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When we advise our clients on negotiations, we often ask them how they intend to formulate a negotiation strategy. Most reply that they'll do some planning before engaging with their counterparts—for instance, by identifying each side's best alternative to a negotiated agreement (BATNA) or by researching the other party's key interests. But beyond that, they feel limited in how well they can prepare. What we hear most often is "It depends on what the other side does."

Fair enough. For most routine negotiations, a reactive approach is sufficient. When the stakes are low, skilled negotiators can pivot with relative ease from one tactic to another as the opposite side makes moves, and often that's enough to ensure that the final deal fully captures value for them. But from time to time dealmakers find themselves in complex negotiations with higher stakes. In those situations they require a much more robust approach. Just like business, political, and military leaders, negotiators need a strategic framework that illuminates the key choices they must make to achieve their ultimate objectives.

In the 30 years we've spent as advisers on hundreds of negotiations, ranging from agreements to resolve armed conflict to multibillion-dollar commercial deals, we have codified what makes negotiation strategies effective. Negotiators should start developing them well before the initiation of talks, but the process is dynamic and iterative and should continue until the final deal is inked—and in some cases beyond. With well-thought-out strategies, negotiators can suppress the urge to react to counterparts or to make preemptive moves that are based on fears about the other side's intentions. They'll be able to prepare for the worst but not trigger it—and to identify the actions most likely to have a significant impact on deal outcomes.

Rethink Counterparts

People tend to pursue deals with the obvious parties. If we're sellers, we search for a buyer; if we're borrowers, we search for a lender. But we often overlook many others in the ecosystem surrounding the negotiation: our competitors, suppliers, and customers—and their competitors, suppliers, and customers. We need an approach that encompasses all the parties that can and will help us fulfill our objectives.

To devise one, negotiators should answer the following questions:

1. What business outcomes do we seek through this negotiation?
2. Who cares about those outcomes?
3. Who can do something to bring about those outcomes?
4. How can we engage, directly or indirectly, with parties that share some of our interest in achieving those outcomes?

Consider how the holder of key patents necessary to play movies and music on DVDs sought to prevent low-cost manufacturers in China from infringing on its intellectual property (and competing unfairly with its duly licensed partners). Initially, it tried to negotiate with those manufacturers, but in most cases it was simply ignored. And even when the Chinese manufacturers were successfully challenged and subjected to a legal process, they would simply close shop and then reopen under a different name.

Working backward from the desired outcome (halting sales of infringing products in significant markets), the patent holder realized that although it couldn't dissuade manufacturers from making unlicensed DVD players, it could persuade large importers and distributors to stop buying and selling those products. By helping the importers and distributors recognize the infringement and intellectual property issues, the patent owner got them on the same side of what would otherwise have been a steep uphill negotiation with the unauthorized manufacturers.

Analyze Counterparts' Constituencies

In high-stakes negotiations, dealmakers tend to talk about how much power and leverage the other side has, what the other side will or won't agree to, and how to influence its behavior. While viewing counterparts as if they were one monolithic entity is convenient, that attitude regularly leads to analytical and strategic missteps. (In the realm of international diplomacy, negotiators have traditionally been somewhat more attuned to thinking about how to influence multiple constituencies when forging deals—be it with the Taliban or the old Soviet Union.)

There are often opportunities to change a deal's scope and achieve better results.

For example, a customer might perceive itself to be at a disadvantage in a negotiation with an important supplier because it represents only a small piece of that supplier's overall business. A closer look, however, might reveal that it accounts for a fairly large percentage of the business at one of that supplier's plants or in a specific geographic market for a particular unit. Though the supplier's corporate leaders might view the customer as insignificant, the plant manager or unit head who depends on it would see it as critical. A corporation isn't one uniform organization; it's a federation of businesses. Most often, profits and losses are assessed not only at the enterprise level but by unit, geography, product, and plant. The authority to negotiate contracts is usually (though not always) delegated accordingly. Carefully parsing a counterpart's constituencies is essential to understanding negotiation leverage.

The supply chain team at a large hospitality and entertainment company took that lesson to heart in negotiations with major beverage suppliers. The team members recognized that bargaining with their sales counterparts over volume discounts would

achieve limited value. It was only by broadening the discussion well beyond discounts and the purview of sales that they learned that other stakeholders within their suppliers had much more value to contribute. There were also opportunities to discuss promotional sponsorships at the entertainment company's venues and events, the strong relationships the beverage suppliers had with performers who could fill those venues, marketing events that the suppliers could host at the entertainment company's hospitality properties, and more.

Rethink the Deal's Scope

The vast majority of negotiators take the fundamental scope of a deal as a given. They may consider a limited set of choices—for instance, shorter- versus longer-term deals—but by and large their tactics are guided by a comparison between their BATNA and how close to some preferred outcome they think they can get. As the entertainment company's example illustrates, however, there are often significant opportunities to change the scope of negotiations and achieve much better results.

Consider a health care firm that was seeking to renegotiate the terms of a major supply contract with a pharmaceutical company. The health care firm needed much more manufacturing capacity from a major plant owned and operated by the pharma company. The pharma company was loath to offer more capacity than the original contract specified, because it anticipated needing to make more of its own products at the same facility in the future. Many creative options were explored, including shared capital investments to increase the plant's efficiency and output, altered financial terms, and the possibility of a "plant within a plant" operating model. Nonetheless, no solution appeared to meet both sides' needs.

However, when the scope of the negotiation was increased beyond altering the existing agreement, and both sides stepped back to reevaluate (and share information on) their respective global operations (including plans for building new plants) and growth objectives (and associated capital investment needs), they were able to reach an agreement. The new contract rebalanced production and supply across multiple plants and delivered substantially more value to both parties. The negotiators didn't expand just the pie; they expanded the entire menu.

Or take the financial services firm that was seeking to renew a contract with a company that owned proprietary data assets and was demanding a hefty price increase. An analysis of the annual report and earnings calls of the data company showed that it was focused on increasing revenue from other products and services—ones the financial services firm was purchasing from several other suppliers. While some of those current suppliers were highly valued partners, and it didn't make sense to contemplate shifting business away from them, in other cases the financial firm could give the data provider an increase in business in the areas it wanted to build. The firm's negotiating team offered to do that—but *only if* the provider agreed to more-reasonable terms on the data it enjoyed a de facto monopoly on.

It's worth noting how counterintuitive this approach is. When confronted with opposing parties who seem to have more leverage, the natural tendency is to look for ways to weaken that leverage—to find walkaway alternatives and issue threats. Such attempts often come up short or undermine deal success. The lesson here is to offer

the other side new *opportunities* instead of focusing just on the needs that only it can meet for you.

Think about how precedents a deal sets may create anchors in future negotiations.

Sometimes the right strategy is even to *reduce* the scope of the deal. A classic piece of negotiation advice is to carefully evaluate (and seek to improve) your BATNA. The problem is, in most high-stakes negotiations, there's really no viable alternative to some deal with the other party. Digging deeper into BATNA analysis is vital in such scenarios. The key is not to simply consider wholesale alternatives to any agreement with a powerful counterpart but rather to explore alternatives to some elements of what you're seeking through that deal.

Here's how that approach worked for a medical device company that felt powerless in its negotiations with a distributor that dominated an important regional market. No other distributor had comparable coverage in the region. After considering expanding the scope of the deal, the device maker instead opted to narrow it. It identified alternative distribution channels for some of its products in some segments of the regional market. Bringing its products to market with a portfolio of smaller distributors would have been prohibitively complex and would have increased costs and reduced revenue. But once the device maker had defined a strategy to narrow the scope of the deal with the incumbent distributor, the negotiations moved to a considerably more even footing.

In fact, the distributor stopped making demands and threats and became willing to engage in a collaborative process. The two sides jointly evaluated where it was especially costly for the distributor to service the device maker (business the distributor was actually happy to give up) and where it would have been most difficult for the device maker to move to alternative distributors. The narrower scope made the distributor willing to reduce some of its requirements (meant to cover the costs of distributing low-margin products in expensive-to-service segments). For the device maker, the cost of agreeing to much of what the distributor was requesting dropped significantly.

Rethink the Nature of Leverage

All too often dealmakers conflate negotiation power with a strong BATNA and the concomitant ability to hurt the other party. Essentially, the message they send is: We don't need a deal with you, and you need a deal with us, so we get to dictate the terms. Such a mindset leads to pressure tactics. It also makes negotiators who lack attractive walkaway alternatives conclude that they have no power, which in turn causes miscalculations and unwarranted concessions. Moreover, their sense of powerlessness can breed fear and resentment—negative emotions that hamper creative thinking about potential avenues to an optimal outcome.

The solution is think beyond walkaway alternatives and consider multiple sources of not only coercive leverage but also *positive* leverage. By positive leverage, we mean things negotiators can uniquely offer to make the other side *desire* a deal rather than fear the absence of one.

Many technology firms have IP teams that seek to persuade consumer electronics companies such as Apple, Sony, and LG to pay for licenses. The negotiation of IP rights in this market is dauntingly complex. Patent infringement is pervasive—though often unintentional. Legitimate efforts to collect royalties are vastly complicated by the well-known phenomenon of patent trolls. As a result, most IP licensing teams struggle to "move up in the queue" for simple *consideration* by underresourced in-licensing teams, who feel besieged by all the parties claiming the right to royalties—and offering little in return except an agreement not to sue.

The IP licensing team at one well-known tech firm had a strong claims portfolio and compelling market data about the rights that other companies were infringing. The team tried to be creative and flexible, offering to blend payments for past infringement, ongoing royalties, and cross-licenses. However, its BATNA—filing lawsuits against infringers that ignored it—wasn't strong, because the ability to enforce patent rights and collect damages had been hampered in recent years in many jurisdictions around the world. The firm didn't have a particularly good track record in court, either. To various consumer electronics companies, it made sense to rebuff the team's demands. And so they did.

Thinking in binary terms is almost always counterproductive.

By researching the business models and strategies of the electronics companies, the team was able to pinpoint which of its firm's patented technologies were complementary to important initiatives at each target licensee. Working with the firm's tech and sales departments, the team then defined value propositions showing each target licensee how it could use the firm's IP to generate new products or revenue streams. One electronics company, for example, could leverage the tech firm's sound and imaging IP in elder-care offerings, and another could enhance its device with the firm's virtual reality expertise. Those opportunities made it worthwhile for the electronics companies to engage in meaningful negotiations with the team. Though this strategy required a lot of time and effort, the payoff was worth it.

Look for Links Across Negotiations

Most negotiators focus exclusively on maximizing the value of the deal at hand. In doing so, they often undermine the success of future negotiations—their own and those of their colleagues. A strategic approach requires considering success beyond the current deal and, in particular, how the precedents it sets will create anchors and shape dynamics in future negotiations. After all, except with pure sales and purchases of assets, most high-stakes business negotiations are repeat transactions undertaken in the context of long-term relationships.

Analyzing links across multiple negotiations can unearth hidden forms of leverage. Consider the case of a global semiconductor company that felt continually squeezed by unreasonable price increases from OEM component suppliers. A major problem was that negotiations over initial licensing or codevelopment of technology for new products were conducted by one group, whereas subsequent contract negotiations (with the same suppliers, but occurring years later) were handled by another group, with relatively little coordination between the two. Meanwhile, negotiations with

those suppliers and other third parties for maintenance and repair services and spare parts were handled by yet another group, and all three kinds of negotiations occurred on different timetables.

How to Pressure-Test Your Strategy
One key to negotiation strategy is putting yourself in the shoes of your counterparts and truly understanding their ...

By looking at these separate but related negotiations holistically, the semiconductor company was able to alter the power dynamics. Teams negotiating supply agreements acknowledged that they had little choice but to accept an incumbent supplier's pricing and terms but were able to point to upcoming product introductions and warn that unreasonable positions held now would most likely exclude suppliers from being considered for next-generation products—and all associated downstream revenue. They also shared data about maintenance and repair revenue streams and their growing ability to redirect such business to partners who demonstrated reasonableness and good faith.

Threats and promises about future business had been made in the past by the company's negotiators, but they weren't specific and lacked credibility. Now the benefits of increased cooperation and the potential loss of opportunities were tangible to suppliers—and hence persuasive.

Consider the Impact of Timing and Sequencing

Many people seek to speed up or slow down negotiations to put pressure on the other side and extract concessions. But pressure tactics often backfire. Careful consideration of how the other side is likely to respond should guide when to accelerate, slow down, or pause a negotiation.

Several years ago a small technology company was in negotiations to renew a critical deal with an internet behemoth. The small company depended a lot on the revenue the deal produced, and the thought of going without it for even a short time was frightening. Seeking to pressure the small firm, the behemoth showed little urgency to complete the deal and signaled that it wasn't sure the contract was worth renewing.

That turned out to be a major miscalculation. Recognizing that it could do little to get the other side to go faster, the small company's negotiation team decided to make use of the time to build support within the firm's ecosystem of customers and business partners for the possibility of partnering with one of the behemoth's giant competitors instead. That time was well spent. As such an alternative went from unimaginable to conceivable to plausible, the smaller firm's leverage grew. In the end the contract with the behemoth was renewed for a nine-figure value that represented a nearly five-fold increase over the expiring deal. While the passage of time did make the small firm nervous about its dwindling cash reserves, it also gave it the opportunity to substantially alter the landscape in which the negotiation took place.

Choreographing the sequence in which you address issues or engage different players is also important. Resolving some issues may reset the stakes or reframe the remainder of the negotiation.

A good example of strategically rethinking sequence in a negotiation comes from the oil and gas industry. As part of a joint venture deal with a national oil company, one large multinational had agreed that if a particular competitor wanted to add itself to the deal later, it could do so by paying its share of the capital plus interest for the time it hadn't participated. A few years later that second multinational indeed triggered its option and sought to open negotiations on the rate of interest. Instead of discussing how many points above or below LIBOR would be appropriate, the multinational decided to go back to the oil company and negotiate what further terms should apply to the revised deal. The multinational proposed the principle that a later entrant shouldn't earn a higher rate of return than the original partners, who had taken a greater risk before the project had proved its value. The oil company readily agreed.

With that matter settled, the multinational turned to the new partner-to-be and demonstrated, using the recently audited books for the joint venture, that the interest owed by an incoming partner would have to be 60% a year, not anything like LIBOR. After some initial shock, the incoming partner agreed.

Five questions can help negotiators strategically manage timing and sequencing:

1. What changes in the external marketplace might increase or decrease the value or importance of the deal for each party?
2. To what extent can we use additional time to strengthen our walkaway alternatives?
3. To what extent can the other side use additional time to strengthen its walkaway alternatives?
4. How might deals negotiated with other parties affect the scope of the negotiation or create precedents that influence the way we resolve key issues?
5. What events or changes in the external marketplace might adversely affect the strength of our walkaway alternatives—and the other side's—or create mutually beneficial opportunities?

Be Creative About the Process and Framing

When approaching a high-stakes deal with a powerful counterpart, many negotiators debate whether to start by issuing their own proposal or by asking the other side to do so. They also often wonder whether they should project strength by asking for aggressive terms in their first offer or counteroffer, or signal a desire for a win-win outcome through more-balanced and reasonable terms. But such binary thinking blinds us to the many ways we might shape the negotiation process to reduce risk and increase the likelihood of a great outcome.

Let's look at a global health care company that depended on a single supplier to make one of its biggest revenue-generating products. The supplier held numerous patents essential to the manufacturing process, so switching to a different one would have taken years and major investments in redesign. But for many years the supplier had been unwilling to collaborate on improving quality and manufacturing efficiency. As the contract with it neared expiration, the health care company pondered how to open the negotiation for a renewal. Should it demand big price reductions and other

improvements? Or should it begin with more-reasonable terms and hope that the supplier responded in kind?

After much debate about the trade-offs, the health care company developed a third approach. Rather than beginning by sending an initial term sheet, it invited the supplier to a prenegotiation summit—a joint discussion of what had worked well, and what hadn't, for each side under the prior contract and of how the market and each side's business objectives had changed. This was deemed a low-risk move. The supplier might well decline the offer, but so what? The health care company's negotiation team would then simply revert to sending an opening term sheet.

How Reactive and Strategic Approaches to Negotiation Differ
Reactive Strategic Focus on the deal terms Focus on shaping the negotiation context and process Look for ...

To the surprise of some on the team, the supplier accepted the invitation. During the summit the health care company's team shared an analysis of the economics and evolving market position of the company's product. It showed that unless the product's price fell significantly, new competitive offerings would take substantial market share away from it. That would reduce not only the health care company's revenue but also the supplier's. The analysis triggered an animated discussion focused not on bargaining but on joint problem-solving. That in turn led to thinking about how to creatively restructure the way the companies worked together and to a set of principles for negotiating commercial terms in the new contract, including a framework for sharing risks and rewards. The ultimate deal saved the manufacturer tens of millions of dollars but was viewed by the supplier as more favorable than the earlier contract. Both sides agreed that a traditional "offer-counteroffer" negotiation process would at best have yielded a significantly less valuable deal for both—and could easily have resulted in no deal at all.

CONCLUSION

High-stakes negotiations tend to produce a lot of anxiety. This leads dealmakers to focus on (perceived) threats rather than identify all possible forms of leverage and think expansively about options. When that happens, negotiators are more likely to make poor tactical choices, either giving in to pressure from the other side or inadvertently causing their own worst fears to come to pass.

A strategic negotiation approach involves more than choosing a cooperative or competitive posture, and thinking in such binary terms is almost always counterproductive. Assessing connections between one negotiation and others with the same party over time (and even with other parties), taking a hard look at whether they're negotiating about the right things, and focusing on when and how to most effectively engage with the other side will unlock far more value for dealmakers.