CHAPTER
19

Ethics, Reputation and Responsible Negotiation

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Introduction

Every negotiation involves choices about what to say and what to leave unsaid. Should a seller reveal that a competing offer has fallen through? May a buyer claim that its budget is exhausted when it is not? Is it acceptable to imply that a deadline is fixed when it can be extended? How far may a negotiator press a counterpart who is in difficulty? And what should a firm do when an official in a foreign country suggests that a contract will be awarded more quickly in exchange for a payment? These are ethical questions, and they arise in almost every negotiation, not only in exceptional cases.

Ethics is sometimes treated as a constraint on effective negotiation, a set of rules preventing negotiators from doing what would otherwise serve them best. This chapter argues that the relationship is more complex. Some unethical tactics do claim value in the short run. But deception, corruption and opportunism also carry costs: legal penalties, the loss of reputation, the breakdown of trust and the destruction of the relationships through which future value is created. The economics of repeated interaction and reputation, introduced in Chapter 12, explains why. A negotiator who is known to lie must be checked at every step; a firm known to pay bribes faces legal risk in many jurisdictions; and a company whose claims about sustainability prove false may lose the trust of investors and customers.

The chapter proceeds in three steps. Section 19.1 asks whether bluffing is lying, examines the line between acceptable and unacceptable tactics and considers the legal limits on misrepresentation. Section 19.2 asks where persuasion becomes corruption and examines the laws and compliance systems that prohibit bribery

in international business. Section 19.3 asks why environmental, social and governance (ESG) commitments and reputation matter at the negotiating table, and examines the risks of overstating sustainability claims.

All three pillars of the book are at stake. Unethical tactics may increase a party's share of the **profit** in a single deal while reducing the value created over time. They are often used where **power** is unequal, and they can provoke the intervention of regulators, courts and the public that changes the balance of power. And they corrupt **persuasion**, which depends on the honesty of claims. The Deal File examines a negotiation in which ethics, accountability and the interests of those affected were central: the negotiations between Boeing and the United States Department of Justice over the company's criminal liability following the two crashes of 737 MAX aircraft in 2018 and 2019.

DEAL FILE

Boeing and the US Justice Department

In October 2018 a Lion Air 737 MAX crashed into the sea off Indonesia, and in March 2019 an Ethiopian Airlines 737 MAX crashed shortly after take-off from Addis Ababa. All 346 people on board the two aircraft died (US Department of Justice, 2021). Investigations found that a flight-control system had repeatedly pushed the nose of the aircraft down on the basis of faulty readings from a single sensor. The 737 MAX was grounded in the United States from March 2019 until November 2020, some 20 months.

In January 2021 the Justice Department charged Boeing with conspiracy to defraud the United States, alleging that two of its technical pilots had misled the Federal Aviation Administration (FAA) about the flight-control system. Boeing entered into a **deferred prosecution agreement** (DPA): prosecution would be deferred for three years and then dropped if Boeing complied with its terms. Boeing agreed to pay a criminal penalty of US$243.6 million, compensation of US$1.77 billion to its airline customers and US$500 million to a fund for the families of those who died (Boeing, 2021; US Department of Justice, 2021).

Breach, plea and rejection. In January 2024, days before the DPA was due to expire, a door plug blew out of an Alaska Airlines 737 MAX 9 shortly after take-off, an event discussed in Chapters 7 and 14. In May 2024 the Justice Department concluded that Boeing had breached the DPA by failing to implement an effective compliance programme. In July 2024 Boeing agreed to plead guilty to the conspiracy charge, pay a further fine and accept an independent compliance monitor. Many families of the victims opposed the plea agreement as too lenient and sought a public trial. On 5 December 2024 Judge Reed O'Connor of the federal court in Texas rejected the plea agreement, objecting among other things to the

procedure for selecting the monitor, which he found gave the court too little role and took account of diversity considerations (US Department of Justice, n.d.).

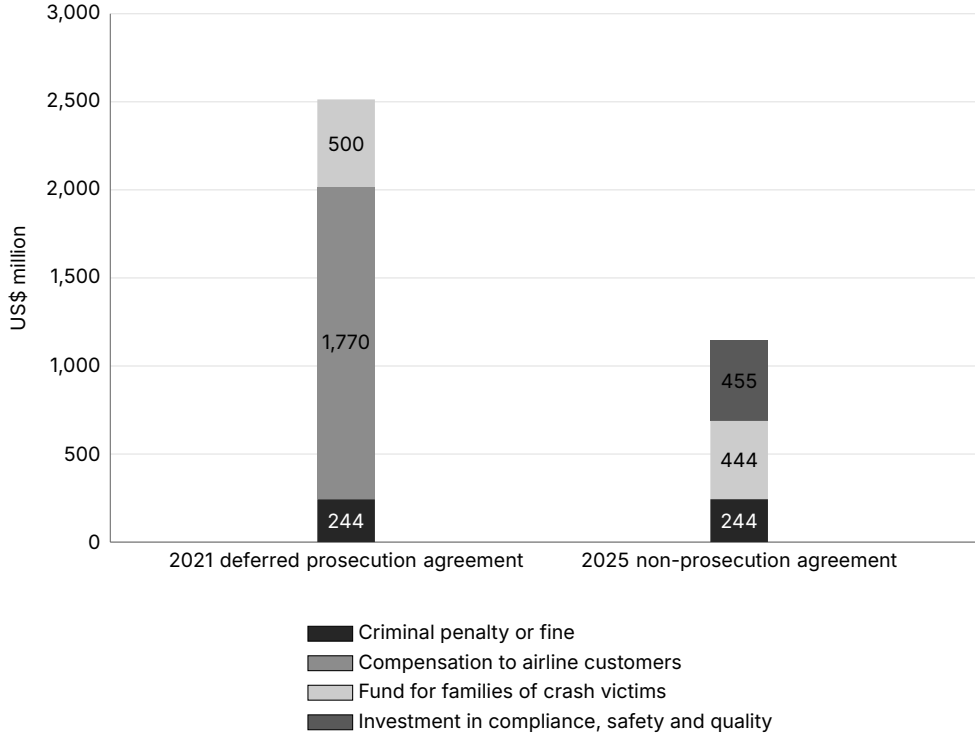
The non-prosecution agreement. On 23 May 2025 the Justice Department told the court that it had reached an agreement in principle not to prosecute Boeing, and the formal agreement was signed on 29 May. Instead of pleading guilty, Boeing admitted that the agreed statement of facts, which described how two of its employees had deceived the FAA's Aircraft Evaluation Group, constituted a conspiracy to defraud the United States. It agreed to pay or invest more than US$1.1 billion: additional compensation of US$444.5 million for the families of crash victims, at least US$455 million in its compliance, quality and safety programmes, and a criminal penalty of US$487.2 million, of which US$243.6 million had already been paid under the DPA. Instead of the court-supervised independent monitor of the 2024 plea agreement, Boeing would retain an independent compliance consultant for its two-year term (*Non-Prosecution Agreement*, 2025). Figure 19.1 compares the two settlements.

Dismissal and appeal. On 6 November 2025 Judge O'Connor granted the government's motion to dismiss the charge. He wrote that the agreement "fails to secure the necessary accountability to ensure the safety of the flying public", but held that a court could not block a dismissal merely because it disagreed with the government's judgement of the public interest. He found that the government had not acted in bad faith, had given more than conclusory reasons for its decision and had met its obligations to confer with victims under the Crime Victims' Rights Act; some families supported the agreement and others opposed it (*United States v. The Boeing Company*, 2025). The families who opposed it asked the Court of Appeals for the Fifth Circuit to intervene. In an opinion of 31 March 2026 the court denied their petitions, holding that the Justice Department had given the families a reasonable opportunity to confer and had not violated their rights to confer and to fair treatment (*In re Ryan*, 2026).

Questions to keep in mind. What are the ethical obligations of a company negotiating with prosecutors after its products have caused deaths? How should the interests of victims, who are not parties to a criminal case but are deeply affected by it, be weighed? Is a negotiated resolution that avoids a trial a form of accountability or an escape from it? And how do such negotiations affect a company's reputation with customers, regulators and the public? The chapter answers these questions in turn. It does not assess the merits of the legal decisions, which were taken by courts and prosecutors within their authority; its interest is in the ethical choices that the negotiation involved.

Figure 19.1

Financial components of Boeing's settlements with the US Justice Department, 2021 and 2025 (US$ million)



Note. Author, based on Boeing (2021) and *Non-Prosecution Agreement* (2025). The 2025 fine shown is the amount still to be paid; the total penalty of US$487.2 million included US$243.6 million already paid under the 2021 agreement. The 2021 agreement was a deferred prosecution agreement; the 2025 agreement was a non-prosecution agreement.

19.1 Is Bluffing Lying?

The Negotiator's Ethical Dilemma

Negotiation involves a tension between two values. On one side is honesty, which most ethical traditions treat as a basic obligation. On the other is the legitimate pursuit of one's own interests, which in negotiation requires not revealing everything. A negotiator who discloses its reservation price will usually obtain an outcome at that price, as Chapter 8 showed. Some concealment is therefore an accepted part of negotiation. The question is where concealment ends and deception begins.

Table 19.1
Boeing and the US Justice Department at a glance

Parties	Boeing; the US Department of Justice; the federal district court in Texas and the Court of Appeals for the Fifth Circuit; families of the 346 victims; the FAA; airline customers, employees and the flying public
At stake	Criminal liability for conspiracy to defraud the FAA; financial penalties and compensation; independent oversight of Boeing's safety and compliance; the families' demand for accountability and a public trial; Boeing's reputation and its relationship with regulators
Timeline	Crashes in October 2018 and March 2019; DPA in January 2021; door plug incident in January 2024; breach found in May 2024; plea agreement in July 2024; plea rejected on 5 December 2024; non-prosecution agreement announced on 23 May 2025 and signed on 29 May; charge dismissed on 6 November 2025; families' petitions denied by the Court of Appeals on 31 March 2026
Terms (2025)	No prosecution; admission that the facts constituted a conspiracy to defraud the United States by deceiving the FAA's Aircraft Evaluation Group; more than US$1.1 billion in compensation, compliance investment and fines; an independent compliance consultant retained by Boeing

Note. Author, based on Boeing (2021), US Department of Justice (2021, n.d.), *Non-Prosecution Agreement* (2025), *United States v. The Boeing Company* (2025) and *In re Ryan* (2026).

Carr (1968) argued, in a famous and controversial essay, that business is like poker: a game with its own rules, in which bluffing is expected and is not lying in the ordinary moral sense. On this view, a negotiator who claims that a price is "final" when it is not is following the rules of the game, which all players understand. Critics have responded that business is not a game people choose to enter, its rules are not agreed by all players, and the poker analogy can be used to justify conduct harmful to others. Most writers on negotiation ethics now distinguish between tactics widely accepted as part of bargaining and tactics crossing the line into deception.

Which Tactics Are Acceptable?

Lewicki and Robinson (1998) surveyed students and managers about the acceptability of a range of tactics. They identified several categories, from traditional competitive bargaining, which most respondents regarded as acceptable, to misrepresentation, false promises and attacks on the other side's network, which most regarded as unacceptable. Table 19.2 summarises the categories.

A practical rule distinguishes statements of **fact** from statements of **opinion or intention**. Exaggerating the merits of one's product ("the best in the market") or concealing one's reservation price is widely regarded as part of bargaining.

Table 19.2

Categories of negotiating tactics and their perceived acceptability

Category	Examples	Perceived acceptability
Traditional competitive bargaining	Making an opening demand far above one's target; not revealing one's limit; gaining time to think	Generally acceptable
Emotional manipulation	Pretending to be angry or upset to gain advantage	Mixed
Misrepresentation	Lying about facts, such as costs or other offers	Generally unacceptable
Bluffing	Making threats or promises one does not intend to carry out	Mixed to unacceptable
Misrepresentation to the other side's network	Damaging the other negotiator's standing with his or her colleagues or superiors	Generally unacceptable
Inappropriate information gathering	Bribing or deceiving to obtain the other side's confidential information	Unacceptable

Note. Author, based on Lewicki and Robinson (1998) and Lewicki et al. (2020).

Inventing a non-existent competing offer, misrepresenting the condition of goods or falsifying costs is not. Between these lie difficult cases, such as implying that a deadline is fixed or a superior will not approve a concession, which Chapter 2 discussed as a problem of agency.

Ethical Frameworks

Philosophers offer several frameworks for deciding hard cases. **End-result** (consequentialist) ethics judges an action by its consequences: a deception is wrong if it causes more harm than good. **Duty** (deontological) ethics judges actions by principles: lying is wrong regardless of its consequences, because it treats the other person merely as a means. **Social contract** ethics judges actions by the norms of the community in which they take place: bluffing may be acceptable where all parties understand and accept it. **Personalistic** ethics asks what one's own conscience permits: could one explain the action to a respected colleague, or to one's family, without embarrassment? Each framework has weaknesses, but together they provide a set of questions that negotiators can ask before acting. A useful practical test combines them: would you be comfortable if the tactic, and your reasons for using it, were reported on the front page of a newspaper?

The Law of Misrepresentation

Beyond ethics lies the law. In most legal systems, a party inducing another to enter a contract by a false statement of material fact, on which the other party reasonably relies to its detriment, commits misrepresentation or fraud. Shell (1991) summarised the elements under American law: a knowing misrepresentation of a material fact, on which the victim reasonably relies, causing damage. A contract obtained by misrepresentation may be set aside, and the deceived party may claim damages. The law generally does not treat statements about one's reservation price or one's opinion of value as material facts, which is why concealing one's limit is legal. But it does treat false statements about the condition of goods, the existence of other offers or financial facts as potential fraud, and in some circumstances a failure to disclose a material fact, particularly one that the other side could not discover, may be actionable.

The Economics of Deception

Deception has economic consequences beyond the deal in which it occurs. Experimental research has found that people who discover they have been deceived punish the deceiver in later rounds, even at a cost to themselves, and deception damages trust in ways difficult to repair (Boles et al., 2000). Chapter 12 showed that reputation sustains cooperation in repeated games; a negotiator known to deceive must be checked at every step, which raises transaction costs for both sides. Chapter 2 showed that information asymmetries can cause markets to break down, as Akerlof's analysis of the market for lemons demonstrated. Honest disclosure, warranties and third-party verification are the institutions markets use to overcome this problem, and they work only when parties expect deception to be detected and punished.

A worked example. Suppose a seller can claim falsely that it has a competing offer, raising the price it obtains by €50,000 in a single deal. If the deception is discovered, which it estimates has a 20 per cent probability, it expects to lose a customer relationship worth €400,000 in future profit and to face legal costs of €100,000. The expected cost of the lie is $0.2 \times (€400{,}000 + €100{,}000) = €100{,}000$, twice the expected gain. Even before considering ethics, deception is a poor bet whenever the relationship has future value and the probability of discovery is not trivial. The calculation also shows why deception is most tempting in one-off dealings with strangers, where both the probability of discovery and the value of the relationship are low, and why legal rules against fraud matter most in exactly those settings.

Research also offers a defence against deception. Schweitzer and Croson (1999) found that asking direct questions about specific facts reduced the frequency of deception by omission, although it sometimes increased outright lies.

Negotiators can therefore reduce their exposure by asking precise questions, verifying important claims, building representations and warranties into contracts and dealing with counterparts whose reputation for honesty is established.

KEY MOVE

Conceal your limit if you must, but never lie about facts. Ask yourself whether you could defend a tactic in public, verify the other side's material claims and write important representations into the contract.

19.2 Where Does Persuasion Become Corruption?

Bribery and Its Costs

Persuasion becomes corruption when a negotiator seeks to influence a decision not through the merits of an offer but through a private benefit to the person who makes the decision. **Bribery**, the offer or payment of something of value to induce someone to act improperly in the performance of a duty, is the clearest case. It corrupts the agency relationship described in Chapter 2: an official or employee who accepts a bribe acts for himself or herself rather than for the principal, whether a government, a company or the public.

Economists have analysed the costs of corruption at several levels. Shleifer and Vishny (1993) showed that corruption is more damaging than taxation, because it must be kept secret, which distorts decisions towards projects in which bribes are easy to hide, and because uncoordinated demands for bribes by many officials can raise its total cost. Mauro (1995) found that countries with higher perceived corruption had lower investment and growth. For firms, the costs include the bribe itself, the risk of prosecution, the loss of control over the decisions of their own employees and agents, and the damage to their reputation.

International Legal Frameworks

The legal framework against bribery in international business has developed considerably since the 1970s. Table 19.3 summarises its main elements.

The enforcement of these laws varies. An executive order of 10 February 2025 directed the Attorney General to cease initiating new FCPA investigations and enforcement actions for 180 days, except in individual cases, and to issue updated guidelines (Executive Order No. 14209, 2025). The guidelines issued by the Deputy Attorney General in June 2025 directed prosecutors to focus on misconduct linked to cartels and transnational criminal organisations, conduct that deprives specific American companies of fair access to competition, threats to national security and serious misconduct, rather than routine business courtesies

Table 19.3

Main legal frameworks against bribery in international business

Instrument	Adopted	Main features
US Foreign Corrupt Practices Act (FCPA)	1977	Prohibits bribery of foreign officials by US companies, issuers of US securities and others acting in the United States; requires accurate books and records and internal controls
OECD Anti-Bribery Convention	1997	Requires signatory countries to make bribery of foreign public officials a crime; monitored by peer review
UN Convention against Corruption	2003	Global convention covering prevention, criminalisation, international cooperation and asset recovery
UK Bribery Act	2010	Covers bribery of public officials and private persons; creates a corporate offence of failing to prevent bribery, with a defence of adequate procedures; does not permit facilitation payments
National laws in the EU, including Poland	Various	Criminalise active and passive bribery in the public and private sectors; in Poland enforced by prosecutors and the Central Anti-Corruption Bureau

(US Department of Justice, 2025). Other countries, including the United Kingdom, have maintained or strengthened their enforcement, and firms operating internationally must comply with the laws of every jurisdiction that may claim authority over their conduct.

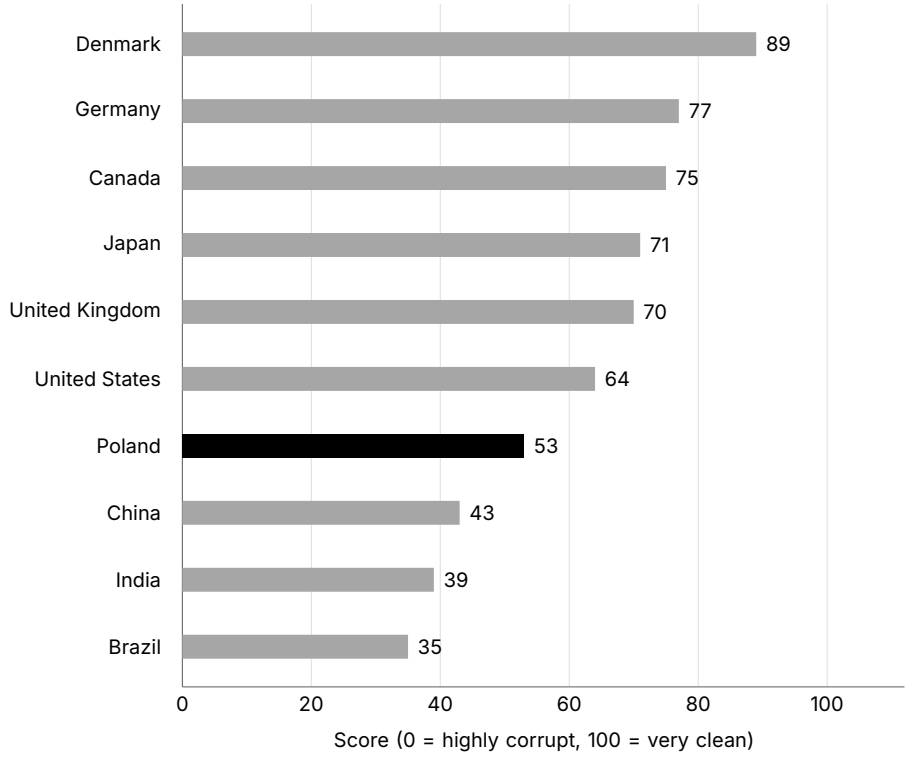
How Corruption Arises in Negotiation

Corruption rarely begins with a crude demand for cash. It more often arises through intermediaries, such as agents, consultants and distributors, whose fees conceal payments to officials; through gifts and hospitality that exceed what is reasonable; through donations to charities or political causes linked to decision-makers; through the hiring of relatives of officials; and through facilitation payments, small sums paid to officials to speed up routine actions such as customs clearance. Chapter 18 noted that gift-giving is an accepted part of business relationships in many cultures. The challenge is to respect such customs while staying within the law and within the firm's own rules.

Figure 19.2 shows Transparency International's Corruption Perceptions Index for selected countries, which measures perceptions of corruption in the public

Figure 19.2

Corruption Perceptions Index 2025, selected countries (score from 0, highly corrupt, to 100, very clean)



Note. Author, based on Transparency International (2026). Denmark ranked first in 2025.

sector among experts and business people. The index is a measure of perceptions, not of actual corruption, but it indicates the level of risk negotiators may face.

Compliance Systems

Firms protect themselves through **compliance programmes**. The main elements are commitment from senior management, a clear code of conduct and policies on gifts, hospitality and facilitation payments, risk assessment of countries, sectors and partners, due diligence on agents and intermediaries, contractual anti-corruption clauses, training, confidential channels for reporting concerns, investigation of allegations, and regular review. Standards such as ISO 37001 provide a framework for anti-bribery management systems, and authorities in the United States and the United Kingdom take the quality of a firm's compliance programme into account when deciding whether and how to prosecute.

For negotiators, compliance is not merely a constraint. A strong compliance programme gives negotiators a credible reason to refuse improper demands ("our company's rules and the law do not allow this"), which can protect them from pressure and preserve relationships. It also reassures partners, lenders and investors that the firm will not expose them to legal risk.

Negotiated Justice

When firms are suspected of corruption, fraud or other corporate crimes, the outcome is increasingly decided not by a trial but by a negotiation with prosecutors and regulators. Deferred prosecution agreements, non-prosecution agreements, plea agreements and civil settlements allow authorities to secure penalties, compensation and reforms of compliance quickly and with certainty, and allow firms to avoid the costs, uncertainty and collateral consequences of conviction, such as exclusion from public contracts. Garrett (2014) documented the rise of such agreements in the United States and questioned whether they deter misconduct and hold individuals accountable.

These negotiations have the same structure as the others in this book. Each side compares an agreement with its alternative, a trial whose outcome is uncertain. The firm's bargaining power depends on the strength of the evidence, the cost to the authorities of a long trial and the harm that conviction would cause to employees, customers and the wider economy. The authorities' power depends on the penalties available and on their ability to impose conditions, such as independent monitors. And persuasion matters: firms which cooperate, disclose misconduct voluntarily and invest in compliance generally obtain better terms. The ethical difficulty is that the parties most affected, victims and the public, are not at the table, a problem illustrated by the Deal File.

KEY MOVE

Never pay or offer anything to influence a decision improperly, directly or through intermediaries. Conduct due diligence on agents, keep gifts and hospitality modest and transparent, and use your company's compliance rules as a shield when you face improper demands.

DEAL SNAPSHOT

The Adani Indictment in the United States, 2024 to 2026

In November 2024 prosecutors in New York unsealed an indictment of Gautam Adani, chairman of one of India's largest business groups, his nephew Sagar Adani and others. The Securities and Exchange Commission brought a parallel civil case alleging that the two men had orchestrated a scheme to pay or promise bribes worth hundreds of millions of dollars to Indian government officials to secure commitments to buy energy at above-market rates; it also alleged that in 2021 they had misled American investors about the company's anti-bribery compliance while raising more than US$175 million from them in a bond offering (Securities and Exchange Commission, 2026). The Adani Group rejected the allegations, which were never tested at trial. In 2026 the cases were resolved without a trial. In May the SEC asked the court to enter final judgments to which the defendants had consented without admitting or denying the allegations, with civil penalties of US$6 million for Gautam Adani and US$12 million for Sagar Adani (Securities and Exchange Commission, 2026). On 10 August 2026, on the Justice Department's motion, the federal court in Brooklyn dismissed with prejudice the securities and wire-fraud counts against Gautam Adani, Sagar Adani and a former executive of the company, while reserving its decision on the charges against other defendants and stressing that its ruling expressed no opinion about the merits of the case (*United States v. Adani*, 2026a). On 3 September 2026 the court declined, for the time being, to dismiss the remaining counts against five other defendants, finding that the government had not given sufficient factual support for its stated reasons (*United States v. Adani*, 2026b). The case illustrates how allegations of corruption, even when they are not proven in court, affect a group's access to finance and its reputation, and how the resolution of such cases is itself a negotiation with authorities whose priorities can change.

19.3 Why Do ESG and Reputation Matter at the Table?

Reputation as an Asset

A reputation is the set of beliefs that others hold about a party's past behaviour and likely future conduct. Klein and Leffler (1981) showed that reputation can enforce contracts beyond the reach of courts: a firm expecting to earn future profits from repeat business has an incentive to perform as promised, because cheating would destroy the stream of future profits. In negotiation, a reputation for honesty and reliability is an asset, reducing the other side's need to verify, monitor and protect itself and so increasing the value which can be created. A reputation for opportunism has the opposite effect.

Reputation also extends beyond the parties at the table. Customers, employees, investors, regulators and communities form views of a firm based on how

it negotiates and on the agreements it makes. The Deal File shows how a company's dealings with prosecutors and with the families of victims can become part of its public reputation, affecting its relationships with customers, regulators and employees long after the legal case has ended.

ESG in Negotiation

Environmental, social and governance (ESG) considerations have entered business negotiations in several ways. Investors and lenders negotiate ESG conditions in financing agreements, such as loans whose interest rates fall when a borrower meets sustainability targets. Buyers negotiate ESG requirements with suppliers, such as limits on emissions, standards for working conditions and the traceability of raw materials, partly in response to legislation such as the European Union's rules on supply-chain due diligence, which were adopted in 2024 and which the EU then agreed to narrow in scope as part of its agenda of simplification. Acquirers negotiate representations and warranties about a target's environmental liabilities and social practices. And firms negotiate with communities and governments about the social and environmental impact of their projects, as the Cobre Panamá case in Chapter 15 showed.

ESG commitments can create value in negotiations. They can align the interests of parties, open access to finance and markets and reduce the risk of conflict with communities and regulators. They can also be a source of conflict, when parties disagree about their importance or cost, and they can expose firms to legal and reputational risk if they are overstated. Table 19.4 summarises the role of ESG in business negotiations.

The Risks of Overstated Claims

When firms make sustainability claims that exceed their actual practices, a practice known as **greenwashing**, they create legal and reputational risks. Regulators in Europe and the United States have increased their scrutiny of such claims, particularly in financial services, where investors increasingly choose funds on the basis of their ESG characteristics.

Responsible Negotiation

What does it mean to negotiate responsibly? Drawing on the analysis of this chapter and of the book as a whole, responsible negotiation involves at least five commitments:

1. **Honesty about facts.** Negotiators may conceal their limits and argue for their interests, but they do not misrepresent material facts.
2. **Legality.** Negotiators comply with the laws that apply to their conduct, including anti-bribery and competition laws, wherever they operate.

Table 19.4

ESG in business negotiations

Context	ESG issues negotiated	Value created	Risks
Financing	Sustainability-linked targets and pricing	Lower cost of capital for meeting targets	Weak or easily met targets; accusations of greenwashing
Supply contracts	Emissions, labour standards, traceability	Resilient, compliant supply chains	Costs passed to small suppliers; audit fatigue
Mergers and acquisitions	Environmental liabilities; social practices; governance	Accurate valuation; reduced post-deal surprises	Hidden liabilities; integration of different standards
Community and government agreements	Environmental protection; local employment; benefit sharing	Social licence to operate	Protests and renegotiation if commitments are not met
Marketing and investor relations	Sustainability claims	Access to ESG-focused investors and customers	Fines and loss of trust if claims are misleading

DEAL SNAPSHOT

DWS and the Cost of Overstated Sustainability Claims, 2021 to 2025

In 2021 the former head of sustainability at DWS, the asset management arm of Deutsche Bank, alleged that the firm had overstated the extent to which it integrated ESG factors into its investments. Her complaint triggered investigations in the United States and Germany. In September 2023 DWS agreed to pay a penalty of US$19 million to settle charges by the US Securities and Exchange Commission that, from August 2018 until late 2021, it had made materially misleading statements about its controls for integrating ESG factors into its investments (Securities and Exchange Commission, 2023). In April 2025 DWS announced the conclusion of a separate investigation by the Frankfurt Public Prosecutor's Office, which had identified a negligent infringement and issued a fine relating to deficits in past ESG documentation, control processes and procedures, and marketing statements (DWS Group, 2025a). DWS accepted the decision, which became effective on 1 April 2025 (DWS Group, 2025b). The case shows how claims made to win business, in effect statements made in a continuing negotiation with investors, can become liabilities when they cannot be substantiated, and how the whistleblower, an insider, played a decisive role in exposing them.

3. **Respect for those affected.** Negotiators consider the interests of parties who are affected by an agreement but not represented at the table, such as employees, communities and, in the Deal File, the families of victims.
4. **Keeping commitments.** Negotiators make promises they intend to keep and claims they can substantiate, including claims about sustainability.
5. **Fair process.** Negotiators recognise, as Chapter 16 showed, that procedural fairness affects whether agreements are accepted and implemented.

These commitments do not require negotiators to give up the pursuit of their interests. They define the space within which that pursuit can create durable value. The author's research on business approaches to economic development argues that sustainable growth depends on business relationships in which trust and responsibility are built into the terms of exchange (Kumar, 2024a, 2026c).

KEY MOVE

Treat your reputation as an asset that every negotiation adds to or subtracts from. Make only the ESG commitments you can substantiate, consider those affected by an agreement who are not at the table and ask whether the deal will still look fair when it becomes public.

BACK TO THE DEAL FILE

Reading the Boeing Negotiations

The concepts of this chapter help to explain the ethical stakes of the negotiations between Boeing and the Justice Department.

The underlying charge concerned deception. The original case alleged that Boeing's employees had misled the FAA about a flight-control system. The case illustrates the costs of misrepresentation described in Section 19.1: once trust between a manufacturer and its regulator is damaged, it must be rebuilt through oversight that is costly for both.

A negotiated resolution raised questions of accountability. DPAs, plea agreements and non-prosecution agreements are negotiated outcomes that avoid the cost and uncertainty of trial. They can secure compensation and reform quickly. They can also be perceived, particularly by victims, as allowing a powerful defendant to avoid public accountability. The judge's comment that the 2025 agreement failed to secure the necessary accountability, while holding that he had no power to block it, captures this tension.

Those affected were not at the table. The families of the victims had a legal right to be consulted but not to veto the agreement. Their division, with some

supporting and others opposing the agreement, shows the difficulty of representing affected parties whose interests and values differ.

Compliance was central. Both the breach found in 2024 and the terms of 2025 turned on the effectiveness of Boeing's compliance programme. The choice between a court-supervised independent monitor and a compliance consultant retained by Boeing was, in effect, a negotiation over how far the company's compliance would be verified by outsiders.

Reputation outlasts the legal case. Whatever the legal outcome, Boeing's reputation with airlines, passengers, regulators and employees depends on whether its safety and quality improve. The legal negotiation ended; the negotiation over trust continues in every aircraft it delivers.

MA EXTENSION

The Economics of Negotiated Justice

Corporate criminal cases are increasingly resolved through negotiated agreements rather than trials. (a) Model the choice between trial and settlement for a prosecutor and a corporate defendant, given the probability of conviction, the penalties at trial, the costs of trial to each side and the collateral consequences of conviction, such as exclusion from government contracts. Show how the bargaining range is determined. (b) Explain why collateral consequences harmful to third parties, such as employees, suppliers or customers, may lead prosecutors to prefer agreements avoiding conviction. (c) Discuss the effect of such agreements on deterrence and on the incentives of firms to invest in compliance. (d) How should the interests of victims enter the model? Relate your answer to the Boeing case.

ETHICS CHECK

In the Boeing case, many victims' families argued that a public trial was necessary for accountability, while the Justice Department judged that a negotiated agreement better served the public interest by securing compensation and compliance investment without the risk of acquittal. Should negotiated resolutions be available for corporate crimes that have caused deaths? What obligations does a company have to the families of victims when it negotiates with prosecutors? Is it ethical for a company to use its economic importance, for example as a major employer and defence contractor, as an argument for leniency?

Pillar Scorecard

Your Move

This is a constructed teaching case.

Table 19.5

Pillar Scorecard: Boeing and the US Justice Department, 2021 to 2026

Pillar	Importance in this case	Evidence
Profit	High	More than US$1.1 billion in payments and investment in 2025, after about US$2.5 billion in 2021, and the commercial consequences of conviction were at stake
Power	High	Prosecutorial discretion, the court's limited power to reject a dismissal and the families' consultation rights shaped the outcome
Persuasion	Very high	Accountability, trust in safety and the public perception of fairness were central for the families, the court and the public

You are the regional director of a Polish construction company based in Wrocław that is bidding for a contract to build a water treatment plant in a country with a low score on the Corruption Perceptions Index. The project is financed by an international development bank. Your local agent, recommended by a business contact, tells you that the bid evaluation committee would "look favourably" on your bid if your company paid a "consultancy fee" of 3 per cent of the contract value to a firm he names. He also suggests that your team host members of the committee on a "study visit" to Poland, including a weekend in Kraków. A competitor from another country is rumoured to have agreed similar arrangements.

1. Identify the ethical and legal issues raised by each suggestion.
2. Which laws could apply to your company's conduct, and why?
3. How would you respond to the agent, and what would you do about your relationship with him?
4. Is any form of study visit acceptable? If so, under what conditions?
5. How could your company use its compliance programme, and the rules of the development bank, to strengthen its position in the bid?

Conclusion

Ethics is not separate from the economics of negotiation; it shapes the value negotiation creates and the trust on which future agreements depend. Concealing one's limit is a normal part of bargaining, but misrepresenting material facts is both unethical and, in many cases, illegal, and deception provokes retaliation and raises the costs of every later transaction. Corruption turns persuasion into the purchase of decisions; it is prohibited by an international framework of laws and conventions whose enforcement varies over time and across countries, and

firms protect themselves through compliance programmes that also strengthen their negotiators' hands. Reputation is an asset that every negotiation adds to or subtracts from, and ESG commitments can create value but become liabilities when they are overstated, as the case of DWS shows. The negotiations between Boeing and the US Justice Department show how a negotiated resolution can secure compensation and reform while leaving those most affected feeling that accountability has been denied. Responsible negotiation means pursuing one's interests honestly, legally and with regard for those affected. Chapter 20 brings together the three pillars of the book and examines how digital technologies are changing the practice of negotiation.

Exercises

A. Objective Questions

1. Carr (1968) compared business to:
   a) chess
   b) poker
   c) a team sport
   d) a family

2. Which of the following is generally regarded as acceptable in negotiation?
   a) inventing a competing offer
   b) bribing the other side's assistant for information
   c) falsifying cost data
   d) concealing one's reservation price

3. Under American law as summarised by Shell (1991), fraud requires:
   a) a knowing misrepresentation of a material fact, reasonable reliance and damage
   b) any false statement
   c) a failure to reveal one's limit
   d) an exaggerated opinion of value

4. The UK Bribery Act 2010:
   a) permits facilitation payments
   b) applies only to public officials
   c) creates a corporate offence of failing to prevent bribery
   d) applies only in the United Kingdom

5. Under the non-prosecution agreement announced in May 2025, Boeing agreed to pay or invest more than:
   a) US$243.6 million
   b) US$500 million
   c) US$1.1 billion
   d) US$2.5 billion

6. On 6 November 2025 Judge O'Connor:
   a) granted the government's motion to dismiss the charge
   b) convicted Boeing
   c) appointed a special prosecutor
   d) rejected the non-prosecution agreement
7. Klein and Leffler (1981) showed that reputation can enforce contracts because:
   a) courts always enforce reputational commitments
   b) a firm that expects future profits from repeat business has an incentive to perform
   c) reputation is a legal asset
   d) customers cannot observe quality
8. Greenwashing refers to:
   a) cleaning industrial waste
   b) paying environmental taxes
   c) investing in renewable energy
   d) making sustainability claims that exceed actual practices

B. Short-Answer Questions

1. Is bluffing lying? Discuss with reference to Carr (1968) and his critics.
2. Using Table 19.2, explain which negotiating tactics are generally regarded as acceptable and which are not.
3. Describe four ethical frameworks and show how each would judge a false claim about a competing offer.
4. Explain the elements of fraud in negotiation and why concealing one's reservation price is generally not fraud.
5. Why is corruption more damaging than taxation, according to Shleifer and Vishny (1993)?
6. Describe the main elements of a corporate compliance programme and explain how it helps negotiators.
7. How can ESG commitments create value in negotiation, and how can they become liabilities?

C. Long-Answer Questions

1. Analyse the negotiations between Boeing and the US Justice Department from 2021 to 2026. What ethical questions did they raise for the company, the prosecutors and the families of the victims?

2. "Honesty is not only right but profitable." Discuss with reference to the economics of reputation and the evidence on deception in negotiation.
3. Compare the legal frameworks against international bribery. How should a multinational firm design its compliance programme when enforcement differs across countries and over time?
4. Evaluate the risks and benefits of ESG commitments in business negotiations, using the case of DWS and examples from earlier chapters.

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