical dollars.” A condescending Liveris suggests that maybe Kuwait is looking for global credibility and to learn from Dow.

In July of 2008, Dow announces that it has agreed to buy Rohm & Haas for $US 18.8 billion in a watertight deal which is premised on receiving the $9.5 billion in cash from the Kuwait deal which still awaits final approvals. Within months the Global Financial Crisis hits Wall Street. Dow’s share price does not avoid the hammering. In December Liveris is back in Kuwait responding to their request for a renegotiation of terms. The new arrangements are still highly favourable to Dow - $US 9 billion in cash and total deal value of $17.4 billion as opposed to original $19 billion. Liveris agrees to do a live interview with CNBC from Kuwait.

One of the journalists points out that Dow is offering half its market capitalisation and citing it as $US 17.5 billion, yet “$16.5 billion is your present total market capitalization”. Liveris at least drops the laugh and tries to sound sombre, but he fails to correct the journalist in any way when the journalist says “I hope the Kuwaitis are not watching”.

Big mistake! Within hours both CNBC interviews have gone viral on YouTube, they have been shown in the Kuwait Parliament, the Kuwait public are outraged, and Kuwait formally withdraws from the joint venture. Dow’s shares drop a further 20 % and the company struggles so badly in early 2009 to fulfil its contractual obligations with Rohm Haas, that there are suggestions in some quarters that the mighty Dow Chemical Company may itself be the next victim of the GFC. The Dow Board considers sacking Liveris but finally do not take that action.

It is too bad that Andrew and Kerry did not attend a strategic negotiations course at Mt Eliza Executive Education, or at least ask us for some advice about substantive, relational and procedural moves to maximize value in their deals!