THE 3-D NEGOTIATOR

Anchoring the Big Picture

In the September issue we discussed how to use anchors to influence your counterpart to be in your favor. Now learn how to use meta-anchors to shape expectations at an even higher level.

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IN THE 1960S, advocates of a U.S. food-stamp program ran into a Congressional dead end while arguing the virtues of food stamps as a welfare program. Yet when food stamps were fundamentally redefined as a farm price-support program, the food-stamp program passed.

Two companies opened negotiations over a possible business integration. The CEO of the larger firm consistently referred to their potential deal as a “merger of equals” rather than as an “acquisition” or “takeover.” Partly as a consequence of this terminology, the smaller firm was ultimately priced at a lower premium than it would have been had the deal been defined as an acquisition.

What do these episodes have in common? In each case, uncertainty surrounded the underlying basis for a zone of possible agreement, or ZOPA. And in each case, one side successfully recast the basis for the negotiation. In response, the other side almost unconsciously began to perceive the ZOPA in a way that was favorable to the proponent.

In “Anchoring Expectations,” our article for the September issue of Negotiation, we described the common tendency of parties to over-rely—irrationally—on the first stated number or piece of evidence in a negotiation when making judgments about uncertain quantities. This psychological phenomenon, known as anchoring, strongly affects the way negotiators perceive the location of the ZOPA in simple deals.

In this column, we look at meta-anchoring, another technique negotiators can use to anchor talks successfully but at a higher level of abstraction, when the very nature as well as the location of the ZOPA is uncertain. Over the years, we’ve observed that many negotiators successfully anchor in the early stages of talks by focusing not on a numerical figure, such as a price or financial terms, but on an animating metaphor—a conceptualization of the nature of the problem the negotiation is meant to resolve. Such meta-anchors can influence the terms of discussion or the face of the issue. This is exactly what proponents of the food-stamp program did in Congress and what the larger firm did to shape perceptions of the ZOPA in its negotiations with the smaller firm. Treating food stamps as a farm price-support program and framing the combination as a merger of equals became meta-anchors that strongly affected all parties’ perceptions of what they were actually negotiating, as well as the ZOPA.

Negotiators are prone to the anchoring effect when they are uncertain about the bargaining range. As uncertainty increases, so does susceptibility to meta-anchoring. By successfully dropping meta-anchors, you can shift perceptions of the ZOPA in your preferred direction and increase the likelihood of a favorable agreement.

Meta-anchoring in action

Consider this real-life negotiation between a foreign company we’ll call Forco and Distributor, which distributed Forco’s goods in the United States. When they began their business relationship, the parties signed a distribution contract that was intended to be perpetual for

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Meta-Anchoring (continued)

Forco's tax purposes but that could be terminated under certain conditions, including nonperformance by Distributor. With Distributor's help, Forco entered the U.S. market with a splash. After enjoying several years of substantial growth, Forco's sales leveled off and then slightly declined.

Disenchanted with Distributor's efforts on its behalf, Forco began sending letters to the company citing specific examples of nonperformance that appeared to establish legal grounds for termination. Eventually, Forco's CEO called Distributor's CEO requesting the termination of their contract—and claiming that Distributor would owe Forco roughly $2 million at that point.

Privately, Distributor calculated that if the contract were terminated due to nonperformance, the company's liability would be closer to $3 million. Distributor disputed many of Forco's nonperformance claims, however, and attributed Forco's recent setbacks to market conditions. Though Distributor believed that Forco's legal claims of nonperformance were weak, the company knew that Forco could attempt to transfer its business, forcing Distributor to sue to prevent the loss.

Rather than meta-anchoring the negotiation around the "termination of the contractual relationship due to nonperformance," an adviser suggested an alternative conceptualization of the problem that came to serve as a potent meta-anchor. During their next phone call, Distributor's CEO pointed out to Forco's CEO that Distributor had signed the perpetual contract at Forco's request and had made significant investments specifically for Forco in the explicit expectation of a perpetual partnership. Moreover, Distributor's CEO forcefully disputed Forco's claims of nonperformance. He also highlighted the risks to Forco of transitioning to another distributor, telling the story of another nonconsensual transfer that cost a manufacturer several years of business growth. In short, Distributor indirectly pointed out that Forco's best alternative to a negotiated agreement could be very poor.

Yet in light of Forco's dissatisfaction, Distributor offered to terminate the contract in return for "compensation for the loss of a profitable, perpetual relationship." After discussing the rationale and mechanics of this approach, Distributor presented Forco with a net present-value calculation estimating the value of the contract to Distributor at $15 million or above—and gradually involved Forco in discussions on this basis.

Distributor consciously moved the talks away from the initial notion that it should pay for nonperformance; instead, it meta-anchored around the idea that it should be compensated for allowing Forco to leave the perpetual contract voluntarily. In the process, Forco's perception of the ZOPA shifted from the expectation of receiving money from Distributor to actually paying the company. Distributor ultimately achieved a settlement of roughly $8 million. By successfully meta-anchoring the negotiations, Distributor came out $11 million ahead of the $3 million payment that the company had originally calculated it would owe Forco.

Preparing to meta-anchor
Meta-anchors can shape the discussion—and the outcome—in many negotiations in which uncertainty exists about the basis of a deal. Here are some steps to follow:

1. Brainstorm possible meta-anchors.
To meta-anchor effectively, look creatively at various animating metaphors, or ways of characterizing the negotiation problem. Some metaphors have clear implications for the appropriate kind of resolution, or at least the most appropriate process and personnel needed to deal with it. For example, a routine extension of an existing deal may receive far less scrutiny during negotiations than a new contract, even when the substantive issues are identical. The sidebar "Picture Perfect" describes a historical illustration of meta-anchoring.

Here's how this first step might play out: A small research-intensive company we'll call R&DCo developed a very innovative piece of technology. Soon after, Acquirer, a much larger firm in a related industry, approached R&DCo to discuss buying out the company. Unlike the dismissive way it had responded to other potential buyers, R&DCo took Acquirer's suggestion seriously. R&DCo felt that its sales were hampered by its small size, by the need to embed its technologies into larger systems, and by its relatively weak distribution channels. Ownership by a strategic buyer such as Acquirer could improve this situation.

In preparation for negotiations with Acquirer, R&DCo identified two likely competing meta-anchors. The first would value R&DCo on a standalone basis. The second would view the deal as an attempt to capture the synergy created by combining R&DCo's technological expertise with Acquirer's sales, marketing, and distribution; by

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using R&DCo's technologies in other markets; and by using the buyer's greater size to win new sales for R&DCo.

2. Evaluate the implications.

After identifying ways of conceptualizing the problem, evaluate their implications. Which meta-anchors could lead to more favorable agreements? Which might lead the process off a cliff? For example, non-U.S. international trade negotiators have described the extreme care necessary when approaching their U.S. counterparts on the subject of regulating trans-border data flows. If the animating metaphor in such negotiations becomes "data as commodity," talks can proceed as ordinary trade deals. But if the meta-anchor becomes "data as information," a significant risk exists that U.S. negotiators will focus primarily on First Amendment concerns, immensely complicating negotiations.

Returning to our ongoing example, the negotiation between R&DCo and Acquirer over price is likely to be shaped substantially by which animating metaphor they come to accept. Will this be a financial transaction in which R&DCo is valued on a standalone basis predicated on its current financials? Or will the negotiation be about estimating and dividing the synergy created by the deal? Valuing R&DCo on a standalone basis would favor the buyer, because R&DCo's value would increase greatly in Acquirer's hands. In contrast, meta-anchoring the sale as a problem of dividing future synergy would boost the per-share sale price by focusing on the value that would be created by combining R&DCo's technologies with Acquirer's products, marketing, and distribution. Clearly, R&DCo should prefer the latter meta-anchor to the former.

3. Anticipate the other side's point of view.

Next, anticipate the other side's reaction to your chosen meta-anchor as well as the kinds of meta-anchors they may propose. As Distributor did in our earlier example, make a plan for dealing with the other side's meta-anchoring attempts. You might even decide, as Distributor did, that sometimes it makes sense to meta-anchor preemptively. A well-prepared negotiator often can offer an advantageous meta-anchor that the other side almost unconsciously adopts without objection in the negotiation's early stages. But a proactive negotiator will take special care to anticipate and prepare a response to the meta-anchors it expects the other side to drop.

R&DCo, for example, expected Acquirer to open talks by stating that it buys businesses based solely on their standalone value. To preempt this likelihood and meta-anchor talks on its own terms, R&DCo's CEO stated: "Almost weekly, we turn down an approach from potential acquirers who want to value us on a standalone basis. We're interested in talking to you because of the significant potential synergy between our two companies. If you want to discuss how we value and divide the joint gains from combining our companies, we're very interested in talking with you. However, if you only want to consider our standalone financials, you'd be wasting your valuable time as well as ours. What do you think?" R&DCo successfully meta-anchored the negotiation by making its standalone valuation the floor above which estimated synergy could be split between the two parties.

Allowing the wrong meta-anchor to shape a negotiation can not only be costly but can also increase the chances that your deal will founder. At the same time, just as using an extreme, inflexible price offer as an anchor can reduce the odds of agreement, arguing too aggressively about which meta-anchor to use can be counterproductive. But when you use meta-anchors subtly, you often can persuade the other side to accept your conception of the problem and move toward an advantageous agreement.

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