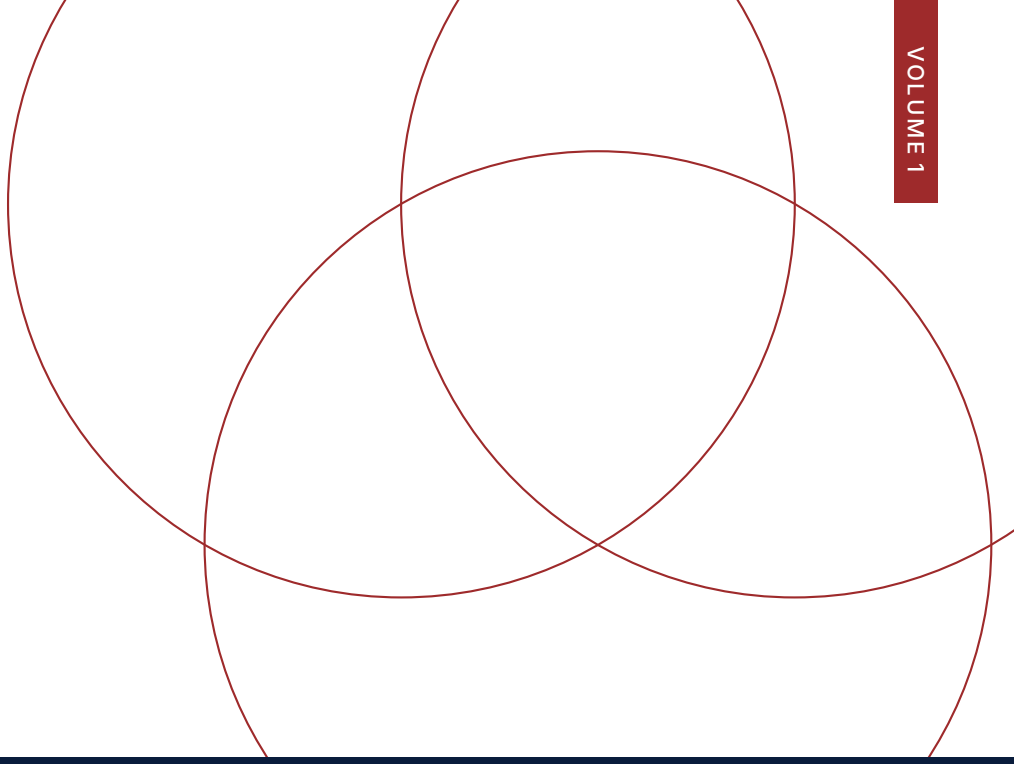

VOLUME 1

Pradeep Kumar

# Profit, Power and Persuasion

## An Economic Approach to Business Negotiations

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# Profit, Power and Persuasion

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PRADEEP KUMAR

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IJPSC
BOOK SERIES

VOLUME 1
Cologne

**Pradeep Kumar**
*Profit, Power and Persuasion: An Economic Approach to Business Negotiations*
IJPSC Book Series, Volume 1

**Bibliographic information of the Deutsche Nationalbibliothek**
The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the internet at https://dnb.d-nb.de.

ISBN 978-3-928984-60-7 (print)
ISBN 978-3-928984-61-4 (PDF)
ISBN 978-3-928984-73-7 (EPUB)
https://doi.org/10.61030/3h2d-uzyx

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**Publisher**
Jung-Stilling-Gesellschaft e.V.
Wiebelhäuser Str. 25, 57299 Burbach, Germany
Register of Associations: Local Court of Siegen, VR 1802
Represented by its President, Prof. Dr. rer. pol. Dr. h. c. Eckehard Krah
Imprint: IJPSC Book Series

**Series Editors**
Prof. Dr. rer. pol. Dr. h. c. Eckehard Krah · Prof. Dr. Serge Velesco

**Editorial Office**
International Journal of Psychology and Strategic Communication (IJPSC)
Widdersdorfer Str. 262, 50933 Cologne, Germany
Phone: +49 160 6695903 · Email: editor@ijpsc.org · https://ijpsc.org

The views expressed in this book are those of the author and do not necessarily reflect those of the publisher or of the IJPSC editorial board.

Typeset in TeX Gyre Pagella and Inter.
Printed by WIRmachenDRUCK GmbH, Illerstraße 15, 71522 Backnang, Germany.
Series standard: IJPSC Blue #091C3C (RGB 9, 28, 60; CMYK 99/69/0/80, FOGRA39).

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# Foreword

With this volume we open the IJPSC Book Series, and it is a pleasure to write its first foreword together. The series grew out of a collaboration between our two universities that has lasted many years. What began with joint teaching and the *International Journal of Psychology and Strategic Communication* has become a common project that keeps growing: a journal, a series of round tables and now a series of books that carries the journal's interests beyond the format of the research article.

The series is published by the Jung-Stilling-Gesellschaft, and its namesake is a fitting patron for a series on economics, communication and persuasion. Johann Heinrich Jung-Stilling (1740–1817), born in Grund in the Siegerland, began as a physician and eye surgeon who restored the sight of many patients. In 1778 he was appointed professor of economics and cameral sciences, the economics and public administration of his time, at the Kameral Hohe Schule in Kaiserslautern. When the school was united with the University of Heidelberg in 1784, he moved there with it, and in 1787 he became full professor of economic sciences at the University of Marburg. In 1803 Elector Karl Friedrich of Baden appointed him Hofrat and released him from teaching so that he could devote himself entirely to his writing; he lived first in Heidelberg and later in Karlsruhe, where he died.

Throughout his life Jung-Stilling was above all a communicator. He wrote for his students and for a wide public, edited periodicals and contributed tales to popular almanacs, and he kept up a correspondence that reached from Goethe, who took the manuscript of his autobiography to print, to Kant and to readers far beyond the German lands. Many turned to him for advice, and he moved with ease between universities, courts and ordinary people, connecting scholars, practitioners and readers who would otherwise never have met. His career anticipates the themes of this book: he taught economics as a discipline in the service of practical decisions, he advised those who had to weigh competing interests, and he knew that knowledge changes little unless it is communicated in a way that people understand and accept. A series that brings together economics, psychology and strategic communication, and that links universities in several countries, stands in this tradition.

The series is founded on a conviction we share. Teaching has to be rethought, and it has to be rethought across the boundaries of individual universities. Good textbooks remain the backbone of students' learning, but they need to be open to

everyone, connected with the research from which they draw, and accompanied by materials that lecturers can use directly in their own courses. Every book in the series is therefore published open access, every chapter carries its own DOI, and every textbook is supported by lecture slides, exercises, self-tests and exam questions that are available free of charge to colleagues at every university.

We know Pradeep Kumar from our joint work at Mittweida University of Applied Sciences, and it is an honour and a pleasure for us to accompany him with this book. *Profit, Power and Persuasion* is exactly the kind of textbook the series was created for. It takes the economics of bargaining seriously without losing sight of the people at the table, and its three pillars, profit, power and persuasion, give students a framework they can carry from the lecture hall into practice. The author's own path across borders, between India and Europe and between economics, law and communication, gives it a truly international outlook.

We are grateful to Pradeep Kumar for entrusting his work to the IJPSC Book Series, to the team in Cologne and Mittweida who prepared this volume, and to the Jung-Stilling-Gesellschaft for making the series possible. We hope that the book will find many readers in lecture halls and boardrooms alike. We look forward to a good future together and to working with Pradeep Kumar on many further projects.

Mittweida and Cologne, November 2026

*Serge Velesco*
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# Preface

*Profit, Power and Persuasion: An Economic Approach to Business Negotiations* originated in a fundamental question that recurs in both the teaching and the practice of negotiation: why do some negotiations between parties of comparable competence and professional experience culminate in mutually beneficial agreements, while others end in industrial disputes, litigation or a complete breakdown of communication? Conventional explanations emphasise personality, preparation, communication skills, active listening and emotional regulation. Although these factors are undoubtedly important, they offer only a partial explanation of negotiated outcomes. A comprehensive understanding requires closer examination of the economic incentives, strategic alternatives, information asymmetries, institutional constraints and power relations that determine how agreements are reached and how their benefits and costs are distributed.

The intellectual and pedagogical foundations of this textbook derive from the author's teaching of Business Conflict and Negotiations and of Business Communication to bachelor's and master's students at the University of Opole, Poland. This experience revealed a persistent gap between the economic analysis of bargaining and the interpersonal dimensions of negotiation. Much of the negotiation literature approaches bargaining primarily as a communicative and behavioural process, emphasising persuasion, conflict management, relationship-building and negotiating techniques. Economic analyses, by contrast, frequently examine bargaining through formal models of rational choice, strategic interaction and utility maximisation, and sometimes give insufficient attention to the interpersonal, organisational and institutional contexts in which negotiations take place. Students are consequently left to integrate these complementary perspectives for themselves.

This textbook seeks to bridge that disciplinary divide by presenting business negotiation as an economic process embedded in a broader framework of strategic decision-making, communication, behavioural response and institutional interaction. Its central argument is organised around three interrelated dimensions: profit, power and persuasion. Together, these dimensions provide an analytical framework for understanding how negotiating parties create economic value, exercise influence, communicate their interests and determine the terms of an agreement.

**Profit** denotes the economic value that negotiating parties seek to create, preserve, exchange and appropriate. It encompasses not only the financial returns pursued by firms but also the broader economic benefits, opportunity costs and trade-offs associated with alternative agreements. Understanding profit requires an examination of how parties identify their interests, assess the potential gains from cooperation, allocate resources and negotiate the distribution of the value generated by an agreement.

**Power** concerns the capacity of negotiating parties to influence decisions, shape the bargaining process and affect the distribution of negotiated outcomes. Its sources extend beyond formal authority and financial resources to include the quality of available alternatives, market structure, control over information, institutional arrangements, legal rights and the relative dependence of the parties. An economic approach to negotiation therefore requires an understanding of how bargaining power emerges, how it changes in the course of a negotiation and how it affects the feasibility and distributional consequences of alternative agreements.

**Persuasion** encompasses the communicative, psychological, cultural and ethical dimensions through which negotiating parties present arguments, interpret information, establish credibility, manage disagreement and seek to influence one another's decisions. Persuasion is not merely a rhetorical technique; it is an integral component of strategic interaction, shaped by the expectations, perceptions, incentives and institutional environments of the parties involved. In this respect, the book treats business communication not as a separate set of skills but as one of the principal mechanisms through which economic value and bargaining power are translated into agreement.

These three dimensions are analytically distinguishable but practically inseparable. An understanding of economic value without an appreciation of bargaining power may leave a negotiator unable to secure an appropriate share of the gains from an agreement. Substantial bargaining power without effective communication may undermine cooperation or prevent an otherwise feasible agreement. Persuasive communication without a sound understanding of economic interests and strategic alternatives may, in turn, produce commitments that are inefficient, unsustainable or unfavourable to the negotiating party. Effective negotiation therefore requires an integrated understanding of profit, power and persuasion rather than mastery of any single dimension in isolation.

The relevance of this integrated approach has become increasingly evident in the contemporary international economy. Developments between 2023 and 2026 demonstrated how tariffs, export controls, access to critical minerals, industrial disputes and international trade agreements can become instruments of bargaining among firms, governments, workers and other stakeholders. The conclusion

of the European Union's trade negotiations with Mercosur and with India further illustrates the interaction between commercial interests, domestic political considerations, institutional frameworks and strategic economic relationships. These developments underline the need to examine negotiation not as an isolated interpersonal activity but as a process that operates simultaneously at the corporate, institutional, national and international levels.

A textbook on contemporary negotiation must therefore explain not only how individual negotiators communicate and make decisions, but also how firms, governments, trade unions and other institutions pursue competing objectives in changing economic and geopolitical environments. By connecting microeconomic reasoning with strategic management, business communication and international economic relations, this volume seeks to provide readers with the conceptual tools required to interpret such interactions and to evaluate their implications.

### Organisation of the Book

The textbook is organised into four parts, each comprising five chapters. Part I establishes the conceptual foundations by examining the nature of conflict, its economic origins, approaches to conflict management and resolution, and the essential characteristics of negotiation as a process of strategic interaction. It provides the analytical vocabulary and theoretical grounding on which the subsequent discussion depends.

Parts II, III and IV examine, respectively, the three principal dimensions of the book's framework: profit, power and persuasion. Each part develops its central concepts through theoretical discussion, practical application and case-based analysis, and each begins with an introductory overview explaining its objectives, conceptual scope and relationship to the chapters which follow. The concluding chapter of Part IV integrates the three dimensions through the analysis of complete negotiations and through classroom simulations, enabling readers to apply the analytical framework to complex bargaining situations. Three appendices complete the volume: a glossary of key terms, a comprehensive negotiation planning template and a question bank for revision, seminars and examinations.

### Structure and Pedagogical Approach of the Chapters

Each chapter follows a consistent pedagogical structure designed to support systematic learning, analytical development and practical application. An **Introduction** sets out the chapter's objectives, principal questions and organisation. It is followed by a **Deal File**, which presents a substantive real-world negotiation or

conflict. The case serves as a recurring analytical reference point, allowing readers to connect theoretical concepts with the circumstances, decisions and outcomes of an actual negotiation.

The theoretical discussion is organised into concise thematic sections, each introduced by a guiding question and concluded with a **Key Move** that identifies a practical implication of the concepts discussed. Supplementary **Deal Snapshots** provide shorter examples from different industries, institutional settings and geographical regions, thereby broadening the comparative perspective.

The chapter then revisits the principal Deal File and analyses it with the theoretical tools developed in the preceding sections. A **Pillar Scorecard** provides a structured assessment of the case in relation to profit, power and persuasion, and an **Ethics Check** invites reflection on the normative questions it raises. The **Your Move** section presents a decision-oriented exercise in which readers evaluate alternatives, justify their choices and consider the likely consequences of different negotiating strategies.

Each chapter closes with a **Conclusion** that synthesises its principal arguments and, where appropriate, provides a conceptual transition to the next chapter. The accompanying **Exercises** comprise objective, short-answer and long-answer questions. They are intended to assess conceptual understanding, to encourage critical reflection and to develop the ability to apply economic and strategic reasoning to practical negotiation problems. A list of **Further Reading** facilitates independent study and more advanced engagement with the relevant literature, including selected publications by the author where they are directly relevant.

### Levels of Reading

The textbook is designed for readers with different levels of prior knowledge and academic preparation, and it can be used in bachelor's, master's and doctoral programmes. The core text is intended primarily for undergraduate students and introduces the principal concepts without assuming advanced knowledge of economics. Technical terminology is explained in context, and theoretical arguments are connected to practical examples wherever possible.

Sections marked **MA extension** provide additional material for master's students and for readers seeking a more advanced treatment. These extensions address formal analytical models, specialised research debates and selected policy questions. For doctoral candidates and early-career researchers, the MA extensions, the long-answer and integrative questions, and the extensive bibliography of theoretical and empirical studies are intended to serve as points of departure for independent research, literature reviews and the formulation of research questions on negotiation, conflict and international economic relations. This differentiated structure allows the textbook to support undergraduate teaching

while also supporting master's and doctoral study and more rigorous engagement with the academic literature.

### Case Selection and Evidence

The cases presented in the textbook reflect the international and interdisciplinary character of contemporary business negotiation. They involve firms, trade unions, governments and other stakeholders across Europe, Asia, Africa and the Americas, with particular attention to developments in Poland and Central Europe. This geographical diversity enables readers to examine how differences in institutional arrangements, market conditions, legal frameworks and cultural contexts influence negotiating processes and outcomes.

The case studies draw on primary and institutional sources, including company announcements and filings, court documents, government publications, official statistics and other verifiable records. The distinction between documented facts, reported statements, allegations and the author's analytical interpretations is maintained throughout the text.

Negotiations and disputes still unresolved when the manuscript was completed in November 2026 are analysed on the basis of the information available at the time. Their treatment should therefore be understood as a contemporaneous assessment rather than a definitive account of subsequent developments.

### The Author's Research and the Scholarly Foundations of the Textbook

The international dimension of this textbook draws in part on the author's research on foreign direct investment in emerging economies, on economic relations between India, Poland and the European Union, and on cross-cultural communication in business (Kumar, 2020, 2022, 2026b). This research informs the discussion of international bargaining, institutional differences, economic interdependence and the strategic considerations that shape negotiations across national boundaries.

The author's research is incorporated where it contributes directly to the theoretical or empirical discussion, and the relevant publications are cited in accordance with the referencing conventions adopted throughout the volume. The textbook nevertheless develops its own integrated analytical and pedagogical framework, bringing together established scholarship, empirical evidence and practical case analysis. Previously published material is duly acknowledged, and the text is intended as a coherent educational resource rather than a compilation of the author's earlier publications.

### Intended Readers and Learning Objectives

The primary readership comprises bachelor's, master's and doctoral students of economics, management, international business, international relations and business communication. The textbook may also serve as a supplementary resource for programmes in strategic management, organisational behaviour, industrial relations, entrepreneurship, public communication and international economic cooperation.

Beyond the academic setting, the volume is also intended for managers, business executives, public officials, trade-union representatives and other professionals engaged in commercial negotiation, institutional bargaining and conflict resolution. By integrating economic analysis with communication and strategic decision-making, it seeks to help readers understand not only how negotiations unfold but also why particular outcomes emerge and how alternative approaches might influence them.

The broader educational objective is to develop the capacity to analyse negotiating situations systematically, to identify the economic interests and strategic constraints of the parties involved, to evaluate alternative courses of action and to assess the likely consequences of negotiated agreements. Rather than prescribing a single universal method, the textbook encourages readers to select and adapt their approach in response to the objectives, information, power relations and institutional conditions of each negotiation.

Ultimately, *Profit, Power and Persuasion* advances the proposition that business negotiation is neither exclusively an art of persuasion nor simply a technical exercise in economic optimisation. It is a multidimensional process of strategic interaction in which economic value, bargaining power and human judgement converge. A rigorous understanding of these interdependencies can contribute to better-informed decisions, more effective conflict management and agreements that are both economically defensible and appropriate to the circumstances in which they are negotiated.

### Conventions

**Currency.** Monetary amounts are presented in the currencies used by the cited sources, principally US dollars and euros, with yen, złoty and other currencies where the sources use them. Where necessary for interpretation or comparison, the relevant currency and reporting context are identified. The term "billion" denotes one thousand million (1,000,000,000).

**Citations and references.** The textbook follows the author–date system of the American Psychological Association (APA, 7th edition). In-text citations identify the author or authors and the year of publication, for example (Fisher & Ury, 1981), and complete bibliographic details are provided in the Bibliography.

Readers are encouraged to consult the cited sources for the original evidence, theoretical arguments and context underlying the discussion.

**Sources of case material.** The facts and figures in the case studies are drawn from primary and verifiable sources: legislation, court decisions and official documents of governments, international organisations and regulators; company filings, financial reports and announcements; statements by the organisations directly involved; and peer-reviewed research. News media are not used as sources. Where a fact could not be confirmed in such a source, it has been omitted.

**Interpretation and responsibility.** The interpretations, arguments and conclusions presented in this volume are the responsibility of the author. Every effort has been made to ensure the accuracy and appropriate attribution of the material; any remaining errors or omissions are the author's own. The case studies are included for educational and analytical purposes and should not be read as judgements on the conduct or motives of the parties beyond what the available evidence supports. Where allegations have not been independently established or legally determined, they are identified as allegations rather than presented as proven facts.

*Pradeep Kumar*
Opole, November 2026

# About the Author



Dr. Pradeep Kumar (ORCID: 0000-0002-1230-7195) is an economist, legal scholar and international business researcher at the University of Opole, Poland. His research examines foreign direct investment, geoeconomic fragmentation, the institutional determinants of cross-border business and cross-cultural business communication, with a particular focus on how regulation, geopolitical risk and bargaining between firms and governments shape economic relations between India, Poland, Germany and the European Union.

Dr. Kumar holds a PhD in Economics, an Executive MBA, an MA in International Relations and a BA LLB degree specialising in Law and Economics. He has more than eighteen years of international experience in teaching, research and institutional development in Europe and India. At the University of Opole he teaches Business Conflict and Negotiations, Business Communication and Public Communication at the Faculty of Philology, and Strategy and Management in Multinational Enterprises at the Faculty of Economics. He also teaches Media Ethics in the Department of Applied Social Sciences, Faculty of Organisation and Management, Silesian University of Technology, Gliwice, Poland. From October 2024 to June 2026 he was Professor of International Entrepreneurship and Economics at Hochschule Mittweida - University of Applied Sciences, Germany, where he led two research projects funded by the DAAD and the German Federal Ministry of Education and Research (BMBF).

He is the Founder, President and CEO of the Indo-European Education Foundation (IEEF), Warsaw, through which he initiates and negotiates academic, business and institutional cooperation between India and Europe. His practical experience of negotiating across cultures and institutions informs many of the cases and exercises in the present volume. His scholarly output includes books, edited volumes and more than sixty scientific and science-promotion articles. His forthcoming books include the companion textbook *Multinational Enterprise Strategy in the Global Economy: Theory, Evidence, and International Case Studies* (University of Opole Publishing House) and *From Evidence to Impact: Sustainable Growth in International Business and Economics* (Novelty & Company, Patna, India, 2026;

ISBN 978-93-47449-01-7). He is currently preparing *International Business, Trade, and Economics: Concepts and Cases* for publication by Springer.

PART

# ONE

# Foundations: Conflict, Economics and Negotiation

Every negotiation begins with a conflict. A buyer wants a lower price than the seller will accept; a union seeks a larger share of a firm's earnings than its owners wish to give; two governments disagree about the terms on which goods and capital may cross their borders. To bargain well in such situations, one must first understand why disagreements arise, how they develop and how they can be brought to an end. Part I lays these foundations. Its five chapters introduce the concepts, tools and institutions on which the rest of the book depends, and they prepare the ground for its central argument: that every business negotiation is a contest over **profit**, decided by **power** and closed by **persuasion**.

The part moves from diagnosis to remedy. It asks first what conflict is and where it comes from, then how it unfolds and how it is managed, and it ends with the two principal routes out of conflict: an agreement reached by the parties themselves, or a decision imposed by a third party when agreement fails.

**Chapter 1** asks what conflict is and why business generates so much of it. It defines the term, distinguishes the levels at which conflict arises, from a single manager torn between roles to disputes between states, and classifies its types, including the conflicts of values that often lie hidden beneath cultural differences. It also asks when disagreement helps a firm and when it harms it, introducing the idea of an optimum level of conflict.

**Chapter 2** turns to economics. It shows that most business conflicts share a common skeleton: a surplus to be divided, agents acting for principals whose interests they do not fully share, contracts unable to foresee the future, and markets in which some parties hold far more power than others. These four ideas recur throughout the book, and they explain why conflicts often break out precisely when cooperation has been most successful.

**Chapter 3** follows conflict through time, from its first signs through escalation to settlement and aftermath. It examines the five styles individuals use to handle conflict, from competing to collaborating, and the systems organisations build to prevent disputes or to contain them before they become costly.

**Chapter 4** introduces negotiation as the principal means of turning conflict into agreement. It explains when a firm should negotiate rather than compete, litigate or walk away, describes the stages of the negotiating process and the factors with most influence on its outcome, and sets out in full the framework of profit, power and persuasion which organises Parts II, III and IV.

**Chapter 5** completes the foundations by asking what happens when negotiation fails. It examines conciliation, mediation, arbitration and adjudication by courts and labour tribunals, and it follows disputes into the international institutions that settle conflicts between investors, firms and states.

Three threads run through all five chapters. The first is that conflict is not a failure of management but a normal feature of economic life, arising wherever people depend on one another for resources they value. The second is that the way a conflict ends depends less on the goodwill of the parties than on their alternatives, their information and the institutions around them. The third is that conflict, handled well, can create value: a dispute forcing a firm to rethink its contracts, its prices or its partnerships may leave both sides better off than before.

Each chapter opens with a recent case from film, technology, broadcasting, trade or port operations, so that every concept is anchored in a real dispute. Together, the five chapters cover the first half of a typical university course in business conflict and negotiation. Readers new to the subject should take them in order, because later parts assume their vocabulary; those trained in economics may move quickly through Chapter 2, and experienced managers through Chapter 3. For every reader, Part I is the point of departure on which the pillars of profit, power and persuasion rest.

CHAPTER

# 1

# Conflict in Business and Economic Life

https://doi.org/10.61030/szm5-yh52

## Introduction

Conflict has a poor reputation in business. Managers speak of disputes as distractions, investors treat strikes and lawsuits as risks to be priced, and students often assume that a good negotiator is someone who makes disagreement disappear. This chapter starts from a different premise. It treats conflict as a normal and lasting part of economic life and argues that the manager's task is not to abolish it but to understand it well enough to channel it productively.

The chapter proceeds in four steps. Section 1.1 defines conflict, sets out the conditions under which a difference becomes a dispute and explains why business, with its scarce resources, interdependent units and constant change, produces conflict in such abundance. Section 1.2 asks where conflict happens and what it is about, distinguishing its levels and types and showing how culture can turn an apparently technical disagreement into a clash of values. Section 1.3 examines what changes when a conflict is fought in public, and how the media and social media shape it. Section 1.4 asks whether conflict is good or bad for a firm, tracing the evolution of management thought towards the idea of an optimum level of conflict.

Throughout, the chapter follows a single case, the strikes that halted film and television production in the United States in 2023, and it closes with exercises in which readers apply its concepts. The vocabulary introduced here forms the first layer of the book's analysis of profit, power and persuasion.

DEAL FILE

## Hollywood on Strike, 2023

On 2 May 2023 the Writers Guild of America (WGA), which represents film and television writers in the United States, called its members out on strike against the Alliance of Motion Picture and Television Producers (AMPTP), the body that bargains on behalf of the studios and streaming services. Ten weeks later, on 14 July, the actors' union SAG-AFTRA joined the walkout. It was the first time since 1960 that writers and actors had been on strike together, and American film and television production came almost to a standstill.

**Table 1.1**

*The Hollywood strikes at a glance*

| | |
|---|---|
| **Parties** | The Writers Guild of America; SAG-AFTRA, representing actors; the Alliance of Motion Picture and Television Producers, acting for studios and streaming services such as Netflix, Disney, Warner Bros. Discovery, Amazon, Apple, Paramount and NBCUniversal |
| **At stake** | The share of streaming revenue paid to writers and actors; the size of writing teams; the use of artificial intelligence (AI) |
| **Duration** | Writers: 148 days, from 2 May to 27 September 2023. Actors: 118 days, from 14 July to 9 November 2023 |
| **Outcome** | Agreements running to May 2026 (writers) and June 2026 (actors), with higher minimum pay, a new bonus for successful streaming titles, minimum staffing of writers' rooms and rules on the use of AI; both were renewed in 2026 without a strike, for four years to 2030 |

*Note.* Author, based on SAG-AFTRA (2023a, 2023b, 2026) and Writers Guild of America (2023, 2026).

**Why the old bargain broke.** For decades, writers and actors received a fee for their work and then *residuals*: payments made each time a film or episode was shown again on television or sold on DVD. Streaming undermined this arrangement. A series on a streaming service is never repeated in the old sense; it simply remains available, and the services did not disclose how many people watched it. Writers argued that a successful series could earn a service millions in subscriptions while its authors received the same flat payment as those whose series had failed. Studios had also begun to hire small groups of writers, so-called mini rooms, for shorter periods. Generative AI then added a new fear. OpenAI had released ChatGPT in November 2022 (OpenAI, 2022), and writers worried that studios would ask machines to produce first drafts and pay people only to polish them. Actors feared that their faces and voices could be scanned once and reused without consent or payment.

**What the unions won.** The writers' agreement, which ran until 1 May 2026, raised most minimum rates by 5 per cent on ratification, by 4 per cent in 2024 and by 3.5 per cent in 2025. It introduced a bonus worth half of the fixed residual for any title watched by at least 20 per cent of a service's domestic subscribers in its first 90 days, and it required a room of at least six writers for a series of 13 or more episodes once production had been approved. A studio cannot oblige a writer to use AI, and material generated by AI does not count as source material, so it cannot be used to weaken a writer's credit or rights (Writers Guild of America, 2023). The actors' agreement raised minimum pay by 7 per cent, followed by 4 and 3.5 per cent in the next two years. Its streaming bonus uses the same threshold but is worth the full fixed residual: three-quarters goes to the cast of the title and one-quarter to a fund shared among performers in streaming programmes. The creation and use of an actor's digital replica now require informed consent and payment (SAG-AFTRA, 2023a). The union valued the package at more than US$1 billion in new pay and benefit funding, and its members ratified it on 5 December 2023 with 78.3 per cent of the vote (SAG-AFTRA, 2023b).

**Questions to keep in mind.** Why did a dispute about pay become a strike lasting almost five months? Who was really in conflict with whom: writers with studios, actors with a technology, or an old business model with a new one? Did the conflict destroy value, or did it produce rules the industry needed? They also introduce the three pillars of this book: how the value of streaming was to be divided (profit), which side could hold out longer (power) and how each side won public support for its cause (persuasion). The chapter returns to them as its argument unfolds.

## 1.1 What Is Conflict, and Why Does Business Produce So Much of It?

### From Difference to Conflict

People and firms differ constantly without being in conflict. Two suppliers may quote different prices, and two managers may favour different strategies, without anything following from it. A difference becomes a conflict only when one side believes that the other stands in the way of something it values. Thomas (1992) describes conflict as a process which starts when one party perceives that another has frustrated, or is about to frustrate, something it cares about. Three elements of this idea recur throughout the book.

- **Interdependence.** The parties need each other. Writers rely on studios to finance and distribute their work, while studios rely on writers to create it. Parties that can simply walk away from one another rarely remain in conflict for long.
- **Perceived incompatibility.** At least one party believes that what the other wants blocks what it wants itself. The belief matters more than the facts: a

conflict can rest on a misunderstanding, whereas a genuine incompatibility can go unnoticed for years.

- **Interference.** One party acts, or is expected to act, in a way that harms the other's goals, for instance by refusing a demand, cutting a budget, filing a lawsuit or walking off the job.

Pondy (1967) added that conflict is a *process* rather than a single event. It can lie dormant in the structure of a relationship long before anyone feels it, and it leaves an aftermath that shapes the next round. Chapter 3 follows this process stage by stage.

### Why Business Generates Conflict

Business is unusually rich in the conditions which produce conflict. Five sources recur in the chapters that follow.

1. **Scarcity and distribution.** Every transaction creates a surplus, the difference between the most a buyer would pay and the least a seller would accept, and how that surplus is shared is inherently contested. At its core, the Hollywood strike was a contest over the division of streaming revenue. Chapter 2 develops this economic root of conflict.
2. **Interdependence across functions and firms.** Sales staff want low prices and fast delivery, finance wants healthy margins, and production prefers long, stable runs. Firms in a value chain depend on one another, yet they compete for the profit that the chain generates.
3. **Divergent goals and time horizons.** Shareholders, managers, employees and local communities expect different things from the same firm, and they weigh the present against the future in different ways (Chapter 6).
4. **Change.** New technologies, regulations and markets render old agreements obsolete. Every contract assumes a particular world, and when that world changes, someone gains while someone else loses. Streaming and generative AI did precisely this to the agreements governing Hollywood.
5. **Culture and history.** Shared values shape how sharply these tensions are felt. Hill and Hult (2021) describe how class consciousness in Britain, expressed in a traditional hostility between managers from the upper middle class and their working-class employees, long made cooperation between management and labour difficult and produced a relatively high level of industrial disputes. Such disputes have declined markedly in recent decades, but the authors argue that wherever class divisions remain deep, the resulting antagonism raises production costs and makes it harder for firms to compete internationally.

### Worked Tool: The Conflict Map

A conflict map records the parties, what each wants, why their aims collide and why neither can simply walk away. Table 1.2 applies this tool to the Deal File.

**Table 1.2**

*Conflict map of the Hollywood strikes, 2023*

| Party | What it wanted | Why its aims collided with the other side | Why it could not walk away |
|---|---|---|---|
| Writers (WGA) | A share of streaming success, minimum staffing and protection from AI | Each demand raised the studios' costs or limited their freedom | Few employers exist outside the members of the AMPTP |
| Actors (SAG-AFTRA) | Higher minimum pay, streaming residuals and consent for digital replicas | Digital replicas promised studios lower costs in the future | The same reasons as the writers |
| Studios and streamers (AMPTP) | Control of costs after heavy streaming losses, and freedom to adopt new technology | Every union gain added cost in a period of falling profits | No content can be made without writers and actors |

*Note.* Author, based on the Deal File.

**KEY MOVE**

Before you try to resolve a conflict, map it. Ask what each side cares about, why its aims collide with yours and what keeps both of you at the table.

## 1.2 Where Does Conflict Happen? Levels and Types

### Levels of Conflict

A conflict can be located by asking *who* is in conflict with *whom*. Table 1.3 sets out the levels used throughout this book.

Intergroup conflict deserves particular attention in business. Departments such as sales and customer support pursue different goals, compete for budgets, staff and recognition, and draw boundaries around their identity as a team. Social identity theory explains why such boundaries matter: people derive part of their self-esteem from the groups to which they belong, and they tend to favour their own group in any contest with another (Tajfel & Turner, 1979).

The levels are also connected. A dispute between two organisations is conducted by individuals, who may at the same time be in conflict with their own

**Table 1.3**

*Levels of conflict*

| Level | Who is involved | Business example |
|---|---|---|
| Intrapersonal | One person torn between goals or roles | A manager asked to cut jobs in a team she built |
| Interpersonal | Two individuals | A sales director and a finance director disagreeing about a discount |
| Intragroup | Members of one team or group | Writers in one union divided over whether to accept a deal |
| Intergroup | Groups or departments within one organisation | Engineering and marketing at odds over a launch date |
| Organisational | An organisation and its members or stakeholders | A company and its trade union |
| Inter-organisational | Two or more organisations | Studios and unions; a retailer and its supplier; two merger partners |
| International | Firms and governments across borders | Trade disputes, investment disputes and border blockades |

*Note.* Author, adapted from Rahim (2023) and Thomas (1992).

side. During the Hollywood strike, union leaders had to hold together members with very different incomes, from famous stars to background actors, while bargaining with the studios. Much of the skill of negotiation therefore lies in managing the conflict *behind* the table as well as the conflict across it.

### Types of Conflict

Conflicts also differ in *what* they are about. Research on teams distinguishes three types (Jehn, 1995; Jehn & Mannix, 2001):

- **task conflict**, a disagreement about the content of the work, such as which product to launch, which price to set or how to share a surplus;
- **relationship conflict**, personal friction expressed as dislike, distrust or a sense of being disrespected;
- **process conflict**, a disagreement about how the work is done: who decides, in what order and under which rules.

Moore (2014) offers a classification that mediators use for diagnosis. Conflicts may concern **interests** (who gets what), **data** (different facts, or different readings of the same facts), **relationships** (emotions, stereotypes and poor communication), **structure** (unequal power, time pressure or geography) or **values** (different ideas of what is right). Each calls for its own remedy. A data conflict eases when information is shared and a conflict of interests yields to bargaining, but a conflict of values often cannot be bargained over at all; it can only be managed.

Conflicts of values are frequently rooted in culture. Hill and Hult (2021) define culture as a system of values and norms shared by a group of people that, taken together, forms a design for living. *Values* are ideas about what a group believes to be good, right and desirable; *norms* are the social rules that prescribe appropriate behaviour in particular situations. When parties from different societies meet, a dispute that appears to concern contract terms may in fact concern norms about time, hierarchy or what counts as a fair offer. Differences in legal systems and religious observance add further complexity to international dealings, a theme developed in Chapter 18.

Conflicts of values are often also conflicts of identity. Drawing on the work of the historian David Cannadine, Jandt (2018) identifies six sources of collective identity that have regulated human life and, at times, fuelled conflict between groups: religion, nation, class, gender, race and civilisation. In business these identities rarely appear in pure form, but they shape how the parties see one another. The acquisition of a national champion by a foreign firm can provoke resistance that has more to do with national identity than with price, and a dispute between managers and workers may be experienced as a conflict between classes as much as a conflict of interests. Jandt also warns against the opposite error: knowing a person's cultural identity does not reveal how that person will behave, because the diversity within cultures is often greater than the diversity between them, and to assume otherwise is to stereotype.

All five of Moore's categories appeared in Hollywood. The share of streaming revenue was a conflict of interests, and the streamers' refusal to disclose viewing figures created a conflict over data. Years of mistrust produced a relationship conflict, while the bargaining power of a few large companies reflected a structural one. For many members, finally, whether a machine should be allowed to write or to act was a question of values.

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**KEY MOVE**

Diagnose the level and the type of a conflict before choosing a strategy. Bargaining settles conflicts of interest; it does not settle conflicts over data, relationships or values unless those are addressed first.

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DEAL SNAPSHOT

**Polish Hauliers at the Ukrainian Border, 2023 and 2024**

After Russia's full-scale invasion of Ukraine, the European Union and Ukraine signed an agreement in June 2022 that opened bilateral and transit road haulage between them to each other's carriers, without the permits previously required (*Agreement between the European Union and Ukraine on the Carriage of Freight by Road*, 2022). Polish hauliers, who faced a sharp rise in the share of Ukrainian competitors, demanded that the permit system be restored. From 6 November 2023 they protested in front of the road crossings at Dorohusk, Hrebenne and Korczowa, and long queues of lorries built up on both sides of the border. On 16 January 2024 the Polish Ministry of Infrastructure signed an agreement with the protesters, who suspended their action until 1 March 2024. The ministry undertook, among other measures, to improve the capacity of the crossings, for example by registering empty lorries in a separate electronic queue at Dorohusk and setting aside four lanes for them (Ministry of Infrastructure, 2024). This single dispute ran across almost every level in Table 1.3: firms competed with firms, a professional group pressed its own government, and two neighbouring states that were close allies had to manage a quarrel over trade.

## 1.3 How Does Conflict Look in Business and in the Media?

### Private and Public Conflict

Most business conflicts remain private. A buyer and a supplier argue about a price increase in a meeting room, and the public never hears of it. Some disputes, however, move into public view, and their character then changes in three ways.

First, **the audience becomes a party**. Customers, investors, regulators and politicians are now watching, and each side begins to address them as much as its opponent. In Hollywood, the picket lines outside studio gates, where famous actors carried placards, were aimed at the public and at the studios' shareholders quite as much as at the negotiators of the AMPTP.

Second, **positions harden**. A concession made in private counts as a compromise; the same concession made in public can look like a defeat, and leaders who have presented their demands as matters of principle find it harder to retreat. Schelling (1960) observed that this effect can be used deliberately: a party committing publicly to a position makes retreat costly for itself, and so makes its threat more credible.

Third, **the conflict is framed**. Public debate favours stories with heroes, villains and high stakes. A tale of writers fighting robots and billionaire executives is more compelling than a dispute over residual formulas, and it shaped how the public, and even some executives, came to see the strike.

DEAL SNAPSHOT

**Musk v. OpenAI, from 2024 to 2026**

Elon Musk, one of the founders and early funders of OpenAI, sued the company and its leaders in 2024. He claimed that they had abandoned its founding mission as a non-profit organisation working for the benefit of humanity and had turned it into a business run for profit. OpenAI replied that Musk had himself accepted the need for a for-profit structure and had turned against the company only after failing to gain control of it. For two years the dispute was fought through court filings, interviews and posts on social media. After a trial in the federal court in Oakland, California, an advisory jury found on 18 May 2026 that Musk had brought his claims too late, and Judge Yvonne Gonzalez Rogers adopted its verdict and dismissed them (*Musk v. Altman*, 2026); Musk's lawyers said that he would appeal. It illustrates how a quarrel between founders can become a public contest over the purpose of a firm, argued as much before the public as before the court.

Social media have increased the speed and reach of all three effects. A dispute that once surfaced in a press release can now spread within hours, and each side can address the public directly, without the filter of journalists. Kumar (2021) examines the wider consequences of social media for conflict and security, and Chapter 16 returns to the theme.

### Going Public as a Tactic

A party may take a conflict public on purpose: to gain allies, to damage the other side's reputation or to compel a third party, such as a government or a court, to act. The tactic is powerful but expensive. It raises the cost of failure for both sides, it is hard to reverse, and it hands part of the control of the conflict to journalists, online audiences and the wider public. Table 1.4 summarises the trade-off.

**Table 1.4**

*Taking a conflict public: gains and costs*

| Possible gains | Possible costs |
|---|---|
| Public support and new allies | Compromise becomes harder without loss of face |
| Pressure on the other side's customers, investors or regulators | Damage to one's own reputation and brand |
| A credible commitment to a position | Loss of control over how the story is told |
| Involvement of courts, regulators or governments | Lasting harm to the relationship |

**KEY MOVE**

Decide deliberately whether a conflict should stay private. Going public can strengthen your position, but it also makes your demands harder to change.

## 1.4 Is Conflict Good or Bad for a Firm?

### Three Views of Conflict

Thinking about conflict in organisations has passed through three broad stages. The *traditional view* regarded conflict as harmful in itself: a sign of poor management, to be removed by clearer rules and firmer authority. The *human relations view* accepted conflict as a natural and inevitable part of organisational life, something to be lived with rather than suppressed. The *interactionist view*, associated in particular with Robbins (1974), went further. It argued that an organisation without conflict becomes static and complacent; some conflict is necessary for creativity and change, and managers should therefore keep it at an optimum level, stimulating it when there is too little and resolving it when there is too much.

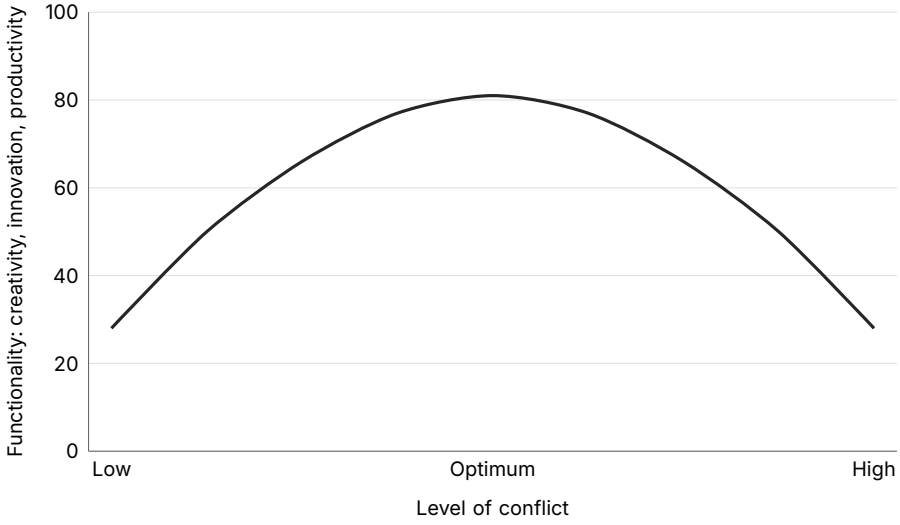
Sociologists had prepared the ground for this view. Coser (1956) argued that conflict can bring problems into the open, test ideas, release tension and force a system to adapt, and Deutsch (1973) distinguished **constructive** conflict, after which the parties are better off and their relationship survives, from **destructive** conflict, which spreads, escalates and leaves every side worse off. Figure 1.1 illustrates the interactionist argument: too little conflict breeds inertia, too much produces dysfunction, and performance peaks in between.

### What the Evidence Shows

Research on teams has refined this picture. A meta-analysis by De Dreu and Weingart (2003) found that relationship conflict clearly harmed team performance and satisfaction, while task conflict, often assumed to be beneficial, was on average harmful as well. Later work suggested that the relationship between task conflict and innovation is curved, much as Figure 1.1 implies. Teams with very little disagreement fail to test their ideas, teams with a great deal of disagreement cannot work together, and a moderate level of debate about the task tends to yield the most innovation (De Dreu, 2006). The lesson is not whether conflict is good or bad: its *type* and *intensity* matter, and task conflict turns harmful once it becomes personal. Table 1.5 summarises the features of functional and dysfunctional conflict.

**Figure 1.1**

*The optimum level of conflict (illustrative)*




*Note.* Author, based on Robbins (1974) and De Dreu (2006). The values are illustrative and show the shape of the relationship rather than measured data.

**Table 1.5**

*Functional and dysfunctional conflict*

| | Functional conflict | Dysfunctional conflict |
|---|---|---|
| Focus | The problem and the task | The person and the relationship |
| Intensity | Moderate and contained | High and spreading |
| Communication | Open, with information shared | Closed, with information used as a weapon |
| Typical result | Better decisions, new rules and adaptation | Lost time and output, broken relationships and exit |

*Note.* Author, based on Deutsch (1973), Jehn (1995) and De Dreu (2006).

### The Economics of a Costly Conflict

Economics poses a sharper question. If both sides could predict the outcome of a strike, why not agree to it on the first day and save the cost? Hicks (1932) noted that, in theory, a rational union and a rational employer should always be able to find an agreement leaving both better off than a strike would. The very occurrence of strikes suggests that the parties do *not* know what the other will accept, or do not trust each other's promises. Seen in this light, conflict is partly a costly way of revealing information, an idea to which the MA extension at the end of the chapter returns.

Costly conflicts of this kind are far from rare. Figure 1.2 shows how many American workers took part in major work stoppages, defined as those involving at least 1,000 workers and lasting at least one full shift, in each year from 2005 to 2025. Between 2008 and 2017 the number never exceeded 150,000. It then rose sharply, to more than 400,000 in both 2018 and 2019, and again in 2023, when 33 major stoppages began, the largest number since 2000, and 458,900 workers were involved (US Bureau of Labor Statistics, 2024). The 30 major stoppages that began in 2025 involved 306,800 workers, and their number remained well above the average of 17.8 a year for 2006 to 2025 (US Bureau of Labor Statistics, 2026). For students of negotiation, the series is a reminder that the failure to agree has a measurable price, paid in lost output and wages by the parties and by many others around them.

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**KEY MOVE**

Keep conflict focused on the task and the terms, never on persons. A conflict is worth its cost only if it produces information, decisions or rules unobtainable more cheaply.

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BACK TO THE DEAL FILE

## Reading the Hollywood Strikes

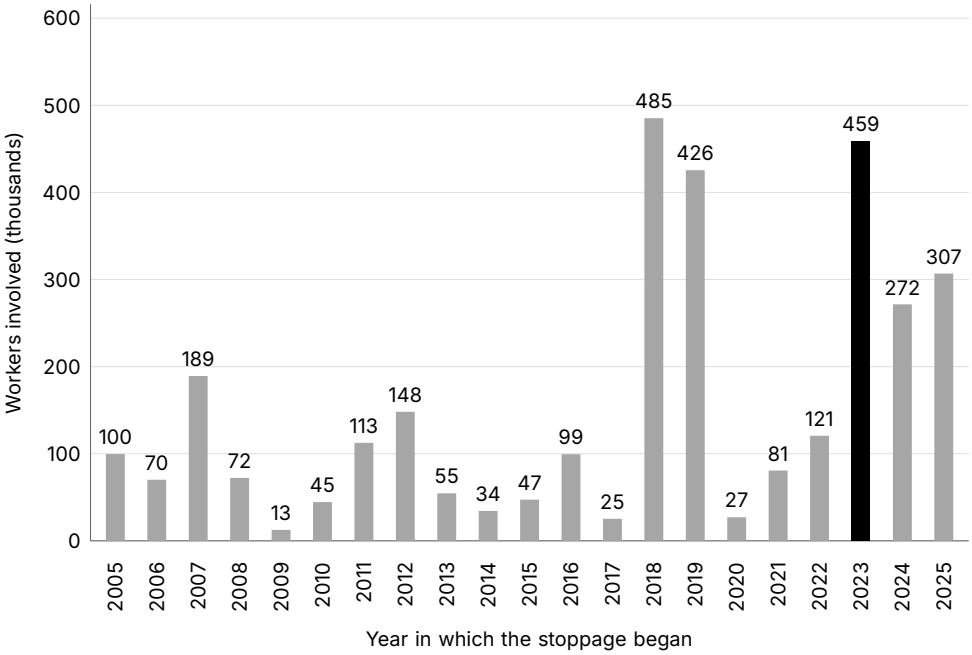
The tools of this chapter explain why the dispute grew into a strike that lasted almost five months.

**It met every condition for conflict.** The parties were deeply interdependent; they perceived a direct incompatibility in the division of streaming revenue; and writers and actors experienced the studios' rejection of their opening demands as interference with their livelihoods.

**It operated on several levels at once.** It was an inter-organisational conflict between unions and studios, but also an intragroup conflict inside each union, whose members ranged from stars to people earning the union minimum. On

**Figure 1.2**

*Workers involved in major work stoppages in the United States, 2005 to 2025 (thousands)*




*Note.* Author, based on the annual series of the US Bureau of Labor Statistics (2026) on stoppages involving 1,000 or more workers. The highlighted bar marks 2023, the year of the Deal File.

the employers' side, studios with large back catalogues and newer streaming services with different cost structures did not share identical interests.

**It combined every type of conflict.** The conflict of interests over pay could, in principle, be split. The conflict over viewing data, the mistrust built up over years and the dispute over the place of AI could not simply be divided, and they made the conflict of interests harder to settle. The final agreements handled each in its own way: the bonus based on viewing figures obliged the services to share some information, while the rules on AI turned a question of values into contractual terms of consent and compensation.

**It was fought in public.** Picket lines and the voices of famous actors transformed a technical dispute into a public story, which strengthened the unions' bargaining position but also made compromise harder for both sides.

**Was it functional?** For union members it produced rules which had not existed before, on streaming success, staffing and AI. The cost, however, was large. In the official statistics for 2023, the information industry, which includes film and television production, accounted for 171,500 of the 458,900 workers involved

in major stoppages, a total exceeded only by education and health services (US Bureau of Labor Statistics, 2024). For the many workers who were not party to the dispute, such as crews, caterers and suppliers, the months without production were costly. In the language of Figure 1.1, the strike pushed conflict well beyond its optimum: it was functional for the parties at the table and dysfunctional for many who were not, a common pattern in large business conflicts.

The durability of the rules it created is nevertheless notable. When the agreements expired in 2026, both unions negotiated new four-year contracts without a strike. Writers ratified theirs on 24 April 2026 with 90.4 per cent of the vote; it raised streaming residuals, improved the viewership bonus and increased contributions to the health plan (Writers Guild of America, 2026). Actors ratified theirs on 4 June 2026 with 91.4 per cent of the vote; it strengthened the protections around AI and digital identity and opened the way to merging the two pension funds that had divided members' earnings (SAG-AFTRA, 2026). The costly conflict of 2023 thus established a framework that later rounds of bargaining could build on rather than reopen.

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MA EXTENSION

### Why Do Rational Parties Strike?

The "Hicks paradox" asks why strikes occur if both parties would gain by agreeing at once on the final terms (Hicks, 1932). Ashenfelter and Johnson (1969) modelled the strike as a means of lowering workers' expectations over time. Later work in bargaining theory treats strikes as a consequence of *private information*: the employer knows its true ability to pay and the union does not, so the union uses the threat and the duration of a strike to distinguish employers who genuinely cannot pay from those who merely claim they cannot (Kennan & Wilson, 1993). Apply this reasoning to the Deal File. What private information did the streaming services hold, and how did the bonus based on viewing figures change the information available to each side? Would a rule requiring services to publish viewing data have shortened the strike?

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ETHICS CHECK

Studios argued that viewing data were commercially sensitive. Writers argued that, without them, they could not judge whether their pay was fair. Is it ethical for one side of a negotiation to withhold information determining the value of the other side's work? Where does a legitimate business secret end and an unfair advantage begin?

### Pillar Scorecard

**Table 1.6**

*Pillar Scorecard: the Hollywood strikes, 2023*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | High | The dispute concerned how streaming revenue should be divided between producers and creative workers |
| Power | High | The unions used a coordinated strike to halt production; the studios relied on their financial reserves and their control of distribution |
| Persuasion | High | Picket lines, public statements and celebrity support shaped public opinion, and AI was framed as a question of values |

### Your Move

*This is a constructed teaching case.*

You are the operations director of a logistics company in Opole that runs a large warehouse for an online retailer. Management plans to install automated picking robots that will remove about a third of the jobs on the night shift within two years. Rumours have spread. Night-shift workers have stopped volunteering for overtime, two team leaders no longer speak to each other, and a local newspaper has asked for comment. The retailer, your main customer, expects normal deliveries during the peak season, which begins in six weeks.

1. Map the conflict in the format of Table 1.2. Who are the parties, and what does each of them care about?
2. At which levels, and of which types, is the conflict (Table 1.3 and Moore's classification)?
3. Using Figure 1.1, would you describe the present level of conflict as too low, optimal or too high? Justify your answer.
4. Should you respond to the newspaper? Use Table 1.4 to support your decision, and propose two steps that could make the conflict functional rather than destructive.

## Conclusion

Conflict is built into economic life because firms share value with partners they cannot do without, in markets that never stand still. This chapter has offered a vocabulary for describing it: the conditions creating it, the levels at which it arises, the forms it takes, the public stage on which it is sometimes fought and the level at which it helps rather than harms. Description, however, is not explanation. The chapter has not yet shown why writers and studios valued the same revenue so differently, or why neither trusted the other's figures. These are economic questions, and they lead directly to the first pillar of the book's argument. Chapter 2 therefore traces conflict to its roots in scarcity, in the gap between owners and the managers who act for them, in contracts that cannot foresee everything and in market power. Chapter 3 then follows a conflict through time, from its first signs to the ways in which it is managed and brought to an end.

## Exercises

### A. Objective Questions

1. According to Thomas (1992), conflict begins when one party:
   a) perceives that another has frustrated, or is about to frustrate, something it cares about
   b) openly attacks another
   c) disagrees with another about facts
   d) breaks a contract

2. Which condition is *not* part of the definition of conflict used in this chapter?
   a) interdependence
   b) perceived incompatibility
   c) equal power
   d) interference

3. A dispute between the marketing and engineering departments of one firm is an example of:
   a) intrapersonal conflict
   b) inter-organisational conflict
   c) international conflict
   d) intergroup conflict

4. Disagreement about who decides and in what order is:
   a) task conflict
   b) process conflict
   c) relationship conflict
   d) value conflict

5. Hill and Hult (2021) define culture as:
   a) the laws of a country
   b) the strategy of a multinational firm
   c) the official language of a society
   d) a system of shared values and norms that forms a design for living

6. Which of the following is a typical cost of taking a conflict public?
   a) less flexibility to compromise
   b) a more credible commitment
   c) more allies
   d) the involvement of regulators

7. According to the interactionist view of conflict (Robbins, 1974), managers should:
   a) eliminate all conflict
   b) keep conflict at an optimum level, stimulating or resolving it as required
   c) ignore conflict as natural
   d) leave conflict to trade unions

8. Under the writers' agreement of 2023, the streaming bonus is paid when a title is watched within 90 days by at least:
   a) 5 per cent of domestic subscribers
   b) 10 per cent
   c) 20 per cent
   d) 50 per cent

### B. Short-Answer Questions

1. Define conflict and explain the three conditions under which a difference becomes a conflict.

2. Distinguish task, relationship and process conflict, giving one business example of each.

3. Why do departments of the same firm come into conflict with one another? Refer to social identity theory in your answer.

4. Explain the difference between values and norms, and show how a difference in norms can cause a dispute between firms from two countries.

5. Name two gains and two costs of taking a business conflict public.

6. What is the "Hicks paradox", and what does it suggest about the role of information in strikes?

7. Describe the trend shown in Figure 1.2. What does it suggest about the costs of failed negotiations in the United States since 2018?

### C. Long-Answer Questions

1. "Conflict is neither good nor bad in itself." Discuss this statement with reference to the traditional, human relations and interactionist views of conflict and to the empirical evidence on task and relationship conflict.

2. Using Moore's classification of conflicts over interests, data, relationships, structure and values, analyse the Hollywood strikes of 2023. Explain why some elements of the dispute could be settled by bargaining while others could not.
3. Choose a recent business conflict in your own country. Map it with the tool in Table 1.2, identify the levels at which it operated and assess whether it was functional or dysfunctional for the parties and for third parties.
4. Explain how the media and social media change the course of business conflicts. Illustrate your answer with the dispute between Elon Musk and OpenAI or with another case of your choice.

## Further Reading

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CHAPTER
# 2

# The Economic Roots of Conflict

https://doi.org/10.61030/jam9-pcsy

## Introduction

Chapter 1 described conflict: the conditions that create it, the levels at which it arises and the forms it takes. Description, however, leaves the most practical question open. Why do some business relationships produce conflict again and again, while others run smoothly for decades? Personalities and misunderstandings play their part, but they rarely tell the whole story. Behind most business disputes lies an economic structure that can be identified before the parties meet, and a negotiator who reads it correctly knows where the conflict will break out, what it will be about and which side is likely to prevail.

This chapter introduces four economic roots of conflict, each recurring throughout the book. Section 2.1 shows that every transaction creates a surplus, a gain from trade to be divided, and its division is a lasting source of tension even between willing partners. Section 2.2 turns to the people who negotiate on behalf of firms and explains why agents do not always act in the interests of the principals they represent. Section 2.3 examines contracts, which can never foresee every future event, and shows how firms making investments tied to a single partner expose themselves to being held up. Section 2.4 asks where market power comes from and how it decides who can impose terms and who must accept them.

The four ideas correspond to the book's pillars. The surplus is the substance of **profit**; agency, incomplete contracts and market power are the main sources of **power**; and all four shape what each side can credibly say at the table, which is the raw material of **persuasion**. The chapter follows one case throughout: the partnership between Microsoft and OpenAI, rewritten twice in six months as the value it had created outgrew the agreement governing it. Two shorter cases examine Broadcom's licensing changes after its acquisition of VMware and the long dispute between Epic Games and Apple.

DEAL FILE

### Microsoft and OpenAI Rewrite Their Partnership, Twice

In 2019 Microsoft invested US$1 billion in OpenAI, then a research laboratory controlled by a non-profit foundation. The bargain was simple. Microsoft supplied money and computing power through its Azure cloud, while OpenAI supplied research talent and the models it built. Microsoft invested further in later years, and before the restructuring of 2025 its interest was equivalent to 32.5 per cent of OpenAI's for-profit business (Microsoft, 2025). By then ChatGPT had become one of the most widely used consumer products in the world, and investors valued OpenAI at hundreds of billions of dollars. Success turned the partnership into a negotiation.

The first round ended on 28 October 2025. OpenAI's business was recapitalised as OpenAI Group, a public benefit corporation under the control of the non-profit OpenAI Foundation, and the two firms announced new terms redrawing who owns what, who may sell what to whom and what happens if OpenAI builds artificial general intelligence (AGI), which OpenAI's charter describes as highly autonomous systems that outperform humans at most economically valuable work. Six months later, on 27 April 2026, they amended the agreement again, this time loosening the ties between OpenAI and Microsoft's cloud.

**Why the old agreement no longer fitted.** The original arrangement had been written for a laboratory, not for one of the most valuable private companies in the world. Figure 2.1 shows how quickly that value grew. Between October 2024 and March 2026 the valuation at which investors bought new OpenAI shares rose more than fivefold, from US$157 billion to US$852 billion.

Three tensions grew inside the old agreement as this value rose. First, OpenAI's demand for computing power rose faster than any single supplier could comfortably meet, yet the agreement tied it closely to Microsoft's cloud. Second, the original structure limited OpenAI's ability to raise capital from other investors, which it now needed on a scale without precedent: its funding round of March 2026 alone raised US$122 billion in committed capital (OpenAI, 2026a). Third, and most delicately, Microsoft's rights did not extend to AGI, while OpenAI's own board would decide when AGI had been reached. A single judgement by one party could therefore end the other's access to the most valuable technology that either of them had financed.

At the same time, the partners had become rivals. Both sold AI services to the same corporate customers, and Microsoft was building models of its own. Each needed the other, and each feared depending on the other too much.

**Questions to keep in mind.** Why did a partnership that created so much value generate so much conflict over its division? Why could a contract signed in good faith in 2019 not settle the questions of 2025, and why did the settlement of 2025

**Table 2.1**

*The Microsoft and OpenAI agreements at a glance*

| | |
|---|---|
| **Parties** | Microsoft; OpenAI, whose business became OpenAI Group PBC, a public benefit corporation controlled by the non-profit OpenAI Foundation |
| **At stake** | Ownership of OpenAI's business; Microsoft's rights to its technology; the exclusivity of Microsoft's cloud; revenue sharing; the treatment of AGI |
| **Timeline** | First investment in 2019; first new agreement on 28 October 2025; amended agreement on 27 April 2026 |
| **October 2025** | Microsoft holds about 27 per cent of OpenAI Group, valued at about US$135 billion. OpenAI contracts to buy a further US$250 billion of Azure services, and Microsoft gives up its right of first refusal over OpenAI's computing. An independent expert panel must verify any declaration of AGI. Microsoft's rights to OpenAI's models and products run to 2032 and extend to models built after AGI |
| **April 2026** | OpenAI may offer all its products on any cloud, although they launch first on Azure. Microsoft's licence to OpenAI's technology becomes non-exclusive. Microsoft stops paying a revenue share to OpenAI, while OpenAI's payments to Microsoft continue until 2030 at the same rate, regardless of technological progress and subject to a total cap |

*Note.* Author, based on Microsoft (2025) and OpenAI (2025b, 2026b).

last only six months? How did each side's bargaining power change as OpenAI grew? The four sections of this chapter answer these questions in turn, and the chapter returns to the case at its close.

## 2.1 Why Does Scarcity Turn into Conflict?

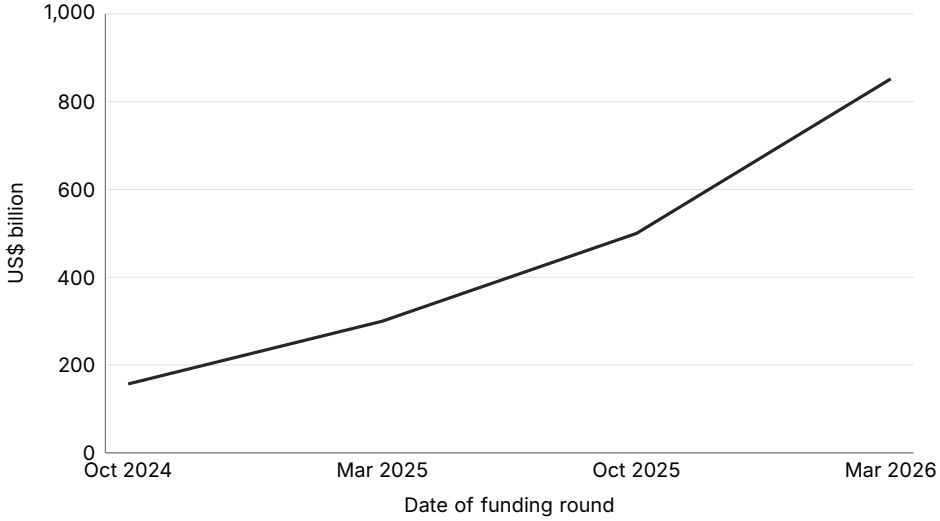
### Every Deal Creates a Surplus

Economics begins with scarcity: there is never enough of what people want to satisfy everyone. In a market, scarcity takes a precise form. Whenever a buyer values a good more than it costs a seller to provide it, a trade between them creates value. The difference between the most the buyer would pay and the least the seller would accept is the **surplus** of the transaction. Trade makes both sides better off, but it leaves open how the gain will be shared.

Consider a component maker in Opole that supplies brake housings to a German carmaker. Producing one housing costs the supplier €40, including a normal return on its capital, so it will not sell for less. The carmaker can buy an equivalent part elsewhere, delivered and certified, for €60, so it will not pay more. Any price between €40 and €60 leaves both firms better off than not trading. Each housing therefore creates a surplus of €20, and the price decides who keeps it. In

**Figure 2.1**

*Valuation of OpenAI in successive funding rounds, 2024 to 2026 (US$ billion)*




*Note.* Author, based on OpenAI (2024b, 2025a, 2026a) and Microsoft (2025). Post-money valuations of private funding rounds, not market prices. The value for October 2025 is implied by Microsoft's stake of about 27 per cent, valued at about US$135 billion.

the vocabulary of introductory economics, the carmaker's share is its **consumer surplus**, the supplier's share its **producer surplus**, and their sum the **social** or **economic surplus** of the trade (Greenlaw et al., 2022). Figure 2.2 shows the division at a price of €50, and Table 2.2 compares three possible prices.

**Table 2.2**

*Who keeps the surplus? One brake housing at three prices (€)*

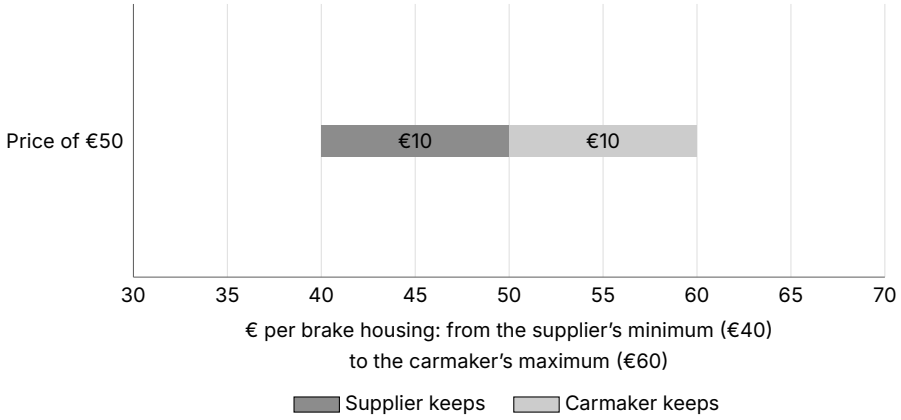
| Price agreed | Supplier's gain (price minus 40) | Carmaker's gain (60 minus price) | Total surplus |
|---|---|---|---|
| 42 | 2 | 18 | 20 |
| 50 | 10 | 10 | 20 |
| 58 | 18 | 2 | 20 |

*Note.* Author's worked example.

Table 2.2 shows the core of distributive conflict. Whatever the price, the total surplus is €20, and every euro that one firm gains, the other loses. The two limits, €40 and €60, are the parties' **reservation prices**, and the space between them

**Figure 2.2**

*The surplus from one brake housing at a price of €50 (€ per unit)*




*Note.* Author's worked example.

is what Raiffa (1982) called the zone of possible agreement. The negotiation decides where in that zone the price will fall. Because each side usually knows its own limit but not the other's, each has a reason to conceal it and to probe for the other's, which is why even friendly negotiations contain an element of contest.

### Claiming Value and Creating Value

Walton and McKersie (1965) distinguished two kinds of bargaining that run through almost every negotiation. In **distributive bargaining** the parties divide a fixed amount, as in Table 2.2. In **integrative bargaining** they look for ways to enlarge the amount itself. The supplier and the carmaker might agree on a five-year contract allowing the supplier to buy a more efficient machine, lowering its cost to €36; or they might redesign the housing together so that it serves two models instead of one. Such moves raise the total surplus, and Chapter 8 examines them in detail.

Creating value, however, does not end the conflict. A larger surplus still has to be divided, and the moves which create value often expose the party making them. A supplier revealing its true costs in order to find savings also reveals how low a price it could accept. Lax and Sebenius (1986) called this permanent tension between creating value and claiming it the **negotiator's dilemma**: the openness needed to enlarge the surplus is the same openness that a tough counterpart can exploit to claim it. It explains why so many partnerships swing between cooperation and suspicion.

### When the Surplus Is Large, Uncertain and Delayed

Conflict over division is sharpest under three conditions. The first is size: the more there is to divide, the more each side gains from a slightly larger share and the more it will spend on lawyers, delay and threats to obtain it. The second is uncertainty: when nobody can measure how much of the surplus each party produced, each can tell a plausible story in which it deserves more. The third is timing: when most of the surplus lies in the future, the parties must divide something that does not yet exist, and their estimates of it will differ.

All three conditions held for Microsoft and OpenAI. The surplus grew from a research budget into a business implicitly valued at about US$500 billion by October 2025. Nobody could say how much of this value came from OpenAI's researchers and how much from Microsoft's money, data centres and corporate customers, and most of it lay in products and revenues which did not yet exist. Each side could therefore argue, with some justice, that it deserved the larger share. The same three conditions explain the Hollywood strikes of Chapter 1, in which writers, actors and studios disagreed about the value of streaming and could not observe how much any title earned.

---

**KEY MOVE**

Before negotiating, estimate the surplus: what the deal is worth to each side compared with not dealing at all. You cannot judge a fair or a winning share of something you have not measured, and where the surplus is uncertain, agree first on how it will be measured.

---

## 2.2 Why Do Agents Not Always Act for Their Principals?

### Principals, Agents and Hidden Information

Firms rarely negotiate in person. Shareholders hire managers, managers send sales teams and lawyers, and workers elect union leaders. In each case a **principal** delegates a task to an **agent**, whose interests are never quite the same. Jensen and Meckling (1976) showed that this relationship creates *agency costs*: the losses arising when agents pursue their own goals, together with what principals spend on monitoring and motivating them. Eisenhardt (1989) showed that the same logic applies wherever one party acts for another under uncertainty and unequal information.

Agency problems grow out of that unequal information, which takes two main forms.

- **Hidden action (moral hazard).** The principal cannot observe how hard or how loyally the agent works. A buyer cannot see whether its purchasing manager really pressed every supplier for a better price, or settled early to avoid an awkward meeting.
- **Hidden information (adverse selection).** One party knows something about quality or value which the other does not. Akerlof (1970) showed that in such markets the better offers can disappear, because buyers who cannot tell good from bad are willing to pay only for average quality, and sellers of good products then withdraw.

In principle both problems have the same remedy: align the agent's rewards with the principal's goals and narrow the information gap through monitoring, reporting or a right to verify. Every such remedy is costly, and none is complete.

### Agency Problems at the Negotiating Table

Every negotiator is someone's agent, and so is the negotiator opposite. The result is a conflict behind each side of the table that can matter as much as the conflict across it. Table 2.3 gives typical examples.

**Table 2.3**

*Agency problems in business negotiation*

| Agent | Principal | Possible divergence | Typical remedy |
|---|---|---|---|
| Sales representative paid on volume | The selling firm | Gives away margin to close more deals | Commission on margin, not only on volume |
| Lawyer paid by the hour | The client | Prolongs talks or litigation | Fixed or success-based fees; budgets |
| Union leader facing re-election | Union members | Avoids any deal that looks like a retreat | Membership ballots on the final offer |
| Chief executive in a takeover | Shareholders | Pursues size and prestige rather than value | Independent board committees; fairness opinions |
| Government trade negotiator | Citizens and firms | Favours organised interests or short-term headlines | Parliamentary scrutiny; publication of texts |

*Note.* Author, based on Jensen and Meckling (1976) and Eisenhardt (1989).

Agency problems also explain several familiar tactics. A negotiator who says that a superior will never approve a concession may be telling the truth, or may be using a real or invented principal to gain leverage; Chapter 17 returns to this "limited authority" tactic. Conversely, a counterpart whose agent is paid on volume will often accept a lower price than its principal would wish, and a well-prepared negotiator can take this into account.

### An Unusual Principal

In the Deal File, the agency problem took an unusual form. OpenAI's business was controlled by a non-profit board whose stated duty was to a mission, ensuring that advanced AI benefits humanity, rather than to investors. Microsoft, a large investor, therefore depended on decision makers who were not obliged to maximise its returns. The risk became visible in November 2023, when OpenAI's board dismissed its chief executive without consulting Microsoft, only to reinstate him within days after pressure from employees and investors; Chapter 3 examines that crisis. The recapitalisation of October 2025 kept the foundation in control but gave Microsoft and other investors conventional equity in a public benefit corporation, which must balance the interests of shareholders with its stated public purpose. In the language of this section, the parties tried to reduce the agency problem without abolishing the mission that created it.

---

**KEY MOVE**

Ask whom the other negotiator works for, and how he or she is paid and judged. The answer often predicts which offers will be accepted better than the merits of the offers themselves.

---

## 2.3 Why Do Contracts Break Down? Transaction Costs and Hold-Up

### The Cost of Using the Market

Coase (1937) asked why firms exist at all if markets allocate resources so well. His answer was that using the market has costs: finding partners, negotiating terms, writing contracts and enforcing them. When these costs are high, it can be cheaper to organise an activity inside a firm, under managerial authority, than to buy it on the market. Williamson (1985) developed this insight into **transaction cost economics**, which asks which form of organisation (market, contract or firm) governs a given transaction at the lowest cost. Transactions are costly to govern, and prone to conflict, when three features are present:

- **asset specificity**: one party has invested in machines, skills, locations or data that are worth much less outside the relationship;
- **uncertainty**: the future is too unpredictable to be described in a contract;
- **frequency**: the parties deal with each other repeatedly, so the stakes of getting the governance right are high.

The same logic explains why multinational firms often prefer to own their foreign operations rather than license their technology to independent partners, a choice examined at length in the author's companion textbook on multinational

enterprise strategy (Kumar, 2026a). It also explains why foreign investors weigh the institutional quality of a host country so carefully: where contracts are hard to enforce, every specific investment becomes a hostage, a theme developed in the author's comparative study of foreign direct investment in India and Poland (Kumar, 2020) and in Chapter 15.

### Incomplete Contracts and Hold-Up

No contract can foresee everything. Writing a complete contract would require the parties to list every possible future event and to agree on what should happen in each, which is impossible when the future is genuinely uncertain. Contracts are therefore **incomplete**. When something unforeseen happens, the parties must renegotiate, and they do so from positions that their earlier investments have changed.

A party that has made a **specific investment** is exposed. Once the investment is sunk, the other side can threaten to walk away and demand a larger share of the surplus, knowing that the investor's alternatives are poor. This is the **hold-up problem** (Klein et al., 1978; Williamson, 1985). Its most damaging effect is not the transfer of value after the event but the loss of value before it: a firm anticipating hold-up will invest less than it should, and some valuable projects will never begin. Hart (2017) has shown how this insight, developed in the property rights theory of Grossman and Hart (1986), explains when firms integrate and who should own the assets on which a relationship depends.

The classic illustration is the relationship between General Motors and its body supplier, Fisher Body, in the 1920s, which ended with General Motors buying Fisher outright. The story is often told as a case of hold-up, although Coase (2000) later questioned that reading of the historical evidence. The lesson surviving the debate is that firms anticipate hold-up and design their relationships to limit it. Table 2.4 lists the main safeguards.

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**KEY MOVE**

Before making an investment that only one partner can use, negotiate the safeguards. Once the investment is made, your bargaining position will be weaker, and the other side will know it.

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**Table 2.4**

*Safeguards against hold-up*

| Safeguard | How it works | Its cost |
|---|---|---|
| Vertical integration | Buy the partner, so that no outside party can hold you up | Large capital outlay; loss of market discipline |
| Long-term contract | Fix prices or price formulas in advance | Rigidity when conditions change |
| Mutual specific investment | Both sides invest, so both have something to lose | Requires trust to begin with |
| Multiple sourcing | Keep alternative suppliers or customers | Smaller volumes and higher unit costs |
| Renegotiation and exit clauses | Agree in advance how changes will be handled | Hard to draft; open to gaming |
| Third-party verification | Let an independent expert or arbitrator decide disputed facts | Fees, delay and the risk of an unwelcome verdict |

*Note.* Author, based on Klein et al. (1978), Williamson (1985) and Hart (2017).

DEAL SNAPSHOT

### Broadcom and VMware's Customers, 2023 to 2026

In July 2023 the European Commission cleared Broadcom's acquisition of VMware, the leading supplier of server virtualisation software, after Broadcom offered a remedy to preserve interoperability (Broadcom, 2023). The deal was completed in November 2023. Broadcom then stopped selling perpetual licences in favour of subscriptions and bundled many products under new terms. Its chief executive had publicly set the goal of raising VMware's annual earnings before interest, tax, depreciation and amortisation from about US$4.7 to 5 billion to US$8.5 billion within three years. European cloud providers complained of sharp price increases, compulsory multi-year subscriptions and bundling. In July 2025 their association, CISPE, asked the EU General Court to annul the Commission's clearance (Case T-503/25), arguing that the Commission had ignored the risk of Broadcom using VMware's dominant position to raise prices and deepen customer lock-in (CISPE, 2025). Firms that had built their infrastructure around one supplier's software had made precisely the kind of specific investment against which Table 2.4 warns. When the supplier changed hands and changed its terms, their room to negotiate was small, and they turned to the law to change the rules instead.

## 2.4 Where Does Market Power Come From?

### Power Rooted in Market Structure

In a perfectly competitive market no firm can dictate terms, because buyers and sellers can always turn to someone else. Real markets are rarely like that. **Market power**, the ability to set prices or conditions above competitive levels without losing most customers, arises from several sources (Tirole, 1988). Porter (2008) showed how the bargaining power of buyers and suppliers depends on the structure of an industry: how many firms there are on each side, how important the product is to the buyer and how costly it is to switch. Shapiro and Varian (1999) added that in information industries, switching costs and network effects can lock customers in for years. Table 2.5 translates these sources into what a negotiator experiences at the table.

**Table 2.5**

*Sources of market power and how they appear in negotiation*

| Source | Example | What the weaker side experiences |
|---|---|---|
| Concentration | Few suppliers of a critical input | Take-it-or-leave-it offers |
| Switching costs | Software, data and staff skills tied to one system | Price rises at contract renewal |
| Network effects | A platform that is valuable because everyone uses it | Terms set by the platform's rules |
| Control of a bottleneck | The only route to customers or to a key technology | Fees on every transaction |
| Legal protection | Patents, licences, exclusive concessions | No alternative supplier for a period |

*Note.* Author, based on Porter (2008), Shapiro and Varian (1999) and Tirole (1988).

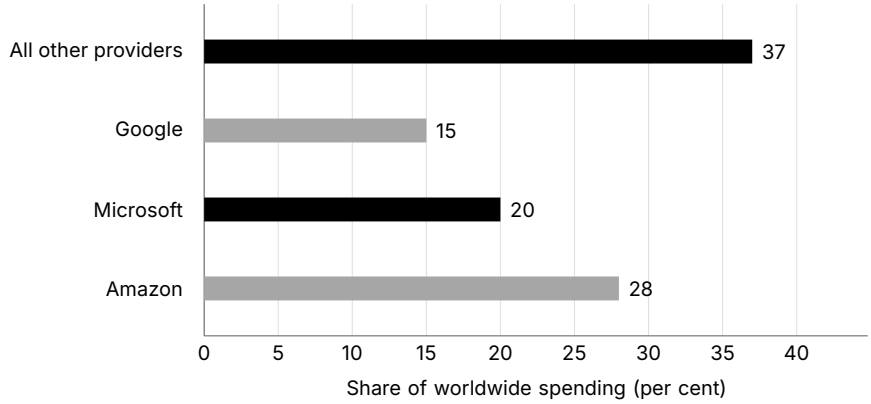
### Measuring Concentration

Economists and competition authorities measure concentration with the **Herfindahl-Hirschman Index (HHI)**, the sum of the squared market shares of all firms in a market. A market served by a single firm scores 10,000; a market divided among a hundred firms with 1 per cent each scores 100. Under the merger guidelines of the US competition authorities, a market with an index above 1,800 is regarded as highly concentrated (US Department of Justice & Federal Trade Commission, 2023).

Cloud computing, the market at the heart of the Deal File, illustrates the measure. Figure 2.3 shows the shares of worldwide spending on cloud infrastructure services in the second quarter of 2026, when the market was worth US$143.4 billion in a single quarter.

**Figure 2.3**

*Shares of the worldwide market for cloud infrastructure services, second quarter of 2026 (per cent)*




*Note.* Author, based on Synergy Research Group (2026). "All other providers" is the remainder of the market and includes many firms with small individual shares.

Counting only the three leaders, the index is already $28^2 + 20^2 + 15^2 = 1{,}409$, and the true figure is higher, because the remaining providers add to it. For a firm buying cloud services, the practical meaning is plain: three suppliers are able to serve a very large customer, and moving from one to another is slow and expensive. For OpenAI, whose need for computing power exceeded what any provider could easily supply, the narrowness of this market was a source of dependence; for Microsoft, the right to be OpenAI's main supplier was a source of power. The agreements of 2025 and 2026 can be read as a step-by-step loosening of that dependence.

### When Market Power Meets the Law

Market power is not illegal in itself, but its abuse can be. Competition authorities and courts therefore become hidden parties to many business negotiations. Since March 2024 the European Union's Digital Markets Act has imposed obligations on large platforms designated as "gatekeepers", limiting the terms they may impose on business users (Regulation (EU) 2022/1925, 2022). A weaker party unable to win at the table may try to change the rules of the table by turning to a regulator or a court, as CISPE did in the Broadcom case and as Epic Games did against Apple.

DEAL SNAPSHOT

### Epic Games v. Apple, 2020 to 2026

Apple's App Store is the only route to customers on the iPhone, and Apple charges developers a commission on sales. Epic Games, the maker of *Fortnite*, sued in 2020. In 2021 the district court largely ruled for Apple but ordered it to allow developers to direct customers to cheaper payment options outside their apps. Apple responded by charging a commission of 27 per cent on purchases made through such links. On 30 April 2025 the district court held Apple in civil contempt for failing to comply and barred it from charging any fee on those purchases (*Epic Games, Inc. v. Apple Inc.*, 2025a). On 11 December 2025 the Court of Appeals for the Ninth Circuit upheld the contempt finding but sent the question of what commission Apple may charge back to the district court (*Epic Games, Inc. v. Apple Inc.*, 2025b). Apple then petitioned the US Supreme Court, which on 30 June 2026 agreed to review the contempt finding. Apple filed its brief in September 2026, Epic's was due in November and the case was set for argument on 11 January 2027; meanwhile, in August 2026, Justice Kagan refused Apple's request to halt the proceedings in the district court (Supreme Court of the United States, 2026). The dispute shows a firm with control of a bottleneck setting the terms, and a weaker party using the courts to renegotiate them over six years and counting.

KEY MOVE

Map the market before the meeting. Your real bargaining power depends less on your arguments than on how easily each side could find another partner, and on which authorities could change the terms.

BACK TO THE DEAL FILE

## Reading the Microsoft and OpenAI Agreements

Seen through the four lenses of this chapter, the agreements of 2025 and 2026 are less peace treaties than a redesign of the relationship's economic architecture.

**The surplus had outgrown its original division.** The terms of 2019 divided a modest and speculative surplus. By 2025 the surplus was measured in hundreds of billions of dollars, and both sides could argue that it rested mainly on their own contribution. The growth shown in Figure 2.1 made the old division untenable for the party whose contribution was growing faster.

**Each side faced an agency problem.** Microsoft's investment was governed by a board bound to a non-profit mission rather than to investors. OpenAI, for

its part, depended on a partner whose managers answered to Microsoft's shareholders and were developing competing products.

**Hold-up threatened in both directions.** Microsoft had built substantial datacentre capacity to serve OpenAI, and OpenAI had built its products on Microsoft's cloud. The AGI clause was an incomplete contract in its purest form: a vital term depended on a future event which could not be defined in advance and which one party alone could declare.

**The new terms read like a list of safeguards.** Table 2.6 matches the main provisions of the two agreements to the safeguards in Table 2.4.

**Table 2.6**

*The agreements of 2025 and 2026 as a set of safeguards*

| Provision | Safeguard it represents | Problem it addresses |
|---|---|---|
| Microsoft converts its position into a stake of about 27 per cent (2025) | Partial integration | Aligns Microsoft's returns with OpenAI's long-term value |
| OpenAI commits to US$250 billion of Azure purchases (2025) | Long-term contract | Protects Microsoft's investment in capacity |
| Microsoft gives up its right of first refusal on computing (2025); OpenAI may sell on any cloud (2026) | Multiple sourcing | Reduces OpenAI's dependence on one supplier |
| An independent panel verifies any declaration of AGI, under the 2025 agreement | Third-party verification | Removes one party's power to trigger a vital clause alone |
| Fixed end dates for Microsoft's rights and for revenue sharing (2030 and 2032) | Renegotiation clause | Replaces open-ended uncertainty with known horizons |
| Revenue share payments no longer depend on technological progress and are capped (2026) | Revised long-term contract | Removes the link between payments and the disputed AGI trigger |

*Note.* Author, based on Microsoft (2025) and OpenAI (2025b, 2026b).

**Market power had shifted.** In 2019 OpenAI needed Microsoft far more than Microsoft needed OpenAI. By 2026 OpenAI could raise capital from many investors, including Amazon, Nvidia and SoftBank, and could buy computing from several suppliers, while Microsoft's own AI strategy relied heavily on OpenAI's models. The amendment of April 2026, which made Microsoft's licence non-exclusive and freed OpenAI to sell through rival clouds, reflects that rebalancing; the companies did not publish the amount of the cap on OpenAI's revenue share payments. The scale of the stakes became clearer at the end of

July 2026, when Microsoft's annual report disclosed that its commercial arrangements with OpenAI had generated US$24.1 billion of revenue in the financial year to June 2026 (Microsoft, 2026).

**Why the 2025 settlement lasted only six months.** The speed of the second renegotiation is itself a lesson of this chapter. When the surplus is growing rapidly and the future is uncertain, any contract becomes incomplete almost as soon as it is signed. The parties did not fail. They treated their agreement as a framework to be revisited, which is how the most valuable relationships in fast-moving industries are often governed.

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MA EXTENSION

### Who Should Hold the Residual Rights?

Grossman and Hart (1986) argued that, because contracts are incomplete, what matters most is who holds the *residual rights of control*: the right to decide whatever the contract does not specify. Ownership should go to the party whose specific investments matter most for creating value, because that party is most exposed to hold-up. Hart and Moore (1990) extended the argument to many parties and assets, and Hart (2017) reviews the theory and its applications. Apply the theory to the Deal File. Whose investments were more important for creating value in 2019, and whose in 2026? Does an equity stake of about 27 per cent in a business controlled by a non-profit foundation allocate residual control efficiently? What role does an independent panel play when neither side can be trusted to hold a residual right alone, and why might the parties later have preferred to remove the AGI trigger from their payment terms altogether?

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ETHICS CHECK

OpenAI was founded with a mission to ensure that advanced AI benefits all of humanity, and its non-profit foundation still controls the business. Microsoft's managers owe duties to their shareholders. When a mission-driven organisation negotiates with a profit-driven one, whose interests should prevail if they conflict? Should the public, which is affected by the technology but absent from the table, have a voice in such negotiations, and through whom?

### Pillar Scorecard

### Your Move

*This is a constructed teaching case.*

You run a family-owned firm near Wrocław that makes injection-moulded plastic parts. A large Scandinavian furniture group offers you a five-year contract for a new range of fittings. To meet its specifications you would need moulds and a production line costing PLN 6 million that no other customer could use. The group proposes a fixed price for the first year and "annual price reviews by

**Table 2.7**

*Pillar Scorecard: Microsoft and OpenAI, 2025 and 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | A surplus of hundreds of billions of dollars had to be divided between partners who were also competitors |
| Power | Very high | Specific investments, dependence on one cloud, a concentrated market and a unilateral AGI trigger shaped each side's leverage |
| Persuasion | Moderate | Public statements stressed partnership and mission, but the outcome rested mainly on economic structure |

mutual agreement" thereafter. It will not pay for the moulds, and its purchasing manager, you learn, receives a bonus based on annual savings.

1. Estimate, in qualitative terms, the surplus the contract would create and who would capture it after the first year.
2. Identify the risk of hold-up and the moment at which it would arise.
3. What does the purchasing manager's bonus tell you about the agency problem on the other side of the table, and how might it affect your strategy?
4. Choose two safeguards from Table 2.4 and draft the clauses you would propose.
5. What information about the market for furniture fittings would strengthen your position?

## Conclusion

Behind the personalities and the public statements, most business conflicts have an economic skeleton. A transaction creates value to be divided; the people who negotiate the division act for others whose interests they do not fully share; the contracts recording the division cannot foresee the future; and the structure of the market decides who can walk away. Microsoft and OpenAI did not renegotiate twice in six months because their executives misunderstood each other. They renegotiated because the economics of their partnership had changed beyond what each agreement could absorb, and because the balance of dependence between them was shifting. A negotiator who can read this skeleton can often predict where a conflict will break out before either side notices it, and can design safeguards before they are needed. This is the first meaning of the book's title: profit is not only what firms seek in a negotiation but also what sets them against each other. Knowing why a conflict exists, however, is not the same as knowing

how it will unfold. Chapter 3 follows conflict as a process, from its first signs through escalation to the ways in which individuals and organisations manage it and bring it to an end.

## Exercises

### A. Objective Questions

1. The surplus of a transaction is the difference between:
   a) the price and the seller's cost
   b) the most the buyer would pay and the least the seller would accept
   c) the buyer's budget and the market price
   d) revenue and profit

2. In Table 2.2, raising the price from €50 to €58:
   a) leaves the total surplus unchanged and shifts €8 per unit to the supplier
   b) reduces the total surplus
   c) increases the total surplus
   d) creates a loss for both firms

3. Lax and Sebenius (1986) called the tension between creating and claiming value:
   a) the hold-up problem
   b) adverse selection
   c) the winner's curse
   d) the negotiator's dilemma

4. According to Jensen and Meckling (1976), agency costs include:
   a) only the agent's salary
   b) taxes on agency fees
   c) losses from divergent interests plus the costs of monitoring and motivating agents
   d) only the cost of legal disputes

5. A purchasing manager who, unobserved by the employer, does not press suppliers hard illustrates:
   a) adverse selection
   b) moral hazard
   c) network effects
   d) vertical integration

6. Which feature does *not* raise transaction costs in Williamson's framework?
   a) asset specificity
   b) uncertainty
   c) a perfectly competitive spot market
   d) frequency of dealings

7. Hold-up occurs when:
   a) prices are set by auction
   b) a contract is fully enforced
   c) a buyer pays in advance
   d) a party that has made a specific investment is pressed to accept worse terms

8. A market served by four firms with shares of 40, 30, 20 and 10 per cent has a Herfindahl-Hirschman Index of:
   a) 100
   b) 1,000
   c) 3,000
   d) 10,000

9. Under the agreement of October 2025, any declaration that AGI has been reached must be verified by:
   a) an independent expert panel
   b) OpenAI's board alone
   c) Microsoft's board
   d) a US court

10. In Epic Games v. Apple, the source of Apple's market power stressed in this chapter is:
    a) a patent on smartphones
    b) government ownership
    c) low prices
    d) control of a bottleneck between developers and iPhone users

### B. Short-Answer Questions

1. Define the surplus of a transaction and explain why its division is a source of conflict even between willing partners.

2. Distinguish distributive from integrative bargaining, and explain the negotiator's dilemma.

3. Explain the difference between moral hazard and adverse selection, giving one business example of each.

4. Why are contracts incomplete? Explain how an incomplete contract combined with a specific investment can lead to hold-up.

5. Name four safeguards against hold-up and state the main cost of each.

6. Calculate the Herfindahl-Hirschman Index for a market in which three firms hold 50, 30 and 20 per cent. Would US competition authorities regard it as highly concentrated?

7. Using Figure 2.3, explain why concentration in cloud computing mattered for the negotiations between Microsoft and OpenAI.

### C. Long-Answer Questions

1. "Most business conflicts have an economic skeleton." Discuss this statement with reference to the four roots of conflict presented in this chapter, illustrating each with a case of your choice.
2. Analyse the agreements between Microsoft and OpenAI of October 2025 and April 2026 using transaction cost economics and the theory of incomplete contracts. Why did the first agreement last only six months?
3. Compare the Broadcom and VMware case with Epic Games v. Apple. In each case, what was the source of the stronger party's power, and why did the weaker party turn to regulators or courts rather than continue to negotiate?
4. You advise a Polish manufacturer considering a long-term supply contract with a much larger foreign customer. Using the concepts of surplus, agency, hold-up and market power, set out the risks it faces and the terms it should seek.

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CHAPTER

# 3

# The Conflict Process and Its Management

https://doi.org/10.61030/unup-ndyg

## Introduction

A conflict is not a single event but a story with a beginning, a middle and an end. It may lie hidden for years in the structure of a relationship, surface suddenly over a minor issue, grow until it absorbs everyone's attention and then subside, leaving the parties sometimes stronger and sometimes unable to work together again. What a manager or negotiator can usefully do depends on where in this story the conflict stands. A word at the right moment can prevent a dispute that, a month later, would require lawyers, mediators or a public campaign to resolve.

This chapter follows conflict through time and asks how it can be managed at each stage. Section 3.1 sets out the stages through which conflicts typically pass and explains why so many of them escalate. Section 3.2 turns to the opposite movement and asks what makes a conflict ripe for settlement. Section 3.3 introduces the five styles that individuals use to handle conflict and shows when each of them is appropriate. Section 3.4 moves from individuals to organisations and examines the measures and systems that firms use to prevent conflict or to contain it before it becomes costly. Section 3.5 asks what conflict costs and what remains when it is over.

The chapter builds directly on the first two: Chapter 1 described what conflict is, Chapter 2 explained its economic roots, and this chapter explains how it moves. In terms of the book's pillars, escalation is largely a contest of **power**, the choice of style is a choice about how much **profit** to claim and how much to share, and the de-escalation of a conflict depends heavily on **persuasion**. The Deal File follows a dispute between two of the largest companies in American television, which left millions of households without some of their favourite channels for two weeks in the autumn of 2025.

DEAL FILE

## Disney and YouTube TV Go Dark

Pay television in the United States is built on carriage agreements. Distributors such as cable companies and streaming services pay channel owners a fee for each subscriber in return for the right to carry their channels. When an agreement expires without a new one, the channels disappear from the distributor's service, an event the industry calls a *blackout*. Most negotiations end without one, but a blackout is the threat that hangs over all of them.

On the night of 30 October 2025, the agreement between Disney and YouTube TV, Google's streaming television service, expired without renewal. ABC, ESPN, FX, National Geographic and Disney's other channels went dark for YouTube TV's millions of subscribers (YouTube, 2025). The dispute was a meeting of giants. Figure 3.1 shows that in October 2025 the two companies were the largest and second-largest distributors of television in the United States, measured by their share of all viewing time.

**Table 3.1**

*The Disney and YouTube TV dispute at a glance*

| | |
|---|---|
| **Parties** | The Walt Disney Company, owner of ABC, ESPN and other channels; YouTube TV, the live television service of Google |
| **At stake** | The fees YouTube TV would pay for Disney's channels; the packaging of Disney's channels and streaming services; each side's position in a changing television market |
| **Duration** | About two weeks, from the expiry of the agreement on 30 October 2025 to a new agreement on 14 November 2025 |
| **Outcome** | A multi-year agreement; all Disney channels restored; ESPN's streaming service (the Unlimited plan) made available to YouTube TV subscribers at no extra cost; financial terms not disclosed |

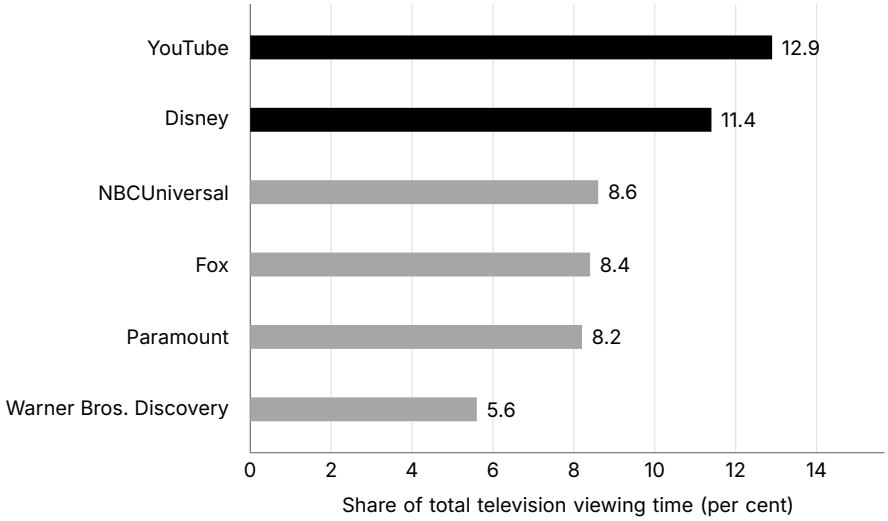
*Note.* Author, based on The Walt Disney Company (2025) and YouTube (2025).

**How the conflict escalated.** Both sides took their case directly to the public. A week before the deadline, YouTube TV told its subscribers that Disney was proposing costly terms which would raise their prices, and promised a credit of US$20 if Disney's channels stayed off the service for an extended period. When the channels went dark, it accused Disney of a decision that harmed subscribers while benefiting Disney's own live television products, which competed with YouTube TV (YouTube, 2025). Each public statement was as much a message to subscribers as a proposal to the other side, and each made retreat harder.

**How it ended.** On 14 November the companies announced a new multi-year agreement in time for a weekend of college football. Disney's channels returned, YouTube TV's subscribers gained access to ESPN's new streaming service at no

**Figure 3.1**

*Shares of total television viewing time in the United States by media distributor, October 2025 (per cent)*




*Note.* Author, based on Nielsen (2025). Shares cover viewing on television sets across broadcast, cable and streaming between 29 September and 26 October 2025; the figure shows selected media companies named in the release.

extra cost, and Disney+ and Hulu could be included in some of YouTube's offers (The Walt Disney Company, 2025). Both sides presented the result as a gain for viewers.

**Questions to keep in mind.** Why did two companies that needed each other let their agreement lapse? What made the dispute escalate, and what finally made it ripe for settlement? Which conflict-handling style did each side adopt, and was it the right one? What did two weeks of blackout cost the parties, their customers and their relationship? The chapter answers these questions in turn.

## 3.1 How Does Conflict Begin and Escalate?

### The Stages of Conflict

Pondy (1967) proposed that conflicts pass through a sequence of stages, which Table 3.2 summarises. The first stage is *latent* conflict: the conditions for conflict exist in the structure of the relationship, but nobody yet feels them. Competition for scarce resources, a desire for autonomy and divergent goals are typical sources, and Chapter 2 showed how economic structures create them. In the *perceived* stage, at least one party becomes aware that its interests are threatened. In

the *felt* stage the conflict becomes personal, as anxiety, frustration and hostility enter the picture. The *manifest* stage is the conflict in action: a refusal, a lawsuit, a strike or a blackout. Finally, every conflict has an *aftermath*, which becomes the starting point of the next round.

**Table 3.2**

*Pondy's stages of conflict applied to the Deal File*

| Stage | What happens | In the Disney and YouTube TV dispute |
|---|---|---|
| Latent | Structural conditions for conflict exist | Rising channel fees met falling numbers of pay-television subscribers; each side also sold competing services |
| Perceived | One or both parties recognise the threat | Renewal talks revealed a wide gap between the parties' proposals |
| Felt | Emotions and hostility enter | Public accusations of unfair rates and abuse of market power |
| Manifest | Open action against the other side | The agreement lapsed and the channels went dark |
| Aftermath | The legacy that shapes future relations | A new agreement, a precedent for future renewals and a test of customer loyalty |

*Note.* Author, based on Pondy (1967).

The model offers two practical lessons. First, conflicts are cheapest to manage early. At the latent stage they can be removed by changing structures, contracts or incentives, while at the manifest stage they must be fought or negotiated. Second, the stages are not a one-way street. A conflict can remain latent for years, and a manifest conflict can return to a latent state when the parties sign an agreement leaving the underlying tensions unresolved.

### Why Conflicts Escalate

Escalation is the tendency of a conflict to grow more intense, more costly and harder to stop. Pruitt and Kim (2004) identified five transformations that typically accompany it, summarised in Table 3.3. The parties move from light tactics, such as persuasion, to heavy ones, such as threats; the number of issues grows; specific complaints become general accusations; more parties are drawn in; and the goal shifts from doing well, to winning, to hurting the other side.

Several mechanisms drive these transformations. **Retaliation spirals** arise when each side answers the other's move with a slightly stronger one, so that every step appears defensive to the party taking it and offensive to the party receiving it. **Commitment** makes retreat costly: once a party has declared publicly that it will not pay a certain rate, a concession looks like defeat, as Chapter 1 showed. **Sunk costs** encourage parties to continue a conflict to justify what they

DEAL SNAPSHOT

### Yahoo Ends Working from Home, 2013

In February 2013 Yahoo told its employees in an internal memo from its head of human resources that staff who had worked from home would in future have to work in the company's offices. The memo argued that the company needed to be "one Yahoo", and that communication and collaboration depended on people being physically together. The decision belonged to the chief executive, Marissa Mayer, who had joined from Google in 2012 to restore the company's performance. It came suddenly and without consultation, and it provoked anger among employees and a national debate in the United States about flexible work and working parents, sharpened by the fact that Mayer, one of the few women leading a Fortune 500 company, had returned to work two weeks after the birth of her son (Nahavandi et al., 2014). In Pondy's terms, a latent conflict over where and how work should be done became perceived, felt and manifest almost overnight, and a dispute inside one firm turned into a public controversy. The same question returned in the 2020s, when employers that had relied on remote work during the pandemic began to call their staff back to the office.

**Table 3.3**

*Five transformations during escalation*

| From | To | Business illustration |
|---|---|---|
| Light tactics | Heavy tactics | From proposals to blackouts, strikes and lawsuits |
| Few issues | Many issues | A dispute about price widens into one about packaging, rival services and market power |
| Specific complaints | General accusations | "Your offer is too high" becomes "you are abusing your dominance" |
| Few parties | Many parties | Customers, politicians, regulators and the media are drawn in |
| Doing well | Winning, then hurting the other side | The aim shifts from a good deal to a public victory |

*Note.* Author, based on Pruitt and Kim (2004).

have already spent on it. **Selective perception** leads each side to notice the evidence that confirms its view of the other as unreasonable. Glasl (1982) described how conflicts that pass certain thresholds, such as the loss of face or the use of threats, become progressively harder to reverse without outside help.

Escalation is also driven by what each group believes about itself and about the other. Eidelson and Eidelson (2003) identified five beliefs that push groups towards conflict. A belief in **superiority** leads a group to see itself as entitled to privileged treatment and others as lazy or inferior. A belief in **injustice** leads it to read misfortune as deliberate mistreatment, so that a layoff caused by lost market share is taken as an attack on labour. A belief in **vulnerability** keeps a group anxious and prone to pre-emptive action, such as a sudden strike or arbitrary dismissals, which provokes the very retaliation it fears. **Distrust** makes every move of the other side look hostile: in a firm with a long history of conflict between management and workers, an unexpected bonus may be met with the question of what management is really after. A belief in **helplessness** persuades a group that nothing it does will make a difference, so it stops trying. Such beliefs are most powerful when the whole group shares them and holds them so deeply that they become unquestioned assumptions; evidence against them is then ignored or explained away. A manager or negotiator who hears these beliefs voiced on either side of the table has learned something important about how hard the conflict will be to settle.

The Disney and YouTube TV dispute showed several of these mechanisms at work, although it never reached the most destructive stages. The conflict widened from fees to packaging and to each side's competing services, drew in subscribers and politicians through public messaging, and moved from offers to the heavy tactic of withdrawing the channels. Neither side, however, sought to destroy the other, because each needed the other's business.

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**KEY MOVE**

Watch for the signs of escalation: heavier tactics, more issues, broader accusations, new parties and a change of goal from winning a good deal to winning the fight. Each is a warning that the conflict is becoming more expensive to stop.

---

## 3.2 How Do Conflicts Cool Down?

### Ripeness and the Hurting Stalemate

If escalation has its own momentum, why do conflicts end at all? Zartman (2000) argued that parties settle when a conflict becomes *ripe*, and ripeness has two elements. The first is a **mutually hurting stalemate**: both sides realise they cannot win at an acceptable cost and that continuing will hurt them more than settling. The second is a **way out**: both sides can see that a negotiated solution is possible. Ripeness is a matter of perception, so a stalemate which hurts but is not recognised as hurting does not produce settlement, and a party believing its rival will soon give in will continue to fight.

In the Deal File, the stalemate hurt both sides from the first day. YouTube TV risked losing subscribers who wanted football, while Disney lost the fees and the advertising revenue that YouTube TV's viewers had generated. The pain grew as major sporting events approached, which is why a weekend of college football served as a natural deadline. The way out was a familiar structure for such disputes: a new fee arrangement combined with a non-monetary element, the inclusion of ESPN's streaming service, which allowed each side to present the outcome as a gain.

### Strategies for De-Escalation

Parties and third parties have several tools for reversing escalation.

- **Unilateral conciliatory moves.** Osgood (1962) proposed a strategy of *graduated and reciprocated initiatives in tension reduction*: one party announces and carries out a small concession, invites the other to reciprocate and continues only if it does. A distributor that offers to keep paying the old fee while talks continue, in return for keeping the channels on air, makes a move of this kind.
- **Separating the people from the problem.** Reducing personal hostility and refocusing the discussion on interests, a method developed by Fisher and Ury (1981) and examined in Chapter 17.
- **Fractionating the conflict.** Breaking a large dispute into smaller issues, each of which can be settled in turn.
- **Face-saving formulas.** Packaging an agreement so that both sides can claim success, as the inclusion of ESPN's streaming service allowed.
- **Third parties.** Mediators, conciliators and arbitrators, discussed in Chapter 5, can lower the cost of concessions by making them look like responses to a neutral proposal rather than surrender.

DEAL SNAPSHOT

**OpenAI's Five-Day Crisis, November 2023**

On 17 November 2023 the board of OpenAI announced that its chief executive, Sam Altman, was leaving the company because he had not been consistently candid in his communications with the board (OpenAI, 2023a). The conflict escalated with remarkable speed. The company's president, Greg Brockman, resigned, and on 20 November Microsoft, OpenAI's largest investor, announced that both men would join it to lead a new advanced research team (Nadella, 2023). Within days the parties agreed in principle that Altman would return under a new initial board chaired by Bret Taylor, and on 29 November OpenAI confirmed his return and announced that Microsoft would take a non-voting observer seat on the board (OpenAI, 2023b). The crisis passed through every stage of Pondy's model in less than two weeks. It also shows how quickly a stalemate becomes mutually hurting when every party, from the board to the employees and the main investor, can inflict serious damage on the others.

KEY MOVE

Do not wait for a conflict to become ripe by itself. Make the costs of the stalemate visible to both sides, and prepare a way out that allows each of them to claim success.

## 3.3 Which Style Fits? The Five Conflict-Handling Styles

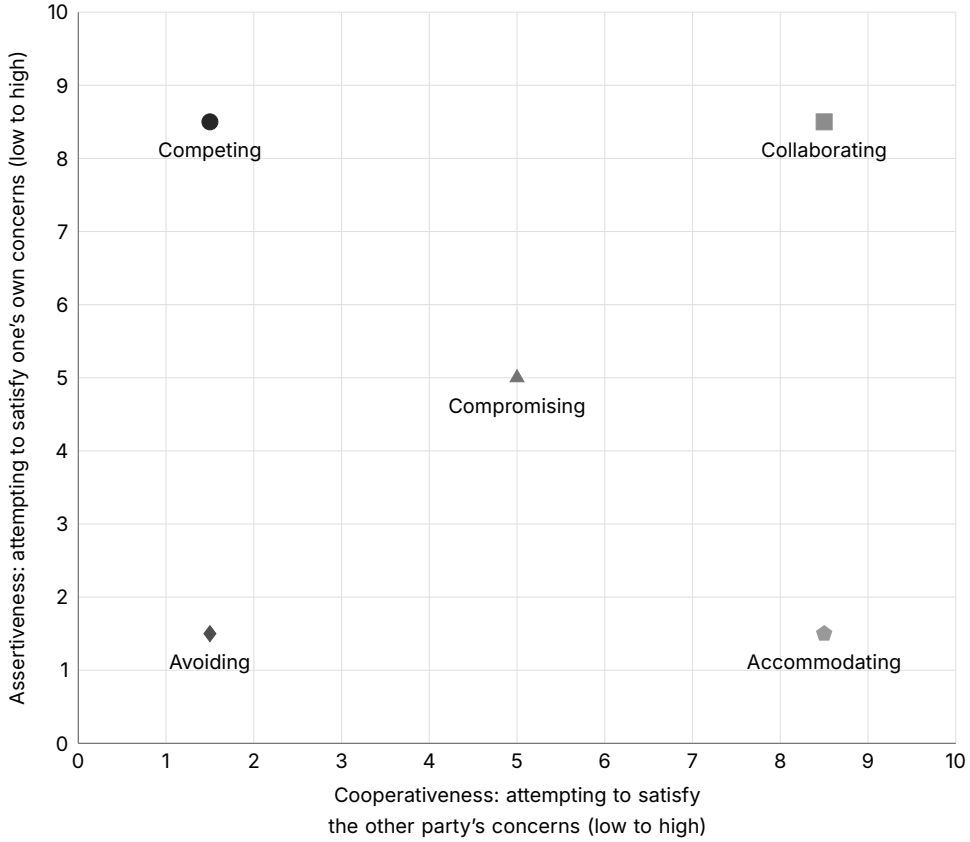
### Two Dimensions of Behaviour

People differ in how they respond to conflict. Building on the managerial grid of Blake and Mouton (1964), Thomas (1976) described these differences along two dimensions. **Assertiveness** is the extent to which a person tries to satisfy his or her own concerns. **Cooperativeness** is the extent to which the person tries to satisfy the concerns of the other party. Combining the two produces five styles, shown in Figure 3.2, which the Thomas–Kilmann instrument has made familiar to generations of managers. Rahim (2023) uses a similar model with slightly different names: integrating, obliging, dominating, avoiding and compromising.

- **Competing** is assertive and uncooperative: one party pursues its own concerns at the other's expense, using whatever power it has.
- **Accommodating** is unassertive and cooperative: one party sets aside its own concerns to satisfy the other's.
- **Avoiding** is both unassertive and uncooperative: the party withdraws, postpones or sidesteps the issue.

**Figure 3.2**

*Five conflict-handling styles*




*Note.* Author, based on Thomas (1976) and Rahim (2023). The positions are conceptual, not measured.

- **Collaborating** is both assertive and cooperative: the parties work together to find a solution that fully satisfies both.
- **Compromising** lies in the middle: each side gives up something to reach a solution that partly satisfies both.

Management teaching often presents the same ideas in a slightly different vocabulary. A widely used classification lists five strategies for resolving conflict in organisations: *ignoring* the conflict, *smoothing* it over by appealing to unity, *compromising*, *forcing* a solution, and *problem solving*. Smoothing is a form of accommodation that covers the conflict rather than resolving it, so the underlying problem may later return more strongly. Compromise is common in negotiations

between trade unions and management, where each side opens with more than it expects and concedes towards a middle ground, and it is most useful when the parties have roughly equal power or are short of time.

### When Each Style Fits

No style is right in every situation. Thomas (1977) argued that each has its proper uses, and later research on negotiation has largely confirmed his view. Table 3.4 summarises when each style tends to fit and what it risks.

**Table 3.4**

*When to use each conflict-handling style*

| Style | Appropriate when | Risk if overused |
|---|---|---|
| Competing | Quick, decisive action is vital; the issue is important and the other side would exploit cooperation | Damaged relationships; others stop sharing information |
| Collaborating | Both sides' concerns are too important to compromise; there is time and trust to explore interests | Time and effort spent on minor issues |
| Compromising | Power is roughly equal; a temporary settlement is needed; time is short | Mediocre agreements that satisfy nobody fully |
| Avoiding | The issue is trivial; the costs of confrontation outweigh the benefits; people need to cool down | Problems grow unaddressed; decisions are made by default |
| Accommodating | The issue matters more to the other side; preserving the relationship is the priority; one is wrong | Loss of respect and of one's own interests |

*Note.* Author, based on Thomas (1977) and Rahim (2023).

The choice of style is also a choice about the surplus discussed in Chapter 2. Competing tries to claim as much of it as possible; accommodating gives it away; collaborating tries to enlarge it before dividing it; compromising splits it; and avoiding leaves it unrealised. In the Deal File, both sides began with a competing style, withdrawing channels and taking their case to the public, and ended with a collaborative element, the inclusion of ESPN's streaming service, which created value for subscribers and for both firms.

### Style, Culture and Context

Styles are not fixed personality traits. The same manager may compete with a supplier, accommodate a key customer and collaborate with a colleague. Preferences are also shaped by culture: societies that value harmony and the preservation of face tend to favour avoiding and accommodating in public, while preferring to resolve differences through indirect channels, whereas more individualist business cultures place a higher value on open confrontation of the issues. Chapter 18 examines these differences in depth, and the author's research on communication in international business shows how misreading a partner's style can turn a manageable disagreement into a damaging conflict (Kumar, 2022, 2023).

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**KEY MOVE**

Choose your style deliberately, not by habit. Ask how important the issue is to you, how important the relationship is, how much power each side holds and how much time you have.

---

## 3.4 How Do Organisations Manage and Prevent Conflict?

### Preventive Measures

Individuals choose styles; organisations design structures. A firm cannot abolish conflict, but it can reduce the conflict serving no purpose. Drawing on the work of Schein (1980) on relations between groups, management texts commonly recommend four preventive measures.

1. **A clear goal structure.** Define the organisation's goals and each unit's contribution to them, so that departments understand how their work fits together and feel their role is recognised.
2. **A reward system that supports cooperation.** Pay and recognition should not set individuals or units against each other, and should reflect the degree of interdependence between them.
3. **Trust and communication.** The greater the trust among members of an organisation, the more open and honest their communication will be. Units should be encouraged to share information and to understand one another's problems.
4. **Coordination.** Well-coordinated activities produce less friction. Where coordination is difficult, a liaison role or a joint team can be created to manage the interface between units.

These measures act on the latent stage of Pondy's model. They remove or soften the structural conditions producing conflict before anyone perceives it.

### Conflict Management Systems

Even well-designed organisations experience disputes, and the question then becomes how they are handled. Ury et al. (1988) observed that every dispute can be resolved by one of three approaches: by reconciling the parties' **interests**, by determining who is right according to some standard of **rights**, such as a contract or the law, or by determining who is more **powerful**. Reconciling interests is usually the least costly, since it tends to produce agreements the parties find satisfying and which preserve their relationship. Determining rights is more expensive, and contests of power, such as strikes, blackouts and proxy battles, are the most expensive of all.

A well-designed **conflict management system** therefore channels most disputes towards interest-based procedures, keeps rights-based procedures as a fallback and makes contests of power rare. Table 3.5 sets out the main principles.

**Table 3.5**

*Principles of a conflict management system*

| Principle | What it means in practice |
|---|---|
| Put the focus on interests | Encourage early negotiation between the people directly involved |
| Build in loop-backs | Allow parties to return to negotiation from rights or power procedures, for example through a cooling-off period |
| Provide low-cost rights and power backups | Offer arbitration or expert determination as cheaper alternatives to litigation and strikes |
| Consult before, give feedback after | Discuss changes before they are made, and review disputes afterwards to prevent recurrence |
| Arrange procedures from low to high cost | Escalate step by step: discussion, then mediation, then arbitration or adjudication |
| Provide skills and resources | Train managers in negotiation, and fund mediation and internal advice |

*Note.* Author, based on Ury et al. (1988).

Many firms apply these principles in their commercial contracts through **escalation clauses**, which require a dispute to pass through defined steps before either side may go to court. A typical clause provides for discussion between project managers, then between senior executives, then mediation and only then arbitration or litigation. Collective agreements between employers and trade unions often contain similar grievance procedures, which Chapter 10 examines.

DEAL SNAPSHOT

**Starbucks and Workers United, 2021 to 2026**

In December 2021 baristas at a Starbucks store in Buffalo, New York, voted to join a union, and by October 2022 workers at 233 company-operated stores in the United States had voted for the same union, about 2.5 per cent of the total (Starbucks, 2022). Years of litigation over unfair labour practice charges followed. In February 2024 the company and the union announced that they would work on a framework for collective bargaining and for settling some of the pending cases (Starbucks, 2024), but no first contract followed. On 13 November 2025, the day of the company's holiday promotion, the union began an open-ended strike, which the AFL-CIO supported on behalf of what it described as more than 12,000 unionised workers (AFL-CIO, 2025). No settlement followed, and in August 2026 the union called for the first time on all customers and allied organisations to boycott Starbucks until it agreed a contract (Starbucks Workers United, 2026). The dispute reveals what happens when a conflict is fought mainly as a contest of power and rights, by means of strikes, boycotts and legal charges, rather than through a system that steers it towards interests.

KEY MOVE

Design the procedure before the dispute. Agree in advance how disagreements will be raised, discussed and, if necessary, escalated, so that the first serious dispute does not become a contest of power.

## 3.5 What Does Conflict Cost, and What Remains Afterwards?

### The Costs of Conflict

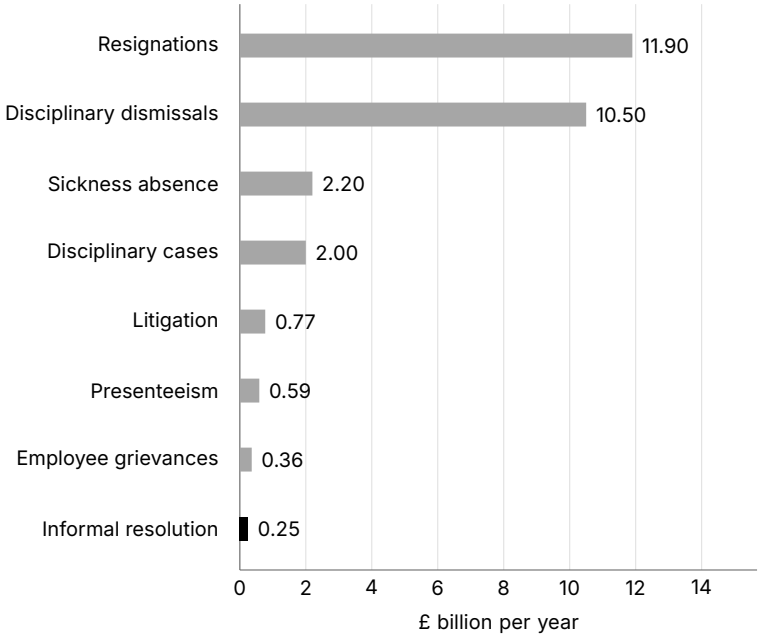
Conflict imposes costs on the parties, on those who depend on them and on the wider economy. Some costs are direct and easy to count, such as lost sales, legal fees and wages lost during a strike. Others are indirect and harder to measure: the time managers spend on disputes rather than on business, the information left unshared, the employees who leave and the customers who do not return.

A study prepared for Acas, the public body promoting good employment relations in Great Britain, estimated that conflict at work cost employers in the United Kingdom £28.5 billion a year, about £1,000 for every employee, and nearly 10 million employees experienced conflict at work in a single year (Saundry & Urwin, 2021). Figure 3.3 shows where the costs arise.

The figure carries a clear lesson for the design of conflict management systems. By far the largest costs arise when conflict ends in the departure of employees,

**Figure 3.3**

*Estimated annual cost of workplace conflict to employers in the United Kingdom, by source (£ billion)*




*Note.* Author, based on Saundry and Urwin (2021). "Litigation" includes management time, legal representation and compensation; "informal resolution" includes informal discussion and workplace mediation.

through resignation or dismissal, while informal resolution and mediation cost very little by comparison. Spending more on early, interest-based resolution is therefore likely to save money, because it prevents conflicts from reaching the stages at which they become most expensive. The same pattern appears in commercial disputes. In the Deal File, the fees each side gained or saved through the blackout have to be weighed against two weeks of lost revenue, the cost of credits to subscribers and the risk that some customers would cancel.

### What Remains Afterwards

The last stage of Pondy's model is the aftermath, and it is often the most important for negotiators. A conflict that ends in an agreement both sides regard as fair can strengthen a relationship: the parties have learned more about each other's interests, tested their own limits and established rules for the future. This is the constructive conflict described by Deutsch (1973) and discussed in Chapter 1. A

conflict ending in the humiliation of one side, on the other hand, leaves a legacy of resentment which becomes the latent conflict of the next round.

Three questions help to assess the aftermath. Did the agreement address the underlying causes of the conflict, or only its symptoms? Do both parties regard the outcome and the process as fair? And have the parties put in place procedures that will help them handle the next disagreement? Disney and YouTube TV will meet again when their new agreement expires, and the memory of November 2025 will shape that negotiation.

---

**KEY MOVE**

Count the full costs of a conflict, including those that do not appear in the accounts, and judge a settlement not only by its terms but also by the relationship it leaves behind.

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BACK TO THE DEAL FILE

## Reading the Disney and YouTube TV Dispute

The tools of this chapter explain both why the dispute escalated and why it ended when it did.

**It passed through every stage of the conflict process.** The latent conflict lay in the economics of a shrinking pay-television market, in which channel owners sought higher fees from fewer subscribers while distributors resisted price increases. Renewal talks made the conflict perceived, public accusations made it felt and the lapse of the agreement made it manifest.

**It escalated, but within limits.** The dispute widened from fees to packaging and rival services, moved from offers to the heavy tactic of withdrawing channels and drew in subscribers and politicians. Yet both sides kept a way back open, because each depended on the other: Disney needed YouTube TV's subscribers, and YouTube TV needed Disney's sport and news.

**It became ripe as the costs mounted.** Each day of blackout cost both sides revenue and goodwill, and the approach of major sporting events turned a tolerable stalemate into a hurting one. The inclusion of ESPN's streaming service supplied a way out that allowed both sides to claim success.

**Both sides began by competing and ended with an element of collaboration.** The public campaigns and the withdrawal of channels were competitive moves, while the final agreement created value by giving subscribers more than they had before.

**The aftermath is still unwritten.** The dispute tested the loyalty of YouTube TV's subscribers and the value of Disney's channels, and both sides will use what they learned in their next negotiation.

MA EXTENSION

### Blackouts, Strikes and the War of Attrition

Why do rational parties allow a blackout or a strike to happen when both lose from it? Game theory offers two explanations. The first models the dispute as a **war of attrition**, in which each side pays a cost for every day the conflict continues and the one holding out longer wins the prize; a party believing it can endure longer has an incentive to fight rather than concede (Bulow & Klemperer, 1999). The second, developed by Fearon (1995) to explain why states go to war, identifies three reasons why bargaining can fail even between rational parties: private information about each side's resolve or costs, which each has an incentive to misrepresent; commitment problems, when one side cannot credibly promise not to exploit a future advantage; and issues that cannot easily be divided. Apply these ideas to the Deal File. What private information did each side hold? Was the blackout a costly way of revealing it, as the Hicks paradox in Chapter 1 suggests? Why might two firms negotiating repeatedly still need an occasional blackout?

ETHICS CHECK

During the blackout, millions of subscribers who had paid for their service lost access to news, sport and entertainment, including the local ABC stations during the weeks of the November 2025 elections. Is it ethical for firms to withdraw services from customers as a negotiating tactic? Should channels that carry news and public information be treated differently from entertainment during commercial disputes, and who should decide?

### Pillar Scorecard

**Table 3.6**

*Pillar Scorecard: Disney and YouTube TV, 2025*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | High | The dispute concerned the fees for Disney's channels and the value of each side's competing services |
| Power | Very high | The two largest distributors of television viewing tested which side could endure a blackout longer |
| Persuasion | High | Both sides campaigned publicly for the support of subscribers and framed their offers as serving the public |

### Your Move

*This is a constructed teaching case.*

You are the sales director of a dairy cooperative near Białystok whose largest customer is a national supermarket chain. For eight years relations have been good, but a new purchasing director at the chain has demanded a price cut of 6 per cent and threatened to remove two of your products from its shelves within a month. Your managing board wants to respond with a press statement accusing the chain of abusing its buying power, and some of your farmers have proposed a protest outside its headquarters. The chain accounts for 35 per cent of your sales; your products account for less than 2 per cent of its dairy range.

1. At which of Pondy's stages is this conflict, and what signs of escalation from Table 3.3 can you identify?
2. Which of the five conflict-handling styles would you recommend, and why? Use Table 3.4.
3. What would make the conflict ripe for settlement, and how could you create a way out that both sides could accept?
4. Propose a simple procedure, based on Table 3.5, that the cooperative and the chain could agree to use for future disputes.

## Conclusion

Conflicts move. They begin in the structure of relationships, become visible when one side perceives a threat, grow personal and then open, and leave an aftermath that shapes the future. Escalation has its own momentum, driven by retaliation, commitment and selective perception, and it ends only when the parties see both that continuing will hurt them and that a way out exists. Individuals choose among five styles of handling conflict, each appropriate in some situations and harmful in others, while organisations can prevent many conflicts through their goals, rewards, communication and coordination, and can contain others through systems that steer disputes towards interests rather than rights or power. The costs of failing to do so, as the evidence from the United Kingdom shows, fall most heavily when conflicts are allowed to run their course. Disney and YouTube TV found their way out after two weeks; Starbucks and its union had not found theirs after almost five years. The difference lies largely in whether the parties could negotiate, and negotiation is the subject of Chapter 4, which introduces it as the principal means of turning conflict into agreement and sets out the framework of profit, power and persuasion on which the rest of the book is built.

## Exercises

### A. Objective Questions

1. In Pondy's model, the stage at which the conditions for conflict exist but nobody yet feels them is:
   a) perceived conflict
   b) aftermath
   c) manifest conflict
   d) latent conflict

2. Which of the following is *not* one of the transformations during escalation identified by Pruitt and Kim (2004)?
   a) from light to heavy tactics
   b) from many to few parties
   c) from few to many issues
   d) from doing well to hurting the other side

3. According to Zartman (2000), a conflict is ripe for resolution when there is:
   a) a clear winner
   b) a court ruling
   c) a mutually hurting stalemate and a perceived way out
   d) a change of leadership on one side

4. Osgood's strategy of graduated and reciprocated initiatives in tension reduction involves:
   a) small announced concessions that continue only if reciprocated
   b) a large concession made only after the other side concedes
   c) the threat of escalation
   d) the appointment of an arbitrator

5. A style that is high in assertiveness and low in cooperativeness is:
   a) collaborating
   b) competing
   c) accommodating
   d) avoiding

6. Covering up a conflict by appealing to the need for unity, without addressing its causes, is called:
   a) forcing
   b) compromising
   c) problem solving
   d) smoothing

7. Ury et al. (1988) argue that the least costly way of resolving most disputes is usually to:
   a) determine who is more powerful
   b) determine who is right
   c) reconcile the parties' interests
   d) go to court

8. According to the estimates in Figure 3.3, the largest single source of the cost of workplace conflict to employers in the United Kingdom is:
   a) resignations
   b) workplace mediation
   c) litigation
   d) presenteeism

### B. Short-Answer Questions

1. Describe the five stages of conflict in Pondy's model, giving a business example of each.
2. Explain three mechanisms that drive the escalation of conflict.
3. What is a mutually hurting stalemate, and why is a way out also necessary for settlement?
4. Describe the two dimensions of the Thomas model and the five styles they produce.
5. Name Schein's four preventive measures against conflict in organisations and explain one of them in detail.
6. Distinguish interest-based, rights-based and power-based approaches to resolving disputes, giving an example of each.
7. Using Figure 3.3, explain why investment in early and informal resolution of workplace conflict may reduce its total cost.

### C. Long-Answer Questions

1. Analyse the dispute between Disney and YouTube TV using Pondy's stages of conflict and the theory of escalation. Why did the conflict escalate, and what made it ripe for settlement?
2. "There is no best way to handle conflict." Discuss this statement with reference to the five conflict-handling styles and to the situations in which each is appropriate.
3. Design a conflict management system for a medium-sized manufacturing firm with frequent disputes with its suppliers and between its own departments. Justify each element with reference to the principles of Ury, Brett and Goldberg.
4. Compare the conflict between Starbucks and Workers United with OpenAI's board crisis of November 2023. Why did one conflict end within days while the other continued for years?

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CHAPTER

# 4

# Introduction to Negotiation

https://doi.org/10.61030/dnar-ehd2

## Introduction

The first three chapters of this book have been about conflict: what it is, where it comes from in economic life and how it moves. This chapter turns to negotiation, the main means by which firms, trade unions and governments bring conflict to an end on terms they can live with. Every day, buyers and sellers agree prices, employers and unions agree wages, partners agree the terms of joint ventures and governments agree the rules of trade. Most of these agreements are reached quietly, without strikes, blackouts or lawsuits, because the parties find talking a better way than fighting to settle their differences.

The chapter proceeds in four steps. Section 4.1 defines negotiation, sets out its essential features and asks when a firm should negotiate and when it should compete, go to court, impose its will or simply walk away. Section 4.2 describes how a negotiation unfolds, from preparation to the implementation of an agreement. Section 4.3 identifies the factors with most influence on the outcome and the challenges which make negotiation difficult. Section 4.4 then sets out in full the framework that organises the rest of the book: negotiation as a contest over **profit**, decided by **power** and closed by **persuasion**.

The chapter thus marks a turning point. It completes the analysis of conflict in Part I and prepares the ground for Parts II, III and IV, each of which develops one pillar of the framework. Its Deal File follows one of the most consequential business negotiations of recent years, conducted not between firms but between the world's two largest trading partners on behalf of thousands of firms on each side: the framework agreement between the European Union and the United States reached at Turnberry, in Scotland, in July 2025, and the long and uncertain process of turning it into law.

DEAL FILE

## The Turnberry Deal between the EU and the US

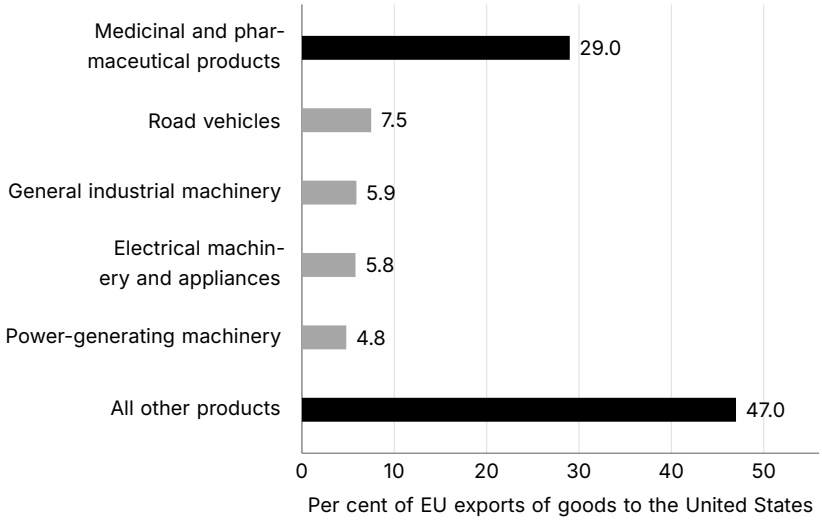
Trade between the European Union and the United States is the largest bilateral economic relationship in the world. In 2025 the EU exported goods worth €554.0 billion to the United States and imported goods worth €354.4 billion, giving it a surplus of €199.6 billion (Eurostat, 2026). Figure 4.1 shows what the EU sells. Medicines and pharmaceutical products alone accounted for almost three-tenths of its exports, followed by road vehicles and several kinds of machinery.

In April 2025 the United States announced "reciprocal" tariffs on almost all its trading partners, including a rate of 20 per cent on goods from the EU (Executive Order No. 14257, 2025). Months of talks followed under the threat of higher rates. On 27 July 2025 President Trump and the President of the European Commission, Ursula von der Leyen, met at his golf resort at Turnberry, in Scotland, and announced a framework agreement. Its terms were set out in a joint statement on 21 August (European Commission, 2025).

**A deal that had to be negotiated twice.** The agreement was political, not legally binding, and each side had to carry it out through its own institutions. On

**Figure 4.1**

*Main product groups in EU exports of goods to the United States, 2025 (per cent of total)*




*Note.* Author, based on Eurostat (2026). Product groups follow the Standard International Trade Classification.

**Table 4.1**

*The Turnberry Deal at a glance*

| | |
|---|---|
| **Parties** | The European Union, represented by the European Commission; the United States, represented by the President and the Office of the US Trade Representative |
| **At stake** | US tariffs on EU goods, especially cars, pharmaceuticals and semiconductors; EU tariffs on US industrial and farm goods; the wider stability of transatlantic trade |
| **Timeline** | US tariffs announced in April 2025; framework agreed at Turnberry on 27 July and set out in a joint statement on 21 August 2025; IEEPA tariffs struck down on 20 February 2026; EU implementing legislation adopted in June 2026; Section 301 tariffs replace the temporary US tariff on 24 July 2026 |
| **US commitments** | A rate of 15 per cent, inclusive of ordinary duties, on most EU goods, and an intention to keep the rates on cars, pharmaceuticals, semiconductors and lumber within the same limit; ordinary duties only on aircraft and parts, generic medicines and some natural resources from 1 September 2025; tariffs of 50 per cent on steel and aluminium to remain for the time being |
| **EU commitments** | An intention to eliminate tariffs on all US industrial goods; preferential access for some US farm and seafood products; expected purchases of US energy worth US$750 billion and intended purchases of US AI chips worth at least US$40 billion through 2028; additional investment by European firms in the United States expected to reach US$600 billion by 2028 |

*Note.* Author, based on European Commission (2025) and European Parliament (2026c).

the American side, the tariffs rested largely on the International Emergency Economic Powers Act (IEEPA). On 20 February 2026 the US Supreme Court held that this law does not authorise the President to impose tariffs (*Learning Resources, Inc. v. Trump*, 2026). The administration at once imposed a temporary global surcharge under Section 122 of the Trade Act of 1974, which the law limits to 150 days (Congressional Research Service, 2026). Bernd Lange, who chaired the European Parliament's trade committee, argued that the replacement could push the rate on EU goods above the agreed limit of 15 per cent, and the Parliament put its work on the legislation on hold (European Parliament, 2026b). It resumed in March, adopted its position on 26 March by 417 votes to 154 and reached agreement with the Council on 20 May. The final texts attach conditions of the Parliament's own: the tariff cuts expire at the end of 2029 unless extended, and the Commission may suspend them if the United States still applies tariffs above 15 per cent to EU products made of steel and aluminium at the end of 2026, or if it fails to address EU concerns about goods that had benefited from the 15 per cent

limit (European Parliament, 2026c). Parliament and Council gave their final approval in June 2026. When the Section 122 surcharge lapsed on 24 July 2026, the United States replaced it with tariffs of 10 or 12.5 per cent under Section 301 of the Trade Act, imposed after investigations of forced labour in its 60 largest trading partners (Office of the United States Trade Representative, 2026). The legal basis of the American side of the bargain had changed twice in five months.

**Questions to keep in mind.** Why did the EU agree to a deal leaving its exporters facing higher tariffs than before 2025? What determined the outcome: the size of the trade at stake, the power of each side or the way each presented its case? Why did a framework agreed in a single meeting take almost a year to become law? The chapter answers these questions in turn.

## 4.1 What Is Negotiation, and When Should a Firm Negotiate?

### A Definition

Negotiation is a process in which two or more parties, who have different preferences but depend on one another, try to reach a joint decision about matters of common concern. The definition has three elements. There must be at least two **parties**, whether individuals, firms, unions or governments. Their preferences must **differ**, since parties who want the same thing have nothing to negotiate. And they must be **interdependent**: each needs the other to achieve what it wants, so neither can simply impose its will.

Lewicki et al. (2020) add several features that set negotiation apart from other ways of handling conflict. The parties choose to negotiate because they believe they can obtain a better result than by accepting what the other side offers or by taking it by force. They expect a process of give and take, in which both will modify their opening positions. And the outcome concerns not only tangible matters, such as prices and quantities, but also intangible ones, such as reputation, fairness and the wish to be seen as the winner. In the Deal File, the tariff rate was a tangible issue; but the European Commission's need to show it had defended European interests, and the American President's need to show he had obtained concessions, were intangibles which shaped the outcome as much as the rate itself.

Two terms are often used interchangeably. In this book, **bargaining** refers to the competitive, distributive part of negotiation, the haggling over how a fixed surplus is divided, as in Chapter 2. **Negotiation** is the broader term that also includes the search for joint gains, the building of relationships and the design of agreements.

### Negotiation and Its Alternatives

Negotiation is only one way of dealing with a conflict, and it is not always the best. Table 4.2 compares it with the main alternatives.

**Table 4.2**

*Negotiation and its alternatives*

| Approach | How the outcome is decided | Typical example | Main cost or risk |
|---|---|---|---|
| Negotiate | By agreement between the parties | A supply contract; a collective agreement; a trade deal | Time, concessions and the risk of no agreement |
| Compete | By the market, as each party pursues its own interest | Price competition between rival firms | Lower margins; no control over the result |
| Litigate or arbitrate | By a judge or arbitrator applying rules | A patent dispute; a contract claim | Cost, delay, publicity and loss of control |
| Impose | By the stronger party's decision | A dominant buyer's standard terms | Resentment, resistance and regulatory challenge |
| Walk away | By ending the relationship | Switching suppliers; leaving a market | Loss of the value the relationship would have created |

Before every negotiation, a firm should therefore ask whether negotiation is the right tool. It should negotiate when the other party controls something it needs, when a better result can be obtained by agreement than by acting alone, and when there is room for an outcome that both sides prefer to no agreement. It may be wise not to negotiate when the other side's demands are unlawful or unethical, when the stakes are too small to justify the cost, when the other party is negotiating in bad faith, or when waiting will improve one's position (Lewicki et al., 2020). The EU faced exactly this choice in 2025. It could negotiate, retaliate with tariffs of its own, challenge the American measures at the World Trade Organization or wait for American courts to rule on their legality. It chose to negotiate while preparing countermeasures; the Supreme Court's ruling of February 2026 later showed that waiting would also have had some merit.

**KEY MOVE**

Before you negotiate, ask whether you should. Compare what you could obtain by agreement with what you could obtain by competing, going to court, imposing your terms or walking away.

## 4.2 How Does a Negotiation Unfold?

### The Phases of a Negotiation

Negotiations differ greatly, from a few minutes of haggling in a market to years of talks between governments, but most pass through a recognisable sequence of phases. Zartman and Berman (1982) described international negotiations as moving from a *diagnosis* of the problem, through the search for a *formula*, a shared understanding of the broad terms of a solution, to the negotiation of the *details*. Business negotiations follow a similar path, which Table 4.3 sets out in six phases.

**Table 4.3**

*The phases of a negotiation*

| Phase | Main tasks | In the Turnberry Deal |
|---|---|---|
| Preparation | Define interests, targets and limits; analyse the other side; consider alternatives | The EU assessed the exposure of its industries and prepared a list of countermeasures |
| Opening | Establish contact, set the agenda and make first offers | The United States announced tariffs of 20 per cent on EU goods; the two sides opened talks |
| Exchanging information | Learn what each side values and why | Months of talks between the Commission and the US Trade Representative |
| Bargaining | Make offers and concessions; search for trade-offs | A ceiling of 15 per cent for most goods in exchange for EU tariff cuts and purchase intentions |
| Closing | Reach and confirm agreement | The meeting at Turnberry on 27 July and the joint statement of 21 August 2025 |
| Implementation | Turn the agreement into action; monitor and adjust | US executive orders; EU legislation adopted in June 2026 after a pause and new conditions |

*Note.* Author, based on Zartman and Berman (1982) and Lewicki et al. (2020).

The phases are not strictly sequential. Parties return to information exchange when a proposal fails, and implementation can reopen issues apparently settled at the closing, as the Deal File shows. Chapter 7 examines preparation in depth, and Chapter 13 the later phases.

International management texts describe a similar sequence with one addition that matters greatly across cultures. Luthans and Doh (2018) divide the process into planning, **interpersonal relationship building**, the exchange of task-related information, persuasion and agreement. In the second stage each side gets to know the people on the other and judges whether they are reasonable. American

DEAL SNAPSHOT

**The UK and US Economic Prosperity Deal, May 2025**

On 8 May 2025 the United Kingdom became the first country to agree general terms with the United States after the tariffs of April. It remained subject to the American baseline tariff of 10 per cent, but secured a quota of 100,000 cars a year at 10 per cent instead of 27.5 per cent and a return to ordinary duties on aerospace goods. In return it opened duty-free quotas for 13,000 tonnes of US beef and 1.4 billion litres of US ethanol a year. A quota for steel and aluminium was still under discussion in June 2025, and preferential terms for pharmaceuticals were left for later talks (Department for Business and Trade, 2025). The deal shows the advantages and limits of moving first. The UK obtained a lower rate than the EU later accepted, but on a narrower range of goods, and several of its most important elements were left as promises to be negotiated.

negotiators often shorten it because they want to turn to business at once, while in many Asian, Arab and Latin American cultures meals, receptions and visits are part of the negotiation itself, and the work has begun even before business is mentioned. Cultures also differ at the final stage. Some negotiators settle issues one at a time and take each off the table as it is resolved; others, Luthans and Doh observe of many Asian and Russian negotiators, prefer to concede little until the whole package can be agreed. Chapter 18 returns to these differences.

### Negotiating at Two Levels

Many negotiations take place at two tables at once. At the first, the negotiators bargain with each other. At the second, each negotiator must win the approval of those it represents: a board, a union's members, a parliament or a coalition of governments. Putnam (1988) called this a **two-level game**. An agreement is possible only if it falls within the *win-set* of each side, the range of outcomes that its domestic constituency would accept.

The European Commission negotiated trade policy on behalf of 27 member states, whose interests differed. German carmakers wanted relief from car tariffs above all, while other states cared more about agriculture, steel or pharmaceuticals. Any agreement then had to pass the European Parliament and the Council. The American President faced constraints of a different kind, from the courts rather than from the legislature. The long implementation of the Turnberry Deal is a study in two-level negotiation: the agreement reached by the leaders had to be renegotiated, in effect, with the institutions behind them.

**KEY MOVE**

Identify every table at which your agreement must be approved. Before closing, check that the deal falls within the win-set of your own constituency, and ask whether it falls within the other side's.

## 4.3 What Decides the Outcome?

### Six Factors That Shape Outcomes

Negotiators often attribute their results to their own skill or to their opponent's stubbornness. In practice, a handful of structural factors explain most outcomes before anyone speaks. Table 4.4 sets them out.

**Table 4.4**

*Factors that shape the outcome of a negotiation*

| Factor | Why it matters | Where the book develops it |
|---|---|---|
| Alternatives | The party with the better alternative to agreement can afford to walk away | Chapter 11 |
| Information | Knowing the other side's limits, priorities and costs allows a negotiator to target offers | Chapters 2 and 7 |
| Time and deadlines | The party under greater time pressure usually concedes more | Chapter 13 |
| Relationships | Parties who will deal again moderate their demands and trust each other's promises | Chapters 8 and 9 |
| People and skills | Preparation, communication and judgement can widen or narrow the gains | Chapters 16 and 17 |
| Structure and institutions | The number of parties, the need for ratification and the rules of the game constrain what is possible | Chapters 5, 14 and 15 |

The first factor deserves special emphasis. Fisher and Ury (1981) introduced the idea of the **best alternative to a negotiated agreement** (**BATNA**): what a party will do if the negotiation fails. A party should accept an agreement only if it is better than its BATNA, and the party whose BATNA is stronger has more power. In 2025 the American BATNA was to impose tariffs unilaterally, which the United States could do at once. The EU's BATNA was to retaliate, which would have hurt its own consumers and firms and risked further escalation. This asymmetry, more than any argument made at Turnberry, explains why the EU accepted a ceiling of 15 per cent. Chapter 11 analyses BATNAs and bargaining power in detail.

Time pressure also played its part. American deadlines for higher rates forced the pace, and the Commission evidently judged that an imperfect agreement was better than the risk of higher tariffs. Information was incomplete on both sides: neither knew how far the other would go, and both were uncertain how American courts would rule on the legality of the tariffs.

### Why Negotiation Is Difficult

If the parties prefer an agreement to no agreement, why do negotiations so often fail or produce poor results? Several challenges recur.

- **Misperception.** Each side tends to overestimate the strength of its own case and to see the other's motives as more hostile than they are. Chapter 16 examines the cognitive biases behind this.
- **Strategic concealment.** Because revealing one's true limits can be exploited, parties hide information, and joint gains go undiscovered. This is the negotiator's dilemma of Chapter 2.
- **Divisions within each side.** Agents may not act for their principals, and constituencies may disagree among themselves, as the two-level game shows.
- **Commitment and face.** Public positions are hard to abandon without appearing to lose, as Chapter 1 explained.
- **Problems of trust and enforcement.** Agreements depend on promises about the future, and parties doubt whether the other side will keep them. The EU's investment and energy figures in the Turnberry Deal were intentions the Commission could not enforce on private firms, while the EU in turn doubted whether the United States would keep its tariff ceiling.

Figure 4.2 compares the highest tariff that each of three European economies faced during 2025 with the rate it accepted in its framework deal.

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**KEY MOVE**

Before you open, assess the structure: each side's alternatives, information, deadlines, relationships, people and institutions. Most outcomes are shaped by these factors long before the first offer.

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DEAL SNAPSHOT

**Switzerland Negotiates Its Way Down from 39 Per Cent, 2025**

From August 2025 the United States applied a tariff of 39 per cent to goods from Switzerland, one of the highest rates imposed on any developed economy, threatening exporters of machinery, watches and many other products (Executive Order No. 14326, 2025). The Swiss government kept negotiating, and a breakthrough was announced on 14 November 2025. Under a non-binding framework, the United States agreed to limit the additional tariff on Swiss goods to 15 per cent, the level applied to the EU. In return, Switzerland undertook to reduce its duties on US industrial goods, fish and seafood and some farm products, and Swiss companies planned direct investment of US$200 billion in the United States by the end of 2028 (Swiss Federal Council, 2025). The case shows how a small economy without the collective weight of the EU used persistence and investment commitments to change the other side's calculation.

## 4.4 Profit, Power and Persuasion: A Framework for the Book

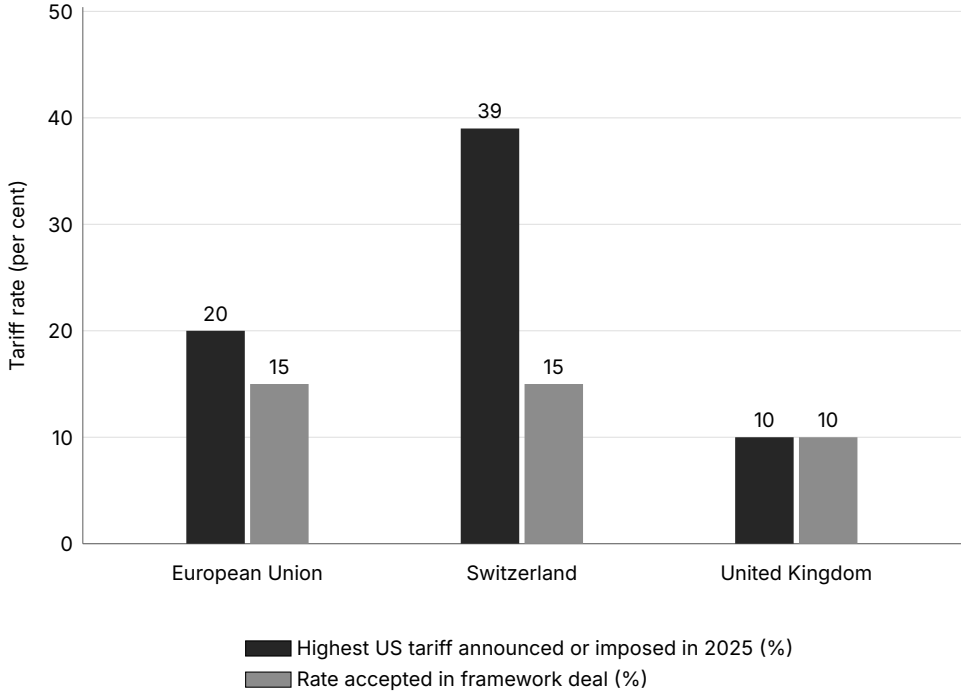
### Three Questions for Every Negotiation

This book argues that every business negotiation can be analysed by asking three questions in turn.

- **Profit: what value is at stake, and how will it be created and divided?** This is the question of the surplus introduced in Chapter 2. It asks what each side wants and why, what its limits are, how much value an agreement could create and who will capture it. Part II develops this pillar: the goals of firms (Chapter 6), preparation (Chapter 7), the creation and division of value (Chapter 8), negotiation along value chains and in deals (Chapter 9) and labour negotiations (Chapter 10).
- **Power: what determines each side's leverage, and how can it be used?** Power comes from alternatives, from the structure of markets, from institutions and from the analytical tools a negotiator brings to the table. Part III develops this pillar: bargaining power (Chapter 11), game theory and decision analysis (Chapter 12), the negotiation process and tactics (Chapter 13), negotiations with many parties (Chapter 14) and negotiations between firms and states (Chapter 15).
- **Persuasion: how is agreement reached and made to last?** Agreements are reached through communication, shaped by psychology and culture and judged by standards of ethics. Part IV develops this pillar: communication

**Figure 4.2**

*Highest US tariff announced or imposed in 2025 and rate accepted in framework deals (per cent)*




*Note.* Author, based on Executive Orders No. 14257 and No. 14326 (2025), European Commission (2025), Department for Business and Trade (2025) and Swiss Federal Council (2025). The highest rates are those announced in April 2025 for the EU and imposed in August 2025 for Switzerland. The rates are not strictly comparable: the EU rate of 15 per cent includes ordinary duties, while the British and Swiss rates are additional to them.

and psychology (Chapter 16), negotiation styles and tactics (Chapter 17), culture (Chapter 18) and ethics (Chapter 19). Chapter 20 brings the three pillars together. Table 4.5 summarises the three pillars of the framework.

### Why Three Pillars?

The three pillars correspond to three disciplines that have studied negotiation, often in isolation from one another. Economics explains the value at stake and how markets and institutions shape bargaining power. Game theory and decision analysis provide tools for analysing strategy. Psychology, communication studies and the study of culture explain how people actually reach agreement.

**Table 4.5**

*The profit, power and persuasion framework*

| Pillar | Central question | Key concepts | Part of the book |
|---|---|---|---|
| Profit | What value is at stake, and who will capture it? | Surplus, interests, targets and limits, value creation and value claiming | Part II |
| Power | What determines each side's leverage? | Alternatives (BATNA), dependence, market structure, institutions, game theory | Part III |
| Persuasion | How is agreement reached and made to last? | Communication, framing, trust, culture, ethics | Part IV |

Raiffa (1982) showed how the analytical and the human sides of negotiation can be combined, and this book follows his example.

The pillars also interact. Power without profit is pointless: leverage matters only when there is value to claim. Profit without power is precarious: a party which creates value but cannot protect its share will see it taken by others, as Chapter 2 showed. Persuasion without power rarely succeeds, since arguments seldom move a party whose alternatives are strong; but power without persuasion produces agreements that are resented, resisted and abandoned. Each chapter of the book closes its Deal File with a **Pillar Scorecard**, which rates the importance of each pillar in the case and summarises the evidence, so that readers can see how the balance among them varies from one negotiation to another.

### The Framework Applied

The Turnberry Deal illustrates all three pillars. On **profit**, the value at stake was the trade shown in Figure 4.1: hundreds of billions of euros of exports, concentrated in pharmaceuticals, cars and machinery, and the profits of the firms producing them. On **power**, the United States held the stronger alternative, since it could raise tariffs at once, while the EU's leverage lay in the size of its market, its capacity to retaliate and, later, in the uncertainty that the Supreme Court's ruling created for the American position. On **persuasion**, each side had to present the agreement to its own public as a success: the President as proof that tariffs bring concessions, the Commission as the least damaging outcome available, and the European Parliament as a deal it had improved through its own conditions.

The author's research on trade cooperation between India and Europe applies a similar logic to another set of negotiations, showing how geoeconomic fragmentation changes the value at stake, the balance of power and the arguments available to each side (Kumar, 2026b). Chapter 15 returns to this theme.

**KEY MOVE**

Ask the three questions in order. First, what value is at stake and who will capture it? Second, what determines each side's power? Third, how will agreement be reached and made to last?

BACK TO THE DEAL FILE

## Reading the Turnberry Deal

The tools of this chapter explain both the terms of the deal and the difficulty of implementing it.

**Negotiation was chosen over the alternatives, but the alternatives shaped it.** The EU could have retaliated, gone to the World Trade Organization or waited for American courts. It negotiated because each alternative was costly or slow, and the agreement reflected the fact that the American alternative of unilateral tariffs was stronger than the European alternative of retaliation.

**The process passed through every phase, and implementation reopened the deal.** Preparation, opening threats, months of information exchange, bargaining and a dramatic closing at Turnberry were followed by an implementation phase that lasted almost a year. The Supreme Court's ruling of February 2026 changed the legal basis of the American commitments and gave the European Parliament an opportunity to attach conditions of its own.

**It was a two-level game on both sides.** The Commission had to satisfy 27 member states and the Parliament; the President had to contend with the courts. The conditions written into the EU's legislation, including the expiry in 2029 and the clauses on suspension and on steel, are the European win-set made explicit.

**Several promises could not be enforced.** The figures for energy purchases and investment were expectations expressed by public authorities on behalf of private firms, while the American limit depended on executive action that the courts could constrain. Agreements built on promises of this kind are inherently fragile, a theme that Chapter 13 develops.

**Each pillar mattered.** The value at stake set the terms of the debate, the asymmetry of alternatives decided the main outcome and persuasion shaped how each side presented it at home.

MA EXTENSION

### Two-Level Games and the Paradox of Weakness

Putnam (1988) showed that a negotiator whose domestic win-set is small may gain bargaining power, because it can credibly say a more generous agreement would be rejected at home. Schelling (1960) made a related point about commitment: the ability to bind oneself can be a source of strength. Apply these ideas to the Deal File. Did the conditions attached by the European Parliament in 2026 strengthen or weaken the EU's position in future negotiations with the United States? Did the Supreme Court's ruling enlarge or shrink the American win-set? Under what conditions does a constrained negotiator gain, and when does the constraint simply make agreement impossible?

ETHICS CHECK

The joint statement of August 2025 included figures for energy purchases and investment that the European Commission could not oblige firms or member states to deliver. Is it ethical for negotiators to include in an agreement commitments they know they cannot enforce? How should the other side treat such promises, and what happens to trust when they are not kept?

### Pillar Scorecard

**Table 4.6**

*Pillar Scorecard: the Turnberry Deal, 2025 and 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | Hundreds of billions of euros of trade, concentrated in pharmaceuticals, cars and machinery, were exposed to tariffs |
| Power | Very high | The United States could impose tariffs at once, while the EU's main alternative of retaliation was costly to itself |
| Persuasion | High | Each side presented the deal at home as a success, and the European Parliament used conditions to show it had improved it |

### Your Move

*This is a constructed teaching case.*

You are the export director of a manufacturer of wooden windows near Kalisz, which sells a quarter of its output to a distributor in the United States. Before 2025 your windows entered the United States at a low ordinary duty; now they face a combined rate of 15 per cent. The distributor proposes that you absorb the whole

tariff by cutting your price. Your margin on American sales is 12 per cent, and two Canadian competitors are offering similar windows. The distributor has worked with you for nine years and values your reliability and your quality certificates.

1. Should you negotiate, or consider one of the alternatives in Table 4.2? Explain your choice.
2. Using Table 4.4, assess the factors that will shape the outcome. What is your BATNA, and what is the distributor's?
3. Plan the phases of the negotiation using Table 4.3.
4. Apply the three questions of the framework. What value is at stake, who has more power and what arguments could persuade the distributor to share the cost of the tariff?

## Conclusion

Negotiation is the principal means by which economic actors turn conflict into agreement. It is a process between interdependent parties with different preferences, and it is the right choice only when an agreement can offer each party more than competing, litigating, imposing or walking away. Negotiations pass through recognisable phases, from preparation to implementation, and many are played at two levels, with the other side and with one's own constituency. Their outcomes depend above all on structural factors: alternatives, information, time, relationships, people and institutions. The Turnberry Deal shows all of them at work, and it shows that an agreement announced in a day may take a year to become real. This chapter has also set out the framework on which the rest of the book is built. Every negotiation is a contest over profit, decided by power and closed by persuasion. Before turning to the first of these pillars, however, Part I has one more question to answer: what happens when negotiation fails? Chapter 5 examines the third parties to whom firms turn when they cannot agree on their own: mediators, arbitrators and the courts.

## Exercises

### A. Objective Questions

1. Which of the following is *not* an essential element of negotiation as defined in this chapter?

   a) two or more parties
   b) different preferences
   c) equal power
   d) interdependence

2. In this book, the term "bargaining" refers mainly to:
   a) the search for joint gains
   b) the competitive division of a fixed surplus
   c) the implementation of an agreement
   d) negotiation between governments

3. Zartman and Berman (1982) describe international negotiation as moving through:
   a) latent, perceived and manifest stages
   b) threat, promise and agreement
   c) opening, middle and end game
   d) diagnosis, formula and detail

4. In Putnam's two-level game, the win-set is:
   a) the range of agreements that a party's domestic constituency would accept
   b) the set of issues on the agenda
   c) the concessions made by the stronger party
   d) the final agreement

5. A BATNA is:
   a) the best agreement a party can hope for
   b) the first offer in a negotiation
   c) a type of contract clause
   d) what a party will do if the negotiation fails

6. Under the joint statement of August 2025, the US tariff ceiling on most EU goods was:
   a) 10 per cent in addition to ordinary duties
   b) 15 per cent including ordinary duties
   c) 20 per cent
   d) 30 per cent

7. In the profit, power and persuasion framework, the question "what determines each side's leverage?" belongs to:
   a) profit
   b) persuasion
   c) power
   d) none of the pillars

8. According to Figure 4.1, the largest product group in EU exports of goods to the United States in 2025 was:
   a) medicinal and pharmaceutical products
   b) electrical machinery
   c) road vehicles
   d) power-generating machinery

### B. Short-Answer Questions

1. Define negotiation and explain each of its essential elements.
2. Name four alternatives to negotiation and state one situation in which each might be preferable.
3. Describe the six phases of a negotiation, giving a business example of each.
4. Explain Putnam's idea of a two-level game and illustrate it with the Turnberry Deal.
5. What is a BATNA, and why does the party with the stronger BATNA usually have more power?
6. Identify three challenges that make negotiation difficult, with an example of each.
7. State the three questions of the profit, power and persuasion framework, and explain how the pillars interact.

### C. Long-Answer Questions

1. Analyse the Turnberry Deal using the six factors in Table 4.4. Which factors best explain why the EU accepted a ceiling of 15 per cent?
2. Compare the agreements reached with the United States in 2025 by the United Kingdom, the European Union and Switzerland. How did the size, alternatives and strategy of each party shape its outcome?
3. "An agreement is only as good as its implementation." Discuss this statement with reference to the Turnberry Deal and to the problems of trust and enforcement in negotiation.
4. Choose a negotiation in which a firm in your country was recently involved. Analyse it using the profit, power and persuasion framework and assess which pillar was most important.

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CHAPTER

# 5

# Settling Business Disputes: Mediation, Arbitration and the Courts

https://doi.org/10.61030/fzgp-2ebw

## Introduction

Negotiation does not always succeed. The parties may be too far apart, too angry or too suspicious of each other to agree; one of them may expect to obtain more from a judge than from the other side; or the dispute may raise questions of law that only an authority can answer. When negotiation fails, firms, workers and governments turn to third parties, who either help them to reach agreement or decide the dispute for them. The choice of third party, and the rules under which it acts, shape not only the outcome but also its cost, its speed and what is left of the relationship afterwards.

This chapter examines the institutions of dispute settlement. Section 5.1 presents the ladder of settlement, from negotiation through facilitated procedures to binding decisions, and compares the steps on cost, speed, confidentiality, control and the relationship. Section 5.2 explains how conciliation and mediation work and why they succeed or fail. Section 5.3 turns to arbitration and litigation, the two ways in which a third party decides a dispute. Section 5.4 examines the special institutions for labour disputes, drawing on examples from India and Poland, and the growth of online dispute resolution. Section 5.5 moves to the international level and the institutions that settle disputes between firms, between investors and states, and between states over trade: the International Chamber of Commerce, the International Centre for Settlement of Investment Disputes and the World Trade Organization.

The chapter completes Part I. Chapter 4 introduced negotiation and the book's framework; this chapter shows what lies behind every negotiation, since the procedures available when talks fail define each side's alternatives, and therefore its **power**. Third parties also change the value at stake, the **profit**, by adding costs

and delays, and they demand a different kind of **persuasion**, addressed to a mediator, an arbitrator or a judge rather than to the other side. The Deal File follows a dispute in which a commercial concession, a global sale and the rivalry between great powers met in two container terminals at either end of the Panama Canal.

DEAL FILE

### Panama Canal Ports, from Sale to Seizure

Since 1997 Panama Ports Company, a subsidiary in which the Hong Kong group CK Hutchison holds an indirect 90 per cent interest, had operated the ports of Balboa on the Pacific and Cristóbal on the Atlantic, at either end of the Panama Canal. Its concession contract had been approved by Law No. 5 of 16 January 1997 and was later extended (CK Hutchison Holdings, 2026a). For most of that time the concession attracted little attention outside the shipping industry.

That changed in 2025. The new American administration regarded Chinese influence over the canal as a threat to its interests, and on 2 February 2025 the Secretary of State, Marco Rubio, told Panama's President, José Raúl Mulino, that the status quo was unacceptable; absent immediate changes, the United States would take the measures necessary to protect its rights under the canal treaty (US Department of State, 2025). On 4 March 2025 CK Hutchison announced agreements in principle to sell its ports business, covering 43 ports in 23 countries, and its 90 per cent interest in Panama Ports Company to a consortium of BlackRock, its unit Global Infrastructure Partners and Terminal Investment Limited (TiL), part of the MSC group. The transaction valued the ports at an enterprise value of US$22.8 billion and was to bring CK Hutchison more than US$19 billion in cash (CK Hutchison Holdings, 2025). The sale, which needed regulatory approvals, turned a commercial concession into an object of rivalry between the United States and China.

**From court ruling to seizure.** On 29 January 2026 Panama's judiciary announced that the Supreme Court of Justice had declared unconstitutional the law approving the concession contract, together with its amendments and the act extending it. On 3 February Panama Ports Company began arbitration against the Republic of Panama under the concession contract and the Rules of Arbitration of the International Chamber of Commerce (ICC); CK Hutchison's board said that it strongly disagreed with the ruling and reserved all its rights (CK Hutchison Holdings, 2026a). When the ruling was published in the official gazette on 23 February, it took effect, and the government took over the terminals under an executive decree. On 24 February APM Terminals, part of the Maersk group, began to operate Balboa for up to 18 months, while TiL took over Cristóbal (APM Terminals, 2026).

**Table 5.1**

*The Panama Canal ports dispute at a glance*

| | |
|---|---|
| **Parties** | Panama Ports Company and its parent, CK Hutchison; the Republic of Panama; indirectly, the governments of the United States and China and the operators appointed to replace Panama Ports Company |
| **At stake** | The concession to operate two strategic terminals; compensation for the investment made; the wider sale of CK Hutchison's ports business |
| **Timeline** | Concession approved in 1997 and later extended; sale announced in March 2025; concession law declared unconstitutional by the Supreme Court on 29 January 2026; arbitration under the concession contract begun on 3 February; terminals taken over on 23 February 2026; investment treaty arbitration begun on 20 August 2026 |
| **Status in October 2026** | Two arbitrations against Panama: one by Panama Ports Company under the ICC Rules and one by CK Hutchison under an investment treaty, claiming damages of more than US$1.5 billion; temporary operation of the terminals by APM Terminals and TiL |

*Note.* Author, based on APM Terminals (2026) and CK Hutchison Holdings (2025, 2026a, 2026b).

**From seizure to arbitration.** The dispute then moved to the arbitrators. On 20 August 2026 CK Hutchison began a second international arbitration against Panama, this time for alleged breaches of an investment protection treaty, claiming damages of more than US$1.5 billion for a series of measures in 2025 and 2026 that, in its words, ended in the destruction of the concession contract and the takeover of the terminals (CK Hutchison Holdings, 2026b). The two proceedings run in parallel and are likely to take years.

**Questions to keep in mind.** Why did a commercial concession end in a court ruling and a seizure rather than a negotiated settlement? Why did the investor turn to international arbitration rather than to Panama's own courts? What can arbitrators do, and what can they not do, for a party which has lost its business? How did the involvement of the world's two largest powers change the options open to each side? The chapter answers these questions in turn.

## 5.1 Negotiate, Mediate or Decide? The Ladder of Settlement

### From Agreement to Decision

The procedures for settling disputes can be arranged on a ladder, shown in Table 5.2. On the lower rungs, the parties keep control of the outcome: they negotiate themselves, or a third party helps them to negotiate. On the higher rungs, they hand control to a third party who decides for them. Higher up the ladder, costs, delays and formality usually rise, while the parties' control over the result and the chances of preserving their relationship usually fall.

**Table 5.2**

*The ladder of dispute settlement*

| Procedure | Role of the third party | Outcome binding? | Typical cost and speed | Confidential? | Effect on relationship |
|---|---|---|---|---|---|
| Negotiation | None | Only if agreed | Lowest; fastest | Yes | Usually preserved |
| Conciliation | Brings the parties together, may suggest terms | Only if agreed | Low | Usually | Usually preserved |
| Mediation | Structures the talks and helps the parties find their own solution | Only if agreed | Low to moderate | Yes | Often preserved or repaired |
| Expert determination | Decides a technical question | Usually, by contract | Moderate | Yes | Partly preserved |
| Arbitration | Hears both sides and makes a binding award | Yes | Moderate to high | Usually | Often strained |
| Litigation | A court applies the law and gives judgment | Yes, subject to appeal | High; slowest | No, as a rule | Often broken |

*Note.* Author, based on Ury et al. (1988) and Moore (2014).

The ladder echoes the distinction drawn in Chapter 3 between reconciling interests, determining rights and contesting power. Negotiation, conciliation and mediation are interest-based procedures; arbitration and litigation determine rights. Strikes, blackouts and seizures, which lie off the ladder altogether, are contests of power. A well-designed system, as Chapter 3 explained, encourages parties to settle on the lowest rung that will work and allows them to step back down when a higher rung has clarified the issues.

#### Bargaining in the Shadow of the Law

The higher rungs matter even when they are never used. Mnookin and Kornhauser (1979) showed that parties who negotiate a settlement do so *in the shadow of the law*: each compares the offer on the table with what it expects a court or arbitrator would award, minus the costs and risks of getting there. The expected judicial outcome thus sets each side's alternative to agreement, its BATNA in the language of Chapter 4. A party expecting to win in court can demand more; a party facing high legal costs or a long delay will accept less. Most commercial disputes are settled before a judgment or award, but the terms of those settlements reflect the decision that the parties expect.

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**KEY MOVE**

Before negotiating a dispute, estimate what a court or arbitrator would probably decide, how long it would take and what it would cost. That estimate is your real alternative to agreement.

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## 5.2 How Do Conciliation and Mediation Work?

#### Conciliation and Mediation Compared

**Conciliation** and **mediation** both involve a neutral third party who helps the disputants to reach their own agreement without imposing one. The terms are often used interchangeably, and their meaning differs from one country and field to another. In general usage, a conciliator concentrates on bringing the parties together, improving communication and, often, proposing terms of settlement, while a mediator manages a structured process designed to help the parties identify their interests and design a solution themselves. In labour relations, conciliation is frequently a statutory step carried out by a public official before a dispute may proceed further, as Section 5.4 shows.

Management texts distinguish several kinds of mediator. An *eminent outsider*, a respected person trusted by both sides, may mediate informally; a *nongovernmental board* or panel may be created by the parties; and a *governmental*

*or semi-governmental body* may supply mediators under public rules. Whatever its form, skilful and sympathetic mediation can resolve differences that would otherwise lead to a stoppage of work or a breakdown of trade.

### What Mediators Do

Moore (2014) describes mediation as a process that moves through recognisable stages: making contact with the parties, gathering information, designing the process, opening joint sessions, defining the issues, uncovering interests, generating options, assessing them and reaching a formal settlement. Within this process, mediators use three broad kinds of intervention (Kressel & Pruitt, 1989):

- **reflexive** interventions, which build rapport and trust and orient the mediator to the dispute;
- **contextual** interventions, which change the atmosphere and the process: separating the parties, controlling the agenda, reducing tension and improving communication;
- **substantive** interventions, which address the content: suggesting options, pointing out the costs of failure, testing the realism of each side's demands and proposing compromises.

Carnevale (1986) argued that a mediator's choice among strategies depends on two judgements: how much the mediator values the parties' own aspirations, and how likely the parties seem to find common ground. When common ground seems likely, mediators tend to help the parties solve the problem; when it seems unlikely and the parties' goals matter, they press harder with proposals of their own.

### When Mediation Succeeds and Fails

Research has identified several conditions under which mediation is most likely to succeed (Kressel & Pruitt, 1989; Wall & Lynn, 1993). The dispute is moderately intense rather than at the extremes of escalation; the parties are motivated to settle, often because the stalemate described in Chapter 3 has begun to hurt; the issues are divisible rather than matters of principle; the resources at stake are not severely limited; and the mediator is seen as competent and impartial. Mediation is less likely to succeed when one party believes it can win outright, when the conflict concerns values or identity, or when the parties' positions have been made public and hardened.

The form that mediation takes also varies with culture. In high-context cultures such as China, disputes between individuals and firms are commonly handled through intermediaries, frequently a friend of both parties or a respected elder, because communication through a third party avoids direct confrontation

and reduces the risk that either side will lose face; impartiality and the maintenance of face are regarded as the two key conditions of successful mediation (Jandt, 2018). In low-context cultures, by contrast, the parties are more likely to address the issues directly and to engage a professional mediator whose authority derives from expertise and procedure rather than from personal relationships.

Moore and Woodrow (2010), drawing on Moore's earlier work, distinguish five kinds of intercultural mediator. **Social network mediators** are trusted members of the parties' own network, who need not be wholly impartial but are believed able to help. **Benevolent mediators** are respected figures of high status to whom disputants turn for advice. **Administrative or managerial mediators** hold formal positions in an organisation and could decide the issue, but prefer to help the parties reach their own agreement within the organisation's rules. **Vested interest mediators** are powerful parties with a stake in the outcome, who encourage, cajole or press the disputants to agree. **Independent mediators** are neutral towards the parties and impartial on the issues, and offer help with the process. Which kind is acceptable depends on culture. Parties from hierarchical and collectivist cultures tend to prefer mediators with status and authority, who direct both the process and the substance and may apply personal or social pressure, as mediators of China's people's mediation committees and many commercial mediators in Hong Kong and Singapore do. Parties from individualist cultures, such as the United States, northern Europe and Australia, tend to choose mediators for expertise rather than status and expect them to leave control of the outcome to the parties (Moore & Woodrow, 2010). Chapter 18 examines these differences in more detail.

Legal frameworks increasingly encourage mediation. The European Union's Mediation Directive of 2008 requires member states to ensure that settlements reached through mediation in cross-border civil and commercial disputes can be made enforceable. At the global level, the United Nations Convention on International Settlement Agreements Resulting from Mediation, signed in Singapore in 2019, provides for the enforcement of international mediated settlements across borders, much as the New York Convention does for arbitral awards.

In the Deal File, mediation was hardly attempted. The issues had become matters of constitutional law and national security, the parties' positions were public and the great powers behind them treated the outcome as a test of strength: precisely the conditions under which mediation is least likely to work.

**KEY MOVE**

Use mediation early, while positions are still flexible and before the dispute becomes a matter of principle or public prestige. Choose a mediator both sides regard as competent and impartial.

## 5.3 Who Decides When Talks Fail? Arbitration and Litigation

### Arbitration

In **arbitration** the parties agree to submit their dispute to one or more private decision makers, the arbitrators, whose award is binding. The agreement may be made in advance, usually through an arbitration clause in the contract, or after the dispute has arisen. Arbitration differs from conciliation in a fundamental way: a conciliator helps the parties reach a decision, whereas an arbitrator decides the dispute.

Arbitration offers business several advantages over the courts (Born, 2021):

- **neutrality**, since neither party has to accept the courts of the other's country;
- **choice of decision makers**, who can be selected for their expertise in the industry or the law concerned;
- **confidentiality**, which protects commercial information and reputations;
- **flexibility**, since the parties can shape the procedure, the language and the seat;
- **finality**, since awards can be challenged only on narrow grounds;
- **enforceability**, since the New York Convention of 1958, to which more than 170 states are party, obliges courts to recognise and enforce foreign arbitral awards with few exceptions.

The last advantage is decisive for international business. A judgment of a national court can be difficult to enforce abroad, while an arbitral award can usually be enforced wherever the losing party has assets. Arbitration also has costs: fees for arbitrators and institutions, lengthy proceedings in complex cases, limited rights of appeal against a mistaken award and, in many cases, a confidentiality that hides rulings from public scrutiny.

### Litigation

**Litigation** is the resolution of a dispute by a court of the state. Its strengths are the mirror image of arbitration's weaknesses. Courts can compel parties and witnesses to appear, they offer appeals to correct errors, their judgments create precedents guiding future conduct, and their proceedings are generally public, which supports accountability. Their weaknesses are delay, cost, formality, lack

DEAL SNAPSHOT

**Uniper against Gazprom, 2022 to 2024**

Uniper, then Germany's largest importer of natural gas, had long-term contracts to buy gas from Gazprom Export that were due to run into the mid-2030s. From June 2022 Gazprom cut its deliveries, and after late August 2022 it delivered no gas at all. Uniper had to buy replacement gas, at times at extremely high prices, and was rescued by the German state, which became its main shareholder. At the end of 2022 it began arbitration. On 7 June 2024 a tribunal seated in Stockholm and applying Swiss law awarded Uniper more than €13 billion in damages and the right to terminate its contracts, which it did a few days later (Uniper, 2024). Uniper itself acknowledged that it was unclear whether significant sums would ever be received. The outcome demonstrates both the strength and the limits of arbitration: a neutral tribunal can establish rights and assess damages with authority, but collecting an award from a party that refuses to pay is a separate battle.

of specialist expertise in some fields and, in international disputes, the difficulty of enforcing a judgment abroad and the suspicion that a court may favour its own nationals or government.

The Deal File shows why an investor may distrust the courts of its host state. It was Panama's own Supreme Court that struck down the concession. For Panama Ports Company, continuing to argue before Panama's courts offered little hope, whereas international arbitration offered a neutral forum and an award that could, in principle, be enforced against Panamanian assets abroad. Table 5.3 compares arbitration and litigation.

**Table 5.3**

*Arbitration and litigation compared*

| Feature | Arbitration | Litigation |
|---|---|---|
| Basis | Agreement of the parties | Jurisdiction of the state |
| Decision maker | Chosen by the parties | Appointed by the state |
| Procedure | Flexible, shaped by the parties and the rules chosen | Fixed by procedural law |
| Publicity | Usually confidential | Usually public |
| Appeal | Very limited | Usually available |
| International enforcement | Strong, under the New York Convention | Often difficult |
| Precedent | Limited | Important in many legal systems |

*Note.* Author, based on Born (2021).

**KEY MOVE**

Decide on the forum when you sign the contract, not when the dispute arises. An arbitration clause that names the rules, the seat and the language is one of the most valuable terms in any international agreement.

## 5.4 Labour Tribunals and Online Dispute Resolution

### Settling Labour Disputes

Disputes between employers and workers have their own institutions in most countries, because of their social importance and because a stoppage of work can harm many people beyond the parties. A widely used classification in management teaching distinguishes five methods of settling industrial disputes: *investigation* of the facts by a board or court of inquiry; *mediation*; *conciliation*; *arbitration*, which may be voluntary, when the parties choose to refer their dispute to an arbitrator, or compulsory, when the law or the government requires it; and *adjudication* by labour courts and tribunals.

India provides a long-standing example of such a system. For more than seventy years, industrial disputes were governed by the Industrial Disputes Act of 1947, which provided for conciliation officers and boards of conciliation, voluntary and compulsory arbitration and a three-tier system of adjudication by labour courts, industrial tribunals and a national tribunal for disputes of national importance. On 21 November 2025 the Act was replaced by the Industrial Relations Code of 2020, one of four labour codes brought into force on that day, which consolidated the law on industrial disputes, trade unions and standing orders (Ministry of Labour and Employment, 2025). The Code replaces the labour courts and tribunals of the old Act with industrial tribunals and a National Industrial Tribunal (*Industrial Relations Code, 2020*). Students using older texts should note the change, which illustrates how dispute institutions evolve with the economy they serve.

Poland follows a different model. Under the Act of 23 May 1991 on the resolution of collective disputes, a dispute between a trade union and an employer must pass through negotiations and then mediation, with a mediator agreed by the parties or, failing agreement, appointed by the ministry responsible for labour from an official list. If mediation fails, the union may call a warning strike of no more than two hours, or the employee side may ask a council of social arbitration to settle the dispute instead of striking (Eurofound, n.d.). Individual employment disputes, such as claims for unfair dismissal, are heard by the labour divisions of the ordinary courts. Chapter 10 examines collective bargaining and industrial conflict in Poland and Central Europe in more detail.

### Online Dispute Resolution

Digital technology has created a new rung on the ladder. **Online dispute resolution** (**ODR**) uses internet platforms to handle disputes, often small and numerous ones, between consumers and businesses or between businesses. Online marketplaces and payment providers resolve millions of complaints each year through automated negotiation tools and online mediation, and many courts now allow hearings and filings to take place online.

Not every ODR initiative has succeeded. In 2016 the European Union launched an online platform to connect consumers and traders with approved dispute resolution bodies. Few complaints, however, ever reached such a body, because traders rarely responded. The EU legislators concluded that the platform's performance did not justify its public and private costs; it stopped accepting complaints on 20 March 2025 and was closed on 20 July 2025 (Regulation (EU) 2024/3228, 2024). The lesson is that technology lowers the cost of access to dispute resolution, but cannot by itself oblige an unwilling party to take part. Chapter 20 returns to the role of artificial intelligence in negotiation and dispute resolution.

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**KEY MOVE**

Know the special procedures that apply to your dispute. Labour disputes, consumer complaints and disputes with public bodies often have mandatory steps that must be followed before a court will hear a claim.

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## 5.5 How Are International Disputes Settled? ICC, ICSID and the WTO

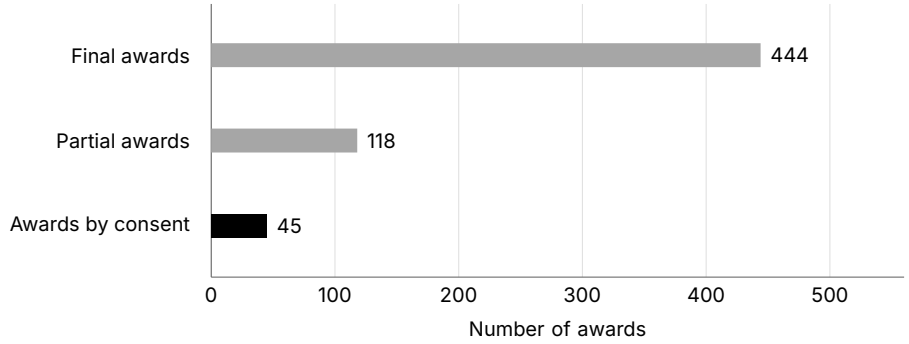
### Commercial Disputes: The International Chamber of Commerce

When firms from different countries cannot agree, they most often turn to international commercial arbitration administered by an institution. The largest is the International Court of Arbitration of the International Chamber of Commerce (ICC), based in Paris. In 2025, 881 new cases were registered under its arbitration rules, involving 2,531 parties from 147 jurisdictions; the cases pending at the end of the year had an aggregate value of US$299 billion. Construction and engineering accounted for 28 per cent of new cases and energy for 15 per cent, and 150 states or state-owned entities appeared as parties (International Chamber of Commerce, 2026). Arbitrations were seated in 123 cities in 70 countries, with France, the United Kingdom, the United States, Switzerland and Singapore the most frequent jurisdictions. Figure 5.1 shows the awards that the ICC's International Court of Arbitration approved in the same year.

Of the 607 awards, 45 were awards by consent, in which the tribunal records a settlement negotiated by the parties themselves, a reminder that arbitration and

**Figure 5.1**

*Awards approved by the ICC International Court of Arbitration, 2025, by type (number)*




*Note.* Author, based on International Chamber of Commerce (2026). Awards by consent record a settlement reached by the parties during the arbitration.

negotiation often run side by side. The choice of seat matters, because the courts of the seat supervise the arbitration and decide any challenge to the award. Cities such as Paris, London, New York, Singapore and Geneva are chosen because their courts are known to support arbitration and to intervene rarely. Other institutions, such as the London Court of International Arbitration, the Singapore International Arbitration Centre and the Arbitration Institute of the Stockholm Chamber of Commerce, compete for the same business.

### Investment Disputes: ICSID

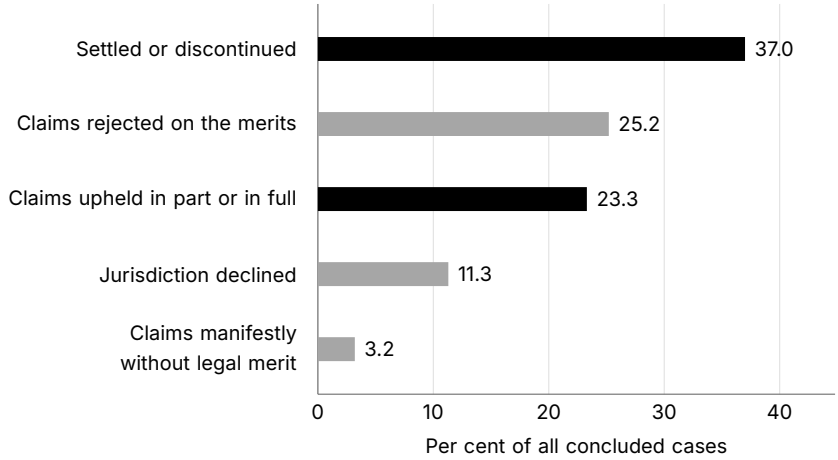
Disputes between foreign investors and host states raise special problems, as the Deal File shows. The investor fears that the host state's courts will not be impartial, while the state insists on its sovereignty. Since the 1960s, these disputes have increasingly been settled by **investor-state arbitration**, under investment treaties, investment laws or contracts in which the state consents in advance to arbitration with foreign investors. The International Centre for Settlement of Investment Disputes (ICSID), part of the World Bank Group, is the main institution.

In its fiscal year ending 30 June 2026, ICSID administered 363 cases, the highest number in its history, and registered 60 new ones. Most new cases relied on the consent given in bilateral investment treaties (62 per cent), and oil, gas and mining together accounted for 43 per cent (ICSID, 2026). Figure 5.2 shows how the cases concluded in that year ended.

The figures carry an important lesson for negotiators. Investors win, in part or in full, in fewer than a quarter of concluded cases, and according to ICSID no damages were awarded at all in 70 per cent of the tribunal decisions of that year. More than a third of cases end in a settlement or are discontinued, often after

**Figure 5.2**

*Outcomes of ICSID cases concluded in the fiscal year 2026 (per cent of all concluded cases)*




*Note.* Author's calculation, based on ICSID (2026). ICSID reports that 37 per cent of concluded cases were settled or discontinued and 63 per cent decided by tribunals; the shares of tribunal decisions have been converted into shares of all concluded cases.

the arbitration has clarified each side's chances. Arbitration, in other words, is frequently a stage in a negotiation rather than its replacement. Panama Ports Company's claim under the ICC Rules and CK Hutchison's treaty claim face the same uncertainty. The author's research on foreign direct investment in India and Poland examines how host-state institutions and the protection of investors shape the decisions of foreign firms (Kumar, 2020), and Chapter 15 returns to bargaining between firms and states.

#### Trade Disputes between States: The WTO

Disputes about trade rules between governments are settled under the Dispute Settlement Understanding of the World Trade Organization. The system begins with consultations, a mandatory period of negotiation; if these fail, a panel of experts rules on the dispute, and either side may appeal to the seven-member Appellate Body. The system was long regarded as the most successful of its kind in international law. Since December 2019, however, the Appellate Body has been unable to function, because the United States has blocked the appointment of new members. A party losing before a panel can therefore appeal "into the void", leaving the dispute unresolved.

DEAL SNAPSHOT

### An Interim Appeal Arrangement for the WTO, 2020 to 2026

In 2020 a group of WTO members, led by the European Union, created the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). Its participants agree that, while the Appellate Body cannot function, appeals in disputes among them will be decided by arbitration under the WTO's own rules, so panel reports cannot be blocked by appeals into the void. With the accession of Cambodia in September 2026, the arrangement covered 62 WTO members, accounting for 60.4 per cent of world trade, including the EU, China and the United Kingdom (European Commission, 2026c). The MPIA shows how parties who cannot restore an institution can negotiate a substitute among themselves, a solution to a problem of power reached by agreement among those willing to take part.

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**KEY MOVE**

In international business, identify in advance which institution would settle a dispute and whether its decisions could be enforced. Treaties, institutional rules and the seat of arbitration are part of your bargaining power.

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BACK TO THE DEAL FILE

## Reading the Panama Canal Ports Dispute

The tools of this chapter help to explain why the dispute left the negotiating table and where it may go next.

**The ladder was climbed quickly and partly skipped.** The parties moved from a commercial relationship, through a constitutional ruling and a seizure, directly to arbitration. Mediation was barely possible: the dispute had become a matter of sovereignty and national security, and the governments behind it treated the outcome as a test of strength.

**The investor chose the forum offering neutrality and enforcement.** Since Panama's own Supreme Court had annulled the concession, Panama Ports Company turned to international arbitration, which offered decision makers independent of the host state and an award enforceable abroad, at least in principle.

**The shadow of the award shapes the negotiation that continues.** Panama's government, the new operators and the investor will all form expectations about what the tribunal is likely to decide and when. The ICSID statistics in Figure 5.2 suggest that investors win in fewer than a quarter of concluded cases, while more than a third of cases settle. A negotiated settlement before the award therefore

remains possible, and the arbitration is as much a source of leverage as a means of decision.

**Power lies behind every rung.** The ruling and the takeover came after open pressure from the United States, and the planned sale to an American-led consortium had made the terminals an object of rivalry between the great powers. Third-party procedures can settle the legal questions, but they cannot remove the political forces that created the dispute.

**The relationship has ended, but not the conflict.** Panama Ports Company has lost its terminals and Panama has gained control of them, but the dispute continues through two arbitrations and through the diplomatic relations of three governments.

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MA EXTENSION

### Which Disputes Reach a Decision?

Priest and Klein (1984) argued that the disputes ending in a judgment are not a random sample of all disputes. Parties settle when they can predict the outcome, so the cases that reach a decision tend to be those in which the result is genuinely uncertain. One implication is that win rates among decided cases tend towards 50 per cent, whatever the strength of the law. Combine this with the idea of bargaining in the shadow of the law (Mnookin & Kornhauser, 1979). How might the selection of cases help to explain the outcomes shown in Figure 5.2? What does the high rate of settlement imply about the role of arbitration in negotiations between investors and states? How might the involvement of powerful governments change the parties' incentives to settle in the Deal File?

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ETHICS CHECK

Panama's Supreme Court struck down a concession that the state had granted and extended, and the government took over the terminals as soon as the ruling took effect, at a time of open pressure from a foreign power. When, if ever, is it legitimate for a state to end an investor's rights in the name of the public interest or national security? What does a state owe to an investor whose investment it has taken, and what does an investor owe to the country whose strategic assets it operates?

### Pillar Scorecard

### Your Move

*This is a constructed teaching case.*

You are the chief executive of a software company in Wrocław that has built a logistics management system for a Danish retailer. The project is four months late, and the retailer has refused to pay the final instalment of €1.2 million, claiming that the system does not meet the agreed specifications. Your team believes

**Table 5.4**

*Pillar Scorecard: the Panama Canal ports dispute, 2025 and 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | High | A concession for two strategic terminals, a sale valued at US$22.8 billion and treaty claims of more than US$1.5 billion were at stake |
| Power | Very high | A sovereign state, its Supreme Court and the pressure of two great powers decided the outcome more than any contract |
| Persuasion | Moderate | Public statements by governments framed the dispute in terms of sovereignty and security; arguments before the tribunal will now matter |

that the delays were caused by the retailer's repeated changes to its requirements. The contract contains an escalation clause providing for discussion between project managers, then between chief executives, then mediation, and finally ICC arbitration seated in Stockholm. You want to continue working with the retailer, which has asked you to bid for a second project.

1. Where on the ladder of settlement in Table 5.2 does the dispute now stand, and which rung would you aim to settle on?
2. Estimate your alternative to agreement by considering what an arbitral tribunal might decide, how long it would take and what it would cost.
3. Would you propose mediation? What kind of mediator would you choose, and why?
4. How would your strategy change if the retailer threatened to go to court in Denmark instead?

## Conclusion

When negotiation fails, the parties climb a ladder of procedures, from conciliation and mediation, which help them reach their own agreement, to arbitration and litigation, which decide the dispute for them. Each rung offers a different balance of cost, speed, confidentiality, control and effect on the relationship, and the higher rungs cast a shadow over the lower ones, since every settlement reflects the parties' expectations of what a judge or arbitrator would decide. Labour disputes have their own institutions, which evolve with the economy, as India's new Industrial Relations Code shows, and online tools offer new rungs whose value depends on the willingness of the parties to use them. At the international level, the ICC, ICSID and the WTO provide forums for disputes between firms, between

investors and states and between states, although the paralysis of the WTO's Appellate Body shows that such institutions survive only as long as the most powerful parties support them. The Panama Canal ports dispute brings these themes together: when power and sovereignty dominate, third parties can settle legal questions but not the conflict which produced them. Part I is now complete. It has shown what conflict is, where it comes from, how it develops, how negotiation can resolve it and what happens when negotiation fails. Part II turns to the first pillar of the book's framework, profit, beginning in Chapter 6 with the goals that firms pursue when they sit down to negotiate.

## Exercises

### A. Objective Questions

1. Which of the following procedures leaves control of the outcome with the parties?
   a) arbitration
   b) litigation
   c) mediation
   d) adjudication

2. "Bargaining in the shadow of the law" means that:
   a) negotiations must be supervised by a court
   b) the expected outcome of litigation shapes the terms of settlement
   c) lawyers must be present at every negotiation
   d) only legal issues can be negotiated

3. A mediator who suggests options and points out the costs of failure is using:
   a) substantive interventions
   b) contextual interventions
   c) reflexive interventions
   d) adjudication

4. The main reason why international businesses prefer arbitration to litigation is:
   a) arbitration is always cheaper
   b) arbitration allows unlimited appeals
   c) arbitrators must follow precedent
   d) arbitral awards are easier to enforce across borders under the New York Convention

5. In voluntary arbitration:
   a) the parties themselves choose to refer their dispute to an arbitrator
   b) the government forces the parties to arbitrate
   c) the arbitrator has no power to decide
   d) the dispute is heard by a labour court

6. In India, the Industrial Disputes Act of 1947 was replaced on 21 November 2025 by:
   a) the Trade Unions Act
   b) the Code on Wages
   c) the Industrial Relations Code of 2020
   d) the Factories Act

7. Under Polish law, if mediation in a collective dispute fails, a union may call a warning strike lasting no more than:
   a) one day
   b) two hours
   c) one week
   d) one month

8. The Multi-Party Interim Appeal Arbitration Arrangement was created because:
   a) the WTO had no panels
   b) the ICC had closed its court
   c) ICSID had stopped registering cases
   d) the Appellate Body of the WTO could no longer function

### B. Short-Answer Questions

1. Describe the ladder of dispute settlement and explain how cost, control and the relationship change as one moves up it.
2. Distinguish conciliation, mediation and arbitration.
3. Under what conditions is mediation most likely to succeed?
4. State three advantages and two disadvantages of arbitration compared with litigation.
5. Describe the main stages of a collective dispute under Polish law.
6. What does Figure 5.2 suggest about the chances of success for an investor that brings a claim against a state?
7. Explain the problem that the MPIA was designed to solve, and how it solves it.

### C. Long-Answer Questions

1. Analyse the Panama Canal ports dispute using the ladder of dispute settlement. Why did the dispute move so quickly to arbitration, and what are the chances of a negotiated settlement?

2. "Arbitration is not an alternative to negotiation but a stage of it." Discuss with reference to bargaining in the shadow of the law and to the statistics on investor-state arbitration.

3. Compare the institutions for settling labour disputes in India and Poland. What do they have in common, and how do they reflect the economies and histories of the two countries?

4. Assess the strengths and weaknesses of the institutions for settling international business disputes, using the examples of the ICC, ICSID and the WTO.

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PART

# TWO

# Profit: Firm Goals and Value Creation

Every business negotiation is, in the end, about value. A buyer and a seller bargain over the share of a surplus created by their trade; partners in a joint venture argue over the returns on their combined investment; a union and an employer divide the revenue their cooperation produces. Part I showed that conflict arises wherever people depend on one another for something they value. Part II turns to that value itself. It asks what firms are trying to achieve when they negotiate, how they prepare to achieve it, how value is created and divided at the table, and how these principles work in the negotiations that matter most to firms: with customers and suppliers, with buyers and sellers of companies, and with their own employees.

The first pillar of the book's framework is **profit**, and the word is used deliberately in a broad sense. It refers not only to the accounting profit shown in a firm's financial statements but to all the value a negotiation can create or destroy: revenue and cost, market share and growth, security of supply, reputation and the future value of a relationship. A negotiator who cannot say clearly what value is at stake, for whom and over what period, cannot judge whether an offer is good or bad. The five chapters of this part provide the tools for answering that question.

**Chapter 6** begins with the goals of the firm. It asks whether firms really maximise profit, whose interests count when shareholders, managers, employees and wider stakeholders want different things, and how the time horizon of decision makers shapes the choice between a quick gain and a lasting relationship. It then shows how strategy is translated into negotiation objectives. The Deal File examines the vote by Tesla's shareholders in November 2025 on a pay package for Elon Musk tied to market value targets of up to US$8.5 trillion.

**Chapter 7** turns from goals to preparation. It sets out how a negotiator defines targets, limits and priorities, distinguishes the positions each side states from the

interests behind them, gathers the information needed to judge the other side's limits and builds arguments the other side will accept as legitimate. It closes with a planning template used throughout the rest of the book. The Deal File follows the strike by Boeing's machinists in 2024, in which members rejected an agreement recommended by their own leaders.

**Chapter 8** addresses the central tension of negotiation: the need to create value and the need to claim it. It explains distributive tactics, integrative strategies that enlarge the surplus, trades across issues, contingent agreements and the test of efficiency, and it returns to the negotiator's dilemma introduced in Chapter 2. The Deal File examines the remedy that allowed Microsoft to complete its acquisition of Activision Blizzard in 2023.

**Chapter 9** applies these ideas to commercial and corporate deals: pricing and procurement, the distribution of power along value chains, mergers and acquisitions, joint ventures and alliances, and the reasons why so many deals fail after they are signed. The Deal File follows the proposed merger of the American supermarket chains Kroger and Albertsons, which ended in a court ruling and a lawsuit between the former partners.

**Chapter 10** examines the most institutionalised form of business negotiation, collective bargaining between employers and trade unions. It explains the economics of wages and strikes, the European model of social dialogue and codetermination, and labour relations in Poland and Central Europe. The Deal File analyses the agreement between Volkswagen and the IG Metall union in December 2024, which provided for deep job reductions without compulsory redundancies.

Three ideas connect the chapters. The first is that value has several dimensions, and a negotiator who sees only price will miss most of what is at stake. The second is that value can be created as well as divided, so the best negotiators look for ways to enlarge the surplus before they argue about its division. The third is that the value a firm can capture depends on what it brings to the table: its goals, its preparation and its understanding of the other side. Power and persuasion, the subjects of Parts III and IV, determine how much of that value each side will finally obtain, but they operate on the foundation laid here. A firm which does not know what it wants, or why, will be outplayed by one which does.

CHAPTER
# 6

# Firm Goals and the Economics of Profit

https://doi.org/10.61030/em5z-jky4

## Introduction

What a firm tries to achieve at the negotiating table depends on what it is trying to achieve as an organisation. A supplier wanting above all to fill its factories will accept prices which a supplier seeking the highest margin would reject. A company preparing for a stock market listing will negotiate differently from a family firm planning for the next generation. A board rewarding its chief executive for the share price will send negotiators into the room with different instructions from a board rewarding long-term growth. Before asking how to negotiate, one must therefore ask what the firm wants and who decides.

This chapter examines these questions in four steps. Section 6.1 asks whether profit maximisation is really the goal of the firm, and examines the alternative goals that economists have proposed, from growth and sales to survival and satisfactory performance. Section 6.2 asks whose interests count, comparing the view that firms should serve their shareholders with the view that they should serve a wider group of stakeholders, and showing how corporate governance decides which interests prevail. Section 6.3 examines the time horizon of decision makers and the choice between short-term gains and long-term relationships. Section 6.4 shows how strategy is translated into concrete negotiation objectives, priorities and limits.

The chapter opens Part II and the first pillar of the book's framework, **profit**. It also builds on the agency problem introduced in Chapter 2, since the goals that a firm pursues depend on the people who control it. The Deal File examines a negotiation at the very top of a firm: the vote by Tesla's shareholders in November 2025 on a pay package for its chief executive, Elon Musk, that rewards him only if the company's market value rises as much as eightfold. The case raises every question of this chapter: what the firm is for, whose interests prevail and how far a board should go to secure the services of one individual.

DEAL FILE

## Tesla's Shareholders Vote on Musk's Pay

In 2018 Tesla's board granted Elon Musk a pay package of share options that could be exercised only if the company met a series of ambitious targets for its market value, revenue and profit. In January 2024 the Delaware Court of Chancery, ruling in a shareholder's derivative suit, rescinded the package, holding that the defendants had failed to prove that it was entirely fair to the company (*Tornetta v. Musk*, 2024). In June 2024 Tesla's shareholders voted again to approve the package and to move the company's legal incorporation from Delaware to Texas (Tesla, 2024), although the Court of Chancery later held that the new vote could not cure the defect.

While the appeal was pending, the board negotiated a new arrangement. On 3 September 2025 it granted, subject to shareholder approval, an award of 423,743,904 shares in 12 equal tranches over ten years (Tesla, 2025a). Each vested tranche would add about one percentage point to Musk's voting power, and he could not keep the economic value of the shares unless he remained with the company for at least seven and a half years. Each tranche requires Tesla to reach both a market value milestone and one of a set of operational milestones (Tesla, 2025b). Figure 6.1 shows the market value targets.

**Table 6.1**

*Tesla's vote on Musk's pay at a glance*

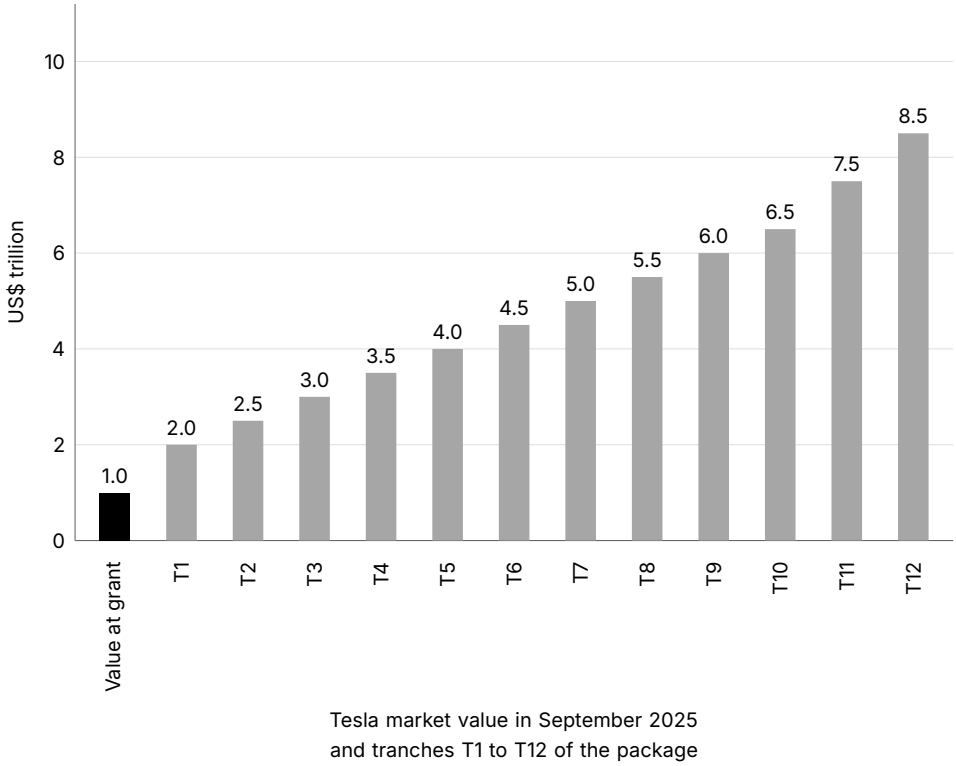
| | |
|---|---|
| **Parties** | Tesla's board of directors and its special committee; Elon Musk; Tesla's shareholders, including large institutional investors, advised by proxy advisory firms |
| **At stake** | Musk's pay and voting control; his commitment to Tesla; the strategy of the company in vehicles, self-driving software and robots |
| **Package** | 423,743,904 shares in 12 tranches; market value milestones from US$2 trillion to US$8.5 trillion; operational milestones including 20 million vehicles delivered, 10 million active self-driving subscriptions, one million robots, one million robotaxis in commercial operation and adjusted EBITDA (earnings before interest, tax, depreciation and amortisation) rising to US$400 billion a year |
| **Outcome** | Approved at Tesla's annual meeting on 6 November 2025 by 1.89 billion votes to 0.56 billion, despite the opposition of the proxy advisers ISS and Glass Lewis |

*Note.* Author, based on Tesla (2025a, 2025b, 2025c, 2025d).

**The negotiation behind the vote.** The package was the outcome of several overlapping negotiations. The board negotiated with Musk, who had made clear that he wanted a larger stake and greater voting control before committing his

**Figure 6.1**

*Market value milestones in Tesla's pay package for Elon Musk, compared with the company's value when the award was granted (US$ trillion)*




*Note.* Author, based on Tesla (2025b). The company valued itself at about US$1 trillion on 3 September 2025. Tranches 1 to 10 require increases of US$0.5 trillion from US$2 trillion; tranches 11 and 12 require increases of US$1 trillion.

time to Tesla's plans for artificial intelligence and robots. The board then had to persuade shareholders, many of whom follow the advice of proxy advisory firms, and both leading advisers, ISS and Glass Lewis, recommended a vote against (Glass Lewis, 2025; Tesla, 2025c). The board argued that Musk was indispensable to Tesla's future and would be paid only if shareholders gained enormously too (Tesla, 2025b); critics replied that the package was excessive, rewarded one individual for the work of thousands and placed no limit on his other commitments. Shareholders sided with the board: more than three-quarters of the votes cast on the proposal were in favour (Tesla, 2025d). Six weeks later, on 19 December 2025, the Delaware Supreme Court held that rescission had been an

improper remedy and reinstated the package of 2018 as well, awarding the plaintiff nominal damages of one dollar (*In re Tesla, Inc. Derivative Litigation*, 2025).

**Questions to keep in mind.** Is Tesla's goal to maximise its profit, its market value or something else? Whose interests did the board represent in its negotiation with Musk: those of the shareholders, of Musk himself or of the company as a whole? Does a pay package tied to a ten-year horizon encourage long-term thinking, or does it focus attention on the share price? And how does a firm's choice of goals shape what its negotiators try to win? The chapter answers these questions in turn.

## 6.1 Is Profit Maximisation the Goal of the Firm?

### The Classical Assumption

Economic theory has traditionally assumed that firms seek to maximise **profit**, the difference between total revenue and total cost. The assumption has great power. It explains why firms expand output until the extra revenue from one more unit equals its extra cost, why they enter profitable markets and leave unprofitable ones, and why competition tends to push prices towards costs. In negotiation, it implies that a firm should accept any agreement raising its profit and reject any lowering it.

Economists distinguish **accounting profit**, revenue minus the explicit costs recorded in the accounts, from **economic profit**, which also deducts the opportunity cost of the capital and other resources the owners have committed. A firm earning an accounting profit of 4 per cent on its capital, when investors could earn 8 per cent elsewhere, is destroying value in the economic sense. The distinction matters at the negotiating table: an apparently profitable agreement may not cover the cost of the capital tied up in it, a point developed in Chapter 7 in the discussion of limits.

### Alternative Goals

Real firms often appear to pursue goals other than profit. Economists and management scholars have offered several explanations, summarised in Table 6.2.

These theories have a common thread. Once ownership is separated from control, as Berle and Means (1932) observed in large American corporations almost a century ago, the goals of the people who run a firm may differ from those of the people who own it. This is the agency problem of Chapter 2 applied to the firm as a whole. A manager who wants a larger empire may negotiate an acquisition which shareholders would reject; a sales director paid on volume may accept a contract lowering the firm's profit.

Firms also pursue goals that are not easily reduced to money: survival, independence, reputation, the welfare of employees or the continuity of a family

**Table 6.2**

*Theories of the goals of the firm*

| Theory | Main goal | Key idea | Implication for negotiation |
|---|---|---|---|
| Profit maximisation | Maximum profit | Owners control the firm and want the highest return | Accept any deal that raises profit |
| Sales revenue maximisation (Baumol, 1959) | Maximum revenue, subject to a minimum profit | Managers' prestige and pay rise with the size of sales | Favour volume, even at lower margins |
| Growth maximisation (Marris, 1964) | Maximum growth of the firm | Managers gain from expansion, limited by the risk of takeover | Favour acquisitions and market share |
| Satisficing (Simon, 1955) | Satisfactory performance | Limited information and attention lead to acceptable rather than optimal choices | Accept the first offer that meets the target |
| Behavioural theory (Cyert & March, 1963) | Bargained goals of a coalition | The firm is a coalition of groups whose goals are negotiated internally | Objectives reflect internal compromise |
| Shareholder value | Maximum long-term market value | The value of the firm reflects all expected future profits | Weigh future as well as present gains |

*Note.* Author, based on the works cited.

business across generations. Simon (1955) and Cyert and March (1963) showed that real decision makers, with limited time and information, set aspiration levels and search for options until they find one meeting them, rather than calculating the best possible result. The behavioural theory of the firm adds that the goals themselves are the outcome of bargaining inside the firm, between production and sales, between headquarters and subsidiaries, between owners and managers. Before a firm negotiates with outsiders, in other words, it has already negotiated with itself.

Some religious and ethical traditions question the profit motive more fundamentally. Schumacher (1973), in an essay on what he called **Buddhist economics**, argued that modern economics treats consumption as the purpose of economic activity and work as a cost to be minimised, whereas a Buddhist view would aim at the greatest well-being with the least consumption and would value work as a way for people to develop their abilities and to cooperate with others in a common task. **Islamic finance** offers a more concrete example. Because Islamic law prohibits the charging of interest, Islamic banks earn their returns through arrangements based on the sharing of profit and loss or on a fixed mark-up, employ religious scholars to decide what is permissible and avoid

investments in activities such as gambling and weapons (Moore & Woodrow, 2010). A negotiator who proposes a conventional loan to such a counterpart is not offering a lower price but an unacceptable product; the same economic purpose has to be reached through a different structure. Chapter 18 returns to belief systems as part of culture.

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**KEY MOVE**

Find out what the other firm is really trying to maximise. A counterpart pursuing volume, growth, survival or reputation will value your offer differently from one pursuing profit, and you can design offers giving it what it values most at little cost to you.

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## 6.2 Shareholders or Stakeholders: Whose Interests Count?

### The Shareholder View

Friedman (1970) argued that the social responsibility of business is to increase its profits, within the rules of the game. Managers are agents of the owners, he reasoned, and if they spend the owners' money on social causes they are imposing a tax that no one elected them to levy. Jensen (2001) refined this view as **enlightened value maximisation**: firms should maximise their long-term market value, which requires them to treat employees, customers, suppliers and communities well, but they need a single measurable objective, because a manager told to serve many masters will in practice serve none and be accountable to nobody.

### The Stakeholder View

Freeman (1984) defined stakeholders as any group or individual who can affect or is affected by the achievement of a firm's objectives, and argued that managers should balance the interests of all of them. The view has gained influence. In 2019 the Business Roundtable, an association of the chief executives of leading American companies, issued a statement committing its members to deliver value to customers, invest in employees, deal fairly with suppliers and support communities, as well as to generate long-term value for shareholders (Business Roundtable, 2019). Hart and Zingales (2017) proposed a middle position: companies should maximise the welfare of their shareholders, which includes the social and environmental concerns that many shareholders hold, rather than market value alone.

The debate is not merely academic. It determines who sits at the table, what counts as a good outcome and whose consent is needed. A firm which sees itself as accountable only to its shareholders will negotiate with suppliers and

employees to minimise costs; a firm treating them as stakeholders will negotiate partnerships to share gains. Table 6.3 compares the two views.

**Table 6.3**

*The shareholder and stakeholder views compared*

| Question | Shareholder view | Stakeholder view |
|---|---|---|
| Whom does the firm serve? | Its owners | All groups that affect or are affected by it |
| What is the measure of success? | Long-term market value | Balanced performance for several groups |
| How are other groups treated? | As means to value, protected by contracts and law | As ends in themselves, with legitimate claims |
| Main strength | Clear accountability | Attention to relationships and externalities |
| Main weakness | Neglect of interests not priced by markets | Difficulty of measuring and enforcing performance |

*Note.* Author, based on Friedman (1970), Freeman (1984) and Jensen (2001).

### Corporate Governance and Executive Pay

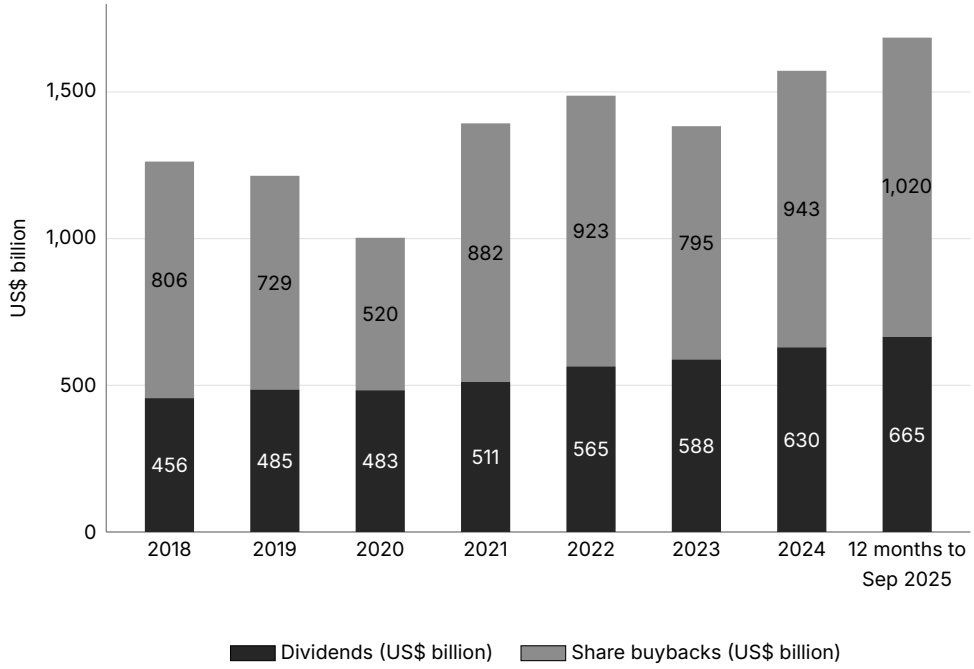
Which interests prevail depends on **corporate governance**, the system of rules and institutions by which firms are directed and controlled. Boards of directors hire and supervise managers on behalf of shareholders; shareholders elect boards and vote on major decisions; proxy advisers, institutional investors, regulators and courts each play a part. Executive pay is one of the main instruments through which boards try to align managers' goals with those of shareholders, but Bebchuk and Fried (2004) argued that powerful managers often influence their own pay, so pay packages may reflect managerial power as much as the interests of shareholders.

The Deal File shows the instrument and its difficulties in their most extreme form. The board argued that a package paying Musk only if Tesla's value rose to between US$2 trillion and US$8.5 trillion aligned his interests perfectly with those of shareholders. Critics argued that a board negotiating with its most powerful member could not be fully independent, and a package of this size reflected Musk's bargaining power rather than the market value of his services. Both arguments draw on the agency theory of Chapter 2.

The scale of money returned to shareholders shows how strongly the shareholder view shapes American business. Figure 6.2 shows the sums paid by the companies in the S&P 500 index as dividends and spent on repurchasing their own shares.

**Figure 6.2**

*Dividends and share buybacks of S&P 500 companies, 2018 to 2025 (US$ billion)*




*Note.* Author, based on S&P Dow Jones Indices (2025). The final column covers the 12 months to September 2025 and is preliminary.

In the 12 months to September 2025, these companies returned more than US$1.68 trillion to their shareholders, US$1.02 trillion of it through buybacks. Supporters see such payments as the efficient return of surplus cash to owners, who can invest it elsewhere; critics see them as a sign that firms are favouring shareholders over investment, employees and suppliers. For negotiators, the figures are a reminder that the value claimed from suppliers, customers and employees is, in part, the value later returned to shareholders.

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**KEY MOVE**

Identify every party whose consent the other side needs: its board, its shareholders, its proxy advisers, its employees and its regulators. An agreement satisfying the negotiator but not those behind him or her will not last.

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DEAL SNAPSHOT

**Unilever Separates Its Ice-Cream Business, 2024 and 2025**

In March 2024 Unilever announced that it would separate its ice-cream division. It argued that ice cream had a very different operating model from its other businesses, with a supply chain and points of sale built for frozen products, a different channel landscape, more seasonality and greater capital intensity, and its growth potential would be better realised under different ownership (Unilever, 2024). The demerger was completed on 6 December 2025, and The Magnum Ice Cream Company, owner of brands such as Magnum, Ben & Jerry's, Cornetto and Wall's, began trading on 8 December in Amsterdam, London and New York (Unilever, 2025). The separation also carried an unresolved conflict of goals. When Unilever acquired Ben & Jerry's in 2000, it agreed that the brand would keep an independent board responsible for its social mission. Disputes between that board and its owners over the brand's political statements followed, and in November 2024 Ben & Jerry's sued its parent company in a federal court in New York (*Ben & Jerry's Homemade, Inc. v. Unilever PLC*, 2024). The case shows how a firm's goals are negotiated not only with markets but also with the groups inside it, and how commitments to stakeholders made in one negotiation can constrain the owners for decades.

## 6.3 Short-Term Gains or Long-Term Relationships?

### The Problem of Time Horizons

Every negotiation involves a choice between the present and the future. A firm can press for the best price today, or accept a lower one in return for a lasting relationship that will yield more over time. Economic theory handles this choice through **discounting**: future gains are worth less than present ones, and the rate at which a firm discounts them determines how much weight it gives to the future. A firm with a high discount rate, because it is short of cash, faces an imminent sale or is run by managers who will soon leave, will favour immediate gains. A firm with a low discount rate will invest in relationships.

Evidence suggests that pressure for short-term results is strong. In a survey of more than 400 financial executives in the United States, Graham et al. (2005) found that most would give up some economic value, and more than half would delay a project that created value, in order to meet expectations for quarterly earnings. Such pressure reaches the negotiating table: a purchasing manager judged on this year's savings may squeeze a supplier whose goodwill the firm will need next year, and a sales director with a quarterly target may grant discounts that undermine pricing for years.

### The Value of Relationships

Relationships have economic value because they reduce the costs of transacting, which Chapter 2 identified as a source of conflict. Partners who trust each other spend less on monitoring and contracts, share information which allows them to create value, and settle disputes before they escalate. Dyer and Singh (1998) argued that such relationships can be a source of competitive advantage in their own right, because they allow partners to make specific investments, share knowledge and combine resources in ways rivals cannot copy. Game theory, discussed in Chapter 12, adds that cooperation is easier to sustain when the parties expect to deal with each other again, because the shadow of the future makes cheating today costly tomorrow.

The choice between short-term and long-term goals is therefore one of the most important decisions a firm makes before it negotiates. Table 6.4 sets out the signs that should push a negotiator towards each.

**Table 6.4**

*When to favour short-term gains and when to favour the relationship*

| Favour the short-term gain when | Favour the relationship when |
|---|---|
| The transaction is a one-off | The parties will deal with each other repeatedly |
| Many alternative partners are available | Alternatives are few or costly to switch to |
| The product is a standard commodity | The product is specialised or co-developed |
| Information can be verified cheaply | Trust and shared information create value |
| The other side will not learn of one's tactics | Reputation travels quickly in the industry |

**KEY MOVE**

Before you negotiate, decide how much the future matters. Write down what the relationship is worth over its expected life, and compare it with what you could gain by pressing hard today.

DEAL SNAPSHOT

**Starbucks Sells Control of Its China Business, 2025 and 2026**

On 3 November 2025 Starbucks announced that it would sell up to 60 per cent of its retail business in China to the investment firm Boyu Capital, at an enterprise value of about US$4 billion, while keeping a stake of 40 per cent and continuing to own and license its brand. The joint venture would operate Starbucks' roughly 8,000 stores in China, with an ambition to expand to as many as 20,000. Starbucks said it expected the total value of its Chinese business, including the sale proceeds, its remaining stake and future licence fees, to exceed US$13 billion (Starbucks, 2025). The transaction was completed on 2 April 2026, with Boyu's funds holding 60 per cent and Starbucks 40 per cent, and the stores began moving to a licensed operating model (Starbucks, 2026). The decision traded full control and a share of future profits for a local partner's knowledge, capital and connections in a market where domestic competitors had grown rapidly. It shows how a firm's goals, here growth in a difficult market rather than the maximisation of its own share of profit, determine what it is willing to give up in a negotiation.

## 6.4 How Does Strategy Become a Negotiation Objective?

### From Strategy to Objectives

Strategy is the set of choices by which a firm seeks to create and capture value over time: which markets to serve, how to compete in them and which resources to build. Negotiations are among the main ways in which strategy is carried out. A firm competing on cost must negotiate low input prices; a firm competing on innovation must negotiate access to talent, technology and partners; a firm expanding abroad must negotiate with foreign governments, distributors and joint-venture partners. The negotiator's first task is therefore to translate the strategy into concrete objectives for each negotiation.

Table 6.5 illustrates this translation for four common strategies.

### Objectives, Priorities and Limits

A well-prepared negotiator brings three things to the table: **objectives**, which state what the firm wants to achieve; **priorities**, which rank the issues according to their importance, so that the negotiator knows what can be traded for what; and **limits**, which state the point beyond which the firm prefers no agreement. Objectives without priorities leave the negotiator unable to make trade-offs; priorities without limits leave the firm exposed to an agreement worse than its alternatives. Chapter 7 develops each element and brings them together in a planning template.

**Table 6.5**

*From strategy to negotiation objectives*

| Strategy | Typical negotiation | Primary objective | Secondary objectives | What not to give away |
|---|---|---|---|---|
| Cost leadership | Purchasing raw materials | Lowest total cost of supply | Reliability, payment terms | Quality standards that protect the brand |
| Differentiation | Supplying a premium retailer | Price that reflects the brand's value | Shelf position, marketing support | Control over how the brand is presented |
| Innovation | Joint development with a partner | Access to technology and skills | Shared costs, speed to market | Ownership of the resulting intellectual property |
| International expansion | Entry into a new market with a local partner | Market access and local knowledge | Speed, regulatory approval | Brand ownership and strategic control |

Translating strategy into objectives requires consultation inside the firm, since different functions value different outcomes. Finance may care most about price and payment terms, operations about delivery and quality, marketing about brand presentation and legal about liability. Cyert and March (1963) would recognise this as the internal bargaining that precedes every external negotiation. Kaplan and Norton (1992) proposed the balanced scorecard as a way of combining financial and non-financial measures of performance, and a similar logic applies to negotiation objectives: a good agreement is judged on several dimensions, not on price alone.

In the Deal File, Tesla's board faced exactly this task. Its strategy was to transform Tesla from a carmaker into a company built on artificial intelligence, self-driving software and robots. The operational milestones in the pay package, from robotaxis to humanoid robots, translated that strategy into objectives, while the market value milestones measured whether shareholders would benefit. The negotiation with Musk thus became a negotiation about the strategy itself.

The author's work on the strategies of multinational firms and on business approaches to economic development examines how firms align their goals with the markets and societies in which they operate, and how those goals shape their dealings with partners and governments (Kumar, 2026a, 2026c).

**KEY MOVE**

Before every important negotiation, write one sentence stating how it serves the firm's strategy. If you cannot write that sentence, you are not ready to set objectives.

BACK TO THE DEAL FILE

## Reading Tesla's Vote

The tools of this chapter explain why Tesla's board negotiated as it did and why the result divided opinion so sharply.

**The firm's goal was long-term market value.** The package paid Musk only if Tesla's value rose from about US$1 trillion, when the award was granted, to at least US$2 trillion and, for the full award, to US$8.5 trillion. This is shareholder value maximisation in its purest form, combined with operational targets that expressed a particular strategy.

**The agency problem ran in both directions.** The board, as agent of the shareholders, negotiated with its most powerful manager, who was also a major shareholder and whose earlier package, according to the Delaware ruling of 2024, had been approved by a board that could not show the deal to be entirely fair. The shareholders, for their part, had to decide whether the board had negotiated for them or for Musk.

**Stakeholders were largely absent.** Employees, customers and the communities in which Tesla operates had no direct voice in the negotiation. Supporters argued that their interests were served by a successful Tesla; critics saw in a package of this size a narrow view of whom the firm serves.

**The time horizon was long, but the measure was the share price.** A ten-year package encourages long-term thinking, yet a target defined by market value can also encourage attention to whatever moves the share price, a concern familiar from the research on short-termism.

**Power and persuasion decided the vote.** Musk's bargaining power rested on the belief of many shareholders that Tesla's value depended on him. The board's campaign to persuade shareholders, and the opposition of the proxy advisers, show how much the outcome depended on persuasion as well as on profit.

MA EXTENSION

### Market Value or Shareholder Welfare?

Hart and Zingales (2017) argued that companies should maximise shareholder welfare rather than market value, because many shareholders care about the social and environmental consequences of the firms they own and cannot always undo those consequences through their own spending. Jensen (2001) replied, in effect, that a firm with more than one objective has none. Apply this debate to the Deal File. Would a board seeking to maximise shareholder welfare rather than market value have negotiated a different package? How should a firm's negotiators weigh value to shareholders against value to employees or suppliers when the two conflict, and who should decide?

ETHICS CHECK

Tesla's package could make one person the owner of shares worth many hundreds of billions of dollars, while most of the company's employees earn ordinary wages. Supporters argue that the package costs shareholders nothing unless they gain far more themselves. Is a pay package ethical if those who must approve it consent to it? Does the size of a reward raise questions of fairness that consent alone cannot answer?

### Pillar Scorecard

**Table 6.6**

*Pillar Scorecard: Tesla's vote on Musk's pay, 2025*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | The package tied hundreds of billions of dollars of reward to the creation of trillions of dollars of market value |
| Power | Very high | Musk's perceived indispensability gave him exceptional leverage over the board and many shareholders |
| Persuasion | High | The board campaigned for votes against the opposition of the leading proxy advisers |

### Your Move

*This is a constructed teaching case.*

You are the managing director of a manufacturer of natural cosmetics in Łódź. The firm is owned 70 per cent by its founding family and 30 per cent by a private equity fund that plans to sell its stake within three years. A German discount chain offers a five-year contract to produce cosmetics under the chain's own label. The contract would double your output, but at margins well below those

you earn on your own brand, and the chain requires exclusivity in Germany for products of that type. The fund supports the deal because it would raise revenue before the sale; the family fears that it would weaken the brand on which the firm's long-term value depends.

1. What goals are the family and the fund each pursuing? Use Table 6.2.
2. Which stakeholders would be affected by the decision, and how?
3. Using Table 6.4, should the firm favour the short-term gain or the long-term relationship with its own customers?
4. Translate the firm's strategy into objectives, priorities and limits for a negotiation with the discount chain, using Table 6.5 as a guide.

## Conclusion

Firms do not negotiate in a vacuum. What they try to win depends on what they are trying to achieve, and that depends on who controls them. The classical assumption of profit maximisation remains a powerful starting point, but real firms also pursue growth, sales, survival, reputation and satisfactory performance, and their goals emerge from bargaining among managers, owners and other groups. The shareholder view and the stakeholder view offer different answers to the question of whose interests count, and corporate governance, including the design of executive pay, decides which answer prevails in practice. Firms must also choose between short-term gains and long-term relationships, a choice that depends on how often they will deal with a partner, how easily they could replace it and how much they discount the future. Finally, strategy must be translated into objectives, priorities and limits before a negotiator enters the room. Tesla's vote on Musk's pay shows all these forces at work in a single negotiation at the top of a firm. Knowing what a firm wants, however, is only the first step. Chapter 7 shows how to prepare to get it: how to set targets and limits, uncover the interests behind each side's positions and gather the information on which a successful negotiation depends.

## Exercises

### A. Objective Questions

1. Economic profit differs from accounting profit because it also deducts:
   a) taxes
   b) the opportunity cost of the owners' capital
   c) depreciation
   d) wages

2. According to Baumol (1959), managers tend to maximise:
   a) profit
   b) the share price
   c) sales revenue, subject to a minimum profit
   d) employment

3. Satisficing, as described by Simon (1955), means:
   a) maximising satisfaction of customers
   b) maximising profit over time
   c) satisfying all stakeholders equally
   d) choosing the first option that meets an aspiration level

4. Friedman (1970) argued that the social responsibility of business is to:
   a) increase its profits within the rules of the game
   b) serve all stakeholders equally
   c) maximise employment
   d) support local communities

5. Freeman (1984) defined stakeholders as:
   a) shareholders only
   b) any group or individual who can affect or is affected by the firm's objectives
   c) employees and managers
   d) creditors and banks

6. At Tesla's annual meeting of 6 November 2025, the share of votes cast for or against the pay package for Elon Musk that supported it was closest to:
   a) 25 per cent of votes cast
   b) 50 per cent
   c) 75 per cent
   d) 99 per cent

7. A firm is most likely to favour the long-term relationship over a short-term gain when:
   a) the transaction is a one-off
   b) many alternative partners are available
   c) the product is a standard commodity
   d) the parties will deal with each other repeatedly

8. According to Figure 6.2, in which form did S&P 500 companies return the larger amount to shareholders in 2024?
   a) share buybacks
   b) dividends
   c) the two were equal
   d) interest payments

### B. Short-Answer Questions

1. Distinguish accounting profit from economic profit, and explain why the distinction matters in negotiation.
2. Explain two theories of the firm proposing goals other than profit maximisation.
3. What did Berle and Means mean by the separation of ownership and control, and why does it matter for negotiation?
4. Compare the shareholder and stakeholder views of the firm, giving one strength and one weakness of each.
5. What is enlightened value maximisation?
6. Explain why short-term pressures can lead negotiators to damage valuable relationships.
7. Distinguish objectives, priorities and limits, and explain why a negotiator needs all three.

### C. Long-Answer Questions

1. "Firms do not maximise profit; they negotiate their goals." Discuss this statement with reference to the economic and behavioural theories of the firm.
2. Analyse Tesla's vote on Musk's pay using agency theory and the shareholder and stakeholder views of the firm. Did the board negotiate in the interests of the company?
3. Using the cases of Unilever and Starbucks, explain how a firm's goals shape the terms it is willing to accept in a negotiation over the structure of its business.
4. Choose a firm you know well. Describe its strategy and show how it should be translated into objectives, priorities and limits for one of its important negotiations.

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CHAPTER
# 7

# Preparing to Negotiate: Goals, Interests and Information

https://doi.org/10.61030/2ej7-zq82

## Introduction

Most negotiations are won or lost before the parties meet. A negotiator who arrives without a clear idea of what to aim for, where to stop and why the other side wants what it says it wants is forced to improvise, and improvisation favours the side that has done its homework. Experienced negotiators often say that preparation accounts for most of their success, and research on negotiation supports them: the targets negotiators set, the alternatives they identify and the information they gather shape outcomes more than any tactic used at the table.

This chapter sets out a disciplined method of preparation in four steps. Section 7.1 asks what the negotiator wants: the target to aim for, the limit beyond which to walk away and the priorities among several issues. Section 7.2 asks why each side wants what it says it wants, distinguishing the **positions** parties state from the **interests** explaining them, and showing that every negotiator must prepare not only for the other side but also for the constituency behind his or her own. Section 7.3 asks what the negotiator knows, and needs to know, about the other side, the market and the context, and how to build arguments that the other side will accept as legitimate. Section 7.4 brings these elements together in a planning template that is used throughout the rest of the book.

The chapter turns the goals of Chapter 6 into a plan for the table, and it applies the first pillar of the framework, **profit**, at the level of the individual negotiation: what value is at stake in this deal, and how much of it can we hope to capture? The Deal File follows a negotiation that failed in a revealing way. In September 2024 the union representing Boeing's machinists reached a tentative agreement with the company, and its members rejected it. The strike that followed lasted 53 days and cost billions of dollars. It reveals what happens when negotiators prepare for the party across the table but not for the party behind it.

DEAL FILE

## Boeing's Machinists Say No

In 2024 Boeing was in a difficult position. A door panel had blown out of a 737 MAX in flight in January, regulators had capped its production and its finances were under severe strain. At the same time, its contract with District 751 of the International Association of Machinists and Aerospace Workers (IAM), which represented more than 30,000 Boeing manufacturing employees, mainly in Washington State, was due to expire on 12 September (Boeing, 2025a). The contract dated from 2008 and had been extended in 2011, 2014 and 2016 (Boeing, 2024b); the extension of 2014 had frozen the machinists' traditional pension plan, and many felt that their pay had fallen behind the cost of living.

On 8 September Boeing announced a tentative agreement with the union, which it described as offering the largest general wage increase in the history of the relationship, together with greater contributions to retirement savings (Boeing, 2024b). The members voted it down, and on 13 September they went on strike. Boeing paused production of all its commercial aircraft except the 787 in South Carolina (Boeing, 2025a).

**Table 7.1**

*The Boeing machinists' strike at a glance*

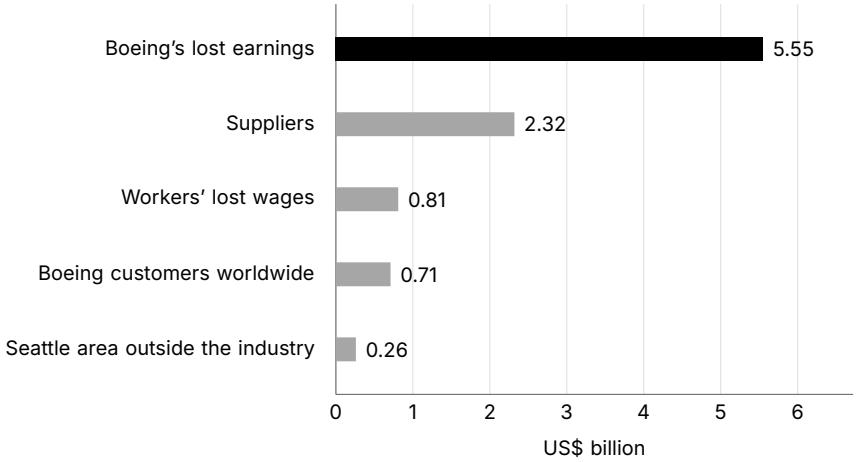
| | |
|---|---|
| **Parties** | Boeing; Districts 751 and W24 of the International Association of Machinists and Aerospace Workers, representing about 33,000 workers in Washington, Oregon and California |
| **At stake** | Wages; the restoration of the pension plan frozen in 2014; bonuses and job security; Boeing's ability to resume production |
| **Duration** | 53 days, from 13 September to 4 November 2024 |
| **Outcome** | After further rounds, members ratified on 4 November 2024 a general wage increase of 38 per cent over four years and a ratification bonus of US$12,000; the frozen pension plan was not reopened, although the pension multiplier for members already vested rose to US$105 a year |

*Note.* Author, based on Boeing (2024b, 2025a) and IAM Union (2024).

**Rising offers and rising costs.** Boeing raised its offer step by step during the strike, while its losses mounted: on 23 October it reported a net loss of US$6.2 billion for the third quarter of 2024 (Boeing, 2024c). On 4 November the members ratified a contract with a general wage increase of 38 per cent over four years, compounding to almost 44 per cent, and a ratification bonus of US$12,000. The traditional pension plan was not reopened (Boeing, 2025a; IAM Union, 2024). The strike's costs reached far beyond the two parties. Figure 7.1 shows an estimate of the direct losses in the first six weeks, which by then approached US$10 billion.

**Figure 7.1**

*Estimated direct losses from the Boeing machinists' strike in its first six weeks, by group (US$ billion)*




*Note.* Author, based on Anderson Economic Group (2024). The estimate covers the period from 13 September to 25 October 2024 and totals US$9.66 billion.

**Questions to keep in mind.** Why did the members reject an agreement reached by their own negotiators? What were the machinists' real interests, and did the first agreement address them? What information did each side lack, and how might better preparation have shortened or prevented the strike? The chapter answers these questions in turn.

## 7.1 What Do We Want? Goals, Targets and Limits

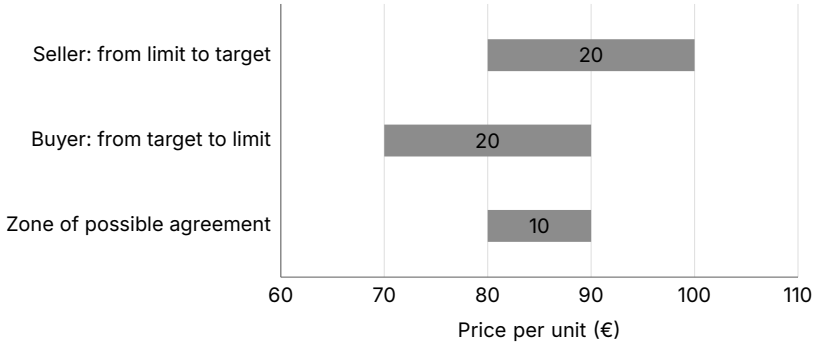
### Targets and Limits

A negotiator should enter every negotiation with two numbers, or their equivalent for issues not measured in money. The **target**, sometimes called the aspiration, is the best outcome that the negotiator can realistically hope to achieve. The **limit**, or **reservation point**, is the least favourable outcome that the negotiator will accept; anything worse than the limit is worse than no agreement at all. Between the two lies the range within which the negotiator expects to settle.

The limit should not be chosen arbitrarily. It follows from the negotiator's best alternative to a negotiated agreement, the BATNA introduced in Chapter 4. A seller whose best alternative is to sell to another buyer at €80 has a limit of about €80, adjusted for any differences in risk, timing or cost between the two deals. Negotiators who set their limits without reference to their alternatives either accept agreements worse than what they could obtain elsewhere or reject

**Figure 7.2**

*Targets, limits and the zone of possible agreement in a price negotiation (€ per unit)*




*Note.* Author's illustrative example. The seller aims for €100 but will accept no less than €80; the buyer aims for €70 but will pay up to €90. Any price between €80 and €90 leaves both better off than no agreement.

agreements which are better. The economic distinction of Chapter 6 matters here: a limit should cover the full economic cost of an agreement, including the opportunity cost of the capital and capacity it ties up, not merely the costs that appear in the accounts.

Targets matter as much as limits. In classic experiments, Siegel and Fouraker (1960) found that negotiators with higher aspirations obtained better results than those with modest ones, provided their aspirations remained within the range of what the other side could accept. Negotiators who focus on their limits tend to settle close to them, while those who focus on their targets tend to settle closer to the targets (Thompson, 2020). A target should therefore be ambitious but justifiable: high enough to stretch the negotiator, and supported by arguments that the other side will recognise as reasonable.

### The Zone of Possible Agreement

When a buyer and a seller each have a limit, an agreement is possible only if the buyer's limit is higher than the seller's. The range between the two is the **zone of possible agreement** (ZOPA), introduced in Chapter 2 through the example of the brake housing. Figure 7.2 shows a negotiation in which the zone exists. If the seller's limit were higher than the buyer's, there would be no zone, and the parties would be better off without an agreement unless one of them could change its limit, for example by adding a new issue or finding a new source of value.

Neither side normally knows the other's limit, and each has a reason to conceal its own. Part of preparation is therefore estimating the other side's limit from

what can be learned about its alternatives, costs and constraints, a task to which Section 7.3 returns.

### Several Issues and Their Priorities

Most business negotiations involve more than one issue. A supply contract may cover price, volume, delivery times, quality standards, payment terms, warranties and the length of the agreement. A collective agreement may cover wages, pensions, bonuses, working hours, job security and the location of future work. The set of issues is sometimes called the **bargaining mix**, and preparing it well is one of the most valuable things a negotiator can do.

For each issue, the negotiator should set a target and a limit, and then rank the issues by importance. Priorities allow trade-offs: a negotiator who knows that delivery time matters more than payment terms can concede on payment in return for faster delivery. Chapter 8 shows how trading across issues of different importance to each side is the main way in which negotiators create value. Without clear priorities, a negotiator either refuses to trade anything or trades away what matters most. Table 7.2 applies these ideas to a supply contract, from the supplier's point of view.

**Table 7.2**

*Targets, limits and priorities for a supply contract (supplier's view)*

| Issue | Target | Limit | Priority (1 = highest) |
|---|---|---|---|
| Price per unit | €100 | €80 | 1 |
| Annual volume | 50,000 units | 30,000 units | 2 |
| Contract length | 3 years | 1 year | 3 |
| Payment terms | 30 days | 60 days | 4 |
| Delivery time | 4 weeks | 2 weeks | 5 |

*Note.* Author's illustrative example.

**KEY MOVE**

Set a target and a limit for every issue before you meet, and rank the issues by importance. Base your limit on your best alternative, and your target on what you can justify, not on what you hope for.

## 7.2 Why Do They Want It? Interests behind Positions

### Positions and Interests

Fisher and Ury (1981) drew a distinction that has become central to the teaching of negotiation. A **position** is what a party says it wants: a price, a wage increase, a deadline. An **interest** is the need, concern or fear that explains why it wants it. Positions are often incompatible, while interests frequently are not, because the same interest can be met in several ways. A union that demands a wage increase of 40 per cent may be driven by an interest in keeping up with the cost of living, in security in retirement, in fairness compared with executives' pay or in respect after years of concessions. Each of these interests could be met by a different combination of measures, some of them less costly for the employer than a large wage rise.

Interests can be grouped into several types (Lewicki et al., 2020):

- **substantive interests**, concerning the tangible outcome: money, volume, time, security;
- **process interests**, concerning how the negotiation is conducted: whether a party is consulted, listened to and treated fairly;
- **relationship interests**, concerning the future of the relationship between the parties;
- **interests in principle**, concerning what the parties regard as right, fair or legitimate.

Uncovering interests requires asking why: why does the other side want this, and why is it important to it? It also requires asking why not: why might the other side reject an apparently attractive offer? The answers often reveal options that neither side had considered.

### The Party behind the Table

Walton and McKersie (1965) identified a form of bargaining often neglected by negotiators: **intra-organisational bargaining**, the negotiation taking place within each side between the negotiator and those he or she represents. Union leaders must satisfy their members, managers their boards, diplomats their governments. The two-level game described in Chapter 4 is a broader version of the same idea. A negotiator who reaches an agreement acceptable to the other side but not to his or her own constituency has not reached an agreement at all.

Preparing for the party behind the table means understanding what the constituency wants, what it will accept, how it will judge the result and how it will decide. It means communicating with the constituency during the negotiation, managing its expectations and, where necessary, educating it about what is achievable. It also means understanding the constituency on the other side,

DEAL SNAPSHOT

**Air Canada's Flight Attendants Reject a Wage Deal, 2025 and 2026**

In August 2025 the flight attendants of Air Canada, represented by the Canadian Union of Public Employees (CUPE), went on strike and continued after the federal government had ordered them back to work. A central issue was not the level of pay but its scope: flight attendants were paid mainly for time in the air, not for the work they did on the ground during boarding. On 19 August the union and the airline reached a tentative agreement that introduced pay for time on the ground, rising from 50 to 70 per cent of the hourly rate by 2028, together with first-year wage increases of 8 to 12 per cent (Air Canada, 2026). In September, however, more than 99 per cent of the members who voted rejected the wage terms, and the parties sent the remaining wage question to arbitration (CUPE, 2026). On 17 February 2026 the arbitrator upheld the tentative agreement, except for raising the wages of flight attendants at Air Canada's leisure carrier, Rouge, by a further percentage point in the first year (Air Canada, 2026). Like the Boeing case, the vote showed a gap between what negotiators believed their members would accept and what the members themselves considered fair. It also showed how an interest that had been neglected for years, payment for unpaid work, can shape members' judgement of every other term.

since an offer accepted by the other negotiator may still be rejected by those he or she represents.

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KEY MOVE

For every position on the table, on both sides, ask what interest lies behind it. Then ask what the people behind each negotiator need in order to accept the agreement, and prepare for them as carefully as for the person across the table.

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## 7.3 What Do We Know? Information and Arguments

### The Information a Negotiator Needs

Information is a source of power, and its absence is a source of weakness. Chapter 2 showed that hidden information is one of the economic roots of conflict; Chapter 1 showed that strikes can be a costly way of revealing it. Good preparation reduces the need for such costly revelation. Table 7.3 lists the main categories of information a negotiator should gather.

The most valuable information is usually the other side's alternatives and constraints, because these determine its limit. Boeing could estimate the cost of a

**Table 7.3**

*Information to gather before a negotiation*

| About | Key questions | Possible sources |
|---|---|---|
| Ourselves | What are our interests, targets, limits, priorities and alternatives? Who must approve the deal? | Internal analysis; consultation with colleagues and decision makers |
| The other side | What are its interests, alternatives, constraints, deadlines and decision process? Who are its negotiators? | Public reports, past agreements, industry contacts, the other side itself |
| The market | What are current prices, costs, capacity and trends? What deals have others made? | Industry data, statistics, consultants, published contracts |
| The context | What legal, political or social factors could affect the negotiation? | Laws and regulations, media, experts |
| The relationship | What is the history between the parties? How much trust exists? | Records of previous negotiations, colleagues who know the other side |

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

strike to itself, but it needed to know how long its machinists could afford to stay out, how strongly they felt about the pension and how much influence the union's leaders had over their members. The union, for its part, needed to know how long Boeing could afford a stoppage while its finances were already under strain. Both sides misjudged the other at important points.

Information can also be gathered during the negotiation itself, by asking questions and listening carefully to the answers. Many negotiators talk too much and ask too little. Chapter 16 examines the skills of questioning and listening.

When the other side comes from a different culture, the list of questions grows. Moore and Woodrow (2010) suggest that negotiators find out how the counterpart's society is organised before they meet: whether its legal system works well enough to provide a fair, timely and affordable decision, or whether people rely on other ways of settling differences; whether its government agencies are bureaucratic or informal and hire on merit or through family and friendship ties; how its economy is structured; and which religious or ideological beliefs shape everyday dealings and make some topics, behaviours or settlement options taboo. The answers affect the other side's alternatives, its decision process and the forms of agreement it can accept. Chapter 18 presents the framework from which these questions come.

DEAL SNAPSHOT

**Walmart Negotiates with a Chatbot**

Walmart buys goods and services from tens of thousands of suppliers, and many of its smaller contracts were never renegotiated because the company lacked the staff to do so. It therefore tested automated negotiation software, in which a chatbot negotiates with suppliers within targets and limits set by Walmart's buyers. In a pilot in Canada, covering goods not for resale such as shopping carts, fleet services and store equipment, the chatbot reached agreement with 64 per cent of the suppliers it approached, against a goal of 20 per cent, achieving average savings of 1.5 per cent and extending payment terms to an average of 35 days. In an extended pilot, the agreement rate rose to 68 per cent and average savings to 3 per cent, and the system was introduced in the United States, Chile and South Africa. More than 80 per cent of suppliers reported that they found the system straightforward and liked being able to make counter-offers (ASCM, n.d.). The case shows preparation turned into software: the chatbot can negotiate only because Walmart's buyers have set clear targets, limits and priorities for every issue in advance.

### Building Legitimate Arguments

Information becomes useful at the table when it is turned into arguments. Fisher and Ury (1981) recommended basing proposals on **objective criteria**, standards that both sides can accept as fair independently of their will: market prices, industry benchmarks, inflation, precedent, expert opinion or accepted principles of fairness. A proposal supported by an objective criterion is harder to dismiss than one supported only by the negotiator's preference, and it allows the other side to accept it without appearing to give in.

Arguments also shape the opening of a negotiation. Research on anchoring has shown that first offers strongly influence final outcomes: in an experiment by Galinsky and Mussweiler (2001), the party making the first offer tended to obtain a better result, unless the other side focused on its own target or on the first party's alternatives. A well-prepared negotiator therefore decides in advance whether to make the first offer, how ambitious it should be and what arguments will justify it. Chapter 13 develops the use of offers and concessions, and Chapter 16 the psychology of anchoring.

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KEY MOVE

Gather information about the other side's alternatives and constraints before you meet, and support every important proposal with an objective criterion the other side can accept.

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## 7.4 The Planning Template

### Bringing It Together

The elements of this chapter can be brought together on a single page. Table 7.4 presents a planning template that negotiators can complete before any important negotiation. The template is used in the Your Move cases throughout the rest of the book, and students are encouraged to use it whenever an exercise asks them to plan a negotiation.

**Table 7.4**

*Negotiation planning template*

| Element | Questions to answer |
|---|---|
| 1. Strategic purpose | How does this negotiation serve our strategy? What would success look like in a year's time? |
| 2. Issues | What issues will be negotiated? Which can we add to create value? |
| 3. Our interests | Why do we want what we want? Which interests are substantive, process, relationship or principle? |
| 4. Their interests | What does the other side need, and why? What would make it say no? |
| 5. Our alternatives | What is our BATNA? How can we improve it before we negotiate? |
| 6. Their alternatives | What is their BATNA? How strong is it, and can we influence it? |
| 7. Targets and limits | What is our target and our limit on each issue? What is our estimate of theirs? |
| 8. Priorities | How do we rank the issues? What can we trade for what? |
| 9. Objective criteria | What standards will support our proposals? |
| 10. Constituencies | Who must approve the agreement on each side, and what do they need? |
| 11. Information gaps | What do we not know, and how will we find out before or during the negotiation? |
| 12. Opening and process | Who will make the first offer? What will it be? What is our agenda and timetable? |

*Note.* Author, based on Fisher and Ury (1981), Lewicki et al. (2020) and Thompson (2020).

### Using the Template Well

The template is a discipline, not a form to be filled in mechanically. Three practices make it useful. First, it should be completed jointly by the people who will negotiate and the people who will approve the result, so that targets, limits and priorities reflect the views of the organisation and not only of the negotiator. Second, it should be revised as the negotiation proceeds, since new information

may change estimates of the other side's limits or reveal new interests. Third, the parts concerning the other side should be completed by imagining oneself in its position, a practice that reduces the tendency, discussed in Chapter 16, to see the other side as more hostile and less reasonable than it is.

Cultural differences, discussed in Chapter 18, also affect preparation. In some business cultures the relationship must be established before substantive issues are discussed, and a negotiator who arrives with a detailed agenda of issues may appear cold or impatient. The author's research on communication in international business shows how misreading such expectations can undermine even well-prepared negotiators (Kumar, 2022, 2023).

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**KEY MOVE**

Complete the planning template with the people who will approve the result, and revise it as you learn. A plan that only the negotiator understands will not survive contact with the constituency.

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BACK TO THE DEAL FILE

## Reading the Boeing Strike

The tools of this chapter explain why the first agreement failed and why the strike lasted as long as it did.

**The negotiators and the members had different targets.** The union's negotiators accepted the first offer, perhaps judging that it was close to Boeing's limit at a time of financial strain. The members' target was far higher, and their limit, as the strike showed, lay well above what their negotiators had accepted.

**Interests behind positions were neglected.** The wage figure was the position, but behind it lay interests in security in retirement, in recovering ground lost since the pension freeze of 2014 and in respect after years of concessions. The first agreement offered little on these, and even the final agreement did not reopen the traditional pension plan. The members' acceptance after 53 days suggests that the strike itself, by demonstrating their resolve, partly met their interest in respect.

**Preparation for the party behind the table failed.** Both the union's negotiators and Boeing's misjudged what the members would accept. In the language of Walton and McKersie, the intra-organisational bargaining within the union had not been completed before the agreement was presented. The rejection was not a dispute over a few details but a signal that the negotiators had not understood their constituency.

**Each side lacked information about the other's alternatives.** Boeing may have believed its workers could not afford a long strike; the workers may have believed that Boeing, already in crisis, would concede quickly. Each was partly right. The successive offers were a costly way of discovering where the zone of possible agreement lay, and Figure 7.1 shows how much of the cost fell on suppliers, customers and the regional economy.

**The final agreement used new issues to close the gap.** The ratification bonus of US$12,000 and the higher pension multiplier for vested members allowed the company to offer more without reopening the traditional pension plan, and allowed members to accept without it. This is the use of the bargaining mix described in Section 7.1.

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MA EXTENSION

### Ratification as a Signal

Walton and McKersie (1965) argued that negotiators must manage the expectations of their constituents as well as the demands of the other side. Putnam (1988) added that a negotiator whose constituency is known to be hard to satisfy may gain bargaining power, because the other side must offer more to obtain ratification. Ashenfelter and Johnson (1969), discussed in Chapter 1, modelled strikes as a way of bringing members' expectations into line with what the employer can pay. Apply these ideas to the Deal File. Did the overwhelming rejection of the first agreement strengthen the union's position in later rounds? Could the union's leaders have used the threat of rejection more deliberately? What does the case suggest about the value of consulting members before, rather than after, an agreement is reached?

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ETHICS CHECK

Preparation involves gathering information about the other side. Some sources are clearly legitimate, such as published reports and market data. Others are more doubtful: monitoring the social media of the other side's negotiators, recruiting its former employees for what they know, or using automated tools that probe its limits. Where should a negotiator draw the line? Is it ethical for a firm to negotiate with suppliers through a chatbot that the suppliers may not fully understand?

### Pillar Scorecard

### Your Move

*This is a constructed teaching case.*

You are the human resources director of a chemical company near Opole that employs 1,200 people. The collective agreement with the company's two trade unions expires in three months. Inflation has fallen, but workers remember that

**Table 7.5**

*Pillar Scorecard: the Boeing machinists' strike, 2024*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | Wages, bonuses and pensions for 33,000 workers, and billions of dollars of lost production, were at stake |
| Power | High | Each side tested how long it could endure a strike while Boeing's finances were already under strain |
| Persuasion | High | The union's negotiators failed to persuade members to accept the first agreement; later offers had to be framed to win a majority |

their pay lagged behind prices in earlier years. The unions have announced a demand for a wage increase of 15 per cent; the board has authorised you to offer up to 6 per cent. A competitor that opened a plant nearby last year is recruiting skilled operators at higher wages. The larger union's leader faces an election next spring.

1. Using Table 7.4, complete a planning template for the negotiation.
2. What interests might lie behind the unions' demand of 15 per cent? Which could be met in ways other than a higher wage increase?
3. What information would you need about the unions, their members and the local labour market, and how would you obtain it?
4. How would you prepare for the party behind the table on both sides, so as to avoid the outcome of the Boeing case?

## Conclusion

Preparation is the stage of negotiation the negotiator controls most completely, and it has the greatest influence on the result. It begins with goals: an ambitious but justifiable target, a limit grounded in the best alternative to agreement and priorities allowing trade-offs across several issues. It continues with interests, the needs and concerns that lie behind each side's positions, including the interests of the constituencies behind the table. It depends on information about the other side, the market and the context, and on arguments built from objective criteria that the other side can accept. The planning template brings these elements together and should be completed with those who will approve the result. The Boeing strike shows the cost of neglecting any of them: an agreement meeting the negotiators' expectations but not the members' interests led to a strike of 53 days and losses of billions of dollars. Preparation, however, is only the beginning. Once the parties meet, they must decide how to divide the value at stake

and whether they can enlarge it. Chapter 8 examines these two tasks, claiming value and creating it, and the tension between them.

## Exercises

### A. Objective Questions

1. A negotiator's reservation point is:
   a) the least favourable outcome he or she will accept
   b) the best outcome he or she hopes to achieve
   c) the other side's first offer
   d) the midpoint of the bargaining range

2. A negotiator's limit should be based mainly on:
   a) the other side's first offer
   b) the target
   c) his or her best alternative to a negotiated agreement
   d) the length of the negotiation

3. Siegel and Fouraker (1960) found that negotiators with higher aspirations:
   a) always failed to reach agreement
   b) were less satisfied with any outcome
   c) made smaller first offers
   d) tended to obtain better results, within the range acceptable to the other side

4. The zone of possible agreement exists when:
   a) the seller's limit is above the buyer's limit
   b) the buyer's limit is above the seller's limit
   c) both sides have the same target
   d) one side has no alternative

5. According to Fisher and Ury (1981), an interest is:
   a) what a party says it wants
   b) the need or concern that explains why it wants it
   c) the other side's alternative
   d) a legal right

6. Walton and McKersie (1965) used the term "intra-organisational bargaining" for:
   a) negotiation within each side between the negotiator and those he or she represents
   b) negotiation between two firms
   c) negotiation with a mediator
   d) bargaining over wages only

7. According to Figure 7.1, which group bore the largest estimated losses in the first six weeks of the Boeing strike?
   a) the striking workers
   b) the Seattle area outside the industry
   c) Boeing's suppliers
   d) Boeing itself

8. Basing a proposal on market prices, inflation or industry benchmarks is an example of using:
   a) anchoring
   b) a BATNA
   c) objective criteria
   d) intra-organisational bargaining

### B. Short-Answer Questions

1. Distinguish a target from a limit, and explain how each should be set.
2. Explain the zone of possible agreement using Figure 7.2.
3. What is the bargaining mix, and why are priorities among issues important?
4. Distinguish positions from interests, and name four types of interest.
5. Why must a negotiator prepare for the party behind the table? Illustrate with the Boeing or Air Canada case.
6. Name five categories of information a negotiator should gather, with a source for each.
7. Explain how first offers can anchor a negotiation, and how the receiving party can resist the anchor.

### C. Long-Answer Questions

1. Analyse the Boeing machinists' strike of 2024 using the concepts of targets, limits, interests and intra-organisational bargaining. How could better preparation on either side have shortened or prevented the strike?
2. "The most important negotiation is the one inside your own side." Discuss with reference to the Boeing and Air Canada cases and to the theory of two-level games.
3. Evaluate the use of automated negotiation by Walmart. What does it reveal about the role of preparation, and what are its limitations and ethical risks?
4. Prepare a complete planning template, using Table 7.4, for a negotiation of your choice in which you or your organisation will soon take part.

## Further Reading

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CHAPTER

# 8

# Claiming and Creating Value

https://doi.org/10.61030/c68d-ub4n

## 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.

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**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.

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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.

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**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.

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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

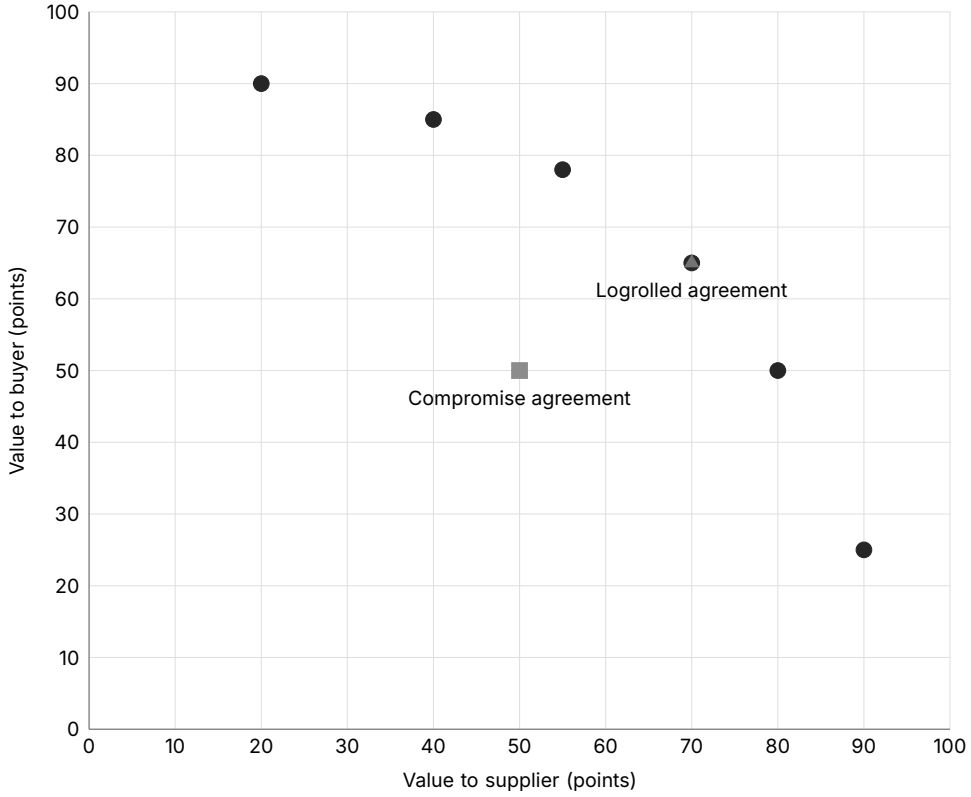
How can negotiators tell whether they have created as much value as possible? Economists use the concept of **Pareto efficiency**: an agreement is efficient if no other agreement would make one party better off without making the other worse off. The set of all efficient agreements forms the **Pareto 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.

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**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.

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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.

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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?

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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.

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CHAPTER
# 9

# Commercial and Corporate Deals

https://doi.org/10.61030/s7bq-c2g7

## Introduction

Firms negotiate continuously. Every day, buyers and sellers agree prices, volumes and delivery dates; purchasing departments renew contracts with suppliers; sales teams negotiate with distributors and retailers. Less often, but with far larger stakes, firms negotiate over the ownership of other firms: they buy, sell, merge, form joint ventures and enter alliances. The two kinds of negotiation differ in scale and frequency, but they rest on the same foundations: a surplus to be divided, interests to be uncovered, power depending on alternatives, and contracts unable to foresee everything.

This chapter applies the tools of Part II to these negotiations. Section 9.1 examines how prices and supplies are negotiated, from one-off purchases to long-term supply relationships, and introduces a tool for deciding which suppliers deserve a partnership and which a tender. Section 9.2 asks who holds power along the value chain, why large retailers and platforms often dominate their suppliers and how law has begun to limit that power. Section 9.3 turns to corporate deals, the purchase and combination of companies, and explains how valuation, due diligence and the structure of a deal shape the negotiation between buyer and seller. Section 9.4 asks why so many deals fail after they have been signed, whether through regulatory challenge, disputes between the partners or problems of integration.

The chapter draws on every element of the first pillar of the framework, **profit**: the goals of Chapter 6, the preparation of Chapter 7 and the creation and claiming of value of Chapter 8. It also prepares the ground for the second pillar, **power**, since the outcome of commercial negotiations depends heavily on market structure and on the alternatives of each side. The Deal File follows the largest proposed merger in the history of American grocery retailing, which was blocked

by the courts in December 2024 and has since become a lawsuit between the former partners. The case shows how the terms negotiated in a merger agreement continue to shape the parties' fortunes long after the deal itself has died.

DEAL FILE

### Kroger and Albertsons, from Merger to Lawsuit

In October 2022 Kroger, the largest supermarket company in the United States, agreed to buy its rival Albertsons at an enterprise value of about US$24.6 billion, including Albertsons' net debt. Together the two chains operated 4,996 stores and employed more than 710,000 people in 48 states and the District of Columbia, with a particularly heavy overlap in the western states (Kroger, 2022a). The companies argued that the combination would allow them to compete more effectively with Walmart, the country's largest grocery seller, and with Costco and Amazon.

The merger agreement anticipated a long regulatory review. The parties expected to sell stores in order to obtain approval, and agreed that Kroger would pay Albertsons a termination fee of US$600 million, about 2.5 per cent of the deal's value, if the agreement was terminated at its outside date with every condition satisfied except clearance under the competition laws (Kroger, 2022b). Kroger was also obliged, as Albertsons later described the agreement, to use its "best efforts" to secure regulatory approval (Albertsons Companies, 2025). To satisfy regulators, the companies proposed in April 2024 to sell 579 stores to C&S Wholesale Grocers for about US$2.9 billion (Kroger, 2024).

**From regulators to the courts.** In February 2024 the Federal Trade Commission (FTC), joined by nine states, sued to stop the merger. It argued that the merger would raise grocery prices and, by reducing competition for workers, would weaken the position of the unions negotiating grocery workers' wages, benefits and working conditions. On 10 December 2024 the federal court in Oregon granted the FTC's request for a preliminary injunction halting the merger (Federal Trade Commission, 2024), and on the same day a state court in Washington ruled against the merger under the state's consumer-protection law.

**From partners to adversaries.** Albertsons then terminated the agreement and sued Kroger in the Delaware Court of Chancery for wilful breach of the merger agreement and breach of the covenant of good faith and fair dealing, arguing that Kroger had failed to use its "best efforts" to secure regulatory approval. It sought damages to be determined at trial, in addition to the termination fee of US$600 million that, in its view, Kroger was already obliged to pay. Kroger replied that Albertsons' notice of termination was not effective and no fee was owed, because Albertsons had itself failed to comply with its covenants; in March 2025 it filed

**Table 9.1**

*Kroger and Albertsons at a glance*

| | |
|---|---|
| **Parties** | Kroger; Albertsons; the US Federal Trade Commission and several states; C&S Wholesale Grocers, as proposed buyer of divested stores; trade unions representing grocery workers |
| **At stake** | A merger worth US$24.6 billion; competition in grocery retailing; prices for shoppers and bargaining power over workers; a termination fee and claims for damages |
| **Timeline** | Agreement signed in October 2022; FTC lawsuit in February 2024; expanded divestiture plan in April 2024; merger blocked by a federal court on 10 December 2024; agreement terminated by Albertsons, which sued Kroger, in December 2024; Kroger's counterclaims in March 2025; trial scheduled for October 2026 |
| **Status in 2026** | Before the Delaware Court of Chancery: Albertsons seeks damages to be determined at trial in addition to the termination fee of US$600 million; Kroger argues that Albertsons failed to comply with its own covenants, so no fee is owed |

*Note.* Author, based on Albertsons Companies (2025), Federal Trade Commission (2024) and Kroger (2022a, 2022b, 2024).

counterclaims. Trial was scheduled to begin in October 2026, almost two years after the merger collapsed (Albertsons Companies, 2025).

**Questions to keep in mind.** Why did two firms which had negotiated a merger for months end up in court against each other? What did each side gain from the terms it negotiated, such as the efforts clause and the termination fee, and what did those terms cost it later? Why did the regulators and the courts reject the remedy that the companies had designed? And what does the case teach about negotiating the parts of a deal concerned with failure? The chapter answers these questions in turn.

## 9.1 How Are Prices and Supplies Negotiated?

### Buying and Selling

The most frequent business negotiations concern the terms on which goods and services are bought and sold. Price is the most visible term, but rarely the only one. Volume, quality, delivery, payment terms, warranties, service, exclusivity and the length of the contract all affect the value of the deal to each side, and Chapter 8 showed that negotiating them together, rather than one at a time, is the main way of creating value. A purchasing manager focusing only on the unit price may obtain a discount at the cost of longer delivery times, lower quality or a supplier unable to invest in the relationship.

The **total cost of ownership** is a useful corrective. It adds to the purchase price all the other costs that a buyer bears over the life of a purchase: transport, storage, installation, training, maintenance, the cost of defects and the cost of switching to another supplier later. A supplier whose price is higher but whose total cost is lower is the better choice, and a seller that can show its lower total cost has a powerful argument at the table.

### Tender or Partnership?

Not every supplier deserves the same approach. Kraljic (1983) proposed classifying purchases along two dimensions: their importance to the buyer's profit and the risk of supply, which depends on how many suppliers exist and how easily they could be replaced. The result is a matrix of four categories, each calling for a different negotiating strategy, as Table 9.2 shows.

**Table 9.2**

*The Kraljic matrix and negotiation strategy*

| Category | Profit impact | Supply risk | Typical examples | Negotiation strategy |
|---|---|---|---|---|
| Non-critical items | Low | Low | Office supplies, cleaning | Standardise, automate and simplify; minimise effort |
| Leverage items | High | Low | Packaging, standard components | Use competition: tenders, auctions and hard distributive bargaining |
| Bottleneck items | Low | High | Specialised spare parts, rare inputs | Secure supply; reduce dependence; accept higher prices if necessary |
| Strategic items | High | High | Key components, critical technology | Build partnerships; create value jointly; share information and risk |

*Note.* Author, based on Kraljic (1983).

The matrix connects directly to the tools of earlier chapters. For leverage items, the buyer's alternatives are strong, so distributive tactics and competitive tenders work well. For strategic items, both sides make specific investments, so the hold-up problem of Chapter 2 arises and the safeguards of long-term contracts and partnerships become essential. The automated negotiation tool used by Walmart, described in Chapter 7, was applied to non-critical and leverage items, where clear targets and many alternatives make negotiation easy to automate.

### Auctions, Tenders and Negotiation

For leverage items, and for many sales of companies, buyers and sellers must decide whether to negotiate with one counterpart or to run a competition among several. Bulow and Klemperer (1996) compared the two approaches and reached a striking conclusion: under fairly general conditions, a seller obtains more by running a simple auction with one additional serious bidder than by negotiating the best possible terms with a smaller number of buyers. Competition, in other words, is often worth more than negotiating skill, because it forces bidders to reveal how much they value what is on offer.

Auctions and tenders take several forms. In an **open ascending auction**, bidders raise their offers until only one remains; in a **sealed-bid tender**, each submits a single offer without knowing the others'; in a **reverse auction**, used widely in purchasing, suppliers bid prices down rather than up. Electronic platforms have made reverse auctions cheap to run, and many large buyers use them for standard components, transport and packaging.

Competitive procedures have limits. They work best when the product can be specified precisely, when several qualified bidders exist and when price is the main issue. When quality, innovation or the relationship matters, a tender focused on price may select the supplier least able to deliver, and a supplier winning on an unsustainably low price will look for ways to recover its margin later. Bidders in auctions also face the risk of the **winner's curse**: the winner is the bidder that valued the item most highly, and therefore the one most likely to have overestimated it, a problem examined in Chapter 12. Public buyers face additional rules. In Poland, as in other EU member states, contracts above certain values must be awarded through procedures set out in public procurement law, which since 2021 has encouraged buyers to consider quality, life-cycle costs and social criteria as well as price. Many negotiations therefore combine both approaches: a competitive stage that narrows the field and reveals prices, followed by negotiation with the preferred bidders over the remaining terms.

### Relational Contracting

For strategic purchases, firms often move beyond the price negotiation to what Macneil (1980) called **relational contracting**: agreements in which the formal contract is only part of the relationship, and the parties rely on shared norms, mutual expectations and the prospect of future dealings to fill the gaps. Dyer and Singh (1998), discussed in Chapter 6, showed that such relationships can create competitive advantage through specific investments, knowledge sharing and complementary resources. Japanese carmakers' partnerships with their suppliers are a classic example, often contrasted with the more adversarial approach once common among American carmakers.

Relational contracts change the nature of negotiation. Instead of a single bargain over price, the parties negotiate rules for sharing cost savings, procedures for adjusting prices when costs change and mechanisms for resolving disputes. These are integrative negotiations over the design of a relationship, and they depend on trust, a theme that Chapter 16 develops.

---

**KEY MOVE**

Classify each purchase before you negotiate it. Use competition where you have many alternatives, and invest in partnership where you and the supplier depend on each other.

---

## 9.2 Who Holds Power in the Value Chain?

### Concentration and Dependence

A value chain links the firms that together turn raw materials into products sold to final customers: farmers and miners, manufacturers, wholesalers, retailers and platforms. The surplus that the chain creates must be divided among them, and the division depends largely on bargaining power. Porter (2008), introduced in Chapter 2, showed that the power of buyers and suppliers depends on concentration, switching costs, the importance of the product and the threat of integration.

In many modern value chains, power has shifted towards the end closest to the consumer. Large supermarket chains decide which products reach their shelves and on what terms; online platforms control access to millions of customers; a handful of firms buy most of the output of many agricultural and industrial sectors. A small supplier selling a large share of its output to one retailer, while representing a tiny share of that retailer's purchases, negotiates from weakness: its alternative to agreement is poor, while the retailer's is strong. Chapter 11 analyses this asymmetry of dependence in detail.

The Deal File shows the same logic from the other side. The FTC's concern was that a merged Kroger and Albertsons would face less competition in selling to shoppers and in hiring workers. Its argument about the unions is a reminder that power in a value chain runs in several directions: a firm growing larger may gain power not only over its customers and suppliers but also over its employees.

### Law as a Counterweight

Governments have increasingly intervened to limit the abuse of buying power. In the European Union, Directive 2019/633 on unfair trading practices in the

agricultural and food supply chain prohibits large buyers from imposing certain terms on smaller suppliers, such as payment later than 30 days for perishable products, cancellation of orders at short notice and unilateral changes to the terms of supply. Poland had already adopted, in 2016, a law against the unfair use of contractual advantage in the trade in agricultural and food products, which is enforced by its competition authority, the Office of Competition and Consumer Protection (UOKiK). Such laws change the negotiating position of weaker suppliers by removing certain demands from the table altogether, and they provide a route to a third party when negotiation fails, as Chapter 5 described.

The author's research on business approaches to economic development discusses how the position of smaller firms in national and international value chains affects their ability to grow and to share in the gains from trade (Kumar, 2026c).

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**KEY MOVE**

Map the value chain before you negotiate: who depends on whom, who could replace whom and which laws limit what the stronger side may demand. Your power lies in your alternatives and in the rules protecting you.

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## 9.3 How Are Companies Bought and Joined?

### Valuation and the Bargaining Range

When one firm buys another, the price is the outcome of a negotiation, and the bargaining range is set by each side's valuation. The seller's limit is the value of the firm to its current owners, as an independent business or in a sale to another buyer. The buyer's limit is the value of the firm to the buyer, which includes the **synergies** the buyer expects from combining the two businesses: lower costs, higher revenues, shared technology or greater market power. The difference between the price paid and the value of the target as an independent business is the **acquisition premium**.

Synergies make a deal possible, but they also make it contentious. The seller argues that the buyer should share them, since they would not exist without the target; the buyer argues that it alone will create them, and it bears the risk of their failing to materialise. Research suggests that buyers often overestimate synergies and overpay. Roll (1986) proposed the **hubris hypothesis**: managers who win a competitive auction for a target may do so because they have overestimated its value, a form of the *winner's curse* that Chapter 12 examines. The Albertsons

claim illustrates the stakes: the premium that Kroger had agreed to pay, which Albertsons now seeks as damages, amounted to several billion dollars.

### Due Diligence and Information

Before committing to a price, a buyer investigates the target through **due diligence**: the examination of its accounts, contracts, liabilities, legal disputes, employees, technology and compliance with regulations. Due diligence reduces the information asymmetry described by Akerlof (1970) and discussed in Chapter 2: the seller knows far more about its business than the buyer does. The negotiation over access to information is itself significant. The seller wants to reveal enough to justify its price without exposing weaknesses that would lower it; the buyer wants to see everything before committing.

### Structuring the Deal

Much of the value in a corporate deal is created or claimed through its structure rather than its price. Table 9.3 summarises the main terms that buyers and sellers negotiate.

**Table 9.3**

*Key terms in the structure of an acquisition*

| Term | What it does | Whose interest it mainly protects |
|---|---|---|
| Form of payment (cash or shares) | Cash gives the seller certainty; shares let it share in future gains and risks | Depends on each side's view of the future |
| Earn-out | Links part of the price to future performance (Chapter 8) | Bridges different forecasts |
| Representations and warranties | Statements of fact about the target, with compensation if they prove false | Buyer |
| Material adverse change clause | Allows the buyer to withdraw if the target's business deteriorates seriously before completion | Buyer |
| Efforts clause | Defines how hard the buyer must work to obtain regulatory approval, for example by selling assets | Seller |
| Reverse termination fee | Compensates the seller if the deal fails for reasons such as regulatory refusal | Seller |
| Break fee | Compensates the buyer if the seller accepts a rival offer | Buyer |
| Outside date | Sets the date after which either side may walk away | Both |

The Deal File shows how two of these terms, the efforts clause and the reverse termination fee, allocated the risk that regulators would block the deal. Albertsons obtained Kroger's commitment to use its best efforts to win approval and a fee of US$600 million if the deal failed for want of clearance under the competition laws; Kroger accepted a fee that was modest relative to the size of the deal. Three practical lessons follow for future negotiators: define efforts obligations precisely, for example by naming the assets to be sold and the criteria for an acceptable buyer; seek a higher termination fee where regulatory risk is high; and involve competition lawyers early.

### Joint Ventures, Alliances, Licensing and Franchising

Not every combination requires a full acquisition. In a **joint venture**, two or more firms create a new entity that they own together; in a **strategic alliance**, they cooperate without creating a new company; in **licensing**, one firm allows another to use its technology or brand in return for royalties; in **franchising**, it licenses a whole business format. Each is a negotiated structure that shares control, risk and returns in a different way. The joint venture between Starbucks and Boyu Capital in China, described in Chapter 6, combined a sale of control with a licence of the brand.

These structures raise their own negotiating problems: how to divide control when ownership is shared, how to resolve deadlocks between partners, how to value the contributions of each side, how to protect technology and brands, and how the partners can exit. Joint ventures between firms from different countries add the cultural and institutional differences examined in Chapter 18. The author's companion textbook analyses the choice among these modes of entry by multinational firms in detail (Kumar, 2026a).

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**KEY MOVE**

Negotiate the structure as hard as the price. Terms that allocate risk, such as efforts clauses, termination fees and earn-outs, often decide who really bears the cost when things go wrong.

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DEAL SNAPSHOT

**Tapestry and Capri, 2023 and 2024**

In August 2023 Tapestry, owner of Coach and Kate Spade, agreed to buy Capri Holdings, owner of Michael Kors, Versace and Jimmy Choo. The FTC sued to block the deal, arguing that "accessible luxury" handbags formed a distinct market in which the two companies competed closely, and on 24 October 2024 the federal court in Manhattan granted a preliminary injunction (*FTC v. Tapestry, Inc.*, 2024). About three weeks later the companies agreed to terminate the merger, explaining that the outcome of the legal process was uncertain and unlikely to be resolved by the outside date of their agreement, 10 February 2025. Tapestry's board approved an additional share buyback of US$2 billion (Tapestry, 2024). The episode illustrates how the outside date, a term negotiated at signing, can determine the end of a deal when regulators intervene.

## 9.4 Why Do Deals Fail after Signing?

### Three Sources of Failure

Signing an agreement is not the end of a corporate negotiation. Many deals fail before completion, and many that are completed fail to deliver the value expected of them. Christensen and his colleagues (2011) noted that studies commonly put the failure rate of acquisitions between 70 and 90 per cent, depending on how failure is measured. Three sources of failure stand out.

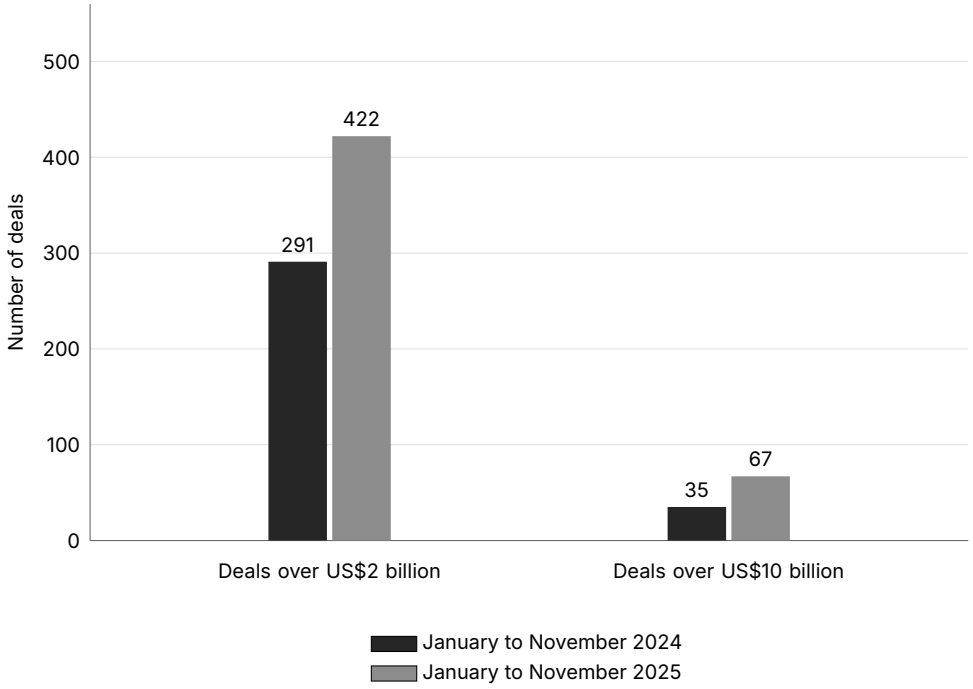
The first is **regulatory challenge**. Competition authorities may block a deal or demand remedies, such as the sale of businesses, that reduce its value. As the Deal File and the case of Microsoft and Activision in Chapter 8 show, the negotiation with regulators can be as important as the negotiation between the parties. Regulatory risk has grown as the size of deals has risen. Figure 9.1 shows that in the first eleven months of 2025 the number of deals worth more than US$10 billion almost doubled compared with the same period of 2024.

The second source of failure is **disputes between the partners**. When circumstances change between signing and completion, a party no longer wanting the deal may look for ways to escape it, and the other may accuse it of bad faith. The case of Kroger and Albertsons shows how quickly partners can become adversaries, and how the terms of the agreement, drafted to allocate risk, become the basis of litigation.

The third source of failure is **integration**. Even when a deal is completed, the combined firm must merge systems, structures and cultures. Differences in management style, decision-making and values can destroy much of the value the deal was expected to create. Many of the negotiations that matter most take place

**Figure 9.1**

*Number of large mergers and acquisitions worldwide, January to November 2024 and 2025*




*Note.* Author, based on MUFG (2025), citing Dealogic data to 30 November 2025. The total value of global mergers and acquisitions in the same period rose from US$3.2 trillion in 2024 to US$4.5 trillion in 2025.

after completion, between the managers and employees of the two firms, and they require the skills of persuasion and cultural understanding developed in Part IV.

Integration itself is a long series of negotiations. Managers of the two firms must agree on which systems, brands, sites and people to keep; trade unions and works councils may have a legal right to be consulted, as Chapter 10 explains; and customers and suppliers of both firms will seek to renegotiate their terms with a larger counterpart. Buyers who plan these negotiations before completion, and involve the target's managers in them, tend to preserve more of the value they have paid for than those treating integration as a technical exercise to be completed after the deal.

DEAL SNAPSHOT

### Mars and Kellanova, 2024 and 2025

On 14 August 2024 Mars, the privately owned maker of Snickers and M&M's, agreed to buy Kellanova, maker of Pringles and Cheez-It. The European Commission was the last authority to decide. On 8 December 2025 it granted unconditional approval, the last of the 28 regulatory approvals and clearances that the deal required, and the companies expected to complete the acquisition on 11 December (Kellanova, 2025). A process lasting about sixteen months from signing illustrates the time and uncertainty that regulatory approval adds to large deals, even when it ends without conditions, and explains why outside dates and termination fees are among the most carefully negotiated terms of any merger agreement.

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**KEY MOVE**

Negotiate for failure as carefully as for success. Ask what will happen if regulators object, if circumstances change or if the partner loses interest, and write the answers into the agreement.

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BACK TO THE DEAL FILE

## Reading the Kroger and Albertsons Dispute

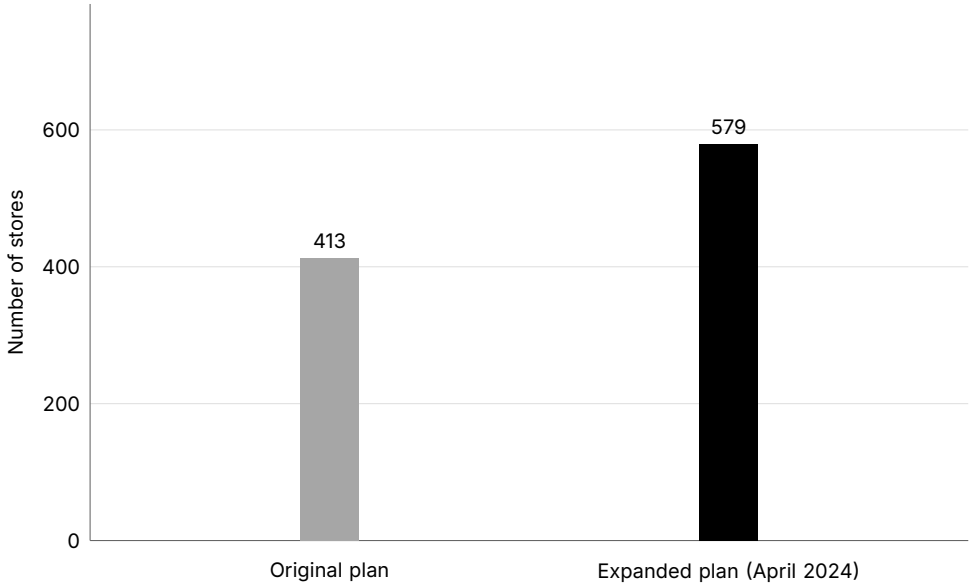
The tools of this chapter explain both the design of the merger agreement and its unravelling.

**The deal rested on a contested view of market power.** Kroger and Albertsons argued that they competed with Walmart, Costco and Amazon in a broad grocery market; the FTC and the courts saw them as each other's closest rivals in many local markets and as major employers of unionised workers. The disagreement about market definition, a theme of Chapter 2, decided the regulatory outcome.

**The remedy did not convince.** The companies offered to sell 579 stores to a single buyer, C&S Wholesale Grocers, after enlarging their original package by 166 stores, as Figure 9.2 shows. The court did not accept that the divestiture would restore the competition the merger would remove. A remedy designed to minimise the value given up by the merging firms was, in the eyes of the regulator, too small and too weak, a pattern also seen in the first remedies offered by Microsoft in Chapter 8.

**Figure 9.2**

*Stores that Kroger and Albertsons proposed to sell to C&S Wholesale Grocers, original and expanded divestiture plans*




*Note.* Author, based on Kroger (2024), which reported that the expanded plan of April 2024 added 166 stores to the original package, for a total of 579 stores and about US$2.9 billion in cash.

**The agreement allocated regulatory risk, and that allocation became the dispute.** The efforts clause and the termination fee of US$600 million were negotiated to share the risk of a regulatory veto. When the veto came, each side argued that the other had failed in its obligations. The efforts clause, drafted in general terms, left room for both interpretations.

**The cost of failure is still being negotiated, now in court.** Albertsons seeks the termination fee and further damages; Kroger argues that it owes nothing. The litigation is a continuation of the negotiation by other means, conducted in the shadow of the law described in Chapter 5, and a settlement before judgment remains possible.

**The case teaches the value of specific terms.** Had the agreement named the stores to be sold, the criteria for an acceptable buyer and the steps Kroger was required to take, there would have been less room for dispute. Precision in drafting is a form of preparation, and its absence is a form of risk.

MA EXTENSION

### Who Bears Regulatory Risk?

In a merger agreement, the buyer and the target must decide who bears the risk that regulators will block the deal. A strong efforts clause, sometimes called "hell or high water", places the risk on the buyer, which must sell whatever assets regulators demand; a reverse termination fee compensates the target if the deal fails. Economic theory suggests that risk should be borne by the party better able to control or insure against it, and each term will be priced into the deal. Apply this reasoning to the Deal File. Was a best-efforts obligation combined with a fee of 2.5 per cent of the deal's value an efficient allocation of risk? How would a higher fee have changed Kroger's incentives during the regulatory review? What do the Kroger and Albertsons, Tapestry and Capri, and Mars and Kellanova cases suggest about how parties should negotiate these terms when regulatory policy is uncertain?

ETHICS CHECK

The FTC argued that a merged Kroger and Albertsons would gain leverage over the unions negotiating grocery workers' wages. Is it legitimate for a firm to seek a merger that increases its bargaining power over its employees, as long as it does not break the law? Should negotiators of mergers consider the interests of employees, suppliers and local communities who will be affected but are not parties to the agreement?

### Pillar Scorecard

**Table 9.4**

*Pillar Scorecard: Kroger and Albertsons, 2022 to 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | A merger worth US$24.6 billion, a termination fee of US$600 million and a claim for further damages were at stake |
| Power | Very high | Market power in local grocery markets and over workers decided the regulatory outcome; the merger agreement allocated the power to walk away |
| Persuasion | High | The companies failed to persuade regulators and courts that their remedy would preserve competition; each now seeks to persuade the court of the other's breach |

### Your Move

*This is a constructed teaching case.*

You are the chief executive of a Polish producer of dairy desserts and cheeses based near Olsztyn, with annual sales of €180 million, mainly in Poland and Germany. A large Indian food company proposes a joint venture to produce and sell your products in India. It would contribute a factory site, distribution to 300,000 shops and knowledge of local regulations; you would contribute recipes, production technology and your brand. The Indian company proposes to own 60 per cent of the joint venture and appoint the chief executive; the joint venture would pay you a royalty of 2 per cent of sales for the use of your brand, and disputes would be settled by the courts of Mumbai.

1. Using the Kraljic matrix and the discussion of value chains, assess the bargaining power of each partner. What does each depend on the other for?
2. Which terms in Table 9.3, adapted to a joint venture, would you seek to negotiate? Consider control, deadlock, protection of your technology and brand, and exit.
3. Propose an alternative structure, such as licensing or a different division of ownership, and compare it with the joint venture proposed.
4. How would you negotiate the dispute resolution clause, drawing on Chapter 5?

## Conclusion

Commercial and corporate deals apply the principles of value creation and value claiming to the negotiations firms conduct most often and those which matter most. In buying and selling, the total cost of ownership and the Kraljic matrix help negotiators decide where to use competition and where to build partnership, and relational contracting allows parties to manage what formal contracts cannot foresee. Power along the value chain depends on concentration and dependence, and law increasingly limits what the strongest firms may demand. In corporate deals, valuation and synergies set the bargaining range, due diligence reduces the seller's advantage of information, and the structure of the deal, through earn-outs, warranties, efforts clauses, termination fees and outside dates, allocates risk between the parties. Many deals fail after signing, through regulatory challenge, disputes between partners or problems of integration, and the terms negotiated at signing then decide who bears the cost. The case of Kroger and Albertsons shows a negotiation which outlived the deal it was meant to create, moving from the boardroom to the courtroom. Chapter 10 turns to the

last of the major arenas of business negotiation examined in Part II: the negotiations between employers and workers, in which the division of value is most directly and most publicly contested.

## Exercises

### A. Objective Questions

1. The total cost of ownership includes:
   a) the purchase price and all other costs borne over the life of a purchase
   b) only the purchase price
   c) only transport costs
   d) the supplier's production cost

2. In the Kraljic matrix, items with high profit impact and low supply risk are:
   a) non-critical items
   b) strategic items
   c) bottleneck items
   d) leverage items

3. Relational contracting, as described by Macneil (1980), relies mainly on:
   a) detailed formal contracts only
   b) shared norms, mutual expectations and future dealings
   c) court enforcement
   d) one-off auctions

4. EU Directive 2019/633 on unfair trading practices protects:
   a) large retailers from suppliers
   b) consumers from high prices
   c) smaller suppliers in the agricultural and food supply chain from certain practices of large buyers
   d) banks from defaulting borrowers

5. Roll's (1986) hubris hypothesis suggests that acquirers:
   a) always pay too little
   b) may overpay because they overestimate the value of targets
   c) never use cash
   d) avoid competitive auctions

6. A reverse termination fee in a merger agreement mainly protects:
   a) the target, if the deal fails for reasons such as regulatory refusal
   b) the buyer
   c) the regulator
   d) the target's employees

7. Under the expanded divestiture plan of April 2024, the companies proposed to sell to c&s Wholesale Grocers:
   a) 250 stores
   b) 413 stores
   c) 579 stores
   d) 1,000 stores
8. According to Figure 9.1, the number of deals worth more than US$10 billion in January to November 2025, compared with the same period of 2024:
   a) fell by half
   b) remained the same
   c) increased tenfold
   d) almost doubled

### B. Short-Answer Questions

1. Explain the concept of total cost of ownership and why it matters in purchasing negotiations.
2. Describe the four categories of the Kraljic matrix and the negotiation strategy suited to each.
3. Why has bargaining power in many value chains shifted towards retailers and platforms?
4. Explain how synergies affect the bargaining range in an acquisition.
5. What is due diligence, and how does it relate to information asymmetry?
6. Name four terms in the structure of an acquisition and explain whose interest each protects.
7. Identify three sources of failure in corporate deals, with an example of each.
8. According to Bulow and Klemperer (1996), why might a seller gain more from adding one bidder to an auction than from negotiating harder with the existing ones? When are competitive tenders a poor choice?

### C. Long-Answer Questions

1. Analyse the dispute between Kroger and Albertsons as a negotiation that continued after the deal failed. How did the terms of the merger agreement shape the dispute, and how might they have been negotiated differently?
2. "In purchasing, the best negotiators know when not to bargain hard." Discuss with reference to the Kraljic matrix and relational contracting.
3. Compare the cases of Tapestry and Capri and of Mars and Kellanova. What determined the outcome of the regulatory review in each case, and what lessons do they offer for negotiating merger agreements?

4. Evaluate the role of law, such as the EU directive on unfair trading practices and Poland's legislation on contractual advantage, in rebalancing bargaining power in value chains.

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CHAPTER
# 10

# Labour Negotiations and Industrial Conflict

https://doi.org/10.61030/bdxu-sn2k

## Introduction

Of all the negotiations in which firms engage, those with their own employees are the most continuous, the most regulated and often the most public. Wages, working hours, job security, the pace of work and the introduction of new technology are negotiated every year in thousands of workplaces, sometimes individually, more often collectively through trade unions and works councils. When these negotiations fail, the result can be a strike, a lockout or a dispute that halts production, disrupts public services and attracts national attention, as the cases of Hollywood in Chapter 1 and Boeing in Chapter 7 have shown.

This chapter examines labour negotiations in four steps. Section 10.1 asks why employers and workers come into conflict and what is at stake in their negotiations. Section 10.2 explains how collective bargaining works and what economic theory says about wages, employment, strikes and the bargaining power of each side. Section 10.3 examines how industrial conflict can be prevented or contained, through institutions of social dialogue, works councils and codetermination, and through the practical measures that management teaching has long recommended. Section 10.4 turns to Poland and Central Europe, where union membership is low but conflicts over pay, public services and the minimum wage remain significant, and where new European rules are changing the framework of collective bargaining.

The chapter completes Part II and the first pillar of the book's framework, **profit**. Labour negotiations are, at bottom, negotiations over the division of the value employers and workers create together, but they also show the other pillars at work: the **power** arising from the ability to strike or to relocate production, and the **persuasion** union leaders and managers must exercise over their

own constituencies and the public. The Deal File follows one of the most significant labour agreements in recent European history, reached between Volkswagen and the German union IG Metall just before Christmas 2024, in which the company and its workers agreed to cut tens of thousands of jobs without a single compulsory redundancy.

DEAL FILE

### Volkswagen and IG Metall's Christmas Agreement

In 2024 Volkswagen, Europe's largest carmaker, faced a crisis. Its sales in China, once its most profitable market, were falling under competition from domestic producers; demand for electric cars in Europe was weaker than expected; and its German factories, built for a larger market, had high costs and spare capacity. In the autumn, the company's management terminated its long-standing job-security agreement, raised the prospect of plant closures in Germany and demanded an immediate flat cut in pay of 10 per cent (IG Metall, 2025). Volkswagen has a long tradition of cooperation between management and labour: the union IG Metall negotiates a company-level collective agreement for its main German plants, the works council has extensive rights of codetermination, and the state of Lower Saxony is a significant shareholder.

The union responded with a counter-proposal and, when negotiations stalled, with warning strikes. On 2 December 2024 work stopped for two hours per shift at nine of Volkswagen's ten German plants, and a central rally was held in front of the headquarters in Wolfsburg (DGB, 2024). According to IG Metall, about 100,000 employees took part on each of the two days of warning strikes (IG Metall, 2025).

**The agreement.** On 20 December 2024, after more than 70 hours of negotiations, the parties reached an agreement which both presented as a success. Management dropped its demand for a flat cut in pay. Instead, the pay increase of about 5 per cent agreed for the wider metal industry was suspended at Volkswagen, and the money was used in part to finance measures for surplus staff, such as shorter working hours with partial pay compensation; profit-sharing payments would be reduced for several years. Compulsory redundancies were excluded until the end of 2030 (IG Metall, 2025). More than 35,000 jobs in Germany would be cut by 2030 in a socially responsible way. Production capacity would be reduced by 734,000 units: the Wolfsburg plant would focus on two assembly lines instead of four, production of the Golf would move to Puebla in Mexico from 2027, vehicle production at Dresden would end in 2025, and Osnabrück would build its current model until mid-2027 while other uses for the site were explored (Volkswagen, 2024). The union side stressed that no plant would close and no

**Table 10.1**

*The Volkswagen and IG Metall agreement at a glance*

| | |
|---|---|
| **Parties** | Volkswagen AG; the trade union IG Metall; the general works council of Volkswagen |
| **At stake** | Pay, jobs and the future of Volkswagen's German plants; the company's competitiveness and its long tradition of social partnership |
| **Timeline** | Management's demands in autumn 2024; warning strikes in December; agreement on 20 December 2024 after more than 70 hours of negotiations |
| **Outcome** | More than 35,000 jobs to be cut in Germany by 2030, with compulsory redundancies excluded until the end of 2030; German production capacity reduced by 734,000 units; no plant closures, but vehicle production in Dresden to end in 2025; the industry-wide pay increase of about 5 per cent suspended at Volkswagen to finance measures such as shorter working time; labour costs cut by €1.5 billion a year; total savings of more than €15 billion a year in the medium term |

*Note.* Author, based on IG Metall (2025) and Volkswagen (2024).

one would be dismissed; the company stressed lower capacity, lower labour costs and competitive development costs.

**Questions to keep in mind.** Why did a company with a long tradition of co-operation come so close to an open conflict with its workers? What did each side give up, and what did it gain? How did the institutions of German industrial relations shape the negotiation and its outcome? And would a similar agreement have been possible in a country with weaker unions and fewer rights for works councils, such as Poland? The chapter answers these questions in turn.

## 10.1 Why Do Employers and Workers Clash?

### The Issues at Stake

Employers and workers depend on each other: the employer needs labour, and workers need jobs. Their interests overlap, since both gain from a successful firm, but they also conflict, since every euro paid in wages is a euro not retained as profit, and every hour of rest is an hour not worked. Labour negotiations typically cover five groups of issues, set out in Table 10.2.

The weight of these issues changes over time. In periods of high inflation, such as 2022 and 2023, pay dominates; in periods of restructuring, as at Volkswagen, job security comes to the fore; when new technology arrives, as artificial intelligence did in the Hollywood strikes of Chapter 1, the terms of its introduction become central. Working time, as the agreement between Deutsche Bahn and its train drivers in Section 10.2 shows, has returned as a major issue in several European countries.

**Table 10.2**

*The main issues in labour negotiations*

| Issue | Workers' typical interests | Employers' typical interests |
|---|---|---|
| Pay and benefits | Higher wages, protection against inflation, pensions, bonuses | Competitive labour costs, pay linked to performance |
| Working time | Shorter hours, predictable schedules, rest | Flexibility to match production to demand |
| Job security | Protection against dismissal and relocation | Freedom to restructure, relocate and reduce staff |
| Conditions of work | Safety, health, workload, respect | Productivity and discipline |
| Technology and change | A share in the gains, retraining, protection from replacement | Freedom to introduce new technology and methods |

### Two Faces of Trade Unions

Freeman and Medoff (1984) argued that trade unions have two faces. The **monopoly face** describes their ability to raise wages above the level that a competitive market would set, by controlling the supply of labour to an employer. The **voice face** describes their role in giving workers a collective channel through which to express discontent and propose improvements, instead of simply leaving the firm. Voice can benefit employers too: it reduces the costs of turnover, brings information about problems that managers might otherwise miss and makes change easier to agree. Which face dominates depends on the institutions within which unions operate and on the relationship between the parties.

The asymmetry of power between an individual worker and an employer is the classic justification for collective bargaining. An individual worker who refuses an employer's terms can usually be replaced; a union that withdraws the labour of a whole workforce cannot. Collective bargaining thus changes the alternatives of each side, which Chapter 4 identified as the main source of bargaining power.

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**KEY MOVE**

Before a labour negotiation, identify which issues matter most to each side at this moment. Pay, time, security and technology rise and fall in importance with the economy, and a settlement that addresses the issue of the moment is more likely to hold.

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## 10.2 How Does Collective Bargaining Work? The Economics of Wages and Strikes

### The Process

**Collective bargaining** is the negotiation of terms and conditions of employment between an employer, or an association of employers, and one or more trade unions acting on behalf of workers. It can take place at several levels: within a single company, as at Volkswagen; across a whole sector, as in much of German and Scandinavian industry; or at national level, through agreements between confederations of employers and unions. The level matters, because sectoral and national agreements set common standards for many firms and take wages out of competition, while company agreements allow terms to reflect each firm's circumstances.

The process typically follows the phases described in Chapter 4: preparation, in which each side gathers information and consults its members; the exchange of demands and offers; bargaining, often punctuated by warning strikes or other pressure; agreement in principle; and ratification by members, which, as the Boeing case showed, cannot be taken for granted. Walton and McKersie (1965), whose distinction between distributive and integrative bargaining was introduced in Chapter 8, developed their theory from studies of labour negotiations, and both forms are present in almost every round.

### Wages and Employment

Economists have developed several models of how collective bargaining affects wages and employment. In the **monopoly union model**, the union sets the wage and the employer then chooses how many workers to employ; higher wages lead to fewer jobs. In the **right-to-manage model**, the parties bargain over wages, but the employer alone decides employment. McDonald and Solow (1981) showed that both arrangements are inefficient: if the parties bargain over wages and employment together, they can reach agreements making both better off, accepting, for example, lower wages in return for more jobs, or the reverse. This **efficient bargaining** approach explains why so many labour agreements trade pay against job security, as the Volkswagen agreement did.

### Strikes, Lockouts and Their Costs

The **strike**, the collective withdrawal of labour, is the union's main source of pressure; the **lockout**, in which the employer closes the workplace to its employees, is the employer's counterpart. Both are costly to the party using them as well as to the other side: strikers lose wages, and employers lose output, customers and reputation. Chapter 1 introduced the Hicks paradox, the question of why rational parties strike at all when both would gain by agreeing at once on the final

DEAL SNAPSHOT

**Deutsche Bahn and the Train Drivers' Union GDL, 2023 and 2024**

For five months in 2023 and 2024, the train drivers' union GDL and Germany's national railway, Deutsche Bahn, fought one of the most disruptive disputes in recent German history, during which strikes cancelled most long-distance trains and many regional services. The central issue was not pay but time: the union demanded a 35-hour week for shift workers without loss of pay. After five months of negotiations the parties reached an agreement, to run until 31 December 2025. From 2029 shift workers would choose their own working week within a range of 35 to 40 hours, and those who chose to work more would earn more. Pay would rise by €420 in two stages, and an inflation adjustment bonus totalling €2,850 would be paid (Deutsche Bahn, 2024). The flexible clause was an integrative solution of the kind described in Chapter 8: it met the union's interest in shorter hours for those who wanted them and the employer's interest in keeping enough drivers at a time of staff shortage.

terms, and the answer of modern theory: strikes are a way of revealing information about each side's true limits and resolve (Hicks, 1932; Kennan & Wilson, 1993).

The threat of a strike shapes negotiations even when no strike takes place. The bargaining power of each side depends on how much it would lose from a stoppage and how long it could endure one. Unions are stronger when labour markets are tight, when their members are hard to replace and when a stoppage would quickly harm the employer, as in transport, health care or just-in-time manufacturing. Employers are stronger when demand is weak, inventories are high and production can be moved elsewhere. Volkswagen's ability to move production of the Golf to Mexico, and IG Metall's ability to stop the company's German plants, defined the bargaining range of the Deal File.

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**KEY MOVE**

In a labour negotiation, put pay, jobs and time on the table together. Agreements that trade among them, as efficient bargaining theory suggests, usually leave both sides better off than a fight over wages alone.

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## 10.3 How Can Industrial Conflict Be Prevented? Social Dialogue in Europe

### Practical Measures for Prevention

Management texts list a range of measures that organisations and governments can use to prevent industrial conflict. A widely used classification, drawn largely from the experience of Indian industry, identifies eight:

1. **A labour welfare officer**, who advises management and workers on health, safety, working conditions and welfare, and acts as a mediator and channel of communication between them;
2. **tripartite and bipartite bodies**, which bring together government, employers and workers, or employers and workers alone, to consult on labour matters in a spirit of cooperation;
3. **standing orders**, written rules defining the conditions of employment, from classification and hours of work to discipline and dismissal, so disputes over these matters are less likely to arise;
4. **a grievance procedure**, which allows individual complaints to be raised and resolved quickly, before they become collective disputes;
5. **joint consultation**, in which management discusses matters of common concern with workers' representatives before decisions are taken;
6. **labour co-partnership and profit sharing**, which give workers a direct stake in the firm's success;
7. **strong trade unions**, able to represent workers responsibly and to make agreements stick;
8. **collective bargaining**, through which the terms of employment are agreed rather than imposed.

India illustrates how such measures are embedded in law and how the law evolves. For decades, Indian legislation required large factories to employ welfare officers and industrial establishments to adopt certified standing orders, and created works committees and tripartite consultation on the model recommended by the International Labour Organization. Since 21 November 2025, these rules have been consolidated in new labour codes: the Industrial Relations Code of 2020, which replaced the Industrial Disputes Act and the Standing Orders Act and requires establishments with 20 or more workers to set up grievance redressal committees, and recognises a union with the support of at least 51 per cent of workers as the sole negotiating union where several exist (*Industrial Relations Code, 2020*; Ministry of Labour and Employment, 2025). Chapter 5 described the corresponding changes in the system of labour tribunals.

### The European Model of Social Dialogue

Many European countries have developed institutions that go further, giving workers a formal voice in the governance of firms and in economic policy. **Social dialogue** refers to the negotiation, consultation and exchange of information between representatives of employers, workers and, in tripartite forms, governments. At European level, social partners are consulted on employment legislation and may conclude agreements that become directives. At national level, tripartite councils discuss minimum wages, pensions and labour law.

Germany offers the most developed form of worker participation within firms. **Works councils**, elected by all employees, may be set up in private workplaces with at least five employees and have rights of information, consultation and, on matters such as working time and the introduction of technical monitoring, codetermination. Under **board-level codetermination**, employee representatives hold one-third of the seats on the supervisory boards of companies with 500 to 2,000 employees and half of the seats in companies with more than 2,000, although the chair, appointed by the shareholders, has a casting vote (ETUI, n.d.). In 2023 works councils existed in only about 10 per cent of workplaces with five or more employees, but they covered 43 per cent of the employees in such workplaces, because they are concentrated in larger firms.

Research suggests that codetermination changes the conduct of negotiations more than their outcomes. Studying a reform that gave some German companies board-level representation and others not, Jäger et al. (2021) found little evidence that worker representation on boards reduced investment or profitability, and some evidence of increased capital investment. The Volkswagen case shows its effect on negotiation: the works council and the union were involved in the restructuring from the start, had detailed information about the company's position and negotiated a solution that spread the costs of adjustment over six years.

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**KEY MOVE**

Build the channels for voice before a crisis. Grievance procedures, joint consultation and works councils make it possible to negotiate restructuring rather than fight over it.

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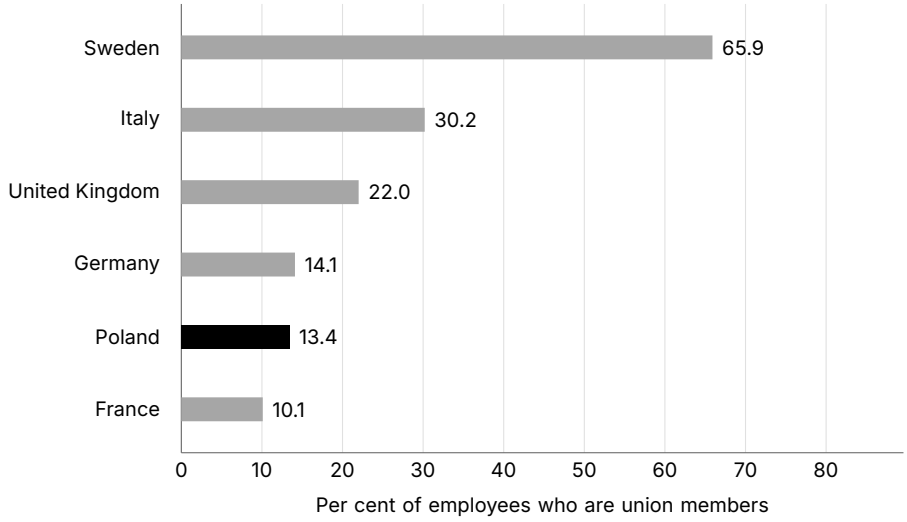
**Figure 10.1**

*Trade union density in selected European countries (per cent of employees)*




*Note.* Author, based on ETUI (n.d.), reporting the OECD/AIAS ICTWSS database. Figures relate mostly to 2023 or 2024; the figure for Poland is the OECD estimate for 2017. National estimates for Poland range from about 10 to about 15 per cent, depending on the method.

## 10.4 Labour Conflict in Poland and Central Europe

### Weak Unions, Strong Conflicts

Labour relations in Poland and much of Central Europe differ sharply from the German model. Trade union membership is low, collective bargaining is fragmented and mostly limited to individual companies, and multi-employer agreements are rare. Figure 10.1 compares trade union density, the share of employees who are union members, in several European countries.

In Poland, three union confederations, NSZZ Solidarność, OPZZ and the Trade Unions Forum (FZZ), account for about 85 per cent of union members. Collective bargaining coverage is among the lowest in the European Union: the OECD and AIAS estimated it at 13.4 per cent in 2019, and an estimate based on registered agreements suggests about 11 per cent in 2024. Works councils, introduced in 2006, have largely disappeared, with fewer than 400 thought to exist, and there is no right to board-level representation in private companies (ETUI, n.d.).

Low membership does not mean an absence of conflict. Disputes are concentrated in the public sector and in a few large employers, and when they occur they can be very large. Table 10.3 shows the volatility of strike activity in Poland, which is dominated by occasional large stoppages in education.

**Table 10.3**

*Strikes and collective disputes in Poland, 2017 to 2021*

| Year | Number of strikes | Working days lost per 1,000 employees | Collective disputes registered by the labour inspectorate |
|---|---|---|---|
| 2017 | 1,556 (1,520 in education) | 420 | 9,492 |
| 2018 | 7 | 400 | 254 |
| 2019 | 9,835 (9,673 in education) | 4,610 | 19,708 |
| 2020 | 27 | 100 | 384 |
| 2021 | 7 | 1,350 | n.a. |

*Note.* Data from Eurofound (n.d.), based on Statistics Poland (GUS) and the National Labour Inspectorate (PIP). In Polish statistics each striking establishment counts as a separate strike, so a national teachers' strike appears as thousands of strikes.

The pattern reflects the procedure for collective disputes described in Chapter 5: negotiation, mediation and only then a strike, preceded where necessary by a warning strike of no more than two hours. Cross-border competition adds another dimension, as the blockade of the Ukrainian border by Polish hauliers in Chapter 1 showed: conflicts over the terms of work can involve not only employers and employees but also governments and foreign competitors.

### Tripartite Bargaining over the Minimum Wage

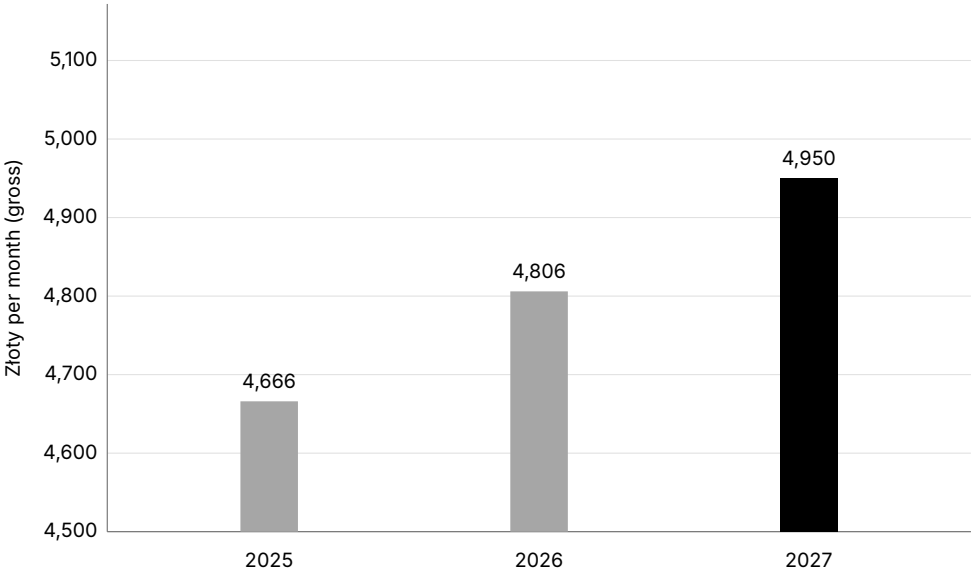
The most visible labour negotiation in Poland takes place each year in the Social Dialogue Council (Rada Dialogu Społecznego), a tripartite body established in 2015, in which the three union confederations, employers' organisations and the government are represented. Its main task each summer is to agree the minimum wage for the following year. The government presents a proposal; the Council has 30 days to agree a joint position; and if it fails, the government sets the minimum wage by regulation, which must be published by 15 September, at a level not lower than its own proposal (*Ustawa z dnia 10 października 2002 r. o minimalnym wynagrodzeniu za pracę*, 2002).

The negotiations over the minimum wages for 2026 and 2027 illustrate the process. In June 2025 the government proposed a minimum monthly wage of 4,806 złoty for 2026, an increase of 140 złoty, or 3 per cent, on the level of 4,666 złoty in 2025. The Council did not agree a joint position, and by a regulation of 11 September 2025 the government set the minimum wage from 1 January 2026 at its own figure, with a minimum hourly rate of 31.40 złoty (Council of Ministers, 2025). Figure 10.2 shows the outcome of the last three rounds.

The outcome shows the logic of bargaining in the shadow of an alternative described in Chapter 5. Because the government decides if the social partners fail

**Figure 10.2**

*Poland's statutory minimum monthly wage, 2025 to 2027 (złoty, gross)*




*Note.* Author, based on Council of Ministers (2025, 2026). In 2026 and 2027 the government's proposal became the final figure. The vertical axis starts at 4,500 złoty to make the differences visible.

to agree, its proposal acts as a powerful anchor and a default, and the parties' real negotiation is with the government rather than with each other. The round for 2027 followed the same pattern. The government proposed 4,950 złoty, an increase of 3 per cent, which the employers' side of the Council unanimously supported (Employers' Side of the Social Dialogue Council, 2026). Without a joint position in the Council, the government set the minimum wage from 1 January 2027 at its own figure of 4,950 złoty, or 32.30 złoty an hour, by a regulation of 14 September 2026 (Council of Ministers, 2026).

### European Rules and Polish Reforms

European law is changing the framework of collective bargaining in the region. The EU's Directive 2022/2041 on adequate minimum wages requires member states in which collective bargaining covers less than 80 per cent of workers to adopt action plans to promote it, a requirement of particular significance for Poland and its neighbours. On 11 November 2025 the Court of Justice of the European Union annulled Article 5(2) of the directive, which listed criteria for

setting statutory minimum wages, and the provision preventing automatic indexation from reducing them, but dismissed the rest of Denmark's action, leaving the provisions on collective bargaining in force (*Denmark v Parliament and Council*, 2025). A new Polish act on collective labour agreements of 5 November 2025, in force since 13 December 2025, simplifies the procedures for concluding them, broadens the matters they may cover to include work-life balance, equal treatment, protection against bullying and the use of new technologies such as artificial intelligence, allows the parties to use a mediator and creates a national electronic register of agreements (Ministry of Family, Labour and Social Policy, n.d.). Whether these reforms will raise coverage substantially remains to be seen.

The author's research on economic relations between Poland and India, and on the role of foreign investment in emerging economies, examines how labour costs, skills and industrial relations affect the decisions of foreign investors, and therefore the bargaining position of workers in host countries (Kumar, 2020, 2024b).

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**KEY MOVE**

In countries with weak unions, do not mistake the absence of collective bargaining for the absence of conflict. Disputes are rarer but can be larger and more political, and the state is often a party to them.

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BACK TO THE DEAL FILE

## Reading the Volkswagen Agreement

The tools of this chapter explain both the crisis and the shape of its resolution.

**The issues of the moment were jobs and capacity.** With sales falling and plants underused, the central question was not the size of a pay rise but how many jobs and plants Germany would keep. The agreement addressed that question directly.

**The agreement was efficient bargaining in practice.** The parties traded pay against jobs and time: workers gave up an immediate pay rise and part of their bonuses, which were redirected into a fund for shorter working hours, in return for the exclusion of compulsory redundancies and plant closures. This is the kind of joint agreement over wages and employment that McDonald and Solow showed can leave both sides better off than bargaining over wages alone.

**Each side's power was real.** Volkswagen could credibly threaten to move production abroad, and did move the Golf to Mexico; IG Metall could credibly stop almost every German plant, as the warning strikes demonstrated. Neither could impose its preferred outcome without severe costs.

**Institutions shaped the process.** Works council rights, board-level codetermination and the participation of the state of Lower Saxony as a shareholder meant that the employees' representatives had detailed information and a voice in the company's governance. The negotiation was conducted within a framework of social partnership that both sides wanted to preserve.

**The costs were spread over time.** By reducing jobs gradually until 2030, through retirements and voluntary departures, the parties converted an immediate conflict into a managed adjustment. Whether the savings prove sufficient, and whether the remaining plants remain competitive, is the test of the agreement in the years ahead. Osnabrück shows that the test has already begun: under the agreement its current model ends production in mid-2027, and the future use of the site was left open (Volkswagen, 2024).

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MA EXTENSION

### Efficient Bargaining and the Contract Curve

McDonald and Solow (1981) showed that when a union cares about both wages and employment, and the employer about profit, the efficient outcomes of bargaining lie on a *contract curve* which differs from the employer's labour demand curve: at any given wage, efficient agreements involve more employment than the employer would choose alone. Agreements that let the employer set employment after wages are fixed, as in the right-to-manage model, are therefore inefficient. Apply this framework to the Deal File. Was the Volkswagen agreement on or near the contract curve? How did the job security guarantee and the working-time fund change the trade-off between wages and employment? Why might efficient agreements be easier to reach under German codetermination than in systems without works councils?

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ETHICS CHECK

The Volkswagen agreement protected the jobs of current employees in Germany until 2030, while moving production of the Golf to Mexico and reducing the number of jobs available to future workers. Is it fair for negotiators to protect the interests of those at the table at the expense of those who are absent, such as young people seeking jobs or workers in other countries? How should unions weigh the interests of current members against those of future workers?

### Pillar Scorecard

### Your Move

*This is a constructed teaching case.*

You are the human resources director of a foreign-owned manufacturer of car components in a special economic zone near Wałbrzych, employing 1,800 people.

**Table 10.4**

*Pillar Scorecard: Volkswagen and IG Metall, 2024*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | Savings of more than €15 billion a year, labour costs, bonuses and the future of German plants were at stake |
| Power | Very high | The union's ability to stop production met the company's ability to relocate it |
| Persuasion | High | Both sides presented the agreement as a success to their constituencies and to the public, in a tradition of social partnership |

The parent company has told you that orders from two European carmakers will fall by a quarter next year, and it plans to move one production line to a plant in Morocco. It asks you to propose a plan to cut costs by 12 per cent. About a fifth of your employees belong to a company union affiliated with NSZZ Solidarność, and there is no works council. Wages in the region have risen quickly in recent years, and skilled operators are hard to find.

1. Identify the issues at stake for the employer and the employees, using Table 10.2.
2. What is the bargaining power of each side? Consider the threat of relocation, the tightness of the labour market and the procedure for collective disputes under Polish law.
3. Using the logic of efficient bargaining, propose an agreement trading pay, jobs and working time.
4. Which of the preventive measures in Section 10.3 could you introduce to reduce the risk of conflict in future?

## Conclusion

Labour negotiations divide the value employers and workers create together, and they are shaped by the issues of the moment, by the power each side derives from its alternatives and by the institutions within which they take place. Trade unions have a monopoly face, which raises wages, and a voice face, which gives workers a channel for improving the firm. Collective bargaining can take place at the level of the company, the sector or the nation, and economic theory shows that agreements covering both wages and employment are usually more efficient than bargaining over wages alone. Strikes and lockouts are costly ways of revealing each side's limits, and their threat shapes every negotiation.

Many measures can prevent conflict, from grievance procedures and joint consultation to works councils and codetermination, and the European model of social dialogue offers the most developed examples. In Poland and much of Central Europe, unions and collective bargaining are weaker, but conflicts over pay and public services can be large, and the state plays a central role, as the annual negotiation over the minimum wage shows. The Volkswagen agreement shows what a strong system of industrial relations can achieve in a crisis: a painful adjustment negotiated rather than imposed. With this chapter, Part II and the analysis of profit are complete. Part III turns to the second pillar of the framework, power, beginning in Chapter 11 with the sources of bargaining power and the concepts of alternatives, dependence and the zone of possible agreement.

## Exercises

### A. Objective Questions

1. According to Freeman and Medoff (1984), the "voice face" of trade unions refers to:
   a) their ability to raise wages above the competitive level
   b) their political campaigns
   c) their role in giving workers a collective channel to express concerns and propose improvements
   d) their control of pension funds

2. In the monopoly union model:
   a) the employer sets wages and employment
   b) the union sets the wage and the employer chooses employment
   c) the parties bargain over wages and employment together
   d) the government sets wages

3. McDonald and Solow (1981) showed that bargaining over wages and employment together:
   a) can produce agreements that make both sides better off
   b) is always impossible
   c) always reduces employment
   d) is illegal in most countries

4. Under the Volkswagen agreement of December 2024, jobs in Germany were to be reduced by:
   a) 3,500 by 2026
   b) more than 35,000 by 2030
   c) 100,000 by 2027
   d) none

5. In German companies with more than 2,000 employees, employee representatives hold:
   a) half of the seats
   b) one-third of the seats
   c) one-tenth of the seats on the supervisory board
   d) all of the seats

6. The agreement between Deutsche Bahn and GDL in 2024 provided for:
   a) an immediate 32-hour week
   b) the abolition of the right to strike
   c) no change in working time
   d) a reduction to 35 hours in stages, with the option to work up to 40 hours for higher pay

7. If Poland's Social Dialogue Council does not agree on the minimum wage, it is set by:
   a) the trade unions
   b) the employers' organisations
   c) the Constitutional Tribunal
   d) the government, by regulation

8. Under the agreement of December 2024, compulsory redundancies at Volkswagen's German plants were excluded until the end of:
   a) 2025
   b) 2027
   c) 2030
   d) 2035

### B. Short-Answer Questions

1. Name the five main groups of issues in labour negotiations and explain why their relative importance changes over time.

2. Explain the monopoly and voice faces of trade unions.

3. Compare the monopoly union, right-to-manage and efficient bargaining models.

4. What determines the bargaining power of a union and of an employer in a dispute?

5. Describe four of the measures for preventing industrial conflict listed in Section 10.3.

6. Explain the role of works councils and board-level codetermination in Germany.

7. Using Figure 10.2, describe how Poland's minimum wages for 2026 and 2027 were decided, and explain why the government's proposal acted as an anchor.

### C. Long-Answer Questions

1. Analyse the Volkswagen and IG Metall agreement of December 2024 using the concepts of efficient bargaining, bargaining power and codetermination. Would a similar agreement have been possible in Poland?
2. "The threat of a strike shapes negotiations even when no strike takes place." Discuss with reference to Volkswagen's warning strikes of 2024 and the dispute between Deutsche Bahn and the GDL.
3. Compare the institutions of industrial relations in Germany and Poland, using Figure 10.1 and Table 10.3. How do they shape the frequency and character of industrial conflict?
4. Evaluate the measures for preventing industrial conflict described in Section 10.3, with reference to the experience of India and of European countries.

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PART

# THREE

## Power: Leverage, Strategy and Tools

Part II showed how value is created and divided in a negotiation. It left open a question that every negotiator faces: why does one side so often obtain the larger share? Two parties may prepare equally well, understand each other's interests equally clearly and invent equally creative options, and yet one of them walks away with most of the surplus. The difference usually lies in **power**, the second pillar of the book's framework, and Part III is devoted to it.

Power in negotiation is often misunderstood. It is not simply size, wealth or aggression. A small supplier with a unique technology can hold a large customer to ransom; a union of a few hundred train drivers can halt a national railway; a country that refines most of the world's rare earths can bring the largest economy on earth to the negotiating table. Power is relational: it depends on what each side needs from the other, on the alternatives each can turn to, on what each knows and on how much time each can afford. It is also dynamic, shifting as markets change, investments are made and deadlines approach. A negotiator who understands the sources of power can assess them before talks begin, strengthen his or her own position and avoid being overawed by the apparent strength of the other side.

Part III also equips negotiators with the analytical tools that turn these insights into strategy. Economics, game theory and decision analysis offer ways of thinking rigorously about choices that depend on what others do, and practical tools help negotiators to manage the process from the first offer to the final signature.

**Chapter 11** sets out the sources of bargaining power: the best alternative to a negotiated agreement, the reservation price and the zone of possible agreement; dependence and market structure; information and expertise; and time and commitment. Its Deal File examines China's export controls on rare earths and the truce agreed with the United States in Busan in October 2025.

**Chapter 12** introduces game theory and bargaining models: the prisoner's dilemma, the ultimatum game, the Nash bargaining solution, repeated games and decision analysis under uncertainty. The Deal File analyses the escalation of tariffs between the United States and China in April 2025 as a game of threat and retreat.

**Chapter 13** turns from analysis to practice. It examines the phases of negotiation in detail (how talks open, how offers and concessions should be made, and how agreements are closed and implemented) and presents tools such as issue matrices, scoring systems and single negotiating texts. The Deal File follows the negotiations between the European Union and Mercosur, which lasted a quarter of a century.

**Chapter 14** examines negotiations with many parties, coalitions, teams and agents, and the methods for managing complex talks. The Deal File follows the three-way arrangement under which Boeing acquired Spirit AeroSystems while Airbus took over the sites that supplied its own aircraft.

**Chapter 15** takes power across borders. It examines how firms negotiate with foreign governments over market entry and investment, why the bargain changes once an investment has been made, how trade agreements, sanctions and geopolitics shift power between firms and states, and how negotiations over natural resources, development finance and debt shape the prospects of developing countries. The Deal File follows the Cobre Panamá copper mine, closed after mass protests and a ruling of Panama's Supreme Court.

Three ideas run through Part III. The first is that power comes above all from alternatives: the party needing an agreement less can demand more. The second is that power can be analysed and changed. Negotiators can improve their alternatives, reduce their dependence, gather information and manage time before they sit down at the table. The third is that power has limits. It can claim value, but it rarely creates it, and its abuse provokes resistance, retaliation and the involvement of regulators and courts. The most effective negotiators use power to secure their share of the value they have created with the other side, not to destroy the relationship that produces it. Part IV will show how persuasion completes what power begins.

CHAPTER
# 11

# Sources of Bargaining Power

https://doi.org/10.61030/qgts-2yex

## Introduction

Bargaining power is the ability to obtain a favourable share of the value at stake in a negotiation. It determines where, within the zone of possible agreement, the parties settle, and sometimes whether they settle at all. Power is often discussed vaguely, as if it were a personal quality or a matter of size. This chapter argues that it can be analysed systematically, and its main sources can be identified, measured and, to a considerable extent, changed before the negotiation begins.

The chapter proceeds in four steps. Section 11.1 introduces the core tools of negotiation analysis: the best alternative to a negotiated agreement (BATNA), the reservation price and the zone of possible agreement (ZOPA). These concepts, introduced briefly in Chapters 4 and 7, are developed here as the foundation of bargaining power. Section 11.2 examines the structural sources of power: dependence, the availability of substitutes and the structure of markets, including the control of critical resources that cannot easily be replaced. Section 11.3 asks whether knowledge gives power, examining the roles of information, expertise and uncertainty. Section 11.4 examines time and commitment, and shows how deadlines, patience and binding commitments can strengthen or weaken a negotiator's position.

The chapter opens Part III and the second pillar of the book's framework, **power**. It builds on the economic roots of conflict in Chapter 2, in which market power was identified as a source of dispute, and on the value created and divided in Part II. Its Deal File examines one of the clearest demonstrations of bargaining power in recent economic history: China's use of its dominance in the processing of rare earths, minerals essential to electric vehicles, wind turbines, electronics and weapons, to bring the United States to a truce in a trade war that the United States had begun.

DEAL FILE

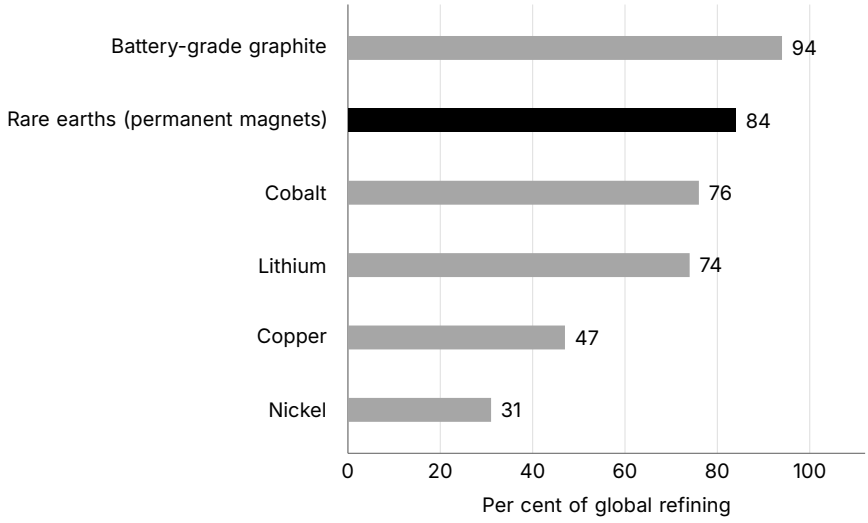
## Rare Earths and the Busan Truce

Rare earths are a group of seventeen metallic elements used in the permanent magnets of electric motors, wind turbines, hard disks, smartphones, missiles and aircraft. They are not especially rare in the earth's crust, but separating and refining them is technically difficult and environmentally damaging, and over three decades China built a dominant position in their processing. According to the International Energy Agency, China accounted for 59 per cent of rare earth mining but 84 per cent of the refining of the rare earths used in permanent magnets, and for similarly high shares of the refining of several other critical minerals (BOFIT, 2026), as Figure 11.1 shows.

In 2025 China used this position as a lever. On 4 April, after the United States had raised its tariffs on Chinese goods, China required licences for exports of seven medium and heavy rare earths (samarium, gadolinium, terbium, dysprosium, lutetium, scandium and yttrium) and of related materials (Ministry of Commerce of the People's Republic of China [MOFCOM], 2025a). Every shipment now needed a licence, which gave Beijing control over the pace of supply. On 9 October it announced much broader controls, which would require licences even

**Figure 11.1**

*China's share of global refining of selected critical minerals, 2025 (per cent)*




*Note.* Author, based on BOFIT (2026), reporting the International Energy Agency's *Global Critical Minerals Outlook 2026*. Rare earths refers to those used in permanent magnets; graphite to battery-grade graphite.

for some products made abroad, if they contained Chinese rare earths worth at least 0.1 per cent of their value or had been made with Chinese rare earth technology (MOFCOM, 2025b). The measures threatened to reopen the tariff war that the two governments had paused in May, examined in Chapter 12.

**Table 11.1**

*The rare earths dispute and the Busan truce at a glance*

| | |
|---|---|
| **Parties** | The governments of the United States and China; indirectly, manufacturers and farmers in both countries and in third countries |
| **At stake** | US tariffs on Chinese goods; Chinese controls on exports of rare earths and other critical minerals; US export controls on technology; Chinese purchases of US farm goods; fentanyl |
| **Timeline** | Chinese licensing of seven rare earths from 4 April 2025; broader controls announced on 9 October; meeting of the two presidents in Busan, South Korea, on 30 October; measures effective from 10 November 2025; arrangement extended in September 2026 to 10 January 2027 |
| **Outcome** | China suspended its October controls for one year; the United States cut its tariff linked to fentanyl by 10 percentage points and suspended for one year a rule extending its export controls to the affiliates of listed firms, as well as its Section 301 measures on shipping and shipbuilding; China suspended its retaliatory tariffs on US farm goods and, according to the White House, undertook to buy US soybeans |

*Note.* Author, based on MOFCOM (2025a, 2025c, 2026) and The White House (2025c).

**The Busan truce.** On 30 October 2025 Presidents Trump and Xi met in Busan, South Korea, and confirmed the arrangement that their negotiators had prepared in Kuala Lumpur a few days earlier. China would suspend for one year the export controls it had announced on 9 October (MOFCOM, 2025c) and, according to the White House, issue general licences for exports of rare earths, gallium, germanium, antimony and graphite; the controls of April were not withdrawn. From 10 November the United States removed 10 percentage points of its tariff on Chinese goods linked to fentanyl and kept its heightened "reciprocal" tariff suspended for a further year, leaving a rate of 10 per cent. It also suspended for one year its Section 301 measures against China's maritime, logistics and shipbuilding sectors and a rule that would have extended its export controls to companies at least 50 per cent owned by firms on its Entity List (Bureau of Industry and Security, 2025b). China suspended its retaliatory tariffs on US farm goods, and the White House said that it would buy at least 12 million tonnes of US soybeans in the last two months of 2025 and at least 25 million tonnes a year from 2026 to 2028 (The White House, 2025c). In September 2026, after an eighth round of consultations in New York and Washington, the two governments extended

the arrangement by only two months, to 10 January 2027, and agreed to keep working towards a mutually agreed solution (MOFCOM, 2026).

**Questions to keep in mind.** How could a country that depends heavily on access to the US market force the larger economy to retreat? What were each side's alternatives to agreement? Why did each side accept a truce of one year rather than a permanent settlement, and why was it then extended by only two months? And what can firms and governments do to reduce their dependence on a single source of a critical input? The chapter answers these questions in turn.

## 11.1 What Is Your Best Alternative? BATNA, Reservation Price and ZOPA

### The Best Alternative to a Negotiated Agreement

Fisher and Ury (1981) argued that the most important source of power in any negotiation is the quality of one's **best alternative to a negotiated agreement (BATNA)**: what a party will do if the negotiation fails. A supplier whose BATNA is to sell to another customer at a good price can afford to reject a low offer; a supplier whose BATNA is to close its factory cannot. The BATNA protects a negotiator from accepting an agreement worse than what could be obtained elsewhere, and it gives the negotiator the confidence to walk away.

Three features of the BATNA deserve emphasis. First, it is a concrete course of action, not a wish: "finding a better buyer" is not a BATNA unless a specific buyer is available on specific terms. Second, it must be evaluated, taking account of its costs, risks and timing, so that it can be compared with offers on the table. Third, it can be changed. A negotiator who improves his or her BATNA before the negotiation, for example by finding an alternative supplier or a second customer, increases his or her power more surely than any tactic at the table.

The other side's BATNA matters as much as one's own. Power in negotiation is relative: what counts is not how good one's own alternative is, but how good it is compared with the other side's. A negotiator should therefore estimate the other side's BATNA, look for ways to weaken it, legitimately, for example by making its alternatives less attractive or less available, and avoid strengthening it inadvertently.

Lax and Sebenius (2006) added that the alternatives which matter are not always the obvious ones. A party's walk-away option may depend on decisions by third parties, on future market conditions or on the reactions of regulators, and the best negotiators shape these "no-deal" options before the talks begin, a process they called setting up the negotiation.

### Reservation Price and the Zone of Possible Agreement

A negotiator's **reservation price**, the point at which he or she is indifferent between agreement and no agreement, is derived from the BATNA. If a seller's BATNA is to sell to another buyer for €80, after allowing for the costs and risks of that sale, its reservation price is about €80. The **zone of possible agreement** (**ZOPA**) is the range between the two parties' reservation prices, introduced in Chapters 2 and 7. When the buyer's reservation price is higher than the seller's, agreement is possible; when it is lower, no agreement can make both sides better off than their alternatives.

Bargaining power, in this framework, is the ability to secure an agreement near the other side's reservation price rather than one's own. It depends on three things: one's own BATNA, which sets one's reservation price and determines how credibly one can walk away; the other side's BATNA, which sets its reservation price and determines how much it can be pushed; and each side's knowledge of the other's reservation price, which determines how accurately it can aim. Table 11.2 lists ways in which a negotiator can strengthen its position before talks begin.

**Table 11.2**

*Ways to strengthen one's position before a negotiation*

| Approach | How it works | Example |
|---|---|---|
| Improve your BATNA | Develop or secure a better alternative before negotiating | A buyer qualifies a second supplier before renegotiating a contract |
| Worsen their BATNA | Make the other side's alternatives less attractive, by legitimate means | A firm signs exclusive deals with distributors a rival would need |
| Reveal your BATNA selectively | Let the other side know of a strong alternative when it helps | A job candidate mentions a competing offer |
| Conceal a weak BATNA | Avoid revealing how much you need the deal | A seller with spare capacity does not disclose it |
| Change the game | Add parties or issues that change both sides' alternatives | A supplier finds a partner to share fixed costs |

*Note.* Author, based on Fisher and Ury (1981), Lax and Sebenius (2006) and Malhotra and Bazerman (2007).

### The Deal File through the Lens of Alternatives

In the dispute over rare earths, each side's BATNA was costly. For the United States, the alternative to agreement was to continue without reliable supplies of rare earth magnets, which would have halted production lines in the car, electronics and defence industries until alternative supplies could be developed, a process expected to take years. For China, the alternative was a renewed escalation of US

tariffs on its exports, the loss of US purchases and further restrictions on its access to American technology. The Busan truce was a point inside the zone of possible agreement: both sides preferred it to continued escalation. Its terms reflected the US alternative's relative weakness at the time: rare earth magnets could not be replaced quickly, while Chinese exporters could redirect part of their sales to other markets.

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**KEY MOVE**

Before any important negotiation, write down your BATNA and the other side's, and estimate the value of each. Then ask what you can do, before the talks begin, to improve yours and to reduce your dependence on the agreement.

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## 11.2 Who Needs Whom More? Dependence and Market Structure

### Power and Dependence

The sociologist Richard Emerson (1962) proposed a simple and powerful idea: the power of A over B equals the dependence of B on A. B depends on A to the extent that B values what A can provide and cannot obtain it elsewhere. Power is thus a property of the relationship, not of either party alone, and it can be changed by changing either party's dependence: by finding alternative sources, by reducing the importance of what the other provides, or by making the other more dependent in return. Bacharach and Lawler (1981) applied this framework to bargaining, distinguishing the dependence of each party on the other and the total dependence in the relationship, which affects how hard both sides work to reach agreement.

Emerson's idea links directly to the BATNA. A party with good alternatives depends little on the other; a party with poor alternatives depends heavily. It also links to the economics of Chapter 2: the specific investments that create hold-up are a form of dependence, and market power, which arises from concentration, switching costs and the control of bottlenecks, is a structural form of the dependence of customers on suppliers or of suppliers on customers.

Pfeffer and Salancik (1978) applied similar reasoning to organisations. Firms depend on their environments for critical resources, and they manage this dependence through strategies such as diversifying suppliers, merging with partners, forming alliances and seeking support from governments. Each of these strategies changes the firm's power in future negotiations.

### Interdependence as a Weapon

Dependence between countries can be used in the same way. Hirschman (1945) showed how Nazi Germany in the 1930s organised its trade with smaller countries in south-eastern Europe so that they depended more on Germany than Germany depended on them, gaining political influence through commercial relations. Farrell and Newman (2019) extended this analysis to the global economy of today. They argued that networks of finance, communication and supply have **chokepoints**, nodes through which flows must pass, and the states controlling these chokepoints can use them as instruments of pressure, a phenomenon they called **weaponised interdependence**. The dollar-based financial system, undersea cables and the supply chains of advanced semiconductors are examples.

The Deal File shows weaponised interdependence in the field of critical minerals. Chinese firms do not dominate rare earth mining as completely as they dominate refining and magnet production, and it is at these later stages of the supply chain that substitutes are hardest to find. Figure 11.1 shows that the same pattern applies to graphite, cobalt and lithium. A country that controls a stage of production through which most of the world's supply must pass gains bargaining power far greater than its share of world trade would suggest. Figure 11.2 shows how China's share rises at each successive stage of the supply chain for rare earth magnets.

### Reducing Dependence

Dependence can be reduced, but rarely quickly. Firms and governments facing a dominant supplier can diversify their sources, stockpile, invest in recycling or in substitute technologies, form alliances with other buyers, or seek to develop domestic production. The United States, the European Union and Japan launched or expanded programmes in 2025 and 2026 to support new mining and refining capacity outside China. Each of these measures changes future BATNAs, and therefore future bargaining power, but each requires years and large investments, during which the dominant supplier retains its advantage. The International Energy Agency nevertheless expects refining to remain highly concentrated for years to come; for battery-grade graphite, for example, China's share of processing is projected to stay above 90 per cent until 2035 (BOFIT, 2026).

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**KEY MOVE**

Ask who needs whom more, and why. Map the stages of your supply chain at which you depend on a single source, and start reducing that dependence long before you need to negotiate.

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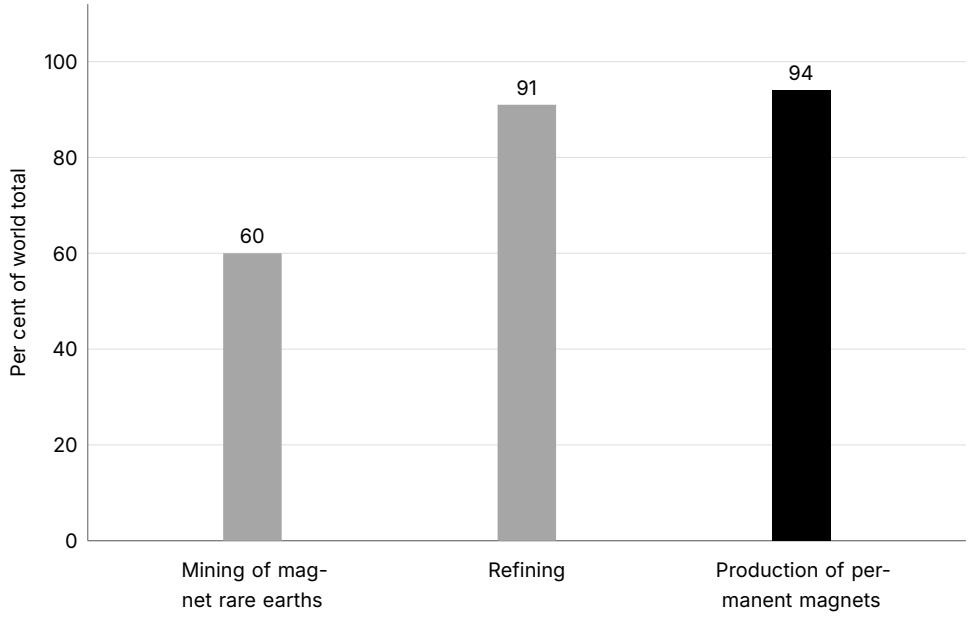
**Figure 11.2**

*China's share of each stage of the supply chain for rare earth permanent magnets, 2024 (per cent)*




*Note.* Author, based on International Energy Agency (2026). Mining refers to magnet rare earths and production to sintered permanent magnets. The figures for 2024 differ slightly from those for 2025 in Figure 11.1 because of differences in year and coverage.

## 11.3 Does Knowledge Give Power?

### Bases of Power

French and Raven (1959) identified five bases of social power: **reward power**, the ability to provide benefits; **coercive power**, the ability to impose costs; **legitimate power**, based on a recognised right to decide; **expert power**, based on knowledge and skill; and **referent power**, based on the respect or affection of others. Raven later added **information power**, based on control of information needed by others. Table 11.3 applies these bases to negotiation.

The Deal File shows several bases at once. China's controls were coercive power, based on its control of a critical resource. The US tariffs and technology controls were coercive power of its own. The ability to offer purchases of soybeans or the suspension of controls was reward power. Each government's legal authority to impose and lift such measures was legitimate power.

DEAL SNAPSHOT

### Nvidia's Chips and Washington's Terms, 2025 and 2026

Dependence can run in the other direction too. China's technology firms need advanced chips designed by the American company Nvidia to train artificial intelligence models, and the US government controls their export. On 9 April 2025 the government informed Nvidia that a licence was required to export its H20 chip, designed for the Chinese market. Nvidia took a charge of US$4.5 billion in the first quarter of its 2026 financial year, mainly for excess inventory and purchase obligations, and was unable to ship a further US$2.5 billion of H20 products (NVIDIA, 2025). In January 2026 the administration changed course for more powerful chips such as the H200. The Department of Commerce replaced its presumption of denial for licences to China with a case-by-case review, on conditions: exporters had to certify that US customers would not be left short of supply, total shipments to China could not exceed half of those to US customers, and shipments had to be reviewed by an independent laboratory in the United States (Bureau of Industry and Security, 2026). At the same time, a presidential proclamation imposed a duty of 25 per cent on imports of chips in the same performance range that did not contribute to building the US technology supply chain (Proclamation No. 11002, 2026). The case shows how a state that controls a chokepoint can loosen its grip on its own terms, turning access into both a bargaining chip and a source of revenue.

**Table 11.3**

*Bases of power in negotiation*

| Base | Source | Negotiation example |
|---|---|---|
| Reward | Ability to give something the other side values | A buyer offers a long-term contract |
| Coercive | Ability to impose costs | A government threatens tariffs or export controls |
| Legitimate | A recognised right, rule or position | A regulator approves or blocks a merger |
| Expert | Knowledge and skill | A consultant's analysis of costs persuades a supplier |
| Referent | Respect, reputation or relationship | A respected industry figure brokers a deal |
| Information | Control of information the other side needs | A firm knows its rival's capacity constraints |

*Note.* Author, based on French and Raven (1959).

### Information and Uncertainty

Information confers power in two ways. A negotiator who knows more about the other side's reservation price, priorities and constraints can aim offers more precisely and avoid conceding more than necessary. A negotiator whose own reservation price is unknown to the other side can claim more of the surplus, because the other side cannot be sure how far it can push. Chapter 2 introduced the economics of hidden information, and Chapter 7 the practical gathering of information before a negotiation.

Uncertainty about the other side's alternatives is a source of risk for both parties. In the Deal File, neither government knew precisely how long the other could endure the costs of escalation: how quickly US manufacturers would run out of magnets, or how badly Chinese exporters would suffer from renewed tariff increases. Each tried to signal that it could hold out longer. The October controls were partly a signal of China's capacity to hurt, and US threats of further tariffs and export controls were signals in return. Signals of this kind are credible only if they are costly to send, a point developed in Chapter 12.

Information can also be created. A firm commissioning an independent analysis of market prices, or testing the market by inviting competing offers, generates information to strengthen its arguments and its alternatives. Expert power, the authority that comes from demonstrated knowledge, can change the other side's beliefs about what is reasonable, and therefore its reservation price.

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**KEY MOVE**

Treat information as a source of power to be built and protected. Learn as much as you can about the other side's alternatives and constraints, and reveal your own only when doing so strengthens your position.

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## 11.4 Can Time and Commitment Be Weapons?

### Deadlines and Patience

Time affects bargaining power because delay is costly, and it is rarely equally costly for both sides. The party losing more from delay, because it is running short of supplies, cash or political patience, is under pressure to concede. Rubinstein (1982) showed in a formal model of alternating offers that, when both parties are rational and fully informed, the more patient party obtains the larger share of the surplus, and the share depends on how much each side discounts the future.

Deadlines concentrate the effect of time. Many negotiations reach agreement only as a deadline approaches, because concessions made earlier would reveal

DEAL SNAPSHOT

**Drug Prices under the Threat of Tariffs, 2025**

In April 2025 the Department of Commerce opened an investigation under Section 232 of the Trade Expansion Act of 1962 into whether imports of pharmaceuticals threatened national security, a step that can lead to tariffs (Bureau of Industry and Security, 2025a). On 30 September 2025 Pfizer became the first company to reach an agreement with the administration. According to the White House, it would offer "most-favoured-nation" prices, matching those it charged in other developed countries, to every state Medicaid programme and on the new medicines it launched (The White House, 2025b). Pfizer added that it would sell medicines directly to patients at discounts averaging 50 per cent and invest an additional US$70 billion in research, development and capital projects in the United States; in return, its products covered by the Section 232 investigation would face no tariffs during a three-year grace period (Pfizer, 2025). By 19 December 2025 the White House had announced 14 such agreements with major manufacturers, including Merck, Novartis, GSK and Sanofi (The White House, 2025e). The episode demonstrates how a credible threat that a government can carry out unilaterally can bring a whole industry to the negotiating table within months.

weakness and because the cost of failure becomes concrete only when the deadline is close. A negotiator who can impose a deadline on the other side without being bound by one gains power; a negotiator who reveals his or her own deadline loses it. In the Deal File, the truce itself became an instrument of time. A suspension of one year gave each side a period in which to reduce its dependence on the other, and the extension of only two months agreed in September 2026 kept both under pressure to continue negotiating.

### Commitment

Schelling (1960) observed a paradox of bargaining: the ability to bind oneself can be a source of strength. A negotiator who can credibly commit to a position, by making it impossible or very costly to retreat, forces the other side either to accept or to bear the cost of no agreement. Public statements, legal restrictions, mandates from constituents and the delegation of negotiation to an agent with limited authority are all ways of making commitments credible. The two-level games of Chapter 4 showed how a negotiator with a constrained domestic win-set can use the constraint to extract concessions.

Commitment is dangerous, however. If both sides commit to incompatible positions, neither can retreat, and the result is deadlock or escalation. Commitments also reduce flexibility, preventing the discovery of integrative solutions. In the Deal File, both governments made public commitments, the United States to

tariffs and China to controls, that made retreat costly. The truce allowed both to step back without appearing to capitulate, because each could present its concessions as conditional and temporary. Table 11.4 summarises how time and commitment act as sources of power.

**Table 11.4**

*Time and commitment as sources of power*

| Source | How it creates power | Risk |
|---|---|---|
| Patience | The party that can wait longer obtains more | Opportunities may be lost while waiting |
| Deadlines for the other side | Pressure to concede as the cost of failure approaches | The other side may call the bluff |
| Concealing one's own deadline | Prevents the other side from exploiting time pressure | Requires discipline |
| Public commitment | Makes retreat costly, so the position becomes credible | Deadlock if both sides commit |
| Limited authority | An agent who cannot concede strengthens the principal's position | Frustration and breakdown |

*Note.* Author, based on Schelling (1960) and Rubinstein (1982).

### The Limits of Power

Power can claim value, but it can also destroy it. Using coercive power provokes resistance and retaliation, encourages the other side to reduce its dependence, and invites intervention by regulators, courts and other governments. China's controls on rare earths spurred investment in alternative supplies outside China, which will weaken its position in the long run; the US tariffs prompted Chinese retaliation and the redirection of trade. The author's research on entrepreneurship and trade in a fragmented world economy examines how firms and governments respond to such pressures by diversifying their partners and building new trading relationships, for example between India and Europe (Kumar, 2026b). A negotiator who uses power without regard to the relationship may win the current negotiation and lose the next one.

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**KEY MOVE**

Manage time deliberately: create deadlines for the other side, hide your own and avoid committing yourself to positions you cannot hold. Use power to secure your share of value, not to destroy the relationship that creates it.

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BACK TO THE DEAL FILE

## Reading the Busan Truce

The tools of this chapter explain why the dispute over rare earths ended in a truce and why the truce remained fragile.

**China's power rested on a chokepoint.** By controlling most of the world's refining of magnet rare earths, China could impose costs on US manufacturers that the United States could not quickly avoid. This was weaponised interdependence of the kind described by Farrell and Newman.

**Both BATNAs were costly, so a zone of agreement existed.** The United States faced shortages of critical inputs; China faced punitive tariffs and the loss of technology. A truce that rolled back the most recent escalation on both sides lay inside the zone of possible agreement.

**Dependence was asymmetric in time.** In the short run the United States depended more heavily on Chinese rare earths than China depended on any single US export, which explains why the United States made significant concessions on tariffs and export controls. In the long run, investment in alternative supplies may reverse the balance.

**Time became part of the agreement.** The one-year suspension gave both sides a window to reduce their dependence, and the two-month extension of September 2026 kept up the pressure to continue negotiating. Each side retained the ability to restore its measures, so each kept its coercive power in reserve.

**Commitments were softened rather than abandoned.** China suspended its October controls but kept those of April in force under a system of licences; the United States kept its reciprocal tariff while reducing the tariff linked to fentanyl. Each could claim to have defended its position.

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MA EXTENSION

### Measuring Bargaining Power

Economists measure bargaining power in several ways. In the generalised Nash bargaining solution, examined in Chapter 12, a parameter between zero and one represents each party's share of the surplus above its disagreement payoff. In Rubinstein's (1982) model, relative patience determines the division. In the sociological tradition of Emerson (1962), power is measured by relative dependence. Hirschman (1945) proposed measuring the potential for trade to be used as a political weapon by the concentration of a country's trade on particular partners. Apply these approaches to the Deal File. How would you measure the relative dependence of the United States and China on each other's goods? Which measure best explains the terms of the Busan truce? What data would you need to test your answer?

ETHICS CHECK

In 2025 both the United States and China used control over goods that the other needed, rare earths on one side and advanced chips on the other, as instruments of pressure. Firms and workers who had no part in the dispute bore much of the cost. Is it legitimate for governments to use economic interdependence as a weapon in negotiations? Should firms controlling critical inputs accept limits on how they use this power, and who should set those limits?

### Pillar Scorecard

**Table 11.5**

*Pillar Scorecard: rare earths and the Busan truce, 2025 and 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | High | Trade worth hundreds of billions of dollars, critical supply chains and US farm exports were at stake |
| Power | Very high | Control of a chokepoint in critical minerals forced a retreat by the larger economy; time and threats shaped the terms |
| Persuasion | Moderate | Both governments presented the truce as a success, but the outcome rested mainly on mutual dependence |

### Your Move

*This is a constructed teaching case.*

You are the purchasing director of a manufacturer of electric motors for industrial machinery in Mielec, which buys the neodymium magnets for its motors from a single supplier in China. The supplier has informed you that, because of new export licensing requirements, deliveries will be delayed by up to three months and the price will rise by 30 per cent. Your firm has magnets in stock for six weeks of production. A Japanese supplier could provide magnets at a price 45 per cent higher than your current price, with deliveries starting in four months; a start-up in Estonia is building a magnet factory that could supply you in eighteen months.

1. What is your BATNA in the negotiation with the Chinese supplier, and what is the supplier's?
2. Using Emerson's analysis of power and dependence, assess the balance of power between your firm and the supplier now and in two years' time.
3. What actions could you take now to improve your BATNA and reduce your dependence?

4. How would you use time and information in the negotiation with the Chinese supplier? What should you reveal, and what should you conceal?

## Conclusion

Bargaining power is the ability to secure a favourable share of the value at stake, and it can be analysed systematically. Its foundation is the best alternative to a negotiated agreement, which sets each party's reservation price and determines the zone of possible agreement. Power depends on dependence: the party needing the other less can demand more, and dependence arises from the structure of markets and supply chains, including the control of chokepoints others cannot avoid. Information confers power by allowing negotiators to aim their offers and conceal their limits, and time and commitment can be used as weapons, although commitments that leave no room for retreat can lead to deadlock. Power can be built and changed, but its use has costs: it provokes resistance, encourages the other side to reduce its dependence and invites retaliation. The Busan truce shows all these elements at work in a negotiation between the two largest economies in the world, in which control of the refining of a few obscure metals proved a stronger lever than the size of the economies involved. Chapter 12 turns to the formal tools that economists and game theorists have developed to analyse strategic interaction, and shows how they explain the escalation and retreat of tariffs between the United States and China in 2025.

## Exercises

### A. Objective Questions

1. According to Fisher and Ury (1981), the most important source of power in a negotiation is:
   a) the quality of one's best alternative to a negotiated agreement
   b) the size of the firm
   c) the first offer
   d) the personality of the negotiator

2. A negotiator's reservation price is derived mainly from:
   a) the other side's target
   b) his or her BATNA
   c) the market average
   d) the first offer made

3. According to Emerson (1962), the power of A over B equals:
   a) the size of A relative to B
   b) the wealth of A
   c) the dependence of B on A
   d) the number of A's employees

4. Farrell and Newman (2019) used the term "weaponised interdependence" to describe:
   a) military alliances
   b) currency unions
   c) trade agreements
   d) the use of chokepoints in global networks as instruments of pressure

5. Which of French and Raven's bases of power rests on control of information that others need?
   a) information power
   b) legitimate power
   c) referent power
   d) reward power

6. In Rubinstein's (1982) model of alternating offers, the larger share of the surplus goes to:
   a) the party that makes the first offer
   b) the more patient party
   c) the larger party
   d) the party with more information

7. Under the Busan truce, China suspended for one year:
   a) all its export controls on rare earths
   b) its purchases of soybeans
   c) its export controls announced on 9 October 2025
   d) its tariffs on US cars

8. According to Figure 11.1, China's share of global refining of battery-grade graphite in 2025 was approximately:
   a) 31 per cent
   b) 59 per cent
   c) 76 per cent
   d) 94 per cent

### B. Short-Answer Questions

1. Define the BATNA and explain three ways in which a negotiator can strengthen his or her position before a negotiation.

2. Explain the relationship between the BATNA, the reservation price and the zone of possible agreement.

3. Explain Emerson's theory of power and dependence, and show how it relates to the BATNA.

4. What is weaponised interdependence? Give two examples, and use Figure 11.2 to explain why control of later stages of a supply chain can matter more than control of mining.

5. Name five of French and Raven's bases of power and give a negotiation example of each.
6. Explain how deadlines and patience affect bargaining power.
7. Why can commitment be both a source of power and a source of danger?

### C. Long-Answer Questions

1. Analyse the dispute over rare earths and the Busan truce using the concepts of BATNA, dependence and weaponised interdependence. Why did the United States, the larger economy, make significant concessions?
2. "Power can claim value but it cannot create it." Discuss with reference to the cases of rare earths, Nvidia's chips and the pharmaceutical pricing agreements of 2025.
3. Evaluate the strategies available to firms and governments for reducing dependence on a dominant supplier of a critical input. Which are most effective in the short run, and which in the long run?
4. Choose a negotiation in which you or your organisation will soon take part. Analyse the sources of power on each side using the tools of this chapter, and propose a plan for strengthening your position.

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CHAPTER
# 12

# Game Theory and Bargaining Models

https://doi.org/10.61030/c526-b4cs

## Introduction

Negotiators are never alone. Whatever one side does, its result depends on what the other side does, and each side knows this. A firm cutting its price may win customers, unless its rival cuts too; a government raising tariffs may extract concessions, unless its trading partner retaliates; a union threatening to strike may win a higher wage, unless the employer calls its bluff. Situations of this kind, in which each party's best choice depends on the choices of others, are the subject of **game theory**, a branch of economics and mathematics that has become one of the most powerful tools for understanding negotiation.

This chapter introduces the main ideas of game theory and decision analysis that negotiators can use, without requiring advanced mathematics. Section 12.1 presents the prisoner's dilemma and shows why rational parties can end up worse off than if they had cooperated. Section 12.2 examines the ultimatum game and the experimental evidence that people reject offers they consider unfair, even at a cost to themselves. Section 12.3 explains the Nash bargaining solution, a benchmark for how a surplus might be divided according to the parties' alternatives. Section 12.4 shows how repetition, reputation and credible threats change incentives. Section 12.5 turns to decision analysis and shows how expected values and decision trees help negotiators to choose under uncertainty.

The chapter develops the second pillar of the book's framework, **power**, by showing how strategic interaction determines what each side can obtain. It formalises ideas met earlier: the negotiator's dilemma of Chapters 2 and 8, the war of attrition of Chapter 3, and the commitment and patience of Chapter 11. Its Deal File follows a contest between the two largest economies in the world which unfolded, in April 2025, with the speed and logic of a textbook game: an escalation of tariffs between the United States and China to levels halting much of their trade, followed by a retreat a month later.

DEAL FILE

### The Tariff Escalation of April 2025

In February 2025 the United States imposed an additional tariff of 10 per cent on imports from China, citing the flow of fentanyl, and in March it doubled the rate to 20 per cent (Executive Order No. 14195, 2025; Executive Order No. 14228, 2025). On 2 April it announced "reciprocal" tariffs on almost all its trading partners, with a rate of 34 per cent for China (Executive Order No. 14257, 2025). What followed was an escalation of a kind rarely seen between large economies. On 4 April China announced an additional tariff of 34 per cent on all US goods from 10 April (Customs Tariff Commission of the State Council, 2025a). The United States raised its reciprocal rate to 84 per cent from 9 April, China announced the same day that it would raise its own rate to 84 per cent (Customs Tariff Commission of the State Council, 2025b), and from 10 April the United States raised its rate again, to 125 per cent (Executive Order No. 14259, 2025; Executive Order No. 14266, 2025). With the fentanyl duties, the total additional tariff on most Chinese goods now stood at 145 per cent. On 11 April China raised its own rate to 125 per cent, from 12 April (Customs Tariff Commission of the State Council, 2025c). At these levels, much trade between the two countries became uneconomic.

Then came the retreat. On 12 May, after talks in Geneva, the two governments issued a joint statement. By 14 May each side would suspend 24 percentage points of its tariff for an initial 90 days, leaving a rate of 10 per cent, and withdraw the increases of 8 to 11 April; China would also suspend or remove the non-tariff countermeasures it had taken since 2 April. A mechanism for continued talks was created, led on the Chinese side by Vice-Premier He Lifeng and on the American side by Treasury Secretary Scott Bessent and Trade Representative Jamieson Greer (*Joint Statement on U.S.–China Economic and Trade Meeting in Geneva*, 2025). Further rounds of consultations followed and led to the Busan truce described in Chapter 11. In February 2026 the US Supreme Court ruled that the emergency powers law under which the reciprocal and fentanyl tariffs had been imposed did not authorise them (*Learning Resources, Inc. v. Trump*, 2026), so that the legal basis of the American moves in this game was itself open to challenge, a development examined in Chapter 4. Figure 12.1 traces the main tariff rates.

**Questions to keep in mind.** Why did two governments, both of which stood to lose from a trade war, escalate to tariffs neither could sustain? Why did each match the other's move rather than back down? What changed between April and May to make retreat possible? And how might game theory help firms caught in such a contest to anticipate what their governments, and their competitors, will do next? The chapter answers these questions in turn.

**Table 12.1**

*The tariff escalation of 2025 at a glance*

| | |
|---|---|
| **Parties** | The governments of the United States and China |
| **At stake** | Bilateral trade worth hundreds of billions of dollars a year; market access, technology and the balance of trade; each side's credibility in future negotiations |
| **Timeline** | Tariffs linked to fentanyl in February and March 2025; reciprocal tariffs announced on 2 April; escalation to 125 per cent on each side by 11 April; Geneva joint statement on 12 May, effective 14 May; further rounds through 2025 |
| **Outcome** | A 90-day suspension that reduced reciprocal tariffs on both sides to 10 per cent, later extended, and a mechanism for continued negotiation |

*Note.* Author, based on the sources of Figure 12.1.

## 12.1 Why Do Rational Players End Up Worse Off?

### Games, Strategies and Equilibrium

A **game**, in the language of game theory, consists of players, the strategies available to each, and the payoffs each receives for every combination of strategies. A strategy is **dominant** if it gives a player a better payoff whatever the others do. A combination of strategies is a **Nash equilibrium** if no player can improve its payoff by changing its own strategy while the others keep theirs (Nash, 1950b). Equilibrium predicts where rational players will end up, but, as the prisoner's dilemma shows, it does not guarantee that they end up anywhere good.

### The Prisoner's Dilemma

The best-known game is the **prisoner's dilemma**. Two players can each cooperate or defect. Each does better by defecting, whatever the other does; but if both defect, both are worse off than if both had cooperated. Table 12.2 applies the game to a tariff dispute between two countries. The numbers are illustrative gains in economic welfare.

**Table 12.2**

*A tariff game as a prisoner's dilemma (payoffs to Country A, Country B)*

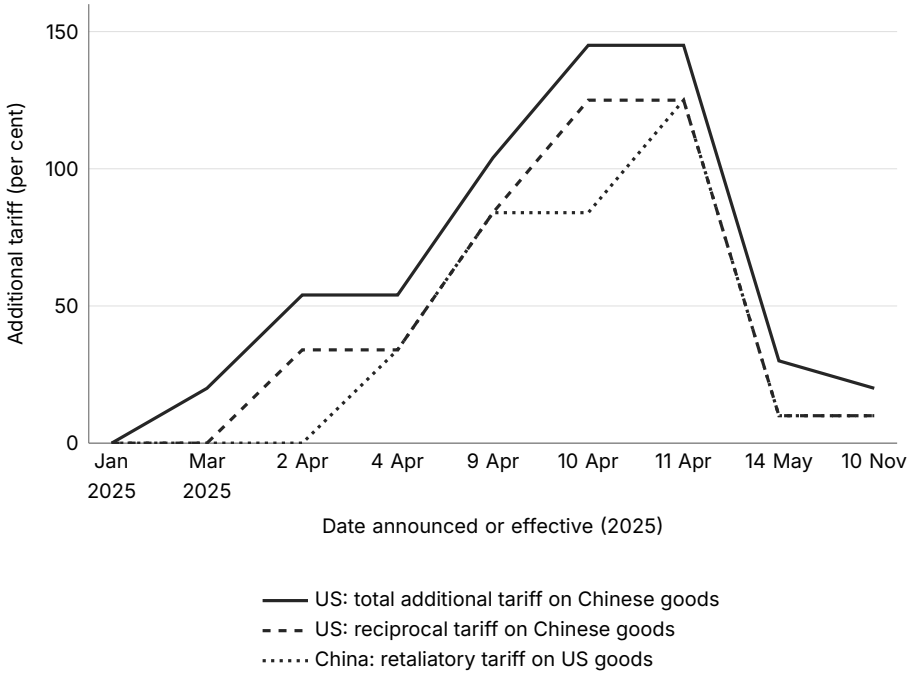
| | Country B keeps tariffs low | Country B raises tariffs |
|---|---|---|
| **Country A keeps tariffs low** | 10, 10 | 2, 12 |
| **Country A raises tariffs** | 12, 2 | 4, 4 |

*Note.* Author's illustrative example.

Whatever B does, A obtains more by raising tariffs (12 rather than 10 if B keeps tariffs low; 4 rather than 2 if B raises them), and the same is true for B. Raising

**Figure 12.1**

*Additional tariffs imposed by the United States and China on each other's goods, 2025 (per cent)*




*Note.* Author, based on the executive orders cited in the text, Customs Tariff Commission of the State Council (2025a, 2025b, 2025c), *Joint Statement on U.S.–China Economic and Trade Meeting in Geneva* (2025) and The White House (2025c). Dates are those on which each rate was announced or took effect. The US total includes the reciprocal tariff and the tariff linked to fentanyl, which was cut from 20 to 10 per cent from 10 November 2025. Rates apply to most goods; many products were subject to exemptions or other duties. China's targeted tariffs of February and March 2025 on selected US products, such as energy and farm goods, are not shown.

tariffs is therefore each country's dominant strategy, and the Nash equilibrium is for both to raise tariffs, with payoffs of 4 each. Yet both would be better off, with 10 each, if both kept tariffs low. Individual rationality leads to collective loss.

The prisoner's dilemma captures the negotiator's dilemma of Chapters 2 and 8: each side gains from claiming value, by concealing information or making extreme demands, but if both do so, the value cooperation would create is lost. It also explains why trade agreements, with binding commitments and enforcement mechanisms, exist: they change the payoffs so that cooperation becomes rational.

### Escaping the Dilemma

Players caught in a prisoner's dilemma can escape it only by changing the game. Four approaches are common in business and international negotiation. The first is a **binding agreement** with enforcement: the commitments that members of the World Trade Organization make on their maximum tariffs, backed by dispute settlement, are designed to stop countries from sliding into the mutual defection of Table 12.2. The second is **monitoring**, which makes defection visible and therefore punishable; cartels and arms-control agreements depend on it. The third is **changing payoffs** through side payments, penalties or rewards, so that cooperation becomes each player's best response. The fourth is **repetition**, examined in Section 12.4, which allows today's cooperation to be rewarded and today's defection to be punished tomorrow. When none of these is available, as in the spring of 2025, when the usual constraints of trade agreements were set aside by both sides, the dilemma can play out in its harshest form.

### Escalation and the Game of Chicken

The tariff escalation of April 2025 resembled a different game as well. In the **game of chicken**, two drivers race towards each other; the one who swerves loses face, but if neither swerves, both crash. Each player wants the other to back down and tries to convince it that it will not back down itself. Commitment, discussed in Chapter 11, is the key: a player who can credibly show that it cannot swerve forces the other to do so. The escalation of tariffs to 125 and 145 per cent was, in part, an attempt by each government to demonstrate resolve and to convince the other that it would bear the costs longer. When the costs became visible to both, both swerved, presenting the retreat at Geneva as a mutual de-escalation rather than a defeat.

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**KEY MOVE**

When you face a prisoner's dilemma, look for ways to change the payoffs: binding agreements, monitoring, penalties for defection or rewards for cooperation. When you face a game of chicken, look for a way for both sides to step back without losing face.

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## 12.2 Take It or Leave It? The Ultimatum Game

### The Game and Its Prediction

In the **ultimatum game**, one player, the proposer, is given a sum of money and proposes how to divide it with a second player, the responder. If the responder accepts, the money is divided as proposed; if the responder rejects, both receive nothing. Standard economic reasoning predicts that the proposer will offer the smallest possible amount and the responder will accept it, since something is better than nothing.

### What People Actually Do

Experiments tell a different story. In the first experiments, Güth et al. (1982) found that proposers commonly offered far more than the minimum, and responders often rejected small offers. Thousands of later experiments have confirmed the pattern: offers typically average 40 to 50 per cent of the sum, and offers below about 20 per cent are frequently rejected (Camerer, 2003). Responders are willing to give up money to punish an offer they regard as unfair, and proposers, anticipating this, offer more. Cross-cultural studies by Henrich et al. (2001) found that the size of offers varies across societies, reflecting local norms of fairness and cooperation, a theme taken up in Chapter 18.

The ultimatum game teaches three lessons for negotiation. First, fairness matters: a party feeling exploited may reject an agreement which would make it better off, as the Boeing machinists did in Chapter 7. Second, take-it-or-leave-it offers are powerful but risky: the proposer gains if the offer is accepted, but an offer perceived as unfair may be rejected at a cost to both. Third, perceptions of fairness depend on reference points, such as previous agreements, the other side's gains or what others have received, which negotiators can shape through persuasion, the subject of Part IV.

### Why Do People Care about Fairness?

Economists have developed models that explain these results. Fehr and Schmidt (1999) proposed that many people are **inequity averse**: they dislike receiving less than others, and to a lesser extent more than others, and are willing to sacrifice some of their own payoff to reduce the difference. A responder who rejects a small offer is not irrational; he or she simply values equality, or the punishment of an unfair proposer, more than the money forgone. Fairness also shapes ordinary business relationships. In a famous survey, Kahneman et al. (1986) found that most respondents considered it unfair for a hardware store to raise the price of snow shovels after a snowstorm, even though economic theory would predict precisely such a response to higher demand. Firms that ignore such perceptions may gain in the short run and lose customers, employees and partners in the

DEAL SNAPSHOT

### The EU, China and Electric Cars, 2024 to 2026

On 30 October 2024 the European Union imposed countervailing duties for five years on battery electric vehicles imported from China, having found that Chinese producers benefited from unfair subsidies. The duties, added to the ordinary EU tariff of 10 per cent, varied by company, as Figure 12.2 shows (Commission Implementing Regulation (EU) 2024/2754, 2024). Talks on an alternative, under which exporters would commit to minimum prices instead of paying duties, had not produced agreement when the duties took effect, and the Commission said it remained open to negotiating such price undertakings with individual exporters (European Commission, 2024). The game then continued as a series of bilateral bargains. In February 2026 the Commission accepted an undertaking from Volkswagen's Chinese joint venture in Anhui and its EU importer, SEAT, for the CUPRA Tavascan, a model built in China. In return for exemption from the duties, the company committed to respect minimum import prices based on the cost of a comparable car made in the EU, to export no more than a set number of vehicles a year, to send no other electric cars from China to the EU and to make significant investments in the EU's electric vehicle industry (Commission Implementing Decision (EU) 2026/328, 2026). The sequence illustrates how a game of retaliation can evolve into a set of bilateral bargains in which minimum prices replace tariffs.

long run, which is why perceived fairness is an asset to be managed in every negotiation.

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KEY MOVE

Never assume that the other side will accept an offer simply because it is better than nothing. Test your offer against the other side's sense of fairness, and give it a reason to regard the division as legitimate.

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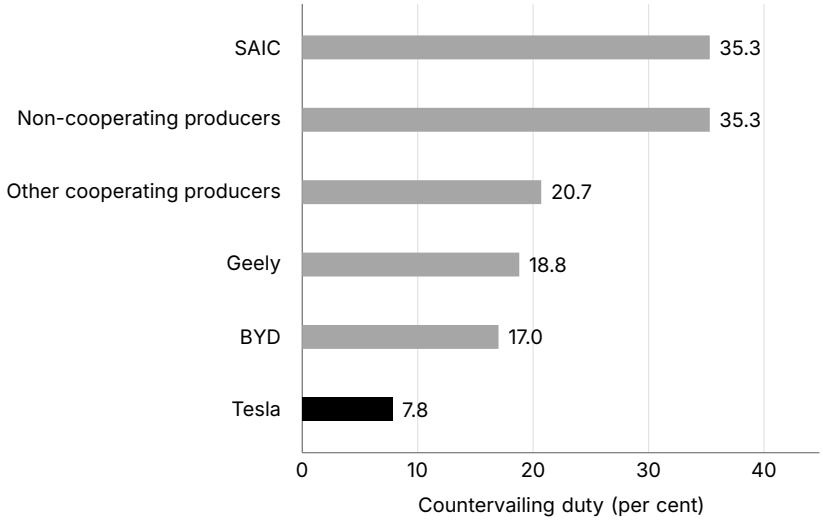
**Figure 12.2**

*EU countervailing duties on battery electric vehicles imported from China, by producer, from October 2024 (per cent)*




*Note.* Author, based on Commission Implementing Regulation (EU) 2024/2754 (2024). The duties are added to the ordinary EU import tariff of 10 per cent. "Other cooperating" refers to producers that cooperated with the investigation but were not individually examined; Tesla's rate followed an individual examination at its request.

## 12.3 How Should the Surplus Be Split? The Nash Bargaining Solution

### The Solution

Nash (1950a) asked a simple question: if two rational parties bargain over how to divide a surplus, what division should they agree on? He showed that, under a small set of reasonable conditions, there is a unique answer. Each party has a **disagreement point**, the payoff it receives if bargaining fails, which corresponds to its BATNA. The **Nash bargaining solution** is the division that maximises the product of the two parties' gains above their disagreement points. When the parties value the surplus in the same way, the solution gives each party its disagreement payoff plus half of the remaining surplus.

### A Worked Example

Return to the brake housing of Chapter 2. The supplier's cost is €40, and the carmaker could buy elsewhere for €60, so the surplus is €20. Suppose, however,

that the supplier has an alternative customer who would pay €45, while the carmaker's alternative remains €60. The supplier's disagreement point is now €45, not €40. Table 12.3 shows how the Nash solution changes.

**Table 12.3**

*The Nash bargaining solution with different alternatives (€ per unit)*

| Case | Supplier's alternative | Carmaker's alternative | Surplus above alternatives | Nash price |
|---|---|---|---|---|
| No alternative customer | 40 | 60 | 20 | 50 |
| Alternative customer at €45 | 45 | 60 | 15 | 52.50 |
| Alternative customer at €55 | 55 | 60 | 5 | 57.50 |

*Note.* Author's worked example.

The table shows the central lesson of the Nash solution: improving one's alternative improves one's share, even if the alternative is never used. Each euro by which the supplier's alternative rises moves the price towards the supplier by half a euro, as the remaining surplus is split in two. This is the formal counterpart of the argument in Chapter 11 that the BATNA is the foundation of bargaining power.

### Asymmetric Bargaining Power

The basic Nash solution splits the remaining surplus equally. The **generalised Nash solution** allows for asymmetric bargaining power, represented by a parameter that gives one party a larger share. Rubinstein (1982), discussed in Chapter 11, showed that such an asymmetry arises naturally when one party is more patient than the other. In practice, the parameter captures everything that makes one side stronger apart from its alternative: patience, information, commitment and skill.

The Nash solution is a benchmark, not a prediction of what will happen in every negotiation. Real negotiators may fail to agree, may misjudge each other's alternatives or may be guided by norms of fairness, such as an equal split of the total rather than of the surplus above alternatives. But the benchmark is useful in preparation: by estimating each side's alternatives and the surplus between them, a negotiator can judge whether a proposed division is reasonable and where the pressure points lie.

**KEY MOVE**

Use the Nash solution as a benchmark: estimate each side's alternative, calculate the surplus between them and ask what an equal split of that surplus would imply. Then work to improve your alternative, because each improvement moves the benchmark in your favour.

## 12.4 What Changes When the Game Repeats?

### The Shadow of the Future

The prisoner's dilemma predicts defection when the game is played once. Most business negotiations, however, are part of continuing relationships: suppliers and customers, employers and unions, and trading nations deal with each other again and again. In a **repeated game**, each player's choice today affects how the other will treat it tomorrow, and cooperation can be sustained by the threat of future punishment.

Axelrod (1984) explored this idea through computer tournaments in which strategies for the repeated prisoner's dilemma competed against one another. The winner was a simple strategy called **tit for tat**: cooperate in the first round, and thereafter do whatever the other player did in the previous round. Tit for tat succeeded because it was nice (it never defected first), retaliatory (it punished defection at once), forgiving (it returned to cooperation as soon as the other did) and clear (its behaviour was easy to recognise). Axelrod concluded that cooperation is sustainable when the **shadow of the future** is long enough, in other words when the parties expect to interact often and value future payoffs highly.

### Reputation and Credible Threats

Repetition also creates reputation. A party known to keep its promises can make agreements others will trust; a party known to retaliate can deter defection without having to retaliate often. Threats and promises influence the other side only if they are **credible**: the other side must believe that the party will carry them out when the time comes, even if doing so is costly. Schelling (1960) showed that credibility can be built by commitment, by reputation and by making the threatened action automatic.

The tariff escalation can be read in this light. Each side's immediate matching of the other's tariffs resembled tit for tat: retaliation was swift and proportional. The retreat at Geneva was the forgiving phase, in which both returned to lower tariffs together. Throughout, each side sought to maintain a reputation for resolve, since any appearance of weakness would invite further demands in later rounds.

DEAL SNAPSHOT

**OPEC+ between Restraint and Market Share, 2025**

The members of OPEC+, a group of oil producers led by Saudi Arabia and Russia, face a classic repeated game. Each member gains from producing more than its quota, but if all do so, prices fall and all lose. Cooperation is sustained by regular meetings, the monitoring of each country's output and the possibility that the largest producers will raise output to punish those who cheat. In 2023 eight members (Saudi Arabia, Russia, Iraq, the United Arab Emirates, Kuwait, Kazakhstan, Algeria and Oman) made two rounds of additional voluntary cuts, of 1.65 million barrels a day in April and 2.2 million in November. From April 2025 they began to return the second round to the market, a process first planned to last eighteen months and then accelerated with larger monthly steps (Organization of the Petroleum Exporting Countries [OPEC], 2025a). In September they started on the first round, adding 137,000 barrels a day in each of October, November and December, and then paused further increases for the first three months of 2026 (OPEC, 2025b, 2025c, 2025d). In November 2025 the wider group also approved a mechanism for assessing each country's maximum sustainable production capacity, to serve as the reference for production baselines from 2027 (OPEC, 2025e). The decisions show the trade-off at the heart of any cartel: restraint supports prices, but producers that have restrained output for years seek to recover market share, and the group must constantly renegotiate the balance.

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KEY MOVE

In a continuing relationship, cooperate first, respond promptly and proportionately to defection, forgive when the other side returns to cooperation and make your strategy easy to read.

---

## 12.5 How Do We Decide under Uncertainty?

### Expected Value

Many negotiation decisions are made under uncertainty: whether to accept an offer or hold out for a better one, whether to settle a dispute or go to court, whether to make a concession now or wait. **Decision analysis**, developed by Raiffa (1968), offers a disciplined way of making such choices. Its basic tool is the **expected value**: the average outcome of a decision, calculated by multiplying the value of each possible outcome by its probability and adding the results.

### Decision Trees

A **decision tree** represents a decision as a sequence of choices and uncertain events. Table 12.4 sets out the calculation for a firm deciding whether to accept a settlement of €2 million in a commercial dispute or to pursue arbitration. Its lawyers estimate a 50 per cent chance of winning €5 million, a 30 per cent chance of winning €2 million and a 20 per cent chance of losing; the arbitration will cost €600,000 whatever the result.

**Table 12.4**

*Accept a settlement or go to arbitration? An expected-value calculation (€ million)*

| Outcome of arbitration | Probability | Award | Cost of arbitration | Net value | Probability × net value |
|---|---|---|---|---|---|
| Win in full | 0.5 | 5.0 | 0.6 | 4.4 | 2.20 |
| Win in part | 0.3 | 2.0 | 0.6 | 1.4 | 0.42 |
| Lose | 0.2 | 0.0 | 0.6 | -0.6 | -0.12 |
| **Expected value of arbitration** | | | | | **2.50** |
| **Settlement offered** | | | | | **2.00** |

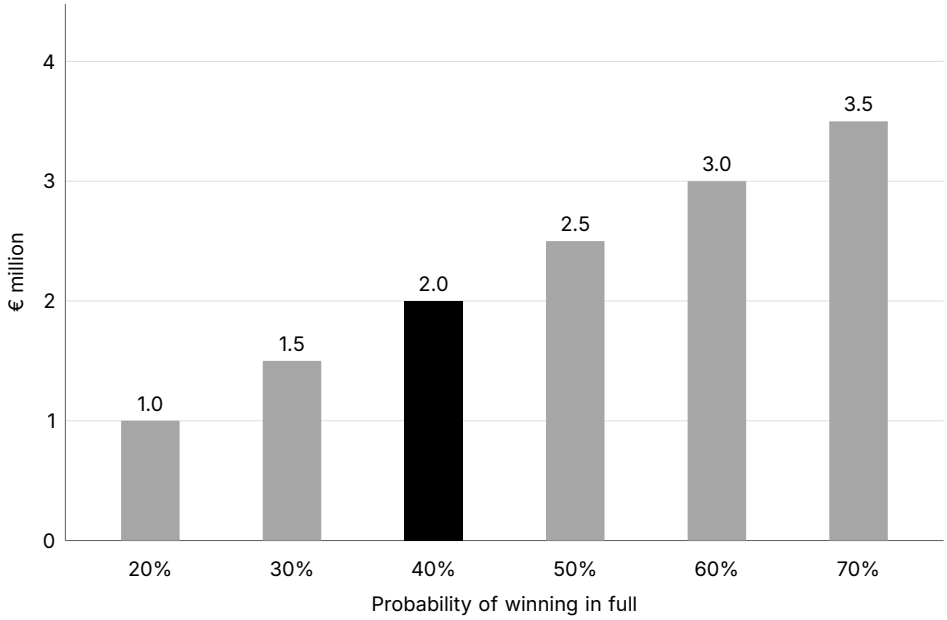
*Note.* Author's worked example.

The expected value of arbitration, €2.5 million, exceeds the settlement of €2 million, so a decision maker who is neutral to risk would reject the offer. The analysis does not end there, however. A firm unable to afford the 20 per cent chance of losing €600,000, or one valuing a quick resolution, may rationally prefer the certain settlement. The calculation also shows the firm its reservation price: any settlement above €2.5 million is better than arbitration on average, and the other side, if it makes a similar calculation, may be willing to offer more than €2 million. Decision analysis thus connects directly to the concept of bargaining in the shadow of the law in Chapter 5.

Because the probabilities are estimates, the conclusion should be tested. Figure 12.3 holds the chance of a partial win at 30 per cent and varies the chance of winning in full, with the chance of losing taking up the remainder. In this example the expected value of arbitration is simply five times the probability of a full win. If the lawyers' estimate fell from 50 to 40 per cent, the expected value would fall to €2 million, exactly the settlement on offer; below 40 per cent, the settlement is the better choice even for a decision maker who is neutral to risk.

**Figure 12.3**

*Sensitivity of the expected value of arbitration to the probability of winning in full (€ million)*




*Note.* Author's calculation from the worked example in Table 12.4. The chance of a partial win is held at 30 per cent; the chance of losing is the remainder. The highlighted bar marks the break-even point at which arbitration and the settlement of €2 million have the same expected value.

### Uses and Limits

Decision analysis forces negotiators to make their assumptions explicit, to separate judgements about probabilities from judgements about values and to test how sensitive their conclusions are to changes in the assumptions. Its limits are equally clear: probabilities are often subjective, outcomes may be hard to value, and people's attitudes to risk and loss depart systematically from the assumptions of expected-value reasoning, as Chapter 16 shows. Dixit and Nalebuff (2008) and Raiffa (1982) offer accessible introductions to the use of these tools in strategy and negotiation.

The author's research on business and trade in a fragmented world economy examines how firms make decisions under the uncertainty created by tariffs and geopolitical tension, and how they seek new partners to reduce their exposure (Kumar, 2026b).

**KEY MOVE**

Before accepting or rejecting an offer under uncertainty, draw the decision tree. Estimate the probabilities and values honestly, calculate the expected value of your alternative and then ask how much risk you are willing to bear.

BACK TO THE DEAL FILE

## Reading the Tariff Escalation

The tools of this chapter explain both the escalation of April 2025 and the retreat of May.

**The underlying game was a prisoner's dilemma.** Each side could gain by imposing tariffs if the other did not retaliate, but mutual tariffs left both worse off. Without a binding agreement, each had an incentive to defect.

**The escalation was a game of chicken.** By matching each other's increases, each government signalled that it would not back down. Tariffs of 125 and 145 per cent served less as instruments of trade policy than as demonstrations of resolve, in an attempt to convince the other side to swerve first.

**Retaliation followed tit for tat.** Each step by one side was met immediately by an equivalent step from the other. This made escalation rapid, but it also made the path back clear: when one side signalled a willingness to reduce, the other could follow.

**The retreat reflected changed expected values.** As the costs to both economies mounted, each government's estimate of the cost of continuing rose. The Geneva statement allowed both to reduce tariffs simultaneously, preserving face, while keeping the option of restoring them in reserve.

**The game repeated.** The 90-day suspension, its extensions and the later Busan truce turned a single confrontation into a repeated game with deadlines, in which each side's reputation for resolve and reliability mattered for every later round.

MA EXTENSION

### Bargaining with Outside Options and Threats

In the Nash bargaining solution, the disagreement point is usually treated as fixed. In practice, parties can influence it by threats, as Nash (1953) himself recognised in a later paper on variable threats. In a tariff dispute, each side's ability to raise the other's cost of disagreement, by imposing tariffs or export controls, shifts the disagreement point and therefore the solution. The *outside option principle* in bargaining theory adds that an outside option affects the outcome only if it is credible, in other words if the party would really take it. Apply these ideas to the Deal File and to the rare earths case in Chapter 11. How did each side try to worsen the other's disagreement point? Which threats were credible, and why? How would you model the effect of the 90-day suspension on the parties' incentives to reach a lasting agreement?

ETHICS CHECK

In April 2025 tariffs of more than 100 per cent were imposed and removed within weeks, causing losses to firms, workers and consumers in both countries and beyond. Game theory treats such moves as strategies in a contest of resolve. Is it ethical for governments to impose large costs on their own citizens and on third parties as a negotiating tactic? Does the analysis of negotiation as a game risk making such tactics seem more acceptable than they are?

### Pillar Scorecard

**Table 12.5**

*Pillar Scorecard: the tariff escalation of 2025*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | Bilateral trade worth hundreds of billions of dollars was disrupted, with large costs to firms and consumers |
| Power | Very high | Each side's ability to impose costs and to endure them determined the escalation and the terms of retreat |
| Persuasion | Moderate | Each government presented its actions as a defence of national interests and the retreat as a mutual success |

### Your Move

*This is a constructed teaching case.*

You are the chief executive of one of two cement producers that supply most of the market in a region of southern Poland. For years both firms have kept prices stable. Your rival has just cut its price to large construction firms by 8 per cent, and your sales director wants to respond with a cut of 10 per cent. A major construction company has also offered you a five-year supply contract at a price 5 per cent below your current list price, and says it will sign with your rival if you refuse. Your analysts estimate a 60 per cent chance that the rival will win the contract if you refuse, in which case your profits would fall by €3 million a year.

1. Model the price competition between your firm and your rival as a game. Is it a prisoner's dilemma? What equilibrium would you expect?
2. How would a strategy like tit for tat apply here? What are the risks of matching or exceeding the rival's cut?
3. Use a decision tree to decide whether to accept the construction company's offer, stating any additional assumptions you need.
4. Within the limits of competition law, which prohibits agreements on prices between competitors, how could you avoid a price war?

## Conclusion

Game theory provides a rigorous language for negotiations in which each side's best move depends on the other's. The prisoner's dilemma explains why rational parties can end up worse off than if they had cooperated, and why binding agreements and enforcement mechanisms are valuable. The game of chicken explains escalation and the importance of commitment and face. The ultimatum game shows that people care about fairness and will reject offers they regard as unfair, even at a cost to themselves. The Nash bargaining solution provides a benchmark for dividing a surplus and shows formally why better alternatives bring larger shares. Repeated games explain how cooperation can be sustained by the shadow of the future, by reputation and by credible threats, and decision analysis helps negotiators to choose under uncertainty. The tariff escalation of April 2025 illustrates all these ideas: a prisoner's dilemma played as a game of chicken, with tit-for-tat retaliation, followed by a mutual retreat when the expected costs became clear. Game theory explains the logic of strategic choices; negotiators must still carry them out. Chapter 13 turns to the practical phases, techniques and tools through which negotiations are conducted, from the opening offer to the implementation of an agreement.

## Exercises

### A. Objective Questions

1. A Nash equilibrium is a combination of strategies in which:
   a) both players receive the highest possible payoff
   b) one player dominates the other
   c) players cooperate
   d) no player can improve its payoff by changing its own strategy alone

2. In Table 12.2, the Nash equilibrium is for:
   a) both countries to keep tariffs low
   b) both countries to raise tariffs
   c) A to raise and B to keep tariffs low
   d) neither country to act

3. In experiments with the ultimatum game, responders typically:
   a) reject offers they regard as unfair, even at a cost to themselves
   b) accept any positive offer
   c) always demand half
   d) make the first offer

4. The Nash bargaining solution maximises:
   a) the sum of the parties' payoffs
   b) the payoff of the stronger party
   c) the product of the parties' gains above their disagreement points
   d) the number of issues agreed

5. In Table 12.3, if the supplier's alternative rises from €40 to €45, the Nash price:
   a) falls to €47.50
   b) remains €50
   c) rises to €52.50
   d) rises to €60

6. Axelrod's (1984) tournaments were won by a strategy that:
   a) cooperated first and then copied the other player's previous move
   b) always cooperated
   c) always defected
   d) chose moves at random

7. Under the Geneva joint statement of May 2025, the United States and China each reduced the tariff in question for an initial 90 days to:
   a) 0 per cent
   b) 10 per cent
   c) 34 per cent
   d) 125 per cent

8. In Table 12.4, the expected value of going to arbitration is:
   a) €2.0 million
   b) €2.5 million
   c) €4.4 million
   d) €5.0 million

### B. Short-Answer Questions

1. Explain the prisoner's dilemma and why it leads rational players to a worse outcome than cooperation.
2. How does the game of chicken differ from the prisoner's dilemma? Which better describes the tariff escalation of April 2025?
3. Summarise the experimental evidence from the ultimatum game and explain its lessons for negotiation. How does the theory of inequity aversion explain this evidence?
4. Explain the Nash bargaining solution and show, with a numerical example, how improving one's alternative changes the outcome.
5. Why can cooperation be sustained in a repeated game but not in a single game?
6. What makes a threat credible? Give two examples.
7. Explain how a decision tree can help a negotiator to decide whether to accept a settlement.
8. Name four ways in which players can escape a prisoner's dilemma, and give a business or international example of each.

### C. Long-Answer Questions

1. Analyse the tariff escalation between the United States and China in April and May 2025 using the prisoner's dilemma, the game of chicken and the theory of repeated games.
2. "Fairness is not an obstacle to rational bargaining but part of it." Discuss with reference to the ultimatum game and to cases from this book.
3. Use the Nash bargaining solution to analyse a negotiation of your choice. How useful is it as a benchmark, and what are its limitations?
4. Evaluate the usefulness of decision analysis for negotiators, illustrating your answer with a decision tree for a business decision under uncertainty.

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CHAPTER
# 13

# Phases, Techniques and Tools of Negotiation

https://doi.org/10.61030/rvfk-edkg

## Introduction

The previous chapters have explained what is at stake in a negotiation, where power comes from and how strategic interaction can be analysed. Negotiators, however, must also act: they must open the talks, make offers, respond to the other side's proposals, decide when and how much to concede, close an agreement and then live with it. This chapter turns from analysis to practice. It examines the phases through which negotiations pass, the techniques most useful in each phase and the practical tools helping negotiators to manage complex talks.

The chapter proceeds in four steps. Section 13.1 asks how talks open: how agendas are set, who should make the first offer and how ambitious it should be. Section 13.2 examines offers and concessions: their size, their timing and what their pattern signals to the other side. Section 13.3 asks how agreements are closed, drafted and implemented, a phase that negotiators often neglect, although it determines whether the value created at the table is realised. Section 13.4 presents tools that bring structure to complex negotiations: planning templates, issue matrices, scoring systems and the single negotiating text.

The chapter draws on all three pillars of the book's framework. Offers and concessions divide **profit**; their timing and sequence reflect **power**; and the way they are presented and justified is a matter of **persuasion**. It builds on the phases introduced in Chapter 4, the preparation of Chapter 7 and the tactics of claiming and creating value in Chapter 8. Its Deal File follows one of the longest negotiations in the history of international trade: the agreement between the European Union and Mercosur, the trading bloc of Argentina, Brazil, Paraguay and Uruguay, which took more than a quarter of a century to negotiate and was still being contested after it had been signed.

DEAL FILE

## EU–Mercosur, a Quarter-Century Negotiation

Negotiations between the European Union and Mercosur began in 1999. They were meant to create one of the largest free trade areas in the world, linking more than 700 million people. In 2024 trade in goods between the two blocs was worth more than €111 billion, almost evenly balanced, with EU exports of about €55.2 billion and imports of about €56 billion; more than 80 per cent of this trade was with Brazil (Council of the EU, 2026). The interests were clear: European manufacturers of cars, machinery, chemicals, wine and cheese wanted access to protected South American markets, while South American producers of beef, poultry, sugar, ethanol and soya wanted better access to Europe's.

The same interests made the negotiation difficult. European farmers, particularly in France, Ireland and Poland, feared competition from South American agriculture produced under different environmental and food-safety standards. Environmental groups warned that the agreement would encourage deforestation in the Amazon. South American governments, for their part, sought protection for their industries and resisted European demands on sustainability. The talks were interrupted for long periods. A political agreement reached in 2019 was reopened, and the negotiations were concluded in December 2024.

**Table 13.1**

*The EU–Mercosur agreement at a glance*

| | |
|---|---|
| **Parties** | The European Union, represented by the European Commission; Mercosur, comprising Argentina, Brazil, Paraguay and Uruguay; within the EU, the member states and the European Parliament |
| **At stake** | The removal of most tariffs on trade between the two blocs; access for EU manufactured goods and services; access for Mercosur agricultural products; environmental and food-safety standards |
| **Timeline** | Negotiations launched in 1999; political agreement in 2019; negotiations concluded in December 2024; approval by the Council on 9 January 2026; signature in Asunción on 17 January 2026; referral by the European Parliament to the Court of Justice on 21 January 2026; provisional application from 1 May 2026 |
| **Terms** | Gradual elimination of tariffs on more than 90 per cent of trade in each direction, saving EU exporters an estimated €4 billion a year in duties; tariff cuts phased in over periods of up to 18 years for sensitive products; tariff-rate quotas and special safeguard arrangements for EU agriculture; commitments on sustainable development |

*Note.* Author, based on Council of the EU (n.d.), European Parliament (2026a), European Commission (2026b) and Fleischhauer Corrêa da Costa and Regazzoni (2026).

**The final phase.** The closing phase was as contested as the negotiation itself. To allow the trade provisions to take effect without ratification by every national parliament, the agreement was divided into two instruments. The EU–Mercosur Partnership Agreement, which combines political dialogue, cooperation and trade, requires ratification by every member state. The Interim Trade Agreement covers only trade and investment liberalisation, needs to be ratified only by the EU and will expire when the Partnership Agreement enters into force (Council of the EU, n.d.). On 9 January 2026 the Council of the EU authorised the signature of both instruments by a qualified majority of 21 member states to 5: Austria, France, Hungary, Ireland and Poland voted against, and Belgium abstained (Fleischhauer Corrêa da Costa & Regazzoni, 2026). The agreements were signed in Asunción, Paraguay, on 17 January (Council of the EU, n.d.). Four days later, the European Parliament voted by 334 to 324, with 11 abstentions, to ask the Court of Justice of the EU for an opinion on whether the agreement was compatible with the EU Treaties. Parliament could not vote on its consent until the Court had given its opinion (European Parliament, 2026a). The Mercosur side moved quickly: Argentina ratified the Interim Trade Agreement on 26 February 2026, Uruguay on 27 February and Brazil's Senate on 4 March (Fleischhauer Corrêa da Costa & Regazzoni, 2026), and by 23 March Paraguay had ratified it too. The Commission then announced that the Interim Trade Agreement would apply provisionally from 1 May 2026 (European Commission, 2026b), a decision seen by opponents as sidestepping the Parliament. Figure 13.1 shows how narrowly the agreement passed through the EU's institutions.

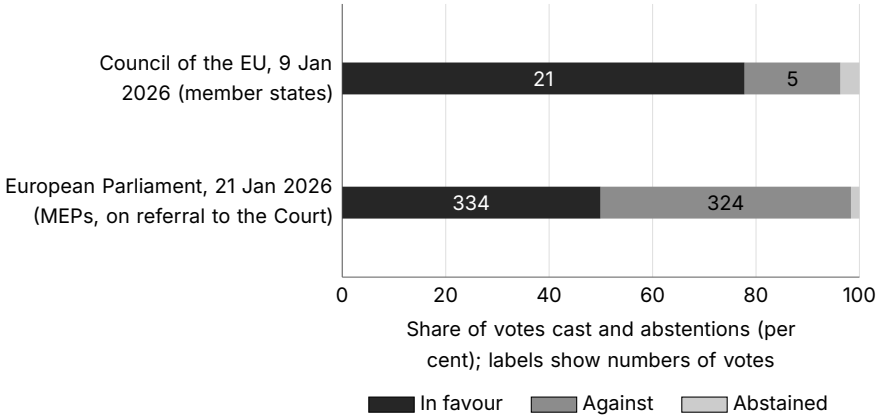
**Questions to keep in mind.** Why did a negotiation with such obvious gains for both sides take more than twenty-five years? How did each phase, from the opening to the closing, shape the next? Why did the closing phase reopen questions that seemed settled? And what tools might have helped the negotiators manage so many issues, parties and constituencies? The chapter answers these questions in turn.

## 13.1 How Do Talks Open?

Chapter 4 set out the phases through which most negotiations pass, from preparation to implementation. This chapter does not repeat that sequence. It asks instead what a negotiator should actually do at each turning point, beginning with the moment at which the talks open, and it asks what each choice is worth in terms of the profit that will eventually be divided.

**Figure 13.1**

*Votes on the EU–Mercosur agreement in EU institutions, January 2026*




*Note.* Author, based on Fleischhauer Corrêa da Costa and Regazzoni (2026) and European Parliament (2026a). The Council votes are those of member states on 9 January 2026; the Parliament votes are those of Members of the European Parliament on the referral to the Court of Justice on 21 January 2026. A vote "in favour" in the Parliament was a vote for the referral, which delayed consent.

### Getting to the Table

Before parties negotiate the substance of a deal, they must first agree to negotiate at all. Saunders (1985) argued that this **pre-negotiation** phase deserves more attention than it usually receives. In it the parties decide that a negotiated solution is worth exploring, define the problem in terms each can accept, agree who will take part and settle the broad terms of reference. Much of the eventual outcome is shaped here, because a problem defined narrowly allows only narrow solutions, while a problem defined broadly invites trades across many issues.

Pre-negotiation is also where the costs of negotiating are weighed. Talks absorb management time, reveal information and create expectations among constituents. A firm or government enters them only when it expects the gains from an agreement, discounted for the probability of reaching one, to exceed these costs. This calculation explains why so many negotiations begin with exploratory contacts, framework agreements and statements of intent rather than formal offers: such steps lower the cost of finding out whether a zone of possible agreement exists before either side commits its reputation to the outcome.

The EU–Mercosur negotiations illustrate the point. A framework cooperation agreement signed by the two blocs in 1995 committed them to work towards closer trade relations before any formal negotiation on tariffs had begun, and

the formal talks launched in 1999 inherited its broad definition of the problem: a comprehensive agreement covering goods, services, investment, public procurement and cooperation, rather than a narrow arrangement for a few products. That definition created the potential for large gains from trade, but it also brought every sensitive constituency on both sides into the negotiation from the start.

### Setting the Agenda

The opening phase of a negotiation shapes everything that follows. Before any offer is made, the parties must agree, explicitly or implicitly, on who will take part, which issues will be discussed, in what order and under what rules. These procedural choices are rarely neutral. An agenda beginning with the issues on which agreement is easy can build momentum and trust; one beginning with the hardest issue can test the parties' resolve early. An agenda linking issues allows trades among them, as Chapter 8 showed; one separating them may simplify the talks but prevent the creation of value. Table 13.2 summarises the main choices in setting the agenda.

**Table 13.2**

*Choices in setting the agenda*

| Choice | Advantages | Risks |
|---|---|---|
| Easy issues first | Builds momentum, trust and a habit of agreement | Leaves the hardest issues to the end, under time pressure |
| Hard issues first | Tests feasibility early; avoids wasted effort | Early deadlock may end the negotiation |
| All issues together, as a package | Allows trades across issues; nothing agreed until everything agreed | Complexity; slow progress |
| Issues one at a time | Simplicity; visible progress | Prevents trades; each issue becomes distributive |
| Agreed principles first, details later | Creates a framework, as in the formula and detail of Zartman and Berman (1982) | Principles may later be interpreted differently |

*Note.* Author, based on Zartman and Berman (1982) and Lewicki et al. (2020).

Many complex negotiations adopt the rule that "nothing is agreed until everything is agreed". The rule allows negotiators to make provisional concessions on some issues without fear that the other side will pocket them and demand more, and it preserves the possibility of trading across issues until the end. The EU–Mercosur negotiations followed this rule, which helps to explain both their length and their final shape, a package in which concessions on agriculture were traded against access for industry.

### The First Offer

Should a negotiator make the first offer? Chapter 7 showed that first offers can act as **anchors**, pulling the final outcome towards them (Galinsky & Mussweiler, 2001). Making the first offer is therefore often an advantage, particularly when the negotiator has good information about the value of what is being negotiated. It is a disadvantage when the negotiator knows little and risks opening too low as a seller, or too high as a buyer, leaving value on the table. In that case it may be wiser to let the other side open and to use its offer as information.

A first offer should be ambitious but justifiable. An offer which is too modest gives away value; an offer so extreme that the other side regards it as unserious can damage the relationship or end the talks. The best first offers are near the top of what can be defended with objective criteria, accompanied by a clear rationale and, where several issues are involved, presented as packages that reveal the negotiator's priorities only selectively, as the multiple equivalent offers described in Chapter 8 allow.

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**KEY MOVE**

Treat the opening as a negotiation in its own right. Shape the agenda to allow trades across issues, decide in advance whether you will make the first offer and, if you do, make it ambitious, justified and hard to dismiss.

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## 13.2 How Should Offers and Concessions Be Made?

### The Size and Pace of Concessions

After the opening, negotiations typically proceed through an exchange of offers and concessions. Chapter 8 introduced the "negotiation dance" and the pattern of diminishing concessions. Three principles guide the making of concessions.

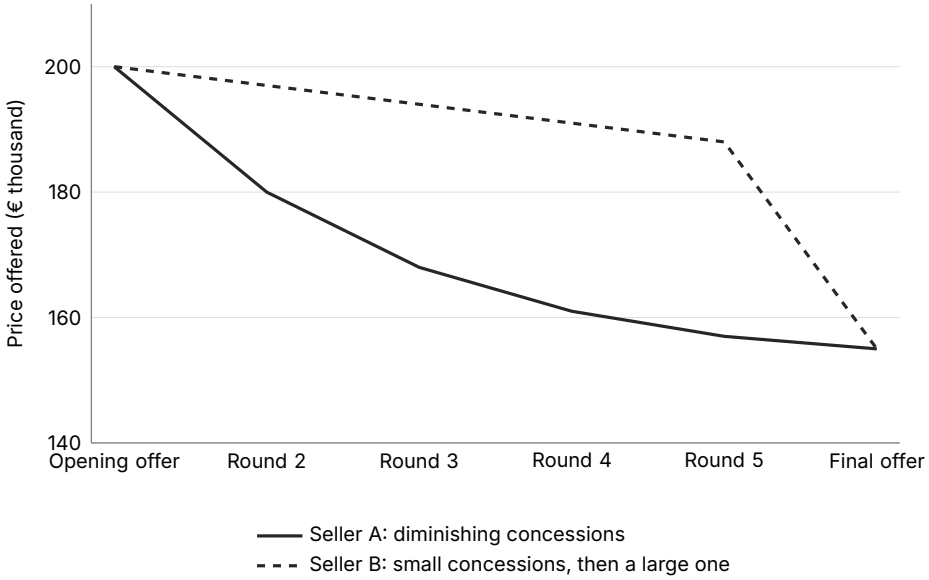
The first is **reciprocity**: concessions should be exchanged, not given away. A negotiator who concedes without receiving anything in return teaches the other side to expect more. Linking each concession to a concession from the other side, for example with the words "if you can accept our delivery schedule, we can consider a lower price", makes the exchange explicit.

The second is **diminishing size**. Concessions becoming smaller over time signal that the negotiator is approaching his or her limit, while concessions staying large or growing suggest much more room to move. Figure 13.2 compares two sellers who begin and end at the same prices but follow different patterns.

Seller A's pattern signals clearly that it is close to its limit. Seller B's pattern, with a large concession at the end after a series of small ones, invites the buyer to

**Figure 13.2**

*Two patterns of concession by a seller (offers in € thousand)*




*Note.* Author's illustrative example. Seller A makes concessions of diminishing size; Seller B makes small concessions and then a large one in the final round.

keep pressing, since the last move suggests that more room may remain. Experimental research points the same way: negotiators who began tough and then became more conciliatory obtained more concessions from their counterparts than those who began soft and later became tough (Hilty & Carnevale, 1993), although toughness carried too far risks deadlock.

The third principle is **justification**. Each concession should be accompanied by a reason, ideally one linked to an objective criterion or to a new piece of information. A concession presented as a response to new information does not signal weakness; a concession presented without a reason invites the other side to ask for another.

### Estimating a Limit from the Concession Pattern

Chapter 8 showed in a worked example what a pattern of diminishing concessions signals. The signal can also be put to quantitative use, to estimate where the other side's limit lies. Consider again Seller A in Figure 13.2. Its concessions in successive rounds were €20,000, €12,000, €7,000, €4,000 and €2,000. Each is roughly six-tenths of the one before. If the pattern continues, the sum of all remaining concessions will be small: a further €1,200, then about €700, then about

€400, and so on, adding up to roughly €3,000 in total. A buyer who reads the pattern in this way would estimate Seller A's limit at about €152,000 and would conclude that pressing for much more than another few thousand euros is likely to waste time and goodwill.

Seller B's pattern supports no such inference. Its concessions of €3,000 in each of four rounds give no sign of approaching a limit, and the final concession of €33,000 suggests that the earlier firmness was a tactic rather than a constraint. A buyer facing Seller B has every reason to continue pressing, because the seller has taught it that patience pays.

The calculation is simple, but it rests on an assumption the other side may exploit: that the pattern of concessions reflects the true limit. A skilled negotiator can shape its pattern deliberately to suggest a limit that is higher, for a seller, than the real one. Reading concessions therefore works best in combination with other evidence, such as market prices, the other side's alternatives and the reasons it gives for each move. It also cuts both ways. A negotiator who concedes erratically, or who makes a large concession late in the talks, sends a signal that it may not intend, and pays for it in the profit it leaves on the table.

### Tactics in the Middle Phase

The middle phase of a negotiation is where most tactics are used. Table 13.3 summarises several common ones and how to respond to them; Chapter 17 examines difficult tactics in more detail.

**Table 13.3**

*Common tactics in the middle phase of a negotiation*

| Tactic | How it works | Response |
|---|---|---|
| Bracketing | Making offers so that the midpoint is the outcome one wants | Re-anchor with your own justified offer |
| Trial balloons | "What if" proposals that test the other side's reaction without commitment | Respond to the substance; ask for a firm proposal |
| Packaging | Combining issues into a single offer to permit trades | Evaluate the package as a whole, using a scoring system |
| Nibbling | Asking for small additional concessions after the main deal seems agreed | Ask for something in return; treat the deal as a whole |
| Good cop, bad cop | One negotiator appears tough, another reasonable | Address the substance, not the roles |
| Limited authority | Claiming that a superior must approve any concession | Ask who has authority and how to reach them |

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

DEAL SNAPSHOT

**The United Kingdom and the EU Reset Their Relations, 2025**

On 19 May 2025, five years after the United Kingdom left the European Union, the two sides held their first summit and agreed a framework for closer relations. The package linked issues valued differently by each side. The EU obtained an extension of its fishing boats' access to UK waters by twelve years, to 2038. The UK obtained agreement to negotiate a common area for food and agricultural trade, which would reduce checks on its exports, in return for following EU rules in this area dynamically. The two sides also committed to work towards a scheme for young people, to explore linking their carbon trading systems and to cooperate on security and defence (McIver & Davies, 2025). Much of the package was a set of principles, with the details left to later negotiations. The case shows how an agenda that links issues of unequal value to each side, here fishing and food trade, can unlock agreement after years of stalemate, and how many negotiations close the formula before they close the detail.

In the EU–Mercosur negotiations, packaging was central. European concessions on beef, poultry and sugar were offered in the form of tariff-rate quotas, limited volumes of imports at reduced tariffs, rather than full liberalisation, and were balanced against Mercosur concessions on cars, machinery and public procurement, with long transition periods for sensitive industries.

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KEY MOVE

Concede slowly, in diminishing steps, and only in exchange for something. Give a reason for every concession, and watch the other side's pattern as carefully as it watches yours.

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## 13.3 How Is an Agreement Closed and Implemented?

### Closing

Negotiations rarely end smoothly. As the parties approach agreement, each fears conceding too much in the final moments and is tempted to hold out for one more concession. Several techniques help to close a deal: summarising what has been agreed and identifying what remains; proposing a final package that resolves the remaining issues together; splitting the difference on the last gap, with the risks described in Chapter 8; setting or using a deadline; and offering a small concession conditional on immediate agreement. Each carries risks. An **exploding**

**offer**, one expiring unless accepted quickly, can force a decision but may damage trust; a deadline which is not respected loses credibility.

### Drafting

An agreement in principle is not yet an agreement. The parties must record it in terms which are clear, complete enough to guide future conduct and acceptable to the constituencies whose approval is needed. Drafting is itself a negotiation: ambiguity can be a way of postponing disagreements that the parties cannot resolve, but it is also a source of later conflict, as the dispute between Kroger and Albertsons in Chapter 9 showed. Negotiators should check that the written text matches what they believe they have agreed, define key terms, specify procedures for resolving disputes and for amending the agreement, and consider how the agreement will be interpreted by those who were not at the table. When the agreement is drafted in more than one language, each version must carry the same meaning. Moore and Woodrow (2010) describe a negotiation between a Chinese party and a New Zealand shrimp farm that stalled over the phrase "technology transfer": to the New Zealanders it meant sharing know-how, while in translation the Chinese heard it as giving their technology away and losing control of it. Only when the interpreters of both teams identified the difference could the parties agree on wording acceptable to both.

### Culture and the Meaning of Closure

Cultures also differ on what the end of a negotiation is. Moore and Woodrow (2010) contrast **contract-oriented** cultures, such as mainstream North American and northern European ones, with cultures of **holistic relationships**, common in many Asian, Middle Eastern and traditional societies. Contract-oriented negotiators expect a written, detailed and binding agreement of limited duration, with explicit consequences for non-compliance and renegotiation only under pre-agreed conditions; they rely on the contract, not the relationship, to secure performance. Negotiators from holistic cultures see agreements, like relationships, as works in progress: terms may be general, oral or open to revision as circumstances change, and compliance rests on commitment, honour and continuing contact. Each side can misread the other. Contract-oriented negotiators may suspect bad faith when terms keep shifting, while their counterparts may see insistence on exhaustive terms as rigid and distrustful. When Mazda opened a car plant in Flat Rock, Michigan, its Japanese managers sought a flexible agreement with the American workforce, one which could be adjusted within a continuing relationship; over time workers and managers asked for a more formal contract, and the Japanese managers found their American staff resolving disputes in a more adversarial way than they had expected (Moore & Woodrow, 2010).

The procedures by which an agreement is approved vary in the same way. A negotiator may have authority to approve it alone; it may need to pass through a bureaucracy; it may be circulated up and down a hierarchy until a consensus forms, as in the Japanese *ringi* process described in Chapter 18; or it may be put to a vote of union members or to a meeting of the community. Agreeing early how each side will approve the outcome avoids the surprise of a deal the people at the table cannot deliver.

#### Implementation

Ertel (2004) argued that many negotiators focus so intently on getting to agreement that they neglect what happens afterwards. An agreement which is hard to implement, poorly understood or unsupported by the people carrying it out, or resented by the other side, may produce less value than a more modest agreement that works. He recommended negotiating as if implementation mattered: involving those who will implement the agreement, discussing how it will be put into practice, anticipating problems and agreeing how they will be handled.

The Deal File shows how implementation can reopen a negotiation. The signature of the EU–Mercosur agreement did not end the conflict over it. The European Parliament's referral to the Court of Justice, the provisional application of the trade agreement by the Commission and the continuing protests of farmers all reflected constituencies that did not regard the closing as legitimate. A negotiation concentrating on reaching agreement with the other side, but neglecting the two-level game described in Chapter 4, risks an agreement which cannot be implemented.

#### Building in Review and Renegotiation

Chapter 8 described the post-settlement settlement, in which parties who have already agreed look for a package that would make both better off. Many agreements go further and write the possibility of improvement into the text. **Review clauses** require the parties to meet at fixed intervals to assess how the agreement is working; **price adjustment formulas** link payments to indices so that changes in costs do not have to be renegotiated from scratch; **reopener clauses** allow one party to reopen specified terms if defined events occur; and **joint committees** give the parties a standing forum in which to settle problems before they become disputes.

Each device trades a little certainty for flexibility, and the trade has an economic logic. Chapter 2 showed that long-term contracts are always incomplete, because no one can foresee every contingency. A contract without any mechanism for adjustment leaves the parties to renegotiate whenever circumstances change, and the party which has made specific investments is then exposed to

DEAL SNAPSHOT

**Paying College Athletes, 2025**

For decades the National Collegiate Athletic Association (NCAA) prohibited American universities from paying their athletes. A series of antitrust lawsuits challenged the rule, and in 2024 the NCAA and the largest athletic conferences agreed to settle the case known as *House v. NCAA*. On 6 June 2025 a federal court in California gave final approval to the settlement. The defendants agreed to pay US$2.576 billion in compensation to former and current athletes, and from the 2025–26 academic year each university may pay more than US$20 million a year directly to its athletes. The rules on payments run for ten academic years, and disputes over deals between athletes and third parties must be resolved through neutral arbitration (*In re College Athlete NIL Litigation*, 2025). The settlement shows the importance of implementation: an agreement reached in court required new institutions, new rules and new procedures before it could work, and its effects on smaller sports and on athletes outside the settlement continued to be debated after approval.

hold-up. A contract with well-designed review and adjustment mechanisms reduces this risk, because it settles in advance how surplus will be shared when the unexpected happens. The cost is that reopeners and reviews can be used strategically, to reopen terms one side simply regrets having accepted. Good drafting therefore defines the triggering events narrowly, limits what can be reopened and specifies what happens if the parties fail to agree, for example by referring the issue to an expert or to arbitration, as described in Chapter 5.

Trade agreements use the same devices on a larger scale. The EU–Mercosur agreement establishes institutional bodies to oversee its application and includes bilateral safeguard procedures that allow tariff preferences to be suspended temporarily if imports surge and harm domestic producers. The EU's separate safeguard regulation for agriculture, adopted by the Council on 5 March 2026, allows tariff preferences on Mercosur farm imports to be suspended temporarily, through faster procedures than existing instruments, and provides for closer monitoring of sensitive products such as beef, poultry, sugar and rice (Council of the EU, n.d.). It is a reminder that such mechanisms are often negotiated not with the other side but with one's own constituents, as the price of their consent to the closing.

**KEY MOVE**

Before you close, test the agreement against the people who must approve and implement it. Draft clearly, agree how disputes and changes will be handled and plan the implementation as carefully as the negotiation.

## 13.4 Which Tools Help? Templates, Issue Matrices and Scoring Systems

### The Planning Template and the Issue Matrix

Chapter 7 introduced a planning template that brings together a negotiator's goals, interests, alternatives, targets, limits and priorities. For negotiations with many issues, an **issue matrix** extends the template. It lists each issue, the negotiator's target and limit, an estimate of the other side's target and limit, the relative importance of the issue to each side and possible trades. The matrix makes it easy to see where interests differ, and therefore where value can be created, and where they conflict directly.

### Scoring Systems

When a negotiation involves many issues, it can be hard to compare packages that differ on several of them at once. A **scoring system** assigns points to each possible outcome on each issue, reflecting its value to the negotiator, so that the total score of any package can be calculated and compared with the negotiator's reservation score. Raiffa (1982) described how such systems can be constructed from a negotiator's priorities. Table 13.5 shows a simple example.

**A worked example.** Suppose the supplier in Table 13.5 has decided, after studying its alternatives, that any package scoring less than 50 points is worse than its best alternative, which is to sell the same output to an existing customer on standard terms. Fifty points is therefore its **reservation score**, the multi-issue equivalent of a reservation price. During the talks the buyer proposes two packages:

- Package X: €95, 40,000 units, 1 year, 60 days and 2 weeks, which scores $30 + 10 + 0 + 2 + 1 = 43$ points.
- Package Y: €85, 60,000 units, 3 years, 45 days and 2 weeks, which scores $10 + 30 + 15 + 6 + 1 = 62$ points.

A negotiator who focused only on price would prefer Package X, which offers €10 more per unit. The scoring system shows that Package X falls below the reservation score and should be rejected, while Package Y, despite the lower price, is well above it. The difference comes from volume and contract length, which the

**Table 13.4**

*An issue matrix for a supply negotiation (supplier's view)*

| Issue | Our target | Our limit | Their likely target | Importance to us | Likely importance to them | Possible trade |
|---|---|---|---|---|---|---|
| Price per unit | €100 | €85 | €80 | High | High | Concede on price for volume |
| Annual volume | 60,000 | 35,000 | 40,000 | High | Medium | Offer price discount above 50,000 |
| Payment terms | 30 days | 60 days | 75 days | Low | High | Accept longer terms for higher price |
| Contract length | 3 years | 1 year | 2 years | Medium | Low | Seek longer contract at little cost to them |
| Delivery time | 4 weeks | 2 weeks | 2 weeks | Low | High | Concede on delivery for price |

*Note.* Author's illustrative example.

**Table 13.5**

*A simple scoring system for a supply negotiation (supplier's view, maximum 100 points)*

| Issue | Weight | Options and points |
|---|---|---|
| Price per unit | 40 | €100: 40; €95: 30; €90: 20; €85: 10 |
| Annual volume | 30 | 60,000: 30; 50,000: 20; 40,000: 10; 35,000: 5 |
| Contract length | 15 | 3 years: 15; 2 years: 10; 1 year: 0 |
| Payment terms | 10 | 30 days: 10; 45 days: 6; 60 days: 2 |
| Delivery time | 5 | 4 weeks: 5; 3 weeks: 3; 2 weeks: 1 |

*Note.* Author's illustrative example. A package of €90, 50,000 units, 3 years, 45 days and 2 weeks scores 20 + 20 + 15 + 6 + 1 = 62 points.

supplier values highly and which the buyer may be willing to give because, as Table 13.4 suggests, they matter less to it. The scoring system thus turns the abstract logic of trading across issues into a rule that a negotiating team can apply at the table, under pressure, without losing sight of the profit at stake.

A scoring system makes trade-offs explicit, allows quick evaluation of packages during the negotiation and helps teams to agree on priorities before the talks. Its limitations are threefold: the weights are subjective, interactions between issues may not be captured, and negotiators may treat the scores as more precise than they are.

### The Single Negotiating Text

In complex negotiations with many parties and issues, the **single negotiating text** can break deadlock. Instead of each side presenting its own proposals, a mediator or one of the parties drafts a single text, which all parties criticise and which is revised repeatedly until no further improvement can be found. Fisher and Ury (1981) described its use by American mediators at the Camp David talks between Egypt and Israel in 1978. The technique shifts the parties from defending their own positions to improving a common text, and it is widely used in trade and treaty negotiations, in which the negotiating parties work from a consolidated text with bracketed passages marking unresolved issues. Table 13.6 summarises this and other tools for structuring complex negotiations.

**Table 13.6**

*Tools for structuring complex negotiations*

| Tool | Purpose | Best used when |
|---|---|---|
| Planning template (Chapter 7) | Organise preparation on one page | Before any significant negotiation |
| Issue matrix | Compare targets, limits and priorities across issues | Several issues with different importance to each side |
| Scoring system | Evaluate and compare packages | Many issues and many possible packages |
| Single negotiating text | Focus parties on improving one draft | Many parties, entrenched positions, a mediator available |
| Bracketed consolidated text | Track agreed and unresolved provisions | Long, technical negotiations such as trade agreements |

The author's research on trade cooperation between India and Europe, and his companion textbook on multinational strategy, discuss how firms prepare for and use the provisions of trade agreements such as those negotiated by the EU with Mercosur and with India (Kumar, 2026a, 2026b).

**KEY MOVE**

For any negotiation with more than a few issues, build an issue matrix and a scoring system before you meet. In multi-party talks, propose a single text and invite everyone to improve it.

BACK TO THE DEAL FILE

## Reading the EU–Mercosur Negotiations

The tools of this chapter help to explain why the negotiations took so long and why the closing remained contested.

**The opening set a broad agenda with a package rule.** By treating all issues together and agreeing nothing until everything was agreed, the parties preserved the possibility of trading agriculture for industry, but they also tied every issue to the most difficult one.

**Concessions were packaged and phased.** European concessions on agriculture were limited by quotas and safeguards; Mercosur concessions on manufactured goods were spread over long transition periods. Phasing allowed each side to make concessions that its constituents could accept.

**The closing phase reopened the negotiation inside the EU.** The division of the agreement into two instruments, the vote in the Council and the provisional application were procedural choices designed to close the deal; the referral to the Court of Justice was a response by those who considered the closing illegitimate. The narrow vote shown in Figure 13.1 reflected a two-level game in which the European win-set was barely large enough.

**Implementation became the next negotiation.** Provisional application from May 2026, special safeguard arrangements for agriculture and the pending opinion of the Court of Justice meant that the agreement would continue to be negotiated in its application, through the use of safeguards, the monitoring of standards and the response of member states.

**Tools mattered.** A negotiation of this scale was conducted through consolidated texts, issue-by-issue working groups and repeated rounds, the tools of Section 13.4 applied over a quarter of a century.

MA EXTENSION

### Sequencing and Agenda Setting in Negotiation Theory

Formal models of negotiation show that the order in which issues are negotiated can change the outcome. When issues are negotiated one at a time, each becomes a distributive contest, and the outcome depends on the parties' bargaining power on each issue separately; when they are negotiated as a package, the parties can exploit differences in priorities. Agenda setting can also be a source of power: the party controlling the agenda can determine which proposals are considered and in what order, a point developed in the theory of voting and committees. Apply these ideas to the Deal File. How did the rule that nothing was agreed until everything was agreed affect the parties' incentives? How did the division of the agreement into two instruments change the EU's internal agenda and the power of its different institutions?

ETHICS CHECK

The Commission applied the interim trade agreement provisionally from May 2026, although the European Parliament had asked the Court of Justice for an opinion and had not given its consent. Supporters argued that provisional application was lawful and delay would harm European firms; opponents argued that it bypassed the elected Parliament. When the closing phase of a negotiation is contested, is it legitimate to implement an agreement before all the bodies whose approval is normally required have given it? How should negotiators weigh the benefits of speed against the legitimacy of the process?

### Pillar Scorecard

**Table 13.7**

*Pillar Scorecard: the EU–Mercosur negotiations, 1999 to 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | High | More than €111 billion of annual trade and expected gains for exporters on both sides were at stake |
| Power | High | Agricultural constituencies, the voting rules of the Council and the powers of the Parliament and the Court shaped each phase |
| Persuasion | High | Supporters and opponents campaigned over standards, sustainability and fairness to farmers throughout the closing phase |

### Your Move

*This is a constructed teaching case.*

You lead a team from a Polish manufacturer of agricultural machinery based in Poznań, negotiating a five-year agreement with a distributor in Brazil now that the EU–Mercosur interim agreement has begun to reduce Brazilian tariffs on your products. The issues include the price to the distributor, minimum annual volumes, exclusivity in Brazil, payment terms, after-sales service and training, and the use of your brand. The distributor wants exclusivity for the whole of Brazil, payment at 120 days and a commitment from you to hold spare parts in São Paulo.

1. Build an issue matrix for the negotiation, using Table 13.4 as a guide.
2. Construct a scoring system for your side and calculate the score of one package you would accept and one you would reject.
3. Plan your opening: would you make the first offer, how would you set the agenda and which issues would you link?
4. How would you plan the implementation of the agreement, given the long transition periods in the EU–Mercosur agreement and the risk that its provisions could change if the Court of Justice found problems?

## Conclusion

Negotiations pass through phases, and each calls for different techniques. In the opening, the agenda and the first offer shape everything which follows: agendas linking issues allow value to be created, and well-justified first offers can anchor the outcome. In the middle phase, concessions should be reciprocal, diminishing and justified, and negotiators should watch the pattern of the other side's concessions as carefully as their own. Closing requires techniques for bridging the final gap, careful drafting and attention to the constituencies that must approve the agreement, and implementation, often neglected, determines whether the value created at the table is realised. Tools such as planning templates, issue matrices, scoring systems and single negotiating texts bring structure to complex negotiations. The EU–Mercosur negotiations show all these phases and tools at work over a quarter of a century, and they show that the closing of an agreement can itself become a new negotiation when important constituencies are not persuaded. Chapter 14 turns to negotiations with many parties, coalitions, teams and agents, in which the complexity seen in this chapter is multiplied.

## Exercises

### A. Objective Questions

1. The rule "nothing is agreed until everything is agreed" mainly allows negotiators to:
   a) make provisional concessions and trade across issues until the end
   b) avoid making any concessions
   c) close the negotiation quickly
   d) negotiate one issue at a time

2. Making the first offer is usually an advantage when the negotiator:
   a) knows little about the value of what is negotiated
   b) is negotiating with a friend
   c) has no alternative
   d) has good information about the value of what is negotiated

3. A pattern of concessions of diminishing size signals that the negotiator:
   a) has much more room to move
   b) is about to walk away
   c) is approaching his or her limit
   d) has no limit

4. Nibbling refers to:
   a) making a very low first offer
   b) asking for small additional concessions after the main deal seems agreed
   c) splitting the difference
   d) using a mediator

5. According to Ertel (2004), negotiators should:
   a) negotiate as if implementation mattered
   b) focus only on reaching agreement
   c) avoid drafting agreements in writing
   d) leave implementation to lawyers

6. A single negotiating text is:
   a) the first offer of the stronger party
   b) the final agreement
   c) a common draft that all parties criticise and revise
   d) a legal opinion

7. On 21 January 2026 the European Parliament voted to refer the EU–Mercosur agreement to the Court of Justice by:
   a) 21 to 5
   b) 334 to 324
   c) 440 to 151
   d) 69 to 3

8. In Table 13.5, a package of €90, 50,000 units, 3 years, 45 days and 2 weeks scores:
   a) 52 points
   b) 62 points
   c) 72 points
   d) 100 points

### B. Short-Answer Questions

1. Compare three approaches to setting the agenda of a negotiation, with the advantages and risks of each.
2. When should a negotiator make the first offer, and when should he or she let the other side open?
3. Explain the three principles for making concessions described in this chapter, with reference to Figure 13.2.
4. Describe three tactics used in the middle phase of a negotiation and how to respond to each.
5. Why is drafting itself a negotiation? Give an example of how ambiguity can cause later conflict.
6. Explain how an issue matrix and a scoring system help negotiators in multi-issue negotiations.
7. Describe the single negotiating text and explain why it can break deadlock.

### C. Long-Answer Questions

1. Analyse the EU–Mercosur negotiations phase by phase, from the opening to implementation. How did each phase shape the next, and why did the closing remain contested?
2. "The agreement is not the end of the negotiation." Discuss with reference to the EU–Mercosur agreement, the settlement of *House v. NCAA* and the work of Ertel (2004).
3. Compare the closing of the EU–Mercosur agreement with the framework agreed between the United Kingdom and the EU in May 2025. What do they suggest about the relationship between agreeing principles and agreeing details?
4. Design a complete set of tools, including a planning template, an issue matrix and a scoring system, for a multi-issue negotiation of your choice, and explain how you would use them during the negotiation.

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CHAPTER
# 14

# Multi-Party, Team and Complex Negotiations

https://doi.org/10.61030/5vvg-aust

## Introduction

Most of the theory in this book has been developed for the simplest case: two parties, each speaking with one voice, bargaining over a surplus that only they can create. Many of the negotiations that matter most in business are not like this. A merger may need the consent of shareholders, lenders, regulators in several jurisdictions, unions and governments. A supply chain may involve a manufacturer, its suppliers, its suppliers' suppliers and the customers of all of them. A trade agreement or a climate treaty may involve dozens or even hundreds of parties. And even an apparently bilateral negotiation is usually conducted by teams and agents, each bringing its own interests to the table.

This chapter asks what changes when the simple model is extended. It proceeds in four steps. Section 14.1 shows how the addition of parties transforms a negotiation: the number of relationships and possible coalitions rises sharply, decision rules become decisive and each party's alternatives come to depend on what the others do. Section 14.2 examines coalitions: why they form, which ones are likely to form and why they break apart. Section 14.3 turns to negotiations conducted by teams and agents, in which every side must first negotiate with itself. Section 14.4 presents methods for managing complex talks, including chairing, working groups, sequencing and the design of decision rules.

All three pillars of the book are at work in multi-party negotiation, and they interact in new ways. **Profit** is created and divided among more claimants, so that the surplus available to any one party depends on the deals the others strike. **Power** shifts from the strength of a single party to its position in a network of possible coalitions, so that a small party can sometimes decide the outcome. **Persuasion** must reach many audiences at once, some of whom are not at the table

at all. The Deal File follows a three-way transaction in which two rival aircraft manufacturers, Boeing and Airbus, divided between them the largest independent maker of aircraft structures in the world, under the eyes of regulators on both sides of the Atlantic.

DEAL FILE

### Splitting Spirit AeroSystems

Spirit AeroSystems was created in 2005, when Boeing sold its aircraft-structures operations in Wichita, Kansas, to an investment group. Over the following two decades Spirit became the largest independent supplier of fuselages and other large structures for commercial aircraft. It built most of the fuselage of Boeing's best-selling 737, along with major sections of the 767, 777 and 787, and it also supplied Airbus, producing fuselage sections for the A350 in North Carolina and France, wings and fuselage sections for the A220 in Belfast, and components in Scotland and Morocco. By 2024 it employed more than 20,000 people (Spirit AeroSystems, 2025a).

The company's position was precarious. Production problems, the disruptions of the pandemic and fixed-price contracts on which it lost money left it with heavy losses. Spirit lost US$616 million in 2023 and more than US$2.1 billion in 2024, and its annual report for 2024 warned of substantial doubt about its ability to continue as a going concern (Spirit AeroSystems, 2025a). Its fate mattered to both of its main customers. In January 2024 a door plug blew out of an Alaska Airlines 737 MAX 9 shortly after take-off, intensifying scrutiny of quality throughout Boeing's supply chain, including the fuselages built in Wichita. Boeing concluded that it needed to bring fuselage production back under its own control. Airbus, for its part, could not allow its competitor to take control of the plants that built parts of its own aircraft.

Figure 14.1 shows how dependent Spirit was on these two customers.

**A deal in three parts.** On 1 July 2024 Boeing announced that it would acquire Spirit in an all-stock transaction valued at US$37.25 per share. The price would be paid in Boeing shares, with the exchange ratio allowed to vary within a range so that Spirit's shareholders were protected against moderate falls in Boeing's share price (Boeing, 2024a). The acquisition, however, depended on a second agreement. On the same day Airbus announced a binding term sheet under which it would take over the Spirit operations that produced parts for Airbus aircraft. The two transactions were negotiated in parallel and made conditional on each other: Boeing would not buy Spirit unless the Airbus work was separated, and Airbus would not leave its supply in the hands of its rival.

The negotiations with Airbus took almost ten months to turn into a definitive agreement, signed on 27 April 2025. Airbus would acquire the operations that

**Table 14.1**

*The division of Spirit AeroSystems at a glance*

| | |
|---|---|
| **Parties** | Boeing; Airbus; Spirit AeroSystems and its shareholders; Composites Technology Research Malaysia (CTRM); competition authorities in the United States and the European Union; defence customers; trade unions and employees; national and regional governments |
| **At stake** | Control of the plants that build structures for Boeing and Airbus aircraft; the survival of Spirit; competition in the supply of aircraft structures; jobs in the United States, the United Kingdom, France, Morocco and Malaysia |
| **Timeline** | Boeing agreed to acquire Spirit and Airbus signed a binding term sheet on 1 July 2024; Airbus signed a definitive agreement on 27 April 2025; the European Commission approved the acquisition subject to conditions in October 2025; the US Federal Trade Commission accepted a proposed consent order on 2 December 2025; Boeing and Airbus completed their transactions on 8 December 2025; the FTC finalised its order in February 2026 |
| **Terms** | Boeing paid US$37.25 per Spirit share in its own stock, an equity value of about US$4.7 billion and an enterprise value of about US$8.3 billion including debt; Airbus took over the Spirit operations that served its programmes for a nominal US$1, together with US$439 million in cash; Spirit's Malaysian plant was sold to CTRM; Boeing undertook to keep supplying rival defence contractors |

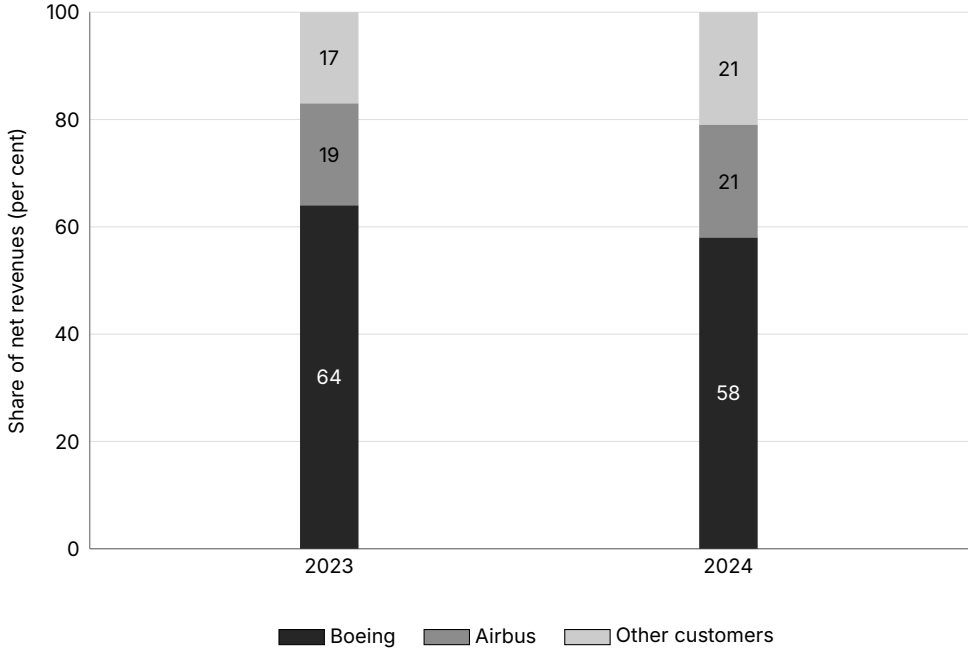
*Note.* Author, based on Boeing (2024a, 2025b), Spirit AeroSystems (2025b, 2025c) and Federal Trade Commission (2026).

made its parts in Kinston, North Carolina, and Saint-Nazaire, France; the A220 wing and mid-fuselage operations in Belfast; work packages in Prestwick, Scotland, and Casablanca, Morocco; and A220 pylon production in Wichita. Rather than paying for these operations, Airbus would take them over for a nominal US$1 together with US$439 million in cash (Spirit AeroSystems, 2025b), a sum that reflected the losses the contracts had been generating. Spirit's plant in Malaysia, which served several customers, was to be sold to a third party, and in August 2025 Spirit agreed to sell it to Composites Technology Research Malaysia (CTRM) for about US$95 million.

**The regulators join the table.** The competition authorities then became parties in their own right. The European Commission was concerned that Boeing, as owner of Spirit, might cut off or worsen supplies of aircraft structures to Airbus and gain access to Airbus's commercially sensitive information. On 13 October 2025 it approved the acquisition on two conditions: all Spirit's businesses supplying aerostructures to Airbus were to be divested, and the Malaysian plant was to be sold to CTRM, which it accepted as a suitable buyer (Spirit AeroSystems, 2025c). In the United States the Federal Trade Commission raised similar

**Figure 14.1**

*Spirit AeroSystems' net revenues by customer, 2023 and 2024 (per cent)*



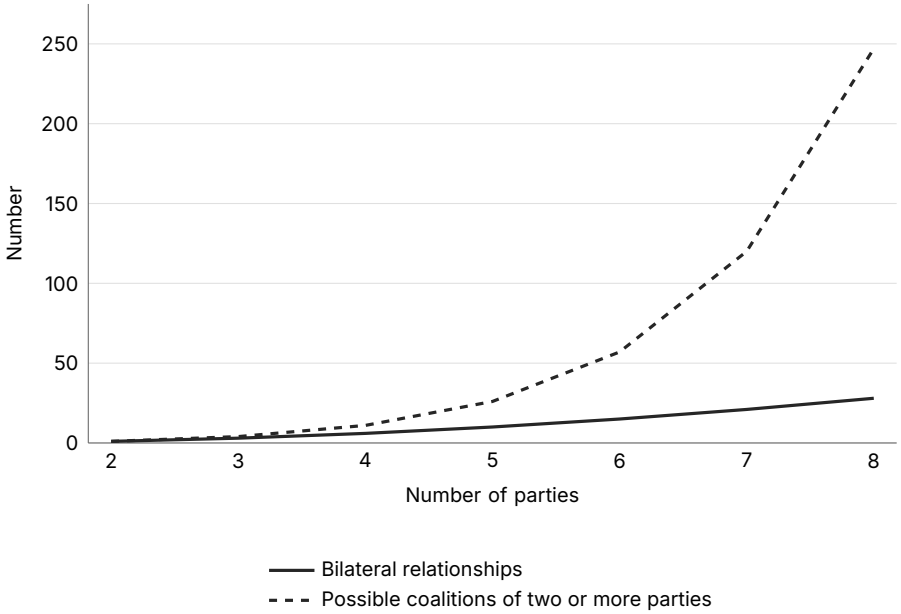

*Note.* Author, based on Spirit AeroSystems (2025a), Form 10-K for the year 2024. "Other" includes defence, business-jet and aftermarket customers.

concerns about Airbus and added a concern about defence: Spirit supplied structures for military aircraft built by Boeing's competitors. Its order required Boeing to divest significant Spirit assets and to continue supplying rival defence contractors (Federal Trade Commission, 2026). On 8 December 2025 Boeing completed its acquisition, bringing about 15,000 employees in Wichita, Tulsa, Dallas, Prestwick and Belfast into the company, while Airbus completed its takeover of the sites that served its programmes (Boeing, 2025b).

**Questions to keep in mind.** Why could Boeing and Spirit not simply strike a bilateral deal? How did the presence of a third party, Airbus, and of the regulators change the bargaining power of each participant? Why did Airbus receive money for taking over factories? And how were the interests of the many parties who were not at the main table, from workers in Belfast to defence contractors, brought into the agreement? The chapter answers these questions in turn.

**Figure 14.2**

*The number of bilateral relationships and possible coalitions as parties are added*




*Note.* Author's calculation. Bilateral relationships equal $n(n-1)/2$, rising from 1 with two parties to 28 with eight; possible coalitions of two or more parties equal $2^n - n - 1$.

## 14.1 What Changes When More Parties Join?

### More Relationships, More Coalitions

The most obvious effect of adding parties is that the number of relationships to be managed rises much faster than the number of parties. Between two parties there is one relationship. Among $n$ parties there are $n(n-1)/2$ bilateral relationships, so that five parties have ten relationships and eight parties have twenty-eight. The number of possible coalitions, groups of two or more parties that might act together, rises even faster. It equals $2^n - n - 1$: four with three parties, twenty-six with five and 247 with eight. Figure 14.2 shows the effect.

The arithmetic explains why multi-party negotiations are so much harder to manage than bilateral ones. Every party must consider not only what it can obtain from the others collectively, but also what it could obtain by joining one group rather than another, and what the others could obtain without it. Information that one party shares with a second may reach a third. Concessions made to one party may be demanded by all.

### Alternatives Depend on the Others

In a bilateral negotiation each party's best alternative to a negotiated agreement (BATNA) is, at least in principle, independent of the negotiation itself: it is what the party can do if the other side walks away. In a multi-party negotiation the alternatives are interdependent. What Boeing could achieve without Airbus's agreement depended on what Airbus would do if Boeing bought Spirit without separating the Airbus work, and that in turn depended on how the regulators would react. Each party's alternative is therefore the outcome of a different, smaller negotiation among the remaining parties. Lax and Sebenius (1991) argued that negotiators must "think coalitionally": instead of asking what they can do alone if talks fail, they should ask which coalitions could form without them and what those coalitions could achieve.

### The Problem of Collective Choice

When more than two parties must agree, the way in which the group decides becomes as important as what each party wants. Table 14.2 compares common decision rules.

**Table 14.2**

*Decision rules in multi-party negotiations*

| Rule | How it works | Advantages | Risks |
|---|---|---|---|
| Unanimity | Every party must agree; each has a veto | Protects every party; agreements are legitimate | Any party can block; outcomes drift to the lowest common denominator |
| Consensus | No party formally objects; abstention is possible | Allows reluctant parties to step aside | Ambiguous; a determined party can still block |
| Qualified majority | A specified share of votes, often weighted, is needed | Prevents a single veto while protecting large minorities | Losers may resist implementation |
| Simple majority | More than half of the votes | Speed and decisiveness | Minorities overridden; voting cycles possible |
| Weighted voting | Votes are weighted by size, contribution or shares | Reflects unequal stakes | Formal weights may give misleading power, as Section 14.2 shows |

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

Each rule creates different incentives. Under unanimity, every party has the power to hold out, and the agreement must give each party at least as much as its alternative; the result is often a modest agreement offending no one. Under majority rules, parties can be overruled, so the contest shifts to building a winning coalition. The vote on the EU–Mercosur agreement in Chapter 13 showed

how a qualified majority allowed the agreement to proceed over the objections of five member states, and how the losers then sought other forums in which to continue the fight.

Majority rules raise a further difficulty, first identified by the Marquis de Condorcet in the eighteenth century. When three or more parties choose among three or more options, majority voting may produce a cycle: a majority prefers A to B, another majority prefers B to C and a third majority prefers C to A. Table 14.3 gives an example.

**Table 14.3**

*A voting cycle among three firms choosing a joint project*

| Firm | First preference | Second preference | Third preference |
|---|---|---|---|
| Firm 1 | Project A | Project B | Project C |
| Firm 2 | Project B | Project C | Project A |
| Firm 3 | Project C | Project A | Project B |

*Note.* Author's illustrative example. Firms 1 and 3 prefer A to B; Firms 1 and 2 prefer B to C; Firms 2 and 3 prefer C to A.

When preferences cycle in this way, there is no option that a majority prefers to every other, and the outcome depends on the order in which options are voted on. Whoever controls the agenda controls the result. This is one reason why procedural questions, which can seem dull, provoke fierce struggles in multi-party talks.

### Multi-Party Value Creation

The addition of parties does not only complicate the division of value; it can also increase the value to be divided. A third party may bring a resource, a capability or a need which makes otherwise impossible trades possible. In the Deal File, Boeing wanted Spirit's Boeing work but not its Airbus work, Airbus wanted the Airbus work but not the obligation to buy the whole company, and Spirit's shareholders wanted to escape a business whose losses threatened its survival. No bilateral deal could satisfy all three; a three-way deal could. Recognising when adding a party will enlarge the pie, rather than merely add another claimant, is one of the most valuable skills in complex negotiation.

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**KEY MOVE**

In a multi-party negotiation, map every party, its interests and its alternatives, then ask which coalitions could form without you. Treat the decision rule and the agenda as part of the negotiation, not as given.

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## 14.2 How Do Coalitions Form and Break?

### Why Coalitions Form

A **coalition** is a group of parties coordinating their positions to obtain an outcome none could obtain alone. Coalitions form for three main reasons. Some form because their members share interests and can achieve more together, as when firms in an industry lobby jointly for a regulation that benefits them all. Some form to block an outcome that their members oppose: a **blocking coalition** need not agree on what it wants, only on what it does not want. And some form because the decision rule requires them: when a majority is needed, parties must find partners.

Coalitions in business are common. Firms form consortia to bid for large contracts, suppliers form alliances to negotiate with powerful buyers, and creditors form committees in insolvency to negotiate collectively with the debtor. The value of a coalition to its members depends on what it can achieve compared with what each member could achieve alone, and on how the gains are divided among them.

### Which Coalitions Form?

Riker (1962) argued that, where the prize is fixed and must be shared among the members of the winning coalition, rational parties will form **minimum winning coalitions**: coalitions just large enough to win. Adding a member who is not needed to win only reduces the share of everyone else. The prediction fits some situations well, but many coalitions are larger than the minimum, because their members value stability, legitimacy or insurance against defection, and because members who share policy preferences find it easier to agree.

Economists have also asked which coalitions are stable. An allocation of value is in the **core** of a negotiation if no group of parties could do better by breaking away and acting on its own. When the core is empty, every possible agreement leaves some group with an incentive to defect, and the negotiation is likely to be unstable, with coalitions forming and dissolving. When the core contains many allocations, the parties have room to agree but must still decide how to divide the value, and bargaining power determines where in the core they end up.

### Power in Coalitions: The Pivotal Party

How much power does each party have in a coalition? A natural answer is that power is proportional to resources or votes. This is often wrong. Consider three shareholders in a joint venture whose decisions require more than half of the votes, as in Table 14.4.

Firm C holds only 5 per cent of the votes, but it has exactly the same power as the two large shareholders, because any two of the three can form a majority and

**Table 14.4**

*Votes and voting power in a joint venture (decisions require more than 50 per cent of votes)*

| Shareholder | Share of votes (%) | Winning coalitions in which it is essential | Shapley–Shubik power index |
|---|---|---|---|
| Firm A | 48 | A + B, A + C | 1/3 |
| Firm B | 47 | A + B, B + C | 1/3 |
| Firm C | 5 | A + C, B + C | 1/3 |

*Note.* Author's illustrative example, using the index of Shapley and Shubik (1954).

none can win alone. The Shapley–Shubik power index measures this by asking, for every possible order in which parties might join a coalition, how often each party is **pivotal**, turning a losing coalition into a winning one. In this example each firm is pivotal in two of the six possible orders, so each has a third of the power. If Firm A's share rose to 51 per cent, its power index would rise to one and the others' would fall to zero. Small changes in formal weights can therefore produce large changes in real power, and parties with few votes can extract a large share of the value if they are pivotal.

The lesson for negotiators is to ask not "how big am I?" but "how often am I needed?". In the Deal File, Airbus was pivotal. Boeing's acquisition could not proceed without a solution for the Airbus work, and the regulators would not approve it without Airbus's supply being protected. This position allowed Airbus to obtain not only control of the plants it needed but also US$439 million in compensation for taking them over.

### Building Coalitions: Sequencing

If a coalition is needed, with whom should a negotiator talk first? Sebenius (1996) showed that the order in which parties are approached can decide the outcome. Securing the agreement of a respected or powerful party early can make it easier to persuade others, who see that the coalition is likely to succeed and do not want to be left out. Approaching the most difficult party first can be a mistake if its refusal becomes known and discourages others; it can be wise if no agreement is possible without it and early talks reveal what it requires. Sebenius described this as mapping the "backward" route: starting from the coalition one needs at the end and working out which commitments must be obtained before others become possible.

Boeing's approach illustrates sequencing. By agreeing a binding term sheet with Airbus on the same day as it announced the acquisition, Boeing presented regulators, shareholders and employees with a solution to the most obvious objection to the deal before they could raise it.

DEAL SNAPSHOT

**Financing the Climate Transition at COP29, 2024**

At the UN climate conference in Baku, Azerbaijan, in November 2024, almost 200 parties negotiated a new goal for climate finance to replace the commitment of developed countries to mobilise US$100 billion a year. The negotiation pitted coalitions against each other. Developing countries, negotiating as the Group of 77 and China but with distinct sub-groups of the least developed countries and the small island states, argued that they needed more than a trillion dollars a year. Developed countries, led by the European Union, wanted the base of contributors broadened to include wealthy developing countries such as China and the Gulf states. After the talks ran beyond their scheduled end, the parties adopted a decision on 24 November 2024 that set a core goal of at least US$300 billion a year by 2035, provided mainly by developed countries, within a broader call to scale up finance from all sources to at least US$1.3 trillion a year. For the first time, contributions by developing countries were recognised, on a voluntary basis (Government Offices of Sweden, 2024). Figure 14.3 compares the figures. Because decisions under the UN climate convention are taken by consensus, every coalition could threaten to block, and the final agreement reflected what the most reluctant parties would accept. Many developing countries criticised the outcome as inadequate, illustrating how a consensus rule can produce agreement without satisfaction.

### Why Coalitions Break

Coalitions are fragile. Their members have different interests on issues other than the one that unites them, and a party outside the coalition can often break it by offering one member a better deal. Blocking coalitions are especially vulnerable, because their members may agree only on what they oppose. Three tactics are commonly used to divide a coalition: offering side payments or special concessions to the weakest member; reframing the issue so some members' interests change; and changing the decision rule or the forum so the coalition is no longer needed or no longer sufficient. Coalitions can protect themselves by agreeing in advance that no member will negotiate separately, by spreading the gains of the coalition fairly and by maintaining regular communication.

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KEY MOVE

Measure your power by how often you are pivotal, not by your size. Build coalitions in the order that makes each later commitment easier, and protect your coalition against offers designed to divide it.

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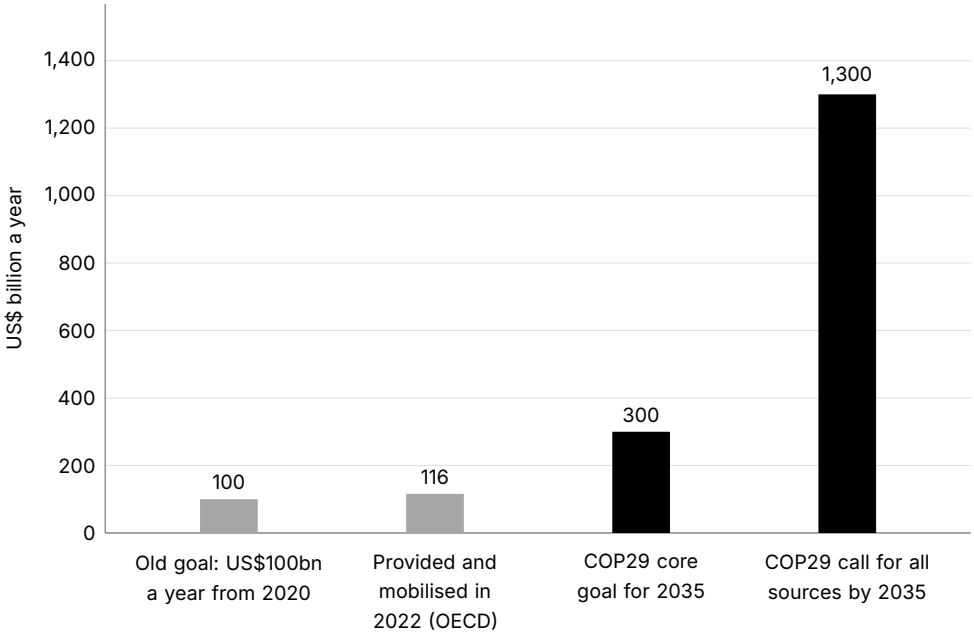
**Figure 14.3**

*International climate finance: the old goal, recent delivery and the COP29 goals (US$ billion a year)*




*Note.* Author, based on OECD (2024) for climate finance provided and mobilised in 2022, and Government Offices of Sweden (2024) for the COP29 goals. The 2022 figure measures finance provided and mobilised by developed countries; the COP29 goals are targets for 2035.

## 14.3 Who Negotiates for Whom? Teams and Agents

### Negotiating within the Team

Business negotiations are usually conducted by teams. A team brings more knowledge, more skills and more capacity to listen, observe and analyse than a single negotiator. It can divide roles: a leader who speaks for the team, technical experts, a lawyer, a note-taker and an observer who watches the other side. Experimental research found that teams tend to achieve more integrative agreements than solo negotiators, partly because they exchange more information and generate more options (Thompson et al., 1996).

Teams also bring problems. Members may disagree about goals and priorities, and the other side may exploit these differences. Members may speak out of turn, contradict each other or reveal information unintentionally. And a team may be less flexible than an individual, because every change of position must be agreed internally. Before every significant negotiation, therefore, a team must

negotiate with itself: agreeing its goals, targets and limits, its priorities among issues, the roles of each member and the rules for communicating during the talks, including signals for calling a break. Table 14.5 summarises the roles commonly assigned.

**Table 14.5**

*Roles in a negotiating team*

| Role | Task | Common mistakes |
|---|---|---|
| Leader | Speaks for the team; makes or proposes concessions | Making commitments the team has not agreed |
| Technical expert | Provides and checks specialist information | Conceding on technical points without seeing the trade-offs |
| Financial analyst | Evaluates offers against the scoring system and the team's limit | Focusing on price and neglecting other issues |
| Lawyer | Checks that terms are enforceable and drafted clearly | Raising legal objections which block value creation |
| Observer | Watches the other side's reactions and dynamics | Not reporting observations in breaks |
| Note-taker | Records offers, concessions and agreements | Incomplete records that cause later disputes |

*Note.* Author, based on Lewicki et al. (2020).

Cultural diversity within teams adds a further dimension. A team drawn from several countries can read the other side more accurately and adapt its communication, but it must also manage differences in its own members' expectations about hierarchy, directness and time, which Chapter 18 examines. The author's research on cross-cultural communication in international business emphasises that these internal differences, if managed well, are a source of strength rather than weakness (Kumar, 2022, 2024a).

### Negotiating through Agents

Many negotiations are conducted not by the principals themselves but by **agents**: lawyers, investment bankers, brokers, sports and literary agents, union officials and diplomats. Chapter 2 introduced the principal–agent problem in general terms; here the question is when and how to use an agent in a negotiation.

Rubin and Sander (1988) identified the main advantages of agents. An agent may have **expertise** in the subject or the process which the principal lacks; **contacts** and a reputation to open doors; **emotional distance**, which allows the agent to bargain hard without damaging the principal's relationship with the other side; and **tactical flexibility**, since an agent can claim limited authority, float ideas without committing the principal and buy time. These advantages

explain why mergers such as the Deal File are negotiated by teams of bankers and lawyers on every side.

Agents also bring costs. The most obvious is their fee. Less obvious are the conflicts of interest that arise when the agent's incentives differ from the principal's. Mnookin and Susskind (1999) showed how these conflicts appear in common forms of payment. Table 14.6 summarises them.

**Table 14.6**

*How agents' fees can shape their incentives*

| Form of payment | Example | Incentive created | Risk to the principal |
|---|---|---|---|
| Success fee on completion | Investment bank advising on a merger | To close a deal | Pressure to accept a deal that should be rejected |
| Percentage of the price | Estate agent selling a house | To sell quickly rather than to wait for a higher price, since the agent gains only a small share of any increase | A lower price than patience would bring |
| Hourly fee | Lawyer negotiating a contract | To prolong the negotiation | Higher costs and delay |
| Fixed fee | Consultant hired for a defined task | To minimise effort | Limited attention to the principal's interests |
| Salary plus bonus tied to outcome | In-house negotiator or union official | To meet the measured target | Neglect of issues that are not measured |

*Note.* Author, based on Rubin and Sander (1988) and Mnookin and Susskind (1999).

A simple calculation shows the second problem in the table. An estate agent paid 2 per cent of the sale price who holds out for a further month to raise the price of a property by €20,000 gains only €400, while bearing the cost of a month's additional effort. The seller gains €19,600. The agent's incentive to accept an early offer is therefore stronger than the seller's. Principals can reduce such conflicts by designing fees that reward the outcomes they care about, by setting clear limits and instructions, by monitoring the agent's conduct and by keeping open their own channels of communication with the other side.

### Two Tables for Every Agent

An agent negotiates at two tables at once: with the other side and with the principal. Chapter 4 described this two-level game for governments; it applies equally to firms and their representatives. The agent must persuade the other side that the principal will not accept less than a certain amount, while persuading the principal that the other side will not give more. The agent's credibility at each

DEAL SNAPSHOT

### The WHO Pandemic Agreement, 2025 and 2026

After the Covid-19 pandemic exposed deep inequalities in access to vaccines, the member states of the World Health Organization negotiated a treaty to prevent, prepare for and respond to future pandemics. The negotiations lasted more than three years. In the final stages a conflict between countries with pharmaceutical industries and those without proved hardest to resolve: developing countries wanted a guarantee that, if they shared samples and genetic data of dangerous pathogens, they would receive a fair share of the vaccines, tests and treatments developed from them, while countries with large pharmaceutical industries resisted binding obligations on their firms. The negotiators separated the issue. The World Health Assembly adopted the Pandemic Agreement by consensus on 20 May 2025, after a committee vote the previous day of 124 in favour, none against and 11 abstentions, but left the annex on pathogen access and benefit sharing to an intergovernmental working group. The agreement could not open for signature until the Assembly had adopted the annex (World Health Organization, 2025). The United States had announced its withdrawal from the WHO in January 2025 (Executive Order No. 14155, 2025). On 1 May 2026 the member states, still divided, agreed that more time was needed, and the outcome was to go either to a special session of the Assembly in 2026 or to the Assembly in May 2027 (World Health Organization, 2026). The working group met again in September and November 2026 (World Health Organization, n.d.). The outcome illustrates how a multi-party negotiation can close a framework by setting aside its hardest issue, at the price of an agreement not yet capable of implementation.

table depends on credibility at the other. When the principal is itself a group, such as a union's members or a firm's board and shareholders, the internal negotiation can be as hard as the external one, as the repeated rejection of offers by Boeing's machinists in Chapter 7 showed. The Spirit transaction required the approval of Spirit's shareholders, which in turn required its board and its advisers to persuade them that Boeing's offer, paid in shares whose value was uncertain, was better than the alternatives available to a company whose survival was in doubt.

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KEY MOVE

Negotiate inside your team before you negotiate with the other side. If you use an agent, design the agent's reward so that it pays for the outcome you want, give clear instructions and limits, and keep your own line to the other side open.

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## 14.4 How Can Complex Talks Be Managed?

### Process Design

Multi-party negotiations cannot be managed in the way bilateral ones are. With many parties, open discussion of every issue among everyone becomes impossible, and the process itself must be designed. Susskind et al. (1999), drawing on experience of public disputes involving many stakeholders, emphasised several elements: identifying and involving all those with a stake in the outcome, agreeing ground rules at the start, using a neutral facilitator or chair, breaking the problem into manageable parts and keeping a written record. Table 14.7 summarises the main tools.

**Table 14.7**

*Tools for managing complex negotiations*

| Tool | How it works | Example |
|---|---|---|
| Chair or facilitator | A neutral or respected person manages the process, proposes compromises and tests agreement | Presidencies of UN climate conferences |
| Working groups | Smaller groups negotiate specific issues and report back to the plenary | Groups on finance, technology and adaptation in climate talks |
| Friends of the chair | A small, representative group helps the chair to find a compromise | Late-stage trade and treaty negotiations |
| Single negotiating text | One draft is revised by all parties (Chapter 13) | Most trade agreements and treaties |
| Sequencing and separation of issues | Easier issues are settled first, or the hardest are deferred | The pathogen annex in the WHO Pandemic Agreement |
| Framework agreements | Principles are agreed first and details negotiated later | The UK–EU Common Understanding of 2025 (Chapter 13) |
| Linked but separate transactions | Several bilateral deals are made conditional on each other | The Boeing and Airbus agreements in the Deal File |

### The Role of the Chair

In multi-party negotiations the chair has considerable influence. A chair decides the order of business, recognises speakers, summarises the discussion, drafts compromise texts and decides when consensus has been reached. A skilful chair uses these powers to build agreement: by consulting privately with each coalition, by testing proposals informally before they are put to the full group and by proposing a final package at the moment when the parties are ready to accept

it. A chair who is seen as partisan, however, loses the trust on which this influence depends. The experience of climate conferences shows both possibilities. Presidencies consulting widely and drafting balanced texts have helped to produce agreements; presidencies seen as favouring particular interests have faced resistance and delay.

#### Linked Transactions

Many complex business deals, like the Deal File, are structured not as a single multi-party agreement but as a set of bilateral agreements made conditional on each other. This structure has advantages. Each bilateral deal can be negotiated separately, in confidence, by the parties most directly concerned, and the conditions linking them ensure that none takes effect unless all do. It also has risks. If one agreement is delayed, all are delayed: Boeing's acquisition of Spirit, expected to close in mid-2025, was not completed until December, partly because the Airbus agreement and the regulatory approvals took longer than planned. And each party in a linked structure has an incentive to hold out at the end, knowing that the others need its agreement. Careful drafting of the conditions, deadlines and the consequences of failure is therefore essential.

#### Handling Parties Not at the Table

Complex negotiations affect many parties who are not formally represented: employees, local communities, suppliers, customers and governments. Some of them can block or delay an agreement through regulators, courts, strikes or political pressure; all of them can affect its implementation. Effective negotiators identify these parties early, assess their interests and their capacity to influence the outcome, and decide how to involve them: by consultation, by including their concerns in the agreement or by negotiating directly with them. In the Spirit transaction, the regulators' conditions brought the interests of Airbus and of defence contractors into the agreement, and the future of the Belfast plant, divided between Boeing and Airbus, was followed closely by trade unions and the UK government. Table 14.8 maps the stakeholders in the division of Spirit AeroSystems.

The author's work on foreign direct investment in Europe discusses how governments and local communities shape the terms on which multinational firms acquire and restructure operations in their territories, a dimension that is central to cross-border transactions of this kind (Kumar, 2024b, 2026a).

**Table 14.8**

*A stakeholder map for the division of Spirit AeroSystems*

| Party | Main interest | Capacity to influence | How it was addressed |
|---|---|---|---|
| Boeing | Control and quality of its fuselage supply | Very high | Acquisition of Spirit's Boeing work |
| Airbus | Security of supply for its programmes | Very high (pivotal) | Takeover of the Airbus sites with compensation |
| Spirit's shareholders | Value and an exit from a loss-making business | High (approval required) | Share offer with a protected exchange range |
| Competition authorities | Competition in aircraft structures and defence | Very high (approval required) | Divestitures, supply commitments and monitoring |
| Defence contractors | Continued access to Spirit's capabilities | Medium (through regulators) | Supply commitments in the FTC order |
| Employees and unions | Jobs and conditions | Medium | Transfer to Boeing or Airbus; continued scrutiny |
| CTRM | Acquisition of the Malaysian plant | Low to medium | Approved as buyer |

*Note.* Author, based on the Deal File sources.

**KEY MOVE**

Design the process before you negotiate the substance. Choose the structure, whether one table or several linked ones, map every stakeholder, including those not at the table, and agree who chairs, how decisions are taken and what happens if one part fails.

**BACK TO THE DEAL FILE**

## Reading the Division of Spirit AeroSystems

The concepts of this chapter explain why the transaction took the form it did.

**A bilateral deal was not available.** Boeing could not acquire Spirit without dealing with the Airbus work, both because Airbus would not accept its rival's control of its supply and because the regulators would not approve it. The relevant negotiation was therefore among three commercial parties, with the regulators acting as additional parties holding vetoes.

**Airbus was pivotal and was paid for it.** Airbus's power did not come from its share of Spirit's revenues, which was about a fifth, but from the fact that no agreement was possible without it. Its position allowed it to take over the operations it needed and to receive compensation for the losses they had been generating.

**Linked transactions and early sequencing reduced risk.** By announcing the Airbus term sheet on the same day as the acquisition, Boeing showed regulators, shareholders and employees that the main obstacle had been addressed. The conditions linking the two deals ensured that neither would take effect without the other.

**The regulators shaped the final terms.** The European Commission and the Federal Trade Commission acted as parties with vetoes, and their conditions brought the interests of Airbus, of CTRM and of defence contractors into the final agreement.

**Implementation will test the agreement.** Integrating Spirit into Boeing, separating the Airbus sites and complying with the regulators' monitoring will take years. The agreement turned a multi-party negotiation into a set of continuing relationships that must now be managed.

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MA EXTENSION

### Cooperative Game Theory and the Division of Value

Cooperative game theory analyses negotiations among many parties by asking what each coalition could obtain on its own. The **characteristic function** assigns to each coalition the value it could secure. The **core** is the set of allocations that no coalition can improve on by acting alone; the **Shapley value** gives each party its average marginal contribution across all orders in which the grand coalition might be formed. Suppose that Boeing and Spirit together can create a surplus of 6, Airbus and Spirit together 2, Boeing and Airbus together 0, and all three together 10, with each party alone obtaining 0. Calculate the Shapley value of each party. Is this allocation in the core? Use your results to discuss how the value of the Spirit transaction might have been divided, and why the party contributing most to the grand coalition need not be the largest.

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ETHICS CHECK

In a multi-party deal, the parties at the table can agree terms imposing costs on those who are not: employees whose plants are divided, suppliers whose contracts are reassigned, communities dependent on a factory. In the Spirit transaction, regulators represented some of these interests, but workers and local communities had no formal veto. What obligations do the parties to a complex transaction have towards those who are affected but not represented? Is it enough to comply with the conditions imposed by regulators, or should negotiators consult and protect affected groups beyond what the law requires?

### Pillar Scorecard

**Table 14.9**

*Pillar Scorecard: the division of Spirit AeroSystems, 2024 to 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | High | A US$8.3 billion transaction, Spirit's losses and the US$439 million paid to Airbus determined how value was divided |
| Power | Very high | Airbus's pivotal position and the regulators' vetoes shaped the structure and terms of the deal |
| Persuasion | Medium | Boeing had to persuade regulators, Spirit's shareholders and employees that the linked transactions protected competition, value and jobs |

### Your Move

*This is a constructed teaching case.*

You are the commercial director of a Polish engineering firm in Gdańsk that wants to bid for a large contract to supply and maintain components for offshore wind farms in the Baltic Sea. The contract is too large for your firm alone. You are considering a consortium with a larger German firm, which has the technology but no local presence, and a Danish firm with experience of maintenance at sea. The client, an energy company, will choose among several consortia. Your firm can offer local manufacturing, which the client values because public support for the project depends on local jobs.

1. Map the parties, their interests and their alternatives. Which coalitions could form without your firm, and what could they achieve?
2. Assess your firm's power. In which possible consortia would your firm be pivotal?
3. In what order would you approach the other firms, and why?
4. Your firm will be represented by a team. Assign roles and set out how the team will agree its positions before meeting potential partners.
5. Draft the main terms of a consortium agreement to protect your firm if one partner tried to negotiate separately with the client.

## Conclusion

Adding parties to a negotiation does more than add voices. The number of relationships and possible coalitions rises sharply, each party's alternatives come to depend on the agreements the others might reach, and the decision rule and the agenda become decisive. Power in multi-party negotiation depends less on size than on how often a party is pivotal, as the example of a 5 per cent shareholder with a third of the voting power showed. Coalitions form to win, to block and to meet decision rules, and they break when outsiders offer their members better terms. Most negotiations are conducted by teams and agents, which bring expertise and flexibility but also internal disagreements and conflicts of interest that must be managed through preparation and the careful design of incentives. Complex negotiations need a designed process: a chair, working groups, sequencing, framework agreements and linked transactions. The division of Spirit AeroSystems between Boeing and Airbus shows all of these elements at work, and it shows how a pivotal party can turn its position into profit. Chapter 15 extends the analysis across borders, examining how geopolitics, development and the power of states shape the negotiations of international business.

## Exercises

### A. Objective Questions

1. With six parties, the number of bilateral relationships is:
   a) 6 b) 12
   c) 15 d) 57

2. The number of possible coalitions of two or more parties among five parties is:
   a) 10 b) 26
   c) 31 d) 32

3. A blocking coalition:
   a) needs only to agree on what it opposes
   b) must agree on a common proposal
   c) always includes the largest party
   d) cannot form under unanimity

4. According to Riker (1962), rational parties dividing a fixed prize tend to form:
   a) grand coalitions of all parties b) no coalitions
   c) blocking coalitions d) minimum winning coalitions

5. In Table 14.4, Firm C, with 5 per cent of the votes, has a Shapley–Shubik power index of:
   a) 0.05
   b) 0
   c) 1/3
   d) 1/2
6. An allocation is in the core if:
   a) it gives every party an equal share
   b) no group of parties could do better by acting on its own
   c) the largest party obtains the most
   d) it is approved by a majority
7. An agent paid a percentage of the sale price has an incentive to:
   a) hold out for the highest possible price
   b) avoid closing the deal
   c) prolong the negotiation
   d) sell sooner than the principal would prefer
8. In the Deal File, Airbus took over the Spirit operations that served its programmes and:
   a) received US$439 million in compensation
   b) paid US$439 million
   c) paid US$4.7 billion
   d) received Boeing shares

### B. Short-Answer Questions

1. Explain why the number of possible coalitions rises faster than the number of parties, using Figure 14.2.
2. Why are each party's alternatives interdependent in a multi-party negotiation? Illustrate with the Deal File.
3. Compare unanimity, consensus and qualified majority as decision rules, with an example of each.
4. Explain the voting cycle in Table 14.3. Why does control of the agenda matter when preferences cycle?
5. Explain why a party with few votes may have as much power as a large party, using the Shapley–Shubik index.
6. What are the main advantages and risks of negotiating through an agent? How can a principal reduce the risks?
7. Describe three tools for managing complex negotiations and give an example of each.

### C. Long-Answer Questions

1. Analyse the division of Spirit AeroSystems as a multi-party negotiation. Who were the parties, what were their alternatives, and why was Airbus able to obtain compensation for taking over factories?
2. "In multi-party negotiation, power comes from position, not size." Discuss with reference to coalition theory, the Shapley–Shubik index and at least two cases from this chapter.
3. Compare the decision rules and the management of the COP29 negotiations on climate finance with those of the WHO Pandemic Agreement. What do the cases suggest about the advantages and costs of consensus?
4. Design the process for a multi-party negotiation of your choice involving at least five parties. Explain your choice of decision rule, chair, working groups, sequencing and treatment of parties not at the table.

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CHAPTER
# 15

# Power across Borders: International Business, Geopolitics and Development

https://doi.org/10.61030/pauz-47ux

## Introduction

When a firm negotiates across borders, the other side of the table is rarely just another firm. Behind every foreign customer, supplier or partner stand governments that tax, regulate, license, protect and sometimes expropriate. When the firm wants to build a factory, open a mine or buy a company abroad, the host government is itself a party to the negotiation, often the most powerful one. And governments in turn negotiate with each other over trade, investment and sanctions, shaping the rules within which firms bargain. International business negotiation is therefore negotiation in the presence of the state.

This chapter, the last of Part III, applies the book's analysis of power to this setting. It proceeds in four steps. Section 15.1 asks how firms bargain to enter a foreign market and what each side brings to the table. Section 15.2 explains why the bargain changes after an investment has been made, a phenomenon known as the obsolescing bargain, and how investors and host states try to manage it. Section 15.3 examines how trade agreements, sanctions, export controls and investment screening shift power between firms and states. Section 15.4 turns to negotiations for development: natural-resource contracts, public–private partnerships and the restructuring of sovereign debt.

The three pillars of the book take a distinctive form across borders. **Profit** is shared not only between firms but between firms and states, through taxes, royalties, local content and jobs. **Power** depends on the alternatives of each side, which change sharply once capital is sunk in a particular country. **Persuasion** must reach not only negotiators but citizens, courts and legislatures, whose support determines whether an agreement survives a change of government. The Deal File follows one of the most dramatic recent cases of these forces at work:

the Cobre Panamá copper mine, whose contract was struck down by Panama's Supreme Court in 2023 after weeks of mass protests, and whose future was being negotiated again in 2026.

DEAL FILE

### Cobre Panamá

Cobre Panamá, in the province of Colón on Panama's Caribbean coast, is one of the largest open-pit copper mines opened anywhere in the world in recent decades. The concession was first approved in 1997 and granted to Inmet Mining, which First Quantum Minerals, a Canadian company, acquired in 2013. By the company's account, more than US$10 billion had been invested in Panama. In 2022 the mine produced a record 350,000 tonnes of copper and, according to its operator, contributed more than US$2.7 billion to Panama's gross domestic product (Minera Panamá, 2023).

The original legal basis of the concession was itself contested, and the government and First Quantum negotiated a new contract to replace it, following objectives on revenue, environmental protection and labour standards that the government set out in January 2022. The draft finalised in March 2023 guaranteed the state a minimum annual contribution of US$375 million, made up of corporate taxes, withholding taxes and a royalty of 12 to 16 per cent of profits, rising with the mine's operating margin (First Quantum Minerals, 2023). After approval by the National Assembly, the contract was signed into law by the President as Law 406 on 20 October 2023 (First Quantum Minerals, 2024).

**The contract collapses.** The approval of Law 406 triggered mass protests across Panama. Environmental groups, unions, teachers and students argued that the contract had been negotiated without transparency, gave a foreign company too much for too little and threatened forests and water supplies through the mine. Roads were blocked across the country, including the access roads to the mine and its port, and production was suspended. On 28 November 2023 the Supreme Court declared Law 406 unconstitutional, so that the contract ceased to exist, although the Court did not order the mine's closure. The National Assembly passed Law 407, which declared an indefinite moratorium on mining and barred new concessions or the renewal of existing ones, and in December 2023 the government placed the mine in a phase of preservation and safe management (First Quantum Minerals, 2024). Production of about 331,000 tonnes in 2023 fell to nothing in 2024 (Figure 15.1).

**From arbitration to renegotiation.** First Quantum began international arbitration proceedings against Panama, under the free trade agreement between Canada and Panama and before the International Chamber of Commerce (ICC), seeking compensation for the loss of the mine (First Quantum Minerals, 2024).

**Table 15.1**
*Cobre Panamá at a glance*

| | |
|---|---|
| **Parties** | First Quantum Minerals and its Panamanian subsidiary, Minera Panamá; the government of Panama; the National Assembly and the Supreme Court; environmental groups, trade unions and protesters; local communities in Colón province; minority investors and lenders |
| **At stake** | One of the world's largest new copper mines, contributing more than US$2.7 billion to Panama's GDP in 2022; thousands of direct and indirect jobs; the state's share of the mine's revenue; environmental protection; international arbitration claims |
| **Timeline** | Concession approved in 1997; First Quantum acquires the project in 2013; commercial production from 2019; government objectives for new terms set in January 2022; draft contract finalised in March 2023; Law 406 approved on 20 October 2023; protests in October and November 2023; Supreme Court rules the contract unconstitutional on 28 November 2023; mine placed on preservation and safe management; one arbitration discontinued and another suspended in March 2025; processing of stockpiled ore in 2026; government commission recommends negotiations on 30 September 2026 |
| **Terms (2023 contract)** | A minimum annual contribution of US$375 million from corporate taxes, withholding taxes and a profit-based royalty of 12 to 16 per cent |

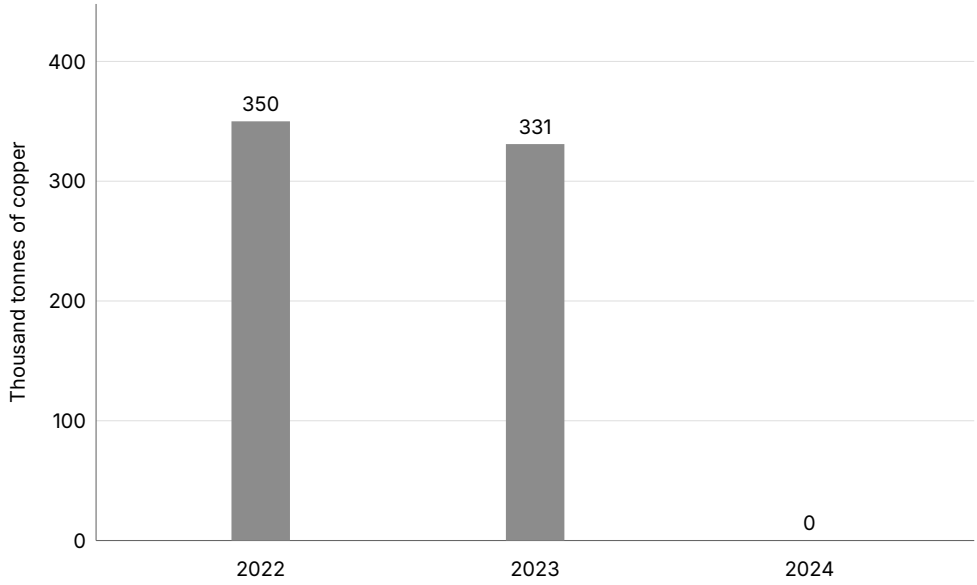
*Note.* Author, based on First Quantum Minerals (2023, 2024, 2025, 2026a, 2026b) and Minera Panamá (2023).

A new president, José Raúl Mulino, took office in July 2024. After talks with the government's legal counsel, First Quantum agreed on 31 March 2025 to discontinue its ICC arbitration and to suspend the one under the free trade agreement (First Quantum Minerals, 2025). Copper concentrate stored at the site was shipped abroad, and in 2026 the processing of stockpiled ore began, with the aim of producing 30,000 to 40,000 tonnes of copper in the year (First Quantum Minerals, 2026b).

On 30 September 2026 an interministerial commission delivered its final report to President Mulino, with 17 recommendations. It recommended opening formal negotiations with First Quantum on a new agreement under which the mine could be put back into operation to achieve an orderly closure, financed by the project itself at no cost to the state and with no possibility of extension, and it made the final termination of the pending arbitrations a mandatory condition of any agreement. The President said he would review the report with his cabinet and legal advisers before announcing a decision, and First Quantum said

**Figure 15.1**

*Copper production at Cobre Panamá, 2022 to 2024 (thousand tonnes)*




*Note.* Author, based on First Quantum Minerals (2024). Production stopped in November 2023. No copper was produced in 2024, when the mine was in a phase of preservation and safe management.

it would engage "constructively and in good faith" (First Quantum Minerals, 2026a, 2026b).

**Questions to keep in mind.** Why was a contract that had been negotiated and approved by the elected legislature overturned within weeks? Why did First Quantum's bargaining power change so much between 1997 and 2023? What alternatives did each side have after the mine closed? And what kind of agreement could survive the next change of government? The chapter answers these questions in turn.

## 15.1 How Do Firms Bargain to Enter a Foreign Market?

### What Each Side Brings

A firm wanting to invest abroad and a government wanting to attract investment both expect to gain, but they must agree on how to share the gains. The economics of foreign direct investment explains what each side brings. Dunning's (1988) eclectic paradigm holds that firms invest abroad when they possess **ownership advantages** (technology, brands, management skills or access to capital lacking in local firms), when a particular country offers **location advantages** (resources, markets, low costs or favourable policies) and when the firm gains more by **internalising** its advantages, owning and controlling the foreign operation, than by licensing or exporting.

Each element is a source of bargaining power. A firm whose ownership advantages are rare, such as a unique technology or the capital and expertise to develop a large mine, can demand better terms than one whose capabilities are widely available. A country whose location advantages are rare, such as a large market or a rich ore body, can demand more from investors than one competing with many similar locations. The author's research on the determinants of foreign direct investment in India and Poland shows how market size, labour costs, infrastructure and policy shape the choices of investors, and therefore the bargaining position of each host country (Kumar, 2020). His earlier comparative analysis of investment in the two countries, and his work on new trends in foreign investment and the sustainable growth of emerging economies, trace how these determinants have changed as emerging economies have become more attractive and more selective hosts (Kumar, 2014, 2016). Table 15.2 summarises the sources of bargaining power on each side of these negotiations.

### The Terms of Entry

The negotiation over entry typically covers taxes and royalties, ownership (whether a local partner or the state must hold a share), requirements for local content and employment, the transfer of technology, the repatriation of profits, environmental and social conditions, and the stability of the terms over time. Each of these issues can be traded against the others, and the integrative techniques of Chapter 8 apply. A host government valuing employment more than immediate revenue may accept lower taxes in exchange for a commitment to local hiring and training; an investor valuing the stability of its terms may accept a higher royalty in exchange for protection against future changes in law.

Governments increasingly negotiate entry not only over economics but over security. When a foreign investor seeks to buy a company in a sensitive sector, approval may be conditional on commitments that go far beyond tax and employment. The acquisition of US Steel by Nippon Steel illustrates this. After President

**Table 15.2**

*Sources of bargaining power in negotiations over foreign investment*

| Source of power | Investor | Host government |
|---|---|---|
| Alternatives | Other countries in which it could invest | Other investors who could undertake the project |
| Unique assets | Technology, brands, capital, management, access to export markets | Natural resources, market access, location, skilled labour |
| Control over approval | Can decline to invest | Grants licences, permits, tax treatment and land |
| Time | Can wait for better terms if the project is not urgent | Can wait if the resource will keep; may face pressure for jobs and revenue |
| Information | Knows the project's costs and expected profits | Knows the political and regulatory environment |
| Allies | Home government, lenders, other investors | Domestic constituencies, other governments, international institutions |

*Note.* Author, based on Vernon (1971), Dunning (1988) and Ramamurti (2001).

Biden blocked the deal in January 2025 on grounds of national security (*Order Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation*, 2025), a new review led to its approval in June 2025, subject to a national security agreement. Nippon Steel committed to make about US$11 billion of new investments in US Steel by 2028, to keep the company's name and its headquarters in Pittsburgh, and to ensure that a majority of its board and key executives were American citizens. The United States government received a "golden share", which allows it to appoint an independent director and whose consent is required for decisions such as changing the company's name or headquarters or moving production or jobs out of the United States (Nippon Steel Corporation & United States Steel Corporation, 2025). Entry was negotiated with the state as much as with the target's shareholders.

### Triangular Diplomacy

Stopford and Strange (1991) described international business as a system of **triangular diplomacy**: firms negotiate with firms, governments with governments and, increasingly, firms with governments. Each set of negotiations affects the others. A government's trade agreement with another country changes the location advantages over which firms bargain; a firm's investment can become a subject of negotiation between governments; and governments compete for investment by offering incentives which firms play against each other. Chapter

13 showed how the EU–Mercosur agreement changed the terms on which European firms could enter South American markets. The Spirit AeroSystems case in Chapter 14 showed governments and regulators on two continents shaping a transaction between firms.

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**KEY MOVE**

Before negotiating entry into a foreign market, map your alternatives and the host's: how many other locations could you choose, and how many other investors could the government choose? Negotiate the whole package, including stability, local content and security conditions, not only taxes.

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## 15.2 Why Does the Bargain Change after Investment?

### The Obsolescing Bargain

The single most important idea in negotiations between investors and host states is the **obsolescing bargain**, developed by Vernon (1971). Before an investment is made, the investor holds most of the power. The host country needs the investor's capital, technology and expertise, and the investor can take its money elsewhere. To attract the investment, the host offers generous terms. Once the investment is made, however, the balance shifts. The investor's capital is sunk in physical assets that cannot be moved. The host has learnt how the project works, its own officials and firms have gained skills, and the project's profitability, once uncertain, has become visible. The investor can no longer credibly threaten to walk away, and the host can demand a larger share of the profits. The bargain struck at the start becomes obsolete.

Figure 15.2 illustrates the shift.

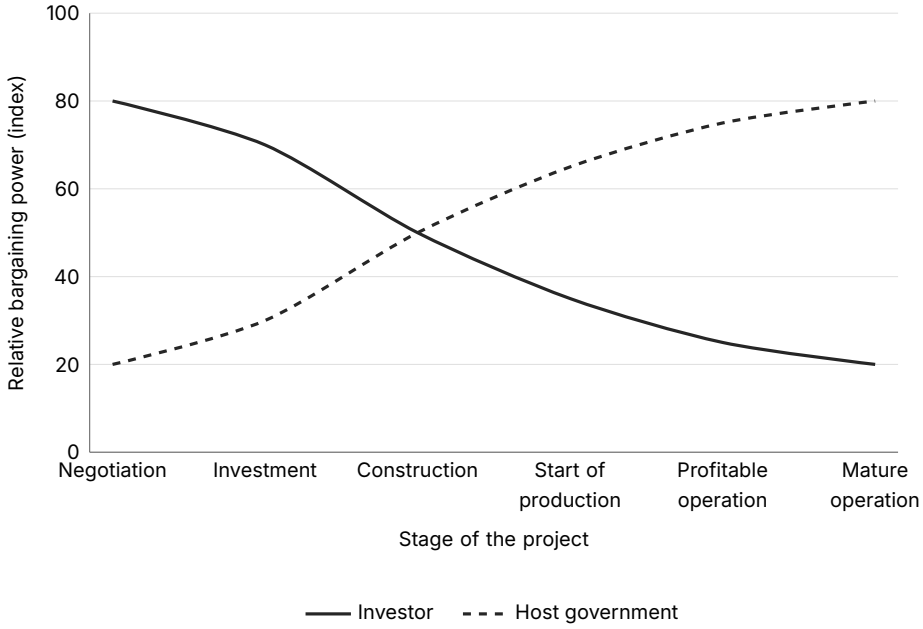
The logic is the same as that of the hold-up problem described in Chapter 2: a party making a specific investment, one worth much less outside the relationship, exposes itself to renegotiation by the other side. In a mine, the investment is about as specific as an investment can be. A copper deposit cannot be moved, and the plant built to exploit it has little value anywhere else.

### Evidence and Qualifications

The model fits the experience of natural-resource industries well. Waves of renegotiation and nationalisation of oil and mining concessions followed periods of high commodity prices in the 1970s and again in the 2000s, when governments in Latin America, Africa and Central Asia raised taxes and royalties, required larger state shares or took over projects outright. It fits manufacturing less well. Kobrin (1987) found that in manufacturing, where technology changes quickly

**Figure 15.2**

*The obsolescing bargain: relative bargaining power of an investor and a host government over the life of a project (illustrative)*




*Note.* Author's illustrative representation of the model of Vernon (1971). The values are indices, not measurements.

and the investor's continuing contribution matters, the bargain obsolesces more slowly or not at all: the host continues to need the investor's new technology, access to export markets and management. Ramamurti (2001) argued that the model also neglects the role of the investor's home government and of international institutions, which can protect investors through treaties and arbitration; the bargain should therefore be seen as a two-tier negotiation, between states as well as between the firm and its host.

The pace of obsolescence depends on several factors. Table 15.3 summarises them.

### Managing the Obsolescing Bargain

Investors cannot prevent the bargain from shifting, but they can manage the shift. Five strategies are common.

The first is **legal protection**: stability clauses in contracts freezing the fiscal terms, and investment treaties allowing investors to bring claims against host

**Table 15.3**

*Factors that speed or slow the obsolescing bargain*

| Factor | Speeds obsolescence | Slows obsolescence |
|---|---|---|
| Type of asset | Immobile, specific assets such as mines and pipelines | Mobile assets; activities that can be moved |
| Technology | Mature, widely available | Rapidly changing, controlled by the investor |
| Market access | Output sold on open world markets | Output depends on the investor's global network |
| Profitability | High and visible profits, rising prices | Modest or uncertain profits |
| Domestic politics | Nationalist sentiment, elections, protests | Broad domestic support, local partners who benefit |
| International protection | No treaty protection | Investment treaties, arbitration, home-government support |

*Note.* Author, based on Vernon (1971), Kobrin (1987) and Ramamurti (2001).

states before international tribunals. Chapter 5 examined investor–state arbitration and its limits. Legal protection raises the cost to the host of changing the terms, but it does not remove the incentive to do so, and an award of compensation is not the same as a working project.

The second is **sharing the gains with the host as they grow**. Contracts with progressive royalties or taxes that rise with prices or profits give the host a larger share when the project does well, reducing the pressure to renegotiate.

The third is **building local support**: employing and training local people, buying from local suppliers, investing in community infrastructure and taking local partners. An investor whose project is widely seen to benefit the country is harder to attack.

The fourth is **retaining a continuing contribution** needed by the host, such as technology, access to markets or the expansion of the project, so the host continues to depend on the investor.

The fifth is **legitimacy of the original bargain**. A contract negotiated in secret, with terms which later appear one-sided, is vulnerable to the charge of never having been fair. A contract negotiated transparently, approved through processes the public trusts and seen to give the country a fair share, is more durable.

The Deal File illustrates every element of the model. First Quantum's investment of several billion dollars was sunk in a single location. The mine's profitability became visible as production reached record levels. The original concession, with terms set in 1997, came to be seen as too favourable to the investor, and the renegotiated contract, although it raised the state's share considerably, was approved quickly and with little public consultation. Protesters and the Court

rejected it not only because of its terms but because of the way it had been negotiated.

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**KEY MOVE**

If you invest in immobile assets abroad, assume that the host will seek to renegotiate once the investment succeeds. Build in progressive sharing of gains, local support and a continuing contribution, and make sure the original bargain is seen to be fair and legitimate.

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## 15.3 How Do Trade Agreements, Sanctions and Geopolitics Shift Power?

### Trade Agreements and the Rules of the Game

Firms bargain within rules negotiated by governments. Trade agreements change the location advantages of countries by reducing tariffs and other barriers, and they change the legal protection available to investors through chapters on investment, services and intellectual property. A firm deciding where to invest, or negotiating with a supplier abroad, must consider not only current tariffs but the agreements which will change them. The EU–Mercosur agreement in Chapter 13 and the tariff escalation between the United States and China in Chapter 12 showed how quickly such rules can change.

Rules made by governments can also be the subject of disputes between them, in which firms' interests are at stake. The case of Indonesia's nickel illustrates how a government can use trade policy to shift bargaining power from foreign buyers to domestic industry, and how weakly the international rules constrain it when the institutions that enforce them do not function.

### Sanctions, Export Controls and Weaponised Interdependence

Governments also shift bargaining power by restricting trade and investment for political reasons. Chapter 11 examined export controls on rare earths and semiconductors as instruments of leverage between the United States and China. Here the focus is on what such measures mean for firms negotiating across borders.

Farrell and Newman (2019) argued that global economic networks, such as payment systems, supply chains and communications infrastructure, are concentrated in a small number of hubs, and states with jurisdiction over those hubs can use them to coerce others. They called this **weaponised interdependence**. States can exploit a hub in two ways: by gathering information from the flows that pass through it, and by cutting others off from it. The power of the United States over

DEAL SNAPSHOT

**Indonesia's Ban on Nickel Ore Exports, 2020 to 2026**

Indonesia has the world's largest reserves of nickel, a metal used in stainless steel and in batteries for electric vehicles. For years it exported unprocessed ore, mainly to China. From 1 January 2020 it banned the export of nickel ore, requiring that it be processed in Indonesia. The policy forced foreign firms wanting Indonesian nickel to invest in smelters and processing plants in the country, and Chinese companies built a large industry there. The European Union, whose stainless steel producers relied on imported ore, challenged the ban at the World Trade Organization. On 30 November 2022 a WTO panel found that the ban and the domestic processing requirement were inconsistent with Indonesia's obligations under the General Agreement on Tariffs and Trade and were not justified by any available exception. On 8 December 2022 Indonesia appealed to the WTO's Appellate Body, which has been unable to hear appeals since 2019 because the United States has blocked the appointment of its members. The appeal "into the void" meant that the ruling could not become final. The EU estimated the direct harm to its interests at about €350 million a year and in 2023 consulted on possible countermeasures under its own enforcement regulation (European Commission, 2023b). Meanwhile Indonesia's output of mined nickel tripled between 2020 and 2024, giving it about 62 per cent of world production (Figure 15.3). The case shows how a resource-rich state can use control of a scarce input to oblige foreign investors to locate processing in its territory, and how the weakness of multilateral enforcement shifts power to the party willing to defy a ruling.

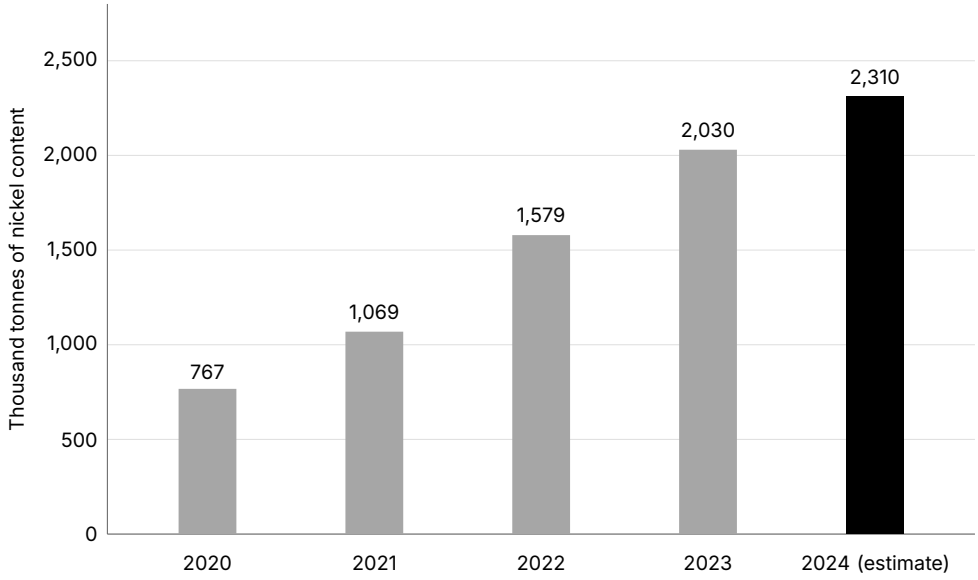
the international use of the dollar and of China over the processing of critical minerals are examples.

For firms, weaponised interdependence has three consequences for negotiation. First, the firm's alternatives depend on government decisions beyond its control: a supplier becoming subject to sanctions ceases to be an alternative overnight. Second, contracts must allocate the risk of such measures, through clauses on sanctions, force majeure and termination. Third, firms increasingly negotiate with governments for licences, exemptions and approvals, so that public authorities become parties to commercial negotiations.

Geoeconomic fragmentation also changes the bargaining position of middle powers. Countries such as India can gain leverage by balancing among competing blocs, but they also face the risk of being caught between them, a dilemma that the author has analysed in the context of India's role in BRICS (Kumar, 2026f). For Central European states, the war in Ukraine has reshaped economic and strategic calculations even in distant markets, as the author's analysis of Poland's economic relations with India and South Asia shows (Kumar, 2026d).

**Figure 15.3**

*Indonesia's mine production of nickel, 2020 to 2024 (thousand tonnes of nickel content)*




*Note.* Author, based on United States Geological Survey (2025), National Minerals Information Center country data for Indonesia. The 2024 figure is an estimate. Indonesia accounted for an estimated 62 per cent of world mine production in 2024.

### Investment Screening

Governments have also increased their scrutiny of inward investment. The United States has long reviewed foreign acquisitions on grounds of national security through the Committee on Foreign Investment in the United States. The European Union adopted a framework for screening foreign direct investment, applicable since October 2020, under which member states share information on investments which may affect security or public order; many member states, including Poland, have national screening systems. As the Nippon Steel case showed, screening turns many cross-border acquisitions into negotiations with the state, in which approval is traded for commitments on governance, employment, investment and security. Table 15.4 summarises how such state measures shift bargaining power in cross-border business.

**Table 15.4**

*How state measures shift bargaining power in cross-border business*

| Measure | How it works | Effect on bargaining |
|---|---|---|
| Trade agreement | Reduces tariffs and barriers; protects investment | Expands alternatives; strengthens investors' legal position |
| Export ban or restriction | Prohibits or limits exports of a good | Forces foreign buyers to invest locally or find other sources |
| Sanctions | Prohibit dealings with designated parties | Removes alternatives; raises compliance costs; may end contracts |
| Export controls | Require licences for sensitive goods or technology | Gives the state a veto over sales; firms must negotiate licences |
| Investment screening | Reviews foreign acquisitions for security risks | Turns approval into a negotiation over commitments |
| Investment treaty | Gives investors access to international arbitration | Raises the cost to host states of changing terms |

*Note.* Author, based on Farrell and Newman (2019) and the cases in this book.

**KEY MOVE**

Treat government action as part of your alternatives. Ask which of your suppliers, customers or partners could be removed by sanctions, export controls or screening, allocate those risks in your contracts and, where the state must approve, prepare to negotiate with it as a party.

## 15.4 Negotiating for Development: Resources, Partnerships and Debt

### Natural-Resource Contracts

Negotiations over natural resources are among the highest-stakes negotiations that developing countries undertake. A single mining or oil contract can determine a large share of a country's public revenue for decades. Yet the parties are often unequal. International mining and oil companies have specialist negotiators, lawyers and geologists, and detailed knowledge of the project's economics; host governments, particularly in smaller and poorer countries, may lack all of these. The asymmetry of information described in Chapter 2 is acute.

Several developments have tried to reduce this imbalance. Model contracts and fiscal regimes published by international organisations give governments benchmarks. Transparency initiatives require the publication of contracts and payments, so that citizens can judge whether a deal is fair. Independent advisers, sometimes funded by development agencies, help governments to negotiate.

And fiscal terms have increasingly been designed to respond to changing conditions. Table 15.5 compares common instruments.

**Table 15.5**

*Instruments for sharing resource revenues between investors and states*

| Instrument | How it works | Advantages for the state | Risks |
|---|---|---|---|
| Royalty on revenue | A percentage of the value of output | Simple; paid from the start of production | Does not rise with profits; can deter investment in marginal projects |
| Profit tax | Tax on the investor's profits | Rises with profitability | Depends on the investor's accounts; transfer pricing |
| Resource rent tax | Additional tax once returns exceed a threshold | Captures windfall gains | Complex to administer |
| State equity | The state holds shares in the project | Share in profits and information | Requires capital; conflicts of interest |
| Minimum payment | A guaranteed annual amount | Predictable revenue | May be too low in good years |
| Production sharing | The state receives a share of output | Common in oil; shares upside | Requires monitoring of production and costs |

A contract combining a royalty, which guarantees revenue from the start, with a profit-related element, which gives the state a larger share in good years, can reduce the pressure for renegotiation driving the obsolescing bargain. The 2023 Cobre Panamá contract contained both a minimum payment and a profit-based royalty, yet still failed. The lesson is that fiscal design alone does not guarantee durability; the process by which the agreement is reached, and its legitimacy among citizens, matter as much.

### Public–Private Partnerships

In a **public–private partnership** (PPP), a private firm finances, builds and often operates infrastructure such as a road, a hospital or a power plant, in return for payments from the state or from users over a long period. Engel et al. (2014) showed that the economics of PPPs is dominated by renegotiation. Because contracts last for decades and cannot anticipate every contingency, they are frequently renegotiated, and the renegotiations often favour the private partner, who may have bid low to win the contract in the expectation of recovering its costs later. The negotiations over a PPP therefore require attention to the same issues as resource contracts: the allocation of risks, mechanisms for adjustment and the transparency of the process.

DEAL SNAPSHOT

**Zambia's Debt Restructuring, 2020 to 2024**

Zambia, Africa's second-largest copper producer, defaulted on its foreign debt in late 2020, becoming the first African country to default during the pandemic. It applied for treatment under the G20's Common Framework, which brought together its official creditors, including China, its largest bilateral lender, and members of the Paris Club, in a single committee co-chaired by France and China. In October 2023, almost three years after the default, Zambia signed a memorandum of understanding with this committee on the treatment of about US$6 billion of debt, and the first bilateral agreement implementing it, with France, was signed only in December 2024 (Direction générale du Trésor, 2024). Agreement with private creditors took longer still. In February 2024 the official creditors confirmed their requirements for **comparability of treatment**, the principle under which each class of creditors must offer relief comparable to the others, and in March 2024 Zambia reached an agreement in principle with the steering committee of its Eurobond holders. The official creditors confirmed that the agreement met this test, and the exchange of the bonds was settled on 11 June 2024 (International Monetary Fund, 2024). The talks were also slowed by disputes over whether multilateral development banks and Chinese lenders should accept losses. The restructuring illustrates how a negotiation among many creditors, each with a veto over its own claims, can make agreement slow even when all agree that relief is necessary. Table 15.6 sets out the main components of the restructuring.

### Sovereign Debt Restructuring

When a country cannot pay its debts, it must negotiate with its creditors, and these negotiations have become more complex as the creditors have become more diverse. In the past, most lending to poor countries came from Western governments, organised in the Paris Club, and from multilateral institutions such as the World Bank and the International Monetary Fund. Today China is the largest bilateral lender to many developing countries, and private bondholders hold a large share of their debt. Each group of creditors wants the others to bear their fair share of the losses, and each fears that relief it grants will be used to pay others. Bulow and Rogoff (1989) showed that sovereign debt is sustained by the threat of sanctions and exclusion from markets rather than by legal enforcement, so the terms of any restructuring are themselves the outcome of bargaining.

To coordinate these creditors, the G20 created the **Common Framework** in 2020. Its first full test was Zambia.

**Table 15.6**

*The main components of Zambia's debt restructuring*

| Creditor group | Debt covered | Form of agreement |
|---|---|---|
| Official bilateral creditors (Official Creditor Committee, co-chaired by France and China) | About US$6 billion | Memorandum of understanding of October 2023, implemented through bilateral agreements from December 2024 |
| Eurobond holders | Zambia's outstanding Eurobonds | Agreement in principle with the bondholders' steering committee in March 2024; exchange of the bonds settled in June 2024 |

*Note.* Author, based on Direction générale du Trésor (2024) and International Monetary Fund (2024).

### Negotiating Capacity and Development

Across resources, PPPs and debt, a common theme is the capacity of developing countries to negotiate. A government lacking information, expertise and alternatives will agree terms it later regrets, setting the scene for the conflict and renegotiation predicted by the obsolescing bargain. The author's work on trade cooperation between India and Europe and on business approaches to economic development argues that negotiating capacity, including the ability of governments and firms to understand partners and their institutions, is itself a factor in development (Kumar, 2026b, 2026c). Building this capacity, through training, transparency and access to independent advice, can produce agreements both more favourable to host countries and more durable for investors.

**KEY MOVE**

In negotiations with developing-country governments, aim for agreements which will still look fair in ten years. Combine guaranteed and profit-related payments, publish the terms, support the other side's capacity to evaluate them and build mechanisms for adjustment rather than leaving change to crisis.

BACK TO THE DEAL FILE

## Reading the Cobre Panamá Negotiations

The concepts of this chapter explain the rise, fall and possible return of the Cobre Panamá agreement.

**The bargain obsolesced as the model predicts.** First Quantum's capital was sunk in an immobile asset. As the mine reached record production, its profitability became visible, and the terms set in 1997 came to look inadequate. Panama sought, and obtained, much better terms.

**Better terms were not enough.** The 2023 contract raised the state's share considerably, but it was negotiated with little public involvement and approved quickly. Citizens, unions and environmental groups, who were not at the table, rejected it, and the Supreme Court gave legal force to their objections. The failure was one of legitimacy, not only of economics.

**Both sides' alternatives deteriorated.** After the closure, Panama lost revenue, jobs and part of its GDP, and faced international arbitration claims. First Quantum lost its largest source of revenue and faced years of uncertain litigation. Each side's alternative to a negotiated agreement became worse, creating the conditions for talks.

**The new negotiation is shaped by the old one.** The commission's conditions (an operation tied to an orderly closure, no extension, no cost to the state and the end of arbitration) respond directly to the reasons why the 2023 contract failed. Any new agreement must persuade not only First Quantum and the government but the citizens who brought down the last one.

**International rules mattered but did not decide.** Treaty-based arbitration gave First Quantum leverage, which it partly gave up to open the way for talks. The case shows that legal protection can bring a host back to the table, but it cannot impose a durable agreement on an unwilling society.

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MA EXTENSION

### Hold-Up, Sunk Investment and Self-Enforcing Contracts

Suppose an investor must sink an investment $I = 6$ (in billions of dollars) to develop a mine yielding a surplus of $R = 2$ a year for many years, with a discount rate of $r = 10$ per cent; the present value of the surplus is then $R/r = 20$. Before the investment, the investor and the host agree that the host will receive a share $s$ of the annual surplus. After the investment, the host can renegotiate by threatening to expropriate, at a cost to itself (in lost reputation, future investment and arbitration risk) of $C$ per year. (a) What is the largest share the host could demand after investment without making expropriation attractive? (b) What is the lowest share the investor would accept before investing? (c) Show that if $C$ is small, no agreement may be self-enforcing, and the investment will not be made. (d) Discuss how investment treaties, progressive fiscal terms and local support change $C$ and the range of self-enforcing agreements, and relate your answer to Cobre Panamá.

ETHICS CHECK

The 2023 Cobre Panamá contract was approved by an elected legislature, but it was rejected by large parts of the population and struck down by the Supreme Court. First Quantum had invested billions of dollars on the basis of a concession granted by the state. Did Panama act fairly towards an investor that had relied on its promises? Did the investor act responsibly in seeking a contract that many citizens regarded as illegitimate? What obligations does a foreign investor have to ensure that the agreements it negotiates with governments are reached transparently and are accepted by the people they affect?

### Pillar Scorecard

**Table 15.7**

*Pillar Scorecard: Cobre Panamá, 2022 to 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | A mine contributing more than US$2.7 billion a year to GDP, a minimum payment of US$375 million a year and international arbitration claims were at stake |
| Power | Very high | The obsolescing bargain, the Supreme Court's ruling and the arbitration claims shifted power repeatedly between the investor and the state |
| Persuasion | High | Public protests overturned the 2023 contract; any new agreement must persuade citizens as well as negotiators |

### Your Move

*This is a constructed teaching case.*

You lead the international expansion of a Polish manufacturer of railway components based in Katowice. The firm plans to build its first factory outside Europe, in India, to supply the country's expanding railway network. Two Indian states are competing for the investment. One offers a lower price for land and a ten-year tax holiday but requires that 40 per cent of components be sourced locally within three years; the other offers faster approvals and a site close to a port but fewer financial incentives. Indian Railways, a state-owned enterprise, will be your main customer. The author's comparative research on foreign direct investment in India and Poland may help you to assess the location factors (Kumar, 2020).

1. Using Table 15.2, assess the bargaining power of your firm and of each state government.

2. How would you play the two states against each other without damaging your relationship with the one you eventually choose?
3. Your investment will be sunk in an immobile factory. Which of the strategies for managing the obsolescing bargain would you use, and how would you build them into the agreement?
4. What risks arising from trade agreements, sanctions or changes in Indian policy should your contracts address?
5. How would you ensure that the agreement is seen as fair by local communities and the state legislature?

## Conclusion

Negotiations across borders take place in the presence of the state. Firms seeking to enter foreign markets bargain with host governments, using their ownership advantages against the host's location advantages, and the terms of entry increasingly include commitments on security as well as on taxes and jobs. Once an investment is sunk, the bargain obsolesces: power shifts from the investor to the host, which may seek to renegotiate. Investors can manage this shift through legal protection, progressive sharing of gains, local support, a continuing contribution and, above all, the legitimacy of the original bargain. Governments also shift power through trade agreements, export bans, sanctions, export controls and investment screening, which change the alternatives available to firms. In negotiations for development, over resource contracts, public–private partnerships and sovereign debt, unequal capacity and many parties make agreement difficult and fragile. The Cobre Panamá case shows these forces at work: a contract giving the state much better terms collapsed for lack of public legitimacy, and the negotiation which followed had to address not only profit and power but persuasion. That is the subject of Part IV, which turns to communication, culture and ethics.

## Exercises

### A. Objective Questions

1. According to Dunning's eclectic paradigm, firms invest abroad when they have:
   a) only location advantages
   b) ownership, location and internalisation advantages
   c) a home government that subsidises them
   d) lower costs than local firms

2. The obsolescing bargain refers to:
   a) the shift in bargaining power from the investor to the host once the investment is sunk
   b) the decline in the value of a contract because of inflation
   c) the end of a contract on its expiry date
   d) the replacement of old technology

3. Kobrin (1987) found that the obsolescing bargain applies less strongly in:
   a) mining
   b) oil
   c) pipelines
   d) manufacturing with rapidly changing technology

4. On 28 November 2023 Panama's Supreme Court:
   a) approved the Cobre Panamá contract
   b) ordered First Quantum to pay compensation
   c) declared Law 406 unconstitutional
   d) referred the contract to arbitration

5. A WTO appeal "into the void" means:
   a) an appeal to a non-functioning Appellate Body, which prevents the panel report from becoming final
   b) an appeal that is withdrawn
   c) an appeal to the International Court of Justice
   d) an appeal that is decided in favour of the appellant

6. Weaponised interdependence, according to Farrell and Newman (2019), refers to:
   a) military alliances between trading partners
   b) tariffs on weapons
   c) the use by states of control over hubs in global networks to coerce others
   d) the dependence of firms on their suppliers

7. Under the principle of comparability of treatment in sovereign debt restructuring:
   a) all creditors receive the same interest rate
   b) each class of creditors must offer relief comparable to the others
   c) official creditors are always repaid first
   d) private creditors are excluded

8. In Table 15.5, the instrument that captures windfall gains once returns exceed a threshold is:
   a) a royalty on revenue
   b) state equity
   c) a minimum payment
   d) a resource rent tax

### B. Short-Answer Questions

1. Using Table 15.2, explain the sources of bargaining power of a foreign investor and of a host government.
2. Explain the obsolescing bargain and illustrate it with Figure 15.2 and the Cobre Panamá case.
3. Describe three strategies an investor can use to manage the obsolescing bargain.
4. How did Indonesia's ban on nickel ore exports shift bargaining power, and why could the WTO ruling not be enforced?
5. Explain how investment screening turns acquisitions into negotiations with the state, using the case of Nippon Steel and US Steel.
6. Compare a royalty, a profit tax and a resource rent tax as ways of sharing resource revenues.
7. Why did Zambia's debt restructuring take more than three years?

### C. Long-Answer Questions

1. Analyse the Cobre Panamá negotiations from 1997 to 2026 using the model of the obsolescing bargain. Why did a contract that improved the state's terms fail, and what would a durable agreement require?
2. "Legal protection cannot substitute for legitimacy." Discuss with reference to investment treaties, investor–state arbitration and the cases in this chapter.
3. How have sanctions, export controls and investment screening changed the negotiations of multinational firms? Use examples from this chapter and from Chapters 11 and 12.
4. Evaluate the G20 Common Framework as a forum for multi-party negotiation, using the case of Zambia and the concepts of Chapter 14.

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PART

# FOUR

# Persuasion: Communication, Culture and Ethics

Parts II and III showed how value is created and divided, and how power decides who obtains the larger share. Yet two parties with the same interests, the same alternatives and the same information can still fail to agree, or agree on terms that neither expected. The difference lies in how they communicate, how they perceive each other and the problem, and whether they trust each other enough to commit. This is the domain of **persuasion**, the third pillar of the book, and the subject of Part IV.

Persuasion is often treated as a soft skill, separate from the hard economics of bargaining. This book takes a different view. Behavioural economics has shown that the way information is presented changes the decisions people make: first numbers anchor final outcomes, losses weigh more heavily than equivalent gains, and people will sacrifice money to punish unfairness. These effects are not marginal. They move the division of surplus, determine whether a zone of possible agreement is recognised and decide whether a deal rational on paper is accepted in practice. Persuasion is where profit and power are turned into agreement.

Persuasion also has a context. People from different cultures define a good agreement in their own terms, communicate in distinct ways and build trust by separate routes. And persuasion has limits: the line between legitimate influence and deception, between hard bargaining and manipulation, is an ethical line, and crossing it destroys the reputation on which future agreements depend.

**Chapter 16** examines communication and the psychology of persuasion: what is said and what is shown, listening and questioning, anchoring, framing and cognitive bias, and the role of emotions, fairness and trust. Its Deal File examines

the meeting between the presidents of the United States and Ukraine in the Oval Office on 28 February 2025 and the minerals agreement signed two months later.

**Chapter 17** examines negotiation styles and difficult tactics: hard, soft and principled negotiation, how to match style to the situation, and how to recognise and neutralise tactics such as ultimatums, extreme demands and deliberate delay. The Deal File compares the responses of Japan and Canada to American tariffs in 2025.

**Chapter 18** turns to culture and etiquette: the frameworks used to compare cultures, negotiating practices across regions and the most costly mistakes made by international negotiators. The Deal File examines the collapse of the merger talks between Honda and Nissan in February 2025.

**Chapter 19** addresses ethics and reputation: deception and bluffing, corruption and compliance, and the value and risks of commitments on sustainability. The Deal File follows the negotiations between Boeing and the US Department of Justice over the 737 MAX crashes.

**Chapter 20** brings the three pillars together. It shows how to analyse a complete negotiation in terms of profit, power and persuasion, examines the growing role of digital technologies and artificial intelligence, and offers simulations for the classroom. The Deal File examines the choice between licensing and litigation facing news publishers and developers of artificial intelligence.

Three ideas run through Part IV. The first is that perception is part of the economics: what the parties believe about the size of the pie, the fairness of an offer and the intentions of the other side shapes the outcome as surely as the objective facts. The second is that communication has an audience beyond the table, including constituents, markets and the public, and what wins applause outside can make agreement inside harder. The third is that persuasion is sustainable only when it is honest. Influence that relies on deception may win a single negotiation, but it destroys the trust and reputation on which every later agreement depends.

CHAPTER
# 16

# Communication and the Psychology of Persuasion

https://doi.org/10.61030/373v-9f8h

## Introduction

Negotiation is communication. Every offer, concession, threat and promise must be expressed in words, gestures, documents or silence, and every one of them is interpreted by people whose perceptions are shaped by their expectations, emotions and mental shortcuts. The standard economic model of bargaining assumes that parties understand each other's messages, evaluate offers by their consequences and decide rationally. Behavioural economics and the psychology of negotiation have shown that these assumptions are often violated, and in predictable ways. The same offer can be accepted or rejected depending on how it is framed; the first number mentioned can pull the final outcome towards it; and an agreement beneficial to both sides can be lost because one side feels humiliated.

This chapter examines these forces. It proceeds in four steps. Section 16.1 examines what is said and what is shown: verbal and non-verbal communication, the channels through which negotiators communicate and the special problems of negotiating in public. Section 16.2 turns to listening, questioning and the first contacts that set the tone of a relationship. Section 16.3 examines the cognitive side of persuasion: anchoring, framing and the biases that lead negotiators astray. Section 16.4 examines its emotional and social side: emotions, fairness and trust.

The chapter builds on earlier parts of the book without repeating them. Chapter 7 introduced the first offer as an anchor and Chapter 13 discussed when to make it; this chapter explains the psychology that gives anchors their force. Chapter 12 introduced the ultimatum game and inequity aversion; this chapter examines how perceptions of fairness and emotions shape communication at the table. The Deal File examines a negotiation in which communication itself became the decisive event: the meeting in the Oval Office on 28 February 2025 at

which a planned agreement between the United States and Ukraine collapsed in front of the world's media, and the agreement the two governments nevertheless signed two months later.

DEAL FILE

### From the Oval Office to the Minerals Agreement

In early 2025 the new administration of President Donald Trump sought an agreement with Ukraine under which the United States would share in revenues from Ukraine's natural resources, including critical minerals, oil and gas. American officials presented the agreement as a way for the United States to benefit from its support for Ukraine and to give it an economic stake in the country's future. Ukrainian officials wanted the agreement to be linked to security for Ukraine and insisted that it should not treat past American aid as a debt to be repaid from Ukraine's resources. After several rounds of negotiation, the two sides agreed a framework text, and President Volodymyr Zelensky travelled to Washington to sign it.

On 28 February 2025 the two presidents met in the Oval Office, with Vice President JD Vance, in front of journalists and television cameras. Towards the end of the public part of the meeting, a discussion of the war with Russia and of diplomacy turned into an open argument. Vance called Zelensky's approach disrespectful; President Trump told him, "You don't have the cards", and both pressed him to show gratitude for American support. Zelensky replied, "I'm not playing cards", and argued that Russia had broken earlier agreements since 2014, so a ceasefire without security guarantees would not work (Trump, 2025a). The meeting ended without the planned signing of the agreement.

**Recovery and agreement.** The breakdown was followed within days by renewed contacts. On 4 March 2025, addressing a joint session of Congress, President Trump read from a letter in which President Zelensky wrote that Ukraine was "ready to come to the negotiating table as soon as possible" and ready to sign the agreement on minerals and security "at any time that is convenient for you" (Trump, 2025b). The two sides resumed negotiations, and on 30 April 2025 they signed an agreement establishing a United States–Ukraine Reconstruction Investment Fund (US Department of the Treasury, 2025). Ukraine's subsoil, territorial waters and resources remained its property, and Ukraine alone would decide the conditions and locations of extraction. Ukraine would contribute 50 per cent of future royalties from new licences, excluding existing projects and revenues already in its budget, while future American military assistance would count towards the US contribution. Crucially for Ukraine, the agreement contained no provisions on debt for past American aid. Ukraine's parliament ratified it on 8

**Table 16.1**

*The Oval Office meeting and the minerals agreement at a glance*

| | |
|---|---|
| **Parties** | The government of the United States, led by President Trump, with the Treasury as lead negotiator; the government of Ukraine, led by President Zelensky; Ukraine's parliament; European governments as interested third parties; domestic and international audiences |
| **At stake** | A share of future revenues from Ukraine's natural resources; the relationship between economic cooperation and American support for Ukraine; the credibility of both governments with their own publics and with Russia |
| **Timeline** | Negotiations on a framework in February 2025; Oval Office meeting on 28 February, without the planned signing; talks resumed in March; agreement signed on 30 April; ratified by Ukraine's parliament on 8 May with 338 votes; fund declared fully operational in December 2025, with first investments planned for 2026 |
| **Terms** | A reconstruction investment fund run jointly by the two governments; Ukraine retains ownership of its resources; Ukraine contributes 50 per cent of future royalties from new licences; future US military assistance counts towards the US contribution; no provisions on debt for past aid; initial capital of US$75 million from each side |

*Note.* Author, based on Trump (2025a), US Department of the Treasury (2025), Government of Ukraine (2025a, 2025b) and US International Development Finance Corporation (2025).

May 2025 with 338 votes (Government of Ukraine, 2025a). Each side committed US$75 million in seed capital, and in December 2025 the fund was declared fully operational, with first investment decisions targeted for 2026 (Government of Ukraine, 2025b; US International Development Finance Corporation, 2025).

The episode is unusual because the critical moment of a negotiation took place in public. It invites questions that are central to this chapter. Why did a meeting intended to celebrate an agreement turn into a confrontation? How did the presence of cameras and audiences change what each side said? What did each side's words and gestures communicate to the other, and to people watching at home and abroad? And how did the parties recover from a breakdown that seemed, at the time, to have ended the negotiation? The chapter takes no position on the wider political questions raised by the war. Its interest is in what the case shows about communication and persuasion.

## 16.1 What Is Said and What Is Shown?

### Models of Communication

How negotiators communicate depends in part on what they believe communication to be. The **transmission model**, developed in the Western tradition from Aristotle's analysis of speaker, speech, audience and purpose and formalised by Berlo (1960), treats communication as a process in which a **source** encodes an idea into a **message**, sends it through a **channel** subject to **noise**, and a **receiver** decodes it and responds; the part of the response reaching the source is **feedback**, and the whole exchange takes place in a **context** which shapes its meaning (Jandt, 2018). The model is useful for diagnosing where a negotiation message has gone wrong: in the encoding of an offer, in a channel that strips away tone, in noise created by distrust or in a decoding coloured by different expectations.

The transmission model also embodies cultural assumptions. Carey (1989, as cited in Jandt, 2018) contrasted it with a **ritual model**, in which communication is directed "not toward the extension of messages in space but toward the maintenance of society in time". Communication in cultures with a strong Confucian tradition, such as China, Korea and Japan, has been described in these terms: as a continuing process through which the parties develop and maintain a relationship. Yum (1988, as cited in Jandt, 2018) identified five effects of Confucianism on communication with direct relevance at the negotiating table: rules of interaction differing according to the status, intimacy and context of each relationship; complementary obligations and reciprocity as the basis of relationships; a sharp distinction between in-groups and out-groups; the use of intermediaries to establish relationships and avoid direct confrontation; and an overlap between personal and business relationships. Much of commercial life in China is lubricated by *guanxi*, networks of personal relationships built on trust and mutual obligation. A negotiator who sees communication only as the exchange of offers may therefore misread a counterpart for whom the early meetings, the meals and the third-party introductions are the substance of the negotiation rather than a preliminary to it. The author's research on cross-cultural communication in global business, from an Indian perspective, makes a similar point about the relational dimension of business communication in South Asia (Kumar, 2022).

### Verbal Communication

Negotiators communicate at several levels at once. Gibbons et al. (1992) distinguished the **logical** level of communication, the proposals, arguments and facts that are explicitly stated, from the **pragmatic** level, what is implied by the way they are stated. "We cannot accept this price" and "This price is difficult for us" make the same logical claim but imply very different degrees of flexibility.

Skilled negotiators attend to both levels, listening for the commitment, hesitation or opening implied in the other side's language.

Several features of language shape how messages are received:

- **Intensity.** Strong language ("absolutely unacceptable", "never") signals commitment but invites resistance and makes retreat costly.
- **Specificity.** Specific statements ("we need delivery by 15 March") are more credible than vague ones ("we need it soon"), but they also reveal information.
- **Polarity.** Statements framed positively ("we can agree if…") open possibilities; statements framed negatively ("we cannot agree unless…") close them, although the logical content may be the same.
- **Pronouns.** "You" statements ("you are being unreasonable") are heard as accusations; "I" or "we" statements ("we are concerned that…") describe one's own position without attacking the other side.

#### Non-Verbal Communication

Much of what negotiators communicate is not expressed in words. Posture, facial expression, eye contact, gesture, tone of voice, the use of space and the management of time all carry meaning. A frequently quoted claim holds that 93 per cent of communication is non-verbal. The claim misrepresents the experiments on which it is based, which concerned the communication of feelings and attitudes through single words in artificial conditions, not the communication of complex information. Non-verbal communication matters greatly, but chiefly for what it conveys about emotion, confidence, respect and sincerity, and its meaning depends heavily on culture, as Chapter 18 shows.

Two lessons follow. First, consistency between words and non-verbal signals strengthens a message, while inconsistency weakens it and invites the other side to trust the non-verbal signal. Second, negotiators should be cautious in interpreting non-verbal behaviour. Crossed arms may signal resistance, or the room may be cold; a lack of eye contact may signal evasion in one culture and respect in another. The best approach is to establish how a person behaves normally and to watch for changes.

International management texts group the non-verbal signals that matter most across cultures into four categories (Luthans & Doh, 2018). **Kinesics** is communication through movement and facial expression, including eye contact, posture and gesture. In a study cited by Luthans and Doh, students from seven countries who were shown pictures of twenty common American gestures gave a markedly different meaning, or no meaning at all, in more than half of their answers. **Proxemics** is the use of physical space. Americans usually conduct business at a social

distance of roughly 1.2 to 2.4 metres, whereas many negotiators from the Middle East and Latin America stand closer, so that one side keeps stepping back while the other tries to close the gap, and each misreads the other. Offices send similar signals: in the United States a large private office marks rank, while a Japanese manager who stays shut away from the team may be seen as distrustful. **Chronemics** is the use of time, which Chapter 18 discusses as the contrast between monochronic and polychronic cultures. **Chromatics** is the use of colour. Black is the colour of mourning in much of the West and white in parts of India, and in Hong Kong red stands for happiness and luck and is the colour of traditional bridal dresses. Each category reaches the negotiating table, from the seating plan and the length of meetings to the colours of a presentation and the wrapping of a gift.

### Channels

Negotiations are conducted face to face, by video, by telephone, by email and by messaging, and the channel shapes the communication. Face-to-face communication carries the richest information and makes it easiest to build rapport, but it also exposes negotiators to pressure and emotion. Written communication allows time for reflection and creates a record, but it strips away tone and makes misunderstandings more likely; messages that seem neutral to the writer can seem curt or hostile to the reader. Research on email negotiation has found that the lack of personal contact makes misunderstanding and impasse more likely, while deliberate steps to build rapport reduce the risk: in one experiment, negotiators who had a brief, purely social telephone conversation before negotiating by email reached impasse less often than those who did not (Morris et al., 2002). The author's research on the rise of social media notes how rapidly public messages now spread and how difficult they are to retract, a point of growing importance for negotiators whose words are reported in real time (Kumar, 2021).

### Negotiating in Public

Most negotiations take place in private, and for good reason. Privacy allows negotiators to explore options, make provisional concessions and save face when they retreat. When a negotiation is conducted in public, each statement is addressed to two audiences: the other side and the onlookers, including each negotiator's own constituents. Chapter 4 described this as a two-level game. The presence of an audience changes behaviour in predictable ways. Research has found that negotiators who are observed by their constituents bargain harder, concede less and are more concerned to appear strong, because they are judged not only on the outcome but on how they behaved (Pruitt & Carnevale, 1993).

The Deal File shows these effects with unusual clarity. A meeting designed for the cameras was intended to display agreement. When disagreement surfaced,

each participant was speaking to audiences at home as much as to each other, and neither could easily concede in public without appearing weak. Commentators on each side read the same exchange in sharply different ways, as a justified defence of national interests or as a humiliation of an ally. From the point of view of negotiation, the essential lesson is that public settings raise the cost of retreat for everyone. Difficult issues are best resolved in private, and public events are best reserved for agreements already reached. Table 16.2 compares private and public negotiation.

**Table 16.2**

*Private and public negotiation compared*

| Feature | Private negotiation | Public negotiation |
|---|---|---|
| Audience | The other side | The other side, constituents, media, third parties |
| Main concern of negotiators | The outcome | The outcome and how one appears |
| Concessions | Easier to make and retract | Costly; seen as weakness |
| Exploration of options | Easy | Difficult; every idea may be reported as a position |
| Risk of escalation | Lower | Higher, as statements are made for the audience |
| Best use | Developing and agreeing terms | Announcing and legitimising agreed terms; building public pressure |

*Note.* Author, based on Pruitt and Carnevale (1993).

**KEY MOVE**

Match your words, tone and gestures, and choose the channel to suit the task: private and face to face for difficult issues, public only for what has already been agreed. When others are watching, remember that every statement is made to two audiences.

## 16.2 How Do Listening, Questions and First Contacts Shape a Deal?

### Active Listening

Negotiators often think of communication as speaking: presenting proposals, making arguments, rebutting objections. Yet the most valuable information in a negotiation usually comes from the other side, and it is obtained by listening. **Active listening** means attending fully to what the other person says, checking understanding and showing that one has understood. Its main techniques are:

- **Paraphrasing**: restating the other side's point in one's own words ("So your main concern is the delivery schedule, not the price").
- **Summarising**: drawing together several points to confirm understanding and move the discussion forward.
- **Labelling emotions**: naming the feeling one perceives ("It sounds as if you feel the last offer did not take your costs into account").
- **Silence**: allowing a pause after the other side has spoken, which often prompts further information.

Active listening serves both creating and claiming value. It reveals interests and priorities, which make integrative trades possible, as Chapter 8 showed. It also reveals information about the other side's alternatives and constraints. And it changes the emotional climate: people who feel understood are more willing to listen in return and less likely to entrench. Listening does not mean agreeing. Summarising the other side's position accurately is fully compatible with rejecting it.

### Questions

Questions are the negotiator's main tool for gathering information. Table 16.3 summarises the main types.

Effective negotiators ask many questions, particularly open and diagnostic ones, and give the other side time to answer. They also plan which questions to ask and which to avoid. A question that the other side cannot answer without revealing its limit will probably be met with evasion; a question about interests is more likely to be answered honestly. Negotiators should also prepare for the questions they will be asked, deciding in advance what they will reveal, what they will decline to answer and how they will decline without lying, a matter examined in Chapter 19.

**Table 16.3**

*Types of question in negotiation*

| Type | Example | Use | Risk |
|---|---|---|---|
| Open | "What matters most to you in this contract?" | Discover interests and priorities | Can produce vague answers |
| Closed | "Can you deliver by March?" | Confirm specific facts | Limits information; can feel like interrogation |
| Probing | "Why is that date important?" | Explore the reasons behind positions | Can seem intrusive if overused |
| Hypothetical | "What if we extended the contract to three years?" | Test options without commitment | May be read as an offer |
| Diagnostic | "How would you evaluate a package that included…?" | Learn how the other side values trade-offs | Requires trust |
| Leading | "You would agree that our quality is higher?" | Steer towards a conclusion | Provokes resistance; damages trust |

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

### First Contacts

The opening minutes of a relationship shape the impressions on which much later behaviour depends. People form judgements of competence and trustworthiness from very brief exposure, and those judgements colour how later information is interpreted. First contacts therefore deserve preparation. The elements that matter include:

- **Appearance and dress**, which signal respect for the occasion and the counterpart, and whose standards differ between industries and cultures.
- **Greetings and gestures**, such as the handshake, the bow or the exchange of business cards, whose forms vary by culture.
- **Language and forms of address**, including the use of titles and first names.
- **Small talk**, which builds rapport and allows each side to learn about the other before substantive issues arise.
- **Punctuality and the management of time**, which signal respect or its absence.
- **Courtesy and hospitality**, including the arrangement of the room, refreshments and the seating of the delegations.

DEAL SNAPSHOT

**Delta Air Lines and CrowdStrike after the Global IT Outage, 2024**

On 19 July 2024 a faulty software update issued by CrowdStrike, a cybersecurity company, affected an estimated 8.5 million devices running Microsoft Windows (Microsoft, 2024). Airlines, banks and hospitals around the world were disrupted. Most airlines recovered within a few days, but Delta Air Lines suffered about 7,000 flight cancellations over five days. Rather than negotiating privately, Delta announced in a filing to the US Securities and Exchange Commission that it was pursuing legal claims against CrowdStrike and Microsoft to recover damages of at least US$500 million, and its chief executive called the disruption "unacceptable" (Delta Air Lines, 2024). The public positioning turned a commercial dispute over the allocation of losses into a contest of reputations, in which each side's statements were addressed to customers and investors as much as to the other side, and in which concessions became harder for both.

The author's study of communication in international business in Buenos Aires found that attention to such details of personal contact, and to the expectations of local partners, shaped the success of foreign business relationships (Kumar, 2023). Chapter 18 examines these differences across cultures in detail.

### Rapport and Repair

Rapport, the sense of mutual understanding and ease between negotiators, makes it easier to exchange information and to recover from mistakes. When communication breaks down, as it did in the Oval Office, rapport must be repaired. Repair usually requires three steps: acknowledging that something went wrong, without necessarily accepting all the blame; re-establishing contact through private channels; and reframing the negotiation around the interests which brought the parties together. In the Deal File, contacts between officials resumed within days of the meeting, and the agreement eventually signed reflected Ukraine's central concern, that past aid not be treated as debt, alongside the American interest in a share of future revenues. The breakdown was public; the repair was largely private.

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KEY MOVE

Listen more than you speak. Ask open and diagnostic questions, paraphrase and summarise to show understanding, and prepare the first minutes of every relationship. When communication breaks down, repair it privately and reframe the talks around shared interests.

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## 16.3 Why Does the First Number Matter? Anchoring, Framing and Bias

### Perception: Selection, Organisation and Interpretation

Every judgement a negotiator makes rests on perception, the process by which people make sense of the information reaching them. Perception proceeds in three steps. In **selection**, people attend to some stimuli and ignore others; in a well-known experiment, about half of the observers who were asked to count passes in a basketball game failed to notice a person in a gorilla costume walking through the scene (Simons & Chabris, 1999, as cited in Jandt, 2018). In **organisation**, people group what they select into patterns and categories. In **interpretation**, they attach meaning to what they have organised. Culture influences each step: what people notice, how they group objects and events, and what they take them to mean are all partly learned (Jandt, 2018). In negotiation, two parties can therefore observe the same offer, gesture or silence and perceive quite different things. The biases discussed in the rest of this section can be understood as systematic patterns in these three steps.

### Two Systems of Thinking

Kahneman (2011) distinguished two modes of thinking. **System 1** is fast, automatic and intuitive; it relies on mental shortcuts, or **heuristics**, that usually work well but sometimes produce systematic errors, or **biases**. **System 2** is slow, deliberate and analytical; it can correct the errors of System 1 but requires effort and attention, which are scarce under time pressure, fatigue and emotion. Negotiation, with its uncertainty, time pressure and emotional stakes, is fertile ground for the biases of System 1.

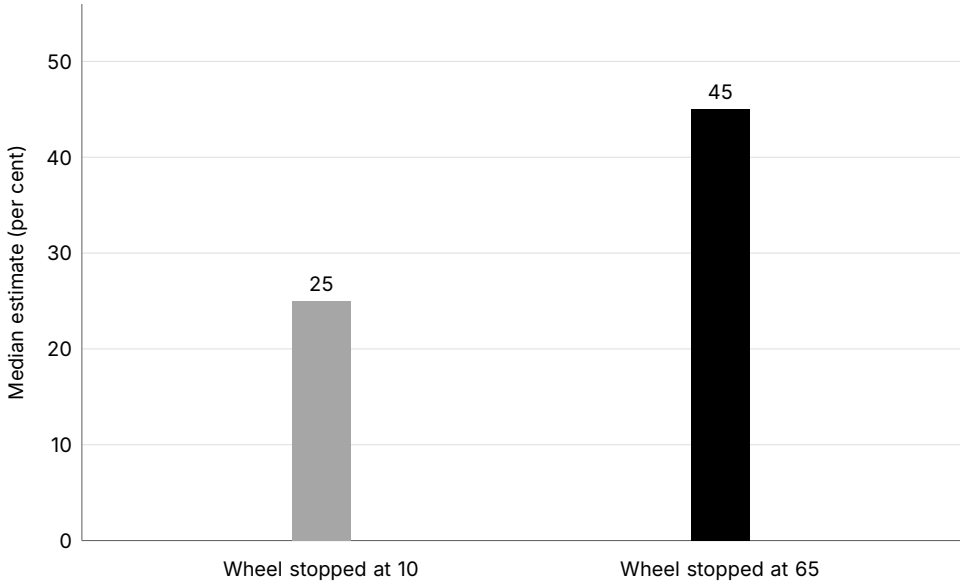
### Anchoring

Tversky and Kahneman (1974) asked participants to estimate the percentage of African countries in the United Nations after spinning a wheel of fortune that, unknown to them, was rigged to stop at either 10 or 65. Participants who saw 10 gave a median estimate of 25 per cent; those who saw 65 gave a median estimate of 45 per cent (Figure 16.1). A number that was obviously irrelevant pulled their judgements towards it. People **anchor** on an initial value and adjust from it, but they adjust too little.

Anchors work even on experts. Northcraft and Neale (1987) gave estate agents and students identical information about a house, varying only the listed asking price. The agents' appraisals of the property's value moved with the listing price, although most of them denied that the listing had influenced them. In negotiation, the first offer is the most obvious anchor, which is why Chapters 7 and 13 recommended ambitious but justifiable first offers. Anchors can also come from

**Figure 16.1**

*Anchoring: median estimates of the percentage of African countries in the United Nations after exposure to a random number*




*Note.* Author, based on Tversky and Kahneman (1974).

other sources: a previous price, a budget figure mentioned in passing, a published "list price" or a figure reported in the media.

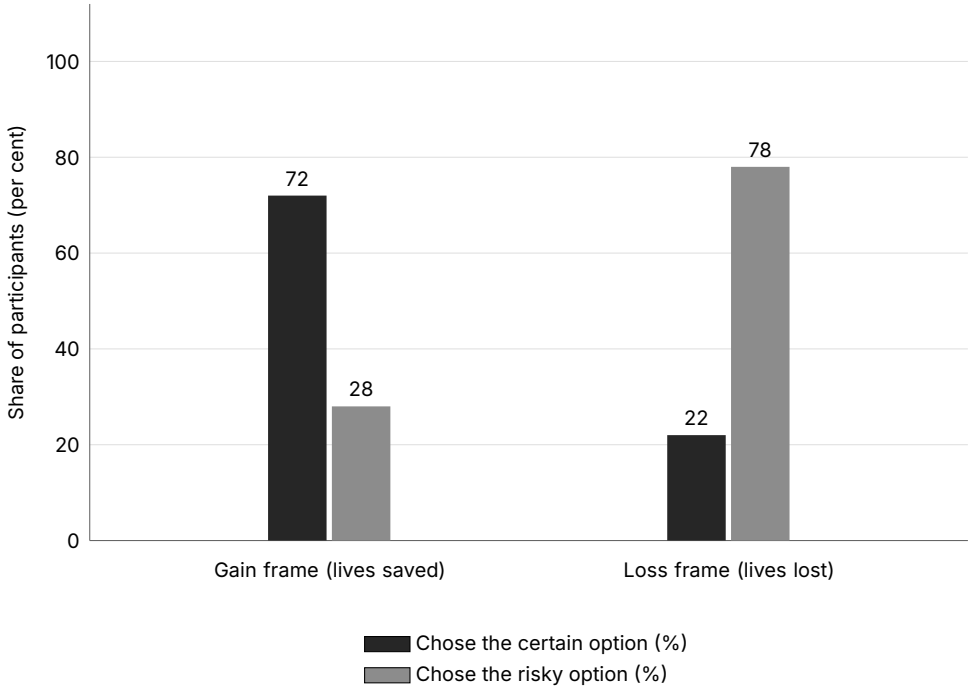
Negotiators can defend themselves against anchors in several ways. They can prepare their own estimate of value, target and limit before seeing the other side's offer, so that they have an alternative reference point. They can respond to an extreme anchor by refusing to treat it as a basis for discussion and making a well-justified counter-offer of their own. And they can shift their attention away from the anchor: Galinsky and Mussweiler (2001) found that negotiators who focused on the other side's alternatives or on their own ideal outcome were much less influenced by the other side's first offer.

### Framing and Loss Aversion

Prospect theory (Kahneman & Tversky, 1979) holds that people evaluate outcomes not in terms of final wealth but as gains or losses relative to a **reference point**, and losses loom larger than gains of the same size. A loss of €100 is felt more strongly than a gain of €100. As a result, people tend to be risk-averse when choosing among gains, preferring a sure gain to a gamble with the same expected

**Figure 16.2**

*Framing: the share of participants choosing the certain and the risky option when the same choice is framed as gains or as losses (per cent)*




*Note.* Author, based on Tversky and Kahneman (1981).

value, and risk-seeking when choosing among losses, preferring a gamble to a sure loss.

Because the reference point can be changed by how a choice is described, the same decision can be made differently depending on its **frame**. Tversky and Kahneman (1981) presented participants with a choice between two programmes to combat a disease expected to kill 600 people. When the options were described in terms of lives saved (200 people will be saved for certain, or a one-in-three chance that all 600 will be saved), 72 per cent chose the certain option. When the same options were described in terms of lives lost (400 people will die for certain, or a one-in-three chance that nobody will die), only 22 per cent chose the certain option (Figure 16.2).

In negotiation, framing has two applications. First, negotiators who frame outcomes as gains tend to be more cooperative and to reach agreement more often than those who frame them as losses, because a negotiator focused on losses is

more willing to risk impasse. Neale and Bazerman (1985) found that negotiators given a positive frame completed more transactions and achieved greater overall profit than those given a negative frame. Second, negotiators can frame their proposals to influence the other side. An offer described as a gain relative to the other side's alternative ("this offer gives you €200,000 more than the market rate") is more attractive than the same offer described as a loss relative to its aspiration ("this is €50,000 less than you asked for").

The minerals agreement offers an illustration. The early drafts were perceived in Kyiv as framed around the repayment of past aid, a loss to Ukraine. The final agreement was presented by both sides in terms of future gains: joint investment in reconstruction, revenues shared from new projects and an economic partnership. The substance changed, but so did the frame, and both mattered for its acceptance.

#### Other Biases

Anchoring and framing are the best-known biases in negotiation, but research has identified many others. Table 16.4 summarises those most relevant to negotiators.

The endowment effect deserves particular attention in business. Kahneman et al. (1990) found that participants given a coffee mug asked for roughly twice as much to sell it as other participants were willing to pay to buy an identical mug. In negotiations over the sale of a business, a property or a product line, owners typically value their assets more highly than buyers do, partly because of ownership itself. Recognising this effect helps both sides to understand why a gap that seems irrational exists, and to bridge it with evidence.

#### The Persuasion Toolkit

Cialdini (2021) identified principles of influence that work through the same mental shortcuts. People are more likely to agree with those who have given them something (**reciprocity**), with those they like (**liking**), with those who appear to have legitimate expertise (**authority**), with what others like them are doing (**social proof**), with what they have already committed to (**commitment and consistency**), with what is scarce (**scarcity**) and with those who share their identity (**unity**). Each principle has legitimate uses in negotiation, such as making a concession that invites reciprocation or citing expert evidence. Each can also be abused, through artificial deadlines, fake scarcity or false claims of authority. The difference between persuasion and manipulation is often whether the claims are true, a question examined in Chapter 19.

**Table 16.4**

*Cognitive biases in negotiation and how to counter them*

| Bias | Description | Effect in negotiation | Counter-measure |
|---|---|---|---|
| Fixed-pie perception | Assuming that the other side's interests are directly opposed to one's own | Misses integrative trades | Ask about priorities; look for issues valued differently (Thompson & Hastie, 1990) |
| Overconfidence | Overestimating one's chances, knowledge or alternatives | Excessive demands; impasse | Seek outside views; assess the alternative objectively |
| Endowment effect | Valuing what one owns more than what one would pay to acquire it | Sellers overprice; buyers underbid | Use market evidence; consider the other side's view of value |
| Escalation of commitment | Continuing a course of action because of past investment | Refusing to walk away; "winning" at any cost | Set limits in advance; review decisions afresh |
| Reactive devaluation | Valuing a proposal less because the other side offered it | Rejecting acceptable offers | Evaluate the proposal on its merits; use a mediator to present it (Ross & Stillinger, 1991) |
| Availability | Judging likelihood by how easily examples come to mind | Overreacting to vivid recent events | Use data rather than anecdote |
| Confirmation bias | Seeking information that supports existing beliefs | Misreading the other side | Look actively for disconfirming evidence |
| Winner's curse | Winning an auction or deal by overestimating value | Overpaying when the other side knows more | Ask why the other side accepted; adjust for information |

*Note.* Author, based on Neale and Bazerman (1991), Kahneman (2011) and the sources cited.

**KEY MOVE**

Prepare your own estimates before you hear the other side's numbers, so that you have your own anchor. Frame your proposals as gains for the other side, check your thinking against the biases in Table 16.4 and never rely on influence techniques whose claims are untrue.

DEAL SNAPSHOT

**The Oasis Reunion Tickets, 2024 to 2025**

When tickets for the reunion tour of the British band Oasis went on sale in August 2024, more than 900,000 tickets were sold through Ticketmaster. Many fans who had waited for hours in online queues found, when they reached the front, that standing tickets cost more than they had expected. Fans believed that prices had been raised by an algorithm in response to demand, and the outcry led the Competition and Markets Authority (CMA) to investigate. The CMA did not find evidence of such real-time pricing. It found instead that cheaper standing tickets had been released first and more expensive ones only once those had sold out, without this being made clear to fans in advance; certain "platinum" seated tickets had also been sold for nearly two and a half times the price of equivalent standard tickets, although some offered no extra benefits (Competition and Markets Authority, 2025a). In September 2025 Ticketmaster gave undertakings, without any admission of wrongdoing or liability, to give 24 hours' notice of tiered pricing, to show price ranges in queues, to avoid misleading labels and to report to the CMA for two years (Competition and Markets Authority, 2025b). The case shows the power of anchors and reference points: the price fans expected became their reference point, so a higher price was experienced as a loss and as unfair, even though some fans would have been willing to pay it. Figure 16.3 shows the gap for platinum tickets.

## 16.4 What Role Do Emotions, Fairness and Trust Play?

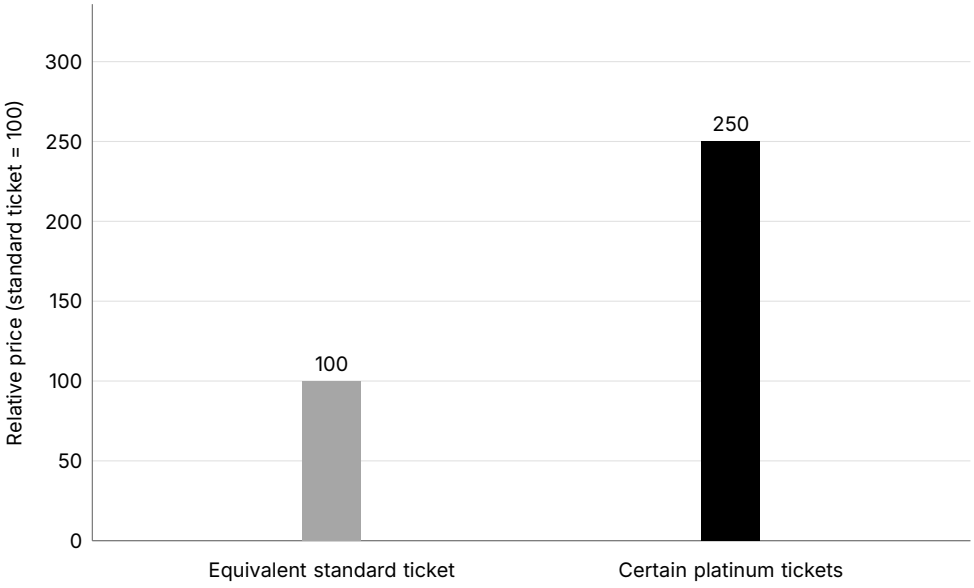
### Emotions as Information and as Strategy

Emotions are not merely obstacles to rational negotiation; they carry information and influence the other side. Van Kleef et al. (2004) found that negotiators facing an angry counterpart conceded more than those facing a happy one, because they inferred the angry party was close to its limit. Anger can therefore claim value. But its effects depend on the situation. Anger expressed by a party with weak alternatives, or perceived as inappropriate or insincere, provokes retaliation rather than concession; anger damages relationships and reduces the willingness of the other side to work on integrative solutions; and anger expressed in public, where neither side can easily back down, tends to escalate. Positive emotions, by contrast, tend to promote cooperation, creativity and the discovery of integrative agreements.

Fisher and Shapiro (2005) argued that negotiators should address the concerns generating emotions rather than trying to manage the emotions directly. They identified five **core concerns**: appreciation (feeling understood and valued), affiliation (feeling connected), autonomy (feeling free to decide), status (feeling one's standing is recognised) and role (feeling one's role is meaningful).

**Figure 16.3**

*Oasis reunion tour: price of certain platinum seated tickets relative to equivalent standard tickets, 2024 (standard ticket = 100)*




*Note.* Author, based on Competition and Markets Authority (2025a), which reported that certain platinum tickets were sold for "near 2.5 times" the price of equivalent standard tickets. Prices varied by venue and date.

When these concerns are met, positive emotions follow; when they are threatened, negative ones arise. The Oval Office meeting illustrates the point. Both sides' statements touched on core concerns: the American emphasis on gratitude concerned appreciation, while the public setting, in which each side felt its standing was being questioned in front of its own citizens, engaged status on both sides. When core concerns are threatened in public, the emotional stakes rise for everyone involved.

### Face

Closely related to status is the concept of **face**, a person's public image and self-respect. Negotiators will often reject an offer which would make them better off if accepting it would mean losing face, for example by appearing to give in under pressure. Effective negotiators therefore help the other side to save face: by allowing concessions to be presented as reciprocal, by attributing changes of position to new information rather than to pressure, and by leaving room for

the other side to claim success to its constituents. The importance of face varies across cultures, as Chapter 18 shows, but no negotiator is indifferent to it.

### Fairness

Chapter 12 showed that people reject offers they regard as unfair even at a cost to themselves, as the ultimatum game demonstrates. In practice, perceptions of fairness depend on three things. **Distributive fairness** concerns the outcome: whether the division of value is seen as fair according to some standard, such as equality, contribution or need. **Procedural fairness** concerns the process: whether each side had a voice, whether information was shared and whether rules were applied consistently. **Interactional fairness** concerns treatment: whether people were treated with respect and dignity. Research shows that procedural and interactional fairness can make outcomes acceptable even when they are not favourable, while their absence can make favourable outcomes unacceptable. The collapse of the Cobre Panamá contract in Chapter 15 and the Oasis ticket sale both show how perceptions of unfair process can provoke rejection independently of the substance.

### Trust

Trust is the willingness to be vulnerable to another party on the basis of positive expectations of its intentions or behaviour. Mayer et al. (1995) proposed that trust rests on three perceptions of the trusted party: its **ability** (competence to do what it promises), its **benevolence** (concern for the other's interests) and its **integrity** (adherence to principles the other accepts). Lewicki and Bunker (1996) argued that trust in business relationships develops in stages: from **calculus-based trust**, grounded in the costs of breaking promises, through **knowledge-based trust**, grounded in experience of the other's behaviour, to **identification-based trust**, grounded in shared values and goals.

Trust has economic value. It reduces the costs of monitoring and enforcing agreements, allows parties to share information which creates value and makes it possible to rely on informal understandings when formal contracts are incomplete, as Chapter 9 showed for relational contracts. When trust is low, parties must rely on structures substituting for it: contracts with detailed terms, guarantees, escrow arrangements, third-party monitoring and staged commitments, which allow each side to verify the other's performance before committing further. Table 16.5 summarises ways of building trust and of substituting for it.

The minerals agreement reflects a negotiation conducted with limited trust. Its structure substituted institutions for trust: a jointly governed fund with equal voting rights, contributions linked to future revenues and future assistance rather than to past obligations, and ratification by Ukraine's parliament. Each side could verify the other's contributions over time. The design allowed

**Table 16.5**

*Building and substituting for trust*

| When trust is | Approach | Examples |
|---|---|---|
| High | Rely on informal understandings; share information openly | Long-standing supplier relationships; relational contracts |
| Moderate | Build trust through small, verifiable steps | Pilot projects; phased agreements; regular reviews |
| Low | Substitute structure for trust | Detailed contracts; escrow; guarantees; third-party monitoring; joint governance |
| Damaged | Repair before negotiating substance | Acknowledgement; private contact; changes of personnel; demonstrable actions |

*Note.* Author, based on Lewicki and Bunker (1996) and Mayer et al. (1995).

an agreement to be reached between parties whose relationship had been publicly damaged only weeks earlier.

The author's research on cross-cultural communication argues that trust between international business partners is built through communication respecting each side's expectations and is sustained by consistent behaviour over time (Kumar, 2022, 2024a).

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**KEY MOVE**

Treat emotions as information and address the concerns behind them: appreciation, affiliation, autonomy, status and role. Protect the other side's face, pay attention to procedural and interactional fairness, and where trust is low, design structures that substitute for it.

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BACK TO THE DEAL FILE

## Reading the Oval Office Meeting and the Minerals Agreement

The concepts of this chapter help to explain both the breakdown and the eventual agreement.

**A public setting raised the cost of retreat.** The meeting was planned as a public signing, not a negotiation. When differences surfaced in front of cameras, each participant was speaking to domestic and international audiences, and none could easily concede without appearing weak.

**Core concerns were engaged on both sides.** Statements about gratitude, respect and having "cards" touched on appreciation and status. Whatever view one takes of the substance, the exchange threatened face on both sides, and emotions escalated.

**Framing shaped acceptability.** Early drafts perceived in Kyiv as repayment for past aid framed the agreement as a loss; the final agreement was framed as joint investment in future gains, with no debt for past aid.

**Repair was private.** After the breakdown, contacts resumed through officials and private channels. The subsequent agreement was negotiated largely out of public view and announced only once its terms were settled.

**Structure substituted for trust.** Equal governance of the fund, contributions linked to future revenues and assistance, and parliamentary ratification allowed parties with limited trust to commit.

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MA EXTENSION

### Prospect Theory and Bargaining

In prospect theory, a negotiator's value function is concave for gains and convex for losses, and steeper for losses than for gains, with a loss-aversion coefficient often estimated at about two. Suppose a seller's reference point is its asking price of €1 million and a buyer offers €900,000. (a) Show how the seller's evaluation of the offer differs if the reference point is instead its alternative, a sale to another buyer at €800,000. (b) Explain why a negotiator who frames outcomes as losses is more willing to risk impasse. (c) Discuss how a mediator might change the parties' reference points to make agreement more likely, with reference to the Deal File and to the experimental evidence of Neale and Bazerman (1985).

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ETHICS CHECK

Negotiators can use framing, anchoring and the principles of influence to change the other side's decisions without changing the substance of what they offer. Ticket sellers can set reference prices; negotiators can open with extreme anchors; negotiators can choose to raise difficult issues in public to put pressure on counterparts. When does the use of psychological insight become manipulation? Is it ethical to exploit a bias that you know the other side has? Does the answer change when the other side is a consumer rather than a professional negotiator?

### Pillar Scorecard

### Your Move

*This is a constructed teaching case.*

You are the head of sales at a Polish software company in Kraków negotiating the renewal of a three-year licence with a large German retailer. During the last

**Table 16.6**

*Pillar Scorecard: from the Oval Office to the minerals agreement, 2025*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Medium | A share of future resource revenues and joint investment were at stake, but the initial capital of the fund was modest |
| Power | High | Ukraine's dependence on American support and the United States' interest in an economic stake shaped the terms |
| Persuasion | Very high | A public breakdown of communication collapsed the signing; private repair, reframing and a trust-substituting structure produced the agreement |

contract a serious outage of your software disrupted the retailer's online sales for a day, and its chief information officer criticised your company publicly on a professional networking site. The retailer's procurement manager has opened the renewal talks by email with a demand for a 30 per cent price reduction, citing the outage and "market prices".

1. How would you respond to the opening demand, given what you know about anchoring? Draft the first paragraph of your reply.
2. Which channel would you use for the next stage of the talks, and why?
3. What questions would you ask the procurement manager and the chief information officer to understand their interests?
4. How would you address the emotions arising from the outage, using the core concerns of Fisher and Shapiro (2005)?
5. Design two contractual mechanisms that would substitute for the trust damaged by the outage.

## Conclusion

Communication is the medium through which every negotiation takes place, and psychology shapes how every message is sent and received. Negotiators communicate at logical and pragmatic levels, through words and non-verbal signals and through channels that shape the message, and when they negotiate in public, every statement is addressed to more than one audience. Listening and questioning are the main sources of the information which creates and claims value, and first contacts set impressions colouring what follows. Anchoring, framing and a range of cognitive biases lead negotiators to systematic errors, which they can reduce by preparation and deliberate analysis, and which skilled negotiators can use, within ethical limits, to persuade. Emotions carry

information and influence, fairness depends on process and treatment as well as outcome, and trust, which has real economic value, can be built in stages or substituted by structure. The meeting in the Oval Office and the subsequent minerals agreement show how communication can break a negotiation in public and how private repair, reframing and careful design can rebuild it. Chapter 17 turns to the styles negotiators adopt and to the difficult tactics they must be ready to meet.

## Exercises

### A. Objective Questions

1. The pragmatic level of communication refers to:
   a) the explicit content of proposals
   b) non-verbal behaviour only
   c) written communication only
   d) what is implied by the way something is said

2. Research on negotiators observed by their constituents suggests that they:
   a) concede more readily
   b) bargain harder and concede less
   c) ignore the audience
   d) always reach better agreements

3. In the experiment of Tversky and Kahneman (1974), participants who saw the number 65 gave a median estimate of:
   a) 10 per cent
   b) 25 per cent
   c) 45 per cent
   d) 65 per cent

4. According to prospect theory, people choosing among losses tend to be:
   a) risk-seeking
   b) risk-averse
   c) risk-neutral
   d) indifferent

5. Reactive devaluation means:
   a) valuing a proposal less because the other side offered it
   b) a fall in the value of a currency
   c) overpaying in an auction
   d) valuing what one owns more highly

6. Van Kleef et al. (2004) found that negotiators facing an angry counterpart:
   a) conceded less
   b) conceded more
   c) walked away
   d) became angry themselves in every case

7. In the model of Mayer et al. (1995), trust rests on perceptions of:
   a) price, quality and delivery
   b) power, profit and persuasion
   c) ability, benevolence and integrity
   d) culture, language and religion
8. The Competition and Markets Authority found that the Oasis ticket sale involved:
   a) algorithmic dynamic pricing
   b) fraudulent tickets
   c) no pricing problems
   d) two price tiers for standing tickets that were not made clear to fans in advance

### B. Short-Answer Questions

1. Explain how intensity, specificity, polarity and pronouns shape the way a negotiating message is received.
2. Why is the claim that 93 per cent of communication is non-verbal misleading? What can non-verbal communication reliably convey?
3. Compare negotiation by email with face-to-face negotiation. How can negotiators reduce the risks of email?
4. Describe four techniques of active listening and explain how each helps to create or claim value.
5. Explain anchoring using Figure 16.1, and describe three ways of defending against an anchor.
6. Explain framing using Figure 16.2, and show how a negotiator can frame an offer as a gain.
7. Distinguish distributive, procedural and interactional fairness, with an example of each from this chapter.

### C. Long-Answer Questions

1. Analyse the meeting in the Oval Office on 28 February 2025 and the minerals agreement signed on 30 April 2025 as a case study in communication. What explains the breakdown, and what made the later agreement possible?
2. "Public negotiation makes agreement harder." Discuss with reference to the Deal File, the dispute between Delta Air Lines and CrowdStrike and the concept of the two-level game.

3. Evaluate the contribution of behavioural economics to the analysis of negotiation. Which biases matter most for business negotiators, and how can they be countered?

4. "Trust is valuable, but structure is reliable." Discuss with reference to the models of trust in this chapter and to cases from this book.

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CHAPTER
# 17

# Negotiation Styles and Difficult Tactics

https://doi.org/10.61030/cpks-pbjn

## Introduction

Two negotiators facing the same counterpart, the same issues and the same alternatives can behave in strikingly different ways. One opens with an extreme demand, concedes little and treats every exchange as a contest; another opens modestly, shares information freely and puts the relationship first; a third tries to separate the people from the problem and to search for an agreement based on objective criteria. These are differences of **style**, the characteristic way in which a negotiator approaches the process. Style is not merely a matter of personality. It is a strategic choice that shapes how much value is created, how it is divided and what happens to the relationship afterwards.

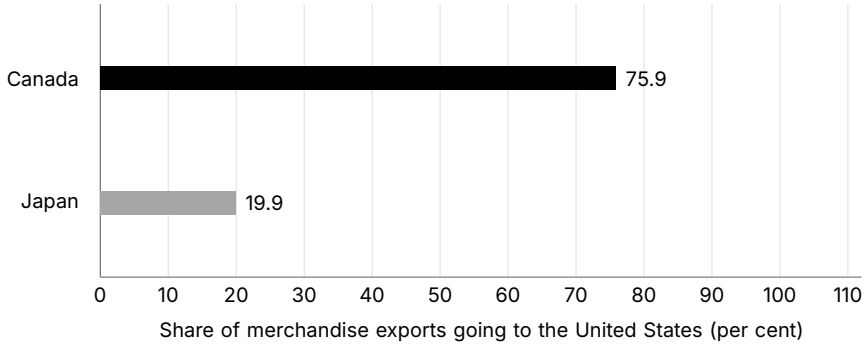
Negotiators must also deal with the style of the other side, which is not always cooperative. Some counterparts use **difficult tactics**: extreme demands, ultimatums, threats, deliberate delay, public pressure or personal attacks. These tactics can work, which is why they persist. A negotiator unable to recognise and respond to them will be exploited; one who responds by escalating may destroy an agreement beneficial to both sides.

This chapter proceeds in three steps. Section 17.1 compares hard, soft and principled negotiation and reviews the evidence on when each succeeds. Section 17.2 asks how style should be matched to the situation, the counterpart, the relationship and the balance of power. Section 17.3 examines difficult tactics and sets out ways of recognising and neutralising them without escalating the conflict.

The chapter builds on earlier parts of the book. Chapter 3 introduced the five conflict-handling styles of competing, collaborating, compromising, avoiding and accommodating; this chapter applies them to the negotiating table. Chapter 12 analysed threats, commitment and the game of chicken; this chapter asks how a negotiator should respond when such moves are used against them. Chapter

**Figure 17.1**

*Share of merchandise exports going to the United States, Canada and Japan, 2024 (per cent)*




*Note.* Author, based on Statistics Canada (2025) and Ministry of Finance Japan (2025). Japan's share is calculated from exports to the United States of ¥21.3 trillion out of total exports of ¥107.1 trillion.

13 listed common tactics of the middle phase of a negotiation; this chapter concentrates on the harder ones. Its Deal File compares two governments that faced the same pressure from the same counterpart in 2025, when the United States imposed tariffs on its trading partners, and responded in very different ways.

DEAL FILE

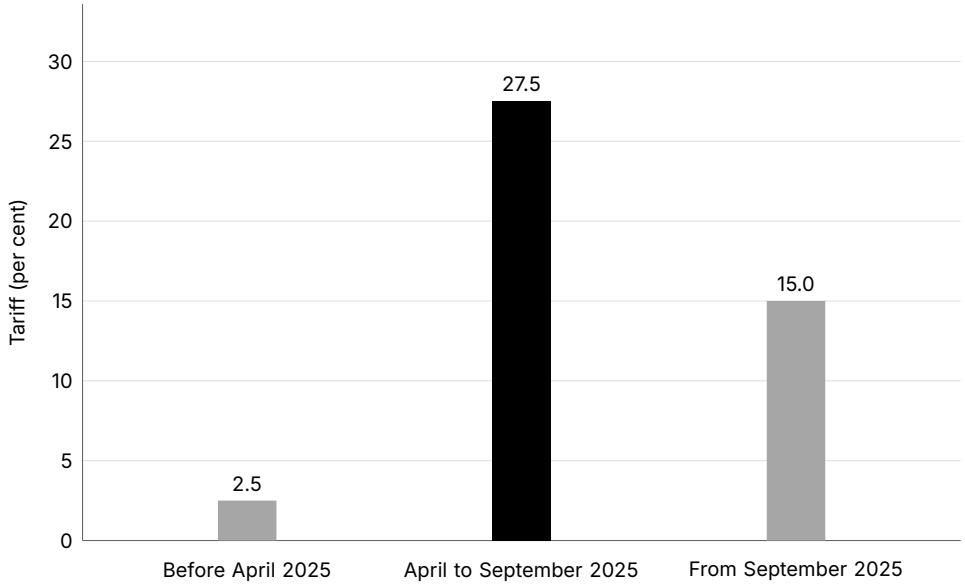
## Japan and Canada under the Same Tariff Pressure

In 2025 the United States raised tariffs on imports from almost all of its trading partners. Japan and Canada, two of its closest allies and largest trading partners, were among those affected. Both faced a 25 per cent tariff on cars and car parts under Section 232 of the Trade Expansion Act (for Canada, on the non-American content of vehicles that met the rules of their regional trade agreement) (Proclamation No. 10908, 2025), and both faced additional tariffs imposed under the International Emergency Economic Powers Act (IEEPA). Their exposure differed sharply. In 2024 the United States took 75.9 per cent of Canada's merchandise exports (Statistics Canada, 2025), but only 19.9 per cent of Japan's, of which about a third were cars and parts (Ministry of Finance Japan, 2025). Figure 17.1 shows the difference.

**Japan: negotiate, do not retaliate.** Japan chose not to impose counter-tariffs. Its chief negotiator, Ryosei Akazawa, made repeated visits to Washington, and on 22 July 2025 the two governments announced a framework agreement. It was implemented by an executive order signed on 4 September 2025 (Executive Order No. 14345, 2025). The United States would apply a baseline tariff of

**Figure 17.2**

*United States tariff on cars imported from Japan, 2024 to 2025 (per cent)*




*Note.* Author, based on The White House (2025a) and Executive Order No. 14345 (2025). The rate before April 2025 is the most-favoured-nation tariff of 2.5 per cent; from April 2025 a 25 per cent Section 232 tariff was added; from September 2025 a combined rate of 15 per cent applied under the framework agreement.

15 per cent to nearly all Japanese goods, including cars and car parts, which had faced 27.5 per cent since April. In return Japan committed US$550 billion for investment in projects in the United States selected by the American president, in sectors such as semiconductors, energy, critical minerals and shipbuilding, and agreed to buy American rice, agricultural products and energy (The White House, 2025a). Under the memorandum of understanding signed on 4 September, the cash flows from each investment would be shared equally until a deemed allocation amount had been reached, and then 90 per cent to the United States and 10 per cent to Japan; the investments were to be made by 19 January 2029 (Government of Japan & Government of the United States, 2025). Figure 17.2 shows the effect on the tariff faced by Japanese cars.

**Canada: retaliate, concede selectively, diversify.** Canada responded differently. When the United States imposed tariffs of 25 per cent on Canadian goods in March 2025, Canada imposed counter-tariffs of 25 per cent on C$30 billion of American goods, from orange juice and wine to appliances and motorcycles, and announced a further list worth C$125 billion (Department of Finance Canada,

2025a). Goods that qualified under the Canada–United States–Mexico Agreement (CUSMA) were later exempted from the American tariffs, which protected most of Canada's exports (Executive Order No. 14325, 2025). Under Mark Carney, who became prime minister in March 2025 and won a general election in April, Canada combined firmness with concessions. In June 2025 it rescinded its digital services tax, which the United States had opposed, to allow talks to resume (Department of Finance Canada, 2025b). From 1 August the United States raised its tariff on Canadian goods outside CUSMA from 25 to 35 per cent (Executive Order No. 14325, 2025). Canada then removed, from 1 September, the counter-tariffs it had imposed in March on most American goods, while keeping those on steel, aluminium and cars, sectors in which the American tariffs applied even to goods that met CUSMA's rules (Department of Finance Canada, n.d.).

**After the Supreme Court.** On 20 February 2026 the US Supreme Court held that IEEPA did not authorise the president to impose tariffs (*Learning Resources, Inc. v. Trump*, 2026). The ruling removed the legal basis of the IEEPA tariffs on Canada and of the reciprocal tariffs on other countries, but it did not affect the sectoral tariffs on cars, steel and aluminium imposed under Section 232. Japan's agreement survived. Its first batch of projects, announced on 18 February 2026, totalled about US$36 billion: gas-fired power generation to supply electricity to data centres for artificial intelligence (about US$33.3 billion), infrastructure for exporting American crude oil (about US$2.1 billion) and a plant making industrial synthetic diamonds (about US$0.6 billion) (Ministry of Economy, Trade and Industry, 2026). A second batch of up to about US$73 billion, including small modular nuclear reactors, followed in March 2026 (US Department of Commerce, 2026). Canada, by contrast, had not concluded a comparable agreement at the time of writing, and its trade with the United States continued to rest mainly on CUSMA.

**Questions to keep in mind.** Why did two allies facing the same counterpart choose such different styles? Which style produced the better outcome, and by what measure? How did each side respond to the difficult tactics of the other, including deadlines, threats and public pressure? And what does the comparison suggest about matching style to the situation? The chapter answers these questions in turn. It does not judge the merits of the tariffs themselves, which economists and governments continue to debate; its interest is in the negotiating choices of each side.

**Table 17.1**

*Japan and Canada under tariff pressure at a glance*

| | Japan | Canada |
|---|---|---|
| **Exposure** | 19.9 per cent of exports to the United States; cars about a third of these | 75.9 per cent of exports to the United States; deep integration under CUSMA |
| **Main style** | Accommodating and problem-solving: no retaliation, a large investment package | Competing and compromising: counter-tariffs, selective concessions, diversification |
| **Key moves** | Repeated ministerial visits; framework in July 2025; US$550 billion investment commitment | Counter-tariffs in March 2025; digital services tax rescinded in June 2025; most counter-tariffs removed in September 2025 |
| **Outcome in 2026** | Tariff of 15 per cent on most goods including cars; projects worth about US$36 billion in a first batch and up to about US$73 billion in a second | Most trade protected by CUSMA; sectoral tariffs on cars, steel and aluminium; no comprehensive agreement |

*Note.* Author, based on the sources cited in the Deal File.

## 17.1 Hard, Soft or Principled?

### Three Approaches

Fisher and Ury (1981) contrasted three ways of negotiating. In **hard** (positional) negotiation, the negotiator treats the other side as an adversary, demands concessions as a condition of the relationship, digs into a position, makes threats and tries to win a contest of will. In **soft** negotiation, the negotiator treats the other side as a friend, makes concessions to preserve the relationship, changes position easily, makes offers and tries to avoid a contest of will. Fisher and Ury argued that both approaches are flawed. Hard negotiation produces unwise agreements, damages relationships and often ends in deadlock; soft negotiation is exploited by hard negotiators. They proposed a third approach, **principled** negotiation, built on four elements: separate the people from the problem; focus on interests, not positions; invent options for mutual gain; and insist on using objective criteria. Table 17.2 compares the three approaches.

Principled negotiation corresponds closely to the integrative approach of Chapter 8 and to the collaborating style of Chapter 3. Its strength is that it treats the relationship and the substance separately, so a negotiator can be firm on interests while remaining respectful of people. Its critics argue that it underestimates the distributive side of negotiation. Once value has been created, it must still be divided, and objective criteria rarely determine a single answer. A negotiator

**Table 17.2**

*Hard, soft and principled negotiation compared*

| Feature | Hard | Soft | Principled |
|---|---|---|---|
| View of the other side | Adversary | Friend | Problem-solver |
| Goal | Victory | Agreement | A wise outcome reached efficiently and amicably |
| Concessions | Demanded as a condition of the relationship | Made to cultivate the relationship | Made on the merits, in exchange for value |
| Attitude to people and problem | Hard on both | Soft on both | Soft on the people, hard on the problem |
| Positions | Dig in | Change easily | Focus on interests, not positions |
| Information | Mislead about one's limit | Disclose one's limit | Avoid having a fixed limit; explore interests |
| Pressure | Apply it | Yield to it | Yield to principle, not pressure |

*Note.* Author, adapted from Fisher and Ury (1981).

who relies only on principled methods may be outmanoeuvred by one who combines them with skilled claiming of value, the tension that Chapter 8 called the negotiator's dilemma.

### What the Evidence Shows

Two bodies of research shed light on which style works best.

The first is experimental. A meta-analysis of studies of distributive negotiation by Hüffmeier et al. (2014) found that hard-line strategies, such as ambitious opening offers and small concessions, tended to produce better economic outcomes for the negotiators who used them than soft-line strategies did. The same strategies, however, tended to produce worse social and emotional outcomes: counterparts were less satisfied, less willing to negotiate again and less trusting. The trade-off is precisely the one that Fisher and Ury described. Toughness claims value in the short run at the cost of the relationship.

The second is field research among professional negotiators. Studies of lawyers in the United States, in which practitioners rated the effectiveness of the lawyers they had negotiated against, found most effective negotiators to be cooperative or problem-solving rather than adversarial; adversarial negotiators, particularly those regarded as unpleasant or unethical, were rated as markedly less effective (Schneider, 2002; Williams, 1983). Toughness sometimes pays, but

a reputation for being difficult carries costs which accumulate over repeated dealings. Table 17.3 summarises the evidence on negotiation styles.

**Table 17.3**

*Evidence on negotiation styles*

| Source of evidence | Main finding | Implication |
|---|---|---|
| Experiments on distributive negotiation (Hüffmeier et al., 2014) | Hard-line strategies claim more value but reduce satisfaction and trust | Toughness has a price in the relationship |
| Studies of professional lawyers (Schneider, 2002; Williams, 1983) | Problem-solving negotiators are rated more effective than adversarial ones | Reputation matters in repeated dealings |
| Repeated games (Axelrod, 1984) | Strategies that cooperate first, retaliate when exploited and forgive quickly perform well | Firmness and cooperation can be combined |
| Integrative bargaining research (Chapter 8) | Sharing information about priorities creates value | Soft on people, firm on interests |

*Note.* Author, based on the sources cited.

### Beyond the Three Styles

The three approaches are ideal types. Real negotiators mix them, and the most effective often combine a firm stance on substance with a cooperative manner. Shell (2006) emphasised that each negotiator has a personal bargaining style, shaped by temperament, culture and experience; effectiveness comes from understanding one's own tendencies and adapting them, rather than abandoning them for an approach which feels unnatural. A naturally accommodating negotiator can learn to prepare firm targets and to ask for more; a naturally competitive one can learn to listen and to share information about priorities.

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**KEY MOVE**

Be soft on the people and firm on the problem. Expect toughness to claim value but to cost goodwill, and decide in advance how much of each you are willing to trade.

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## 17.2 How Should Style Be Matched to the Situation?

### Relationship and Substance

Chapter 3 showed that no conflict-handling style suits every situation. In negotiation, the choice of style depends above all on two questions: how important is the substantive outcome, and how important is the relationship with the other side? Savage et al. (1989) used these two questions to recommend a strategy for each combination. Table 17.4 summarises their approach.

**Table 17.4**

*Choosing a negotiating strategy by the importance of outcome and relationship*

| | Relationship important | Relationship unimportant |
|---|---|---|
| **Outcome important** | Collaborate: seek integrative agreements that serve both sides' interests | Compete: claim value firmly, as in a one-off purchase |
| **Outcome unimportant** | Accommodate: concede on the issue to strengthen the relationship | Avoid: do not negotiate, or negotiate briefly and move on |

*Note.* Author, based on Savage et al. (1989).

The matrix is a starting point, not a rule. Most business negotiations involve both an important outcome and a relationship that matters, which points towards collaboration; but collaboration requires a counterpart willing to reciprocate.

### The Counterpart's Style

The style of the other side matters as much as one's own. Research on repeated interaction, reviewed in Chapter 12, shows that strategies which begin cooperatively, respond in kind to the other side's behaviour and return quickly to cooperation after a conflict perform well against a wide range of opponents (Axelrod, 1984). Applied to negotiation, this suggests three principles. First, open cooperatively unless there is clear evidence that the other side will exploit cooperation. Second, respond to competitive moves firmly enough to show that exploitation does not pay, but without escalating beyond what the move requires. Third, signal willingness to return to cooperation as soon as the other side does.

Matching the other side's style is not always wise. Responding to aggression with aggression can produce an escalating spiral, as Chapter 3 described. Responding to aggression with passivity invites further aggression. The aim is a response that is firm enough to change the other side's calculation and calm enough to keep the door open.

### Power, Dependence and Alternatives

Chapter 11 showed that bargaining power comes above all from alternatives. A negotiator with a strong alternative can afford a harder style, because the threat to walk away is credible; one with a weak alternative risks having its bluff called. Dependence also shapes style. A party depending heavily on the other may choose accommodation not out of weakness of character but out of a realistic assessment of what confrontation would cost.

The Deal File illustrates this logic, but with an important twist. On a simple reading of dependence, Canada, which sent three quarters of its exports to the United States, should have been the more accommodating party, and Japan, which sent a fifth, the more confrontational. The opposite happened. Several factors explain this. Canada's exports were largely protected by CUSMA, so that the tariffs actually applied affected a smaller share of its trade than its total dependence suggested. Canada's domestic politics, in which public opinion strongly supported a firm response, rewarded resistance. And Japan's strategy reflected its priorities: its car industry, the largest part of its exports to the United States, needed relief from the 27.5 per cent tariff, and its security alliance with the United States gave it a strong interest in avoiding confrontation. The comparison suggests that style depends on the whole structure of a negotiation, not on a single measure of power.

### Constituencies and Time Horizon

Two further factors shape the choice. The first is the negotiator's **constituency**. Chapter 4 described the two-level game in which negotiators bargain with the other side and with their own constituents at the same time. A style winning approval at home may make agreement abroad harder, and vice versa. Canada's counter-tariffs answered domestic pressure for a firm response, but they also narrowed the room for concessions that its government could offer. Japan's restraint required its government to accept domestic criticism that it had conceded too much.

The second is the **time horizon**. In a one-off transaction, a hard style may maximise value. In a continuing relationship, the costs of toughness accumulate, because each round of negotiation shapes the next, and a reputation for fair dealing becomes an asset, as Chapter 12 showed. Trade relations between allies are among the longest of all relationships, which is one reason why both Japan and Canada, despite their different styles, combined firmness with repeated signals of willingness to agree. Table 17.5 summarises the factors that should guide the choice of style.

**Table 17.5**

*Factors in choosing a negotiating style*

| Factor | Favours a harder style | Favours a softer or collaborative style |
|---|---|---|
| Importance of the relationship | Low; one-off deal | High; continuing relationship |
| Alternatives | Strong alternative | Weak alternative |
| Counterpart's behaviour | Exploits cooperation | Reciprocates cooperation |
| Constituency | Rewards firmness | Rewards agreement |
| Potential for joint gains | Little; fixed pie | Large; issues valued differently |
| Information | Other side reveals little | Both sides share priorities |
| Time horizon | Short | Long |

### Comparing Outcomes

Which country negotiated better? The answer depends on the measure. Japan secured a lower tariff on its most important export and early certainty for its car industry, at the cost of a very large investment commitment whose terms gave the United States considerable control over the choice of projects and a large share of their profits. Canada protected most of its trade through CUSMA and avoided committing to a comparable investment package, but faced continuing sectoral tariffs and uncertainty about the future of the trade agreement on which its economy depends. Each style traded certainty against cost in a different way, and the full balance will only be known years later. The comparison shows that style choices are bets on how the other side will respond and on how the relationship will evolve.

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**KEY MOVE**

Choose your style by analysing the whole situation: the importance of the outcome and of the relationship, your alternatives, your counterpart's behaviour, your constituency and your time horizon. Open cooperatively unless there is evidence you will be exploited, respond firmly but proportionately, and keep the way back to cooperation open.

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DEAL SNAPSHOT

**South Korea's Investment Pledge, 2025**

South Korea faced the same tariffs on its cars as Japan, and it too sought a tariff of 15 per cent in return for investment in the United States. Agreeing the details took months, and the outcome was settled at a summit in Gyeongju on 29 October 2025 and published in a joint fact sheet in November. The package had two parts: US$150 billion of Korean investment in the shipbuilding sector and a further US$200 billion of investment under a memorandum of understanding, of which Korea would not be required to provide more than US$20 billion in any calendar year. In return the United States would apply a tariff of 15 per cent to most Korean goods (The White House, 2025d). The annual cap limited the strain that so large a commitment could place on Korea's foreign-exchange reserves. Korea's approach combined acceptance of the overall framework with firmness on the details that mattered most to it, a pattern of being soft on the headline and hard on the terms.

## 17.3 How Should Difficult Tactics Be Handled?

### Why Difficult Tactics Work

Difficult tactics, sometimes called hardball tactics, are designed to pressure the other side into concessions it would not otherwise make. They work by exploiting the psychological tendencies described in Chapter 16: anchoring, loss aversion, the desire to avoid conflict and the discomfort of uncertainty. They also work by changing, or appearing to change, the other side's alternatives. A negotiator who recognises a tactic for what it is has already reduced its power, because the tactic depends largely on being taken at face value.

Chapter 13 described several common tactics of the middle phase of a negotiation, including bracketing, trial balloons, nibbling, the good cop and bad cop routine, and claims of limited authority. Table 17.6 sets out a further group of harder tactics, with their purpose and the main responses.

**Table 17.6**

*Difficult tactics and responses*

| Tactic | How it works | Response |
|---|---|---|
| Extreme opening demand | An outrageous first offer anchors the talks and makes later demands seem moderate | Do not counter-offer from the anchor; reject it explicitly and re-anchor with a justified offer of your own |
| Ultimatum (take it or leave it) | Presents an offer as final, leaving no room for negotiation | Test it: ignore the framing and discuss the substance; consider your alternative calmly |

| Tactic | How it works | Response |
|---|---|---|
| Threat | Warns of harm if demands are not met | Assess credibility and cost to the threatener; do not respond in kind immediately; name the threat and redirect to interests |
| Deliberate delay | Uses time to increase pressure, often near a deadline | Prepare your alternative; set your own deadlines; avoid negotiating against an artificial clock |
| Public pressure | Takes the negotiation to the media or the public to mobilise third parties | Keep communication professional; respond to the public on substance; seek private channels |
| Intimidation and personal attacks | Uses anger, insults or status to unsettle | Name the behaviour; take a break; refuse to negotiate under abuse |
| The bogey | Pretends that an issue of little importance matters greatly, in order to trade it later | Ask for reasons; test with diagnostic questions; compare with known interests |
| Salami tactics | Achieves a large goal through a series of small demands, each too small to resist | Look at the cumulative effect; agree the whole package before conceding parts |
| Exploding offer | An offer with a very short deadline prevents comparison with alternatives | Ask for more time; do not accept a deadline that prevents due diligence |
| Snow job | Overwhelms the other side with information, hiding what matters | Ask for summaries; use experts; focus on the key issues |

*Note.* Author, based on Lewicki et al. (2020) and Ury (1991).

### Threats, Commitments and Credibility

Schelling (1960) showed that threats and commitments are strategic moves working by changing the other side's expectations about one's future behaviour. A threat is effective only if it is credible, which usually requires either that carrying it out would not be too costly to the threatener, or that the threatener has committed itself so firmly that it cannot back down. A threat which is not believed invites a test; a threat carried out may harm both sides.

Responding to a threat therefore begins with an assessment of credibility. Would carrying it out harm the threatener as well? Has the threatener committed itself publicly? Has it carried out similar threats before? A negotiator who concludes that a threat is credible must decide whether the cost of the threatened harm exceeds the cost of the concession demanded. A negotiator who concludes that it is not credible can call the bluff, but must be prepared to be wrong.

Tariffs in 2025 illustrate the logic. Many threatened tariffs were imposed, raised, suspended or reduced as negotiations progressed, so that both sides had to assess repeatedly which threats would be carried out. Japan treated

the threats as credible and negotiated to reduce them. Canada treated them as credible but responded with threats and measures of its own, then reduced its counter-measures when it judged that doing so would advance negotiations. The Supreme Court ruling of February 2026 changed the credibility of a whole category of threats overnight, by removing the legal basis for tariffs imposed under emergency powers.

#### Ultimatums and Deadlines

An ultimatum attempts to end the negotiation by presenting an offer as final. It works if the other side believes no better offer will come and its own alternative is worse. It fails if the other side tests it and finds that the offer can be improved. Chapter 12 showed that people reject offers they regard as unfair even at a cost to themselves, so an apparently unfair ultimatum may be rejected even when accepting it would be rational in narrow terms.

Deadlines are related tactics. Real deadlines, such as the expiry of a contract or a date fixed by law, concentrate minds and often produce agreement. Artificial deadlines are used to create pressure and to prevent the other side from considering alternatives. The response is to distinguish real from artificial deadlines, to avoid making one's own position dependent on the other side's clock and to prepare one's alternative well before any deadline arrives. The repeated deadlines set for tariff negotiations in 2025, several of which were extended, show both the power and the fragility of deadline pressure.

#### Public Pressure

Taking a negotiation into the public arena is a tactic that mobilises third parties, such as voters, customers, investors or regulators, to put pressure on the other side. It can work, as Chapter 16 showed, but it raises the cost of retreat for both sides and can provoke escalation. Paramount's tender offer for Warner Bros. Discovery, described below, went over the heads of the board to the shareholders, and Delta's public announcement of its claims against CrowdStrike, described in Chapter 16, addressed investors as much as the other side. Both episodes show that public pressure is a tactic whose effects are hard to control.

#### Getting Past No

Ury (1991) proposed a five-step method for dealing with difficult counterparts, which he called **breakthrough negotiation**:

1. **Go to the balcony.** Do not react. Step back mentally, name the tactic to yourself, buy time and keep your eyes on your interests.
2. **Step to their side.** Defuse emotions by listening actively, acknowledging the other side's points and agreeing wherever you can.

DEAL SNAPSHOT

**The Battle for Warner Bros. Discovery, 2025 to 2026**

On 5 December 2025 Warner Bros. Discovery agreed to sell its studios and streaming business to Netflix, after separating its global networks division, for US$27.75 per share in cash and Netflix stock, an enterprise value of US$82.7 billion (Netflix, 2025). Three days later Paramount Skydance launched a hostile tender offer, going directly to shareholders with an all-cash bid of US$30 per share for the whole company. It amended the offer repeatedly, adding a personal guarantee from the billionaire Larry Ellison and, in February 2026, a payment to shareholders for each quarter of delay beyond 2026 (Paramount Skydance, 2026a). On 27 February 2026 Warner Bros. Discovery signed a merger agreement with Paramount at US$31 per share, an equity value of US$80.9 billion plus the assumption of its net debt. Paramount paid on Warner Bros. Discovery's behalf the US$2.8 billion termination fee owed to Netflix, agreed to a regulatory termination fee of US$7 billion if approval were refused and accepted a "ticking fee" for each day of delay after 30 September 2026 (Paramount Skydance, 2026b). The two companies later announced that the merger was expected to close on 6 October 2026 (Paramount Skydance & Warner Bros. Discovery, 2026). The case shows a sequence of difficult tactics in a commercial setting: a hostile offer bypassing the board, public letters to shareholders, repeated bids and fees designed to transfer risk. It also shows how the board used the competing bids to raise the price, and how the final terms shifted risk to the bidder.

3. **Reframe.** Treat the other side's position as a possible option and ask problem-solving questions: why, why not, what if.
4. **Build them a golden bridge.** Make it easy for them to say yes by involving them in designing the solution, satisfying their unmet interests and helping them save face.
5. **Use power to educate.** If they still resist, show them the consequences of not agreeing, by making your alternative clear, without threatening or humiliating them.

The method rests on the insight that difficult tactics are often a sign of fear, pressure from constituents or the habit of a hard style rather than of an irreversible commitment. Responding with understanding, while protecting one's own interests, changes the game from a contest of wills to a joint problem.

### Negotiation Jujitsu and Tricky Bargaining

The second edition of *Getting to Yes* added two chapters on what to do when the other side will not negotiate on the merits (Fisher et al., 1991). If the other side asserts its position, attacks one's ideas or attacks one personally, the natural reaction is to push back, which locks both sides into positional bargaining. Fisher and his co-authors recommended instead what they called **negotiation jujitsu**: like a martial artist, the negotiator steps aside and turns the other side's force against the problem. A position is treated neither as accepted nor as rejected but as one possible option, whose underlying interests and principles can be explored. Criticism is invited rather than resisted, by asking what is wrong with a proposal or what the other side would do in one's place. A personal attack is recast as an attack on the problem. The two main tools are questions, which offer no target to strike at, and silence, which often prompts the other side to fill the pause with an answer or a new suggestion.

For **tricky bargaining**, tactics designed to be used by one side only, the authors proposed three steps: recognise the tactic, raise it explicitly and then negotiate over its legitimacy, applying the same principles to the rules of the game as to the substance (Fisher et al., 1991). The negotiator questions the tactic rather than the other side's integrity, asks what interests lie behind it, suggests other procedures and tests the tactic against the principle of reciprocity. If the other side persists, the negotiator falls back on the best alternative. Fisher and his co-authors grouped the tactics into three families: **deliberate deception**, such as false facts, ambiguous authority and dubious intentions; **psychological warfare**, such as stressful surroundings, personal attacks and the good cop and bad cop routine; and **positional pressure**, such as refusing to negotiate, extreme demands, escalating demands and take-it-or-leave-it offers. Many of the tactics in Table 17.6 fall into these families, and naming the family helps a negotiator choose a response.

### When to Walk Away

Not every negotiation should end in agreement. If the other side persists with tactics that make a fair agreement impossible, or if the best available agreement is worse than one's alternative, walking away is the rational choice. Walking away is also a signal: it shows that one's alternative is real and one will not be exploited. It should be done calmly and, where possible, with a clear statement of the conditions under which talks could resume. Tapestry's decision in November 2024 to abandon its acquisition of Capri rather than fight a long legal battle, described in Chapter 9, shows how walking away can be a considered choice rather than a failure.

**KEY MOVE**

Name the tactic to yourself, then decide on your response rather than reacting. Test ultimatums and threats against your alternative, refuse to negotiate against artificial deadlines or abuse, and build the other side a golden bridge to agreement. Walk away when the best available deal is worse than your alternative.

BACK TO THE DEAL FILE

## Reading the Responses of Japan and Canada

The concepts of this chapter help to explain the two responses and their outcomes.

**Different styles reflected different structures.** Japan, facing a tariff on its most important export and valuing its security relationship highly, chose accommodation combined with problem-solving: no retaliation and a large investment package that served American interests. Canada, protected for most of its trade by CUSMA and supported by domestic opinion, chose a more competitive style combined with selective concessions.

**Both responded to difficult tactics.** Both faced deadlines, threats and public statements designed to increase pressure. Japan responded by negotiating quickly to remove uncertainty; Canada responded with counter-measures and then with targeted concessions.

**Constituencies shaped style.** Canada's firm response answered domestic pressure, but it also made concessions harder to offer. Japan accepted domestic criticism of its concessions in exchange for certainty.

**Outcomes depend on the measure.** Japan gained a lower tariff and certainty at the cost of a large and closely controlled investment commitment. Canada protected most of its trade without such a commitment, but faced continuing sectoral tariffs and uncertainty over CUSMA.

**Institutions changed the game.** The Supreme Court ruling of February 2026 removed one category of threat, illustrating how the credibility of tactics depends on the legal framework within which they are used.

MA EXTENSION

### Reputation and the Choice of Style in Repeated Bargaining

Consider a negotiator who faces a sequence of counterparts and can be one of two types: "tough", who never concedes below a high price, or "flexible", who concedes when pressed. Counterparts do not know the negotiator's type but update their beliefs after observing its behaviour. (a) Explain why a flexible negotiator may have an incentive to behave as if it were tough in early rounds. (b) Under what conditions does building a reputation for toughness pay, and under what conditions does it destroy value by causing impasse? (c) Apply your analysis to a government that negotiates trade agreements with many partners at the same time. How might its behaviour towards one partner affect its negotiations with others, and how might the partners coordinate their responses?

ETHICS CHECK

Many difficult tactics involve pressure rather than deception: deadlines, threats, public campaigns and hostile offers. Some, such as the bogey or false claims of limited authority, involve misrepresentation. Are hard tactics relying on pressure ethically different from those relying on deception? Is it ethical for a negotiator to use a tactic that works only because the other side does not recognise it? How should a negotiator respond to a counterpart whose tactics he or she regards as unethical but legal?

### Pillar Scorecard

**Table 17.7**

*Pillar Scorecard: Japan and Canada under tariff pressure, 2025 to 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | Tariffs on hundreds of billions of dollars of exports, and investment commitments of US$550 billion by Japan, were at stake |
| Power | Very high | Dependence on the US market, the protection of CUSMA, legal authority for tariffs and alliance relationships shaped each side's options |
| Persuasion | High | Styles, public campaigns, deadlines and threats determined how the parties communicated and how quickly they reached, or failed to reach, agreement |

### Your Move

*This is a constructed teaching case.*

You are the export director of a Polish manufacturer of furniture based in Poznań that sells about 30 per cent of its output to a large German retail chain. At the annual negotiation, the chain's new purchasing director opens with a demand for a 15 per cent price cut, calls the offer "final", says three Asian suppliers are waiting, and gives you 48 hours to accept. During the meeting he criticises the quality of your last delivery in front of your team. You know the chain has been your customer for twelve years, and switching suppliers would take it at least six months.

1. Identify each difficult tactic in the opening and explain how it is meant to work.
2. Using Table 17.5, decide which style you would adopt and why.
3. Apply the five steps of breakthrough negotiation to plan your response.
4. Assess the credibility of the threat to switch suppliers. What information would you seek?
5. Under what conditions would you walk away, and how would you do it?

## Conclusion

Negotiators differ in style, and style is a strategic choice. Hard negotiation tends to claim value but damages relationships; soft negotiation preserves relationships but is exploited; principled negotiation seeks wise agreements by separating people from problems and focusing on interests, though it must still contend with the division of value. The evidence suggests that toughness pays in single encounters but carries costs which accumulate in continuing relationships; the most effective negotiators combine firmness on substance with a cooperative manner. The right style depends on the importance of the outcome and of the relationship, the balance of alternatives, the counterpart's behaviour, the constituency and the time horizon. Difficult tactics, from extreme demands and ultimatums to threats, delay and public pressure, work largely by being taken at face value; they can be neutralised by recognising them, testing them against one's alternative and building a golden bridge to agreement. The responses of Japan and Canada to American tariffs show two coherent but different styles applied to the same pressure, each with its own costs and benefits. Chapter 18 turns to culture, which shapes both the styles negotiators adopt and how their tactics are perceived.

## Exercises

### A. Objective Questions

1. Fisher and Ury (1981) recommend being:
   a) hard on the people and soft on the problem
   b) soft on the people and hard on the problem
   c) hard on both
   d) soft on both

2. The meta-analysis of Hüffmeier et al. (2014) found that hard-line strategies tend to:
   a) produce worse economic and social outcomes
   b) produce better outcomes of every kind
   c) produce better economic outcomes but worse social and emotional outcomes
   d) have no effect

3. According to Savage et al. (1989), when both the outcome and the relationship are important, a negotiator should:
   a) collaborate
   b) avoid
   c) compete
   d) accommodate

4. In 2024 the share of Canada's merchandise exports going to the United States was about:
   a) 20 per cent
   b) 50 per cent
   c) 76 per cent
   d) 90 per cent

5. Under the framework agreement implemented in September 2025, the US tariff on most Japanese goods, including cars, was:
   a) 2.5 per cent
   b) 10 per cent
   c) 15 per cent
   d) 27.5 per cent

6. The bogey is a tactic in which a negotiator:
   a) makes an offer with a very short deadline
   b) threatens to walk away
   c) overwhelms the other side with information
   d) pretends that an unimportant issue matters greatly, in order to trade it later

7. The first step of Ury's breakthrough negotiation is to:
   a) build a golden bridge
   b) use power to educate
   c) reframe
   d) go to the balcony

8. In February 2026 the US Supreme Court ruled that:
   a) IEEPA did not authorise the president to impose tariffs
   b) Section 232 tariffs were unlawful
   c) CUSMA was invalid
   d) Japan's investment agreement was unconstitutional

### B. Short-Answer Questions

1. Compare hard, soft and principled negotiation using Table 17.2.
2. Summarise the evidence on the effectiveness of hard and cooperative styles. What explains the difference between experimental and field findings?
3. Explain how the importance of the outcome and of the relationship should shape the choice of style.
4. Why did Canada, though more dependent on the US market than Japan, adopt a harder style?
5. Describe four difficult tactics and the recommended response to each.
6. How should a negotiator assess the credibility of a threat?
7. Explain the five steps of breakthrough negotiation.

### C. Long-Answer Questions

1. Compare the responses of Japan and Canada to American tariffs in 2025 and 2026. Which negotiated more effectively, and by what measures?
2. "Toughness wins the deal but loses the relationship." Discuss with reference to the evidence in this chapter and to cases from this book.
3. Analyse the battle for Warner Bros. Discovery as a sequence of difficult tactics and responses. What does it teach about negotiating against a hostile bidder?
4. Design a training programme for a sales team that regularly faces aggressive purchasing negotiators. Which styles, responses and tools would you teach, and why?

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CHAPTER
# 18

# Culture, Etiquette and Cross-Border Negotiation

https://doi.org/10.61030/kmkf-ert8

## Introduction

When negotiators from different backgrounds meet, they bring with them more than their interests and alternatives. They bring assumptions about what a negotiation is for, how it should proceed, what counts as a fair offer, how much should be said directly and how much left implicit, how quickly decisions should be made, who has the authority to make them and how trust is earned. These assumptions are shaped by **culture**: the shared values, beliefs and norms of behaviour that members of a group learn and pass on. Because cultural assumptions are usually taken for granted, negotiators often fail to notice that the other side does not share them, and they misread behaviour perfectly normal in the other side's context as evasive, rude, naive or aggressive.

Culture affects all three pillars of this book. It shapes how parties define **profit**: whether a good agreement is a signed contract with detailed terms or the beginning of a long relationship. It shapes how **power** is exercised and perceived: whether hierarchy is respected or challenged, and whether pressure is applied openly or indirectly. And it shapes **persuasion**: which arguments convince, which forms of communication are trusted and how emotions may be shown.

This chapter proceeds in five steps. Section 18.1 asks what culture is and why it matters at the negotiating table, including the culture of organisations as well as nations. Section 18.2 presents the main frameworks for comparing cultures, those of Hofstede, Hall, Lewis and Meyer, together with the Wheel of Culture of Moore and Woodrow, and discusses their uses and limits. Section 18.3 compares negotiating practices in Europe, Asia and the Americas and extends the comparison to the Middle East, Africa and Central and Eastern Europe. Section

18.4 turns to etiquette: attitudes to time, hierarchy, gifts and hospitality. Section 18.5 identifies the mistakes that cost international negotiators most.

A warning is necessary at the outset. Cultural generalisations describe tendencies in large groups, not the behaviour of any individual. Within every country there are wide differences between regions, generations, industries and people, and experienced international negotiators often adapt their behaviour to their counterparts. A generalisation helping a negotiator to form questions is useful; one replacing observation with stereotype is harmful. Osland and Bird (2000) warned against this kind of "sophisticated stereotyping" and urged negotiators to treat cultural frameworks as hypotheses to be tested in each encounter.

The Deal File illustrates a point that is often overlooked. The most consequential cultural difference in a negotiation is not always between nations. Honda and Nissan are both Japanese companies, yet their merger talks collapsed in February 2025, in large part because of differences in corporate culture, history and identity, and because one side's proposal was perceived by the other as a loss of standing it could not accept.

DEAL FILE

### Why Honda and Nissan Did Not Merge

In December 2024 two of Japan's best-known carmakers announced that they would explore a merger. Honda, the country's second-largest carmaker, and Nissan, its third, signed a memorandum of understanding on 23 December to consider combining under a joint holding company. Mitsubishi Motors, in which Nissan held a large stake, signed a separate memorandum with the two companies to consider joining. The aim was a mobility company with annual sales revenue of more than 30 trillion yen and operating profit of more than 3 trillion yen. Under a tentative timetable, a definitive agreement would be signed in June 2025, and in August 2026 the holding company's shares would be listed on the Tokyo Stock Exchange in place of those of the two carmakers. Honda would nominate the majority of the holding company's directors, and its president would be chosen from among Honda's nominees (Honda Motor & Nissan Motor, 2024).

The logic was clear. Both companies faced intense competition from Chinese producers of electric vehicles, led by BYD, and from Tesla, and both needed to invest heavily in electric vehicles, batteries and software. Nissan was in difficulty. Its net income for the first half of its 2024 financial year had fallen from 296.2 billion yen to 19.2 billion yen, and in November 2024 it announced plans to reduce its global workforce by 9,000 and its global production capacity by 20 per cent (Nissan Motor, 2024). For Nissan, a combination with Honda offered a route to recovery as a Japanese company; for Honda, it offered scale.

The talks ended within seven weeks. As the two sides examined the terms, Honda became concerned about the pace of Nissan's restructuring and about the risk that a joint holding company with a shared board would slow decisions. It proposed changing the structure so that Honda would become the parent company and Nissan its subsidiary, through an exchange of shares. Nissan rejected the proposal. On 13 February 2025 the two companies announced the termination of the memorandum, saying it was "most appropriate to cease discussions and terminate the MOU" in order to prioritise speed of decision-making in a volatile market (Honda Motor & Nissan Motor, 2025). They said that they would continue to cooperate in a strategic partnership aimed at the era of intelligent and electrified vehicles.

**Table 18.1**

*The Honda–Nissan merger talks at a glance*

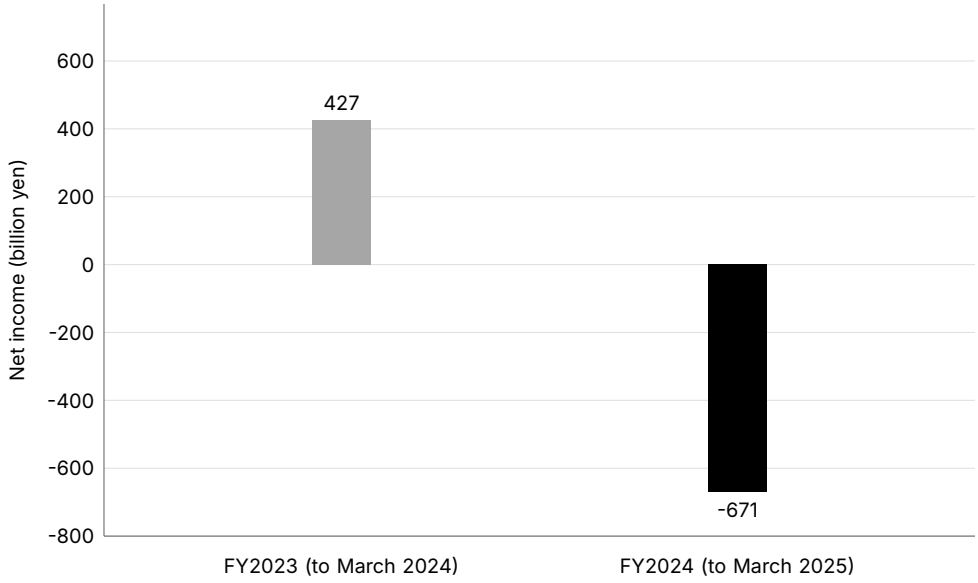
| | |
|---|---|
| **Parties** | Honda Motor; Nissan Motor; Mitsubishi Motors; Renault, Nissan's largest shareholder; employees, suppliers and the Japanese government as interested parties |
| **At stake** | The creation of a group with targeted sales revenue of more than 30 trillion yen; the recovery of Nissan; investment in electric vehicles and software; the identity and independence of two companies with long histories |
| **Timeline** | Memorandum of understanding signed 23 December 2024; Honda proposes making Nissan a subsidiary in early 2025; talks terminated 13 February 2025; Nissan's chief executive replaced from April 2025; agreement on joint development of vehicle electronics and software announced 31 August 2026 |
| **Proposed terms** | A joint holding company, with Honda nominating the majority of its directors, later replaced by a proposal to make Nissan a subsidiary of Honda through a share exchange |

*Note.* Author, based on Honda Motor and Nissan Motor (2024, 2025, 2026) and Nissan Motor (2025a, 2025b).

**Aftermath.** Nissan's chief executive, Makoto Uchida, was replaced in April 2025 by Ivan Espinosa. In May 2025 Nissan reported a net loss of 670.9 billion yen for the year to March 2025, against net income of 426.6 billion yen a year earlier, and announced its Re:Nissan plan, which would reduce its workforce by 20,000 between the 2024 and 2027 financial years and consolidate its vehicle plants from 17 to 10 by 2027 (Nissan Motor, 2025a, 2025b). Figure 18.1 shows the reversal in its results. Honda, for its part, reported a net loss of 423.9 billion yen for the year to March 2026, after large losses and impairments related to electric vehicles (Honda Motor, 2026). In the first quarter of its 2026 financial year Nissan returned to an operating profit of 77.9 billion yen (Nissan Motor, 2026),

**Figure 18.1**

*Nissan's net income, financial years 2023 and 2024 (billion yen)*




*Note.* Author, based on Nissan Motor (2025a). Nissan's financial year ends on 31 March; FY2023 ended in March 2024 and FY2024 in March 2025.

and on 31 August 2026 the two companies concluded an agreement to jointly develop and standardise the core electronic control units and software for their next-generation software-defined vehicles, from the 2029 financial year (Honda Motor & Nissan Motor, 2026). The cooperation that the merger was meant to deliver began to take shape, but as a partnership between independent companies.

**Questions to keep in mind.** Why did two companies from the same country, with a shared strategic logic, fail to agree? What role did corporate identity, history and the perception of status play? How might the negotiation have been structured differently? And what does the case suggest about the relationship between national and organisational culture? The chapter answers these questions in turn.

## 18.1 What Is Culture, and Why Does It Matter at the Table?

### Layers of Culture

Culture can be thought of in layers. At the surface are **artefacts and behaviours**: dress, greetings, the arrangement of the meeting room, the way a business card is presented. Beneath them are **norms and values**: beliefs about what is right, proper and important, such as respect for hierarchy, the importance of punctuality or the value placed on directness. At the deepest level are **basic assumptions**, so taken for granted that people rarely articulate them, about human nature, time, relationships and the relationship between the individual and the group. Schein (2010) developed this layered model for organisations, and it applies equally to national cultures. Negotiators usually notice the surface first and misinterpret it because they do not see the values and assumptions beneath.

Hofstede (1994, as cited in Jandt, 2018) proposed a related classification of the elements of culture into four categories: **symbols**, verbal and non-verbal language; **heroes**, real or imaginary people who serve as models of behaviour; **rituals**, socially essential collective activities; and **values**, shared feelings about what is good or bad, normal or abnormal, which lie at the core. Jandt (2018) adds two further features of culture: it is transmitted socially, through families and schools, from one generation to the next, and its members consciously identify with the group. He also distinguishes the culture of a whole society from the smaller groups within it, which scholars have called subcultures, co-cultures, subgroups and microcultures. Organisational and professional cultures, discussed next, are among the most important of these smaller groups for business negotiators.

### National, Organisational and Professional Cultures

Negotiators belong to several cultures at once. **National culture** is the most studied, but **organisational culture**, the shared values and practices of a company, and **professional culture**, those of engineers, lawyers, bankers or diplomats, can be just as important. Two engineers from different countries may understand each other better than an engineer and a lawyer from the same country. Two companies from the same country may have strikingly different cultures, shaped by their founders, histories and experiences.

The Deal File illustrates this. Honda has a long tradition as an independent, engineering-driven company that has rarely relied on alliances. Nissan's recent history was very different: it was rescued by Renault in 1999, became part of the Renault–Nissan alliance under Carlos Ghosn, and then went through the turmoil of Ghosn's arrest in Japan in 2018 and a long renegotiation of its relationship with Renault, in which it sought and obtained a more equal footing. For a company that had fought to recover its independence and equality within one alliance,

a proposal to become the subsidiary of another was not merely a question of governance. It touched its identity.

### How Culture Affects Negotiation

Salacuse (1998) identified ten ways in which culture can affect negotiating style, and surveyed several hundred executives and students from different countries about their preferences. His dimensions provide a useful checklist for negotiators preparing to meet a counterpart from another culture. Table 18.2 lists the ten dimensions.

**Table 18.2**

*Ten ways in which culture can affect negotiation*

| Dimension | One end of the range | Other end of the range |
|---|---|---|
| Goal of the negotiation | A contract | A relationship |
| Attitude to the process | Win–lose | Win–win |
| Personal style | Formal | Informal |
| Communication | Direct | Indirect |
| Sensitivity to time | High: time is money | Low: time is flexible |
| Emotionalism | High | Low |
| Form of agreement | Specific and detailed | General principles |
| Building an agreement | Bottom-up, from details | Top-down, from principles |
| Team organisation | One leader decides | Consensus of the group |
| Risk-taking | High | Low |

*Note.* Author, based on Salacuse (1998).

Salacuse found substantial differences between national groups on several dimensions, but also wide variation within each group. His findings support the warning in the Introduction: the dimensions are a guide to what to look for, not a prediction of what any individual will do.

Brett (2014) proposed a different way of linking culture to negotiation, by distinguishing three kinds of culture according to how people earn and protect their social worth. In **dignity** cultures, typical of North America and northern Europe, worth is seen as inherent in each person and not dependent on others' opinions; people tend to be direct and to trust others until given reason not to. In **face** cultures, typical of East Asia, worth depends on one's standing in a stable hierarchy, which others must respect; people avoid open confrontation and value harmony. In **honour** cultures, found in parts of the Middle East, southern Europe and Latin America, worth must be claimed and defended, and slights must be answered. The framework helps to explain why the same proposal can be received very differently. An offer regarded by a negotiator from a dignity

culture as a neutral business proposition may be received by one from a face culture as a public loss of standing.

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**KEY MOVE**

Prepare for the culture of your counterpart's organisation and profession as well as its nation. Ask what a good agreement means to them, how they make decisions and what would cause them to lose face, and treat every cultural generalisation as a hypothesis to test.

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## 18.2 Which Frameworks Help? From Hofstede to the Wheel of Culture

### Hofstede's Dimensions

The most widely used framework for comparing national cultures was developed by Hofstede from surveys of IBM employees in more than 50 countries, later extended by other researchers (Hofstede et al., 2010). It describes cultures along six dimensions:

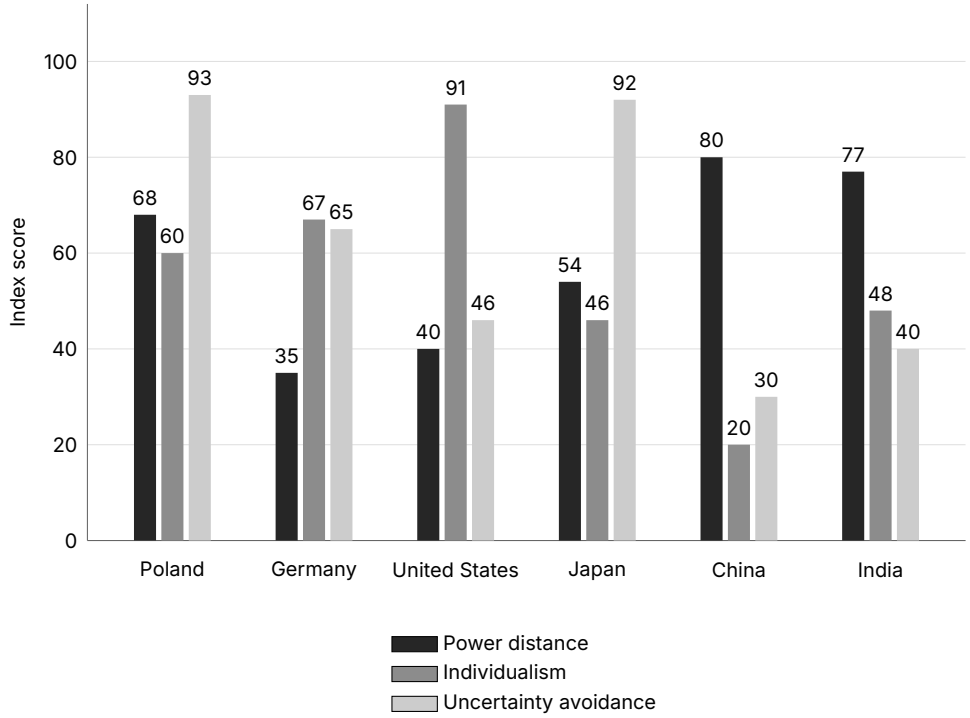
- **Power distance**: the extent to which less powerful members of a society accept that power is distributed unequally.
- **Individualism versus collectivism**: the extent to which people see themselves as independent individuals or as members of groups to which they owe loyalty.
- **Masculinity versus femininity**: the extent to which a society values achievement, competition and success, or caring, cooperation and quality of life.
- **Uncertainty avoidance**: the extent to which people feel threatened by ambiguity and unknown situations and seek rules to reduce them.
- **Long-term versus short-term orientation**: the extent to which a society values persistence and future rewards over tradition and immediate results.
- **Indulgence versus restraint**: the extent to which a society allows the gratification of basic desires.

Figure 18.2 shows scores on three of these dimensions for six countries that appear frequently in this book.

The scores suggest hypotheses for negotiators. Negotiators from countries with high power distance, such as China and India, may expect decisions to be made by senior figures and may be uncomfortable negotiating with a counterpart of lower rank. Negotiators from strongly individualist countries, such as the United States, may focus on the deal and their own interests, while those from more collectivist cultures may give more weight to the relationship and to the

**Figure 18.2**

*Scores on three of Hofstede's cultural dimensions, selected countries (index, 0 to about 100)*




*Note.* Author, based on Hofstede et al. (2010). Scores are relative positions of national averages, not measures of individuals. Later updates have revised some values.

interests of their group. Negotiators from countries with high uncertainty avoidance, such as Japan and Poland, may prefer detailed contracts, careful preparation and clear rules, while those from countries with lower uncertainty avoidance, such as China and the United States in Hofstede's data, may be more comfortable with ambiguity and improvisation.

Hofstede's work has been criticised on several grounds: its original data came from one company in the 1960s and 1970s; it equates cultures with nations; and its dimensions may oversimplify complex societies. Later projects, notably the GLOBE study of leadership and culture in 62 societies (House et al., 2004), have refined and in places challenged its findings. Hofstede's dimensions nevertheless remain a useful starting point for asking what to expect and what to check.

### Hall: High and Low Context

Hall (1976) distinguished **low-context** cultures, in which meaning is carried mainly by explicit words, from **high-context** cultures, in which much of the meaning lies in the context: the relationship between the speakers, their status, the setting, what is not said and how things are said. Germany, Scandinavia and the United States are usually described as relatively low-context; Japan, China, Korea, India and the Arab world as relatively high-context.

The distinction has direct consequences for negotiation. In low-context cultures, negotiators expect clear statements of position, explicit agreements and detailed written contracts; silence or vagueness may be read as evasion. In high-context cultures, negotiators may express disagreement indirectly, avoid an explicit "no", rely on the relationship to fill gaps in the contract and regard a demand for exhaustive written terms as a sign of distrust. The difference extends beyond face-to-face talk. A comparison of 200 South Korean and American corporate websites found that the Korean sites relied more on animation, images and other visual formats whose meaning depends on context, while the American sites relied more on explicit text (Kim et al., 2009, as cited in Jandt, 2018). Hall also distinguished **monochronic** cultures, which treat time as linear and divide it into scheduled segments, from **polychronic** cultures, which handle several matters at once and give priority to relationships over schedules.

Luthans and Doh (2018) develop the contrast into four dimensions of verbal style. **Direct** styles state intentions explicitly, **indirect** styles convey them through implication. **Elaborate** styles use much talk and detail, as is common in Arab countries; **exacting** styles, common in England, Germany and Sweden, aim for precisely the right number of words; and **succinct** styles, common in East Asia, leave much to understatement, pauses and silence. **Personal** styles reduce the distance between speakers, as Americans do by moving quickly to first names, while **contextual** styles choose words that reflect the speakers' roles and relative status, as in Japan, India and Ghana. **Instrumental** styles are goal-oriented and centred on the sender; **affective** styles are process-oriented and require the listener to attend to how a message is delivered and to what is left out. A simple test shows the difference in practice. Invited to a meeting, a person from a high-context culture is likely to ask who will be there, so as to prepare for the relationships involved, whereas a person from a low-context culture is likely to ask what the meeting is about.

### Lewis: Linear-Active, Multi-Active and Reactive

Lewis (2006) classified cultures into three broad types. **Linear-active** people, common in northern Europe and North America, plan, focus on one thing at a time, value facts and stick to agendas. **Multi-active** people, common in southern Europe, Latin America and the Arab world, are talkative and emotional, do

several things at once, value relationships and are flexible about schedules. **Reactive** people, common in East Asia and Finland, listen more than they speak, avoid confrontation, value courtesy and harmony and react to others' proposals rather than initiating. Lewis placed countries within a triangle defined by the three types, recognising that most cultures combine elements of each.

#### Meyer: The Culture Map

Meyer (2014) proposed eight scales on which cultures can be placed, drawn from her work with international managers: communicating (low-context to high-context), evaluating (direct to indirect negative feedback), persuading (principles-first to applications-first), leading (egalitarian to hierarchical), deciding (consensual to top-down), trusting (task-based to relationship-based), disagreeing (confrontational to avoiding confrontation) and scheduling (linear time to flexible time). A key insight of her approach is that positions on the scales are relative. A Polish manager may seem direct to a Japanese counterpart and indirect to a Dutch one. What matters in a negotiation is the gap between the parties, not the absolute position of either.

#### Moore and Woodrow: The Wheel of Culture

The frameworks above compare cultures on a few dimensions. Moore and Woodrow (2010), writing from long practice as mediators and trainers, proposed instead a map of the cultural variables that shape how a society negotiates, which they called the **Wheel of Culture**. Its outer rim is formed by the forces that shape a culture over time: the **natural environment**, **history** and **social structures**, including family and community, the legal and political systems, the economy, civil society and systems of religious and ideological belief. The inner rim holds what the parties bring to a particular negotiation: the **situation, problems and issues** as each culture defines them, the **needs and interests** to be met and the **sources and forms of power** each can use. The spokes are the elements of the negotiation itself on which cultures differ: roles and participation, the view of relationships, attitudes to cooperation, competition and conflict, communication, time and space, the use of third parties, the basic approach to negotiation and the kind of outcome sought. The authors open their discussion with a couple from Texas and Taiwan who had to negotiate between their families over every aspect of their wedding, from the date chosen by an astrologer to the colour of the dress, which was white for purity in one tradition and the colour of death in the other; they settled on two ceremonies. The value of the wheel for business negotiators lies less in classification than in the questions it prompts about each rim and spoke, several of which Chapter 7 used for preparation. Table 18.3 summarises five frameworks for comparing cultures.

**Table 18.3**

*Five frameworks for comparing cultures*

| Framework | Main idea | Use in negotiation | Main limitation |
|---|---|---|---|
| Hofstede (dimensions) | Cultures differ on measurable value dimensions | Anticipate attitudes to hierarchy, risk, group and time | Equates culture with nation; based on older data |
| Hall (context and time) | Meaning may be explicit or embedded in context; time may be linear or flexible | Interpret indirect communication; set expectations about schedules and contracts | Broad categories; little measurement |
| Lewis (three types) | Linear-active, multi-active and reactive behaviour | Anticipate style of interaction at the table | Based on observation; risk of caricature |
| Meyer (culture map) | Eight relative scales of workplace behaviour | Identify gaps between the parties on specific behaviours | Focused on managers; relative positions may change |
| Moore and Woodrow (Wheel of Culture) | Environment, history and social structures shape issues, interests, power and the conduct of negotiation | Build a checklist of questions for preparation and process design | Descriptive map; does not predict behaviour |

*Note.* Author, based on the works cited.

The author's research on cross-cultural communication in global business, drawing on Indian experience, emphasises that these frameworks are most useful when combined with direct knowledge of the counterpart and of the business context; cultural intelligence, the ability to notice, interpret and adapt, matters more than knowledge of any single model (Kumar, 2022, 2024a).

**KEY MOVE**

Use cultural frameworks to generate questions, not answers. Focus on the gap between your culture and your counterpart's on the dimensions that matter most for the negotiation: hierarchy, directness, attitude to time, form of agreement and basis of trust.

## 18.3 How Do Europeans, Asians and Americans Negotiate, and Beyond?

### A Caution about Regions

This section describes tendencies in negotiating practice that are widely reported in the literature and by practitioners. Each region contains many cultures, and each country many sub-cultures; globalisation, education and international business experience have narrowed some differences, particularly among younger managers in multinational firms. The descriptions are therefore starting points for preparation, to be checked against the behaviour of each counterpart.

### Europe

Europe is not one negotiating culture but several. In **northern Europe**, including Germany, the Netherlands and Scandinavia, negotiators tend to be direct, well prepared and focused on facts and technical detail; they value punctuality and expect agreements to be honoured to the letter. Dutch and Scandinavian negotiators are often notably egalitarian and informal. German negotiators often emphasise thorough analysis and expect proposals to be supported by data. In **southern Europe**, including Italy, Spain and Portugal, relationships carry more weight, discussions may range widely before reaching the point and schedules are more flexible. **France** combines a preference for logical argument from principles, a relatively formal style and considerable respect for hierarchy. The **United Kingdom** is often described as indirect in expression, with understatement and humour used to soften disagreement, combined with a pragmatic, deal-oriented approach.

**Central and Eastern Europe**, including Poland, the Czech Republic, Hungary and Romania, has changed rapidly since 1989. Many negotiators combine a formal style at first meeting, with attention to titles and courtesy, and strong technical preparation, with growing informality as relationships develop. Poland ranks high on uncertainty avoidance in Hofstede's data, which may be reflected in a preference for detailed contracts and careful legal review. The experience of rapid economic change and of integration into European supply chains has made many Central European negotiators pragmatic and comfortable working across cultures, often as intermediaries between western European firms and other markets. The author's comparative work on investment in India and Poland highlights how institutional and cultural factors shape the expectations that investors from each country bring to negotiations (Kumar, 2020).

### Asia

**Japan** is often described as a high-context, consensus-oriented culture in which harmony, face and long-term relationships are central. Decisions are typically prepared through extensive internal consultation (*nemawashi*) and formal circulation for approval (*ringi*), which can make Japanese teams seem slow to decide but quick to implement once a decision is made. Japanese negotiators may avoid an explicit refusal, expressing disagreement through silence, delay or phrases such as "this will be difficult". The Deal File suggests that even between Japanese companies, a proposal perceived as a loss of face for one party can be decisive.

**China** places great weight on relationships (*guanxi*) built over time through personal contact, hospitality and reciprocal favours, and on face (*mianzi*). Negotiations often begin with general principles and the building of trust before detailed terms are discussed. Chinese negotiators may use time strategically, revisiting issues which seemed settled, and may regard a signed contract as a stage in a continuing relationship rather than its final definition.

**India** combines a high-context, relationship-oriented style with considerable directness in argument and a strong tradition of bargaining. Hierarchy matters, and decisions in family-owned businesses, which account for much of Indian industry, may rest with the head of the family. Indian negotiators often value flexibility, persistence and the building of personal trust, and discussions may be long and wide-ranging. The author's research on India's economic relations with Europe shows how these preferences have shaped long negotiations between Indian and European partners, at both business and government level (Kumar, 2013a, 2013b, 2026b).

**South Korea** combines hierarchy and a strong emphasis on relationships with a fast pace of decision-making and considerable directness, and Korean negotiators are often willing to show emotion. The Korean–Polish defence agreements described below show Korean firms negotiating long-term relationships that include local production and technology transfer.

### The Americas

Negotiators from the **United States** are often described as direct, informal, optimistic and focused on the deal, with a preference for getting to business quickly, putting proposals on the table early and concluding with detailed written contracts drafted by lawyers. Time is valued, and long silences or slow progress can cause impatience. **Canada** shares many of these features with somewhat greater formality and an emphasis on consensus. In **Latin America**, including Brazil, Mexico and Argentina, relationships and personal trust are central, communication is often expressive and indirect, hierarchy is respected and schedules are flexible. The author's study of communication in international business in

DEAL SNAPSHOT

**The India–EU Free Trade Agreement, 2007 to 2026**

Negotiations on a free trade agreement between India and the European Union began in 2007, were suspended in 2013 and relaunched in 2022. On 27 January 2026, at a summit in New Delhi, the two sides announced that negotiations had been concluded. Trade liberalisation would cover 96.6 per cent of trade for India and 99.3 per cent for the EU. Indian duties of up to 150 per cent on alcoholic beverages would be reduced gradually, to 30 per cent for most wines, 40 per cent for spirits and 50 per cent for beer; tariffs of up to 45 per cent on olive oil would be eliminated; and most tariffs on car parts would be removed over five to ten years. The EU, for its part, granted no market access for sensitive products such as sugar, ethanol, rice, soft wheat, beef, poultry and milk powders (European Commission, 2026a). Before entering into force, the agreement still had to be legally reviewed, signed and ratified. The author's conference paper on the realignment of India–Europe trade relations under geopolitical tension examines the economic interdependence that brought the two sides back to the table (Kumar, 2026e). Figure 18.3 shows the main tariff cuts. The negotiation brought together two very different negotiating traditions: the EU's rules-based, legally detailed approach, conducted by the Commission on behalf of 27 member states, and India's strong defence of policy space for its farmers and small industries, combined with a preference for building political trust at the highest level before closing. The long pause after 2013 and the final push at a summit illustrate how political relationships and timing shaped an agreement whose technical terms had been explored for years.

Buenos Aires found that attention to personal relationships and to local expectations of courtesy and time shaped the success of foreign firms (Kumar, 2023).

### The Middle East and Africa

In much of the **Middle East**, negotiation is embedded in personal relationships and hospitality. Building trust through repeated meetings, often over coffee or meals, precedes substantive discussion; bargaining may be expected; and decisions may rest with senior family members or officials. Honour and respect are important, and public criticism can cause lasting damage. In **sub-Saharan Africa**, which comprises dozens of countries with very different cultures, common themes include the importance of relationships and of respect for age and seniority, the role of community and extended family, and a flexible approach to time; in many countries, government officials play a significant role in business negotiations. Table 18.4 summarises these tendencies by region.

**Table 18.4**

*Tendencies in negotiating practice by region*

| Region | Typical goal | Communication | Decision-making | Attitude to time | Form of agreement |
|---|---|---|---|---|---|
| Northern Europe | Contract | Direct, factual | Analytical; often egalitarian | Punctual, scheduled | Detailed |
| Southern Europe | Contract and relationship | Expressive, wide-ranging | Hierarchical | Flexible | Principles, then detail |
| Central and Eastern Europe | Contract | Formal at first, then direct | Hierarchical, becoming flatter | Punctual | Detailed, carefully reviewed |
| United States | Contract | Direct, informal | Individual authority | Time is money | Detailed, lawyer-drafted |
| Latin America | Relationship | Expressive, indirect | Hierarchical | Flexible | Principles, relationship-based |
| Japan | Relationship | Indirect, high-context | Consensus | Patient | General, relationship-based |
| China | Relationship | Indirect, high-context | Hierarchical, consensus | Patient, strategic | Evolving, relationship-based |
| India | Relationship and contract | Mixed; argumentative | Hierarchical; family firms | Flexible | Negotiated in detail over time |
| Middle East | Relationship | Indirect, hospitable | Hierarchical; family | Flexible | Relationship-based |

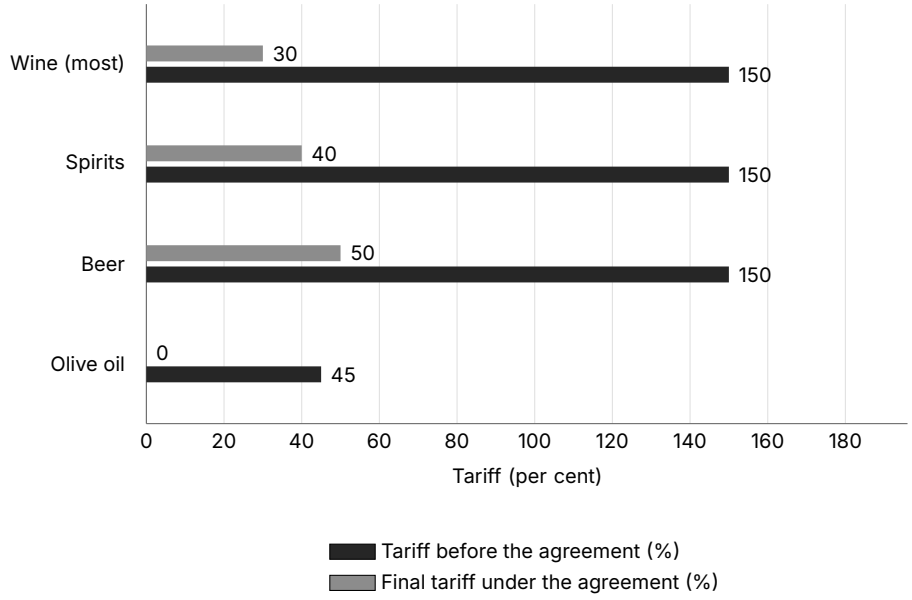
*Note.* Author, based on Salacuse (1998), Lewis (2006), Meyer (2014) and Brett (2014). The entries describe tendencies, not rules.

**KEY MOVE**

Before a cross-border negotiation, study how your counterpart's region and industry usually approach the goal, the communication, the decision and the form of the agreement, then confirm or correct your expectations in the first meetings.

**Figure 18.3**

*Indian import tariffs on selected EU products before and after the India–EU agreement (per cent)*




*Note.* Author, based on European Commission (2026a). The "before" rates are the maximum rates reported; the "after" rates are the final rates once phase-in periods are complete (for wine, the rate for most wines).

## 18.4 Etiquette: Time, Hierarchy, Gifts and Hospitality

### Why Etiquette Matters

Etiquette, the conventions of polite behaviour, can seem a matter of manners rather than substance. In negotiation it is more than that. Etiquette signals respect, and respect affects trust, which Chapter 16 showed to have real economic value. A breach of etiquette may not end a negotiation, but it can create an impression of ignorance or disrespect that colours every later exchange, particularly in face and honour cultures. Conversely, attention to etiquette signals that the negotiator values the relationship enough to have prepared.

### Time

Attitudes to time vary widely. In monochronic cultures, punctuality is a sign of respect and reliability, agendas are followed and meetings end on time. In polychronic cultures, relationships take precedence over schedules, meetings may start late and run long, and several issues may be discussed at once. Neither

approach is better; each makes sense within its own context. Negotiators from monochronic cultures should allow more time for meetings and for decisions in polychronic settings and should not interpret delay as lack of interest. Those from polychronic cultures should recognise that lateness may be read as disrespect in monochronic settings. Deadlines, which Chapter 17 discussed as a tactic, are also perceived differently: in some cultures, a deadline imposed early in a negotiation may be regarded as a sign of impatience or bad faith.

#### Hierarchy and Titles

In hierarchical cultures, negotiators expect to deal with counterparts of equivalent rank, and sending a junior representative to meet a senior executive may be seen as a slight. Titles, academic degrees and positions should be used correctly, particularly in German-speaking countries, Central Europe and much of Asia. Seating, the order of speaking and the order in which people enter a room may reflect rank. In egalitarian cultures, by contrast, insistence on titles and formality may seem stiff, and decisions may be made by whoever has the relevant expertise.

#### Gifts

Gift-giving is expected in some cultures and viewed with suspicion in others. In Japan and China, modest, well-chosen gifts, presented and received with both hands and often not opened in the giver's presence, are a normal part of building relationships. In parts of the Middle East and Asia, hospitality and gifts express respect. In many Western countries, by contrast, corporate rules and anti-bribery laws strictly limit gifts, and anything beyond a token may be regarded as an attempt to influence. Jandt (2018) describes a case capturing the dilemma: a public official in the United States, bound by an ethics policy prohibiting gifts of any value from clients, is offered a mooncake by a Chinese family, a gift symbolising unity and part of the custom of *guanxi*. Negotiators must therefore navigate between two risks: giving offence by ignoring local custom, and breaking the law or their company's code by giving or accepting something that could be construed as a bribe. Chapter 19 examines the legal framework, including laws such as the US Foreign Corrupt Practices Act and the UK Bribery Act, which apply to conduct abroad.

#### Hospitality, Meals and Small Talk

In many cultures, business relationships are built over meals, and accepting hospitality is part of the negotiation. Refusing an invitation may cause offence; discussing business at the wrong moment during a meal may be equally inappropriate. Negotiators should learn the conventions of their hosts: who sits where, who

orders, who pays, whether toasts are expected, and whether alcohol is customary or prohibited. Small talk, which Chapter 16 described as a way of building rapport, also varies: suitable topics in one culture, such as family, may be too personal in another, and topics such as politics or religion are best avoided in most first meetings. Table 18.5 provides an etiquette checklist for international negotiators.

**Table 18.5**

*Etiquette checklist for international negotiators*

| Area | Questions to prepare | Common pitfalls |
|---|---|---|
| Greetings | Handshake, bow or other? First names or titles? | Over-familiarity; incorrect titles |
| Business cards | How should they be presented and received? | Writing on or pocketing a card carelessly in East Asia |
| Punctuality | Is lateness acceptable? How long do meetings last? | Impatience at delay; lateness in monochronic cultures |
| Hierarchy | Who should lead the team? Who sits where? | Sending a junior to meet a senior executive |
| Language | Will an interpreter be needed? How direct can I be? | Idioms and jokes that do not translate; speaking too fast |
| Gifts | Are gifts expected? What is appropriate? What do our rules allow? | Gifts that are too valuable or culturally inappropriate |
| Hospitality | Are meals part of the process? Is alcohol customary? | Refusing hospitality; discussing business at the wrong moment |
| Dress | How formal is business dress? | Under-dressing for formal cultures |

**KEY MOVE**

Learn the etiquette of your counterpart's culture before the first meeting, check your company's rules on gifts and hospitality, and when unsure, ask. A sincere effort to respect local conventions is usually appreciated even when imperfect.

DEAL SNAPSHOT

**Poland and Korea Build Tanks Together, 2022 to 2026**

In July 2022, after Russia's full-scale invasion of Ukraine, Poland signed a framework agreement with South Korea's Hyundai Rotem covering 1,000 K2 main battle tanks, including a version adapted for Poland, the K2PL. A first executive contract, signed in August 2022, covered 180 tanks built in Korea, worth US$3.37 billion net, and the last of them arrived in Poland in November 2025. A second contract, signed on 1 August 2025 in Gliwice, covered 180 further tanks for delivery between 2026 and 2030: 116 of the Korean model and 64 K2PL, of which 61 were to be built at the Bumar-Łabędy plant in Gliwice with Polish components and with production equipment supplied by Hyundai Rotem, together with a transfer of technology (Ministry of National Defence, 2025, n.d.). The partnership required the two sides to bridge different negotiating cultures: Korean speed and hierarchical decision-making on one side, and on the other a Polish public procurement system that combines detailed legal requirements with strong political interest in local production and technology transfer. The phased structure, with an initial off-the-shelf purchase followed by later contracts for local production, allowed trust to be built step by step, as Chapter 16 recommended where trust has still to be established.

## 18.5 Which Mistakes Cost International Negotiators Most?

### Common and Costly Mistakes

Experience and research point to a set of recurring mistakes that cost international negotiators value, time and relationships. Table 18.6 summarises them.

**Table 18.6**

*Costly mistakes in cross-border negotiation*

| Mistake | Example | Cost | Remedy |
|---|---|---|---|
| Assuming one's own norms are universal | Pressing for a quick decision in a consensus culture | Resistance; lost trust | Learn how the other side decides |
| Stereotyping | Treating an individual as a national average | Misreading behaviour | Treat generalisations as hypotheses |
| Misreading indirect communication | Hearing "this will be difficult" as a request for more information | Wasted time; false expectations | Ask clarifying questions; consult local advisers |

| Mistake | Example | Cost | Remedy |
|---|---|---|---|
| Ignoring hierarchy | Sending a junior to meet a senior executive | Offence; delay | Match rank; respect titles |
| Causing loss of face | Public criticism or a proposal that implies inferiority | Rejection of otherwise acceptable terms | Frame proposals to protect status; raise sensitive issues privately |
| Over-reliance on the contract | Treating a signed contract as the end of the relationship | Disputes over implementation | Invest in the relationship after signing |
| Under-reliance on the contract | Relying on goodwill where the other side expects detail | Ambiguity; later disputes | Agree the level of detail expected |
| Poor use of interpreters | Speaking in long, idiomatic sentences; addressing the interpreter rather than the counterpart | Misunderstanding | Brief interpreters; speak clearly; address the counterpart |
| Neglecting legal and institutional differences | Assuming home-country law or practice applies | Unenforceable terms; compliance breaches | Use local legal advice; choose governing law and dispute resolution carefully |
| Ignoring organisational culture | Assuming that firms from the same country share a culture | Failed integration | Study the counterpart's history, identity and decision-making |

### Face and Status: The Most Expensive Mistake

Of all these mistakes, the one that most often destroys otherwise viable agreements is causing the other side to lose face. Chapter 16 described face as a person's public image and self-respect, and Brett's framework shows that it carries particular weight in face cultures. Chinese culture distinguishes two aspects of face: *lien*, the confidence of society in a person's moral character, and *mien-tzu*, prestige and reputation achieved through success (Jandt, 2018). **Facework** refers to the communicative strategies people use to protect their own face and to support or challenge the face of others. Ting-Toomey's face-negotiation theory proposes that people in low-context, individualist cultures tend to negotiate face directly and to protect their own face, while those in high-context, collectivist cultures tend to negotiate face indirectly and to give greater weight to mutual

face and the face of the other party (Jandt, 2018). Cohen (1997), writing on international negotiation, listed the ways in which a negotiator can lose face: a rebuffed overture, a personal insult, failure to achieve goals, a derogatory remark or disregard for one's status, being forced to give up a cherished value, a revelation of personal inadequacy, damage to a valued relationship and, significantly for bargaining, making what may later be seen as an unnecessary concession.

The Deal File illustrates the cost. The economic logic of combining Honda and Nissan was widely accepted; the obstacle was the structure. A merger of equals under a joint holding company preserved Nissan's standing, even though Honda would appoint most of the board. A proposal to make Nissan a subsidiary changed the meaning of the deal, from partnership to takeover. Whatever its merits in terms of speed of decision, it was perceived as a loss of status that Nissan's management, employees and partners could not accept. Honda's concerns about Nissan's restructuring were real, but they might have been addressed through conditions, milestones or governance rules rather than through a change in the relationship between the two companies.

#### Adapting and Bridging

Negotiators can reduce the risk of these mistakes in several ways. They can **prepare** by studying the counterpart's culture, organisation and history. They can **adapt** their behaviour within limits, for example by allowing more time, using more formal address or being more indirect in criticism. They can use **cultural intermediaries**, such as local advisers, colleagues from the counterpart's culture or interpreters who understand context as well as language. And they can **create a shared culture** for the negotiation by agreeing explicitly on the process: the agenda, the language, the level of detail, the decision-making procedure and how disagreements will be handled. Communication scholars call such a jointly created set of understandings a **third culture**: not merely a fusion of the parties' original cultures but a new and coherent culture that individuals from different backgrounds build together (Casmir & Asuncion-Lande, 1989, as cited in Jandt, 2018). Long-standing international joint ventures and negotiating relationships often develop a third culture of this kind.

The capacity that underlies all of these strategies is **intercultural communication competence**, defined as the ability to communicate effectively and appropriately with people of other cultures (Spitzberg, 2000, as cited in Jandt, 2018). Effectiveness means achieving one's goals; appropriateness means doing so in a way that maintains the relationship. Chen identified four areas of skill: personal strength, including self-awareness and the ability to manage anxiety; communication skills, including behavioural flexibility and interaction management; psychological adjustment to unfamiliar environments; and cultural awareness of the counterpart's customs and social system. Chen and Starosta grouped these into

three dimensions: affective (intercultural sensitivity, the willingness to acknowledge and respect difference), cognitive (intercultural awareness of one's own and other cultures) and behavioural (intercultural adroitness, the skills to act appropriately) (Jandt, 2018). Jandt also notes that what counts as competence is itself culturally defined: in high-context, collectivist cultures such as Malaysia and Thailand, initial reserve and silence until a relationship is established may be a mark of competence, although the same behaviour might be judged negatively in an individualist culture. The author's research on the role of cross-cultural communication in international business and sustainable growth reaches a similar conclusion about the value of these competences for firms (Kumar, 2024a).

Adaptation helps, but only up to a point. In an experiment with American business people negotiating with counterparts who adapted to American behaviour to different degrees, Francis (1991) found that moderate adaptation produced more favourable reactions than either no adaptation or substantial adaptation: counterparts often expect foreigners to behave somewhat differently and may be uncomfortable with a close imitation of their own style. Adair and Brett (2005) found that negotiators from different cultures follow different sequences of behaviour, such as sharing information directly or inferring it from offers, and mixed-culture negotiations reach better outcomes when the parties learn to recognise and respond to each other's sequences.

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**KEY MOVE**

Above all, protect the other side's face. Frame proposals so that they preserve the counterpart's standing, raise sensitive issues in private and address your real concerns through conditions and governance rather than through symbols of dominance.

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BACK TO THE DEAL FILE

## Reading the Honda–Nissan Talks

The concepts of this chapter help to explain why two Japanese companies with a shared strategic logic failed to agree.

**Organisational culture mattered more than national culture.** Both companies were Japanese, but their histories and identities differed sharply: Honda's tradition of independence, and Nissan's experience of rescue, alliance and the hard-won recovery of equal standing with Renault.

**Face and status were decisive.** The original framework of a joint holding company allowed Nissan to present the deal as a partnership. Honda's proposal to make Nissan a subsidiary turned it into a takeover and was rejected, even though the underlying economic logic had not changed.

DEAL SNAPSHOT

### Offshoring and the Snowstorm

Offshore call-centre agents working for a North American airline struggled to help customers stranded at airports by a snowstorm, because they had never seen snow or been to an airport; the airline put television news in their break rooms so that they could see what their customers were facing. The consultants A.T. Kearney found that firms moving services abroad meet four cultural challenges: communication, context, relationships and working norms. An American financial services manager who asked an Indian counterpart for a detailed work plan received the reply "I will do the needful", which was clear in India and puzzling to her, while the detail she expected seemed to her counterpart unnecessary and even a sign of distrust. Offshore agents who lacked everyday experience of credit cards had to be taught it before they could process payments, and agents who deferred to their superiors would not speak in meetings unless invited. The consultants' advice was to insist on mutual respect, avoid a mentality of "us and them", appoint liaisons who make sure that every team receives the same information and use the different strengths of each culture, as the British pushchair maker Mamas and Papas did when it placed each stage of its work where the skills for it were strongest (Luthans & Doh, 2018). Offshoring contracts are negotiated once, but they succeed or fail in thousands of daily exchanges across cultures.

**Decision-making styles collided.** Honda's concern about slow decision-making under a joint board, and its frustration with the pace of Nissan's restructuring, reflected the importance of speed in a market reshaped by Chinese competitors. Nissan's process, shaped by its history and its relationship with Renault, needed time to build internal consensus for painful restructuring.

**The relationship survived the failed deal.** By announcing continued cooperation when they ended the merger talks, and by agreeing in August 2026 to develop vehicle electronics and software together, the two companies preserved the relationship and much of the value the merger was meant to deliver, without the loss of face a takeover would have implied.

MA EXTENSION

### Culture, Identity and the Economics of Mergers

Economic models of mergers usually focus on synergies, market power and the division of gains through the acquisition premium, as Chapter 9 showed. Behavioural and organisational research adds that cultural differences between merging firms impose integration costs, and perceived threats to the identity and status of the acquired firm's managers and employees can reduce or destroy expected synergies. (a) Construct a simple model in which the value of a merger equals expected synergies minus integration costs that rise with cultural distance, and in which the target's managers can block the deal if their loss of status exceeds a threshold. (b) Use the model to explain why a change in the proposed structure from a holding company to a parent–subsidiary relationship could make an otherwise profitable merger fail. (c) Discuss how earn-outs, governance rules or partnerships short of full merger might preserve part of the value. Relate your answer to the Honda–Nissan case and to the partnership agreed in 2026.

ETHICS CHECK

Cultural adaptation can be a sign of respect, but it raises ethical questions. Should a negotiator adapt to practices that conflict with his or her own values or company rules, such as the exchange of valuable gifts, the exclusion of women from meetings or expectations of personal favours? Where is the line between respecting cultural difference and accepting conduct that is unethical or illegal? Does a firm from a dignity culture have the right to impose its standards of directness and transparency on partners from face or honour cultures?

### Pillar Scorecard

**Table 18.7**

*Pillar Scorecard: the Honda–Nissan merger talks, 2024 to 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | High | A group with targeted sales revenue of more than 30 trillion yen and synergies in electric vehicles and software were at stake |
| Power | High | Nissan's weak finances gave Honda the upper hand, which encouraged its proposal to make Nissan a subsidiary |
| Persuasion | Very high | Corporate identity, face and the perception of status determined whether the structure could be accepted |

### Your Move

*This is a constructed teaching case.*

You are the international business director of a Polish manufacturer of dairy processing equipment based in Białystok. With tariffs on European machinery set to fall under the India–EU agreement, your company plans a joint venture with a family-owned Indian engineering firm in Pune to assemble and service equipment for Indian dairy cooperatives. The Indian firm's founder, now in his seventies, chairs its board; his daughter, who studied in the United Kingdom, runs its operations. Your team consists of your chief engineer, a lawyer and yourself. The first meeting will take place in Pune. The author's research on investment in India and Poland and on India–Europe relations provides background for your preparation (Kumar, 2020, 2026b).

1. Using the frameworks in Section 18.2, identify the main cultural gaps that are likely to affect the negotiation.
2. Who should lead your team, and how should you address the founder and his daughter?
3. Plan the first meeting: its agenda, the role of hospitality and the topics you would avoid.
4. How would you propose the ownership and governance of the joint venture so as to protect both sides' standing?
5. What level of detail would you seek in the written agreement, and how would you explain your approach to your Indian partners?

## Conclusion

Culture shapes what negotiators want, how they communicate and how they decide. It operates at several levels, national, organisational and professional, and at several depths, from visible behaviour to taken-for-granted assumptions. Frameworks such as those of Hofstede, Hall, Lewis and Meyer, and the Wheel of Culture of Moore and Woodrow, help negotiators to anticipate differences in attitudes to hierarchy, directness, time, risk and the form of agreement, provided that they are used as hypotheses rather than stereotypes. Negotiating practices vary across Europe, Asia, the Americas, the Middle East and Africa, but variation within regions and among individuals is large. Etiquette, including attitudes to time, hierarchy, gifts and hospitality, signals respect and builds trust, but must be reconciled with legal and ethical limits. Of all the mistakes international negotiators make, causing the other side to lose face is among the most costly, because it can turn an economically sound proposal into one that cannot be accepted. The collapse of the Honda–Nissan merger talks, and the partnership that followed, show how identity and status can decide a negotiation even between companies

from the same country. Chapter 19 turns to ethics, which sets the limits within which persuasion, culture and power must operate.

## Exercises

### A. Objective Questions

1. Schein's layered model of culture places at the deepest level:
   a) artefacts and behaviours
   b) basic assumptions
   c) norms and values
   d) dress and greetings

2. In Brett's framework, cultures in which social worth depends on standing in a stable hierarchy are called:
   a) face cultures
   b) dignity cultures
   c) honour cultures
   d) linear-active cultures

3. Power distance refers to:
   a) the physical distance between negotiators
   b) the distance between a negotiator's target and limit
   c) the difference in size between two firms
   d) the extent to which less powerful members of a society accept unequal distribution of power

4. In a high-context culture, meaning is carried mainly by:
   a) explicit words
   b) written contracts
   c) context, relationships and what is not said
   d) numbers

5. In Lewis's classification, people who listen more than they speak and avoid confrontation are:
   a) linear-active
   b) multi-active
   c) reactive
   d) proactive

6. Meyer emphasises that positions on her culture map are:
   a) absolute
   b) the same for all individuals in a country
   c) fixed for all time
   d) relative to the other party

7. Honda and Nissan terminated their merger talks after Honda proposed:
   a) making Nissan its subsidiary
   b) a merger of equals
   c) selling Nissan's stake in Mitsubishi Motors
   d) a joint venture with Renault

8. Under the India–EU agreement, the Indian tariff on most European wines is to fall to:
   a) 0 per cent
   b) 30 per cent
   c) 75 per cent
   d) 110 per cent

### B. Short-Answer Questions

1. Explain the difference between national, organisational and professional culture, with an example of each.
2. Using Table 18.2, describe four ways in which culture can affect negotiation.
3. Explain Brett's distinction between dignity, face and honour cultures and its implications for making proposals.
4. Using Figure 18.2, compare the likely negotiating expectations of Polish and American negotiators on hierarchy and uncertainty.
5. Explain Hall's distinction between high-context and low-context cultures and its consequences for written contracts.
6. Why must negotiators handle gifts with care? Describe the two risks involved.
7. Why is causing loss of face so costly? Illustrate with the Deal File.

### C. Long-Answer Questions

1. "The Honda–Nissan talks failed because of culture, not economics." Discuss, using the concepts of organisational culture, face and decision-making.
2. Compare the frameworks of Hofstede, Hall, Lewis and Meyer with the Wheel of Culture of Moore and Woodrow. Which is most useful for preparing a business negotiation, and why?
3. Analyse the India–EU trade negotiations from 2007 to 2026 as a cross-cultural negotiation. What explains the long delay and the eventual agreement?
4. Design a preparation programme for a Polish company entering negotiations in a culture very different from its own. Include frameworks, etiquette, team composition and ways of avoiding the mistakes in Table 18.6.

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CHAPTER
# 19

# Ethics, Reputation and Responsible Negotiation

https://doi.org/10.61030/p7rd-z6jb

## 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.).

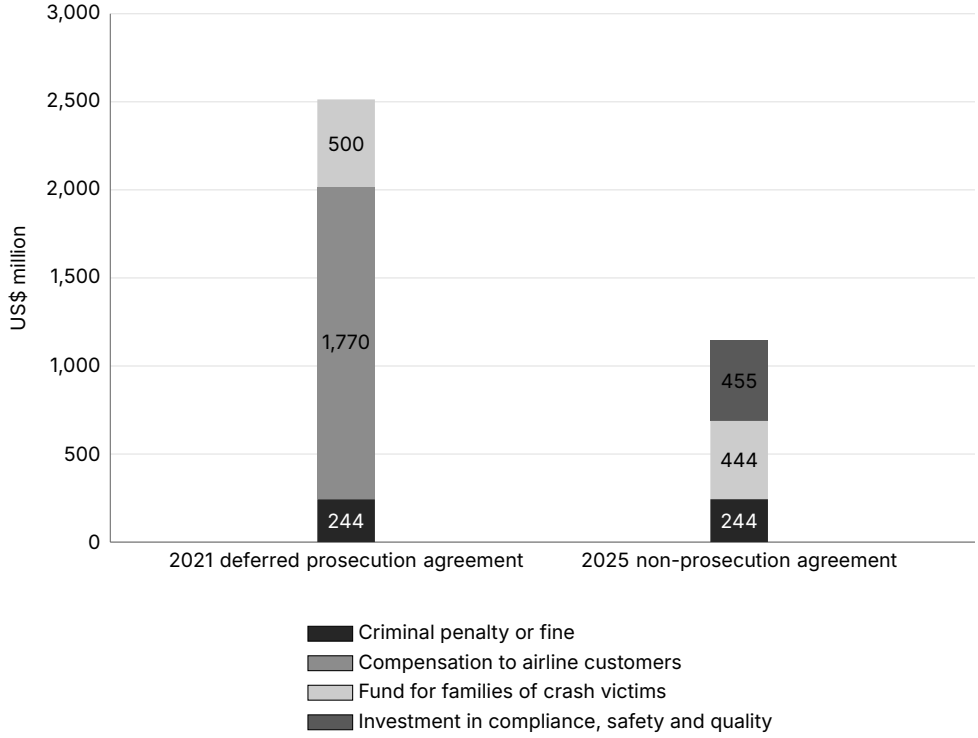
**The non-prosecution agreement.** On 23 May 2025 the Justice Department told the court that it had reached an agreement in principle not to prosecute Boeing, and the formal agreement was signed on 29 May. Instead of pleading guilty, Boeing admitted that the agreed statement of facts, which described 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.

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**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.

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## 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.

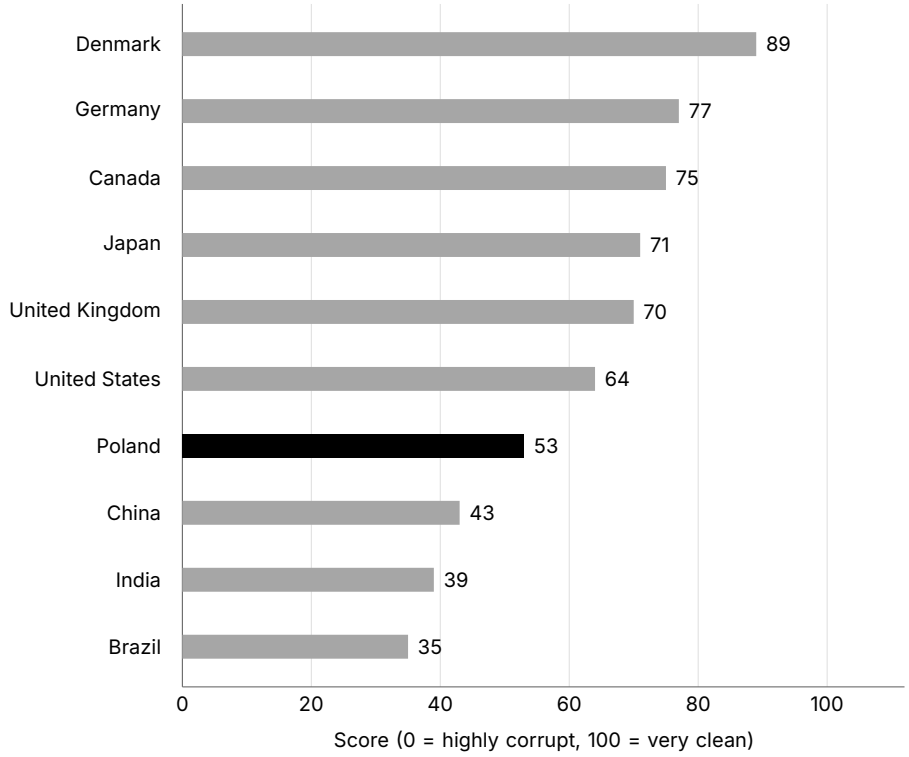
### How Corruption Arises in Negotiation

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.

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**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.

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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.

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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.

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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.

## Further Reading

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CHAPTER
# 20

# Profit, Power and Persuasion Together: Digital Negotiation and Practice

https://doi.org/10.61030/f3hq-r2ct

## Introduction

This book has argued that every business negotiation is a contest over **profit**, the value parties create and divide; that it is decided by **power**, which comes from alternatives, markets, institutions and analytical tools; and that it is closed by **persuasion**, through communication, culture and ethics. Parts II, III and IV examined each pillar in turn. Real negotiations, however, do not arrive divided into chapters. A negotiator facing a difficult deal must analyse its economics, its balance of power and its human dimension at the same time, and decide how to act on all three.

This final chapter brings the three pillars together. It proceeds in four steps. Section 20.1 sets out a method for analysing a complete negotiation through the three pillars and applies it to the Deal File. Section 20.2 examines what changes when machines take part in negotiation, from automated procurement to AI-assisted preparation and negotiations between software agents, and the questions this raises about information, accountability and trust. Section 20.3 presents five classroom simulations built from cases in the book. Section 20.4 asks which skills negotiators will need in an economy shaped by geopolitical fragmentation, technological change and new expectations of responsibility.

The Deal File is itself about technology. Since 2023 news publishers, authors and other owners of content have faced a choice in their dealings with the developers of artificial intelligence: license their content in exchange for payment, or sue for infringement of copyright. Some have done one, some the other and some both. The choice illustrates every theme of this book: the creation and division of value from a new technology, the role of alternatives and of courts in

determining bargaining power, and the importance of persuasion, coalitions and legitimacy in a contest that is being fought in public as well as at the table.

DEAL FILE

### Publishers and AI Firms: License or Sue?

The large language models that power AI assistants are trained on vast quantities of text, including news articles and books. From 2023 onwards the owners of that content asked whether, and on what terms, it could be used without their permission. AI developers argued that training models on publicly available text was a lawful, transformative use; many publishers and authors called it copying on an industrial scale, threatening their businesses. Each side had alternatives to agreement, and each faced uncertainty about what the courts would decide.

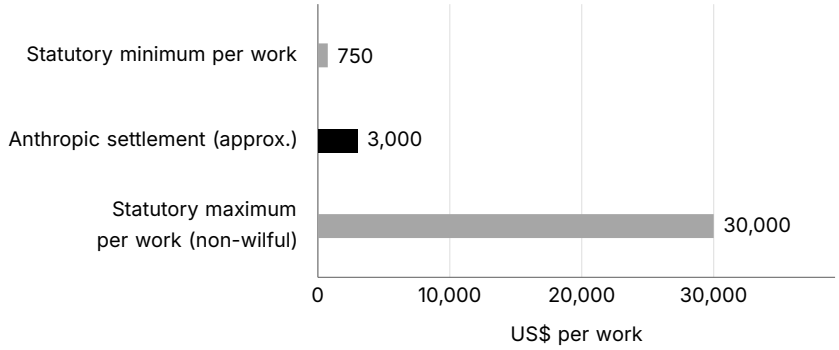
**The licensing route.** Several publishers and platforms chose to negotiate. In February 2024 Google gained access to Reddit's Data API under an expanded partnership that allowed it to display, train on and otherwise use Reddit content (Google, 2024). In May 2024 News Corp, owner of *The Wall Street Journal*, *The Times* and other titles, signed a multi-year agreement giving OpenAI access to current and archived content from its news publications, for display in answers to users' questions and to improve OpenAI's products (OpenAI, 2024a). In neither case did the companies disclose the financial terms, which is itself a feature of such negotiations: the absence of public prices makes each new deal harder to benchmark.

**The litigation route.** Other owners of content chose to sue. On 27 December 2023 *The New York Times* sued OpenAI and Microsoft, alleging that millions of its articles had been used without permission to train models now competing with it. On 26 March 2025 Judge Sidney Stein allowed its main claims of direct and contributory copyright infringement to proceed (*The New York Times Co. v. Microsoft Corp.*, 2025). In April 2025 the Judicial Panel on Multidistrict Litigation centralised the copyright cases against OpenAI, including those of the *Times*, other news organisations and groups of authors, before the same judge in New York (*In re OpenAI, Inc., Copyright Infringement Litigation*, 2025).

**A settlement that set a benchmark.** Authors brought a class action against Anthropic, the developer of the Claude models. In June 2025 Judge William Alsup ruled that training AI models on lawfully acquired books could be fair use, but that downloading and storing books from pirate websites was not protected, leaving that claim to go to trial (*Bartz v. Anthropic* PBC, 2025a). The parties settled instead, and on 17 October 2025 the court granted preliminary approval to the class settlement. The 482,460 works finally identified would each receive an award of about US$3,000, less costs and fees, which the court described as four times the statutory minimum for ordinary infringement, and a fairness hearing

**Figure 20.1**

*Damages per work: the Anthropic settlement and statutory damages under US copyright law (US$)*




*Note.* Author, based on *Bartz v. Anthropic PBC* (2025b) and 17 U.S.C. § 504(c). Statutory damages range from US$750 to US$30,000 per work and may be raised to US$150,000 for wilful infringement; the maximum for wilful infringement is not shown.

was set for April 2026 (*Bartz v. Anthropic* PBC, 2025b). Figure 20.1 compares the settlement with the range of statutory damages.

**Regulation.** Governments also shaped the negotiation. In the European Union, obligations under the AI Act for providers of general-purpose AI models took effect on 2 August 2025. Providers must put in place a policy to comply with EU copyright law, including the reservations of rights that rights holders use to opt their content out of text and data mining, and must publish a sufficiently detailed summary of the content used for training, according to a template provided by the AI Office (Regulation (EU) 2024/1689, 2024). In the United States, the outcome depended largely on the courts' interpretation of fair use.

**Questions to keep in mind.** How should a publisher decide between licensing and litigation? What determines the price of a licence? How do court rulings in other cases change the bargaining power of each side? Why have some publishers chosen to do both? And what does the contest suggest about negotiation when the law is uncertain and the technology is changing quickly? The chapter answers these questions using the three pillars of the book. Readers should note that Anthropic, one of the parties discussed, is also the developer of an AI system; the facts here are drawn from court records and published reports.

**Table 20.1**

*Publishers and AI firms at a glance*

| | |
|---|---|
| **Parties** | News publishers, book authors and other rights holders; AI developers including OpenAI, Microsoft, Google and Anthropic; courts; regulators in the United States and the European Union; readers and users of AI services |
| **At stake** | Payment for the use of content in training and in AI products; control over how content is used and attributed; the business model of journalism and publishing; the cost and legal certainty of AI development |
| **Timeline** | *New York Times* lawsuit filed 27 December 2023; Reddit–Google deal February 2024; News Corp–OpenAI deal May 2024; claims in the *Times* case allowed to proceed March 2025; fair-use ruling in the Anthropic case June 2025; EU general-purpose AI obligations from 2 August 2025; Anthropic settlement preliminarily approved 17 October 2025 |
| **Main options** | License content for payment and attribution; sue for infringement; combine both; block access through technical opt-outs |

*Note.* Author, based on the sources cited in the Deal File.

## 20.1 Analysing a Full Negotiation through the Three Pillars

### A Method

The chapters of this book offer many tools. To analyse a complete negotiation, they can be organised into a sequence of questions under each pillar. Table 20.2 sets out the method.

The order matters. Negotiators who begin with tactics, before they have understood the value at stake and the balance of alternatives, tend to fight over the wrong things. Negotiators who analyse profit and power but neglect persuasion may design an economically sound agreement which is nonetheless rejected, as several Deal Files in this book have shown. The method asks negotiators to work through all three before choosing a strategy, and to return to them as the negotiation unfolds.

### Profit: The Value of Content

The first question is what value is at stake. For AI developers, high-quality, reliable and current text has value both for training models and for products that answer questions about current events. For publishers, the same content is the basis of their business; it has value in licensing income and, more importantly, in the readers and subscribers it attracts. Licensing creates value when the AI developer gains legal certainty and access to content it needs, and the publisher gains income, attribution and links that bring readers back, more than it loses from readers who obtain answers without visiting its site.

**Table 20.2**

*Integrated analysis of a negotiation through the three pillars*

| Pillar | Key questions | Tools from the book |
|---|---|---|
| **Profit** | What value is at stake, and for whom? How can it be enlarged? How will it be divided? What are the parties' interests, targets and limits? | Surplus and the zone of possible agreement (Chapters 2 and 11); planning template (Chapter 7); integrative bargaining and logrolling (Chapter 8); deal structures and earn-outs (Chapter 9) |
| **Power** | What are each side's alternatives? Who depends on whom? What role do time, information, coalitions, institutions and third parties play? | BATNA and dependence (Chapter 11); game theory and decision trees (Chapter 12); coalitions and pivotal parties (Chapter 14); third parties and courts (Chapter 5); states and geopolitics (Chapter 15) |
| **Persuasion** | How will the parties communicate? How do framing, emotions and trust affect perceptions? What cultural and ethical considerations apply? Who must be persuaded beyond the table? | Communication and bias (Chapter 16); styles and tactics (Chapter 17); culture (Chapter 18); ethics and reputation (Chapter 19); two-level games (Chapter 4) |
| **Synthesis** | Given all three, what strategy should each side adopt? What process will get there? What would a durable agreement look like? | Phases and tools (Chapter 13); conflict styles (Chapter 3); implementation (Chapter 13) |

The terms of the reported agreements show how parties have tried to enlarge and divide this value. Licences often combine an annual payment with access to archives, the right to display excerpts with attribution and links, and sometimes cooperation on products. These are the multi-issue packages described in Chapter 8: a publisher valuing attribution and traffic and an AI developer valuing legal certainty and current content can trade across issues.

#### Power: Alternatives Shaped by Courts

The second question is what determines each side's power. The publisher's alternative to a licence is to sue, to block access through technical opt-outs or to do nothing. The AI developer's alternative is to rely on a fair-use defence, to use other content, including licensed material from other publishers, or to generate synthetic data. The value of each alternative depends on uncertain court rulings, which is why litigation and negotiation are so closely connected.

A simple decision tree, of the kind introduced in Chapter 12, shows the logic. Suppose a publisher believes that, if it sues, it has a 40 per cent chance of winning damages and a licence on favourable terms worth US$300 million in present

value, and a 60 per cent chance of losing, in which case it receives nothing. Litigation would cost US$30 million. The expected value of suing is 0.4 × US$300 million − US$30 million = US$90 million. If an AI developer offers a licence worth US$100 million in present value, a risk-neutral publisher should accept; if it offers US$60 million, the publisher should prefer to sue. The developer makes the same calculation from its side, and the zone of possible agreement lies between the publisher's expected value of litigation and the developer's expected cost of being sued. Table 20.3 shows how court rulings can shift this range.

**Table 20.3**

*How rulings shift the bargaining range: an illustrative example (present values, US$ million)*

| Scenario | Publisher's expected value of suing | Developer's expected cost of being sued | Zone of possible agreement |
|---|---|---|---|
| Before any ruling: probability of publisher winning 40 per cent | 90 | 170 | 90 to 170 |
| After a ruling that training is fair use: probability falls to 15 per cent | 15 | 95 | 15 to 95 |
| After a ruling that copying from pirate sites is not protected: probability of liability for such copies rises to 80 per cent | 210 | 290 | 210 to 290 |

*Note.* Author's illustrative example, assuming an award worth US$300 million if the publisher wins. The developer's expected cost is the expected award plus its own legal costs of US$30 million and a reputational cost of US$20 million; the publisher's expected value is the expected award less its legal costs of US$30 million.

The example shows why the Anthropic ruling of June 2025 mattered so much. By holding that training on lawfully acquired books could be fair use, it weakened the authors' position on that claim; by holding that copying from pirate sites was not protected, it strengthened their position on the other, and exposed the developer to potentially very large statutory damages. The settlement followed within weeks, at a level that, at roughly US$3,000 per work, reflected the strength of the authors' remaining claim. Each new ruling in any of the many related cases changes the alternatives of all the parties, and so the price of licences negotiated elsewhere.

Power also depends on coalitions and on the pivotal position described in Chapter 14. A single small publisher has little power, because its content is replaceable. A large publisher with unique, current and trusted content, such as a leading national newspaper, has more. Collective action by publishers, through

industry bodies or collective licensing schemes, can increase their power, though it may raise questions under competition law.

#### Persuasion: Legitimacy, Framing and Trust

The third question is how agreement will be reached and accepted. Both sides have fought a public contest of framing. Publishers frame the issue as one of fairness and the survival of independent journalism; AI developers frame it as one of innovation, access to knowledge and the lawful use of public information. The framing matters because courts, legislators and the public will decide the rules within which future negotiations take place, as the two-level game of Chapter 4 predicts. Trust also matters. Publishers need confidence that licensed content will be used as agreed and attributed accurately; developers need confidence that a licence will protect them from future claims. Transparency obligations, such as those in the EU AI Act, can support trust by making the use of content visible.

#### Synthesis: Why Some Publishers Do Both

The analysis explains why some publishers have chosen both routes. Licensing to one developer creates income and establishes a market price, strengthening the argument, in litigation against another, that the use of content has a value for which payment is due. Litigation against one developer, in turn, strengthens the publisher's alternative in negotiations with others, since a credible threat of suit raises the developer's expected cost of proceeding without a licence. The two routes are complementary strategies within a single negotiation with an industry, not mutually exclusive choices.

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**KEY MOVE**

Before you choose a tactic, work through all three pillars: the value at stake and how it can be enlarged, each side's alternatives and what could change them, and what will make an agreement acceptable to those who must approve it. Revisit the analysis whenever a court, a regulator or a competitor changes the alternatives.

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## 20.2 What Changes When Machines Negotiate?

### From Tools to Agents

Digital technology has long supported negotiation through email, video conferencing, databases and electronic auctions. Artificial intelligence adds three new possibilities. First, AI can **support human negotiators**: summarising documents, analysing past deals, generating options, drafting proposals and simulating the other side for practice. Second, AI can **negotiate on behalf of a party** within limits set by humans, as in the automated negotiation of supplier contracts described in Chapter 7, where Walmart used software to negotiate terms with large numbers of smaller suppliers. Third, AI agents may increasingly **negotiate with other AI agents**, for example in procurement, advertising markets or the scheduling of logistics, with humans setting goals and limits but not taking part in each exchange. Table 20.4 summarises these roles of AI in negotiation.

**Table 20.4**

*Roles of AI in negotiation*

| Role | Examples | Benefits | Risks |
|---|---|---|---|
| Preparation assistant | Research, analysis of counterparts, scenario modelling, scoring systems | Speed; broader analysis; better preparation | Errors and fabricated facts; over-reliance; confidentiality |
| Practice partner | Simulated counterparts for training | Low-cost rehearsal; feedback | Unrealistic behaviour; narrow scenarios |
| Drafting and communication | Proposals, summaries, translation | Clarity; speed; overcoming language barriers | Loss of nuance; tone errors; cultural misreading |
| Autonomous negotiator | Negotiating routine contracts within set limits | Scale; consistency; lower transaction costs | Errors at scale; accountability; manipulation by counterparts |
| Agent-to-agent negotiation | Machines negotiating with machines | Speed; efficiency in high-volume markets | Collusion; opacity; loss of human judgement |

### Information and Strategy

AI changes the economics of information described in Chapter 2. Preparation that once took a team weeks can be done in hours, which reduces the advantage of the better-resourced party. At the same time, a party with better data and better models may gain a new advantage, particularly in negotiations with

consumers or small firms. Because AI systems can analyse patterns in a counterpart's past behaviour, they can also estimate reservation prices more accurately, shifting power towards the party using them.

Research has also shown that automated negotiators can learn strategic behaviour, including behaviour humans would regard as deceptive. In an early experiment, researchers who trained dialogue systems to negotiate the division of items found that the systems learned to feign interest in items they did not value in order to concede them later, without having been programmed to do so (Lewis et al., 2017). Research on pricing algorithms has found that algorithms learning by trial and error can, in some market conditions, arrive at prices above competitive levels without explicit communication, raising concerns about tacit collusion (Calvano et al., 2020). These findings suggest that the ethical questions of Chapter 19, about deception and fair dealing, and the competition questions of Chapter 9, apply with new force when machines negotiate.

#### Accountability and Trust

When an AI system negotiates, who is responsible for what it says and agrees? In most legal systems, a party using an automated system is bound by the agreements it makes and responsible for its representations, as it would be for a human agent. Chapter 2 described the principal–agent problem; AI agents create a version of it in which the agent's incentives are set by its design and training, which the principal may not fully understand. Firms using AI in negotiation therefore need clear limits on what systems may agree, human review of significant commitments, records of exchanges and testing for errors and biases. Regulation is beginning to address these issues. The EU AI Act sets transparency obligations for certain systems, including disclosure when people interact with an AI system, and obligations for providers of general-purpose models.

Trust in AI-assisted negotiation depends on transparency. Counterparts may react differently when they know they are negotiating with a machine; some may regard it as fairer and more consistent, others as impersonal or manipulative. The persuasion pillar suggests that relationships, face and emotions, examined in Chapters 16 and 18, remain important even when machines mediate communication, and the most complex and relationship-intensive negotiations will continue to require human judgement.

#### What Remains Human

AI is likely to transform routine, high-volume, well-defined negotiations, in which issues are few, preferences are clear and relationships matter little. It is less likely to replace humans in negotiations that are complex, novel, emotionally charged, politically sensitive or dependent on long-term relationships, such

as most of the Deal Files in this book. In those negotiations, AI will be a powerful assistant: preparing analysis, generating options and testing strategies. The decisions about what to value, whom to trust, how to frame an offer and when to walk away will remain human, as will responsibility for them.

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**KEY MOVE**

Use AI to prepare more thoroughly, rehearse more often and draft more clearly, but set clear limits on what any automated system may agree, review its significant commitments and remain accountable for what it says on your behalf.

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## 20.3 Five Simulations from the Book's Cases

### How to Use the Simulations

The following simulations allow students to apply the concepts of the book in practice. Each is based on a Deal File and can be run in a seminar of 90 minutes to three hours. Lecturers divide students into teams, give each team the public information from the relevant Deal File and a short confidential brief prepared from the guidance below, allow time for preparation using the planning template of Chapter 7, run the negotiation and then hold a debriefing. Students should not use information unavailable to their role, and lecturers may vary the parameters to create different zones of possible agreement. Table 20.5 outlines five simulations built from the book's cases.

### Guidance for Each Simulation

**Simulation 1: The writers' contract.** Give each side a confidential brief with its priorities among the issues, its reservation point on pay and residuals and its constituency's expectations. The union's brief should emphasise protection against the use of AI and the views of its members; the studios' brief should emphasise flexibility and the costs of a long strike. Introduce a public-relations event midway, such as a press statement, to test how public pressure affects the negotiation. Debriefing questions: Which issues were traded? How did constituencies shape the outcome? What role did the threat of a strike play?

**Simulation 2: The partnership review.** Give the investor a confidential valuation of the developer and a concern about losing exclusive access; give the developer a need for capital and computing power and a wish for greater independence. Include several issues of different value to each side, so that logrolling is possible. Debriefing questions: How was the surplus divided? Did the teams find trades that created value? How did each side protect itself against hold-up?

**Table 20.5**

*Five simulations built from the book's cases*

| Simulation | Based on | Parties | Main issues | Concepts practised |
|---|---|---|---|---|
| 1. The writers' contract | Chapter 1: the Hollywood strikes of 2023 | Writers' union; studios' association | Pay, residuals from streaming, staffing, use of AI | Interests and positions; collective bargaining; public pressure |
| 2. The partnership review | Chapter 2: Microsoft and OpenAI | A large technology investor; an AI developer | Equity stake, access to models, revenue sharing, exclusivity, governance | Surplus, specific investment, hold-up and value creation |
| 3. Dividing a supplier | Chapter 14: Boeing, Airbus and Spirit AeroSystems | Acquirer; rival customer; target's board; competition authority | Price, sites, compensation, supply commitments, remedies | Multi-party negotiation; coalitions; pivotal parties; linked deals |
| 4. Restarting the mine | Chapter 15: Cobre Panamá | Host government; foreign investor; community representatives | Royalties, state participation, closure date, environment, arbitration | Obsolescing bargain; legitimacy; stakeholders |
| 5. The merger that might be | Chapter 18: Honda and Nissan | Two companies' negotiating teams | Structure, governance, restructuring, brands, timetable | Culture; face; organisational identity; deal design |

**Simulation 3: Dividing a supplier.** Use four teams. Give the acquirer a strong wish to complete quickly, the rival customer a need to secure its supply and a willingness to accept loss-making contracts only with compensation, the target's board a duty to maximise value for shareholders, and the competition authority a mandate to protect competition. Allow coalitions to form and permit side agreements. Debriefing questions: Who was pivotal? Which coalitions formed, and why? How did the authority's conditions shape the outcome?

**Simulation 4: Restarting the mine.** Give the government a mandate shaped by public opinion and the Supreme Court's ruling, the investor a need to recover its investment and end uncertainty, and the community representatives concerns about water, jobs and environmental protection. Require that any agreement be acceptable to all three. Debriefing questions: How did legitimacy affect the terms? What mechanisms made the agreement durable? How did the arbitration claims affect each side's alternatives?

**Simulation 5: The merger that might be.** Give each company's team a confidential brief describing its history, identity and internal constraints, and the economic case for combination. Halfway through, give one team an instruction to propose a change of structure that would make the other its subsidiary. Debriefing questions: How did the proposal affect the negotiation? How could the underlying concern have been addressed without threatening face? Would a partnership short of merger have been better?

#### Debriefing and Assessment

Debriefing is where learning happens. Lecturers can compare outcomes across groups, plot the agreements on a chart of joint value and division, and ask students to explain why outcomes differed. Useful questions include: What was your alternative, and did it change during the negotiation? What did you learn about the other side's interests? Which tactics worked, and which provoked resistance? Did you face any ethical choices? What would you do differently? Assessment can combine the outcome, measured with a scoring system of the kind described in Chapter 13, with a written reflection that applies the concepts of the book.

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**KEY MOVE**

Treat simulations as experiments. Prepare with the planning template, negotiate, then analyse the outcome through the three pillars and compare it with what other groups achieved under the same conditions.

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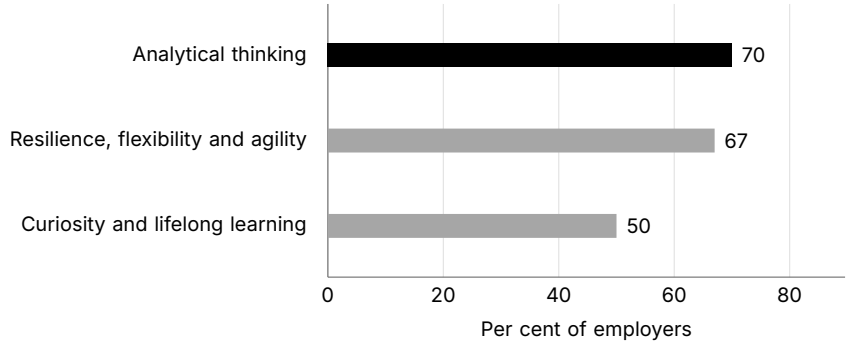
## 20.4 Which Skills Will Future Negotiators Need?

#### Three Forces

Three forces are reshaping the environment in which business negotiators work. The first is **geopolitical fragmentation**: tariffs, export controls, sanctions, investment screening and competition between major powers, examined in Chapters 11, 12, 15 and 17, have made governments parties to many commercial negotiations and have made alternatives less stable. The second is **technological change**, above all the spread of AI, which is changing both what is negotiated, as the Deal File shows, and how negotiation is conducted. The third is **new expectations of responsibility**: investors, regulators, employees and the public increasingly judge firms by the environmental and social consequences of their agreements and by the fairness of the processes through which they are reached, as Chapters 15 and 19 showed.

**Figure 20.2**

*Selected skills identified as core by employers, 2025 (per cent of employers)*




*Note.* Author, based on World Economic Forum (2025), chapter 3. The report describes analytical thinking as essential for "seven out of 10" companies; the shares for other skills appear only in the report's chart and are not reproduced here.

Employers' expectations reflect these forces. In the World Economic Forum's survey of employers for its *Future of Jobs Report 2025*, analytical thinking was the skill most often identified as core for the workforce, by seven out of ten employers, followed by resilience, flexibility and agility, cited by 67 per cent, and leadership and social influence. Creative thinking and motivation and self-awareness came next, and curiosity and lifelong learning was cited by 50 per cent of employers, with technological literacy and empathy and active listening also among the top ten (World Economic Forum, 2025). Figure 20.2 shows the shares that the report states in its text.

Almost every skill in Figure 20.2 is a negotiating skill. Analytical thinking is the basis of the profit and power analysis of Parts II and III. Resilience and flexibility are needed to manage uncertainty, deadlock and difficult tactics. Leadership and social influence, empathy and active listening are the core of persuasion in Part IV.

### A Skills Framework

Table 20.6 organises the skills that future negotiators will need around the three pillars of the book.

### Learning to Negotiate

Negotiation is a skill that improves with deliberate practice and reflection. Research on negotiation training has found that people learn most effectively when they compare cases and draw out the underlying principles, rather than studying a single example (Thompson et al., 2000). This is why each chapter of this book

**Table 20.6**
*Skills for future negotiators*

| Pillar | Skills | Where developed in this book |
|---|---|---|
| Profit | Economic analysis of value; financial modelling of deals; designing multi-issue agreements and contingent contracts | Chapters 2, 6, 7, 8 and 9 |
| Power | Analysing alternatives and dependence; strategic and game-theoretic thinking; managing coalitions; understanding states, law and geopolitics | Chapters 5, 11, 12, 14 and 15 |
| Persuasion | Listening and questioning; framing; managing emotions and trust; cross-cultural competence; ethical judgement | Chapters 16, 17, 18 and 19 |
| Integration | Using AI responsibly; analysing complete negotiations; learning from experience | Chapters 13 and 20 |

has combined a Deal File with shorter snapshots, and why Section 20.3 asks students to compare outcomes across groups. The author's teaching and research on international business, communication and economic relations between India and Europe reflect the same conviction: negotiators learn best by connecting theory to real cases and by reflecting on how culture and context shape what works (Kumar, 2026a, 2026b). The same conviction underlies the author's forthcoming work on turning evidence into impact in international business and economics (Kumar, 2026g).

**KEY MOVE**

Build your skills across all three pillars. Practise analysis, strategy and communication deliberately, compare cases to find the principles beneath them, learn to use AI as an assistant rather than a substitute and develop the ethical judgement that makes your agreements last.

BACK TO THE DEAL FILE

## Reading the Choice between Licensing and Litigation

The three pillars together explain the choices of publishers and AI developers.

**Profit: value can be created by agreement.** Licences give developers legal certainty and access to current, reliable content, and give publishers income, attribution and traffic. The multi-issue structure of licences allows both sides to trade across issues they value differently.

**Power: courts set the alternatives.** The value of litigation to publishers, and its cost to developers, depends on rulings that are still emerging. The Anthropic ruling and settlement show how a single decision can shift the zone of possible agreement and set a benchmark for others. Large publishers with unique content have more power than small ones, and coalitions can increase their leverage.

**Persuasion: legitimacy and framing matter.** Both sides are seeking to persuade courts, legislators and the public, whose decisions will set the rules for future negotiations. Transparency obligations under the EU AI Act may build trust by making the use of content visible.

**Synthesis: licensing and litigation are complementary.** Publishers that license to some developers and sue others are using each route to strengthen their position in the other. The contest is not a single negotiation but a series of related ones, in which every agreement and every ruling changes the alternatives of all the parties.

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MA EXTENSION

### Bargaining in the Shadow of Uncertain Law

Mnookin and Kornhauser (1979) argued that private negotiations take place "in the shadow of the law": parties bargain over outcomes reflecting what a court would decide. When the law itself is uncertain, as in the case of AI and copyright, each ruling changes the shadow. (a) Extend the decision tree of Section 20.1 to a setting with many publishers and one developer, in which a ruling in one case changes the probability of success in all others. (b) Show why early settlements may be cheaper for the developer and why some publishers may prefer to wait for rulings in other cases. (c) Explain how a large settlement, such as that in the Anthropic case, creates a benchmark affecting later negotiations. (d) Discuss whether collective licensing by publishers would increase total welfare, and what concerns it might raise under competition law.

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ETHICS CHECK

AI developers argue that training models on publicly available text is a lawful use, benefiting society through access to knowledge; publishers and authors argue that it takes the value of their work without consent or payment. Is it ethical to use content for training without permission while the law is uncertain? Should AI developers pay for content even where the law might not require it? And what responsibilities do firms have when they deploy AI agents to negotiate with people who may not know that they are dealing with a machine?

### Pillar Scorecard

**Table 20.7**

*Pillar Scorecard: publishers and AI firms, 2023 to 2026*

| Pillar | Importance in this case | Evidence |
|---|---|---|
| Profit | Very high | Licensing agreements with major publishers and platforms and a settlement award of about US$3,000 for each of 482,460 books show the value of content to AI development |
| Power | Very high | Court rulings, coalitions of rights holders and regulation determine each side's alternatives |
| Persuasion | High | Both sides are seeking to persuade courts, legislators and the public, whose decisions will set the rules for future negotiations |

### Your Move

*This is a constructed teaching case.*

You are the head of strategy at a Polish media group that publishes a national daily newspaper, several regional titles and a large archive of articles dating back to the 1990s. An international AI developer has offered your group a three-year licence to use its archive and current articles in training and in its AI assistant, in exchange for an annual payment and attribution with links to your websites. Another AI developer appears to have used your content without permission. Your editors are divided: some fear that AI assistants will reduce visits to your websites; others see licensing income as essential for the future of the newsroom.

1. Using Table 20.2, analyse the negotiation through the three pillars.
2. Estimate the value of your content to the developer and to your group, and identify issues other than price that could be traded.
3. Build a simple decision tree comparing licensing with legal action against the second developer, using the approach of Section 20.1.
4. How would rights under EU law, including the AI Act and the reservation of rights against text and data mining, affect your alternatives?
5. Would you join other European publishers in negotiating collectively? What are the advantages and risks?

## Conclusion

This book began with conflict: the disagreements over value, power and fairness that arise wherever firms, workers, governments and communities depend on each other. It has argued that negotiation is the principal means by which economic actors turn such conflict into agreement, and every negotiation can be understood through three pillars. **Profit** asks what value is at stake and how it can be created and divided. **Power** asks what each side's alternatives are and how they can be changed. **Persuasion** asks how agreement is reached and made to last, through communication, culture and ethics. The Deal Files of this book, from the Hollywood strikes and the Microsoft–OpenAI partnership to the Busan trade truce, the division of Spirit AeroSystems, the Cobre Panamá mine and the negotiations between publishers and AI firms, show these pillars at work in some of the most important business negotiations of recent years.

Three lessons stand out. First, value is rarely fixed: the best negotiators enlarge the pie before they divide it, by understanding interests, trading across issues and designing agreements which work in practice. Second, power is relational and changeable: it comes from alternatives which can be improved, from coalitions which can be built and from institutions, courts and states able to shift the balance at any moment. Third, persuasion is indispensable: agreements economically sound and backed by power can still fail if they are perceived as unfair, threaten the other side's identity or rest on deception. The negotiators who will succeed in an economy shaped by geopolitical fragmentation, technological change and new expectations of responsibility are those who can analyse all three pillars together, act ethically and learn from every negotiation they undertake.

## Exercises

### A. Objective Questions

1. In the integrated method of Table 20.2, the first pillar to analyse is:
   a) persuasion
   b) profit
   c) power
   d) tactics

2. In the illustrative decision tree of Section 20.1, the publisher's expected value of suing is:
   a) US$30 million
   b) US$90 million
   c) US$120 million
   d) US$300 million

3. In June 2025, in the case brought by authors against Anthropic, the court held that:
   a) all uses of books for training were infringing
   b) the case should be dismissed
   c) training on lawfully acquired books could be fair use, but copying from pirate sites was not protected
   d) AI developers must license all content

4. Under the settlement in the Anthropic case, the award for each work was about:
   a) US$750
   b) US$1,500
   c) US$3,000
   d) US$30,000

5. Obligations under the EU AI Act for providers of general-purpose AI models took effect on:
   a) 1 January 2025
   b) 2 August 2025
   c) 1 January 2026
   d) 2 August 2027

6. Research on pricing algorithms by Calvano et al. (2020) raised concerns about:
   a) deception by consumers
   b) labour shortages
   c) lower prices
   d) tacit collusion

7. In the World Economic Forum's survey for 2025, the skill most often identified as core by employers was:
   a) analytical thinking
   b) technological literacy
   c) talent management
   d) creative thinking

8. Thompson et al. (2000) found that negotiators learn most effectively by:
   a) comparing cases to draw out principles
   b) studying a single case in depth
   c) memorising tactics
   d) negotiating without preparation

### B. Short-Answer Questions

1. Explain the method of integrated analysis in Table 20.2 and why the order of the pillars matters.

2. Using Table 20.3, explain how court rulings shift the zone of possible agreement between publishers and AI developers.

3. Why might a publisher both license its content to one developer and sue another?

4. Describe three roles that AI can play in negotiation, with the benefits and risks of each.
5. Who is accountable when an AI system negotiates on behalf of a firm? What safeguards should firms adopt?
6. How should a lecturer run and debrief one of the simulations in Section 20.3?
7. Explain how the skills in Figure 20.2 relate to the three pillars of the book.

#### C. Long-Answer Questions

1. Analyse the choices of publishers and AI developers between licensing and litigation through the three pillars of profit, power and persuasion.
2. "In the age of AI, the human negotiator becomes more important, not less." Discuss.
3. Choose one Deal File from this book and analyse it fully using the integrated method of Table 20.2. What strategy would you have recommended to each party?
4. What skills will business negotiators need over the next decade, and how should universities and firms develop them?

## Further Reading

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Thompson, L., Gentner, D., & Loewenstein, J. (2000). Avoiding missed opportunities in managerial life: Analogical training more powerful than individual case training. *Organizational Behavior and Human Decision Processes, 82*(1), 60–75.
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APPENDIX A

# Glossary

This glossary defines the main terms used in the book. The numbers in brackets refer to the chapters in which each term is introduced or discussed most fully.

**Accommodating.** An unassertive and cooperative conflict-handling style, in which one party sets aside its own concerns to satisfy the other's (3, 17).

**Active listening.** Attending fully to what the other side says and showing understanding through paraphrasing, summarising, labelling emotions and silence (16).

**Agenda.** The list and order of issues to be discussed in a negotiation; its design can create or prevent trades across issues and can confer power on whoever controls it (13, 14).

**Agent.** A person who negotiates on behalf of another, such as a lawyer, banker, broker or union official; see also principal–agent problem (2, 14).

**Anchoring.** The tendency of an initial number, such as a first offer, to pull later judgements and the final outcome towards it (7, 13, 16).

**Arbitration.** A process in which a neutral third party hears the parties and makes a decision that is usually binding (5).

**Avoiding.** A conflict-handling style both unassertive and uncooperative, in which a party withdraws from or postpones the issue (3).

**BATNA (best alternative to a negotiated agreement).** What a party will do if the negotiation fails; the main source of bargaining power (4, 11).

**Bargaining power.** The ability to obtain a favourable share of the value created by an agreement, deriving above all from alternatives, dependence, information, time and commitment (11).

**Bargaining zone.** See zone of possible agreement.

**Blocking coalition.** A group of parties able to prevent an agreement, even if its members do not agree on what they want instead (14).

**Bluffing.** Making claims, threats or promises which one does not intend to carry out, or which misrepresent one's position; its ethical status depends on whether it concerns facts or intentions (19).

**Bogey.** A tactic in which a negotiator pretends that an issue of little importance matters greatly, in order to trade it later (17).

**Bracketing.** Making offers so that the midpoint between the two sides' positions falls at the outcome one wants (13).

**Breakthrough negotiation.** Ury's five-step method for dealing with difficult counterparts: go to the balcony, step to their side, reframe, build a golden bridge and use power to educate (17).

**Coalition.** A group of parties coordinating their positions to obtain an outcome none could obtain alone (14).

**Collaborating.** A conflict-handling style both assertive and cooperative, in which the parties seek a solution fully satisfying both (3, 17).

**Collective bargaining.** Negotiation between employers and representatives of employees, usually trade unions, over pay and conditions (10).

**Commitment tactic.** A move that limits one's own future options in order to make a threat or position credible (11, 12).

**Comparability of treatment.** The principle in sovereign debt restructuring that each class of creditors must offer relief comparable to that offered by others (15).

**Competing.** An assertive and uncooperative conflict-handling style, in which a party pursues its own concerns at the other's expense (3, 17).

**Compliance programme.** A firm's system of policies, controls, training, reporting and investigation designed to prevent breaches of law, such as bribery (19).

**Compromising.** A conflict-handling style in which each side gives up something to reach a solution partly satisfying both (3).

**Concession.** A move by a negotiator towards the other side's position; its size, timing and justification signal information about the negotiator's limit (8, 13).

**Conflict.** A situation in which parties perceive that their interests, values or goals are incompatible; it may concern interests, data, relationships, structures or values (1, 3).

**Contingent contract.** An agreement whose terms depend on future events, such as an earn-out, allowing parties with different expectations to agree (8, 9).

**Core (cooperative game theory).** The set of allocations of value that no group of parties could improve upon by acting on its own (14).

**Core concerns.** Fisher and Shapiro's five sources of emotion in negotiation: appreciation, affiliation, autonomy, status and role (16).

**Corruption.** The abuse of entrusted power for private gain, including bribery of public officials or private employees (19).

**Cultural intelligence.** The ability to notice, interpret and adapt to cultural differences in behaviour (18).

**Deadlock (impasse).** A situation in which negotiators cannot reach agreement and neither is willing to concede further (3, 13).

**Deal File.** The recent real case that opens each chapter of this book and is revisited as the theory unfolds.

**Deferred prosecution agreement (DPA).** An agreement under which prosecutors defer and later drop charges against a company if it meets conditions such as paying penalties and improving compliance (19).

**Dependence.** The extent to which a party needs the other side for resources it cannot easily obtain elsewhere; greater dependence means less bargaining power (11).

**Dignity, face and honour cultures.** Brett's classification of cultures according to whether social worth is inherent (dignity), depends on standing in a hierarchy (face) or must be claimed and defended (honour) (18).

**Distributive negotiation.** Negotiation over the division of a fixed amount of value, in which one side's gain is the other's loss (8).

**Earn-out.** A contingent payment in an acquisition that depends on the future performance of the acquired business (8, 9).

**Eclectic paradigm (OLI).** Dunning's explanation of foreign direct investment by ownership, location and internalisation advantages (15).

**Endowment effect.** The tendency to value what one owns more than what one would pay to acquire it (16).

**ESG.** Environmental, social and governance considerations in business and investment (19).

**Escalation of commitment.** Continuing a course of action because of past investment in it, even when it no longer makes sense (16).

**Expected value.** The probability-weighted average of the possible outcomes of a decision (12, 20).

**Exploding offer.** An offer expiring after a very short time, designed to prevent the recipient from considering alternatives (13, 17).

**Face.** A person's public image and self-respect; losing face can cause negotiators to reject offers which would otherwise benefit them (16, 18).

**Fairness.** Perceptions of whether an outcome (distributive fairness), a process (procedural fairness) or treatment (interactional fairness) is just (12, 16).

**Fixed-pie perception.** The mistaken assumption that the other side's interests are directly opposed to one's own (8, 16).

**Framing.** The way in which a choice or offer is presented, for example as a gain or as a loss, which can change decisions (16).

**Golden share.** A special share held by a government that gives it the right to approve or block specified decisions of a company (15).

**Good cop, bad cop.** A tactic in which one negotiator appears tough and another reasonable, so that the other side concedes to the reasonable one (13, 17).

**Greenwashing.** Making sustainability claims that exceed a firm's actual practices (19).

**Hard negotiation.** A positional approach that treats the other side as an adversary and seeks victory through demands and pressure (17).

**High-context and low-context cultures.** Hall's distinction between cultures in which meaning is embedded in context and relationships and those in which it is carried mainly by explicit words (18).

**Hold-up.** The risk that a party which has made a relationship-specific investment will be forced to accept worse terms by the other side, knowing the investment cannot be moved (2, 15).

**Hostile bid.** An offer to acquire a company made directly to its shareholders without the approval of its board (17).

**Integrative negotiation.** Negotiation that seeks to enlarge the total value available by reconciling the parties' interests, for example by trading across issues valued differently (8).

**Interests.** The underlying needs, concerns and motives that lie behind a party's stated positions (4, 8).

**Investment screening.** Government review of foreign acquisitions for risks to security or public order (15).

**Issue matrix.** A table listing each issue in a negotiation with each side's targets, limits and priorities, used to identify trades (13).

**Logrolling.** Trading concessions on issues one values less for gains on issues one values more (8).

**Loss aversion.** The tendency for losses to be felt more strongly than gains of the same size (16).

**Mediation.** A process in which a neutral third party helps the parties to reach their own agreement, without the power to impose one (5).

**Minimum winning coalition.** A coalition just large enough to win, which rational parties dividing a fixed prize tend to prefer (14).

**Multi-issue negotiation.** A negotiation involving several issues, which allows trades and packages (8, 13).

**Nash bargaining solution.** A benchmark division of surplus in which each party gains equally over its alternative when bargaining power is equal (12).

**Negotiation.** A process in which interdependent parties with different preferences try to reach a joint decision about how to create and divide value (4).

**Negotiator's dilemma.** The tension between creating value, which requires sharing information, and claiming value, which may be harmed by sharing it (8).

**Nibbling.** Asking for small additional concessions after the main deal appears agreed (13).

**Non-prosecution agreement.** An agreement under which prosecutors decline to bring charges against a company in exchange for conditions such as payments and reforms (19).

**Objective criteria.** Independent standards, such as market prices, expert opinion or precedent, used to justify proposals and resolve disagreements (8, 17).

**Obsolescing bargain.** Vernon's model in which bargaining power shifts from a foreign investor to the host government once the investment has been sunk (15).

**Opening offer.** The first proposal in a negotiation; it can anchor the outcome (7, 13).

**Pareto efficiency.** A situation in which no party can be made better off without making another worse off; efficient agreements lie on the Pareto frontier (8).

**Pillar Scorecard.** The table in each chapter that assesses the importance of profit, power and persuasion in the Deal File.

**Pivotal party.** A party whose support turns a losing coalition into a winning one; its power may far exceed its size (14).

**Positions.** The specific demands parties state, as distinct from the interests behind them (4, 8).

**Post-settlement settlement.** A process in which parties who have reached an agreement search for an alternative making both better off (8).

**Power distance.** The extent to which less powerful members of a society accept that power is distributed unequally (18).

**Principal–agent problem.** The conflict arising when an agent's interests differ from those of the principal on whose behalf it acts and the principal cannot fully observe the agent's actions or information (2, 14).

**Principled negotiation.** Fisher and Ury's approach: separate the people from the problem, focus on interests, invent options for mutual gain and insist on objective criteria (8, 17).

**Prisoner's dilemma.** A game in which each player's individually rational choice leads to an outcome worse for both than cooperation would (12).

**Procedural fairness.** The perceived fairness of the process by which a decision is reached (16).

**Prospect theory.** Kahneman and Tversky's theory that people evaluate outcomes as gains or losses relative to a reference point and weigh losses more heavily than gains (16).

**Public–private partnership (PPP).** A long-term arrangement in which a private firm finances, builds and often operates public infrastructure in return for payments (15).

**Reactive devaluation.** Valuing a proposal less because it was offered by the other side (16).

**Reciprocity.** The norm of responding in kind, which leads concessions to invite concessions and hostility to invite hostility (12, 13, 16).

**Reference point.** The benchmark against which outcomes are judged as gains or losses (16).

**Relational contract.** An agreement relying on the parties' continuing relationship and informal understandings rather than detailed written terms (9).

**Reputation.** Others' beliefs about a party's past behaviour and likely future conduct, which can enforce agreements and is built or damaged in each negotiation (12, 19).

**Reservation point (reservation price).** The least favourable terms that a party will accept, below which it prefers its alternative (11).

**Ripeness.** The condition in which a conflict is ready for resolution, typically when both sides perceive a mutually hurting stalemate and a way out (3).

**Salami tactics.** Achieving a large goal through a series of small demands, each too small to resist (17).

**Scoring system.** A method assigning points to each possible outcome on each issue, so packages can be compared (13).

**Shapley–Shubik power index.** A measure of voting power based on how often each party is pivotal in forming a winning coalition (14).

**Single negotiating text.** A single draft, criticised and revised by all parties until no further improvement can be found (13).

**Soft negotiation.** An approach that treats the other side as a friend and makes concessions to preserve the relationship (17).

**Specific investment.** An investment whose value is much higher within a particular relationship than outside it (2).

**Splitting the difference.** Agreeing at the midpoint between two positions, which favours the party with the more extreme starting position (8).

**Stakeholder.** Any party affected by or able to affect an agreement, including those not at the negotiating table (6, 14).

**Surplus.** The value created by an agreement over and above what the parties could obtain without it (2).

**Target.** The outcome a negotiator realistically aims to achieve (7).

**Tit for tat.** A strategy in repeated games that cooperates first and then copies the other player's previous move (12).

**Transaction costs.** The costs of finding partners, negotiating, writing and enforcing agreements (2).

**Trust.** The willingness to be vulnerable to another party on the basis of positive expectations of its intentions or behaviour (16).

**Two-level game.** Putnam's model in which negotiators bargain simultaneously with the other side and with their own constituents (4).

**Ultimatum.** An offer presented as final, on a take-it-or-leave-it basis (12, 17).

**Ultimatum game.** An experiment in which one player proposes a division of money and the other accepts or rejects it, revealing the role of fairness (12).

**Uncertainty avoidance.** The extent to which members of a culture feel threatened by ambiguity and seek rules to reduce it (18).

**Walk-away point.** See reservation point.

**Weaponised interdependence.** The use by states of control over hubs in global economic networks to coerce others (15).

**Win-set.** In a two-level game, the set of agreements a negotiator's constituents would accept (4).

**Winner's curse.** The tendency of the winner of an auction or deal to have overestimated the value of what it acquired (9, 16).

**Zone of possible agreement (ZOPA).** The range between the parties' reservation points within which any agreement is better for both than their alternatives (7, 11).

APPENDIX B

# Negotiation Planning Template

This template brings together the tools of the book in a single worksheet, organised around its three pillars. It extends the one-page template in Table 7.4 with the issue matrix and scoring system of Chapter 13, the coalition and stakeholder analysis of Chapter 14 and the cultural and ethical checks of Part IV. It can be copied and completed for any negotiation, and is designed for use with the Your Move cases and the simulations in Chapter 20.

**Table B.1**

*Part 1: Overview*

| Item | Notes |
|---|---|
| Negotiation and date | |
| Our team and roles (leader, expert, analyst, lawyer, observer, note-taker) | |
| Counterpart and its team | |
| Strategic purpose: how does this negotiation serve our strategy? | |
| What would success look like in one year? | |

**Table B.2**

*Part 2: Profit (value at stake)*

| Question | Our side | Their side (estimated) |
|---|---|---|
| What issues are on the table? Which could be added? | | |
| Interests behind positions: substantive, process, relationship, principle | | |
| Target on each main issue | | |
| Reservation point on each main issue | | |
| Priorities: rank the issues | | |
| Possible trades across issues (logrolling) | | |
| Contingent terms that could bridge different expectations | | |
| Objective criteria to support proposals | | |

*Note.* Author, based on Chapters 2, 7, 8 and 9.

**Table B.3**

*Part 3: Issue matrix and scoring system*

| Issue | Weight (points) | Best option and points | Acceptable option and points | Worst acceptable option and points | Likely importance to them |
|---|---|---|---|---|---|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| Total (maximum 100) | 100 | | | Reservation score: | |

*Note.* Author, based on Chapter 13.

**Table B.4**

*Part 4: Power (alternatives and leverage)*

| Question | Our side | Their side (estimated) |
|---|---|---|
| BATNA: what will we do if there is no agreement? | | |
| How can we improve our BATNA before we negotiate? | | |
| How dependent is each side on the other? | | |
| Information advantages and gaps | | |
| Time pressure and deadlines | | |
| Possible commitments, threats or promises, and their credibility | | |
| Coalitions that could form with or without us | | |
| Third parties, regulators, courts or governments that could intervene | | |

*Note.* Author, based on Chapters 5, 11, 12, 14 and 15.

**Table B.5**

*Part 5: Persuasion (process, people and principles)*

| Question | Notes |
|---|---|
| Constituencies on each side: who must approve, and what do they need? | |
| Opening: who makes the first offer, and what will it be? | |
| Agenda and sequence of issues | |
| How will we frame our proposals as gains for the other side? | |
| Questions to ask; information we will and will not disclose | |
| Likely emotions and core concerns on each side | |
| Cultural factors: hierarchy, directness, time, form of agreement, face | |
| Expected style of the counterpart and our planned style | |
| Difficult tactics we may face and our responses | |
| Ethical limits: what we will not do or say | |
| Channel and setting: face to face, video, email, public or private | |

*Note.* Author, based on Chapters 13, 16, 17, 18 and 19.

**Table B.6**

*Part 6: Stakeholders not at the table*

| Stakeholder | Interest | Capacity to influence the outcome | How we will address it |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

*Note.* Author, based on Chapter 14.

**Table B.7**

*Part 7: Closing and implementation*

| Question | Notes |
|---|---|
| What would a final package look like? | |
| Conditions under which we would walk away | |
| Key terms to define in writing | |
| Mechanisms for review, adjustment and dispute resolution | |
| Who will implement the agreement, and have they been consulted? | |

*Note.* Author, based on Chapter 13.

**Table B.8**

*Part 8: Review after the negotiation*

| Question | Notes |
|---|---|
| Outcome compared with our target, reservation point and BATNA | |
| Score of the agreed package | |
| Value created: did we find trades across issues? | |
| What did we learn about the other side's interests and alternatives? | |
| Which tactics worked, and which provoked resistance? | |
| What would we do differently next time? | |

APPENDIX C

# Question Bank

This question bank provides additional questions for revision, seminars and examinations. It complements, and does not repeat, the exercises at the end of each chapter. Part A contains multiple-choice questions, with answers at the end of the appendix. Part B contains discussion and essay questions for each Part of the book.

## A. Multiple-Choice Questions

### Part I. Conflict and Negotiation

1. Which of Moore's sources of conflict is most likely to be resolved by sharing information? (Chapter 1)
   a) a conflict of values
   b) a relationship conflict
   c) a structural conflict
   d) a data conflict

2. A supplier which has built a factory dedicated to one customer is most exposed to:
   a) hold-up
   b) the winner's curse
   c) reactive devaluation
   d) the endowment effect

3. According to the theory of ripeness, parties are most likely to settle when:
   a) one side is clearly winning
   b) both perceive a mutually hurting stalemate and a way out
   c) the conflict is new
   d) a third party imposes a decision

4. In Putnam's two-level game, a larger win-set at home:
   a) always strengthens a negotiator abroad
   b) prevents agreement
   c) makes agreement easier but may weaken the negotiator's bargaining position
   d) has no effect

5. Compared with litigation, arbitration typically offers:
   a) greater privacy and a choice of decision-maker
   b) more publicity
   c) more appeals
   d) no binding decision

### Part II. Profit

6. A firm whose managers are paid mainly in shares is most likely to negotiate with a focus on:
   a) employment levels
   b) supplier welfare
   c) shareholder value
   d) community relations

7. If a seller's reservation price is €80 and a buyer's is €95, the zone of possible agreement is:
   a) €0 to €80
   b) €80 to €95
   c) €95 to €110
   d) there is none

8. Logrolling creates value when the parties:
   a) value all issues equally
   b) split every difference
   c) negotiate one issue at a time
   d) value issues differently

9. An earn-out is most useful when buyer and seller:
   a) agree on the value of the business
   b) disagree about the future performance of the business
   c) have no information
   d) want to avoid any contingent payments

10. In collective bargaining, a strike is best understood as:
    a) a failure of rationality
    b) always irrational
    c) a costly signal and a test of each side's alternatives
    d) a form of mediation

### Part III. Power

11. A negotiator can most directly increase its bargaining power by:
    a) improving its BATNA
    b) revealing its reservation price
    c) making the first concession
    d) shortening its own deadline

12. In a one-shot prisoner's dilemma, the equilibrium outcome is:
    a) mutual cooperation
    b) random
    c) one cooperates and one defects
    d) mutual defection

13. Concessions of diminishing size signal that a negotiator:
    a) has much room left
    b) is about to make a large concession
    c) is approaching its limit
    d) is bluffing

14. In a vote requiring more than 50 per cent among shareholders holding 49, 49 and 2 per cent, the shareholder with 2 per cent has:
    a) no power
    b) one third of the voting power
    c) one half of the voting power
    d) 2 per cent of the voting power

15. According to the obsolescing bargain, the host government's bargaining power is greatest:
    a) before the investment is made
    b) at the start of negotiations
    c) when the investor has alternatives elsewhere
    d) after the investment is sunk and profitable

**Part IV. Persuasion**

16. Presenting an offer as "€20,000 more than your alternative" rather than "€10,000 less than you asked for" is an example of:
    a) framing
    b) anchoring
    c) bracketing
    d) nibbling

17. According to Van Kleef et al. (2004), expressing anger:
    a) always backfires
    b) makes agreement impossible
    c) has no effect
    d) can lead the other side to concede, but carries relational costs

18. A negotiator who opens cooperatively, retaliates when exploited and returns quickly to cooperation is following:
    a) a hard strategy
    b) a soft strategy
    c) a strategy similar to tit for tat
    d) an avoiding strategy

19. In Hall's terms, a culture in which much meaning is conveyed by context and relationships is:
    a) low-context
    b) high-context
    c) linear-active
    d) individualist

20. Which of the following is most likely to constitute fraud in negotiation?
    a) inventing a non-existent competing offer to raise the price
    b) praising one's own product
    c) concealing one's reservation price
    d) refusing to answer a question

## B. Discussion and Essay Questions

### Part I. Conflict and Negotiation

1. "Conflict is not a failure of business but a normal part of it." Discuss with reference to at least two Deal Files from Part I.
2. Compare the costs of conflict for firms, workers and governments. How can these costs be measured?
3. Under what conditions should firms prefer mediation to arbitration, and arbitration to the courts?
4. Explain how the phases of negotiation interact. Use a case from Part I to show how a later phase can reopen an earlier one.
5. To what extent can economic theory explain why negotiations fail?

### Part II. Profit

6. How do the goals of the firm, whether shareholder value, stakeholder value or long-term relationships, shape the way it negotiates?
7. "Preparation is the most important stage of negotiation." Discuss using the planning template in Appendix B.
8. Explain the tension between creating and claiming value, and evaluate the strategies negotiators use to manage it.
9. Compare negotiations over a commercial contract, a merger and a collective agreement. What do they have in common, and how do they differ?
10. How did the Polish system of social dialogue and minimum-wage setting, discussed in Chapter 10, shape the outcomes of wage negotiations?

### Part III. Power

11. "Power comes from alternatives." Evaluate this claim using cases of export controls, tariffs and supply-chain dependence from Part III.

12. Assess the usefulness of game theory for business negotiators, with examples of the prisoner's dilemma, the game of chicken and the Nash bargaining solution.

13. How should negotiators design the process of a complex, multi-issue negotiation? Use the tools of Chapter 13 and a case of your choice.

14. Analyse a multi-party negotiation of your choice in terms of coalitions, pivotal parties and decision rules.

15. Discuss how foreign investors and host governments can create agreements able to survive changes in bargaining power and government.

#### Part IV. Persuasion

16. Which cognitive biases are most dangerous for business negotiators, and how can organisations reduce their effects?

17. "A negotiating style is a strategic choice, not a personality trait." Discuss.

18. Evaluate the main frameworks for comparing cultures. How should an international negotiator use them without falling into stereotypes?

19. Where is the line between legitimate persuasion and manipulation? Discuss with reference to anchoring, framing, bluffing and the principles of influence.

20. How is artificial intelligence changing business negotiation, and which human skills will remain essential?

#### Integrative Questions

21. Choose any Deal File from this book and analyse it fully using the three pillars of profit, power and persuasion. What would you have advised each party to do differently?

22. "Profit decides what is at stake, power decides who gets it, and persuasion decides whether the deal lasts." Discuss with reference to at least three cases from different Parts of the book.

23. Compare the role of the state in three Deal Files from different Parts of the book. How does government involvement change the nature of business negotiation?

24. How have geopolitical fragmentation and new expectations of responsibility changed business negotiation since 2020? Use cases from the book to support your answer.

**25.** Design a course of negotiation training for managers in a Polish company that is expanding internationally. Which concepts, cases and exercises from this book would you include, and why?

# Answers to Objective Questions

**Chapter 1** 1 a; 2 c; 3 d; 4 b; 5 d; 6 a; 7 b; 8 c.

**Chapter 2** 1 b; 2 a; 3 d; 4 c; 5 b; 6 c; 7 d; 8 c; 9 a; 10 d.

**Chapter 3** 1 d; 2 b; 3 c; 4 a; 5 b; 6 d; 7 c; 8 a.

**Chapter 4** 1 c; 2 b; 3 d; 4 a; 5 d; 6 b; 7 c; 8 a.

**Chapter 5** 1 c; 2 b; 3 a; 4 d; 5 a; 6 c; 7 b; 8 d.

**Chapter 6** 1 b; 2 c; 3 d; 4 a; 5 b; 6 c; 7 d; 8 a.

**Chapter 7** 1 a; 2 c; 3 d; 4 b; 5 b; 6 a; 7 d; 8 c.

**Chapter 8** 1 d; 2 c; 3 a; 4 b; 5 b; 6 d; 7 c; 8 a.

**Chapter 9** 1 a; 2 d; 3 b; 4 c; 5 b; 6 a; 7 c; 8 d.

**Chapter 10** 1 c; 2 b; 3 a; 4 b; 5 a; 6 d; 7 d; 8 c.

**Chapter 11** 1 a; 2 b; 3 c; 4 d; 5 a; 6 b; 7 c; 8 d.

**Chapter 12** 1 d; 2 b; 3 a; 4 c; 5 c; 6 a; 7 b; 8 b.

**Chapter 13** 1 a; 2 d; 3 c; 4 b; 5 a; 6 c; 7 b; 8 b.

**Chapter 14** 1 c; 2 b; 3 a; 4 d; 5 c; 6 b; 7 d; 8 a.

**Chapter 15** 1 b; 2 a; 3 d; 4 c; 5 a; 6 c; 7 b; 8 d.

**Chapter 16** 1 d; 2 b; 3 c; 4 a; 5 a; 6 b; 7 c; 8 d.

**Chapter 17** 1 b; 2 c; 3 a; 4 c; 5 c; 6 d; 7 d; 8 a.

**Chapter 18** 1 b; 2 a; 3 d; 4 c; 5 c; 6 d; 7 a; 8 b.

**Chapter 19** 1 b; 2 d; 3 a; 4 c; 5 c; 6 a; 7 b; 8 d.

**Chapter 20** 1 b; 2 b; 3 c; 4 c; 5 b; 6 d; 7 a; 8 a.

**Appendix C, Part A**

1 d; 2 a; 3 b; 4 c; 5 a; 6 c; 7 b; 8 d; 9 b; 10 c; 11 a; 12 d; 13 c; 14 b; 15 d; 16 a; 17 d; 18 c; 19 b; 20 a.

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Every negotiation is an economic decision. *Profit, Power and Persuasion* explains business negotiations with the tools of economics: how value is created and divided at the table, where bargaining power comes from and how it shifts, and how information, arguments and trust shape the outcome.

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*(01.10.2024–30.06.2026)*

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ISBN 978-3-928984-60-7
9783928984607

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