Deal types in pharma/biotech

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Deal types

- One-way deal:
  - Acquisition
  - Licensing
  - Distribution
  - Agency (not really a licensing deal)
- Collaborative venture:
  - Joint Venture
  - Co-promotion/co-marketing

Acquisition

- All ownership/rights pass to the purchaser
  - Unlike Licensing, where IP remains in ownership of originator
- Payment is usually on signature
- May include an “earn-out”
  - Buyer pays some of the agreed total once certain milestones are reached

Agency/Distribution deals

- Agent manages distribution, invoicing & debt collection on behalf of the originator
  - May also include local marketing and sales activities
    - Bespoke or general sales force
  - Usually paid a mix of
    - Annual fees
    - Commission or sales-based income
  - Brand & Product ownership remains with the originator
  - Would not usually involve local manufacture

- Some licensing deals are called “Distribution Agreements”

Impact of deal type on Licensee

SUPPLY AGREEMENT	LICENSING DEAL	PURCHASE RIGHTS
• Licensor does work	• Shared work	• Licensee does work
• Low capital costs	• Some capital costs	• High capital costs
• High unit costs	• Lower unit costs	• Lowest unit costs
• No control	• Some control	• Full control

Agency/distribution — Licensing — Acquisition

Collaborative Ventures

- ➔ Pool product/device
- ➔ Share development
- ➔ Share marketing
  - co-marketing
  - co-promotion
  - geographical split
- ➔ Profits via JV company or royalty payments

Co-development

- Usually involves development projects
  - Combines complementary skills
  - Allows partner to fund development
- May lead to shared marketing
- Requires
  - Clear responsibilities
  - Agreed activity programme
  - Objective end-points
  - Mechanism to share costs/benefits

Joint Ventures

- Used with co-development deals
- Legal entity
- Both parties to assign IP to JV
- Management
    - Seconded employees
    - Activities sub-contracted to partners
- Termination can be complex
- Exploitation via
    - licenses to JV partners
    - On-licenses by JV to 3rd parties
    - Direct exploitation by the JV

Joint Ventures

- Profit sharing from:
  - Sub-contractor fees
  - Raw material supplies
  - Royalties on sales against IP
  - Profit on products licensed back
  - Dividends from JV
  - Capital appreciation of JV investment
- Can adjust each
  - Match risk/returns
  - Ensures a “fair” distribution of profits

Co-marketing vs Co-promotion

- Co-marketing
  - Same product, different brands
    - May be different formulations
- Co-promotion
  - One brand, 2 Sales forces
    - May have device & product brands
  - Usually on national basis
- Both options may not exist
  - Regulatory constraints
  - Licensing constraints

Co-marketing vs Co-promotion

➜ Co-promotion

- Inflexible
- One party controls
- Image tied to both
- No competition
- Extensive coordination
- Builds only one brand

➜ Co-marketing

- Flexible
- Low control
- Separate image
- Competitive
- Limited coordination
- Separate Trademarks

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Thank you!

Interested to learn more?

Visit **The Pharmaceutical Out-licensing Course**

Or contact **Inge Cornelis**, Director Client & Product Projects at CELforPharma