



LISBON
SCHOOL OF
ECONOMICS &
MANAGEMENT
UNIVERSIDADE DE LISBOA

The art and science of negotiation in M&A

João Carvalho das Neves
Professor of Management, Finance & Control
jcneves@iseg.ulisboa.pt



Negotiation concepts

What is a negotiation?

- It is a dialogue between two or more persons or parties intended to reach a mutually beneficial outcome, resolve points of difference, to gain advantage for an individual or collective, or to craft outcomes to satisfy various interests.

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Negotiation: Persuasion – The art of getting what you want



- Analyze issues
- Challenge opposing views
- Propose a solution
- Present reasons
- Produce evidence
- Provide author's qualifications
- Address the others interests and sympathies

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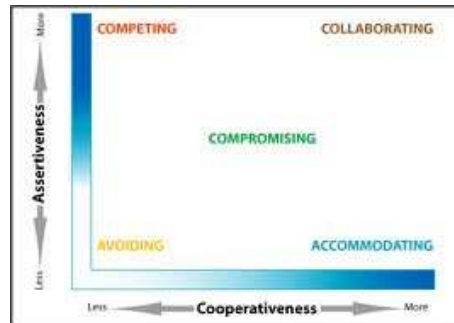
Negotiation: An agreement with mutual benefits



- Shared interests and avoidance of joint losses
- Developing mutual advantage with positive relationship
- Satisfying the interest of both sides with a creative solution

Negotiation styles

Negotiation styles



- Kenneth W. Thomas identified 5 styles
- Based on the dual-concern model:
 - A concern for self (i.e. assertiveness), and
 - A concern for others (i.e. cooperation).

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Collaborating

- Often appropriate when:
 - The issues and relationship are both significant
 - Cooperation is important
 - A creative ending is necessary
 - Reasonable hope exists to address all concerns
- Often inappropriate when:
 - Time is short
 - The issue is unimportant
 - You are overloaded
 - The goals of the other party are certainly wrong

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Competing

- Often appropriate when
 - An emergency looms
 - You are sure you are right and being right matters more than preserving relationships for future
 - The issue is trivial and others don't really care what happens
- Often inappropriate when:
 - Collaboration has not yet been attempted
 - Cooperation from other is important
 - Used routinely for most issues
 - Self-respect of others is needed

Compromising

- Often appropriate when:
 - Cooperation is important but time or resources are limited
 - When finding some solution, even less than the best, is better than a complete stalemate
 - When efforts to collaborate will be misunderstood as forcing an agreement
- Often inappropriate when:
 - Finding creative solutions is possible and essential
 - When you can't live with the consequences of the agreement

Accomodating

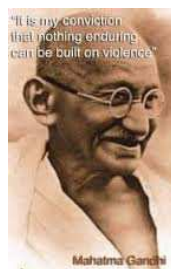
- Often appropriate when:
 - You really don't care about the issue
 - You are powerless but have no wish to block the other person
 - When you realize you are wrong
- Often inapprpriate when:
 - You are likely to harbor resentment
 - Used habitually win order to gain acceptance
 - When other wish to collaborate and will feel like enforcers if you accomodate

Avoiding

- Often appropriate when:
 - The issue is trivial
 - The relationship is insignificant
 - Time is short and a decision not necessary
 - You have little power but still wish to block the other person
- Often inappropriate when:
 - You care about both relationship and the issues involved
 - Used commonly for most issues
 - Negative feelings may linger
 - Other would benefit from caring

Negotiation strategies

Negotiation strategy: Soft negotiator: gentle style of bargaining



Assumption: Gentleness generates on the other party positive responses

Negotiation strategy: Positional bargaining: Hard style of negotiating



Assumption: In order to win it is necessary to fight in order to achieve the objective

They make threats, are distrustful of others, insist on their position, and apply pressure to negotiate

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Negotiation strategy: Reciprocity approach

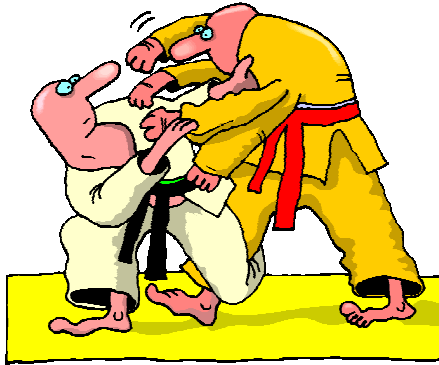


Assumption: the demands and concessions are made fairly

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Negotiation strategy: Jiu-jitsu approach. Principled



- A good agreement is one which is:
 - wise and efficient,
 - and improves the parties' relationship.
- Wise agreements satisfy the parties' interests and are fair and lasting.

A landmark book: Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (2nd Ed., Penguin Books, 1991).

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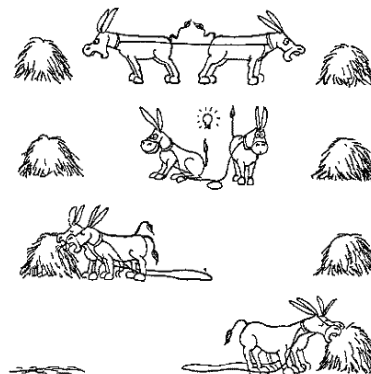
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Negotiation strategy

Win-lose



Win-win

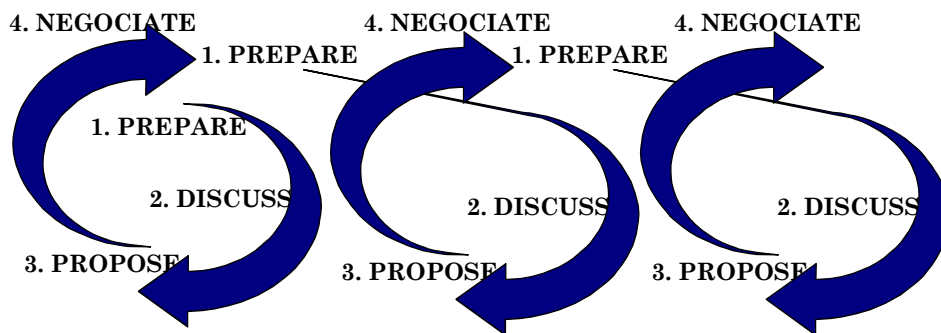


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The negotiation process

Processo de negociação em 4 fases



Preparation is crucial for success

- Determine your goals for the negotiation
- Be clear about what you want to achieve
- Define who is responsible for what
- Identify previously possible difficulties
- Identify the possible advantages and disadvantages of an agreement / disagreement
- Decide on the tactics to be used
- Find ways to measure the success of the negotiation
- Keeping in predefined line
- Feeling confident. Create a positive mind

Jiu-jitsu approach

- BATNA – Best Alternative to a Negotiated Agreement. What the parties will do if do not reach an agreement.
- Parties: Who are those that will be involved in the negotiation?
- Interests: What are the needs and priorities of each party?
- Valor: How can the negotiation generate value and who will get it or share it?
- Barriers: What are the constraint that may avert the agreement (or obtain a maximum value) and how to overcome the constraint?
- Power: How can each party influence the negotiation process and the outcome?
- Ethics: What is more appropriate to do?

5 key issues in a jiu-jitsu negotiation:

1. Separate people from issues

- People tend to become personally involved with the issues and with their side's positions:
 - First - differences on perception among the parties
 - Second - Emotions are a source of problems. People often react with fear or anger when they feel that their interests are threatened. Try to understand their source
 - Communication - Negotiators may not be speaking to each other, but may simply be grandstanding for their respective constituencies. The parties may not be listening to each other, but may instead be planning their own responses.

Key issues in a jiu-jitsu negotiation:

2. Interests

- Good agreements focus on the parties' interests, rather than their positions.
- When a problem is defined in terms of the parties' underlying interests it is often possible to find a solution which satisfies both parties' interests.
 - This can be done by asking why they hold the positions they do, and by considering why they don't hold some other possible position. Interests may differ somewhat among the individual members of each side. However, all people will share certain basic interests or needs, such as the need for security and economic well-being.
- Once the parties have identified their interests, they must discuss them together. Parties should keep a clear focus on their interests, but remain open to different proposals and positions.

5 key issues in a jiu-jitsu negotiation:

3. Generate options

- 4 problems may arise:
 - Parties may decide prematurely on an option and fail to consider other alternatives
 - Parties may narrow their options to find the single answer.
 - Parties may define the problem in win-lose terms, assuming that the only options are for one side to win and the other to lose.
 - Or a party may decide that it is up to the other side to come up with a solution to the problem.
- 4 techniques to overcome obstacles and generate creative options:
 - Separate the invention process from the evaluation stage.
 - The parties should come together in an informal atmosphere and brainstorm for all possible solutions to the problem. Parties may suggest partial solutions to the problem.
 - Only after a variety of proposals have been made should the group turn to evaluating the ideas.
 - Evaluation should start with the most promising proposals. The parties may also refine and improve proposals at this point.

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Key issues in a jiu-jitsu negotiation:

4. Use objective criteria

- When interests are directly opposed, the parties should use objective criteria to resolve their differences
- The parties must agree which criteria is best for their situation
- the parties may create a fair procedure for resolving their dispute.

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Key issues in a jiu-jitsu negotiation

5. The second best alternative to the negotiated agreement

- The walkway point
 - "the reason you negotiate is to produce something better than the results you can obtain without negotiating". A party should reject agreements that would leave them worse off than their BATNA.
 - Without a clear idea of their BATNA a party is simply negotiating blindly.
 - The BATNA is also key to making the most of existing assets. Power in a negotiation comes from the ability to walk away from negotiations. Thus the party with the best BATNA is the more powerful party in the negotiation.
 - The weaker party will have a better understanding of the negotiation context if they also try to estimate the other side's BATNA.
 - "Developing your BATNA thus not only enables you to determine what is a minimally acceptable agreement, it will probably raise that minimum."



Emotions effects

Positive effect of emotions

- Before the negotiation process starts
 - Positive mood generates more confidence and higher propensity to plan and use a cooperative strategy
- During the negotiation process
 - Those in a positive mood tend to enjoy more interaction more, show less contentious behavior, use less aggressive tactics and more cooperative strategies.
 - This will increase the probability of reaching instrumental goals, and enhance the ability to find integrative gains.

Negative effect of emotions

- Negative emotions affect negotiation outcomes. Anger is the one most researched
- Angry negotiators use more competitive strategies and to cooperate less, even before the negotiation starts. This approach tend to reduce joint outcomes.
- Anger disrupts the process of negotiation educing the level of trust, narrowing the focus of attention and changing the central goal from reaching an agreement to retaliating against the other side.
- Angry negotiators pay less attention to opponent's interests. Are less accurate in judging others and their interests, thus achieving lower joint benefits.
- Anger negotiators are more self-centered in their preferences, and may not se some of the profitable offers.
- Those who get angry, cry, or otherwise lose control, are more likely to make errors.

The jiu-jitsu negotiator has a positive attitude

- The negotiator seeks to know which power the other party, controls the pace of the negotiation and keeps a relationship of respect.
- Raises key issues and try to find common interest for the agreement at the expense of rigid solutions.
- Keeps a broad view of all the key issues, and do not focus exclusively on price. Try to identify common views and enhance value creation.
- Involves all people in the negotiation process, to be interested in generating negotiated solutions.

Qualities of a jiu-jitsu negotiator

Mind:
Calm
Perseverance
Timing

Communication:
Advocates
Assertive
Empathizes
Influences

Criativity:
Generates solutions
Exchange compromises

Attention:
Listen
Observe

Curiosity:
Questions
Understands

Organization:
Summarizes
Develops plans



Other issues in negotiations

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Roles of people in negotiation

- Lead negotiator
- Lead strategist
- Devil's advocate
- Listen attentively

Research psychologists Leigh Thompson and Susan Brodt found that negotiating teams achieve higher quality outcomes than solo negotiators.

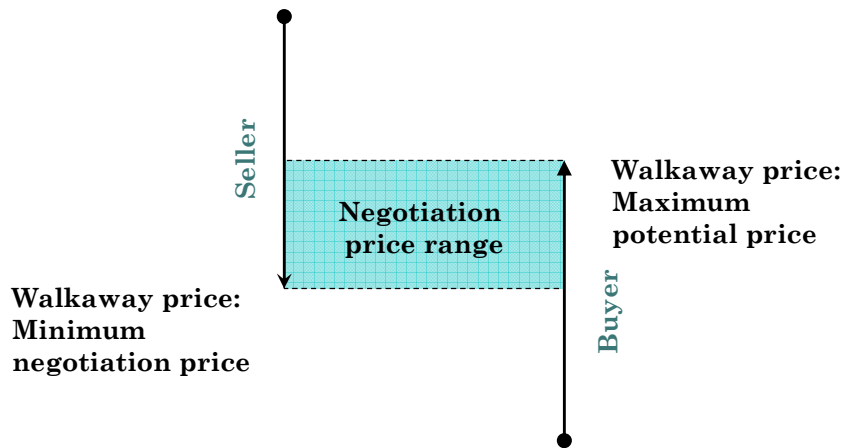
Teams are able to learn more about the other party's priorities than one person can.

Having a lead negotiator who does most of the talking and a lead strategist who does most of the listening and is responsible for strategy adjustment makes maximum use of team resources.

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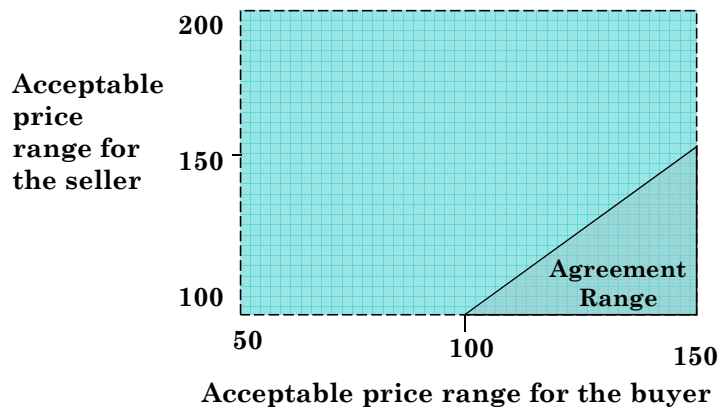
Negotiation price range



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Probability of agreement without considering other factors



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Drivers involved in the progress of negotiation

- Communication
- Rapport
- Trust
- Interpretation of facts
- Behaviour and data analysis
- Hability of negotiator dealing with facts and people

Guide for successful negotiations

- Understand interests of both parties
- Know to deal with conditional offers
- Contingent analysis and decision
- Appropriate timing
- Self-discipline
- No preconceived ideas
- Be able to create room for a good agreement
- Good management of the agenda
- De-dramatization of critical momentum

Dead-lock management

- Price is na issue?
- Forms of compensation?
- Keep the whole package of interests on the table
- Propose earn-out system if adequate



Formal issues

Memorandum of understanding (MOU)

- Description of the transaction: Merger, purchase of shares, transfer of shares, etc.
- Important details for the purchase: For example, the valuation method and access to data
- The seller agrees not to change the target company before the deal is closed
- Safeguard clauses: for example cases in financial distress
- Special agreements: Such as employment contracts
- Sections "In the shop ": Preventing the seller to find other buyers for a certain period of time
- Compensation fee (bust-up): To be paid to the buyer if the seller sells the company to be acquired to a third party

Confidentiality agreement

- The parties agree that the information revealed during the process will be used only for its intended purpose - to proceed to the acquisition, and that they will be kept confidential
- It is also common to set a deadline for agreement

Final agreement

- The structure and terms of the transaction
- Main legal and financial issues of the acquired company, as well as other relevant information about the parties involved in business
- How to deal with contingent issues
- Clarify how to deal with issues that may be found after the deal is closed.
- Etc...

Issues to consider in the final agreement

- Presentation of the contracting parties
- Deal assumptions
- Traded securities
- Representations and Warranties
- Price and payment
- Due Diligence / Audit
- Board of directors after the acquisition
- Conflict of interests
- Responsibility
- Failure to comply with the contract
- Expenses
- Other issues

Exercise

Role-playing

