Executive MBA Mergers & Acquisitions

HOW TO ACHIEVE A SUCCESSFUL MERGER AND ACQUISITION
“A CASE STUDY"

A Master Thesis submitted for the degree of
“Master of Business Administration”

supervised by
Univ.Prof. Dr Klaus Gugler

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Vienna June, 2009

Affidavit

I, Thamer M. M. Al-Muhid, hereby declare

1. that I am the sole author of the present Master Thesis, “How to Achieve a Successful Merger and Acquisition “Case Study”,79 pages, bound, and that I have not used any source or tool other than those referenced or any other illicit aid or tool, and
2. that I have not prior to this date submitted this Master Thesis as an examination paper in any form in Austria or abroad.

Vienna,

Date: June 2nd 2009, Signature:________________

Contents

LIST OF FIGURES

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The Executive MBA Mergers & Acquisition program at Vienna University of Technology has taken a considerable commitment in terms of time and effort and required sacrifice, this magnificent program had taken a lot of our times, this time was on the expense of our loved one and families times, many thanks for my wife and family whom they had supported me all the way with smile and high spirit.

I would like also to thank Vienna University of Technology EMBA-M&A team and would like to express my appreciation for their relentless hard work to find solutions and agreement in many matters. Special thanks for Prof. Klaus Gugler, for his guidance through the Master Thesis and his patience and my thanks for Ms. Gappmaier for her support and being there when needed.

For my colleagues at the program an Arab proverb says:

“you go one mile to visit a sick man, two miles to make peace-but three miles to win friends”. Take care my friends and thank you for sharing the good and the better and the best time during the program.

As to finish with another wise Arab saying:

“don’t worry that a rose-bush carries a lot of thorns, but enjoy, that a thorny rose-bush carries a lot of wonderful roses”

Thank you all and hoping to see you in future “coming together is a beginning. Keeping together is progress. Working together is success” (Henry Ford).

Thamer Al-Muhid

ABSTRACT

The focal point of this thesis is to identify the major pillars that contribute to a successful merger and acquisition. By using the case study of Scientific Design Inc., a United States based chemical technology licensor, catalyst manufacturer and engineering services provider, which was acquired jointly by Saudi Basic Industries Corporation “SABIC” and Süd-Chemie AG “SCAG”.

SABIC is an international industrial group that is primarily active in the manufacture and sale of hydrocarbons and basic chemicals, intermediates, polymers, fertilizers and metals. SABIC is incorporated in Saudi Arabia and has affiliated companies in various countries in Europe and world-wide.

SCAG is a specialist in the field of chemistry for surfaces including the most finely distributed inorganic matter and one of the world’s leading companies producing catalysts, adsorbents and additives.

The parties had formed in the year 2003 a 50/50 joint venture in order to acquire joint control of Scientific Design Company, Inc. “SD Inc”, New Jersey, USA. SD Inc., is active in licensing of process technology, especially for the petrochemical industry, and in the manufacture of proprietary catalysts, and offers a wide range of related engineering services.

The acquisition case was filled within the European Competition Authority under CASE M.3154.

The author aims to show how the buyer employed a simple, understandable and creative approach to achieve success in completing the transaction.

SD Inc had been acquired via an European entity , adding a complexity to the Merger and Acquisition (M&A) transaction process as the acquirers needed to fulfill regulatory requirements in three jurisdictions (USA, Europe and Saudi Arabia).

EXECUTIVE SUMMARY

The case study which took place in the year 2003 was the acquisition of Scientific Design (SD) Inc., a United States based chemical technology licensor, catalyst manufacturer and engineering services provider, the target was acquired jointly by Saudi Basic Industries Corporation “SABIC” and Süd-Chemie AG “SCAG” from SD Inc., ultimate parent Linde AG. After the continuous success of the target for the last five years; this study was conducted to find out the essential factors that contribute to a successful merger and acquisition transaction. Most of the times, mergers and acquisitions (M&A) fail to go through because a number of things were overlooked or one of the parties to the transaction had a change of mind. That contracting parties have second thoughts about a merger can be due to a number of reasons. These include the possibility that the due diligence report came up with damaging information that made a merger unattractive to the buyer or that the seller came up with difficult terms that the buyer could not agree to.

Most countries have laws that prohibit mergers that increase market power and antitrust laws must be complied if the merger is to be allowed by the bodies charge with overseeing M & A’s. Thus in some cases, the deal is frustrated by the failure of the merger/acquisition to meet all the requirements set out by law. The Competition Authority can lead to the cancelling of a deal if it is found that all M&A will not lead to efficiency gains for the contracting parties. Most of these deals are entered into by organizations to improve their competitive advantage and when the possibility of this being achieved is remote, there is no incentive to continue with the deal.

This thesis tackled all the aspects that are essential for setting up a successful transaction team by the two partners; that will be able to deliver the deal within a predetermined time frame. Recruiting the right candidates for the job proved a vital step in ensuring that the team was well positioned to succeed in their task. This involved recruiting members from the acquirer who were highly skilled in their area of expertise and head hunting specialized firms who could provide vital service in the various jurisdictions that the transaction would take place in.

After putting the team in place, the steering committee gave the go ahead for the exercise to begin. An important discovery that the case study made was the importance of involving the post merger integration (PMI) group right from the start in all activities that took place. This was revealed later on when the group was preparing its report. The hands on experience that the team had in the various due diligence activities that were conducted meant that they were well acquainted with the challenges the target company faced. They were thus able to develop a realistic plan for recovery and a five year plan that met all the acquirer's demands. The target became highly profitable and the whole process and organizational setup was a good example of what steps to take when intending to conduct a successful M & A.

1. INTRODUCTION

Mergers and acquisitions (M&A) are common occurrences in the business world today. Not a day goes by without the media reporting about new M&A'S that either failed or were successful. Since the late 1990's, there has been a surge in the number of M&A's with indications that the trend is likely to gain momentum rather than decline. In the author's opinion, and in light of the global financial crisis currently being experienced, the boom in M&A will begin to taper off in 2010. The focus will shift to current opportunities in taking over loss-making or bankrupt companies and turning them into the profitable ones and then selling them as whole concerns or disposing of them piecemeal (asset stripping), to targeting strategic business entities.

During the acquisition year of 2003 SD Inc., the target in our case study is active in licensing of process technology, especially for the petrochemical industry, and in the manufacture of proprietary catalysts, and offers a wide range of related engineering services. The main process technology at SD Inc. is for Ethylene Oxide. Ethylene oxide ("EO") is a key chemical intermediate for the manufacture of many important products. It is a highly reactive ethylene downstream product, produced by catalytic partial oxidation of ethylene at elevated temperature and pressure. Ethylene is one of the most important basic chemical products, which belongs to the olefin group consisting of ethylene, propylene and butadiene. Ethylene is used as a raw material and can be processed to a variety of further intermediate chemicals. For instance, with polymerisation ethylene transforms to polyethylene (like high and low density polyethylene, hdPE and ldPE; linear high and low density polyethylene, lhPE and lldPE), by oxidation with chloridric acid ethylene gets polyvinylchloride, PVC, and by oxidation with acetic acid ethylene gets vinyl acetate monomer, VAM.

EO, for the most part, is used to produce mono ethylene glycol (MEG or EG), with the help of water. The large demand for EG is driven by the rising demand for polyethylene terephtalate (PET) which is the raw material for fibres, textiles and other industrial applications. Additionally, PET resins are used in films for the food industry and packaging materials such as bottles (using a stretch blow moulding machine to blow the PET preform). EG is also used as antifreeze, especially for aircraft and runway de-icers, and as solvent in various applications. Other ethylene oxide derivatives are ethanolamines (e.g. foam stabilizers as application), ethoxylates (e.g. surfactants as application), glycol ethers and akoxylates.

The production of EO requires a combination of both process and catalyst technology. The catalyst for the selective oxidation of ethylene to EO for all the competing technology licensors is based on silver loaded on to an alpha-alumina carrier. EG is produced by hydration without use of a catalyst. In adding water, EO is transformed to EG. Since most customers are mainly producing EG, they usually combine the production of EO (by a catalyst) with the production of EG in their plants. This is why quite often the production sites are referred to as EO/EG plants. The relevant technology, however, is always and only the selective oxidation of ethylene to EO. A producer or potential producer for EO has the choice of developing its own technology or licensing it from a company that owns a suitable technology.

Figure 1-1 below illustrates the Ethylene Oxide and Ethylene Glycol production process.

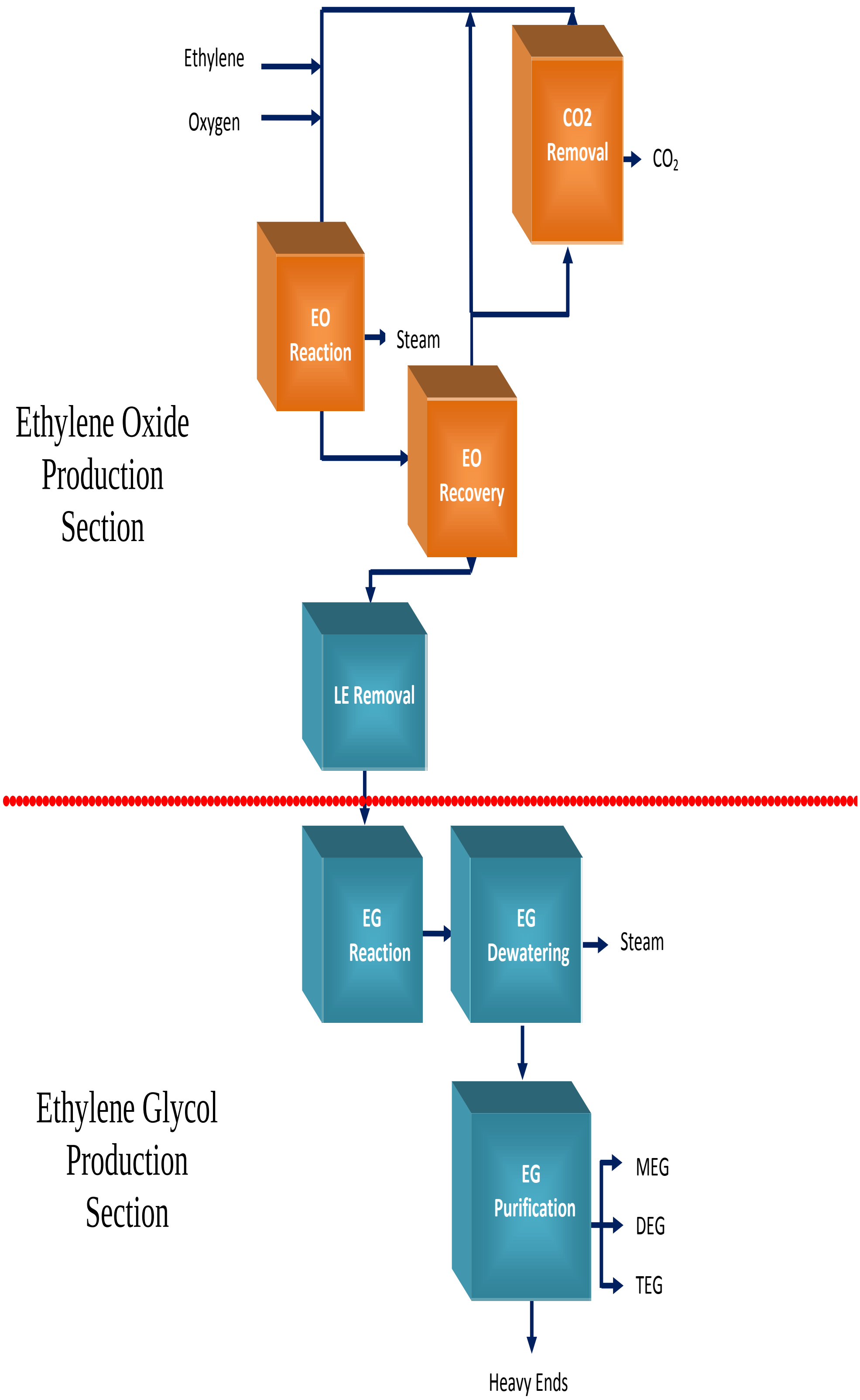

Figure 1-1 Ethylene Oxide and Ethylene Glycol production process

Not all successful technologies are licensed as their owners may prefer to exploit their technology themselves for captive production. Customers of EO technology purchase a package, which enables them to build and operate a production unit using the licensor's patents and proprietary know how. The package usually also includes the right to use certain catalysts with the process technology and may include catalyst supply agreements or a license to manufacture the catalyst. The licensor generally gives performance guarantees.

For SABIC this acquisition was a vertical merger because by this merger SABIC will have the technology and catalyst parts to complement its production facility.

While for SCAG the acquisition was a horizontal merger because this new technology, which SCAG does not have, will stretch SCAG portfolio and strengthen their competitive position.

1.1 First step in a Merger and Acquisition Process

In my thesis I will describe the case from my own perspective, as I was part of the SABIC's team. As soon as a target (SD Inc) has been identified, the M & A department within both parties formed a M&A steering committee to head the acquisition. The steering committee then appointed a Leader (two leaders in this case representing both parties) who was tasked with seeing the acquisition through to its logical conclusion. A number of qualifications were deemed essential for the right candidate if success was to be achieved. These qualifications included;

i. At least 5-10 years of experience in technology transfer, contracts, joint ventures and project management.

ii. A strategic thinking perspective.

iii. An Effective Communications talent.

iv. Project Management skills.

There are different understandings for the above qualifications. During the case study, and immediately after selecting the M&A Leader, the salient points were defined and written down in a booklet named “M&A Code of Ethics”.

In sections 1.1.2 to 1.1.4, some of the material in the booklet is included. This material is a result of many successful M&A transactions over the past fifteen years and has proven to be useful in making the M&A process successful.

The M&A Code of Ethics is frequently updated and takes place after the conclusion of each M&A transaction. Each M&A transaction has different M&A Code of Ethics, although the main difference has to do with the nature of the transaction and the objectives of the organization behind this specific transaction.

The material below had to be modified to suit the Master Thesis formats, and the Executive MBA M&A program.

1.1.1 Strategic Thinking in Merger and Acquisition

The Leader of the M&A team has to think strategically and have the ability to link his M&A process strategy with the organization’s ultimate strategy. During our case study, the chosen Leader’s strategic thinking was codified in a strategic goal which is:

“A Plan Needed to Achieve the Goals”

Taking into account that the plan should be understandable, well-prepared and feasible, the goals are the targets or the results which the Leader or his organization would like to reach by the end of the M&A process. Those targets are the organizational or management targets.

Strategy is very essential in M&A and most bids fail to succeed without a good and understandable strategy. During the case study, several important elements were identified with regards to strategy, which impact the M&A process. These are;

i. Forming the M&A steering committee and choosing the Leader.
ii. Identifying everyone roles and responsibilities.
iii. Explaining the reason behind the M&A Organization or management vision about this M&A.
iv. Having a Post Merger Implementation plan ready for the target from day one of the M&A process.

1.1.2 Effective Communication in Merger and Acquisition

The case study was unique in that it had an effective communications system which allowed for smooth flow of information between the different teams, all the way to the Board of Directors of the organization.

Without an effective communications setup, the project's success would have been jeopardized. The definition and protocol of effective communications was communicated to all the team members that were involved in the M&A process regardless of their position; the definition was:

"Reaching your Targets in a short and understandable way"

The effective communications definition was understood by all those involved in the M&A process.

The following advice was imparted to the team members;

i. One should listen actively to others; in other words to be a good listener and a polite interrupter.

ii. Use simple and clear spoken language in both written and verbal communications.

iii. Take notes during meetings and conversations (telephone, video conferences and corridor directions) and keep them in a permanent record; this method is generally found to be very effective.

iv. Always adopt logical argument methodology, this will ensure that you gain respect of the team members and will grant success.

v. Finally confirm and clarify even if things seem to be clear, if you do not confirm your understanding some people will tend to say I meant different thing.

1.1.3 Project Management in Merger and Acquisition

Project management can be defined as:

"Meeting the project due date within its constraints"

Due date in the above mentioned definition is the day that the project is expected to be finished or achieved; while, constraint refer to the resources i.e. people and budget, in addition to other pre-requisites.

The M&A can be considered as a Project Management process and a good Project Manager will contribute a lot to the M&A if he possesses additional, skills in other areas of expertise such as human resource, finance, project scheduling methods, contract, negotiations, crisis and risk management, corporate and others related policies, procedures and regulation.

During our case study and other cases over the past fifteen years we found that the M&A Leader shall have the following skills:

i. Good background about human resource, finance, legal, negotiations and technical matters
ii. Excellent Project scheduling skills and knowledge, mainly where you list your project resources, identify milestones and key tasks and keep daily activities reports.
iii. To be a Leader and to minimize pressure on your subordinates.
iv. Have the capability to work under pressure and to resolve pressing issues.
v. Have the capability and the knowledge to work with different people/organization/government bodies/national and international countries by-laws (i.e. legal, labor and environment).
vi. Ability to manage stress, which is very important since almost all the M&A transactions will come through difficult circumstance like time pressure and those circumstances normally develop stress.
vii. Tools and means to motivate people and team members.

The M&A Code of Ethics contains a lot of illustrations which served as a quick reference and checklist for its users. This made it user friendly and some of those illustrates are depicted in Figure 1-2 under the name of essential skills and knowledge requirements for M&A Leader and team members. This summarizes the issues discussed in points 1.1.2 through 1.1.4.

After the skills required and code of ethics is clear to the M&A Leader, selection of the M&A team members will begin. This team will help the M&A Leader in executing the M&A transaction to meet the anticipated results.

The members will be drawn from in-house personnel as well as from external consultants and specialized firms. During the selection of M&A team members, certain criteria were set as the benchmarks for recruiting any member. The said criteria are discussed in section 1.2 below.

Strategic Thinking

- Forming a steering committee (Sponsor or Owner) for the M&A?
- Knowing why having this M&A? organization or Management vision about this M&A.
- Having an integration plan for the M&A product ahead of time?
- Appointing the right M&A Leader and identifying his roles and responsibilities?
- Giving the M&A Leader the adequate flexibility in choosing his M&A team members?

Effective Communications

- Listen actively to others, be a good listener and a polite interrupter.
- Use a simple clear spoken language in both written or verbal communications.
- Taking notes during meetings and conversations (Telephone, Video Conferences and ***corridors directions***) and keeping those notes in a permanent record; this method is generally found to be a very effective one.
- Always adopt logical argument methodology,this will ensure that you gain a respect of the team members and will grant you a success.
- Confirm and clarify even if things seems to be clear? Nevertheless this will not harm and will clear any ***hidden agendas***.

Project Management

- Good background about Human Resource, Finance, Legal, Negotiations and Technical.
- Excellent Project scheduling skills and knowledge, mainly where you list your project resources, identify Milestones and key tasks and keep daily activities reports.
- act as a Leader and minimize pressure on your subordinates.
- Have the capability to work under pressure and to resolve hot issues.
- Have the capability and the knowledge to work with different people/Organizations/Government Bodies/National and International Countries by-Laws (Legal, Labor and Environment)
- Ability to Manage stress.
- Tools and Means to motivate people and team members.

Figure 1-2, Essential skills and knowledge requirements for M&A Leader and team members (source see bibliography#19)

1.1.4 M & A Team Members Selection Criteria

The M&A Leader shall be given a free hand in selecting his team members since experience has shown that interference by the steering committee or other parties in selecting the team members has a negative impact on the M&A process. Such interference can slow down the process and jeopardize the whole deal.

The M&A Leader had considerable authority to appoint members to his team, while the steering committee was to provide him with guidance and recommendations. Final approval for the team members was placed in the hands of the steering committee. This intrusion was very minimal, as the idea of approval was to fine-tune the M&A Leader selections and guide him as opposed to imposing decisions on him. The steering committee and the M&A Leader in our case study had realized that, in order to make the M&A transaction a successful one, they had to select the best in-house resources (manpower and know how) and external consultants and specialized firms. External consultants and specialized firms are critical for so many reasons. These include the fact that the target acquisition is in another country than that of the acquiring company or Leader organization. Consequently, issues concerning local tax laws, environmental legislations and company law need experienced people who can offer expert advice on various matters. It was found to be prudent to engage consultants and specialized firms that the company had done business with as opposed to hiring new talent.

After selecting all the team members, the steering committee met with the M&A Leader and his team members (in-house members) and explained to them the importance of this M&A transaction. In addition, a copy of the Code of Ethics relevant to this M&A transaction was availed to them for their read-through.

It contained the above material, in addition to important information that all members needed to know, such as;

i. Acquisition target details; why the organization wanted this acquisition and what it will do with the target. Since this information had a lot to do with the organization's strategy and was top confidential information, team members were given a basic outline, while the M&A Leader received a detailed copy. This measure was adopted in a bid to keep sensitive data secret.
ii. The M&A Leader's role and responsibilities, key team members' roles, such as identifying sub-team Leaders like the Technology Leader, and giving them their role and responsibilities.
iii. The acquisition budget that includes the Due Diligence cost.
iv. Acquisition transaction detailed schedule which included the target date and the final recommendation on whether to proceed with the transaction or not.

The above four points had been illustrated in the M&A Code of Ethics so that the M&A Leader and the team members would use it as a quick reference. Figure 1-3 illustrates it and it is named Primary Information of the M&A Transaction.

Figure 1-3, Primary Information of the M&A Transaction (source see bibliography#19)

The most important message that was passed to the M&A Leader and his team members is that the target is very essential to the continued success of the organization.

The number of competitors of SD Inc. In the non-captive (non-captive means the open market where client can obtain technology license and buy the necessary catalyst) use market is less than five. SD Inc., was ranked in the second place.

If the deal were to fall through, the Acquirers especially SABIC will most probably suffer because of the threat of foreclosure of an extremely important target, mainly the technology to produce EO and its competitive advantage will be adversely affected.

Now that the M&A Leader and his team members had understood the message, and realized the importance of this unusual M&A transaction, they were given the following objectives;

i. The loss of the target in any form like being sold to a competitor or going bankrupt means that the acquirer's (SABIC's) competitive position will be affected, and in addition to that the other acquirer's (SCAG's) opportunity to expand its portfolio will be postponed; the acquirers decided that they must acquire the target.

ii. Six months to close the deal.

iii. Combine the Post Merger Acquisition phase with the Due Diligence Phase.

iv. Run the target for six months and make it break even at the end.

By that time, the organization's chart of the M&A transaction looks like the one in Figure 1-4 below. At this point, the external advisors were reporting to the relevant team Leader, such as the one in charge of legal affairs or sometimes to the M&A Leader directly, depending on the sensitivity of the matter and the nature of the task the consultant was doing.

Figure 1-4, The case study M&A transaction organization chart (source see bibliography#19)

2. M&A TEAM WORK PLAN

After the M&A organization chart had been finalized, and every member within the process was made aware of their role and responsibility, a preliminary meeting was held to set a strategy and devise a plan to achieve the four objectives above.

The M&A team was further divided into several sub-teams which were headed by a senior person. Each team had developed an action plan that detailed how each team would execute the multi tasks in parallel since the organization goal was to acquire the target in a short as time as possible. The teams were arranged into four core groups, that is;

i. Due Diligence group; its main objective is to contact the target, facilitate, carry out the Due Diligence process, issue the Due Diligence report and present it to the M&A Leader and then to the project steering committee. In section 2.1 most of the important tasks that this team took care of will be discussed.

ii. Regulations and Permissions group; this group was one of the main groups since the acquisition needs approval in three jurisdictions (USA, EU and Saudi Arabia).The main task of this group was to obtain those approvals as per the applicable laws. The major finding of this group is discussed in section 2.2.

iii. Post Merger Integration (PMI) group; the main task of this group was to create synergies between the target and the organization, develop a PMI plan and participate among the Due Diligence group. In addition, it should update its PMI while participating with the Due Diligence group. The major conclusion of this group is discussed in section 2.3.

iv. Coordination and Facilitation group; the main objectives of this group was to facilitate the communications between the different groups, as well as to guarantee the project schedule and clear any obstacles that may have been encountered. The most important task of this group was to structure the deal, recommend the financing structure, conclude and close the deal. This group's task will be discussed briefly in section 2.4.

The M&A transaction had been divided in three phases; Phase 1 mainly dealt with the Due Diligence activities which were the responsibility of the Due Diligence group. Phase 2 focused on closing the deal and was managed by the Coordination and Facilitation group while Phase 3 focused mainly on the Post Merger Integration and was headed by the PMI group.

For ease of reference, a chart that detailed all this information was supplied to all team members, the M&A Leader and the steering committee as shown in Figure 2-1. It contained a list of the four core groups with a brief function description. At the same time, the contact details for all the team members and management were distributed to all concerned.

Figure 2-1. The four core groups of the case study

2.1 Due Diligence group

The group was headed by a senior in-house person familiar with the target business nature; the Due Diligence took place inside the target premises within a designated data room and prior arrangements had been made for a wish list for the documents to be ready in the Due Diligence data room. The typical or long list of documents or areas for the Due Diligence along with the Due Diligence data room regulations is provided in appendix 1. However, what will be discussed in the later sections are the areas that are most relevant to the case study and an analysis of the valuable lessons to learn from the case study.

From the target preliminary information the group decided to put more effort in the following areas:

i. Business (Profitability)
ii. Environmental
iii. Human Resource
iv. Finance and Tax
v. Research and Development
vi. Intellectual Properties

In sections 2.1.1 through 2.1.6 the most important findings and lessons that the Due Diligence group found in performing their duties will be addressed.

2.1.1 Business (Profitability)

The target was experiencing financial loss and a shrinking market share. It was one of those difficult times for the company and Linde AG, the ultimate owner wanted to sell the company since most indications pointed towards serious difficulties and challenges in the upcoming years which might lead to bankruptcy. In addition to that the target represented a tiny portion of the owner's total business portfolio (also sales).

The Profitability Net Income (loss) before Tax for the period (1998-2002) showing straight losses except for the years 1998 & 2001. In addition to that the company has much more debt than annual sales. Projections for the year 2003 indicated that the company was likely to make further losses.

Figure 2-2 below illustrates what has been discussed above, which is the Profitability Net Income (loss) before Tax $ for the years (1998-2003 "estimation") please note that for confidentiality reasons the numbers are not given.

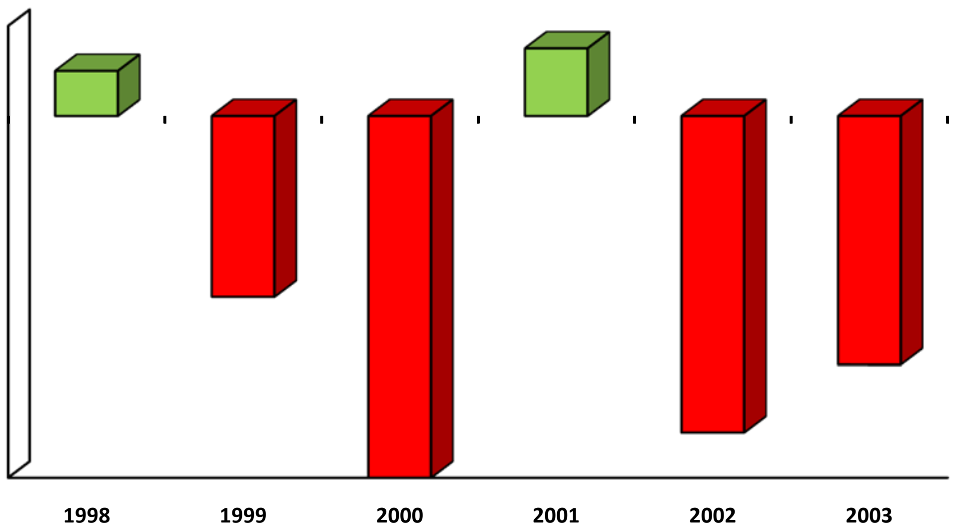

Figure 2-2, Profitability Net Income (loss) before Tax $ for the years (1998-2003 "estimation")

The Due Diligence revealed several critical facts such as that the target has a solid marketing strategy, a wide customer base, a priority list, and proper commercialization of new technology. However, its competitors usurped them in introducing new products and the area of customer care and after sales services. During each Due Diligence assessment, the group kept updating their Strengths, Weakness, Opportunities and Threats analysis (SWOT) with the participation of the PMI group representatives. The SWOT analysis will be discussed in more detail during the review of the PMI group.

Experience revealed that a thorough exercise should be conducted during Due Diligence by meticulously analyzing the target records, interview their direct responsible persons and investigate the target via its suppliers, customers and competitors if possible.

2.1.2 Environmental

The target is located in one of the most restrictive US states with regards to environmental issues it is the State of New Jersey. Consequently, this aspect had to be keenly looked into and all areas including the Environmental Assessment, Environmental Compliance Audit and Health and Safety Audit of the target carefully assessed.

In spite of the fact that the target is doing well in this area, the facility still needed to upgrade some of its production equipment in order to comply with new regulations that will be incorporated in the near future.

2.1.3 Human Resource

Initial information indicated that the average age for most of the target's key personnel was above 50 and that the existing organization chart was not the most effective one. The group concluded that it should go further in its Due Diligence and along with the participation of the PMI decided to develop a succession plan and suggest a new organization chart.

This is not a normal process that you carry out during the Due Diligence phase but it was specific to the case study and might be applicable to other cases especially when time is of essence.

The Due Diligence group and the PMI group, with the help of an external advisor, examined this area in more detail during the Due Diligence and interviewed certain personnel within the target organization. After that, they developed a clear succession plan, career development plan along with a suggested organization chart. The old chart and suggestions for a new organization chart will be discussed briefly in the next paragraph. This departure from the norm highlighted the importance of spending additional time in the area of Human Resource so as to fully apprise oneself of the whole picture. Other related items within this area such as saving (pension) plans and compensations are typical areas to look into and are already covered in appendix 1.

The target resources were divided in seven major categories which included the following; Research & Development, Engineering & Licensing, Finance & Administration, Maintenance, Production, Corporate and Sales & Marketing. The M&A team found that the line reporting system was mixed up.

The team findings are illustrated in figure 2-3 below where the percentage of each category staff is given in comparison to the total number of staff. The biggest efforts were toward the Research & Development with 30% and the Engineering & Licensing with 25%, which is somehow logical to the nature of the target business, but is slightly above the industry average. However other categories were experiencing a shortage in manpower such as the Sales & Marketing with 9%, the production with 16%, maintenance 4% and Finance & Administration with 10%, while other categories were above the reasonable percentages, such as the Corporate with 5%.

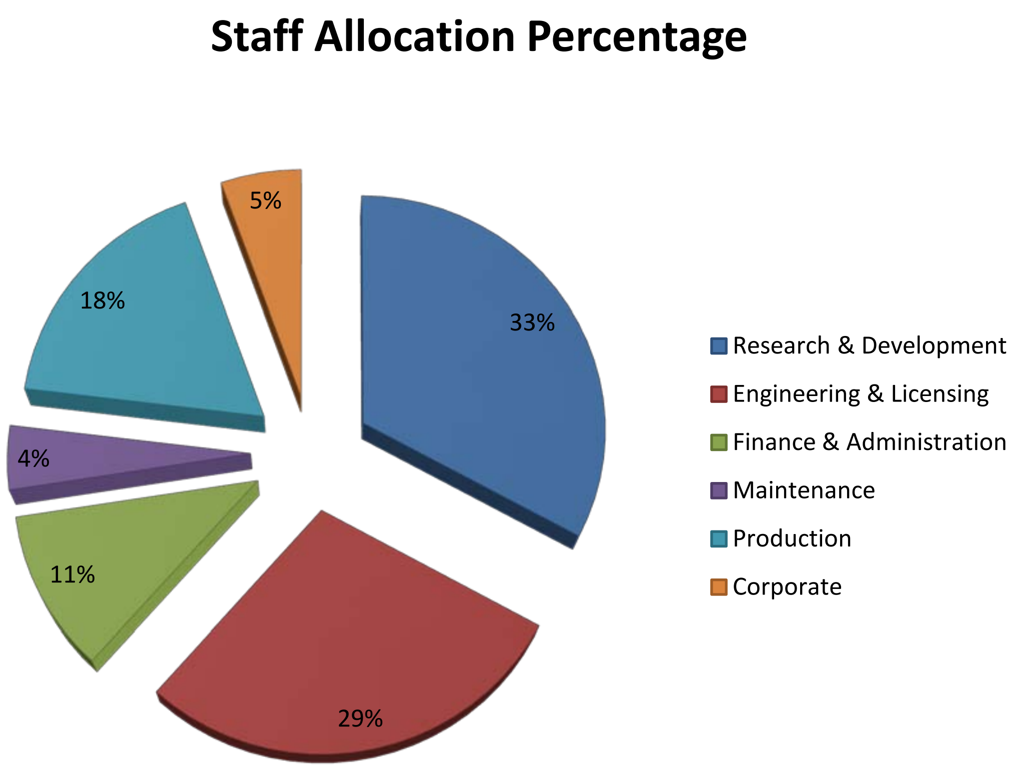

Figure 2-3. As Is Staff Allocation Percentage

The other important issue with the As Is organization chart consisted of five hierarchical layers compared to three to four layers that are the industry's best practice. In addition to that, the As Is organization structure and management processes neither encourage nor allow for the right level of internal inter or intra departmental communication. For example, person A in department 1 might report to the head of department 2 and not to his department's head (department 1).

The team had recommended a reduction in the layers to maximum of three and the merging of some departments. This is illustrated in figure 2-4 below. The Corporate department was merged with the Finance & Administration in the suggested model and relocation of staff implemented.

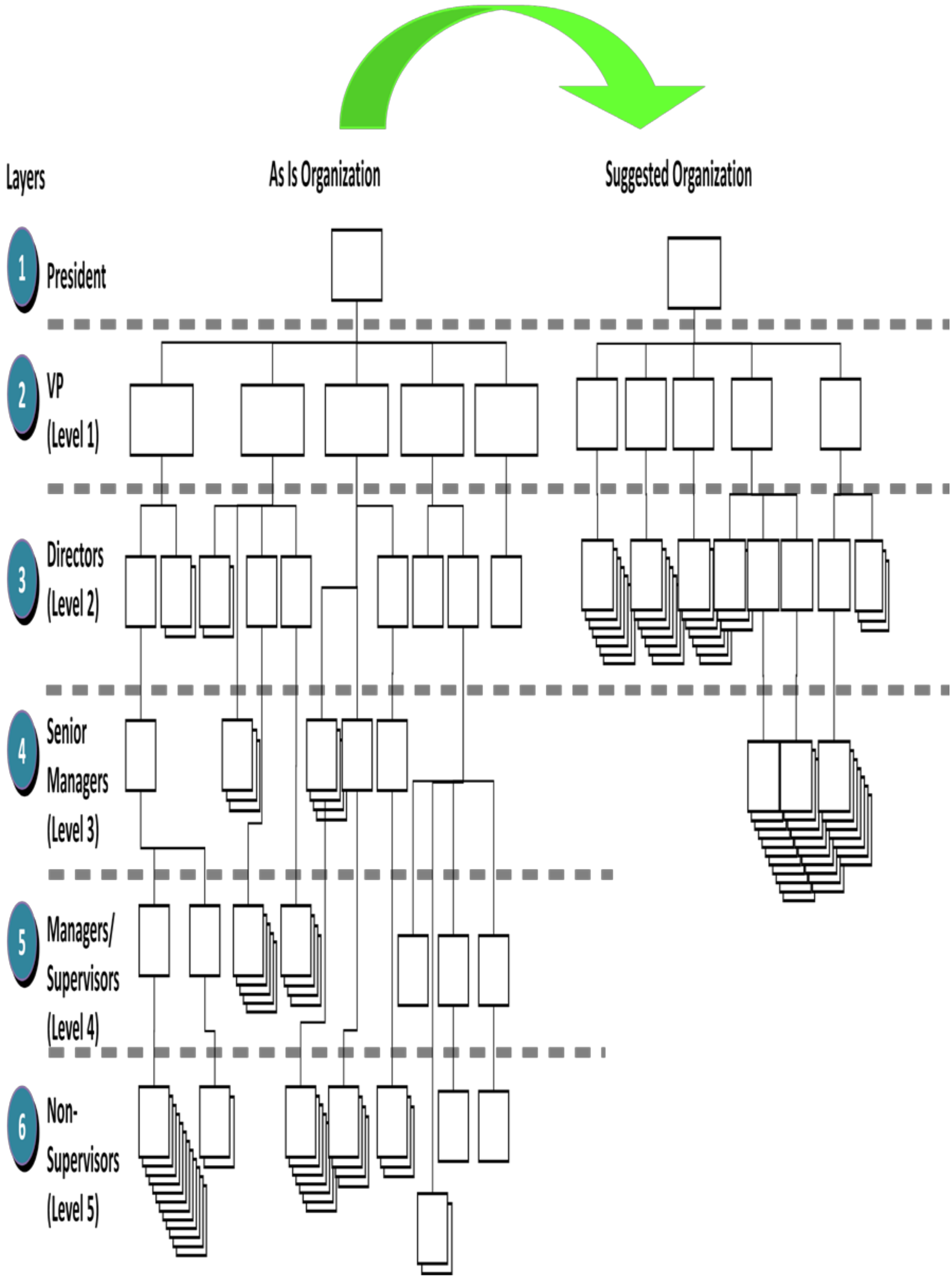

Figure 2-4, As Is and suggested organization

Finally, another very important discovery was made interviewing personnel during the Due Diligence namely that most employees were not aware of their roles and responsibilities. In a number of cases, job descriptions were not clear or sometimes mixed up.

2.1.4 Finance and Tax

The M&A group had performed the typical Finance and Tax Due Diligence which is listed in appendix 1. It was discovered that payment terms for the company sales were favorable towards its customers, this was mainly because of the shortage in manpower in collection department addition to the target's deteriorated competitive position. This had led to financial burdens on the target.

2.1.5 Research and Development

Since the Research and Development is the major backbone for the target's competitiveness it was one of the top Due Diligence items that need to be checked thoroughly. The important items for due diligence are recorded in the typical Research and Development checklist in appendix 1. The Research and Development department was lacking the appropriate strategy, team work spirit and the essential resources needed to keep the company in a competitive position. These observations needed more than a due diligence exercise to uncover and the team had to personally interview employees to get this information.

This area was one of the most important areas that Due Diligence group and the PMI group worked together as the survival and competitiveness of the business requires a strong Research and Development department that knows its roles and responsibilities and is up to the challenges that it faces. This was the team first priority and the PMI group prudently updated its SWOT analysis after this stage.

2.1.6 Intellectual Properties

In the technology field, Intellectual Properties is the major field that firms concentrate on to secure the company competitive position. The team looked into the typical issues in Intellectual Properties area (in appendix 1) and found that conducting a patents infringement study and patents freedom to operate study were important areas of concern.

There are many reasons for obtaining an infringement or freedom-to-operate opinion. The fundamental purpose of such opinions is to advise the client as to whether a technology would infringe a third party's patent. The technology may include a product or service that the client currently produces and sells, or uses a product/service that the client contemplates making, selling, or using in the future. A client may have already become aware of a particular patent, possibly by receiving actual notice of the patent or by discovering the patent in the course of developing the technology. In some cases, the client may not be aware of any particular patents and may want to be sure that there are no patents that would impact a technology development. In either case, the client is seeking some assurance that it will not face a potentially expensive and time consuming patent infringement lawsuit.

Based on the above scenarios, the group decided to go ahead and perform the above studies with the help of specialized firms in certain countries where the target's major business is carried out. The results obtained from this exercise will be covered by the representations and warranties article in the sales and purchase agreement.

2.2 Regulations and Permissions Group

The major task of this group was to check the requirements needed to impose the acquisition process in the three jurisdictions, namely Saudi Arabia, USA and Europe. It was mainly concerned with confirming that no antitrust laws were being broken. A discussion of each jurisdiction and the major lessons learned are contained in appendix 2.

2.2.1 Competition

Fair competition is a healthy phenomenon if the appropriate regulations and laws are applied across the board. It is good for the economy as it encourages proper allocation of scarce resources and results in cheaper prices for the consumer. The competition laws in the USA and Europe are mature compare to Saudi Arabia where laws regulating competition are still unclear.

2.2.2 Saudi Arabia Competition Requirement

During the year 2003 when the case study took place, Saudi antitrust laws did not even exist. It came into existence in the mid of the year 2004 and was made effective in the first quarter of 2005; the major items of the Saudi antitrust laws are in appendix 2.

This new law pleased the group as they did not need to file for any Saudi antitrust law; instead, they only needed to comply with very minimal requirements to make the deal effective.

2.2.3 USA Competition Requirement

Useful information with regard to the USA competition law or the antitrust Acts is contained in appendix 2. Figure 2-5, gives a brief outline of the major USA Antitrust Acts.

The Sherman Act of 1890	•Was the first federal antitrust Act passed in 1890 Federal statute to limit cartels and monopolies. It falls under antitrust law, the Act is divided into sections, one dealing with firms while the others dealing with persons.
The Clayton Act (October 15, 1914)	•The Clayton Act made both substantive and procedural modifications to federal antitrust law. Substantively, the act seeks to capture anticompetitive practices in their incipiency
Robinson-Patman Act of 1936 or Anti-Price Discrimination Act	•The Act prohibits sales that discriminate in price on the sale of goods to equally-situated distributors when the effect of such sales is to reduce competition. Price means net price and includes all compensation paid.
The Hart-Scott-Rodino Antitrust Improvements Act of 1976	•Is a set of amendments to the antitrust laws of the United States, principally the Clayton Antitrust Act. •The Act provides that before certain mergers, tender offers or other acquisition transactions can close, both parties must file a "Notification and Report Form"
The Celler Kefauver Act or Amendments 1950	•The Amedndments was passed in 1950 to close a loophole regarding certain asset acquisitions and acquisitions involving firms that were not direct competitors

Figure 2-5, the Major USA Antitrust Acts (source see bibliography#14)

Fortunately the group did not need to file the acquisition under the Hart-Scott-Rodino Act, (a brief description of this Act is given in appendix 2). However, the group identified a voluntary requirement called Exon-Florio Regulatory Compliance which is briefly described in appendix 2. The group's recommendation was to comply with this statute despite the fact that regulation is voluntary

Exon-Florio Amendment, section 721 of the defense production Act of 1950, 50 U.S.C § 2170, as added by section 5021 of the Omnibus Trade and Competitiveness Act of 1988 (the " Amendment"), provides that the president of the United States or his designee, the Committee on Foreign Investment in the United States ("CFIUS"), may investigate and block a transaction, or require a foreign acquirer to sell an acquired U.S. company, that could result in foreign control of a U.S. business if he determines that;

i. there is credible evidence that the foreign interest seeking control might take action that threatens to impair the "national security" and
ii. Other provisions of law are inadequate to protect the national security. The Amendment applies to all transactions, regardless of the size of the transaction or the parties involved.

As mentioned earlier, the M&A transaction took place in the year 2003, only two years after the 9/11 incident in the USA. The Acquirer agreed with the group that complying with the statute was a prudent decision.

2.2.4 European Competition Requirement

The most interesting definition for the European Union Competition rules the group encountered was highlighted in the EU competition policy which states that;

"In free market, business is a competitive game. Sometimes, companies may be tempted to avoid competing with each other and try to set their own rules for the game. At times, a major player in the game may try to squeeze its competitors out of the market. The European Commission acts as the referee to ensure that all companies play by the same rules"

The above definition is summarizing the EU competition policy; useful information regarding the EU competition policy located in appendix 2. Figure 2-6, shows Major EU antitrust policies.

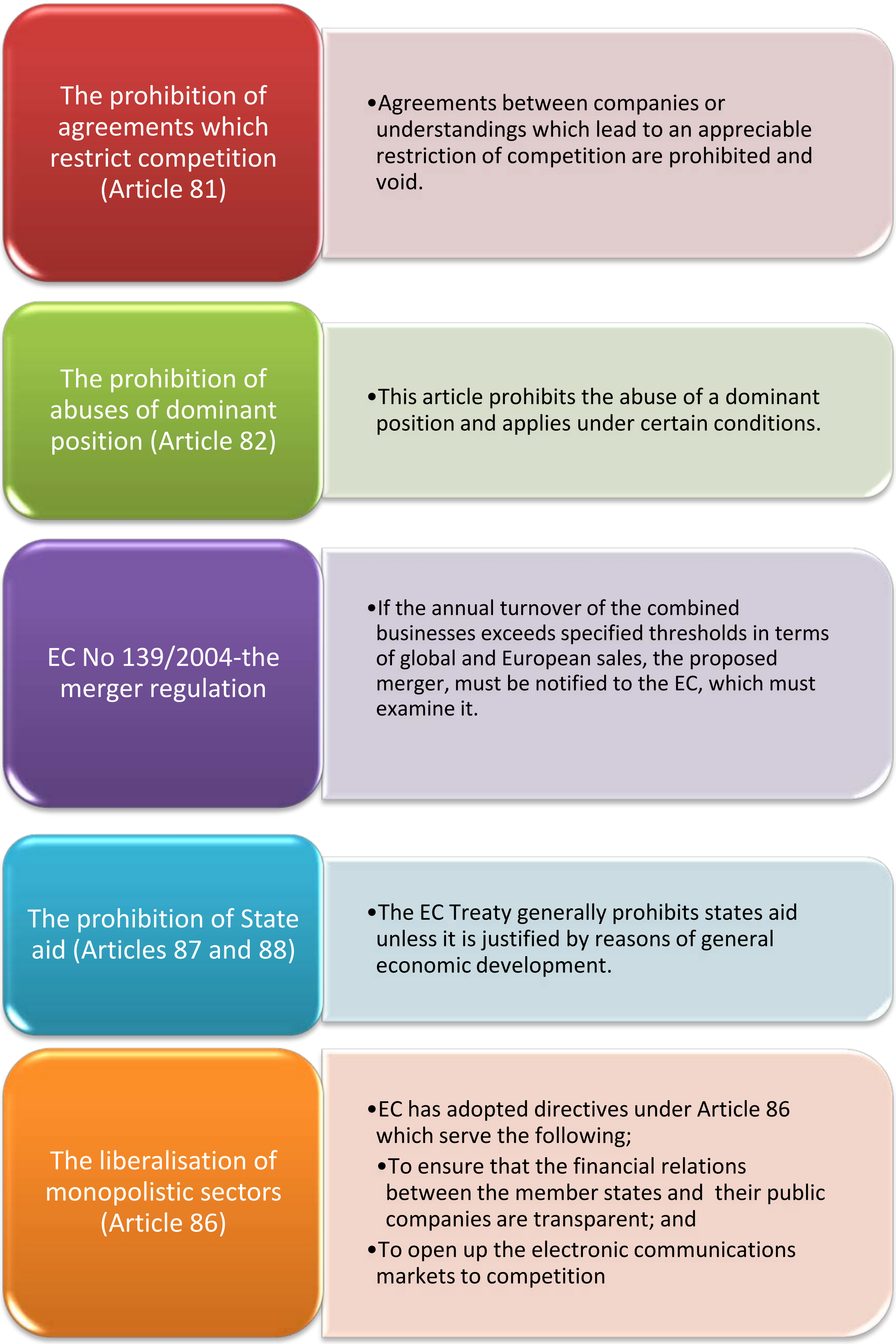

Figure 2-6. Major EU antitrust policies (source see bibliography#14)

The group found that they needed to file the form relating to the notification of a concentration pursuant to regulation (EEC) No 4064/8. They had to appoint one of the top firms to help them in file for the above notification.

What was learned during this phase is that it is wise to choose the best specialized firm that can help you in file for the antitrust; this will save a lot of time and effort although the cost will be higher. Without commitments The EU competition commission decided to clear the acquisition.

2.3 Post Merger Integration Group

In spite of the fact that the task of this group will take place only after closing the deal, it was the management's decision to involve it in the process at day one; the decision turned out to be a wise one. The group started with an initial SWOT analysis and integration plan based on preliminary information available prior to the start of the Due Diligence process. This integration plan was based on different scenarios depending of what the acquirer wanted the target to be after six months (as discussed earlier in section 1.2, where the management wish was to have the target break-even). The group had laid out a five years plan that if implemented, would probably double the sales.

The group kept updating its SWOT analysis, the six month plan and the five years plan along with the Due Diligence group after each critical Due Diligence area findings. By the time the Due Diligence group had prepared the Due Diligence final report, the PMI group had finalized its three plans and was ready to take the lead in The next phase.

It is important to have a Post Merger Integration plan at all early stage and get the persons who will implement the plan involved in the Due Diligence phase.

2.4 Coordination and Facilitation Group

The main task of this group was to facilitate the communications between different parties and keep the project schedule under control. Through experience it was learnt that logistics is an important issue that needs skilled people to take care of. Logistical challenges mainly concerned obtaining the necessary country entry visas, travel arrangements and scheduling meetings for the huge gatherings that met every day. .

In addition to their above task the group had been given a very critical duty to work closely with all the other three groups to develop the deal structure, financial arrangements, draft the sales and purchase agreement and take the lead in the next phase of concluding and closing the deal.

After all the groups had concluded their duties successfully, they sat together to discuss the Due Diligence findings and to participate in writing the Due Diligence report before presenting it to the M&A steering committee. The most useful part of the Due Diligence report and the Due Diligence presentation discussed are in section 3 below.

3. DUE DILIGENCE FINDINGS

The next two sections will discuss the Due Diligence report format and the Due Diligence presentation format which are very essential in the case study.

3.1 Due Diligence Report Format

The most important four articles within the Due Diligence report are;

1. Existing and potential risks along with its suggested solutions in addition to its suggested representation and warranties to be considered in the sales and purchase agreement.
2. SWOT analysis.
3. PMI plan.
4. and finally the team recommendations.

The report will include other important articles such as the recommended deal structure, which will be discussed in the following section.

The report will be presented by the M&A Leader with the support of some of his team members, the main structure of the Due Diligence presentation is given in appendix 3.

3.2 Due Diligence Presentation Format

The Due Diligence Presentation mainly includes the major articles of the Due Diligence Report and consists of seven main areas that are discussed in appendix 3. They are illustrated in figure 3-1 below.

At this stage what is the most important is that the team has the suggested deal structure along with the draft sales and purchase agreement in place and ready to negotiate with the target owner.

After obtaining the steering committee's approval to go ahead and close the deal, the Coordination and Facilitation group contacted the target owner and concluded the deal. After that it took care of the necessary legal matters including the EU antitrust clearance, deal finance and related issues needed to start phase 3.

From the start of Phase 3, the PMI group was in charge. The group had done excellent work during the previous stages and their work in this phase is discussed below in section 4, with some details that give the lessons learned from this case study phase.

Figure 3-1. The Due Diligence Presentation Format

4. POST MERGER INTEGRATION PROCESS (PHASE 3)

Immediately after the deal closing the PMI group communicated a message to the target that contains three major pillars via one of the organization seniors, those pillars were:

i. No layoffs in the short term.

ii. Standalone company, no merger or the like will take place.

iii. Committed to make the target succeed in its competitive position.

From experience gained from the case study, the above three pillars are what any acquired company wants to hear; in the case study, the message had a positive influence on the success of the PMI group tasks. It boosted the staff morale, enhanced their cooperation and produced a creative environment.

The PMI group had finalized the PMI plan and was ready to start this phase. Its participation from the beginning of the M&A transaction and during the other two phases, Phase 1 the Due Diligence phase and Phase 2 the deal closing phase had critically improved the knowledge about the target.

The PMI plan was divided into different sub-plans which had as their plan objectives the need to meet the main requirement of the steering committee that is to have the target break even after six months. In addition to this, there was a five year plan, which aimed to double the sales in the fifth year and place the target in a better competitive position.

As discussed earlier the Research & Development department was the group's first priority, although it realized that it needed to begin with the Human Resource area since both areas are heavily dependent on each other.

The group decided to start with the Human Resource area, then go to the Research & Development area and the Business area. In the upcoming sections 4.1 to 4.3 a more detailed discussion about those areas will be made.

4.1 Human Resource PMI Plan

The PMI group during the Due Diligence phase and based on the message passed to the target immediately after the closing date (target shall be standalone), had concluded the following organization design principles that they need to consider for this case study. Those organization design principles and their rationales are illustrated in figure 4-1 below.

The group had considered eight organization design principles, those are:

i. Business Units; to structure the target as one business unit to satisfy the requirements of a standalone business.

ii. Spans of Control; increased spans will focus supervisor on supervising and focus non-supervisors on their functional activities, not administration.

iii. Management Layers; flatten the organization to increase cross teaming and integration, reduce the number of managerial staff and increase empowerment of staffs which speeds up decision making in the organization.

iv. Roles Responsibilities; clear roles and responsibilities to minimize duplication of effort and improve efficiency.

v. Dotted Lines; elimination of dotted lines clarifies authority, roles and responsibilities and eliminates bypassing and undermining of more senior staff by direct reports.

vi. Activities Alignment; align activities that require close integration based on frequency, predictability and strategic importance.

vii. Focus; increasing focus improves efficiency and effectiveness and it minimizes the complexity of a number of activities performed.

viii. Resource Allocation; resource allocation for time management increases utilization and minimize downtime of resources.

The group found that none of the above organization design principles existed within the target organization and that they needed to work at installing them in the work culture of the target. In this regards, the group had done an excellent job and had to make only little modification on their earlier suggested organization chart in figure 2-4.

In the next section, the core competences that will enable the group to fulfill its commitment will be discussed.

ORGANIZATION DESIGN PRINCIPLES	RATIONALE
Business Units	- Structure as one business unit to satisfy requirement for standalone business (shown earlier).
Spans of Control	- Increased span of central will focus supervisors on and focus non-supervisors on their functional activities, not administration.
Management Layers	- Flatten the organization to increase cross teaming and Integration. - Reduce the number of managerial staff. - Increase empowerment and speed decision making in the organization.
Roles and Responsibilities	- Clear roles and responsibilities to minimize duplication of effort. - Clarify roles and responsibilities to improve efficiency.
Dotted Lines	- Elimination of dotted lines clarifies authority, roles and responsibilities. - Eliminate bypassing and undermining of more senior staff direct reports.
Activities Alignment	- Align activities that require close integration based on frequency, predictability and strategic importance.
Focus	- Increasing focus improves efficiency and effectiveness. - Minimize the complexity of the number of activities performed.
Resource Allocation	- Resource allocation for time management increases utilization and minimize downtime of resources

Figure 4-1, Organization design principles and their rationale

4.1.1 Human Resource Core Competence

During the Due Diligence phase the group identified the need to improve the target's competitive position, which was one of the items included in the communication message to the target, and to take care of several core competency related to the human factors that will enable employees to reach their goals. The employees need improvement in three main areas, which are: employee capability, employee motivation and employee direction.

In order for the group to satisfy the three above main areas, they need to work on the following processes which are also illustrated in figure 4-2 below:

i. General Human Resource Support; which mainly deals with the employee capability and includes the following:
    a. Relocation and expatriate support.
    b. Recruiting.
    c. Training.
    d. Staffing and succession planning.

ii. Compensation and Benefits; this deals with employee motivation via the payroll and benefits administration, and compensation/incentives strategy, and employee direction

iii. Organization Development; this deals with all the three areas, employee capability through appraisal & career planning, employee motivation through organizational development and employee direction through industrial relations.

Implementing the above issues will ensure that employee performance will be at its best. The group's plan in the area of Human Resource had been implemented and was very successful. In addition, the group had recommended to the steering committee that the composition of the target's Board of Directors be carefully selected and have both technical and practical experience. The steering committee approved the group's recommendation which turned to be excellent choice.

The lessons learned are that the role of the PMI group should not be limited to the ones that are taught in the classroom but it needs to be expanded as required and it needs to be empowered.

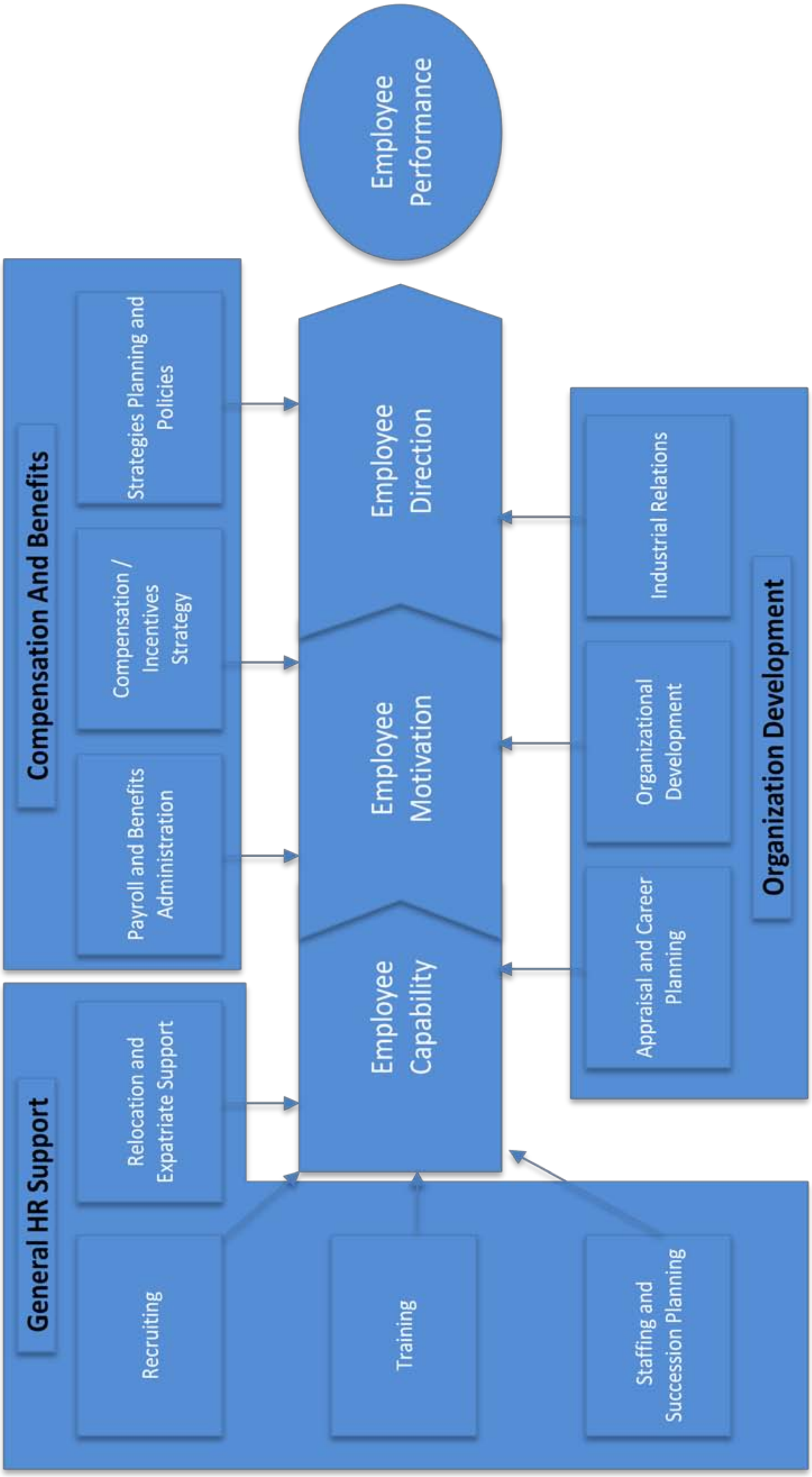

Figure 4-2. Human Resource Core Competence Development Plan

4.2 Research and Development

The PMI group found during the Due Diligence phase that the target Research and Development department, which is the core competence for the company, lacked very essential major rules such as the lack of a strategic focus and effort prioritization, project duplication, different reporting systems, lack of prioritization of project portfolio and lack of an incentive scheme.

Since the above task is independent of the task in section 4.1, the group had run those two tasks in parallel and they decided to implement a long listing plan. The most important items in the plan included were:

i. Assigning an experienced Research and Development professional from the Acquirer to head this department.
ii. Conducting outside search and screening of candidates for research positions.
iii. Introduce methods to improve productivity of current research effort.
iv. Introduce a formalized Research and Development portfolio management process in addition to that developing a Research and Development strategy.

As a result of introducing the above changes and others, the Research Development department became more focused, homogenized and productive.

It is very important that the PMI group kept its plans focused and updated even after implementation so that the plans remained relevant and effective.

4.3 Business Plan

During Phase 1 of the Due Diligence phase, the PMI identified several areas for improvement such as the shortage of marketing manpower and lack of sales incentive scheme, lack of profitable services and products strategy, inappropriate business unit structure and lack of business intelligence.

The group developed a business rescue plan in the most important areas as well as an accelerated plan to fulfill the commitment to the management to have the target achieve breakeven after six months. The most important lesson to learn from this case study is the need to motivate people prior to ask them to extend their work efforts.

The group also developed a five years business plan that aimed at doubling the sales and increase the EBIT(see section 5 below). Next I will discuss the target situation in its fifth acquisition anniversary the end of the year 2008.

5. TARGET'S FIFTH ACQUISITION ANNIVERSARY

Most of the M&A Leader's and the group's plans had been implemented and the results started to be noticed six months after the target achieved breakeven.

Currently, the target head count had increased by almost 40% to handle the increased workload. The Research and Development facility had become a state of the art facility and business was booming after the break even stage. Sales and the EBIT had almost tripled and the new target management is doing well, the employees are satisfied and the work environment is healthy for creativity.

These results would have been not achievable without the M&A Leader and his team members, mainly the four groups, in addition to the M&A steering committee approach to the acquisition.

6. CONCLUSION

The business, financial and competitive position data received from SD Inc. over the last five years and in particular the data received in the fifth target acquisition anniversary showed how successful the M&A transaction was by reaching positive records in the sales, EBIT and competitive position area for SD Inc, which at the closing date was losing money and customers in addition to the accumulated debt and other burdens.

There were a lot of factors adopted by both SABIC and SCAG behind the success of the case which if adopted in almost any M&A transaction will contribute to positive results. The acquirer divide the M&A transaction into three phases, Phase 1, the Due Diligence phase, Phase 2, the Deal closing phase and Phase 3, the Post Merger Integration phase. Those phases were carried out professionally and accurately under the supervision of a well knowledgeable experienced and senior appointed steering committee. The committee selected a distinguished M&A Leader who had the knowledge, management skills, experience and commitment to reach the goals. The Leader was supported by a team that matched his level of experience, knowledge and commitment.

The creative approach for the M&A transaction work plan set by the M&A team (steering committee, M&A Leader and his team members) in dividing the process to four groups: Due Diligence group, Regulations & Permissions group, Post Merger Integration group and Coordination & Facilitation group. The most important factor that made this transaction a successful one is that the role of those groups was not a typical role; it was an interactive, flexible and dynamic role.

In conclusion, the clear objectives behind the acquisition, well prepared acquisition strategy, management support, the selection of the M&A organization along with the right external consultants, the creative approach such as the envelopment of the PMI from day one, leaving the target as a standalone and treating the target as an equal partner, empowerment and motivation of the involved persons, are behind the success of this case.

Figure 6-1 illustrates the essential steps/processes on how to achieve a successful merger and acquisition.

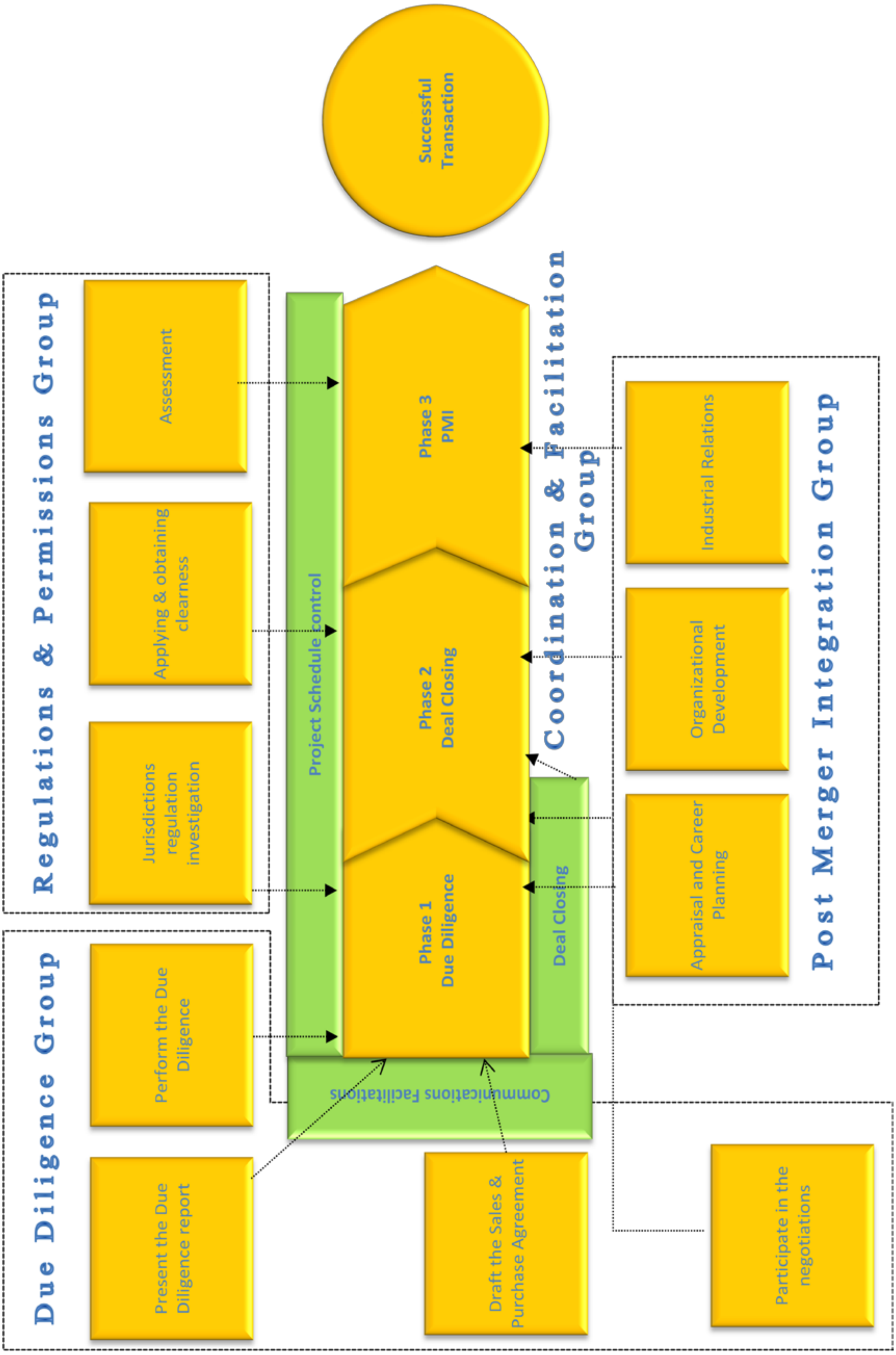

Figure 6-1, How to Achieve Successful Merger and Acquisition

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Appendix 1

1.Due Diligence Data Room Regulations

2.Due Diligence Check List

1. Due Diligence Data Room

The Due Diligence will take place normally via a virtual or physical Data Room; the Data room is a room where all the requested information in section 2, the checklist, will be available and ready to be examined. Most of the time you have to agree ahead on the Data Room protocol i.e. no copies are allowed outside the Data Room and only a certain number of people are in the room at the same time.

In addition to the Data Room, an interview with the employees shall be conducted in order to develop a better understanding of the acquired target.

The case study revealed that whatever information will be provided in the Data Room; interviewing target employees most of the time is very advisable and sometimes it is a non-avoidable action.

The roles for the Data Room (physical one) are more or less standard and include the following;

1. Identify the target Data Room Lead Coordinators from the target that can provide reliable help and will be held accountable for the provided information.
2. Designate a remote place for the Data Room.
3. The acquirer should provide a wish list containing the files/items that need to be seen in the Data Room.
4. Identify the target personnel whom the acquirer would like to interview.
5. No pictures may be taken of the facilities except with the consent of one of the Lead Coordinators.

6. All disclosure is subject to the terms and conditions of the Confidentiality Agreements heretofore entered into each member of the Acquirer team has to sign an individual Confidentiality Agreement.

7. No photocopies, laptops, computers, printers, pictures or the alike shall be permitted in the Data Room.

8. The Data Room opening time and duration.

2. Due Diligence Checklist

The most common areas to examine during the Due Diligence (DD) are:

1. Corporate records:

It is important to look for the following:

i. Charter Documents:

a) Certificate of incorporation

b) By – Laws

ii. Minutes of Meeting (MOM):

All Types of Minutes of Meeting i.e. Board of Directors.

iii. Organization Charts:

Detailed organization chart including Job Description, Pension Plan and other related employee benefits and the alike.

iv. Company Agreements:

All types of signed agreement i.e. Cooperatives Agreement, Supply Agreement, Alliances …etc, in addition to the ongoing Agreement/s (under process and yet signed ones).

v. Liabilities & Litigation: To identify all types of liabilities and litigation directly or indirectly against the target acquisition.

vi. Audit Reports, including also Audit Letters

This will include financial, Legal Tax, Environmental and other Audit if applicable.

2. Property:

i. Deeds

ii. Lease

iii. Available and existing insurance policies

iv. Any related signed Agreements that is related to the property

3. Insurance:

i. All insurance policies i.e. liability and environmental insurance.

ii. Summary of all annualized insurance cost to the target acquisition including the retired and/or former employees.

4. Finance:

i. Tax issues: Copy of all tax related matters.

ii. Financial statement, P+L statements for the last 5 years.

iii. Financial Audit reports for the last 3 years.

5. Business:

i. Product Portfolio.

ii. Market volume and existing market share.

iii. Historical Sales & Volume for the last 5 years and future plans.

iv. Customer-Supplier relationship.

v. Sales Network.

vi. Life cycle analysis for the key products.

6. Assets:

   i. Fixed assets: mainly equipments.

   ii. Intellectual Properties (IP):

      a. List of all IP (Patent, Trade Marks, domain names…etc).

      b. IP Philosophy.

      c. List of all potential IP.

      d. Current Assets: Raw Materials and Consumables.

7. Production:

   i. Technology.

   ii. Quality.

   iii. Storage.

8. Environment:

   i. Copy of all Environment Regulation and Records.

   ii. Copy of all Environment Litigation and inconsistent if any.

3. Exon-Florio

3.1 Scope of "National Security”

There is no definition of "national security" in either the Amendment itself or the regulations. The regulations provide solely that notification is appropriate where the company being acquired "provides products or key technologies essential to U.S. defense requirements." For example, products or services that clearly have no relation to national security would include toys and games, food products, hotels, restaurants and legal services.

By contrast, products or technology related to weapons, oil or other regulated industries in which the U.S. government has traditionally taken an interest, or transactions involving certain foreign countries, may arguably fall within the scope of "national security." Given the current international environment, it is reasonable to take a broad view of what may constitute "national security."

3.2 Control

A critical element in determining whether the Amendment is applicable to a particular transaction is the concept of control. Control is the direct or indirect power to decide important matters affecting the U.S entity. In particular, control exists if the acquirer has the ability to make decisions about:

i. The sale, lease, mortgage, pledge or other transfer or any or all of the principal assets of the company, whether or not in the ordinary course of business.

ii. The dissolution of the company.

iii. The closing and /or relocation of the production or research and development facilities of the company.

iv. The termination or non-fulfillment of contracts of the company; or

v. The amendment of the articles of incorporation or by-laws of the company as to any of the above matters.

3.3 Failure to Give Notice

If there is any doubt as to whether the transaction may be one that affects "national security," it is highly recommended that the parties provide proper notice of the transaction as set forth in 31 C.F.R. § 800 402. Once the notice is given and the transaction is cleared by the U.S. government, the government cannot thereafter seek divestiture pursuant to the Amendment. However, if voluntary notice is not filed, the transaction remains subject to divestment under Amendment indefinitely based upon circumstances existing at the time the transaction was closed.

3.4 Executive Order 13224

Pursuant to Executive Order 13224 regarding the blocking of terrorist property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism, an investigation must be undertaken regarding whether certain designated persons and groups are a party to certain transactions. The Specially Designated Nationals and Blocked Persons list is online at;

www.utreas.gov/offices/enforcement/ofac/sdn/t.

Appendix 2

1. Competition Regulations across Saudi Arabia, USA, & Europe

1. Saudi Arabia Competition Law

This law aims to protect and encourage fair competition and combat monopolistic practices that affect lawful competition. The Saudi competition law had been approved only in the mid of the year 2004 and was effective in the first quarter of the year 2005. Some of the important highlights of the Saudi competition law are:

i. Provisions of this Law shall apply to all firms working in Saudi markets except public corporations and wholly-owned state companies.

ii. Have a lot of common articles with EU and USA competition laws such as, practices, agreements or contracts among current or potential competing firms, whether the contracts are written or verbal, expressed or implied shall be prohibited, if the objective of such practices, agreements or contracts, or consequent impact thereof is the restriction of commerce or violation of competition among firms. A firm or firms enjoying a dominant status shall also be banned from carrying out any practice which restricts competition among firms, in accordance with the conditions and rules specified in the Regulations, especially the following:

   a) Controlling prices of commodities and services meant for sale by increasing, decreasing, fixing their prices or in any other manner detrimental to lawful competition.

   b) Restricting freedom of flow of commodities and services to markets or removing them, wholly or partially, therefore by hiding, unlawfully storing, or refraining from dealing in them.

c) Contriving a sudden abundance of commodities and services which results in an unrealistic price affecting other dealers in the market.

d) Preventing any firm from exercising its right to enter or move out of the market at any time or hampering the same.

e) Depriving, wholly or partially, certain firm or firms of commodities and services available in the market.

f) Dividing or allocating markets for selling or purchasing commodities and services pursuant to any of the following criteria:

g) Geographical regions

h) Distribution centers

i) Type of clients

j) Seasons and time periods.

k) Influencing the normal price of sale, purchase, or supply quotations of commodities and services whether in government or non-government bids or auctions.

l) Freezing or restricting manufacturing, development, distribution or marketing processes and all other aspects of investment, or restricting the same.

m) However in spite of the above the law is not yet being implemented in a proper way.

2. USA Antitrust Acts

Nowadays the Bureau of Competition is under the division of the Federal Trading Commission (FTC) charged with elimination and prevention of "anticompetitive" business practices. It accomplishes this through the enforcement of antitrust laws, review of proposed mergers, and investigation into other non-merger business practices that may impair competition. Such non-merger practices include horizontal restraints, involving agreements between direct competitors, and vertical restraints, involving agreements among businesses at different levels in the same industry (such as suppliers and commercial buyers).

The FTC shares enforcement of antitrust laws with the Department of Justice. However, while the FTC is responsible for civil enforcement of antitrust laws, the Antitrust Division of the Department of Justice has the power to bring both civil and criminal action in antitrust matters.

I will discuss the most important USA Antitrust Acts utilizing the information available on the internet and mainly on Wikipedia which is source number 7. Those major USA Antitrust Acts are:

a). The Sherman Act of 1890:

Was the first federal antitrust Act passed in 1890 to limit cartels and monopolies. It falls under antitrust law; the Act is divided into sections;

I. Section 1 (mainly firms) prohibits contracts, combinations and conspiracies in restraint of trade among the several States, or with foreign nations.

II. Section 2 (mainly persons) prohibits monopolization and attempts and conspiracies to monopolize.

b). The Clayton Act (October 15, 1914) and Celler Kefauver Act or Amendments:

The Act was enacted in the United States to add further substance to the U.S. antitrust law regime by seeking to prevent anticompetitive practices in their incipiency. The Clayton Act made both substantive and procedural modifications to federal antitrust law. Substantively, the act seeks to capture anticompetitive practices in their incipiency by prohibiting particular types of conduct, not deemed in the best interest of a competitive market. Notably, the act prohibits:

i. Differential pricing
ii. Tying & exclusive dealing
iii. Creation of treble damages
iv. Unfair Mergers & Acquisitions

An important difference between the Clayton act and its predecessor, the Sherman Act, is that the Clayton Act contained safe harbors for union activities.

The Celler Kefauver Act or Amendments to Clayton Act passed in 1950 to close a loophole regarding certain asset acquisitions and acquisitions involving firms that were not direct competitors, mainly to take care of the following:

I. Amendment to the Clayton Act, statute was expanded to include horizontal and vertical mergers.

II. Protection of small competitors from more efficient larger competitors.

c). Robinson-Patman Act of 1936 or Anti-Price Discrimination Act:

Essentially the Clayton Act in 1936 for prohibiting differential pricing or price discrimination (Example: charging two different buyers different prices for good of similar grade and quality). In general, the Act prohibits sales that discriminate in price of goods to equally-situated distributors when the effect of such sales is to reduce competition. Price means net price and includes all compensation paid. The seller may not add in additional goods or services. Injured parties or the US government may bring an action under the Act.

d). The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Public Law 94-435, known commonly as the HSR Act):

This is a set of amendments to the antitrust laws of the United States, principally the Clayton Antitrust Act. The Act provides that before certain mergers, tender offers or other acquisition transactions can close, both parties must file a "Notification and Report Form" with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice. The filing describes the proposed transaction and the parties to it. Upon the filing, a 30-day waiting period (15-days for all-cash transactions) then ensues during which time those regulatory agencies may request further information in order to help them assess whether the proposed transaction violates the antitrust laws of the United States. It is unlawful to close the transaction during the waiting period. Although the waiting period is generally 30 days (again, 15 days if the transaction is all cash), the regulators may request additional time to review additional information and the filing parties may request that the waiting period for a particular transaction be terminated early ("early termination"). Early terminations are made public in the Federal

Register and posted on the Federal Trade Commission website. Additionally, some types of transactions benefit from a special treatment of shorter waiting periods.

The filing requirement is triggered only if the value of the transaction and, in some cases, the size of the parties, exceeds certain dollar thresholds, which are adjusted over time. For the purpose of determining the "size of the parties" one assesses the size of the party to the transaction, its ultimate parent entity, and all subsidiaries of that ultimate parent entity.

The rules are somewhat complicated. The general rule is a filing is required if three tests are met;

(1) the transaction affects commerce;

(2) either

(a) one of the parties has sales each year or assets of US$100 million or more [as of 2008, raised to $126.3 million] and the other party has sales or assets of $10 million or more [2008:$12.6 million]; or

(b) the amount of stock the acquirer has is valued at $200 million or more [2008:$252.3 million] at any time; and

(3) The value of the transaction is $50 million or more [2008:$63.1 million].

The rules are somewhat overlapping to some degree, but the basic requirements are that all transactions of $252.3 million or more require a filing. All transactions worth more than $63.1 million require a filing if one of the parties is worth at least $12.6 million, the other is worth at least $126.3 million and the total amount of assets now owned by the acquirer reaches $252.3 million. These are only the mandatory filing requirements; if an entity wasn't sure if the filing requirements applied to it, it could make a request to the Justice Department to determine if it was.

3. European Union Competition Law

The goal of the community's competition policy is to protect and develop effective competition in the common market. Competition is a basic mechanism of the market economy involving supply and demand. Most of the material in this section has been extracted from EU publications (Bibliography number 3 & 4) with minor editions.

The most interesting definition for the EU Competition rules I came across was:

"In free market, business is a competitive game. Sometimes, companies may by tempted to avoid competing with each other and try to set their own rules for the game. At times, a major player in the game may try to squeeze its competitors out of the market. The European Commission acts as the referee to ensure that all companies play by the same rules"

The legislative framework of European competition policy is provided by the EC Treaty (Articles 81-89). Further rules are provided by Council and Commission regulations. European competition policy comprises five main areas of actions;

a). The prohibition of agreements which restrict competition (Article 81):

Agreements between companies or understandings which lead to an appreciable restriction of competition are prohibited. In fact, they are automatically void, so that the normal rule 'agreements need to be respected' does not apply. The European Commission or a national competition authority can order companies to end such illegal agreements and impose fines on companies for having concluded them. This applies also to unwritten agreements, as well as to concerted practices.

Examples include agreements which:

I. Fix purchase or selling prices or other trading conditions;

II. Limit production, market, technical development or investment;

III. Share markets or sources of supply between competitors; or

IV. Apply discriminatory conditions to companies that are not parties to the agreement, placing them at a competitive disadvantage.

However, some restrictive agreements between companies are allowed as they may encourage competition, for example by promoting technical progress or by improving distribution. An agreement satisfying all of the following conditions is allowed:

I. It improves the production or distribution of goods or promotes technical or economic progress;

II. It allows consumers a fair share of the resulting benefit;

III. The restriction of competition must be necessary to achieve the two points above;

IV. It must not eliminate competition for a substantial proportion of the products or services.

On that basis, the European Commission has adopted so-called block exemption regulations which spell out the conditions to be fulfilled by certain categories of agreements in detail. Restrictive agreements that fulfill the conditions of a block exemption regulation are allowed under Article 81.

b). The prohibition of abuses of dominant position (Article 82):

This article prohibits the abuse of a dominant position and applies under the following conditions;

I. The company holds a dominant position, taking into account its market share and other factors, such as whether there are credible competitors, whether the company has its own distribution network and whether the company has favorable access to raw materials, all are factors which allow the company to evade normal competitions;

II. The company dominates the European market or a substantial part of it;

III. The company abuses its position by, for example, overcharging customers, charging excessively low prices destined to squeeze competitors or bar new entrants from the market, or granting discriminatory advantages to some customers.

The EC or a national competition authority can prohibit an abuse and fine the offending company.

c). The prohibition of mergers which create or strengthen a dominant position (EC No 139/2004-the merger regulation):

If the annual turnover of the combined businesses exceeds specified thresholds in terms of global and European sales, the proposed merger must be notified to the EC, which must examine it. Below these thresholds the national competition authorities in the EU member states may review the merger.

These rules apply to all mergers no matter where in the world the merging companies have their registered office, headquarters, activities or production facilities. This is so because even mergers between companies based outside the EU may affect markets in the EU if the companies do business in the EU.

The EC may also examine mergers which are referred to it from the national competition authorities of the EU member states. This may take place on the basis of a request by the merging companies or based on the request by the national competition authority of an EU member state. Under certain circumstances, the EC may also refer a case to the national competition authority of an EU member state.

What does EC No 139/2004 the merger regulation, include? It covers the following;

I. The EC has the exclusive power to investigate mergers with a community dimension. Companies thus have a one-stop shop for merger control, which simplifies and reduces administrative procedures. The main benchmarks for determining which mergers have a community dimension are that the worldwide turnover of the merging companies is over EUR 5000 million and that their community-wide turnover is over EUR 250 million.

II. Mergers with a community dimension have to be notified to the Commission for its agreement before they are put into effect.

III. After an initial scrutiny period of 25 working days, the Commission decides either to authorize the transaction or, if it thinks that the concentration might result in a significant impediment, it may initiate an in-depth investigation procedure which usually takes up to a further 90 working days (in certain circumstances, this may be increased to 105 or 125 working days)

IV. At the end of this procedure, the Commission may authorize the merger conditionally or unconditionally or it may prohibit it, notably in cases where the companies have not been able to propose appropriate solutions to the concerns raised by the Commission. Conditions attached to the authorization frequently entail the sale to competitors of assets, shares, patents ...etc

d). The liberalization of monopolistic sectors (Article 86):

Services such as transport, energy, postal services and telecommunications have not always been as open to competition as they are today. The EC has been instrumental in opening up these markets to competition or encouraging liberalization; because of that the EC has adopted directives under Article 86 which serve the following;

I. To ensure that the financial relations between the member states and their public companies are transparent; and

II. To open up the electronic communications markets to competition

If the EU member states do not comply with directives, the EC initiates an infringement procedure under Article 226 of the EC Treaty.

e). The prohibition of State aid (Articles 87 and 88):

A company which receives government support obtains an unfair advantage over its competitors. Therefore, the EC Treaty generally prohibits states aid unless it is justified by reasons of general economic development. To ensure that this prohibition is respected and exemptions applied equally across the EU, the EC is in charge of watching over the compliance of state aid with EU rules.

Appendix 3

1.Due Diligence Report

2. Due Diligence Presentation

1. Due Diligence Report

After gathering all the required information and thoroughly examining it, a Due Diligence report shall be prepared, the report will have all the results in addition to the recommendations for each aspect area (i.e. finance) of the Due Diligence process. It will give an overall recommendation on whether the acquisition should go ahead or not. The Due Diligence report shall contain Due Diligence checklist items which are mainly covered in figure A3-1.

Figure A3-1, Main Articles to be included in the Due Diligence Report

2. Due Diligence Presentation

The presentation to the Acquisition Steering Committee or top management shall include the following:

i. Executive Summary:

   a. Reason's for the acquisition.

   b. Due Diligence Major snapshots.

i. Financial Data (EBITDA, Business Valuation …etc) mainly in the form of figures and graphs.

ii. Business Situation (Mainly in the form of figures and graphs), including the Strength, Weakness, Opportunities and Threats (SWOT) analysis.

iii. Litigation and Threats if they do exist.

iv. Other Major Due Diligence findings.

v. Deal breakers.

vi. Recommendations including the best legal, financial and tax structures and also the steps needed in order to have a successful and completed acquisition.

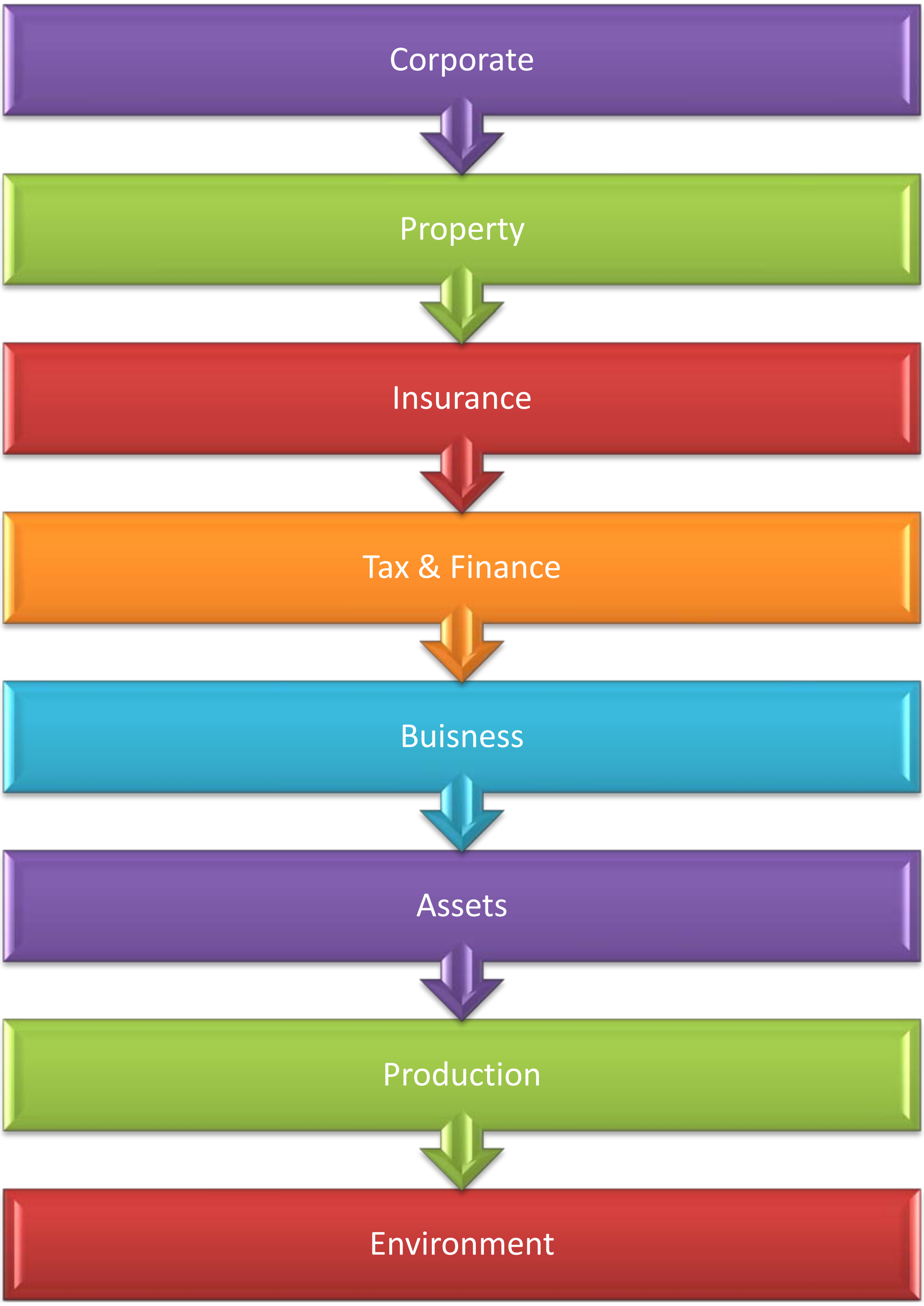

Figure A3-1 Due Diligence Checklist