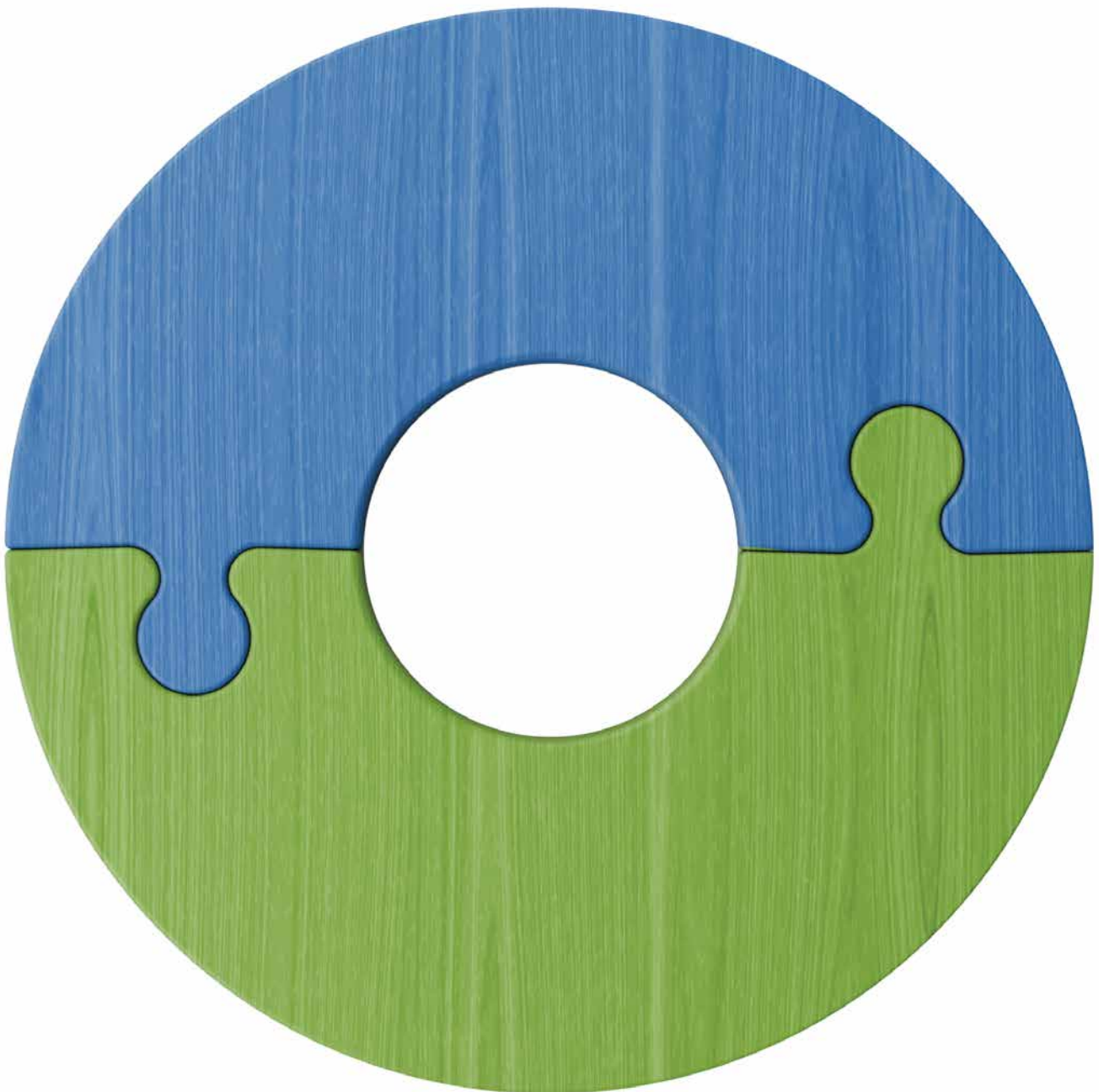# How to Combine **RIM Programs** After a Merger

Blake Richardson, CRM, CIP

From the moment two companies publicly announce a merger, their operational wheels begin turning. This article identifies issues that may not be discussed before the merger is completed and provides advice about the issues that must be discussed post-merger.

Mergers and acquisitions (M&A) are a potential reality for organizations regardless of their industry, revenue, geography, or size. They occur for a variety of reasons, such as gaining economies of scale, increasing operational synergies, reducing tax liabilities, and pre-empting competition.

Whatever the reason may be, one constant exists: an M&A will have an impact on the combined organization. This article addresses the impacts to records and information management (RIM) in a newly merged environment.

Merging Parties' Discussions

Pre-Merger

From the moment two companies publicly announce a merger, their operational wheels begin turning, though there are regulatory limitations on what the two organizations can discuss, share, and plan until the merger has been approved. The limitations exist to prevent "gun-jumping," which according to attorney Richard Liebsekind, is the term the Antitrust Division of the U.S. Department of Justice (DoJ) and the Federal Trade Commission (FTC) use to refer to a "variety of actions that merging parties might enter into prior to closing to facilitate the merger and expedite the integration of the companies."

In the presentation "Gun-jumping: Antitrust Issues Before Closing the Merger," Liebsekind made to the ABA Section of Business Law, Antitrust Committee ABA Annual Meeting in San Francisco clear examples of gun-jumping provided by the DoJ and the FTC are coordinating prices and terms to be offered to customers or allocating customers for sales to be made *prior* to the merger and coordinating negotiations with customers for sales to be made *after* the merger.

"The government's position," Liebsekind said, "is that firms must remain

competitors until closing, and cannot lessen competition between them in order to facilitate a merger that has not been consummated."

Therefore, merging companies conducting pre-closing due diligence and planning activities need to know that antitrust agencies might view their activities as violations of federal law.

In most cases there are operational matters that *can* be discussed between the organizations during this phase of the merger process. RIM professionals should consult with their legal or compliance department to determine what can and cannot be discussed with their counterparts in the other organization.

RIM matters that may be allowed for discussion in the pre-merger phase include:

- Record retention schedule formats
- Offsite storage vendors used (but not contractual terms or pricing)
- Number of employees (but not pay rates)
- Technology and how it is used (but not related pricing or maintenance costs)
- Reporting structure
- Approach to disposition
- Geographical operating locations and related challenges

Conducting pre-merger discussions with the other organization's RIM manager allows for early insight into the operational differences between the RIM programs and facilitates additional Q&A and planning once the merger has been approved.

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Post-Merger

Once a merger has been approved, the combined organization is permitted to strategically and tactically plan and execute. RIM professionals can now discuss in detail matters such as offsite vendor contractual terms, conditions and pricing, employee responsibilities and pay rates, policies and procedures, disposition processes, legal holds, and technology.

The following sections address specific issues to consider when merging RIM environments.

Storage of Physical Records

A merged RIM environment commonly has contractual relationships with multiple offsite record storage vendors, or in some cases both organizations use the same vendor but have different terms, conditions, and pricing. Sometimes one or both organizations manage record storage and related activities in-house instead.

Multiple Vendors Used

If multiple offsite storage vendors are used, the RIM manager of each merged organization should discuss the following issues to determine the most efficient and economical course of action:

Contracts – Discuss the duration, terms, conditions, and pricing.

Volume of records in storage – Discuss the volumes of boxes, tapes, files (open-face shelving), and non-document content, such as physical evidence and items related to company history. Discuss whether the combined storage volume will result in a potential reduction in monthly storage fees.

Vendor issues – Discuss issues regarding customer service, vendor reliability, and operational procedures related to the vendor choice and vendor management.

Vendor service footprint – Discuss which vendors are best positioned to ser-

vice the merged organization's geographical areas of operation.

Vendor service offerings – Determine the business and RIM requirements of the merged organization. Consider such topics as shredding, document imaging, consulting, and using online technologies and software.

RIM managers have several offsite storage options to consider during this process. They might determine that multiple storage vendors best serve the interests of the merged organization. This option is often selected if one vendor is unable to service all of the merged organization's areas of operation.

While it is an option to assign all storage tasks to one current vendor, there are contractual and monetary issues to consider first. For example, if the records of company "A" are to be permanently withdrawn from its current storage vendor and moved to the vendor used by company "B," RIM must determine if penalties exist for early termination of the contract, what the costs will be for the permanent withdrawal of the records, and whether the vendor used by company "B" will absorb the transfer cost.

Same Vendor Used

If both companies use the same offsite storage vendor, the combined company should compare existing contracts to determine which has the more favorable terms, conditions, and pricing. Then, the merged company's RIM professionals should quantify its combined storage volume and negotiate a new contract that retains the most favorable terms and conditions and provides an even more favorable pricing structure based on the increased storage volume and transactional activity.

Onsite Records Storage Used

If one of the companies manages its records storage in-house, either onsite or at an offsite facility it owns or leases, the RIM managers of the combined company should determine if an in-house approach will meet its current and anticipated needs.

Can it support the requirements of the new organization, or will additional staff, space, and equipment be needed? Does the combined company have the appropriate technology, such as a physical records management system or warehouse software applications that help with shelving configuration, barcode tracking, and check-in/check-out?

In analyzing the costs related to in-house storage of their combined records, they should consider expenses for payroll (including benefits), equipment, space, utilities, and liability insurance to protect against such issues as accidents and workers' compensation claims.

RIM Employees

Merged organizations usually expect to realize increased operational efficiencies based on eliminating personnel "redundancies" – and this expectation certainly applies to RIM.

Once the merger is finalized, the RIM managers should evaluate the functions performed by each staff member to identify duplicate functions or processes. Duplicate functions and processes do not automatically warrant a staff reduction. In some cases, current staff levels should be maintained to support the increased size of the merged company and anticipated growth.

RIM managers should identify the need for advanced or specialized skill sets, who has those skills, and whether additional specialized personnel are needed.

RIM managers must also determine if certain functions will be discontinued – for example, transitioning from onsite to offsite records storage – and how the change will impact staffing. Ultimately, RIM managers must submit to senior management their staffing recommendations for the combined operation.

Record Retention Schedules

When companies merge, the likelihood exists that if both organizations have an established retention schedule, the format, record types, and retention periods may differ. For example, many companies use a detailed, departmental records retention schedule format, while some use a functional or big bucket approach.

The combined RIM team should compare the record retention schedules of the merged companies and document the differences related to formats, record types, and retention periods. If the schedules are fundamentally different, the RIM managers should discuss why they chose their approach, evaluate the RIM requirements in the combined environment, and determine which type of schedule better serves the merged organization.

Additionally, RIM managers should discuss and agree on the process for adding or modifying retention schedule components. For example, one company may have had a policy that all retention schedule modifications must be approved by their respective legal and tax departments, while the second company may not have required such approvals.

> RIM managers must also determine if certain functions will be discontinued and how the change will impact staffing.

Technology

During pre-merger discussions it is appropriate for RIM managers to talk about the software they use for managing records and documents. Once the merger has been approved, they should have detailed discussions about how their technologies are used, deployed, administered, and supported.

During the discussions it is important to get answers to the following questions:

RIM Software

- Do the companies rely on a vendor's online portal or database for physical records management?
- Is content management performed with or without integrated electronic and physical records management functionality?
- Does the content management application integrate with other applications, such as SharePoint, PeopleSoft, SAP, or contract management?
- Has document management functionality, such as versioning, checking in/out, annotating, and redacting, been deployed with the content management application?

Application Activities

- Are they centralized? That is, are the majority of application activities performed by RIM?
- Are they decentralized? That is, are the majority of application activities performed by departmental end-users?
- Are they a hybrid, with just designated actions, such as applying legal holds, system administration, configuration, and disposition, performed by RIM?

Support, Maintenance, Scalability

- Does the application require heavy IT intervention, or can the majority of administration and configuration be performed by a RIM "power user?"
- What are the annual maintenance costs?
- What are the licensing models?
- What is the scalability in the combined environment?
- What is the date of the last upgrade and the current version?
- What deficiencies have been identified and what remediation efforts have taken place?

RIM should determine the RIM requirements in the merged environment and evaluate each aforementioned matter to determine what applications will best serve the combined organization and if any should be decommissioned or integrated. If applications are decommissioned, RIM managers and staff must work closely with IT to determine a migration or conversion strategy.

Legal Holds and Disposition

Upon approval of the merger, RIM managers should evaluate each company's approach to legal holds and disposition. This includes identifying who is responsible for communicating, applying, and rescinding legal holds. Some companies may assign the entire process to the legal department; others might depend on legal to initiate the communications and to send any periodic hold reminders while keeping RIM responsible for applying the holds in the records management application.

Organizations may differ on how disposition is administered. Some companies require a multi-stage approval process involving department heads, RIM managers, and tax and legal representatives before any records can be destroyed or deleted, while other companies may only require one level of approval, such as a department head or a legal representative.

In addition, after the retention period has expired, some companies allow low-risk, non-sensitive information to be destroyed without approval or deleted automatically from a content management application. RIM should understand how each company has approved and performed disposition and consult with the combined legal department to determine how disposition is to be administered in the combined environment.

An Opportunity

Although the thought of an impending merger can be a source of anxiety and uncertainty, the merging of two organizations' RIM functions can be rewarding and educational, as RIM professionals gain insight into how others manage records and information and the tools, policies, and procedures they use.

The process of merging programs also provides RIM professionals the opportunity to improve their analytical, technical, and constructive debating skills. Therefore, if you are in the process of a merger or your company someday announces one, take advantage of the opportunities, and use the approaches addressed in this article to help ensure that your combined RIM program is successful. **END**

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