**Do a 3-D Audit of Barriers to Agreement**

**How to tailor your approach to the barriers that stand between you and the deal you want.**

**BY JAMES K. SEBENIUS**

*When talks stall*, it's tempting to jump to conclusions: "It's purely a price gap." "They're being unreasonable." "We're not communicating well." "We're in a weak position."

Instead of focusing on the first explanation that leaps to mind, you should diagnose the key barriers to agreement; this will then allow you to devise the most promising approach to overcoming them. Without an accurate barriers assessment, the strategy you craft may address the wrong problems.

In an approach that we call "3-D Negotiation," David Lax and I have classified tactics and interpersonal interaction "at the table" as the first dimension of deal making. The process of diagnosing and overcoming barriers to agreement extends into two other dimensions as well: *deal design*, the art and science of crafting arrangements that unlock value for all parties, and *setup* "away from the table," in which the right people are lined up in the right sequence to address the right issues at the right time and facing the right no-deal consequences.1 I introduced readers to the 3-D approach in an earlier *Negotiation* article ("Negotiating in Three Dimensions," February 2004 [Reprint # N0402A]). With a thorough 3-D audit of the barriers that stand between you and your desired deal, you can consciously craft strategies to overcome them.

**Begin your 3-D audit**

Before a negotiation or when talks stall, take time to answer the following three questions, which correspond to our three dimensions:

1. **Are the barriers to agreement tactical and/or interpersonal?**

   When you see strong potential for a mutually beneficial deal, yet you can't seem to get there from here, common interpersonal or tactical barriers may be holding you back. These include poor communication, lack of trust, cross-cultural clashes, and hardball tactics. Robert Moses, the famous parks commissioner of New York and Long Island, was known to browbeat and threaten during negotiations, yet would often back down when his counterpart responded in kind rather than staying silent or appearing fearful. Keep in mind, of course, that some people who escalate are better left unchallenged until they've let off steam and become more open to reason.

2. **Do the barriers result from poor deal design?**

   A barrier can arise when one or both sides are dissatisfied with the agreement on the table. A poor deal may fail to maximize the potential "value pie" or fail to accomplish the parties' objectives, or it can offer insufficient value relative to parties' aspirations or walkaway options, or both. For example, a tug-of-war between a software firm and a customer over the price of a suite of products may have no solution; the proposed price may always be too high or too low for one of the players. But including a bundle of software, customization, and training at a higher price might break the impasse.

3. **Do the barriers result from a flawed setup?**

   A flawed setup can indicate problems with the negotiation's scope, sequence, or process choices. Scope flaws could mean you're dealing with the wrong parties, interests, issues, or no-deal options; for example, you may face an agent whose incentives diverge from those of his client. Sequence flaws entail problems with the order in which you approach parties or deal with issues. Process-choice flaws suggest that a negotiation is poorly organized; parties may have overlooked the potential benefits of joint fact finding or mediation. For example, frozen negotiations between Microsoft and the U.S. Department of Justice finally broke through with the help of intensive mediation efforts by outside parties.

   By answering these three questions, you'll be prepared to craft a 3-D strategy with the best chance for overcoming the barriers your 3-D audit has found.

**First-dimension barriers: Interpersonal and/or tactical**

Communication problems are one example of these familiar barriers. If the other side just doesn't seem to understand your key interests, priorities, or limits, you may not be presenting your ideas clearly, or she may not be listening well. The situation could also reflect a failure in bargaining, if each side is doing little more than emphasizing its immovable position. When negotiating with a foreign counterpart, you may not have the proper cultural "filters" in place to communicate well or to avoid giving offense. A "yes" from a Japanese industrial negotiator may not mean "Yes, I agree to the deal," but merely, "Yes, I heard you."

February 2006
Imagine that a supplier is negotiating with an important but difficult client who adamantly refuses to budge on certain contract terms. Assuming that they face an interpersonal barrier, suppliers often seek training on the principles of persuasion, joint brainstorming, initial offers, body language, and so on.

Yet apparent tactical or interpersonal barriers may actually be another type of problem. More broadly, the best response to a barrier in one dimension may be moves within other dimensions. As the purchasing agent calms down a bit, for example, he mentions that cash is very tight, "especially this quarter." Is this a deal-design barrier? Perhaps a delayed payment schedule would do the trick, with the bulk of the payment due when procurement budgets are replenished.

The frustrated supplier also may be overlooking a fundamental setup barrier. While top management from both firms might speak of the importance of "partnership" and "quality," the purchasing agent may be motivated by monthly targets and pennies ground out of suppliers. To succeed, the supplier may need to create a more promising setup with more sympathetic parties involved in the negotiation.

This can mean finding and nurturing an influential internal champion on the other side who would truly benefit from added quality and service. The supplier might induce such an advocate to persuade the agent on her behalf, directly or via links to senior management. Beyond a good proposal and the effective interpersonal skills needed in the initial two-party negotiation, a three- or four-party setup—internal champion plus senior management in addition to the supplier and agent—can maximize the odds of the supplier's success at the ground level.

Second-dimension barriers: Poor deal design
Consider the following real-world dispute. Environmentalists and farmers opposed a power company's plans to build a dam in the Midwest. On the surface, the parties appeared to have deep, irreconcilable positions. Yet a superior deal could be designed if the parties looked past their bargaining positions to their underlying interests.

As it turned out, the farmers were worried about reduced water flow below the dam, the environmentalists were focused on the downstream habitat of the endangered whooping crane, and the power company needed new capacity and a greener image. After a costly legal stalemate, the three groups designed a better deal that included a smaller dam built on a fast track, water-flow guarantees, downstream habitat protection, and a trust fund to enhance whooping crane habitats elsewhere.

Working solo or jointly at the drawing board, negotiators sometimes can discover hidden sources of value and then craft agreements to unlock that value and overcome barriers created by poor deal design. Here are some questions to ask the next time your talks seem stalled for deal-related reasons:

- Is price truly the only issue?
- Can we unbundle different aspects of what looks like a single issue and give each side what it values most—at low cost to the other side?
- Should we add contingencies and risk-sharing provisions to the contract?
- Can the contract cope not only with economic issues but also with the egos involved?

Third-dimension barriers: Setup flaws
To get a better sense of setup barriers, put yourself in the shoes of Thomas Stemberg, the founder of Staples, the original big-box office-supply store. Thanks to a first round of financing from venture-capital backers, Staples' concept of rock-bottom prices for small businesses beat early sales targets by 50%. With positive early results in hand and the threat of new competitors such as Office Depot, Stemberg urgently needed expansion capital. Logically enough, he returned to the VC industry.

But during the hunt for second-round financing, the question of valuation emerged as a potential stumbling block. The VCs appeared to be closing ranks, refusing to value Staples as highly as Stemberg hoped.

On the surface, the obvious barrier to a large, rapid capital infusion was the unified hardball valuation of the VCs at the table. Should Stemberg simply have been a better "win-lose negotiator," focusing on his bargaining and interpersonal tactics? Or did he actually face a deal-design barrier, one that required creative thinking?

Neither. The real barrier that Stemberg faced was an unfavorable setup—specifically, the wrong parties and a poor no-agreement alternative. He needed a better walkaway option and a way to access new parties more receptive to his preferred deal.

Generating a better financing offer would be standard good advice. Stemberg tried to do just this, approaching investment bank Goldman Sachs. Unfortunately, Goldman initially proposed exactly the same valuation to Stemberg as the VCs. Now what?

A good 3-D negotiator next would consider which uninvolved parties might value the agreement more highly. For help in "breaking the cartel," as he put it, Stemberg sought out Harvard Business School professor William Sahlman, an expert on entrepreneurial start-ups and venture firms. Sahlman advised Stemberg to approach the pension funds
and insurance companies that backed the VC firms directly. "They may be limited partners of the venture capital firms," Sahlman said, "but they often resent handing off 20% of the profits and a hefty management fee."

After he followed this advice, Stemberg's institutional-funding options greatly expanded. Several limited partners of the VC firms put up their own money at Stemberg's price, and he found other wealthy investors willing to do the same.

When he went back to his first-round VC backers, Stemberg had alarming news. Not only did they risk being cut out by their own limited partners, but they also might be crowded out altogether as other investors piled in. "Do you guys want to play or not?" Stemberg asked. They did.

Facing a flawed setup, Stemberg changed the scope of his negotiation by resetting the table with new parties whose interests were better aligned with the deal he wanted. The lesson: If you don't like the way the table is set, don't just focus on tactical or deal-design barriers. Instead, reset the table by attacking the scope and sequence of your negotiations.

Our Harvard Law School colleague Robert H. Mnookin was the first to develop the notion of barriers to negotiated agreement. His initial set of barriers—cognitive, tactical/strategic, principal-agent, and reactive devaluation—relates more closely to academic disciplines such as psychology and game theory than does our practice-oriented 3-D barriers schema.

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