

# Don't let 'buyer' steal the bacon

[Brad Cherniak](#) | Jan 14, 2013 9:42 AM ET



Getty Images/Thinkstock *Many small companies answer any question interested multinational companies ask, show them whatever they want to see, and let them talk to whomever they want — customers, employees, investors.*

The numbers point to mergers and acquisitions remaining strong in the new year. While corporate tuck-under acquisitions were generally strong in 2012, continuing their run from post-2008, growth in the smaller segments of the market has tended to be even stronger, both in dollar terms and transaction volumes, but also more volatile.

These overall trends look like they will continue into 2013, although data at the smallest end (companies with \$25-million or less in sales) is difficult to come by.

Corporate venture capital, a small but growing niche wherein large companies invest in early stage and small companies as strategic add-ons to their core product or service offerings, is also more readily available. These can range from minority investments to outright acquisitions.

There are many scenarios whereby a small to mid-sized Canadian business may find itself in the sights of a giant corporation. Everything is for sale at the right price, but how do SMBs increase the chances of getting the right price against a much larger, more well-resourced party sitting across the table?

Many a company being pursued by a household, even iconic, Fortune 100 or S&P/TSX 60 name, tends to presume the company is too big and too established to play rough and dirty. "It won't screw me, it's got a storied reputation to uphold, right?"

For this reason, many small companies answer any question they ask, show them whatever they want to see, and let them talk to whomever they want — customers, employees, investors.

It can be intimidating to push back against a multinational corporation, which has experts in everything and endless resources against your meager retinue of employees who are too busy trying to do their jobs, even if they did have knowledge of an M&A transaction. You may want to do a deal, but being too deferent isn't a good idea.

But there are ways you can protect yourself. First, you are under no obligation to use the buyer's "standard" documents, hue to their "standard" process, or to their "standard" terms. Everything is negotiable. If the acquirer says the deal is "take-it-or-leave-it," but the terms seem too onerous, call its bluff. That being said, find out what the terms are as early as you can in the process.

Also, do not presume the motives are pure. In many cases, large corporations tie small targets up with negotiations to knock them off their game, study and copy their technology, poach superstars, or just to gain market intelligence.

Too often, SMBs will show suitors their core software code or full customer list — the last, most sensitive step of the buyer's due diligence — to then have the deal momentum vaporize. This can be a nightmare scenario. The buyer has reviewed your business and its prospects carefully, and appears serious enough to warrant a look under your hood before sealing the deal. Discussions and due diligence have gone on for

some time, and the buyer may have expended significant legal and other professional resources. What could go wrong?

Plenty. You are at the buyer's mercy, with your "special sauce" in a petri dish in their lab under a microscope. The buyer may be having their engineering department reverse-engineer your product to decide whether to buy you or just copy your technology. Or their sales team may be pouring over your customer list to develop a plan to poach key customers.

Non-disclosure agreements and detailed, formal letters of intent are some protection, but require a significant legal budget to enforce. Something few small businesses have. Nonetheless, there are signs for which you should keep your eyes open, such as: awkward periods of silence where your calls are not being returned; extensions of pre-set time lines without good reason; and more and more technical people from the buyer entering the picture.

That's not to say that a relationship with a major corporation can't be highly successful and profitable. Often they can be willing to pay generous prices and move very quickly for targets they consider critical to meet a strategic need. SMBs need to arm themselves with M&A deal negotiation experience and legal expertise on their team, whether in-house or external.

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