Insight overview

TSAs: The bridge from Day 1 to full separation – ensuring a safe transition

Learn how Transition Service Agreements (TSAs) ensure business continuity post-merger, mitigate risks, and facilitate a smooth transition to independence.

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Transition Service Agreements (TSAs) have become increasingly popular as businesses are complex machines of interrelated, interdependent and intertwined services with deep technology stacks, making disentangling business units far more complex than it once was.

Most deals close within three months, not enough time for the buyer to develop the capability to support the acquisition independently. By offering support under a TSA, the negotiating process can be accelerated without having to wait for the buyer to assume full responsibility of the business unit.

A legal, contractual framework, the TSA provides business continuity until the buyer can fully integrate the business. Whilst it aims to provide both parties a bridge from day one to a fully separated / integrated business, from our experience if not done well, it can lead to significant value erosion or even worse failure of the deal.

TSAs can be a double-edged sword. While they facilitate a quick transition, sellers often have to provide these agreements despite not being in the business of offering professional services to third parties, especially competitors.

This may necessitate granting the buyer access to core business systems, such as ERP systems, which requires segregating access, protecting data, and possibly implementing firewalls to prevent access to sensitive information. On the buyer's side, the services are crucial for maintaining operations during the transition period, but they come at a premium, often more costly than sourcing or providing the services independently, and with limited control over service quality.

Usually made up of two parts:

1. Legal Agreement governs the overall contractual provisions of the TSA. Usually drafted by the Legal team.
2. Schedules capture the descriptions, fees, and durations of services to be provided. These are drafted by the functions that will provide / receive the services.

A well-crafted TSA should be a means to an end, not merely a service contract, but a roadmap that guides both parties from the close of the deal to the separation of operations. Some guiding principles when drafting a TSA:

Start at the end:

- Start with the end in mind – know how to exit services before drafting the schedules.
- Focus on completing the transition, not achieving highest levels of service.

Provide Continuity:

- Use TSAs as a last resort for services that cannot be discontinued, outsourced, replicated or transitioned to the buyer or Third-Party vendor prior to transaction close.
- Ensure business continuity.
- Minimise customer, employee and operational disruption.
- Ongoing compliance with local law and regulation.

Minimise Cost:

- Keep service costs as close to current as possible whilst encouraging quick service exit. Often achieved by enforcing extension penalties.

Maintain Service Level:

The seller should deliver services in the same manner, timeliness, frequency, quality and quantity, degree of care and level of security and control as provided pretransaction. The buyer, on the other hand, must consume the services as transitional and with due care and consideration of not putting undue pressure and risk on the seller's organisation.

Manage the process:

- Let lawyers draft the Legal Agreement; however, service schedules must be drafted by the service receivers and providers.
- Developing TSAs is an iterative process, leverage existing information to get to a good starting draft.
- Keep TSAs simple, clear and specific – outline who will provide services, how performance will be measured, payment mechanisms and issue resolution processes.
- Omitted Services: despite the best will in the world, key services will be forgotten. Allow a period to add omitted services without penalty.
- Agree on a communication plan, monitor performance and costs, and stay engaged.

Although essential, TSAs can be complex and costly mechanisms to implement and manage. Having a well

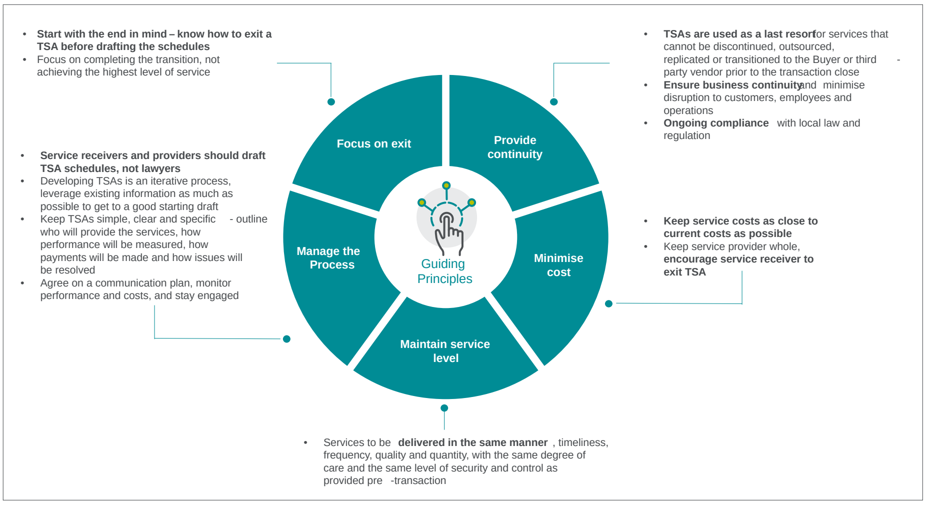

Figure 1 - TSA Guiding Principles

understood negotiating approach / strategy including what you are willing to give away, where the red lines are and knowing how to exit services will ensure the TSA supports the deal. Depending on which side of the TSA you are on, here are some negotiation tips:

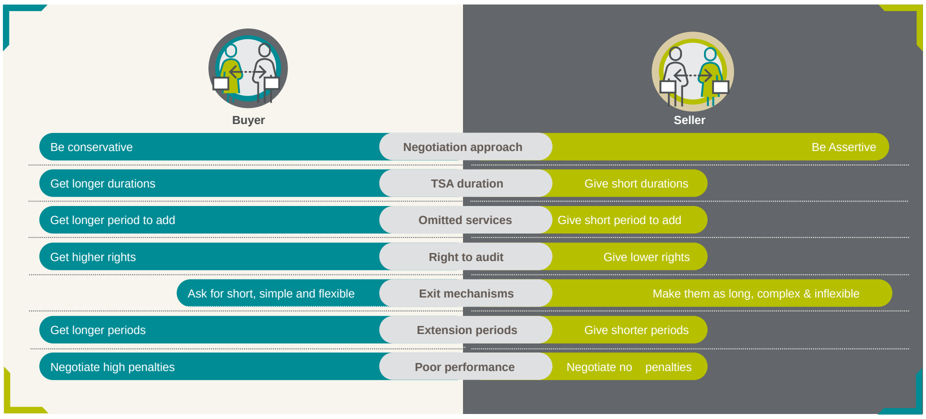

Figure 2 - TSA negotiations

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