Dilemma 1.  
Knowing Your Enemy  

Stepping out the door and picking up my copy of this morning’s The Wall Street Journal, I flipped through to the “Deals and Deals Makers” section – my favorite – in “C”, the headline made me smile. It had finally happened, we had finally closed the deal. The markets would shudder that day, and our target firm stock would rise to the offer point. Oh sure, we may take a hit on our share price while the short-sellers and individual investors executed the standard market tactic of selling the acquirer and buying the acquiree, but knowing how efficiently we structured the deal, and knowing that we effectively kept the old management staff in place – and above all, in this frozen credit market – structured the debt load in a cash deal that would take advantage of the lines we entered years ago, I knew that this was the right move. I poured my second cup of coffee into the travel mug, grabbed the paper and got into my truck, tuning in the business station to hear if they were covering the M&A. Sure enough, it was on there – my deal was the talk of the business community! I grinned all the way to work, thinking about the next big steps and hiring a director to lead the integration of the high-tech startup into our mature business.

Soon after I got to the office, and went through the lengthy routine of firing up the Bloomberg terminal and my laptop, I scanned the futures markets and then the overnight trading of the stock price of our target firm. “That doesn’t look right,” I muttered to myself, as I saw volumes spike on the target firm well over eight hours prior to our planned leak of the information. I knew that other firms had eyed this new, young firm, and there had been blips in volume and price over the past six months, but this was unnatural – clearly volumes exceeding 150% of the previous six months and over 200% of the pricing – something had leaked. I took a screen snapshot and sent it across to our team with the quick subject line: “what happened?”
We deep dove the charts, and I called one of my good friends, a technical analyst for the local investment bank. “Chuck – did you see what happened with XUY this morning? What do you make of it?”

“Yeah, I saw it – let me have my team take a look at it. We’re good to go since you’ve released this to the Journal, right?” I could always count on Chuck to always check with me before launching off the pad on his own mission. I concurred with him and then went back to my team, who was calling the target firm and asking what had happened to leak the information. It wasn’t long before my key valuation analyst, Katie, popped her head in the door and asked to speak with me.

“We know what happened,” she said with a sigh. “XUY tipped off the local newspaper in Modesto, and when they posted it online, a Google Alert running at a hedge fund saw it. They went in and bought up the price.”

I nearly blew up. “How could this happen? We had confidential agreements in place, and everyone knew that we were in a quiet period on this activity. Nothing should have leaked at all. Now we are going to have the Board wondering if we can actually run an effective M&A without massive signaling, threatening our deals.” I tried to remain calm, but this had been run so well, and after the past two deals had fallen through, and especially given this economy, we had to have this go right. I entered our “war room” and hit the speed dial for XUY leadership, in their “war room.” Dan, the surfer/CEO as I had nicknamed him, took the call. He already knew what this was about.

“Mike, I am positive – nothing was leaked on our end,” Dan said. “I know you are hearing about this all over the terminals, but I am telling you, we did not leak it to any paper.” I
could tell his voice was a little nervous in tone, but that could be expected from such a small firm now being plastered all over the main news feeds. This wasn’t making any sense.

“Ok, thanks Dan – we have got to track this down. Can you actually get the Google Alert and the cached article from the local paper post? We don’t see it any more on the web.” One of the big reasons we acquired these guys was their cyber skills and sleuthing. It was time to test that decision. Dan eagerly agreed, looking to do anything he was comfortable with and we agreed to reconvene in an hour.

I fielded half a dozen calls from the Board. None were too pleasant, all of the same tone. So much for enjoying this acquisition with that Padron 1964 cigar I had saved…my thoughts were interrupted by John, the executive assistant assigned to our team. “Mike – Dan’s on the polycon in the war room,” he said. I walked into the war room, and hit the mute button. “Ok, Dan, what do you have?” I demanded.

Dan audibly sighed. “Well, we were able to mine the Google Alert and the cached article. It had been removed from the web, but we were able to image the metadata – I’m sending it to your display.” Katie queued up the image on the projector. Most of it was blather from both our websites, and then, down near the bottom, was what Dan was upset about. I read it aloud, in disbelief. “According to unnamed sources from an investment bank in Minneapolis, XUY will be bought by Snap 270 Corporation for $20 a share…” I didn’t need to read the rest, I knew who that “unnamed” investment bank was, and so did the rest of my team. I felt them all look at me intently. “Nice work, Dan. Ok, everybody, let’s stay focused, we have a deal to finish…and I have a call to make,” I said in a quieter tone. Everybody looked down, not knowing what to say. They all knew of my friendship with Chuck at CIB, and knew that given the hurting economy, most investment firms were desperate for M&A funds. CIB wasn’t our
investment bank, and couldn’t be because of my friendship with Chuck. But the acquisition of XUY would create substantial wealth for anybody that knew about the acquisition before the market did…I knew Chuck was having a rough time, but this just didn’t make sense, he wouldn’t do this. “Katie, I need a witness for this call – can you sit in on this?” Katie nodded, and I knew sooner or later, I might be calling the SEC.

I knew Chuck from our early friendship in high school, college and getting our MBAs together – that friendship ran deep. He would have been the only one that could have known about this, so I had no choice but to confront him. Do I press on, not thinking about it, and just assuming that the market won’t pay attention to the information advantage some had, or do I notify the Board and recommend a call to SEC? This could easily get my friend in trouble, and if he didn’t go to jail or be fined, he would lose his job for sure…and in this market. What should I do at this point?
Dilemma 2.
*Deception and Foreknowledge*

The product launch had gone very poorly. The engineering staff wasn’t talking to the production staff, and the development had missed so many milestones that it was a wonder the firm had not pulled the plug entirely. The only thing that *had* gone right was lining up the funding for the product, from individual and private equity investors. That had been my sole role in the product launch, and I had put in the time and effort to make it work. So, naturally, I was feeling the pressure from my investors and losing my patience with the engineering and production team. Management was so aloof; it didn’t seem that they really understood what we were trying to do, and simpleton answers like “just fix it” or “make it happen” underlied my belief that they just didn’t have a clue…but then again, maybe that *is* why they hadn’t pulled the plug on it. Our competition was another story entirely – they had faced similar challenges we had faced, but seemed to take a different approach entirely, by going after low market applications and not the high end performance – high willingness to pay product market we were going into. But, things had come to a head, and my investors in the product had decided to call a private meeting with me – we had built substantial trust up over the past decade, and they knew I would give them a straight answer. I treated their investments as if they were my own.

Frank greeted me at the door to the private meeting room at Kincaid’s. It was after hours, as most of my meetings were, and we settled in to small talk over drinks. Finally Frank gestured to Mark, who had a nondescript binder. Taking the last sip of my Bombay Sapphire, I looked a Frank quizzically. He smiled. Mark handed me the binder. “Go ahead, open it,” he said. Inside the binder were the design specifications, funding profile, and targeted market plan for our competitor’s product. Essentially, I had all the information needed to not just fix our design
problems, but to move quickly into their market space with our product and end the competition with us controlling no less than 80% of the market – a near-monopoly. Frank spoke up first, seeing the look on my face.

“Look, Mike,” he addressed me in his matter-of-fact tone, “we have substantial funds invested in this product and your firm, and we need this to work. We’ve been able to get key market data in order to give you the advantage. We need this to happen.”

“Key market data” – interesting words, I thought to myself. Essentially it was foreknowledge of everything my competitor was doing, their funding levels, and key design parameters that we may need to get our product into the market first. These investors had ties throughout the industry. It was entirely possible that the data given to me was available in industry circles; chances are other investment firms had the same information on our product. But still, it was something that we needed, and something that could be used to win this competition. Yet, it was so detailed – it may actually have been straight from our competition, and then considered industrial espionage. “Where did you guys get this,” I said incredulously.

Frank smiled. “Mike, you know we haven’t invested the time and energy in your products – not to say nothing about the funding – for no reason. But we have to make sure our interests are protected in the near and future,” he continued, emphasizing that last point, “if that means giving you are best marketing intelligence for an information advantage, then we have to do what gives us the best return.”

We finished the evening discussing next products and future funding, but my mind kept drifting to the binder now in my briefcase. What if it was espionage intelligence, and not the market data as Frank had presented? These people were a source of business funding that I needed, and I couldn’t afford to push them away. I attempted to rationalize the taking of the data
by realizing that being so well funded, they could actually buy market intelligence that our poor marketing staff could never afford. But what if it wasn’t? I would essentially have to report the transfer of information to our management, and then the who? White collar task forces at the FBI? Would they laugh? Where could I disclose this? What should I do at this point?
What Actually Happened

A. Dilemma One. I called Chuck and demanded that we meet in an hour to discover what I had found. I preferred to do it in person, as I’ve become very astute in learning body language and voice patterns of somebody lying (I guess you learn that in mergers and acquisitions – looking across the table and seeing if a bluff is going on). Chuck wasn’t lying, and he immediately called his internal investigation arm at his investment bank. The SEC did get involved, and the end result was Chuck wasn’t implicated at all – in fact, it turned out that a source inside our firm leaked it to another investment bank – not Chuck’s bank. There were sanctions and a loss of a job plus additional penalties levied against the firm. Chuck respected my decision and we are still friends to this day.

B. Dilemma Two. I took the “key market data” to our corporate ethics officer who reviewed it, and then convened the different leadership functions for determination of next steps. During my interview with the corporate ethics staff, I voiced my concerns about the data being the proprietary property of the competitor firm. Nothing was ever conveyed to my pool of investors and the private equity firms. The marketing staff, as well as the engineering teams wrote a report stating that the information was open-source, meaning available in the market, but very detailed to the point at which it would have taken patent research, back-in calculations on budgets, and studying the hiring practices of the competitor firm to obtain the data – all legal in the collection of business intelligence.