



CHEAT SHEET

- *Know the business.* Get familiar with the particular framework used by the organization to form its business strategy. Traditionally, this has been an area of weakness for the general counsel.
- *Understand the legal context.* Fully understand the legal context for a corporation's strategic initiatives. Consider whether the organization is legally primed for growth.
- *Make sound judgments.* Making business decisions with few facts in the face of paradoxical demands is a challenge. Still, high integrity is equally important to strategic capability.
- *Learn from others.* Management training offers an opportunity to reflect in a structured setting and network with peers.

THE CHIEF OPPORTUNITY COUNSEL — How to Increase Your Value Through Participation in Strategic Business Conversations

By Charles H. Veigel

Jack Welch, the former CEO of General Electric, was once asked at a Yale University business school presentation what advice he could offer to an MBA student who is in charge of a big, new conglomerate. Welch, a master at metaphors, threw off his jacket and deliberately rolled up his sleeves while walking to the front of the stage. “You have to think about that company as being a big house,” he said, with its various floors representing management and its interior walls supporting the divisions of the company. Then, he said, “You get a hand grenade and pull the pin.” While slowly swinging his arm in an arc, and with each person in the auditorium on the edge of their seats, he said, “... and you roll the sucker right through the front door of the house and blow up every floor and every wall.”¹ Welch went on to explain that, once the previous structure was leveled to the ground, one could actually do something with the company. His fundamental strategy was to create an organization without boundaries and without barriers to communication in which ideas flowed freely between the aircraft parts division and the one that made light bulbs — an organization that was, therefore, capable of supporting all types of partnerships.

Similar to the effect of Welch's grenade (i.e., an organization without boundaries), the 21st century general counsel is also on a mission to overcome the barrier that posits that the general counsel, and lawyers in general, make poor corporate leaders and should be left out of strategic business discussions. Confirmed by a recent survey of general counsel and boards of directors, strategic input is an area of increasing value for the 21st century general counsel,² and yet, the general counsel is not as involved in business strategy as she would like to be.³ Perhaps without realizing it, or because of misperceptions, CEOs and the boards of directors have neglected to realize the latent contribution tucked away behind the door of the general counsel's office. This article explores ways to overcome barriers and increase the general counsel's value by participating in the corporation's strategic business discussions. It is about pulling the pin on the prejudicial title "Vice President of No" and replacing it with "Chief Opportunity Counsel."

To begin, this article introduces three key dimensions of strategic capability that the general counsel must cultivate in order to make meaningful contributions to strategic conversations and add greater value. Those three dimensions include: (1) knowing the organization's strategic development framework and its business context; (2) understanding whether the organization is "legally" primed for growth and the legal contexts for its strategic initiatives; and (3) exercising sound judgment reinforced by high integrity.⁴ The good news is that the 21st century general counsel already possesses, in various degrees, one or more of these dimensions, given her general intelligence, legal knowledge, training and experiences.

One word of caution: Some general counsel may perceive an inherent tension between playing an active role in the strategic business conversation and providing detached, robust and

independent legal advice. It is possible that participation in the strategic business conversation will make this perceived tension all the more weighty. But, it is simply an acceptable challenge the general counsel must anticipate and overcome if she is to realize significant contribution to strategic discussions. By proactively sensitizing the CEO and the board of directors to these concerns, she may eventually lighten any perceived tension.

Mastering the strategic framework and the business context

In the general counsel's quest to add more value to the strategic discussion, the first step is to familiarize herself with the particular strategic model(s) or framework used by the organization to form its business strategy. She must also willingly take on a careful study of the many elements of the model. Traditionally, this has been an area of weakness for the general counsel.⁵

Strategic framework

Michael Porter, a leading author on corporate strategy,⁶ whose five forces of strategic analysis are introduced in the sidebar on p. 32, defines strategy as the set of integrated choices that describe how an organization will achieve superior performance in the face of competition.⁷ Strategy is about making choices, and there are a number of strategic business development models that help an organization ask questions, make choices and land on a winning strategy. In addition to Porter's "five forces analysis," Rita McGrath and Ian MacMillan's "discovery driven growth," Boston Consulting Group's "growth share matrix," and Hamel and Prahalad's "core competence analysis," there are other popular

strategic business models.⁸ Many organizations create their own strategic model. Whichever model is chosen or used, the strategic business model will provide a framework that imposes a disciplined way of thinking about the organization's strategic choices.

Business context

Unsurprisingly, the main elements of any strategic model will require the general counsel to fully appreciate the organization's business. Most strategic business models will guide the strategic thinker through a structured waterfall of questions about the business context that will guide the research and analysis needed to compile a strategy. Using Porter's five forces analysis, by way of example, a selection of relevant questions may include: What industry does the corporation serve, and what products are in it? Which products are part of another distinct industry? Who are the organization's primary competitors, and what is the geographic scope of the corporation's competition? Who are the buyers of the organization's products and services? Who are the primary suppliers? Are there any substitutes for the corporation's products and services, and are there any lurking new entrants? What is the overall profitability of the organization versus the competitors? What are the controlling forces for profitability? The answers to these questions serve as the foundation for a strategic business conversation.⁹

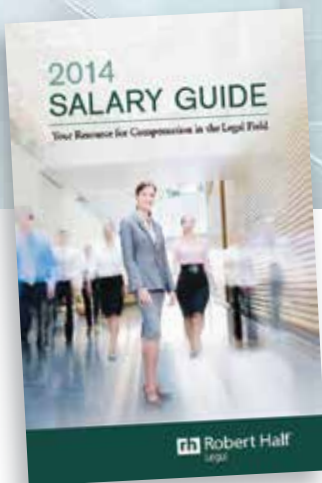
It is often surprising how many general counsel fail to have a clear understanding of their corporation's industry, competitors, value chain, product positioning and strategic direction. Given that many general counsel represent large corporations



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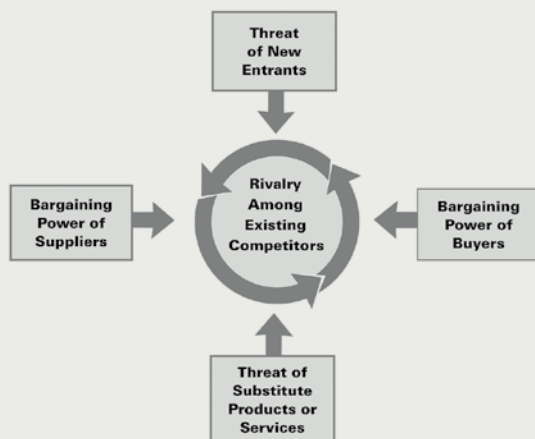
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Strategy framework

A leading framework for industry analysis and business strategy development is Michael Porter's five forces analysis. Porter's framework has served as a useful strategic model for many organizations. It draws upon industrial organization (IO) economics to derive five forces that determine the competitive intensity and overall industry profitability and effective strategic positioning.¹⁹ The extended rivalry that results from all five forces defines an industry's structure and shapes the nature of competitive interaction within an industry. If the forces are intense, few companies, if any, earn attractive returns on investment. If the forces are benign, many companies are profitable.²⁰ The below schematic identifies the five forces.²¹

The Five Forces That Shape Industry Competition



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Based on the assumption that industries are long-lasting and competition remains relatively stable, Porter's five forces analysis is based largely on a dominant theme: a company can achieve a sustainable competitive advantage. In her text, "The End of Competitive Advantage: How to Keep Your Strategy Moving as Fast as Your Business," Rita McGrath challenges Porter's assumption.²² She argues that competitiveness cannot be sustained when today's marketplace advantages are quickly copied, technology changes, customer seek other alternatives, and so forth. According to McGrath, stability, not change, is dangerous in highly dynamic and competitive environments. Competition within an industry is not the most significant threat. Instead, she writes that industries are competing with other industries. Using the industry as the focus or level of analysis is perhaps too narrow. She argues for a new level of analysis that "... reflects the connection between market segment, offer, and geographic location ..." which she calls the arena. Companies may have different strategic approaches depending in which arena it participates. Using this approach, companies will look to leverage capabilities and skills amongst various arenas. She further argues that advantages are merely transient, not sustainable, in today's dynamic business environment.

Familiarity with Porter's five forces analysis and McGrath's recent critique will serve as useful background as a general counsel begins to familiarize herself with the particular strategic model(s) the organization is using to formulate its business strategy and understand the many elements of that model.

that sell numerous products and services, this is certainly challenging. Nonetheless, developing that understanding is a crucial exercise and a key step in developing strategic capability. In larger corporations that employ a strategy function, contextual business information will have already been assembled, and you simply need to ask for it. Conversations with the CEO, other senior management leaders or the marketing and sales department may reveal useful information as well. As an active (or hopeful) member of the strategic team, the general

counsel must take certain responsibility for developing her own knowledge base by researching the answers to the questions on the previous page. Such a commitment to growing one's knowledge of the contextual business framework evidences commitment to becoming a contributing voice in key strategic discussions.

To build your knowledge base, take advantage of a variety of helpful databases, some free of charge, which help the general counsel learn about the organization's business context. The US government, for example, tracks

industries, their productivity, growth and employment using a coding scheme, the *North American Industry Classification System (NAICS)* and its predecessor, the *Standard Industrial Classification (SIC)*. The corresponding NAICS code can be found by using the search feature at www.census.gov/naics and entering a keyword search that describes the nature of the corporation's business. By searching with the industry code, the US Census Bureau's website offers a variety of useful industry reports.¹⁰ Business and trade publications, as well as trade associations,

compile all types of information on industry corporations and provide resources for identifying competitors, suppliers and customers. *Business Insights: Essentials*, a database often found at public libraries in the United States, is helpful in learning about competitive intelligence, market share information, product trends, product and brand information, and comparison of companies within industries.¹¹ Other fee-based tools include Standard & Poor's *NetAdvantage*¹² and *IBISWorld*, which provides US and global industry reports.¹³ Investment bank and stock market analyst reports provide helpful industry profit metrics.

In order to fully understand the business context, the general counsel must also appreciate the organization's legacy and culture. To get to the heart of this, the general counsel might ask the following: What is the history of the corporation? When was it founded and by whom? What is the organization's mission, vision and values? How would the culture of the organization be described? How will the organization's culture evolve?

Learning about the organization's strategic model and business context will not happen overnight; it takes determination and resolve, given the general counsel's many daily priorities. But it is a crucial capability and a key dimension necessary for active participation in the organization's strategic conversation. Mastering this dimension alone is invaluable for the 21st century general counsel and enhances her perception within the corporation, helping to begin redefining herself as a potential "Chief Opportunity Counsel."

Mastering the legal context

In addition to identifying the organization's strategic business model and appreciating the organization's business context, the general counsel must also fully understand the legal context for a corporation's strategic initiatives. This dimension challenges the

general counsel to consider whether the organization is "legally" primed for growth and, if so, what are the legal dimensions for the corporation's strategic initiatives. Mastering this capability should not be challenging for the 21st century general counsel. Her legal education, knowledge and experience should have prepared her well for success in this dimension and is, in fact, a position of great strength for the general counsel. It is also the dimension where the general counsel's value is most apparent to the CEO and the board of directors.

Is the organization "legally" primed for growth?

Given that the pursuit of strategic initiatives requires corporate resources and assets, it is necessary for the general counsel to identify conditions that could have materially adverse effects on the corporation's strategic initiatives. In other words, are there legal issues which could affect whether a strategic initiative should be pursued or not? For instance, the corporation may be involved in litigation, which could result in cash-flow problems or deplete retained financial surplus that may be earmarked for a strategic opportunity.

To gauge whether a corporation is "legally" primed for growth, a general counsel should perform due diligence and record the results on a legal health scorecard.¹⁴ Periodically presented to the CEO and the board of directors, a legal health scorecard might include topics such as: (1) a schedule and status report of any material litigation, administrative proceedings, or governmental investigation or inquiry, pending or threatened, affecting the company or any of its respective officers or directors; (2) identification of existing or pending governmental regulations affecting the company's business; (3) any information concerning environmental matters and compliance with environmental laws and regulations;

The sooner the general counsel gets involved, the earlier she can impact and structure strategy and use legal or regulatory tools to creatively and proactively help advance the company's mission. Mastering the legal dimension of strategic initiatives is, therefore, not optional. It is mandatory.

(4) any strikes, unusual labor relationships, work stoppages or employment-related proceedings; and (5) details and the disposition of material contracts (customer, supplier, lender, etc.), properties owned and leased, intellectual property (and any claims threatened or asserted by third parties) that might affect a strategic initiative.

Legal dimensions for strategic initiatives

In addition to being fully aware of the current legal health of her corporation and whether it's "legally" primed for growth, it is important for the general counsel to have a firm grasp of the various legal dimensions of the most common strategic initiatives. Those include joint ventures and alliances, the creation of new businesses, new product lines and services, new franchises, new channels to market, new customer segments, new geographies and locations, and new value chains. Equally, the general counsel should be well versed about corporate dissolution and liquidation, as well as mergers, acquisitions and divestitures. In this, a general counsel should expect to use her full breadth of legal training and experience in areas such as mergers and acquisitions, labor and employment, antitrust, compliance and regulatory, export control, intellectual property, data privacy, environmental, real estate, foreign corrupt practices, procurement, and so forth.

One can be certain that when the legal implications of a strategic initiative are queried, all heads turn to the general counsel. The general counsel should be well prepared for this moment and plan to shine. Preparation is key, but the good news is that these moments can be largely anticipated. How does the general counsel prepare for legal contextual issues that arise during strategic conversations? In addition to relying on experience, the general counsel should develop her own strategic opportunity legal playbook. The playbook might include a collection of answers to the waterfall of questions posed by the organization's strategic framework (see above), a copy of the legal health scorecard previously developed, a series of practical how-to articles about each anticipated strategic initiative, and a map that helps track each strategic initiative currently "in play" within the organization. A sample visual strategic opportunity map is offered, by way of example, in the sidebar on p. 36, and ACC's resources provide numerous useful, practical articles about strategic opportunities. Most important, in the final part of the playbook, the general counsel should set forth her analysis of the legal and business contexts for each proposed or anticipated strategic opportunity, to ensure a positive performance outcome during the strategic discussion. In fact, the general counsel may even venture to include her own roadmap for the organization's strategic business development. In making this analysis, the general counsel should not just anticipate problems but also anticipate business opportunities. Whatever tool is used, the general counsel should review her playbook prior to each strategic discussion, as it develops the foundation for the role of "Chief Opportunity Counsel."

The point here is that with every thoughtful answer or contribution to the strategic discussion, particularly those regarding the legal context of

a strategic initiative, the value of the general counsel's role increases. It also means that the CEO and the board of directors will hold high expectations of the general counsel's ability to offer meaningful and relevant contributions. Likewise, as the stature of the general counsel increases, she will be viewed as a business facilitator and included far sooner in strategic discussions. The sooner the general counsel gets involved, the earlier she can impact and structure strategy and use legal or regulatory tools to creatively and proactively help advance the company's mission. Mastering the legal dimension of strategic initiatives is, therefore, not optional. It is mandatory.

Sound judgments reinforced by high integrity

Making sound judgments reinforced with high integrity is equally important to strategic capability and rounds out the three key dimensions. Lawyers already know how to analyze all sides of an issue, and therefore, making sound judgments is not unfamiliar. Judgments are, after all, decisions based on careful thought. Yet, in the business realm, decisions are often made in the face of ambiguity, uncertainty and/or conflicting demands in which not all relevant information is known or even knowable. And, they are, more often than not, made in a hurry. In essence, the strategic thinker is asked to create balance, while disrupting it; to focus on a broad vision, while also providing critical evaluation of the day-to-day plans; to maintain stability, while preparing for change and evolution; and to work within a certain business context, while challenging it.¹⁵ Making business decisions with few facts in the face of paradoxical demands is the challenge for the general counsel, especially given today's fast-paced business that does not allow judgment from detailed reflection and analysis.

Given the effort to "make the numbers," and the often mutually incompatible objectives (and pressures) of improving growth, profitability and the return on investment, the general counsel's judgment must be held to the highest level of integrity — the adherence to the letter and spirit of the law, and the corporation's ethical standards and values.¹⁶ Like the CEO and other senior executives, the general counsel should act as a role model and set the standard for high integrity.

As opposed to hard skills (i.e., mastering the organization's strategic model, and the business and legal contexts), this third dimension of strategic capability invites the general counsel to cultivate soft skills. Such skills are increasingly important in today's work force. It is not enough to be highly capable in the first two dimensions, without developing judgment buttressed by high integrity. Lawyers have already been trained to analyze facts and make reasoned judgments supported by ethics. But, the challenge for the 21st century general counsel in this dimension is to feel comfortable in making those judgments or decisions in the face of paradoxical demands and often few, if any, facts.

The development of the three dimensions of strategic capability

The development of the three dimensions, while learnable, are not entirely teachable, especially in a continuing legal education (CLE) setting. Although some formal classroom learning may be useful (e.g., leadership training, workshops or business/MBA classes or programs), various other methods of informal learning may prove more helpful to the general counsel, such as personal coaching, establishing mentoring relationships, participating in mastery experiences, establishing peer networks and regular critical self-reflection.¹⁷ For example, mentors can provide experienced and diverse perspectives, psychosocial support

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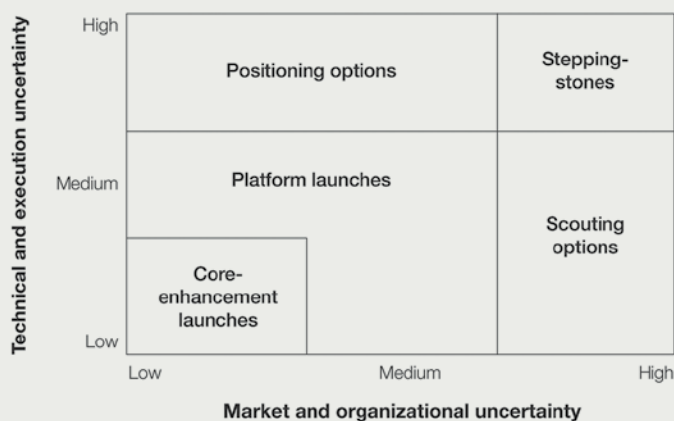
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Strategic mapping tool

The general counsel can use a variety of tools to track strategic initiatives. For some, a chronological listing is enough. For others who are visually oriented, a map might be useful, such as the one provided in Rita McGrath and Ian MacMillan’s text, “Discovery-Driven Growth: A Breakthrough Process to Reduce Risk and Seize Opportunity.” The map, as reproduced below, allocates strategic initiatives into five different categories: (1) core enhancement launches, (2) platform launches, (3) positioning options, (4) stepping stones and (5) scouting options.²³ Each can be explained as follows: Core enhancement launches are strategic initiatives that help serve the corporation’s customers better. In this category, market and technical uncertainty is generally low. Platform launches are future contributions to the core business. M&A opportunities serve as platform launches, as well as new products or services that could well be the next core business. Positioning options, the third category, are investments in today’s organization, which buys the right, but not the obligation, to make an investment in the future. Prototypes and early-stage experiments serve as positioning options. Stepping stones are generally high-risk new technologies or capabilities. Market and technical uncertainty are generally quite high for stepping stones. Finally, scouting options are situations where an organization seeks to apply a certain technology to a new arena or industry. Although the technical risk might be low, the market uncertainty could be very high.

Each strategic initiative can be represented by a circle or bubble (the larger the circle or bubble, the greater the upside potential) and placed on the map in the area reflecting the initiative. Whether the visual map is used or not, the general counsel should carefully use a tool to track the major strategic initiatives currently “in play” within the organization and assign herself or someone on her team to participate in the initiative’s evolution.

An opportunity portfolio



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and role modeling, whereas mastery experiences or stretch assignments offer specific exercises in judgment and self-knowledge. Leadership training offers the general counsel an opportunity to reflect in a structured setting and network with peers, either with other general counsel or senior management.

It is recommended that the cultivation of these three dimensions not occur in isolation. The dimensions are linked, influencing and reinforcing each other. For example, contextual mastery, in both the business and legal dimensions, will help narrow and fine-tune the strategic conversation, while simultaneously determining the nature of the judgments to be made. The outcome of the judgments will serve as learning experiences for future strategic conversations and will reinforce or re-shape newly developed contexts. Likewise, robust strategic conversations will challenge the strategic framework, which may be widely held within the organization, and restructure the business or legal contexts.¹⁸

Finally, high performance is coupled with self-efficacy, and, therefore, the general counsel should remain mindful that the development of the three dimensions cannot occur if she lacks self-confidence. Given that the general counsel may be learning an unfamiliar strategic framework and business context, which for many general counsel might be intimidating, it is important to prevent low self-efficacy from undermining the development of the three dimensions.

Becoming the “Chief Opportunity Counsel” and an effective participant in strategic conversations

Many general counsel already possess one or more of the three dimensions of strategic capability but, for a variety of reasons, have yet to “blow up” the boundaries created by preconceived notions of a general counsel’s potential contribution in the corporate environment. Instead of activating a

demonstrable and, frankly, invaluable skill-set in making quick, thorough and sound strategic recommendations, the general counsel has remained confined and incorrectly labelled as the “Vice President of No,” identifying risk but not opportunity and always problematizing, not problem-solving. But, the strategy-driven 21st century CEO needs an equally strategic general counsel who is capable of utilizing her extensive legal knowledge and expertise to identify and execute areas of innovation and opportunities for growth. Admittedly, there is much work to be done, and the idea of adding more to your plate may be daunting. This article has given you a few ideas on where to begin: how to develop your dimensionality as a strategic player and how to begin to construct a playbook that helps you prepare for strategic discussions. It may have reminded you of just how much you actually bring to the table. Your responsibility is to break down barriers, accept the challenge of self-education and redefinition as a strategic thinker, and counter

preconceived definitions of the role of a general counsel. Help your CEO understand that what you are capable of doing best is helping the organization say “yes” to strategic opportunities as their new “Chief Opportunity Counsel.” **ACC**

NOTES

- 1 Jeffrey E. Garten, *The Mind of the CEO*, (Basic Books: New York, 2001), quoting Jack Welch at pp. 2–3.
- 2 “*Skills for the 21st Century General Counsel*,” a survey published jointly by the Association of American Corporate Counsel and Center for the Study of the Profession at Georgetown University Law Center, 2013.
- 3 “*Beyond the Law: KPMG’s Global Study of How General Counsel are Turning Risk to Advantage*,” a survey published by KPMG, 2012, p. 7.
- 4 Adapted from Narendra Laljani, “*Making Strategic Leaders*,” (Palgrave MacMillan: New York, 2009).
- 5 KPMG Survey, p. 9.
- 6 Michael Porter, “*Competitive Advantage: Creating and Sustaining Superior Performance*,” (New York: The Free Press, 1985).

- 7 Joan Magretta, “*Understanding Michael Porter: The Essential Guide to Competition and Strategy*,” (Harvard Business Review Press: Boston, 2012), p. 219.
- 8 W. Kiechel, “*The Lords of Strategy: The Secret Intellectual History of the Corporate World*,” (Boston: Harvard Business Press, 2010) and B.D. Henderson, “*The Experience Curve Revisited*,” *bcg.perspectives*, 1980, p. 229 cited in Rita Gunther McGrath, “*The End of Competitive Advantage: How to Keep Your Strategy Moving as Fast as Your Business*,” (Harvard Business Review Press: Boston, 2013); Rita Gunther McGrath and Ian C. MacMillan, “*Discovery-Driven Growth: A Breakthrough Process to Reduce Risk and Seize Opportunity*,” Boston: Harvard Business Press, 2009).
- 9 Michael E. Porter, “*The Five Competitive Forces That Shape Strategy*,” *Harvard Business Review* 86.1 (2008). See generally <http://hbr.org/2008/01/the-five-competitive-forces-that-shape-strategy/ar/1>.
- 10 www.census.gov/econ/isp/index.php.
- 11 www.cengagesites.com/literature/782/gale-business-insights-global-essentials/whats-inside/.
- 12 www.netadvantage.standardandpoors.com/login/NASApp/NetAdvantage/NET/login/login.jsp.
- 13 www.ibisworld.com/industry/home.aspx.
- 14 The ACC’s resources provide a number of sample due diligence checklists that members can download from the ACC library.
- 15 Laljani, p. 37.
- 16 See Ben W. Heineman Jr., “*High Performance and High Integrity*,” (Harvard Business Press: Boston, 2008) *for an excellent discussion about high integrity*.
- 17 Laljani, p. 179.
- 18 Laljani, p. 185.
- 19 http://en.wikipedia.org/wiki/Porter_five_forces_analysis.
- 20 *Harvard Business Review, January 2008 (Vol. 86, No.1)*.
- 21 *Id.*
- 22 McGrath, “*The End of Competitive Advantage: How to Keep Your Strategy Moving as Fast as Your Business*.”
- 23 McGrath and MacMillan, “*Discovery-Driven Growth: A Breakthrough Process to Reduce Risk and Seize Opportunity*,” p. 52.

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