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Negotiation: the right set-up makes a deal
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Most research into negotiation focuses on the cut and thrust of dealmaking at the table. Yet no matter how many right moves you make at the table - however skilfully you read body language, build trust, frame arguments, make offers and counter-offers - doing so at the wrong table can undercut your results.

Our analysis and experience suggest that asking several questions before negotiations begin can ensure the most promising set-up, with the right parties dealing with the right issues in the right sequence at the right table or tables, facing the right no-deal options. Resetting the table more favourably can also overcome barriers that will not yield to purely interpersonal efforts.

Have you included the "highest value" players? The owners of a niche packaging company with an innovative technology were involved in discouraging price negotiations to sell the company to one of two prospective "industry" buyers, all of them larger packaging operations. Typically, a company in this situation would continue arguing for a higher valuation and refine its negotiating tactics with each prospective purchaser. Instead, the packager rethought its approach and found a new set-up with much greater potential for profit.

A fresh look suggested that one of the company's leading customers, a large consumer goods company, might place a high value on having exclusive access to the company's technologies and unique packaging products. So it opened negotiations with the consumer goods company as a potential buyer.

As well as uncovering a completely new source of value - and a much higher possible selling price - the manoeuvre also increased the pressure on the larger packaging companies. They would face increased competition and might not be able offer their customers the same kind of distinctive packaging as that promised by the consumer goods company.

In short, at the outset of the sale process, the packaging company was negotiating, however skilfully, at the wrong table, with the wrong parties, whose interests were wrong for maximising the sale price. The potential "high-value" player - the one that might place the highest value on the deal - was absent from the original negotiations. Have you included potentially influential players? To improve the odds on your negotiating target saying "yes", try to discern who influences the target. In one instance, an owner-manager was eager to sell his company, and his first instincts told him to open negotiations at once with a potential acquirer's chief executive. After further thought, he chose another route.

Whose advice would the target company's CEO seek regarding acquisitions? His chief financial officer would be pivotal. But careful research had identified a particular analyst in the finance department whom the CFO respected - and who would almost certainly carry out the valuation work.

After initial contact with the CEO, the owner-manager's advisers spent time ensuring that this analyst supported the deal. When intensive negotiations finally began with the CEO, the groundwork had been laid. The CEO turned to his CFO, who turned to his key analyst, who made the company's case from the inside.

Prior to his recent efforts in negotiating interim governments in Afghanistan and Iraq, Lakhdar Brahimi,
veteran United Nations diplomat, sought a diplomatic solution to the 17-year civil war in Lebanon. But the negotiating set-up did not simply include the leaders of the warring factions.

Mr Brahimi said: "We met in Jedd to discuss our plan. We needed the Americans with us. We needed the United Nations with us. We needed France with us because France was very close to the Christians and we needed the Vatican, which is a very important player there. So we went to Beirut, Damascus, Baghdad, Paris, Rome, Washington, New York, London, Moscow and Beijing. That is the first step to make sure that all the people who carry some influence are really on board."

Have you set up the right no-deal option? Adding parties to the initial two-party set-up in order to bolster your best no-deal option - your option to walk away if you say no to your original counterpart - is standard practice among many top negotiators.

Martin Lipton, a lawyer and veteran negotiator in New York takeover deals, even compared the value of greater negotiating skill in the initial two-party deal with the value added by bringing in competition to the initial set-up: "The ability to bring somebody into a situation is far more important than the extra dollar a share [negotiated] at the back end. At the front end, you're probably talking about 50 per cent. At the back end you're talking about 1 or 2 per cent."

Indeed, transforming a two-party set-up into more of an auction can change the psychology of the deal as well as the competitive pressures.

After leading a string of alliances and acquisition negotiations that transformed Millennium Pharmaceuticals from a 1993 start-up to a multi-billion dollar company less than a decade later, Steve Holtzman, then chief business officer, explained the rationale for adding parties: "Whenever we feel there's a possibility of a deal with someone, we immediately call six other people. It drives you nuts trying to juggle them all, but it will change the perception on the other side of the table, number one. Number two, it will change your self-perception. If you believe that there are other people who are interested, your bluff is no longer a bluff, it's real."

Have you involved the right agent? In deals where a negotiating agent is used, it is vital to find the agent with appropriate skills and knowledge, as well as to craft a contract that aligns the agent's incentives with your own. Yet a well-structured contract with a skilful agent may not be enough.

Joseph Bachelder, a lawyer in executive pay deals, once took his client aside after the first negotiating session. The board had selected the client to be its next chief executive and was working out his compensation package. Mr Bachelder informed his client that he would end up with everything he wanted from the negotiation. Why was he so confident of total victory? Because, he explained, the board had put the well-regarded internal company lawyer in charge of the negotiations.

Why was this a mistake? It was not an issue of effectiveness: the lawyer was undoubtedly a skilled negotiator. Yet, as Mr Bachelder happily informed his client, "When this is over, you're going to be that guy's boss. He knows that. He can't fight you too hard on anything."

For its representative in these critical talks, the board should have hired an outside specialist, with properly aligned interests and incentives. More generally, managers should look hard at a potential agent's other interests and relationships to determine whether he or she is part of the right negotiating set-up.

Have you included those who must approve the deal? Vetting a proposed deal in advance with others who must approve it can be a wise move. For example, when Traveler's and Citicorp were contemplating a merger, John Reed and Sanford Weill together visited Alan Greenspan, chairman of the Federal Reserve, to get a reading on the Fed's likely attitude to the deal. Often regulatory participation implies an active negotiation over acceptable terms of the deal, not merely a passive submission for arms-length approval or rejection.
Do too many parties unnecessarily complicate the negotiation? Many set-ups become more promising when simplified and reduced. For example, instead of a full, unwieldy process involving many parties, two dominant industry players in a negotiation on technical standards may be better off agreeing standards between themselves first and then sequentially bringing the smaller players on board. In other cases, an obstructive party with no real stake in the outcome may be better cut out altogether.

While tactics and interpersonal skill at the table is the most familiar aspect of negotiation, the set-up away from the table shapes the environment within which negotiators make their tactical and interpersonal moves. These preparatory actions - some of which are described above - determine whether the set-up is barren or fertile ground for a successful deal.

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