

# A New Development With Vendor as Lender: Using Terms Pushback Strategy as a Source of Financing to Assist in Acquiring a Competitor

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Companies in competitive, slow-growth industries are always looking for ways to increase revenue and margins. One strategy to meet these objectives is to acquire a competitor, with such recent merger examples as Sherwin Williams and Valspar, Tyco and Johnson Controls, and Agrium and Potash Corp. And there would be more mergers had the Justice Department not blocked some companies' efforts to combine because of antitrust concerns, as in the recent Staples and Office Depot attempted merger.

In the latest development with mergers and terms pushback strategy (TPS), a multibillion dollar company is replacing a portion of acquisition debt held by its lender group with suppliers of the company being acquired—by augmenting working capital through the use of extended payment terms. The adage of vendor as lender is almost routinely heard by credit teams from long standing customers that announce they are disregarding vendor-set trade terms and unilaterally extending these terms. The latest twist is that a customer's competitor, where the supplier does not have a trade relationship, let alone credit scoring and setting terms with this company, is announcing to this supply chain they will be bound by extended terms. Thus, suppliers with no contractual trade relationship with companies face a TPS if they wish to preserve the trade relationship with the former customer.

I have reported on a handful of motivators for companies to roll out TPS, including improved benchmarking results, to consultants advising the finance team of the benefits to merger and acquisitions.<sup>2</sup> Each of these TPS' motivators is to improve their cash flow while acquiring goods to operate. Dell's strategy expands TPS to now include expanding growth through acquiring companies (Company Acquiring Customer ("CAC") TPS).

This CAC TPS acquisition strategy is a further red flag for suppliers that customers, or companies that acquire customers, see suppliers as a way to expand growth, not just provide products or services on supplier-set terms. As when the WSJ reported over two years ago that P&G's rolling out a TPS and moving suppliers to 75 days resulted in improving its cash flow by \$2 billion.<sup>3</sup> This TPS strategy resonated with CFOs from small to large companies, to likewise improve their cash flow and working capital by rolling out a TPS, to expect a like mindset with companies acquiring others to offset the acquisition costs.

What is the cost to suppliers for having to wait longer for payment? The below is a calculation for waiting for the invoice tied to extended terms to mature:

## Cost of Carrying A/R

	Ending A/R	Annual Borrowing Rate	Daily Cost of Borrowing - Annual Rate / 360	Daily Cost of Carrying the A/R (Daily Rate x AR Amt)
Example	20,000,000	3%	0.008333 %	1,666.67

The WSJ reports Dell proposes to finance its acquisition of a competitor, EMC, in part through a TPS of EMC's suppliers to over 100 days—suppliers who are not selling to Dell.<sup>1</sup> The TPS proposed by Dell will allow it to more quickly pay down the acquisition debt and, what is key to this process, improve its cash flow by upwards of \$1 billion. Dell has experience with a TPS, having pushed out its own supplier's terms to over 100 days, and improving its cash flow by over \$1 billion. Dell's improved cash flow on the backs of suppliers encouraged lenders to finance a portion of the EMC acquisition.

How can the credit team keep the CAC within normal terms? The following are some good practices:

Supply contract: if the supplier has a contract with its customer, and a no-assignment provision, the supplier can reject the CAC TPS as they have no contractual relationship and no duty to honor the CAC TPS:

<sup>1</sup> Sam Goldfarb and Rachael King, Will EMC Adopt Dell's Lengthier Payment Terms, The Wall Street Journal (July 18, 2016).

<sup>2</sup> Seven More Reasons Customers are Adopting a Terms Push Back Strategy and What Suppliers Can Do to Fight Back, Credit and Financial Management Review (2016)

<sup>3</sup> Serena Ng, P&G, Big Companies Pinch Suppliers on Payments, The Wall Street Journal (April 16, 2013).

PO and Invoice Trade Relationship: like the supply contract response, the supplier can advise the CAC there is no trade relationship and no duty to comply with TPS.

Supply Chain Finance: the supplier in the CAC transaction likely will be offered a supply chain finance alternative. Supply chain finance is a lending program commonly offered by money center banks to shorten the customer's suppliers' payment terms and improve their cash flow. However, for the supplier to shorten their payment terms under supply chain finance means that they discount their invoices by a negotiated interest rate.

The credit team may negotiate incentives to keep the CAC within terms, or reject the extended payment schedule. Some of the negotiating points: Early-pay discount; annual volume rebate award and other trade concessions; and exclusive supply agreement in exchange for extended terms.

Supplier responses to attempt to keep the CAC within normal terms can include a higher price for extended terms; Robinson-Patman Act restrictions that limit the supplier's right to break a customer class pricing and agree to a CAC's TPS;

and internal contractual restrictions the supplier is bound by, such as loan covenants that make TPS A/R ineligible.

As companies continue to merge, the supplier must appreciate that the Dell strategy of a CAC TPS may be a part of any acquisition. As this may motivate a customer to extend terms, a best practice for the credit team is to prepare the sales and finance teams and management to be aware of recent developments, and be prepared with best practice responses.

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