CHAPTER

8

Claiming and Creating Value

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Introduction

Every negotiation involves two tasks that pull in opposite directions. The first is to **claim value**: to secure as large a share as possible of whatever the agreement produces. The second is to **create value**: to find agreements which make the total larger, so both sides can gain more than they would from a simple split. A negotiator who only claims value may win a large share of a small agreement, or no agreement at all. A negotiator who only creates value may enlarge the total and then watch the other side take most of it. Skilled negotiators do both, and they know that the moves which serve one task often undermine the other.

This chapter examines the two tasks and the tension between them. Section 8.1 analyses distributive negotiation, in which a fixed amount is divided and one side's gain is the other's loss, and the tactics that decide where in the bargaining range an agreement falls. Section 8.2 turns to integrative negotiation and shows that value is created by exploiting differences between the parties: in their priorities, their expectations, their attitudes to risk, their time preferences and their capabilities. Section 8.3 examines the main techniques for doing so: trading across issues, packaging and contingent agreements. Section 8.4 asks how to judge whether an agreement is efficient, introduces the idea of the Pareto frontier and returns to the negotiator's dilemma first met in Chapter 2.

The chapter is the heart of the book's first pillar, **profit**. Chapter 6 asked what firms want, and Chapter 7 how they prepare to obtain it; this chapter explains how the value at stake is enlarged and divided at the table. Its Deal File follows one of the largest acquisitions in the history of the technology industry, which was saved from a regulatory veto by an inventive piece of value creation: the sale of a set of rights that one party valued little and another valued highly.

DEAL FILE

Microsoft, Activision and the Cloud-Gaming Remedy

In January 2022 Microsoft announced that it would buy Activision Blizzard, the publisher of *Call of Duty*, *World of Warcraft* and *Candy Crush*, for US$68.7 billion, a deal which, it said, would make it the world's third-largest gaming company by revenue, behind Tencent and Sony (Microsoft, 2022). Competition authorities in the United States, the European Union and the United Kingdom examined it closely, and Sony, the maker of the PlayStation, campaigned against it.

Microsoft tried to address the concerns through commitments to its rivals. In late 2022 it agreed to keep Activision's games available on other platforms, including those of Nintendo, Sony and the Steam store, for ten years. The European Commission approved the deal in May 2023, on condition that for ten years consumers in the European Economic Area (EEA) would receive a free licence to stream the Activision games they owned through any cloud gaming service, with a matching free licence for cloud gaming providers (European Commission, 2023a). The UK's Competition and Markets Authority (CMA), however, had concluded in April 2023 that the deal would substantially lessen competition in **cloud gaming**, the playing of games streamed over the internet, a market in which it estimated Microsoft's global share at 60 to 70 per cent, and it prohibited the acquisition (Competition and Markets Authority, 2023a).

Table 8.1

The Microsoft and Activision cloud-gaming remedy at a glance

Parties	Microsoft; Activision Blizzard; the UK Competition and Markets Authority; Ubisoft, as buyer of the cloud-streaming rights; the European Commission and the US Federal Trade Commission
At stake	Completion of a US$68.7 billion acquisition; the future of competition in cloud gaming
Timeline	Deal announced in January 2022; prohibited by the CMA in April 2023; restructured in August 2023; cleared by the CMA and completed on 13 October 2023
Remedy	Before completion, Microsoft transferred the cloud-streaming rights to Activision's current and future PC and console games, outside the European Economic Area, to Ubisoft for 15 years; within the EEA, Ubisoft received a non-exclusive licence

Note. Author, based on Competition and Markets Authority (2023a, 2023b) and Microsoft (2022).

A deal restructured. Faced with the veto, Microsoft returned to the CMA with a different proposal. In August 2023 it offered to sell the cloud-streaming rights

to all current and future Activision games for PC and console, outside the European Economic Area, to the French publisher Ubisoft for 15 years. Ubisoft, not Microsoft, would decide how and where those games could be streamed, and could license them to any cloud service, including Microsoft's own. The CMA concluded that the concession addressed its concerns, accepted undertakings requiring the rights to be transferred to Ubisoft before completion, and cleared the restructured deal on 13 October 2023; Microsoft completed the acquisition the same day (Competition and Markets Authority, 2023b). In the United States, a federal court refused in July 2023 to stop the deal (*FTC v. Microsoft Corp.*, 2023), the Court of Appeals for the Ninth Circuit affirmed that refusal on 7 May 2025, and on 22 May 2025 the Federal Trade Commission dismissed its own administrative complaint (Federal Trade Commission, 2025).

Questions to keep in mind. Why did Microsoft's first remedies fail, and why did the sale of cloud rights succeed? Who gave up what, and who gained what, in the restructured deal? Was value created, or merely moved from one party to another? And what does the case suggest about how negotiators can find agreements when the parties' positions appear incompatible? The chapter answers these questions in turn.

8.1 Who Gets the Bigger Slice? Distributive Negotiation

The Logic of Division

In a **distributive** negotiation the parties divide a fixed amount, and every unit that one side gains, the other loses. Walton and McKersie (1965) called this distributive bargaining and distinguished it from integrative bargaining, in which the parties enlarge the amount itself. The purest examples are one-off negotiations over a single issue, such as the price of a used car or a piece of land, but every negotiation contains a distributive element, because whatever value is created must eventually be divided.

Chapter 7 introduced the structure of a distributive negotiation: each side has a target and a limit, and an agreement is possible only within the zone between the two limits. The outcome depends on where in this zone the parties settle, which in turn depends on what each side knows or believes about the other's limit and on the tactics each uses to influence those beliefs.

Tactics for Claiming Value

Table 8.2 summarises the main tactics negotiators use to claim value and the counters available to a well-prepared negotiator.

Raiffa (1982) described the exchange of offers and concessions as a "negotiation dance". Each side opens away from its target, concedes in steps of decreasing size and signals, through the pattern of its concessions, how close it believes it is

Table 8.2

Tactics for claiming value and how to counter them

Tactic	How it works	Counter
Ambitious first offer	Anchors the negotiation near one's own target (Chapter 7)	Focus on your own target and alternatives; re-anchor with a justified counter-offer
Small, slowing concessions	Signals that one is approaching one's limit	Track the pattern; ask for reasons rather than numbers
Commitment	Makes a position credible by making retreat costly, often publicly (Schelling, 1960)	Help the other side find a face-saving way to move
Concealing the limit	Prevents the other side from claiming the whole surplus	Estimate the limit from the other side's alternatives and costs
Revealing a strong alternative	Raises one's apparent limit	Test the alternative; strengthen your own
Deadlines	Pressure the side with more to lose from delay	Avoid revealing your own deadlines; create alternatives
Splitting the difference	Appears fair but rewards the more extreme opening position	Agree on objective criteria before splitting

Note. Author, based on Raiffa (1982), Lewicki et al. (2020) and Thompson (2020).

to its limit. A negotiator who concedes too quickly invites further demands; one who refuses to concede at all may provoke deadlock. Textbook advice, drawing on research on concession making, is that negotiators obtain better results when they make concessions slowly, in diminishing steps, and in exchange for concessions from the other side rather than unilaterally (Lewicki et al., 2020).

A Worked Example: Reading the Concession Pattern

Table 8.3 shows the offers exchanged in a negotiation over the price of an industrial machine. The figures are those of Figure 7.2, expressed in thousands of euros: the seller's limit is €80,000 and its target €100,000, while the buyer's limit is €90,000 and its target €70,000.

Three features of the sequence matter. First, both parties opened beyond their targets, leaving room to concede without abandoning them. Second, both made concessions of diminishing size, signalling that they were approaching their limits; a negotiator who conceded €6,000, then €8,000, would have invited the other side to press for more. Third, the final step, a meeting at €86,000, close to the midpoint of the last two offers, came only when each side's concessions had become small. The agreement lies inside the zone of possible agreement, but closer to the buyer's limit than to the seller's, so the seller captured more of the surplus, partly because the buyer conceded slightly faster in the fourth round.

Table 8.3

A sequence of offers and concessions (€ thousand)

Round	Seller's offer	Seller's concession	Buyer's offer	Buyer's concession
1	104		68	
2	98	6	74	6
3	94	4	78	4
4	92	2	81	3
5	91	1	82	1
Agreement	86		86	

Note. Author's illustrative example.

When parties are close, they often **split the difference**. The midpoint between two offers is a natural meeting place, what Schelling (1960) called a *focal point*: a solution that stands out because both sides can recognise it without discussion. Its apparent fairness hides a risk, however. The midpoint depends on where each side opened, so splitting the difference rewards the party making the more extreme opening offer. A negotiator who suspects that the other side's opening was inflated should resist splitting until the offers have been justified by objective criteria.

The Limits of Claiming

Distributive tactics can claim value, but they cannot create it, and some of them destroy it. Concealing information prevents the discovery of joint gains; extreme anchors and commitments can push the parties out of the zone of agreement; deadlines and threats can damage relationships that would have created value in future. In the Deal File, Microsoft's first approach to the CMA was largely distributive: it offered commitments that it hoped would satisfy the regulator while preserving as much as possible of the value of the acquisition for itself. The CMA's veto showed the limit of that approach.

KEY MOVE

When value must be divided, open ambitiously but justifiably, concede slowly and in exchange for concessions, and never reveal your limit. But before you start dividing, ask whether the amount on the table could be made larger.

8.2 How Can the Pie Grow? Integrative Negotiation

The Fixed-Pie Bias

Many negotiators assume their interests are directly opposed to those of the other side, so any gain for one must be a loss for the other. Thompson and Hastie (1990) called this the **fixed-pie perception** and found that most of the negotiators they studied began with it. Those who learned the other side's true interests early in the negotiation obtained better results, and much of this learning took place in the first few minutes, while some negotiators never realised their interests were compatible and settled for poor agreements. The perception leads negotiators to overlook agreements which would make both sides better off, and to view any proposal from the other side with suspicion, on the assumption that what is good for the other must be bad for them.

The fixed-pie perception is often wrong, because parties rarely value every issue in exactly opposite ways. When they value issues differently, they can trade, and trade creates value just as it does in a market. This is the essence of **integrative** negotiation: finding agreements that exploit the differences between the parties so as to make the total value larger.

Differences That Create Value

Lax and Sebenius (1986) argued that differences, more than shared interests, are the main source of joint gains. Table 8.4 lists the most important kinds.

The last row describes the Deal File. Microsoft wanted Activision above all for its games and their players on consoles, PCs and mobile devices. Cloud-streaming rights outside Europe were a small part of that value, but to the CMA they were the source of its concern. By transferring those rights to Ubisoft, Microsoft gave up something it valued relatively little in exchange for something it valued enormously, the completion of the acquisition. The CMA obtained what it valued most, an independent holder of cloud rights able to license them to any provider. Ubisoft obtained a valuable asset. Each party gained more than it gave up.

Finding Integrative Agreements

The idea of integration is older than modern negotiation research. In a lecture of 1925 Follett (1940) defined conflict simply as the appearance of difference, of opinions or of interests, and argued it could be dealt with in three ways: by **domination**, in which one side wins; by **compromise**, in which each side gives up part of what it wants; and by **integration**, in which a solution is found meeting the real wishes of both. Her example was modest. Reading in a small room of the Harvard library, she wanted the window closed and another reader wanted it open; they opened a window in the next room, where no one was sitting, so that

Table 8.4

Differences that create value

Difference	Why it creates value	Example
Priorities	Each side concedes on what matters less to it in return for what matters more	A buyer cares most about price, a supplier about volume: a lower price for a larger order
Expectations	Each side is willing to bet on its own forecast	A seller confident of future sales accepts payment linked to those sales
Attitudes to risk	The less risk-averse party bears risk in return for a higher expected return	A fixed fee for a risk-averse client, a share of the upside for the provider
Time preferences	One side values the present, the other the future	Earlier payment in return for a lower total, or later payment for a higher one
Capabilities and assets	Each side contributes what it can provide cheaply and the other values highly	A manufacturer's capacity combined with a distributor's market access
Valuations of an asset	An asset is worth more to one party than to the one that holds it	Selling rights to a party that can exploit them better

Note. Author, based on Lax and Sebenius (1986) and Malhotra and Bazerman (2007).

he had fresh air and she had no draught. Neither had to sacrifice anything. Follett saw integration as the only method able to end a conflict rather than postpone it, because a compromise leaves both sides with unmet desires which resurface later.

Integrative agreements are found by a process that differs from distributive bargaining. The parties share information about their interests and priorities, though not necessarily about their limits; they generate several options before evaluating any of them, a practice that Fisher and Ury (1981) called inventing options for mutual gain; and they evaluate options against objective criteria. Pruitt (1981) identified several ways of reaching integrative agreements: expanding the resources available, compensating the party conceding on a particular issue, trading concessions across issues, reducing the cost of compliance for one party and bridging, the invention of a new option satisfying both sides' underlying interests. The cloud-gaming remedy was a bridging solution: neither Microsoft's original position nor the CMA's veto, but a new option that met both sides' interests.

Adding Parties and Issues

When the parties to a negotiation cannot find an agreement satisfying both, they can sometimes change the negotiation itself. Lax and Sebenius (2006) argued that skilled negotiators do not only bargain at the table but also design it: they

DEAL SNAPSHOT

The NBA's Media Rights, 2024

In July 2024 the National Basketball Association (NBA) signed 11-year media rights agreements with Disney, NBCUniversal and Amazon, running from the 2025–26 season. The league divided its games into packages that suited each partner's strengths: national television for Disney and NBC, and streaming for Amazon, whose agreement also covered the women's league, the WNBA (Amazon, 2024). Warner Bros. Discovery, which had broadcast NBA games for almost four decades, claimed the right to match one of the packages and went to court when the league rejected its offer. In November 2024 the parties resolved all their disputes. Warner Bros. Discovery received 11 years of live rights in the Nordic countries, Poland and Latin America outside Brazil and Mexico, a global licence for NBA content and highlights through its digital brands Bleacher Report and House of Highlights, and an arrangement under which its studio programme *Inside the NBA* would continue to be produced by its TNT Sports unit for broadcast on ESPN and ABC (Warner Bros. Discovery, 2024). The settlement turned a distributive dispute, about who would hold the American rights, into an integrative one, in which each side received what it valued most.

decide which parties should take part, which issues should be on the agenda and in what sequence the negotiations should take place. Adding a party with different interests or capabilities can create options that did not exist between the original parties; adding an issue can create the differences in priorities on which trades depend.

The Deal File is an example of this design. In a negotiation limited to Microsoft and the CMA, the only options were approval with Microsoft's commitments or a veto. Bringing Ubisoft into the negotiation created a third option. Ubisoft valued the cloud rights as a business opportunity, the CMA valued their independence from Microsoft, and Microsoft valued the completion of the acquisition far more than the rights themselves. Similar moves are common in business: a supplier unable to meet a buyer's price may bring in a financing partner, a logistics firm or a second customer to share fixed costs, turning a two-party deadlock into a three-party agreement.

KEY MOVE

Look for differences, not only for common ground. Ask what the other side values more than you do, and what you value more than it does, and build the agreement around the trade.

8.3 Why Trade across Issues?

Logrolling

The most common way to create value is **logrolling**: trading concessions across issues that the parties value differently. Table 8.5 shows a simple example. A supplier and a buyer negotiate over two issues, price and delivery time. For the supplier, price matters most; for the buyer, fast delivery matters most. If they compromise on both issues, each obtains a moderate result. If the supplier accepts faster delivery in return for a higher price, both are better off.

Table 8.5

Logrolling: compromise and trade compared (points of value to each party)

Agreement	Price	Delivery time	Value to supplier	Value to buyer	Total value
Compromise on both issues	€90	3 weeks	50	50	100
Logrolled agreement	€95	2 weeks	70	65	135

Note. Author's illustrative example. Points measure the value each party places on the outcome; the supplier weights price more heavily, the buyer delivery time.

Logrolling requires two things: more than one issue on the table, and knowledge of the other side's priorities. A negotiation over a single issue is necessarily distributive, so negotiators who want to create value should add issues: payment terms, volume, warranties, timing, exclusivity, future cooperation. Negotiating several issues at once, as a **package**, is usually better than settling them one at a time, because sequential negotiation removes the possibility of trading.

Contingent Agreements

Parties often disagree about the future: whether sales will grow, whether a project will succeed, whether a regulator will approve a merger. Such disagreements can block agreement, since each side bases its offer on its own forecast. Bazerman and Gillespie (1999) showed that **contingent agreements**, in which the terms depend on what actually happens, can turn these disagreements into a source of value. Each side effectively bets on its own forecast, and both believe they have made a good deal.

Contingent agreements are common in business. In acquisitions, **earn-outs** make part of the price depend on the acquired firm's future performance, bridging the gap between a seller who believes in rapid growth and a buyer who doubts it. In media rights, contracts often include options to extend or to terminate early. In supply contracts, prices may be indexed to the cost of raw materials. Contingent agreements also discipline the parties: a seller who claims its

business will grow quickly but refuses an earn-out reveals that it does not believe its own forecast.

Table 8.6 shows how a simple earn-out can bridge a gap in expectations. The owner of a software firm in Kraków believes that its profits will grow quickly and asks €12 million for it; a buyer, more cautious, offers €8 million. Neither will move far, because each bases its offer on its own forecast. An earn-out allows each to be paid according to the forecast it believes.

Table 8.6

An earn-out bridging different forecasts (€ million)

Element	Amount	Condition
Payment on completion	8.0	None
Earn-out, year 1	up to 2.0	Paid in full if operating profit exceeds €1.5 million
Earn-out, year 2	up to 2.0	Paid in full if operating profit exceeds €2.0 million
Maximum total price	12.0	If both targets are met

Note. Author's illustrative example.

If the seller's forecast proves right, it receives the €12 million it asked for; if the buyer's proves right, the buyer pays little more than its original offer. Both sides prefer the earn-out to no agreement, and each expects to do well under it. The design must, however, prevent the buyer from depressing profits after completion, for example by moving costs into the acquired firm, which is why earn-out agreements usually define the accounting rules and the seller's role in management during the earn-out period.

Contingent agreements have limits. The contingency must be measurable and hard to manipulate; the party that controls the outcome must not be able to influence it unfairly; and the agreement must remain acceptable to both sides even if the less favourable outcome occurs.

KEY MOVE

Never negotiate one issue at a time if you can avoid it. Put several issues on the table, trade what matters less to you for what matters more, and use contingent terms when the parties disagree about the future.

DEAL SNAPSHOT

Netflix and WWE's Raw, 2024

In January 2024 Netflix and TKO Group, the owner of WWE, announced a long-term partnership under which Netflix would become, from January 2025, the exclusive home of *Raw*, WWE's weekly wrestling programme, in the United States, Canada, the United Kingdom and Latin America, among other territories, and the home outside the United States of all WWE shows and specials (TKO Group Holdings, 2024). TKO's president said that the agreement locked in significant and predictable economics for many years. The structure illustrates the logic of contingent and phased agreements. Netflix, which had little experience of weekly live programming, could test its audience in some markets before expanding to others over time, while WWE secured a stable income and access to Netflix's global audience. Differences in the two parties' attitudes to risk, and in what each could offer, created value which a simple fixed-term contract would not have captured.

8.4 Is the Deal Efficient? The Negotiator's Dilemma

Pareto Efficiency

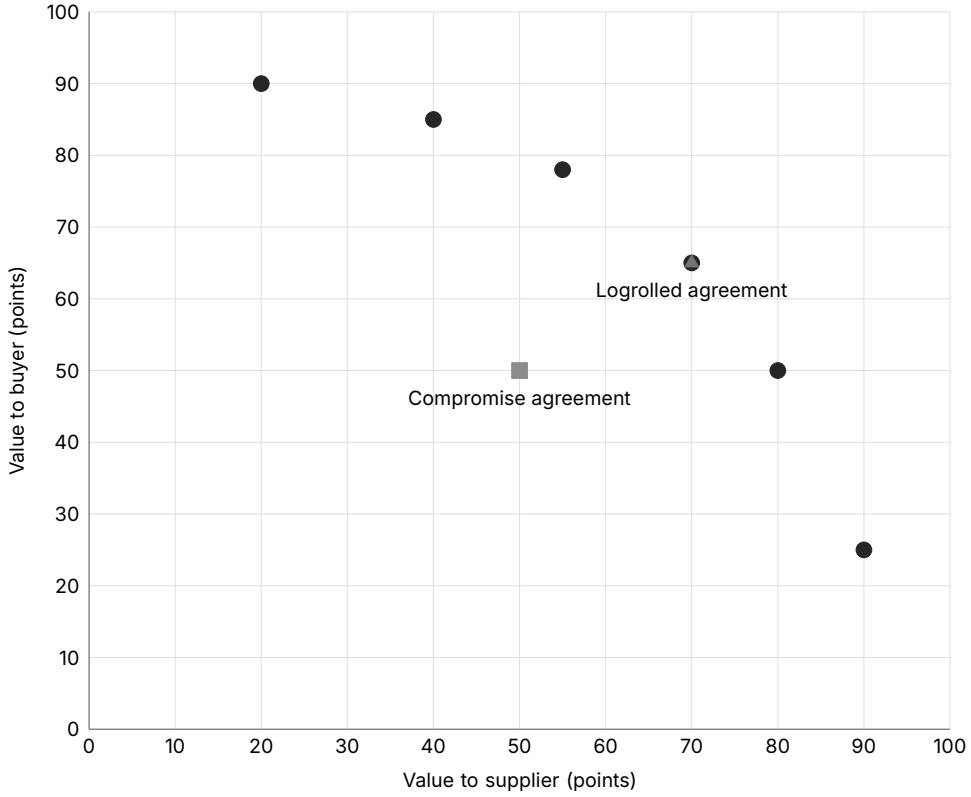
How can negotiators tell whether they have created as much value as possible? Economists use the concept of **Pareto efficiency**: an agreement is efficient if no other agreement would make one party better off without making the other worse off. The set of all efficient agreements forms the **Pareto frontier**. An agreement inside the frontier leaves value on the table: some other agreement would make both sides better off, or one better off without harming the other.

Figure 8.1 illustrates the idea using the example of Table 8.5. The compromise agreement lies inside the frontier; the logrolled agreement lies on it. Many agreements reached in practice lie inside the frontier, because the parties did not share enough information to find better ones, compromised on every issue or settled issues one at a time.

Raiffa (1985) proposed a practical remedy for agreements that fall inside the frontier: the **post-settlement settlement**. After the parties have reached an agreement, they, or a neutral third party, look for a better one. If they find an agreement both prefer, they adopt it; if not, the original stands. Because neither side risks losing what it has already secured, both have reason to share information they withheld before.

Figure 8.1

The Pareto frontier: efficient and inefficient agreements (points of value to each party)



Note. Author's illustrative example. Points on the frontier are efficient; the compromise agreement leaves value unrealised, while the logrolled agreement lies on the frontier.

The Negotiator's Dilemma Revisited

Chapter 2 introduced the **negotiator's dilemma** described by Lax and Sebenius (1986): the moves that create value expose a negotiator to the loss of value. To find integrative agreements, parties must share information about their interests and priorities. A negotiator who reveals that delivery time matters greatly, however, invites the other side to demand a high price for fast delivery. Conversely, the tactics that claim value, such as concealing information and making extreme demands, prevent the discovery of joint gains.

There is no complete escape from the dilemma, but negotiators can manage it. They can share information about interests and priorities while protecting their limits and alternatives; share it gradually and reciprocally, so openness on one

side is matched by openness on the other; make several offers of equal value to themselves at once, letting the other side's choice reveal its priorities without revealing their own; and build the trust which allows deeper sharing over time. One practical technique is the use of **multiple equivalent simultaneous offers**: instead of a single proposal, a negotiator presents two or three packages that are of equal value to itself but differ in their combination of issues. The other side's choice reveals its priorities without either side disclosing its limits, and experimental research suggests that such offers can improve both the economic results and the relationship (Leonardelli et al., 2019). Chapter 12 shows how game theory analyses the dilemma, and Chapter 16 how trust can be built.

In the Deal File, the dilemma was sharpened by the presence of a regulator with the power to block the deal. Microsoft had reason to concede as little as possible; the CMA had reason to demand as much as possible. The cloud-rights solution was found only when Microsoft accepted that its first remedies would not work and identified an asset whose transfer would meet the regulator's concern at a modest cost to itself.

KEY MOVE

Before you sign, ask whether there is an agreement both sides would prefer. Share information about interests and priorities, protect your limits, and consider a post-settlement settlement if you suspect value has been left on the table.

BACK TO THE DEAL FILE

Reading the Cloud-Gaming Remedy

The tools of this chapter explain why Microsoft's first approach failed and why the restructured deal succeeded.

The first approach was distributive. Microsoft offered commitments designed to preserve as much of the acquisition's value as possible for itself, and argued that they were sufficient. The CMA, holding the power of veto, rejected them. Both sides treated the negotiation as a contest over a fixed amount: how much control of cloud gaming Microsoft would keep.

The solution exploited a difference in valuation. Cloud-streaming rights outside Europe were worth relatively little to Microsoft compared with the acquisition as a whole, but they were the core of the CMA's concern. Transferring them to Ubisoft met the regulator's interest at modest cost to Microsoft, and gave Ubisoft a valuable asset.

A third party enlarged the set of options. By bringing Ubisoft into the negotiation, Microsoft created an option that had not existed in a two-party negotiation

with the regulator. Adding parties and issues is one of the main ways of escaping the fixed-pie perception.

The agreement lies closer to the frontier than the alternatives. A veto would have destroyed the value of the acquisition for Microsoft and Activision's shareholders; the original deal would have left the regulator's concern unaddressed. The restructured deal made every party better off than the alternatives available to it.

Delay had a cost. The CMA's criticism, that Microsoft could have proposed the remedy earlier, is a reminder to begin the search for integrative solutions early. Months of distributive bargaining consumed time and money that a more integrative approach might have saved.

MA EXTENSION

Can Negotiators Always Reach Efficient Agreements?

Myerson and Satterthwaite (1983) proved a striking result: when a buyer and a seller each have private information about how much they value an item, no bargaining procedure entered voluntarily by the parties can guarantee a trade whenever it would create value, unless someone outside the negotiation subsidises it. Private information, in other words, makes some inefficiency unavoidable. Relate this result to the negotiator's dilemma and to the post-settlement settlement. Why might a regulator, or a third party such as Ubisoft, help parties to overcome the inefficiency that private information creates? What does the result imply about the value of trust and of credible information-sharing in negotiation?

ETHICS CHECK

In the restructured deal, Microsoft, Ubisoft and the CMA each gained. Consumers of cloud games were not at the table, and their interests were represented only by the regulator. When parties create value by exchanging rights, licences or assets, who protects the interests of those who are affected but absent? Is it ethical for a negotiator to claim that an agreement creates value for everyone when the gains of some parties may come at the expense of others outside the room?

Pillar Scorecard

Your Move

This is a constructed teaching case.

You are the commercial director of a ship repair yard in Gdańsk. A Norwegian ferry operator wants one of its ferries refitted before the summer season. It has proposed a fixed price of €8 million and completion within ten weeks, with penalties of €100,000 for each day of delay. Your own estimate of cost is €7.2

Table 8.7

Pillar Scorecard: Microsoft, Activision and the cloud-gaming remedy, 2023

Pillar	Importance in this case	Evidence
Profit	Very high	A US$68.7 billion acquisition was saved by transferring an asset of modest value to Microsoft and high value to the regulator
Power	Very high	The CMA's power of veto forced Microsoft to restructure the deal
Persuasion	Moderate	Microsoft's arguments failed until it changed the substance of its offer; the CMA publicly criticised its approach

million, and you believe you can complete the work in eleven weeks, or in nine weeks if you hire additional subcontractors at a cost of €400,000. The operator values early completion highly, because every week of the summer season brings in substantial revenue, but it is uncertain whether hidden corrosion will require additional work. Your yard has spare capacity in the autumn, and you would like a long-term maintenance contract.

1. Which issues are on the table, and which could you add to create value?
2. What differences between the parties, in priorities, expectations, risk and time, could be the basis of an integrative agreement? Use Table 8.4.
3. Design a contingent agreement to deal with the uncertainty about hidden corrosion.
4. Propose a package that both sides would prefer to the operator's original proposal, and explain how you would protect your own interests while sharing information.

Conclusion

Every negotiation involves both claiming and creating value. Distributive negotiation, the division of a fixed amount, depends on targets and limits, anchors and concessions, information and commitment, and it can claim value but not create it. Integrative negotiation creates value by exploiting differences between the parties in their priorities, expectations, attitudes to risk, time preferences, capabilities and valuations of assets. Its main techniques are logrolling across issues, the negotiation of several issues as a package and contingent agreements that allow each party to bet on its own forecast. Pareto efficiency provides a test of whether value has been left on the table, and the post-settlement settlement offers a way of recovering it. The tension between creating and claiming value, the

negotiator's dilemma, cannot be eliminated, but it can be managed by sharing information about interests while protecting limits. The Microsoft and Activision case shows the difference an integrative approach can make: a deal which distributive bargaining had failed to save was rescued by the sale of rights valued little by one party and highly by another. Chapter 9 applies these ideas to the commercial and corporate deals in which firms engage most often: negotiations with customers and suppliers along the value chain, and negotiations over the purchase and combination of companies.

Exercises

A. Objective Questions

1. In a distributive negotiation:
   a) both parties gain from enlarging the total
   b) the parties share all information
   c) there are always several issues
   d) one party's gain is the other's loss

2. The "fixed-pie perception" identified by Thompson and Hastie (1990) is the belief that:
   a) the total value of an agreement is always large
   b) all negotiations are integrative
   c) the parties' interests are directly opposed
   d) the first offer is always accepted

3. According to Lax and Sebenius (1986), the main source of joint gains is:
   a) differences between the parties
   b) shared interests
   c) the first offer
   d) deadlines

4. Logrolling means:
   a) splitting the difference on every issue
   b) trading concessions across issues that the parties value differently
   c) negotiating one issue at a time
   d) refusing to make concessions

5. An earn-out in an acquisition is an example of:
   a) a distributive tactic
   b) a contingent agreement
   c) a deadline
   d) a post-settlement settlement

6. An agreement is Pareto efficient if:
   a) both parties receive equal value
   b) it involves only one issue
   c) it was reached quickly
   d) no other agreement would make one party better off without making the other worse off

7. The CMA approved Microsoft's acquisition of Activision after Microsoft agreed to transfer cloud-streaming rights to:
   a) Sony
   b) Nintendo
   c) Ubisoft
   d) Nvidia

8. In the settlement of November 2024, which of the following did Warner Bros. Discovery receive?
   a) live rights in several international markets and a global licence for highlights
   b) the right to broadcast NBA games in the United States
   c) a share of the NBA's revenue from Amazon
   d) ownership of an NBA team

B. Short-Answer Questions

1. Describe three tactics for claiming value and the counter to each.
2. Explain why distributive tactics can destroy value.
3. Name five kinds of difference between parties that can create value, with an example of each.
4. Using Table 8.5, explain why logrolling produces more value than compromise.
5. What is a contingent agreement? Give two business examples and state two conditions for its success.
6. Explain the Pareto frontier with reference to Figure 8.1.
7. What is a post-settlement settlement, and why might parties agree to one?
8. Using Table 8.3, explain what a pattern of diminishing concessions signals, and why splitting the difference can favour the party with the more extreme opening offer.
9. What are multiple equivalent simultaneous offers, and how do they help to manage the negotiator's dilemma?

C. Long-Answer Questions

1. Analyse the Microsoft and Activision case as a negotiation in which value was first claimed and then created. Why did the integrative solution take so long to emerge?
2. "Differences, not common interests, are the source of value in negotiation." Discuss with reference to the NBA's media rights and Netflix's agreement with WWE.
3. Explain the negotiator's dilemma and evaluate the strategies available for managing it.
4. Choose a negotiation from your own experience or from recent business news. Identify the value left on the table and propose an agreement closer to the Pareto frontier.

Further Reading

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