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NEGOTIATE YOUR WAY  
THROUGH THE COVID19 CRISIS

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**By**

KELD JENSEN



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This book is about the most important leadership skill that ever existed: The skill to interact with other people through negotiation.





Keld Jensen – delivering a keynote

## **The author**

Mr. Keld Jensen is an international author, professor, speaker, advisor and expert in negotiations, behavioral economics and trust. He has worked with leading global companies and governments and individuals as an advisor and trainer. Among these: SAB Miller, LEGO, Danish, Lithuanian and Canadian Government, Rolls Royce, Siemens, Thermo Fisher, Carlsberg, Vestas, Novo Nordisk etc.

He is the author of 24 books on international negotiation and communication which is published in more than 37 countries in 18 languages and got more than 2.8 million readers.

He has written a number of articles for the Forbes Magazine on negotiation. Keld is an associate professor

at Thunderbird School of Global Management at ASU in the US, Aalborg University in Denmark and Baltic Management Institute in Belgium and Lithuania and teaches at various International Executive MBA programs.

He is frequently used as a commentator in the electronic and print media. He has more than 200 TV appearances in recent years.

In 2015 and 2016 Mr. Jensen was appointed to be among the 100 Global Top Thought Leaders in Trust. In 2017 his concept of SMARTnership Negotiation won the award “Best negotiation/tender strategy” issued by the Organization of Public Procurement Officers in Scandinavia. In 2018 he won the IACCM Innovation award for the SMARTnership negotiation strategy. He was nominated for the IACCM Strategic Direction award in 2019.

He lives in Scottsdale Arizona, with his wife and 2 sons.

# TABLE OF CONTENTS

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<b>Negotiate Your Way Through the COVID19 Crisis</b>	<b>1</b>
You depend on others.....	4
The handshake is just the beginning .....	5
Do not let others dictate terms.....	5
<b>Three Negotiation Skills to Help Jumpstart the Economy Post-Corona</b>	<b>8</b>
1. Break Down the Barriers.....	9
2. Find the Added Value (NegoEconomics), Then Share It .....	11
3. Focus on SMARTnership.....	13
<b>Conflict and combative negotiations</b>	<b>16</b>
How the Body Reacts to Stress .....	16
Combat is used as an intentional strategy when:....	17
Disputes over agreements and force majeure.....	19
Dispute is harmful .....	22
Do not fall into the trap .....	24
How to deal with a hostile and combative negotiator .....	25
Should hostility be met with hostility?.....	27
The big builder .....	28
Predict the counterpart's next move.....	29

<b>The constructive negotiator .....</b>	<b>31</b>
Get your share of the profit .....	32
Learn to see the whole.....	34
Handle lowball offers correctly.....	34
Enlarge the cake before you divide it.....	36
An impending strike is avoided.....	37
Conflict or concensus? .....	39
Something positive may result from the conflict ...	39
How three competitors became four winners.....	40
The person avoiding conflict is exploited .....	41
No one-sided concessions .....	42
<b>How NegoEconomics is generated .....</b>	<b>44</b>
Expanding the Negotiating Space .....	44
Differences lead to NegoEconomics .....	45
Cooperation requires openness and trust.....	47
Considerable NegoEconomics .....	48
Exploit the differences .....	52
NegoEconomics is created by means of economies of scale.....	53
Cooperation yields NegoEconomics .....	55
When misunderstandings are cleared up, NegoEconomics is generated .....	56
How is the NegoEconomics to be shared? .....	58
Negotiate about the division in advance .....	59
Review the negotiating variables .....	60



<b>Trust is Basic to Business and Life .....</b>	<b>63</b>
Trust is Money .....	63
The Trust Factor makes SMARTnership and Honest Negotiation Possible.....	65
Prerequisites for the Formation of a Cooperative Negotiation Climate .....	65
Personal Chemistry .....	66
Generosity .....	67
Insist that your Supplier Make a Decent Profit.....	69
<b>Why Negotiators Must Insist Their Opponent Makes A Profit .....</b>	<b>71</b>
How Technology Has Changed Our Negotiating Behavior .....	74
Email negotiations <i>can</i> be successful.....	76
Building successful relationships .....	77
Looking at the upsides of email negotiation .....	77
Lies, bluff and threats.....	77
Avoiding argumentation.....	78
<b>Renegotiation of rental agreements .....</b>	<b>80</b>
<b>How to become a better negotiator .....</b>	<b>85</b>



## NEGOTIATE YOUR WAY THROUGH THE COVID19 CRISIS

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**R**ight now, more than ever, the art and science of negotiation is a necessity.

When a crisis emerges, it brings out the best in people—and the worst in people. This current crisis is no exception. I have seen people’s selfish hoarding end in store shelves barren of toilet paper. But I have also witnessed individuals and companies reaching out to help others and their communities.

I have read about a big company informing its landlord he can’t expect to receive the next month’s rent. And I’ve seen property owners reaching out to renters, telling them their next month’s payment is forgiven.

People stop paying what they rightfully owe, contract obligations go unfulfilled, and promises are not kept. In most cases, it’s not because someone doesn’t *want* to keep their end of a bargain. No, it’s because

they've been hit so hard by the pandemic that they simply *can't* meet an obligation.

When we are stressed, we often gravitate toward “fight-or-flight” behavior. You can see this happen in many sorts of circumstances, including negotiations. Despite our stress, we should do all we can to resist that instinctual response, and look for ways to *collaborate* instead. Negotiation experts confirm it: Negotiators who take a collaborative approach consistently outperform those who come to the table with a zero-sum mindset.

I have observed attorneys arriving at a crime scene, waving contract clauses—especially force majeure clauses—and insisting their client is not responsible for whatever damage they caused. That may be justified in some circumstances. But the midst of a crisis is not the time for legal mumbo-jumbo, waving contracts, or perhaps even attorneys. We know attorneys and court cases can be wildly expensive. And, more important, they can ruin a valuable relationship, with dire consequences in the months and years ahead.

When this whole mess is over and we restart the world, we're going to need every relationship we've cultivated. Ideally, the crisis will have inspired wisdom and appreciation enough to strengthen our precious relationships. History has taught me that individuals and organizations who battle through tough times together often emerge with almost unbreakable bonds of loyalty.

**BE AWARE:** Even though we may believe we have conflicting interests with the counterpart, we truly *are* all in this together. Be ethical. Be kind. Be safe. And

approach negotiation as a collaborative process, meant to foster progress and success for all.

John Donne’s declaration, “No man is an island,” may be more true at this time than ever before. Alliances and working relationships are essential elements of our everyday lives—and they cannot exist, they will never succeed, in the absence of sound negotiations. Yes, we are all in this together.

In this book, I will show you how to escape the zero-sum mentality so that *you* win, and so does your negotiating counterpart. It can and must be win-win; no one loses, because no one has to. I will show you how to dodge angry confrontations and avoid conflicts. My advice is simple and imminently practical, built on solid experience over decades of advising and guiding others, and in my own negotiations. I will introduce you to the secrets of building overwhelming value for both sides, through the award-winning concept of NegoEconomics. This advice and these principles apply to anyone challenged by the pressures of the current crisis, and they will apply long after the crisis is over.

### *Why we negotiate*

Though you may not realize it, you negotiate all the time—but especially when times are tough. This holds true whether you need to negotiate (or renegotiate) with your landlord, your bank, an employee, an employer, a client, a supplier—you name it.

You might not have looked at it this way, but many of your daily interactions with others are, in essence, negotiations. A negotiation could be characterized as a psychological game between two people or groups. The factors involved vary from situation to situation, so it is wisest to be skilled in a number of different negotiating techniques. This equips you to successfully deal with whatever situation arises. The person who masters the art of negotiation is a tremendous asset to himself, and to any organization to which he belongs. The person who is unable to negotiate well costs himself, his family, his organization dearly.

## **You depend on others**

We all depend on others in many of our efforts to reach our goals, solve our problems and satisfy our needs. The real-world situations we face are rarely black-and-white. Others sometimes doubt or argue about things we believe to be right. Effective negotiation leads us to sound decisions. Here are some real-world examples.

Conflicts arise as a crisis evolves. These conflicts could include:

- Your employer asks you to accept a reduction in salary
- You cannot pay your landlord
- A client can't pay your invoice
- An airline, hotel or venue will not refund your deposit or ticket

- Your company is laying people off
- Health costs are mounting beyond what you can afford
- Working remotely breeds misunderstandings
- Familiar with face-to-face negotiating, you must now deal with the special challenges of virtual negotiation

Pressure creates counterpressure; in a time of limited resources, a stronger party may become greedy.

## **The handshake is just the beginning**

Remember, a negotiation is not complete with the signing of a contract. That is just the *beginning* of the interaction. A positive working relationship can only be built if both parties are willing participants, each with the desire to fulfill their obligations and be answerable for their actions. The stronger party today may be at his counterpart's mercy tomorrow. A party who takes a thrashing often thirsts for revenge. And when emotions take over, any negotiation is at dire risk.

## **Do not let others dictate terms**

As mentioned earlier, a negotiation is a psychological game. To play a game, you need to know the rules; and in the game of negotiation, you must understand how we influence one another. You must learn to decline gracefully, and to test limits without ruining relations in the process. You must be able to be

tough but flexible in your stance. You must know when it is worthwhile to negotiate, and when it is better to accept a situation as it is.

A negotiator who sends the wrong signals risks getting the treatment he's unwittingly asking for. If you're perceived to be weak, you're liable to be exploited. If your actions and attitude signal that you're looking for a fight, there are likely to be unnecessary obstructions and conflicts. If you're unwilling to look at the big picture, you can miss alternatives that could lead to a bigger cake to share. If you don't dare open up and listen, the dialogue may never get moving, and you'll never discover the key to resolving a deadlock.

My purpose with this book is to help you navigate your negotiations in this time of crisis. I hope and pray it will give you some valuable tools that assist you in your mission, whatever it may be. I am aware it is far from a complete discussion of the art and science of negotiation. My ambition is to bring useful, practical information quickly to market, to help as effectively as I can from within my field and expertise.

If you would like more information, you are welcome to visit our online training site, at [www.smartnership.thinkific.com](http://www.smartnership.thinkific.com) and [www.keldjensen.com](http://www.keldjensen.com).

You can also find my other books on [Amazon](https://www.amazon.com).

“Human beings are born solitary, but everywhere they are in chains—daisy chains—of interactivity. Social actions are makeshift forms, often courageous, sometimes ridiculous, always strange. And in a way,



every social action is a negotiation, a compromise between 'his,' 'her' or 'their' wish and yours.” — Andy Warhol

## THREE NEGOTIATION SKILLS TO HELP JUMPSTART THE ECONOMY POST-CORONA

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**W**e live in an era characterized by jarring market volatility, single-digit profit margins, vaporizing trust, and unstable resource allocation—and a world pandemic bringing the economy to its knees. In a commercial environment fraught with such challenges, negotiation skills are indispensable for putting the economy back on track.

Adam Smith was a Scottish economist, philosopher and author as well as a moral philosopher, a pioneer of political economy and a key figure during the Scottish Enlightenment. He is also known as “The Father of Economics” and “The Father of Capitalism.” Smith wrote two classic works, *The Theory of Moral Sentiments* and *An Inquiry into the Nature and Causes of the Wealth of Nations*. Adam Smith wrote that in a capitalistic society, you should do what is good for you and not the group.

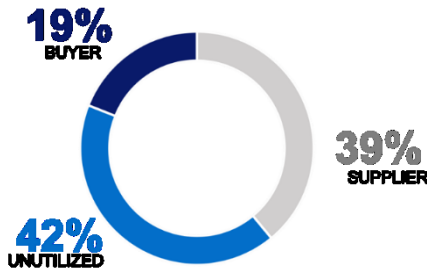
Negotiation skills are the lifeblood of business. From the decisions made by executives at the top, to middle-management project leadership, to front-line employees meeting customer needs, right down to cafeteria workers buying vegetables off the farm truck, everyone uses negotiation skills on a daily basis. People who are aware they are negotiating, and that they can get more of what they want by understanding the process, can have a greater impact in the economy than those who are unfocused and directionless.

With this in mind, here are three powerful negotiation techniques anyone can use to contribute positively to breaking through the recessionary malaise.

## **1. Break Down the Barriers**

Today's business leaders should view their counterparts as a potential partners – people to cooperate with in order to achieve mutual gains. A negotiator operates from a much stronger power position when he or she shares information freely, demonstrates trust in the bargaining process, and broadens the scope of the discussion by exploring alternative approaches.

In recent years, we have witnessed high-profile negotiations over the budget that allows the country to operate, as well as the debt ceiling, all with a predominantly zero-sum approach. That is, an approach in



which one party wins *at the expense of* the counterpart. Over and over again, we have seen progress stifled until the parties finally broke down the barriers and opened up communication. How much time and money will be lost before people realize they realize more value in any transaction when they shift to a position of openness, honesty and transparency?

The new paradigm for getting business done with the loyal opposition is to take a chance and boldly revealing some of the cards in your hand, aiming to create a positive negotiating climate built on cooperation and trust. Openness begets more openness and provides the gateway to the added value that would otherwise remain hidden in the transaction.

When parties begin to work cooperatively, new solutions become evident and alternative ways of resolving problems reveal themselves. Both sides can then leave the negotiating table with more than they expected. It has even been documented that negotiators who are focused on *helping* their counterparts may be smarter than those who aren't.

## **2. Find the Added Value (NegoEconomics), Then Share It**

The focus needs to be on accessing the added value that is buried in the deal, so both parties to the negotiation can benefit from a “bigger pie.” In an independent research project, my firm, Center for Negotiation, found that parties typically leave up to 42 percent of the value of a transaction untapped because they fail to examine all the possibilities. If this unexploited value is aggregated across the thousands of commercial transactions that are conducted every day, it amounts to billions of dollars that could be infused into the global economy.

Frequently, companies follow set routines without questioning whether changing a deal’s conditions could create added value. Negotiating terms of payment is a perfect example. Most business suppliers are willing to extend the length of their terms of payment, but they never fully explore other alternatives relating to how a supplier is paid. When the culture of a negotiation is zero-sum, we-win-you-lose, any attempt to go down another path is quickly shut down. Here’s a typical conversation:

**Supplier:** Would you be willing to consider an advance against the purchase price?

**Buyer:** No, that’s out of the question.

This is a knee-jerk reaction. Before gathering any other information, the buyer has slammed the door shut. The approach needs to be toward more exchange of in-

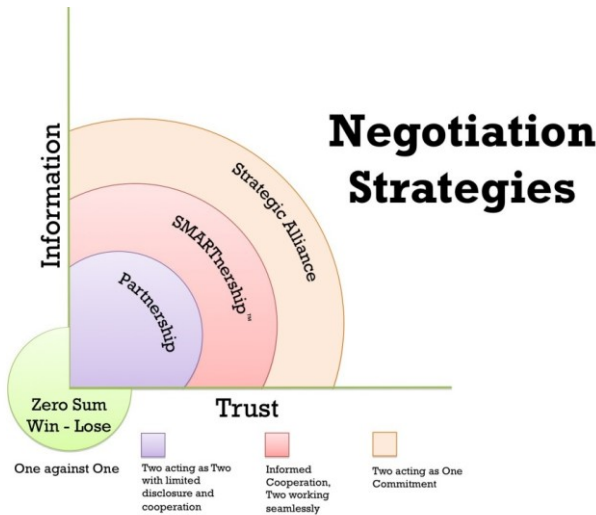
formation, more openness to exploring creative solutions, and more give and take in the interpersonal dynamic.

The buyer should proactively search for added value by asking questions such as how big an advance the supplier is looking for, why does she want to be paid up front, and what is she willing to give in return. The supplier should ask questions about the buyer's resistance to paying the advance and what the cost of doing so would be. It is only with this additional information that both parties can create a win-win deal.

In this example, let's say the supplier finds out that it would cost the buyer \$10,000 for a \$100,000 advance. With this information, the supplier can now make offers of comparable value in exchange for the advance, such as early delivery of the shipment, half off the installation of the equipment, or free service for a year. Since both parties have different expectations and mindsets regarding which aspects of the deal have the most value, there is a bigger potential for a "bigger pie" which can then be shared between the parties.

Leaders who abandon combative negotiation tactics and focus on creating a climate of openness and transparency will find that they leave the table with a better result and a greater sense of satisfaction with the process. Generally, they also come away with a stronger relationship with their counterpart— which will pay dividends later.

### 3. Focus on SMARTnership



It has been proven over and over that the most successful negotiation results are achieved by building partnerships based on optimal levels of trust, cooperation, and shared information. I call these *SMARTnerships™*. With this approach the parties work together in such a way that the whole is greater than the sum of the parts, though both parties still retain their autonomy and the discretion to pursue their individual interests. By creating SMARTnerships, companies can come out of tough times with greater resilience and long-standing working relationships.

Take a look at [Apple's textbook partner](#), McGraw Hill. These two parties could have viewed each other as competitors; with digital publishing the clear wave of

the future, the entire publishing industry has been turned on its head. However, McGraw Hill has been a long-term partner of Apple, and with its newest app – iBooks 2 for the iPad – it doesn't look like this partnership will dwindle anytime soon.

The iBooks 2 app allows complete textbooks to be downloaded on the iPad. These innovative books feature interactive video, games, music and many features that enhance the learning experience, and at a better price point for the student. So far there are only seven textbooks available on the iPad app, five of which are from McGraw Hill. There were over 350,000 downloads of these books in just the first three days they were available. By partnering together, these two companies were able to create new opportunities and unlock the hidden potential of collaboration.

Some years ago, before the upturn that began in 2017, we were approaching nearly a decade of stagnant economic conditions. It seemed clear that there will be no quick fix through bailouts or spending incentives. There needed to be a cultural shift towards openness and transparency in the way business was done.

By breaking down barriers, finding and sharing added value, and focusing on creating partnerships, the opportunity was there to infuse the economy with billions of dollars—funds that were hidden beneath recession-minded thinking and stifled communication. The NecoEconomics was there for the taking! Leaders just needed to use these powerful negotiation techniques and seize the opportunity to help reinvigorate the economy.



Then, as now, we were moving from the orthodox economic system to the behavioral economic system. The truth is, you should do what's good for you, but at the same time do what is good for the group. That's the only way we all can win. Adam Smith was wrong!

## CONFLICT AND COMBATIVE NEGOTIATIONS

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**I**n some cultures, in certain lines of business, and among certain individuals and groups, conflict is dominant. In the midst of a crisis, we find more combative behavior than in any other situation. The reason is that we are being put under intense pressure, and we react through combative behavior.

### **How the Body Reacts to Stress**

When your body perceives stress, adrenaline is released into the blood stream. This is a physical defense mechanism that increases your preparedness for fight or flight (combat or concession). The ability of the blood to coagulate is also increased. While this is occurring, your intellect is blocked, to a degree. You are no longer as capable of thinking rationally, and your creative and critical cerebral functions are blocked. When you can no longer make rational decisions, you act instinctively.

This is a defense mechanism that you have inherited from primordial times. You are constructed for survival.

The stress involved inhibits your ability to think logically. The rational part of the brain was developed at a later stage than other parts; it provided the ability to curb instinctive reactions. But menacing circumstances may still block your rational thought processes.

If you are forced to negotiate under stress, your effectiveness will be reduced. A certain stress level can be useful. It gives you energy and increases your ability to perform. But the threshold between useful and harmful stress varies from one person to another. Many of the events that occur in connection with negotiations can easily generate stress beyond that threshold.

### **Combat is used as an intentional strategy when:**

When we're moving toward adverse times and have a tougher business climate. Profitability is declining, margins are being reduced, and everybody must rationalize. Combative behaviour is intensified because far too few negotiators are capable of being tough when it comes to substance, and at the same time able to prevent this toughness from rubbing off on their behavior. They slide into classical combat.

Negotiators feel they must live up to the "tough" approach to negotiations that governs the organization or the boss. They want to be accepted by his peers. You come across this tough attitude in industries where there are many suppliers selling identical products. You also

encounter it in connection with one-off transactions, and, of course, during any crisis such as the one surrounding COVID19.

The other party wants to win by pressuring you into making unilateral concessions. In his ideal world, all gains are made at *your* expense. He feels you must be forced to give in when it comes to gains, and you must undertake all risks and costs.

The other party works toward reaching a quick agreement by exploiting his advantages. The other side should be given no time to prepare, consider, explore alternatives, and catch up with themselves following a surprising gambit.

**A conflict-oriented negotiation is characterized by:**

- One-way communication: the conflict-oriented negotiator is often verbally driven and clever at arguing. He works in terms of claims, demands and threats. He will not or is not able to answer questions. By answering, he would risk revealing he is bluffing, or that he is playing a weak hand. His answers could give his counterpart valuable information—information that would upset the division of power in the relationship.
- Deliberate insults: the purpose of throwing insults is to stress the counterpart and throw him off balance. Many negotiators stressed in this way choose to make one-sided admissions (to their detriment) in order to escape the stressful situation.

- Bluffing: the negotiator wants to appear stronger than he actually is, and lure his counterpart with attractive promises (which will never be kept).
- Dirty tactical moves: attempts to generate uncertainty and stress.
- Exaggerated shows of power: again, attempting to generate uncertainty and stress.
- Raised voice: when the negotiator is short on fact-based arguments.
- Threats: once more, the objective is to generate uncertainty and stress.
- Greed: the negotiator does not want to share any value (or at least no added value that might be created).
- Hidden purpose: the negotiator wants the counterpart to open up, hoping to learn something he can use to trap the counterpart or back him into a corner.

## **Disputes over agreements and force majeure**

Disputes over agreements that have been made can develop into serious conflicts. What are we to do if a previously friendly and forthcoming counterpart does not meet his obligations? Suddenly you and the counterpart have widely different ideas about what was agreed upon. For example:

Petersen's Electronics has an insurance policy which covers damage to its working facilities. One night a fire starts at the company's plant, in a room where plastic packaging and cables are kept. Fortunately, the fire is discovered by employees working late. They manage to get the fire under control, keeping it from spreading to adjacent storage areas. The fire department arrives and finishes extinguishing the fire.

Next day, the damages are inspected by a fire engineer from the insurance company. The parties disagree about whether or not the stored goods were damaged by the aggressive smoke. There is no visible damage other than soot on the cardboard boxes containing the goods. In accordance with regulations concerning damages, the insurance company intends to pay only the cost of cleaning the facilities, and re-packaging the goods whose containers were affected by smoke or soot. Petersen's owner claims sensitive electronic gear (meant for sale) which was also in adjacent areas, was exposed to the smoke and that the affected gear would therefore inevitably be damaged by corrosion—so it must now be discarded and replaced. The parties disagree as to the degree of risk resulting from the fire. The insurance company claims that if sensitive gear stored nearby was damaged, Petersen's shares the blame, since that gear was not stored in sufficiently protective packaging. They insist if they are to pay damages, they must also receive the goods in order to salvage and make use of them. Petersen's owner refuses to accept this option, insisting that it endangers Petersen's brand.

The parties involve their attorneys in the matter, but struggle to reach an agreement. In the end they compromise in order to avoid a lawsuit.

Petersen's owner draws the following lesson from the incident: Next time there is a fire, we will not extinguish it. If the fire results in a total loss, there can be no discussion about the extent of damage to goods.

Now we have a vicious circle, with insurance premiums going up at dizzying speed.

Two more provident and forward-looking parties could have avoided all the conflict if they had taken a longer perspective in formulating the original agreement, and had discussed:

- What steps can be taken to limit damage in the event of a fire? How will such steps affect insurance premiums?
- What happens with regard to goods stored on the premises if we suffer fire or water damage? Who will decide whether affected goods are to be discarded or salvaged, and how will the decision be made?

Many disputes that I've become involved in as an advisor could have been avoided or resolved in mutual understanding, if only the parties had taken the time to consider possible future scenarios and asked, "If X happens, what shall we agree should be done?"

## **Dispute is harmful**

A dispute may sometimes result in short-term gains for one party, but it is often harmful in one or more ways:

- It damages relationships and trust. The openness that is necessary for us to find potential added value does not appear.
- The disputive behavior may not be tolerated, so that the counterpart breaks off the negotiation.
- The disputing negotiator will end up with a bad reputation.
- The insults thrown at the counterpart will result in ill will and block further progress and solutions.
- Pride and prestige (saving face) become factors, and the counterpart responds in kind. Emotions take over and the negotiation runs off the rails.
- The disputive negotiator forces the counterpart into a grudging agreement, which he or she does not want to (or cannot) honor.
- In short, revenge might seem sweet, but its price can be exceedingly high.
- Missing the whole picture.

I often have to call conflict negotiators' attention to the fact that they are not looking at the whole picture, and so cannot make a sound assessment as to whether



they've made a good negotiation, or a bad one. They often find this idea astonishing. As they see it, they have pushed through a number of one-sided concessions, and they're feeling victorious.

A sales negotiation is finalized, with the buyer saying: "This looks pretty good. It's an agreement we ought to be able to live with. I am confident my colleagues will accept it. You can count on receiving the formal order on Friday."

On Friday morning he calls the seller: "The order I promised you will go to another provider."

"Why? Did we not agree?"

"Well, yes, in principle, but this morning one of your competitors called and offered us 60 days' credit on the same purchase. The additional 30 days are so valuable to us that we are unable to decline. However, if you can also grant us 60 days, I would rather buy from you."

After a short silence, the seller agrees. The buyer is satisfied—the extra 30 days' credit is worth \$20,000 to him. It is a concession he obtained without anything being demanded in return. The buyer's tactics here are typical, but was the result actually favorable for him?

If the extended credit increases the interest the seller will have to pay by \$30,000, how does the the whole deal look now?

Both parties have mutually lost \$10,000 as a result of the changes in their contract.

I've named this aspect of negotiations *NegoEconomics*. NegoEconomic factors can be found throughout any negotiation, from conditions of payment (for example), to service agreements and warranties. In many negotiations there are literally hundreds of variables that could create NegoEconomic value. NegoEconomics is finding and taking advantage of the asymmetric values between the parties. If one party's cost is lower than the counterpart's gain—we have created NegoEconomics.

### **Do not fall into the trap**

When the buyer said the 30 extra days credit were so valuable to his company that they could not decline the competitor's offer, the seller *should* have asked, "How much are those 30 days worth to you?" If the buyer's answer is "Roughly \$20,000," the seller might go on to say, "Okay—then I would like to make it worth your while to stay with us by lowering our sale price by \$20,000." A basic rule is: **Make no one-sided concessions.** Therefore, the seller might have continued: "However, in order to be able to take on that cost, we would ask that you extend our contract to 18 months, rather than 12. With this quid pro quo, we should be able to fully recoup our \$20,000 concession, but at no additional cost to you."

Alternately, when the seller agreed to lower the sale price by \$20,000, the buyer might have said, "Excellent—we agree on the 60-day credit period. However, that will leave you with an interest cost that you had not counted on. How much will that be?" If the seller were to answer, "About \$30,000," then the buyer

could continue: “In that case, it would be better for you to incentivize us by lowering the sale price by \$27,000. From our viewpoint, that would even out the difference between your offer and your competitor’s, but it would be less expensive for you.”

Either solution is more advantageous for both seller and buyer. Everyone wins.

## **How to deal with a hostile and combative negotiator**

You cannot change other people, but you can adapt your actions to fit their behavior. If you depend on a particular counterpart, and must make the most of your dealings with them, the actions below will help you do so.

Demand a new negotiator. Working with a new negotiator, with more favorable personal chemistry, the willingness to agree may grow, and a mutually favorable agreement may be reached.

Don’t try to go at it alone. Take a partner along with you to the negotiation. This gives you moral support and at least one source of agreement in the room. Your support person can also gracefully take you out of the game if the situation becomes too heated.

Demand a set agenda before you meet. This gives you a picture of the other party’s intentions, who he may be bringing along, and a stable point of agreement during the proceedings.

Be silent. You are not obliged to immediately respond to or comment upon everything that is said or done—not even outright lies by your counterpart. Silence, at least for the moment, may be your best course. Too-hasty counter-arguments can easily incite conflict.

Seek to open a dialogue. For example, “*You have made it clear that you think our proposal is bad. How would you like it to be different?*”

Delay. Tire out your counterpart. This may put him in a more amenable frame of mind.

Play along. If you can reach a friendly agreement, you may be able to make it seem to the counterpart that he is the winner. Many negotiators are blinded by results set down on paper. For example, if they can negotiate a set of free spare parts, somewhat better payment terms and a small rebate percentage, they (and their bosses) are satisfied. Why get into a conflict if it can be avoided by building a little extra negotiating room into your proposal? Take the concessions you might have to make into consideration, in advance. It might end up being a simple, bazaar-like negotiation, but does that really matter if you both are satisfied with the end result? Building in space for negotiation is not the same as opening with an asking price you know is too high.

Of course, if you have other options—other organizations you could be dealing with—then you need not accept the hostile behavior at all. Just leave the negotiation and take your business elsewhere.

### **You can build in negotiating room by:**

- Using conditionals. For example, make good use of the word “if.” For example, “If you are willing to...then I would be able to...”
- Suggesting payment terms, delivery dates, or other elements you are reasonably sure the counterpart will want to change.
- Offering an alternative technical solution.

### **Should hostility be met with hostility?**

You’ve tried to be flexible and accommodating, but nothing has helped. Despite all attempts to reach an agreement, the counterpart will make no concessions. You depend on his business, and so do not want to simply walk away, or give in to unreasonable demands. There may come a point where you have no option but direct confrontation—meeting hostility with hostility. Before you act, ask yourself two questions:

- Am I strong enough to win? Do I have the resources necessary to pick up the fight and carry it through? Am I on solid ground legally?
- Am I willing to pay the price, if I don’t win? Some might say, “I’m holding a trump card; there’s no doubt that I’ll win, so the other party is going to be the one who pays.” But what if the other party *will not* pay?

## **The big builder**

Mr. Wang, one of my clients, told this story: “I had not received payment for materials I had sold to a builder. My delivery had been inspected and accepted, but no payment had appeared. The amount in question was a whole million.

“Payment reminders and threats of debt collection produced no result. I needed the money I was owed—otherwise I would be unable to pay taxes and fees on time. Collection via the bailiff was not an alternative; it would take too long. A journalist assisted me by promising to publish an article about the builder’s business ethics, complete with a photo of the man. The headline was to be, ‘A Problem of Ethics, or Is His Ability Lacking?’ With this trump card in hand, I contacted the builder and stated my threat: ‘If I do not get my money, you can read about yourself in tomorrow’s paper. After that, supplier credit will be hard to come by.’

He replied almost at once: ‘I regret that you did not receive your money. We made a mistake, and I would like to apologize for that. If you come here in half an hour, I will see to it that there is a check for \$1 million waiting for you. I want to transfer it to you in person, look you in the eye, and apologize.’

I was happy. I had won. We met, but when the check was about to be transferred, the builder said to me, ‘Before handing over the money, I would like to ask you something. Did you really think through the situation? Do you want the one million, or do you want new orders from us?’ Faced with the threat of no further business, I withdrew. I agreed to accept \$700,000. I left

\$300,000 poorer, but with the promise of a future contract. I did get a new order from the builder, but its final invoice was reduced in the same way.”

## **Predict the counterpart’s next move**

Negotiations are similar to the game of chess. Before making a planned move, you must think through how the counterpart might respond. If I were the builder in the previous example, what would I have done? You probably realize your only trump card is the threat: “In that case, I will stop buying from you!”

- How can you handle such a threat? Go through your possible counter-moves and make the right decision. Not an emotional decision, which you can so easily fall into when you are poorly prepared. What will you lose if you give in? How much would you have to increase your sales to recover the lost revenue? Is this customer really going to give you his business, as he says he will? What would you lose if you dropped the customer? Could you bring in the same revenue from other buyers, or will you have to tighten your belt?
- In our example above, it would have been better for Mr. Wang to take the million-dollar check and stop doing business with that builder—but he was unprepared, and made an emotional decision that turned out to be a bad one.

## **SUMMARY**

**Characteristics:** A strong negotiating position. Tough argumentation. One-way communication. Tactical gambits to stress and tire down the other party. One's own needs and intentions are kept hidden. Tough follow-up and monitoring of agreements concluded with a possibility of sanctions in case of any infringement of the agreement. Can also be the strategy of the weaker party. Relations ruined.

**Intentionally used:** To win by beating the other party and get him to make concessions. In combination with other strategies, to create insecurity and stress. To achieve a quick conclusion. When one's own demands are of vital importance. To take advantage of the openness of the other party. To counteract combat. To retaliate. To live up to the role of the tough one.

**Unintentionally used:** When the negotiator is insecure, wants to assert himself, wants to protect himself, to retaliate. When factual arguments are in short supply.

**Involves the risk of:** Unsatisfactory solutions compared to what cooperation would have yielded. Short-term solutions, revenge, bad reputation, deadlocks, ruined personal relations.

**Can be counteracted by:** Remaining silent, stalling, playing along



## THE CONSTRUCTIVE NEGOTIATOR

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**M**ore and more negotiators have discovered that better cooperation means better solutions and more sustainable relationships. Enlarge the cake before dividing it. Look for alternatives that increase profit and reduce risks. Spend your energy on creating added value. Often, but not always, you will succeed. If you can make that cake big enough, a solution with two winners becomes possible. I call that SMARTnership.

A cooperative negotiation is characterized by:

- Personal chemistry is working; the parties are willing to open up, but they are not naïve.
- Openness introduces the elements needed for discovering alternatives and creating added value.
- The openness is not unlimited—there is still an element of discretion. Some information may be

held back, if it would give the counterpart a trump card he could play when it came time to divide the cake.

- Dialogue. Listen to the your counterpart, even if you do not share his views. Ask about, rather than argue against.
- You are both honest and treat one another with respect.
- Civility. Demands, feelings and assessments are presented without threats or insults.
- The negotiators have done their homework and know their stuff.
- The negotiators invest their time and energy in problem solving.
- Both parties are seeking long-term, stable and profitable relationships.

## **Get your share of the profit**

Are our demands to be based exclusively on our costs, or do we have a right to part of the advantage we are offering our counterpart? Now and then there are opportunities to make offers to the counterpart without any cost to ourselves. Should we give without asking anything in return?

*Example:*

I call a hotel to book a conference for Wednesday and Thursday of week 41. While checking his availability chart, you hear the hotel representative say, “Well, yes...week 41...hmm...we’ll have to find a solution to that...”

“Is there a problem?” you ask.

“Well, we have a large group coming in for a luncheon meeting on that Thursday, so we are rather short of rooms. We will solve it somehow, though.”

“Would it be better if we changed to Tuesday and Wednesday?”

“Oh, yes. It certainly would. That would be a great help to us.”

“All right. Then I will try to persuade my customer to change the time. What do you think I should say to convince them?”

“How about if we provide wine with your meals?”

Providing wine with meals is not costly for the hotel, but the guest greatly appreciates it.

It is important to look for and take advantage of opportunities that may appear. In the case of the hotel, the guest’s request it is not greedy, it is businesslike. In other situations, we may offer something without asking for anything in return; we simply want to help the counterpart. Maybe we want to strengthen the relationship; or perhaps we feel pity for them.

Being businesslike is not always easy. If we give away too much and too easily, we may be regarded as naïve, and risk being exploited. If we demand too much, we may be considered greedy, so that people would rather not associate with us.

## **Learn to see the whole**

Others' demands may be regarded as costly, risky, threatening or insulting. You might think you are being offered far too little. Years of experience have taught me that if I take my time, keep my feelings in check and *ask*, then I may be able to get a good look at the bigger picture. It's then that I may discover that what appears to be a risk might also offer interesting possibilities.

Two parties are discussing a project. They support and trust one another. They stand to benefit greatly from one another's experience. The work efforts they agree to take on in the project are about equal. However, when it comes to discussing distribution of the revenue the project will bring in, one of the parties makes a demand: they must receive 75% of the gross income, or their board of directors will not agree to the project.

## **Handle lowball offers correctly**

A normal counter reaction to such a demand might be: "That is unreasonable. We are both investing the same amount of time and other resources, so we should share the income equally." When you feel you've received a seriously lowball offer, it is easy for emotions to take over. Hold on—take it easy. Resist the urge to

immediately counter-argue. Instead, gather more information.

“How did you arrive at your 75 % figure?”

“We must be able to count on a profit of \$500,000.”

“What have you estimated your costs will be?”

“\$700,000.”

“All right. If I understand this correctly, you need a distribution that gives you \$500,000 on top of your \$700,000 expenses. That’s \$1.2 million. If we can assure you of that, would we have an agreement?”

“Yes.”

“Good. Now, how did you calculate that you must have 75% of the project’s gross?”

“Our board of directors doesn’t believe that we will sell more than 1,000 of the 2,000 units the project will produce. The price per unit is \$1,600. Selling 1,000 units would result a gross income of \$1.6 million. 75% of that would give us the \$1.2 million we need to be able to agree to the project.”

Your own projections say that at least 1,800 units will be sold, not 1,000. Now, instead of launching into a dispute about probable sales, you take time to consider the situation carefully. You see there is a chance of bigger gains if things work out well. So your counter-proposal is this:

“We will consider taking a greater risk, and letting you keep 65%—rather than 75%—of the revenue from the first 1,000 units sold. However, for sales above 1,000 units, we must get 90% of the revenue.”

If this is accepted, you stand to take away as much as 60% of the cake.

## **Enlarge the cake before you divide it**

You will have a bigger cake to share if you find alternatives which lower costs and reduce risks, or which increase profits. This is not magic. Examples abound in our daily lives. Take these ideas and work out how to implement them in your own business. You will be creating added value—another example of NegoEconomics ( Negotiation Economics).

### *Example*

Traditionally, furniture is produced at a factory, then shipped—fully assembled—to stores. Customers visit the store, select the items they want and take them home or have them delivered. IKEA follows a different pattern. Its furniture is displayed (fully assembled) in their big stores. Customers select an item they want, but what they take home (or have delivered) is different: a box containing the item’s components, and a booklet of assembly instructions. The customer assembles his furniture at home. This greatly lowers IKEA’s production and storage costs, and they are able to pass on the savings to their customers in the form of lower prices.

## **An impending strike is avoided**

A major company is faced with an impending strike by its employees. The workers have demanded a pay raise of 8%, but a previous collective bargaining agreement does not allow more than a 2% increase. A suggested compromise increase of 5% is completely unacceptable to the company. A strike notice is issued.

I am consulted. In order to do anything, I first need to get a complete picture of the conflict. In conversations with the parties involved, the following is revealed:

The employees have been dissatisfied for several years; this has left its mark on product quality. Expenses for raw materials and for production machinery have also risen significantly. Recruitment of new workers is becoming more difficult. Staff turnover is high. The company's nine production workers had originally been organized into teams of three, but absenteeism has been steadily increasing and now stands at about 25%. To deal with this, the company is considering a change of organization, to four-person teams, one person serving as a reserve, when one of the others does not come to work. This would require hiring three additional people, bringing the production crew to a total of twelve workers.

Many of the employees sought work with the company because it allowed them considerable freedoms. They were not required to start or end work at specific times. Further, once the production planned for a day or week was completed, team members were free to go home.

A pay raise greater than 2% would force the company to find an outside provider to take on production functions. At this point, if the company's nine employees want to be better compensated, they must cooperate with their employer to make the cake bigger.

The workers cannot directly increase the company's income. Expenses for materials and equipment are fixed, and beyond the workers' control. There are other expenses the employees *can* influence, however.

There are currently nine employees on the team. They could suggest the introduction of a bonus system, in which the employees share in the savings they are able to create by becoming more efficient in their work.

They nine employees could work out among themselves how they might manage with only one reserve worker, rather than the three the company plans to hire. This would mean two fewer people the company would have to add, and the savings from that could be shared between the company and the existing team. To make this work, the production workers would have to be willing to cover for one another, if anyone was absent. This would sometimes mean a longer workday, but if they could manage it, the company cake would be considerably larger. This and other steps to increase their own efficiency could result in pay increases as high as 15%. Further, as efficiency improved, the team size could be reduced through natural retirement (with no new hiring), without reducing production.



The parties involved agreed to these ideas, and the proposed changes were implemented. Absenteeism dropped. Wages grew by 14%. The employees were given even greater responsibility for planning and carrying out their work. Turnover reduced. In short, everybody won.

## **Conflict or consensus?**

Three friends who take yearly vacations together are planning their trip for the upcoming summer. Steve wants to go to Florida, but Maria would rather visit Oregon and John prefers Mexico.

Will they be able to vacation together, or will the group have to split up for the holiday? Where will they go? Who will decide, and how? Upset and conflict are dangerously close.

*Dont answer the question*

*My advice is: instead of arguing, ask questions instead. Ask what the others feels like doing on their vacation. Don't fight about the solution. Base the progress on the needs. Are they conflicting? Or could they merge? Perhaps we learn that Maria wants culture, Steve wants beach and sun and John wants an active vacation with lots of exercise.*

## **Something positive may result from the conflict**

We should not be afraid of saying things straight out. We must test old assumptions when real life

changes the rules. It does not work to hide from change and continue on as we always have. While this is being written, the subsidiaries of GM are conferring about where future production of middle-class vehicles is to happen. We read in the media read about blackmail, unrest and labor strikes. Workers viewed their employers' move as attacks, and automatically responded with counter-attacks. The result is that the cake to be shared becomes smaller.

When the initial shock of a conflict has passed, it becomes possible to step back and have a look at reality. The counterpart has laid his cards on the table, stating what will happen if a solution is not found. The two parties sit down at the negotiating table. The group that produces metal body panels accepts the proposition there be three shifts daily, and that part-time workers will be taken on. A four-year agreement is signed. The government wakes up and, among other things, sets new priorities for national infrastructure development. Maybe their changes will be successful, but maybe they were too late in coming to their senses.

## **How three competitors became four winners**

A good friend was about to sell his company. When he received the prospective buyers' offers, he was pleasantly surprised. Buyer A offered \$14.3 million. B offered \$11.1, million and C offered miserable \$8.5 million for the company, whose assessed value is \$11 million.

For my good friend, the choice seemed easy: to sell to A. He would rather not have anything to do with C.

The offer of \$8.5 million was ridiculously low, after all. However, he was persuaded not to rush into a decision, but rather to take it easy and sit down with all the bidders. “Do not argue. Listen and ask. Try to find out why each wants to buy the company, and what they plan to do with it.” Now it turned out that:

A was out to get his hands on the well-established trademarks and brand, but intended to move production offshore.

B was only really interested in the company’s advanced equipment, and looking at the possibility of selling it all off at a handsome profit.

C was planning to start an industrial school in the company’s building, but had no need of its production equipment.

In the end, by letting the three buyers purchase only the portions of the whole package they were really after, each could be offered a price that was lower than their original bid. At the same time, the seller collected considerably more than the \$14.4 million A had offered for the whole package. It was a negotiation that ended with *four* winners.

## **The person avoiding conflict is exploited**

If you send the wrong signals, you may find yourself being exploited. Do not be surprised if your counterpart takes your whole hand, after you offered him a finger. We negotiators know how to read one another. The person who gives in after a protracted

negotiation is sending a signal that could be summed up as “I give up.”

## **No one-sided concessions**

Avoid one-sided concessions. When you make a concession, always demand something in return. For example, from the scenario above: “Provided that construction will limit themselves to four new full-time employees, we can also withdraw our demands.”

The Department of Development has presented its proposed schedule for a new software product. After a brief silence, the Marketing Director says, “That will not work. It’s far too slow. If you cannot speed up things, we will have to farm out the development to somebody else.”

“May we have a few minutes’ break to work out what we might be able to do?”

“Certainly.”

“We’ve reviewed the matter, and worked out a way to deliver the product in two weeks.”

“That’s still much too slow. You will have to look at it again.”

## **SUMMARY**

Zero-sum games are used to share the cake we have negotiated our way to. Cooperation is used to create a bigger cake to share.

Pure zero-sum games entail a risk of leading to solutions with a winner and a loser, or two losers.

The choice isn't between zero-sum games or cooperation. The methods must be combined.

In zero-sum games for known stakes, it's often more difficult to get more than half the cake than is the case if the stakes are unknown to the other party.

Zero-sum games feature threats, bluffing, manipulation, power language, unsatisfactory relationships, and uncertainty in the decision-making phase. Cooperation feature openness, trust, creativity, good relationships, and rational solutions.

From time immemorial man hasn't been geared to cooperation. Our congenital urge for survival makes many of us eager to fight when feeling insecure, menaced, or stressed. We obey the law of the jungle.

Many people who do cooperate are much too open and naive. They think that cooperation entails an equal split of everything.

Some people ruin the chances of cooperation and lose all the NegoEconomics by being too greedy.

A business-like division of NegoEconomics makes demands upon the negotiator. You must master the difficult art of helping yourself to what's on the table in a manner that's accepted by the other party. You must know where the borderline runs between a business-like attitude and usury.

## HOW NEGOECONOMICS IS GENERATED

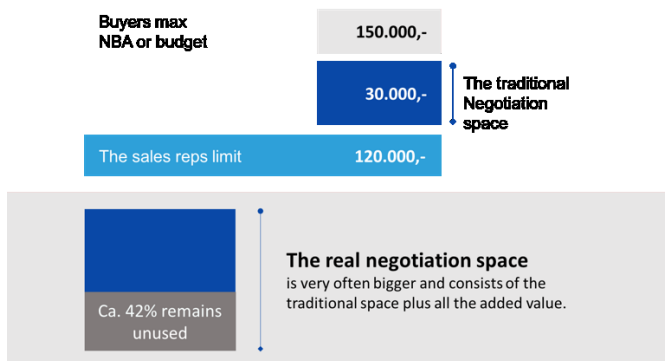
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**W**here should you be looking for the NegoEconomics? Many people think that the most important reason for cooperation is that the parties share the same values and objectives and agree about many things. This doesn't have to be so if you want to generate NegoEconomics. Instead you can look for and take advantage of the differences that exist between the parties.

### **Expanding the Negotiating Space**

“Negotiating space” could be defined as the difference between the highest price a buyer is willing to pay, and the lowest price a seller is willing to accept. For a deal to be struck there must be positive negotiating space. The buyer must be willing to pay a price that is higher than the seller's threshold of pain.

## Identify the real negotiation space



If the maximum price a buyer can pay is \$150, 000, and the lowest price the supplier can accept is \$120, 000, the difference of \$30,000 constitutes the negotiating space, within which a deal can be struck. However, the *actual* negotiating space is normally larger. It consists of the sum of the negotiating space plus the NegoEconomic value that can be created. This additional value can enable the parties to reach an agreement even if the highest dollar price the buyer is willing to pay is below the seller's lowest acceptable price.

## Differences lead to NegoEconomics

You and I are doing a project together. We are going to dig a ditch. Your digging costs amount to 50 USD per metre, mine are 30 USD. If I dig the entire ditch, together we'll save 20 USD per metre. If I dig the entire ditch instead of us digging half each, we consequently save 10 USD per metre.

In a zero-sum game there'll be disagreement about who is going to dig the ditch. In the case of cooperation, we leave it to the party who can dig at the lowest cost to do the job. The NegoEconomics generated, we share, e.g. by letting me have 35 USD per metre.

Don't think that this simple solution is obvious, and will always be realized. The typical negotiation is the zero-sum game.

A zero-sum negotiation may end by leaving it to the party with the highest cost to dig the ditch on his own. By means of threats, harsh arguments, and clever tactical moves, the negotiator has made the other party undertake all the trouble of digging.

*"It doesn't take long to dig. You won't have to dig very deeply. The ditch isn't all that long, and the soil is easy to work, as it's mainly sand. If you want your money, the ditch must be finished by tomorrow noon!"*

In this negotiation openness and trust are in short supply; they would be required to discover who is in the best position to undertake the job. In a zero-sum game much energy is lost in fighting. As long as they think that their victory at the negotiating table will lead to good solutions, they'll continue to fight and do battle.

I am your sub-supplier. In order for your production to run without disruption, and in order for you to be able to vary the production pace on a daily basis, 10,000 units of the component that I manufacture need to be in stock. Traditionally that stock has been kept at the producer's premises, but then they heard about the Japanese model of "just-in-time-deliveries". Let's assume that



your costs in making storage facilities available are 250,000 USD. If as a supplier I make storage available, it might only cost me 150,000. By having the articles stored on the premises of whoever has the lowest storage costs, we generate NegoEconomics that we can share.

By going through *all the costs* incurred by the project, and by examining, without any bias, what would happen if you or I or a third party were to be in charge of the work, and what the alternative solutions might be, the NegoEconomics can be located.

They should be related to a potentially increased risk and to other types of cost increases that might arise.

Cooperation requires the parties to be open to each other, trust each other, and master the art of constructive two-way communication.

## **Cooperation requires openness and trust**

In utilizing the experience, creativity, and capacities of both parties in a joint effort to rationalize, synergies will arise. More energy is fed to the negotiation efforts and problem solving. In zero-sum games energy is consumed through the parties' attempts at manipulating each other.

You should review how various technical solutions will affect the useful life, maintenance costs, flexibility, residual value, etc. Take, for instance, IKEA. What are the consequences of their idea of “flat packages”?

## **Considerable NegoEconomics**

Things start at the design level. The furniture is designed for rational production in low-cost materials. Instead of packaging, transporting, and storing air, we have the flat package. The work involved in assembling the furniture is left with customer, who doesn't see it as an extra cost. The NegoEconomics generated in comparison with completely finished and fitted furniture is considerable.

In a similar way you review all the useful value and all earnings in the project. You can deposit the money at a 16% interest rate during the project period, whereas I only intended leaving it on my current account at 9%. The NegoEconomics will be considerable if you take a close look at the yield.

We have a jointly owned summer cottage at a holiday resort. In recent years we've only spent two weeks there every year. If we refrain from using it ourselves, we can instead let it on an annual basis. We discover that we can get 60,000 USD to share, something which is probably far more valuable than those four weeks. We have to halt and reconsider the old solution. Property ownership generates work and costs. We don't consider the property as capital investment, but use the summer cottage for recreational purposes.

What other alternatives do we have yielding the same recreational value? We decide that in future we'd rather rent that own. In this way we'll gain time and not have to carry out maintenance work. What we gain is freedom of choice and variation, as we can change our place of residence each year. We save money as it is cheaper

to rent than to own. The surplus money enables us to acquire other useful things through increased consumption in other areas.

We can find a host of business ideas all based on the principle of “time sharing”. You need computer capacity every day between 8 am and 7 pm, and I can use it anytime, day and night, but I also need to have 11 hours of use. We use the same computer, you during the day, I at night. Here we take advantage of the differences in needs and times, and can distribute the economies of scale if the benefit for you exceeds my costs.

I am building you a factory. You wish to move in as soon as possible. Every week is worth 150,000 USD to you. Construction work can be accelerated, but that would cost me 90,000 per week.

The tax planners have found a volume construction under which a considerable expenditure is more than offset by tax advantages. This hunt for NegoEconomics within the tax system doesn’t yield any rationalization gains or synergies, but makes losers of us all.

We have different expectations of future inflation rates. You want a fixed price valid for the next two years. I don’t want to lose on inflation. You expect costs to increase by at least 10%. I anticipate 6%. If I don’t give you a fixed price, you’ll increase my price by 10% – to hedge against calculated increases in costs. If I take this chance and give you a price, I feel well protected if I add another 7%. My fixed price yields an NegoEconomics of 3% compared to your calculation with a changeable price.

I plan to rent A sports venue to show an exhibition match between the soccer teams Real Madrid and Manchester United. I promise to be responsible for the players' fees, if A sports venue undertakes to defray the marketing costs and rent. The gross earnings will be divided between us.

A sports venue can seat an audience of 10,000. We agree to sell the seats at an average price of 200 USD. A sports venue promises to accept these terms and demands 65% of the gross earnings.

I carry out a calculation assuming that we'll be able to sell 95% of the seats. A sports venue offers me 35% of the gross = 70 USD per ticket, a total of 665,000 USD. The project isn't profitable for me. The two teams demand 850,000 USD between them, plus any earnings from television-transmissions and publicity. They are not going to accept any other terms.

I have to make a counterbid. Out of the expected gross of 9500 times 200 USD, making 1,900,000 USD, I must get 850,000 USD corresponding to 45%. There is no way I can go down to my ultimate limit, but I add another 5% to my room for negotiation and profits, demanding 50% of the gross earnings.

A sports venue representative do their sums, and state that their final offer is 58%. I resignedly state that my lowest bid is 45%. We are too far apart. None of us seems to have any gains or marginal amounts to relinquish. We agree that it's too bad that we couldn't arrange the exhibition match.

In spite of us giving up all profits, the project doesn't seem feasible. Real Madrid and Manchester don't retreat an inch from their demands. We dare not raise the ticket price. How can we make the project pay its way?

I change my negotiation method attempting to get a dialogue going. I ask A sports venue negotiators how they have arrived at 58% as their absolute minimum. They reply: *"We must earn at least 750,000 USD."*

I don't understand their arithmetic. 58% gross on 1,900,000 would give them 1,102,000 USD! Instead of pointing out their miscalculation, I ask, *"How did you figure that out?"*

*"We have to be very cautious in connection with all speculative projects, and we expect to sell about 6500 tickets. 6500 times 200 USD comes to 1,300,000 USD. 58% of that is 754,000 USD."*

Many deadlocked and apparently hopeless situations can be solved if someone opens up and provides the negotiations with more information. In my negotiations with A sports venue, I realize that we have produced two different sets of calculations, each based on our respective fears and hopes for the project.

When we begin negotiating about percentages we end in a blind alley with our bids and counterbids. The amount of USD that my calculations lead to, doesn't agree with the amount of USD that A sports venue will earn according to their percentage. Knowing how the other party views the project, I can now respond with a new counteroffer.

*“You’ll have 58% of the gross of the first 6500 tickets we sell, and I’ll have 42%. If we sell more than 6500 tickets, you’ll have 25% of the surplus gross, and I’ll have 75%”.*

I’m quite sure that we can sell 9500 tickets and expect this offer to bring me 6500 times 84 USD equalling 546,000 USD plus 3000 times 150 USD equalling 450,000 USD, in all 996,000 USD.

I see an opportunity to execute the project with a chance of good profits. The gain is big enough for me to run the risk. A sports venue negotiators can, even with a very cautious calculation, make the project pay. They don’t have to run any risk, but get an opportunity to do a good business deal.

We have different expectations of the project as well as different attitudes to risk. We might even get the project to pay off if we had different time aspects. There is certain to be a period during which A sports venue is under-utilized, and would therefore be satisfied with less as an alternative to standing empty.

## **Exploit the differences**

By means of these simple examples, I’ve demonstrated how we can generate considerable NegoEconomics by exploiting some of the differences that exist between the parties. We achieve negotiated solutions with two winners. Nobody has to relinquish their original demands. Projects that seemed impossible can be done after all. I’ve given examples of differences that usually exist when it comes to:

Costs and physical preconditions

Useful value and earnings

Useful value exceeds costs

Expectations

Attitude to risk

Time

## **NegoEconomics is created by means of economies of scale**

Instead of having two sub-suppliers manufacturing the same unit, the entire production is assigned to one of them. He aggregates all the costs over double the number of units, and he can also squeeze his own purchasing prices as he doubles his orders.

Stocks are kept in one place only, and the size of the stock can be reduced. Transport costs can be reduced as can the administrative purchasing costs. We don't have to have duplication of development, tools, and management.

The NegoEconomics generated is related to the increased risk and the intensified future dependence.

The intensified dependence requires a different relationship between buyer and seller. The buyer can no longer lord it over the others as he could in connection with the price negotiations of previous years, when he could play out the sub-suppliers one against the other.

Short-term profit orientation in which the horizon is one budgetary period will have to be replaced by a long-term strategy. This entails the acceptance of a higher degree of dependence on sub-suppliers, and acceptance of them getting a share of the NegoEconomics generated in negotiations.

In the negotiations, the buyer has to be more inclined to find and develop the potential NegoEconomics. Instead of holding on to the old solutions by trying to squeeze the price as much as possible.

The sub-supplier must participate in the uncertainties and risks facing the buyer in the marketplace. He undergoes hard competition and scrutiny before the cooperation can begin. The choice of sub-supplier must be made with uncanny precision, simply because the interdependence between buyer and seller will be intensified.

This change in purchasing strategy will expose the buyer with a cultural chock. In theory they have bought into these theories of NegoEconomics and partnership, but in a negotiation, and in their behavior they are stuck in the fierce confrontations of the zero-sum game.

Other negotiators don't at all buy the advantages of the theory. They're convinced that combat provides them with the best situation. Sooner or later financial realities will force them to accept partnership as a basis for business. If not, they will disappear from the market as a result of having gone bankrupt. That has even happened to communist regimes.



You and I are in the same town developing electronics. We have a vague idea of each other's businesses, but we haven't as yet met. We use the same bank, and one day a creatively thinking banker introduces us to each other. The personal chemistry clicks and we agree the following:

Let's share an office. We'll get bigger, better, and more up-to-date, representative premises at lower costs.

We can share a secretary and administrative staff.

We can employ a salesman working for both of us.

Our respective experience seems to supplement each other, yielding substantial synergies.

The list of advantage associated with economies of scale is long. However, there are limits to these advantages; collecting several enterprises under one that isn't a panacea that always works. NegoEconomics may instead turn into increased costs, more red tape and inefficiency. This is amply illustrated by our public monopolies.

## **Cooperation yields NegoEconomics**

If two plus two make more than four, this is known as synergy. When we've begun to cooperate to save costs and improve the utilization of resources, we discover that we can supply each other with experience.

Our pooled experience means that we can create new and better products and systems. I couple my software with your pc, we now have a complete system and

become stronger and more attractive in the market. Together we make the resources grow, and we evolve. If we had stayed as separate units, we would, in the longer term, have been ousted from the market.

## **When misunderstandings are cleared up, NegoEconomics is generated**

It's easy for negotiators to speak at cross-purposes. They have different positions, different experiences, and perceive different threats, dangers, and opportunities. Individual words can be interpreted in completely different ways.

The supplier asks the customer, "*Could you possibly change the time of delivery?*" The customer thinks, "Change the time of delivery? No, that can't be done. By preference we'd rather have the delivery moved forward, but that can't be done, I suppose. Consequently, he replies, "*No way!*"

The customer doesn't realize that the supplier never told him how he wanted to change the time of delivery. It could be in either direction. The customer simply assumed that the seller was looking for a postponement of the delivery. It's normal for us to expect the worst when we interpret signals. The seller takes it for granted that the customer knew that he was talking about shortening the time of delivery. Anyone sitting next to these two negotiators listening to them, would easily grasp that they are at cross-purposes. If the misunderstanding is cleared up, NegoEconomics can be generated.

You ask the party across the table, “*Would you consider letting us have an advance?*” He says no, without knowing what he’s turning down, because he isn’t used to advances and sees it as a cost and risk. If instead you had asked, “*If we were to reduce the price a little, would you consider letting us have an advance?*”, you would reduce the risk of getting an automatic rejection.

Maybe he wants to hear how much you are willing to come down. If you say, “*Let us have a 30% advance and we’ll reduce the price by 3.4%* “, there is less risk of getting an automatic rejection.

## **SUMMARY**

NegoEconomics is generated by the parties having different costs and physical conditions.

NegoEconomics is generated when the parties can justify earnings, freed resources, and useful effects in different ways.

NegoEconomics is generated when the parties have different expectations and attitudes to risk.

NegoEconomics is generated when your own costs for an extra effort is lower than the useful affect accruing to the other party of that same effort.

Synergies constitute NegoEconomics.

NegoEconomics is generated when misunderstandings are cleared up.

## **How is the NegoEconomics to be shared?**

Cooperation and SMARTnership don't presuppose an equal division. As a negotiator it's your job to ensure that you get to keep the highest possible share of the NegoEconomics generated, and at the same time you must keep the other party satisfied:

He must be able to manage and develop his enterprise under the conditions achieved in the negotiation. He should continue to be a good and valuable partner.

Compared to the alternatives available to him, the outcome should be better than alternative ones; a deal that he can't afford to miss; an agreement that he wants to protect and keep alive.

He must feel that it's a good deal, and that he has performed well in negotiation. He must feel that he has succeeded in his task.

Personal relations must be good. The parties should trust each other.

Negotiations are decisions without uncertainties. Your information about the other party's alternatives and his assessment of them in the long and short term is limited. Your information about how the other party draws the demarcation lines between a brilliant agreement, a good agreement, a reasonable agreement, an agreement with which he can live, and an unsatisfactory agreement that he wants to discontinue as quickly as possible, and an agreement that he'll reject, is limited. Sometimes 50/50 is the appropriate division, at other times it is 30/70 or 90/10.

In the end phase of the negotiation, when potential NegoEconomics has been identified and the principles and solutions of the agreement have been give clear contours, you move to a tougher type of negotiation in which you test your opposite party. On the basis of the signals you receive, the division will be determined on a case by case basis. However, this method has certain inherent risks. You must be careful not to spoil the relationship and the negotiation result in the final phase by embarking on a fight that contains venomous lies and personal attacks.

### **Negotiate about the division in advance**

A manufacturing company plans to invest in a heat-recovery plant, but they are uncertain about the conditions under which the investment would be profitable.

The suppliers with whom they have negotiated so far, dare not venture a binding estimate on future financial results, but merely refer to operational results from similar plants. The only guarantee these suppliers are willing to give, are the normal guarantees against flaws in the material and errors in manufacture.

The suppliers dare not meet the needs of the customer - a guaranteed heat recovery volume - but limit themselves to selling the machine to be used for recovering heat. They end up in a price negotiation in which the customer plays off one supplier against the other.

Another supplier is contacted. He guarantees a rate of heat recovery that means that the investment will have paid for itself in 30 months. If the customer does

not achieve this result, the supplier guarantees full financial compensation or supplementary components to the plant until the guaranteed return on investment has been achieved.

This supplier meets the needs of the customer - a guaranteed rate of heat recovery - but in return he demands to be in charge of all servicing and maintenance of the plant for a five year period at a fixed rate, agreed in advance. Furthermore the supplier demands that if the plant turns out to be even more profitable than guaranteed, the “extra profit” that ensues must be divided on a 50/50 basis between himself and the customer.

## **Review the negotiating variables**

Go through the different negotiating variables: times, prices, performances, guarantees, payment plans, hardware, software, etc. Start by making a list of those variables that might become topical in connection with the upcoming negotiations. Examine what room for negotiation you might conceivably have in these fields. Can you give/take more or less? This provides you with a picture of the flexibility available to you, and the alternatives you can utilize.

Find out what the consequences will be to you if you give/get more or less. This will give you an idea of what points are key for you, and what changes in conditions are less important.

Try to analyse the room for negotiation which the other party might conceivably have in different fields, and if has more variables than those you already know

about. To be able to make this analysis, it's necessary to you to enter into negotiations or utilize your contacts to find answers through informal channels.

Try to obtain information concerning the consequences for the other party of the various changes to conditions. If you're successful, you'll get a good picture of the variables that can be utilized to create NegoEconomics, and a good idea of the proportion of this NegoEconomics you'll have to relinquish.

This picture makes it possible for you to think through the points in which you can be open, and how detailed you can be when you explain the possibilities you see.

You must be open yourself to get more information from the other party. Without this information it can be difficult to generate and exploit the available NegoEconomics. Openness generates trust. Don't be afraid to open up before the other party does. Demonstrate that you have the courage to take the first step.

If you negotiate at the level of principles without revealing what a change in conditions would mean to you, you're in a better position prior to the final zero-sum negotiation. Staying at the level of principles means that you indicate interest, options, and direction.

*"We'll see what we can do about the delivery time. We ought to be able to shorten it. Possibly, certain extra efforts will have to be made, but I suppose it'll still be worth your while."*

At the same time as you indicate that there might be an opening, you should try to obtain as much information back as possible. If the other party tells you of any room for manoeuvre he might have, and of the consequences to him of any change, you have the upper hand when the NegoEconomics is to be divided.

For a supplier it is usually better to try to obtain an overall solution and information of the level of costs acceptable to the buyer. For a buyer it's normally the best thing first to try to squeeze the total amount. Try to locate the potential NegoEconomics, and summarize everything into the new package whose total price will be squeezed in a final negotiation round.



## TRUST IS BASIC TO BUSINESS AND LIFE

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**T**rust is absolutely essential in any important long-term relationship, whether you are selling, buying, resolving conflict, or negotiating solutions. It is difficult to establish an effective business framework if there is no trust between the parties seeking to work together. Very few people want to do business with a supplier they cannot trust, even if the supplier offers the lowest prices. Likewise, very few people want to work with a colleague they cannot rely on.

### **Trust is Money**

Recently the consulting firm A. T. Kearney, carried out a study that confirmed the central role of trust in negotiations. A direct link exists between trust and profit. The more trust you are able to bring to the table; the more money you are likely to take away. This means, provided you continually share information with your negotiation counterpart in an honest and open manner, not only will trust increase considerably, but so will the quality of the agreement—the potential for optimizing

the result and the financial prospects. The ability to build solid, trustworthy relationships is increasingly seen as a vital competitive advantage.

Economists have calculated that physical capital (infrastructure and the means of production) accounts for one fourth of our wealth. Human capital (education level and innovative thought and action) account for another 50%, roughly. Until recently, no one had fielded a convincing accounting for the remaining 25%.

I find the solution to this question is to be found in a place where economists rarely look: trust. Scandinavian society is remarkable for its high trust level, and that abundant trust is arguably the basis of the region's enviable wealth and happiness. (Denmark, for example, has been nominated as the world's happiest nation.) The smaller you view the risk of being conned by a stranger, the easier it is to cooperate with a stranger – or an organization about which you do not have complete information.

Numerous studies carried out in Europe and the United States indicate lack of trust is a direct cause of unprofitable agreements and the loss of business opportunities. There are plenty of examples of the difficulties created when trust and respect are absent from a negotiating environment. Good relationships lay the groundwork for a profitable future. The more an agreement is based on trust, the greater the likelihood it will be implemented. Without trust and understanding, the parties have no more than an empty agreement which may, or may not translate into a productive business relationship.

## **The Trust Factor makes SMARTnership and Honest Negotiation Possible**

The Trust Factor is a cocktail of trust, honesty, cooperation, and fairness, flavored with good intentions that your loyal opposition fully benefit from the deal you are making. When the Trust Factor lies at the foundation of a transaction a SMARTnership is formed and the NegoEconomic potential in the deal is optimized

This code of conduct is based on a set of values that determine particular rules of play:

- honesty
- full and fair disclosure
- respect for the dignity of the others
- ethics and morals

## **Prerequisites for the Formation of a Cooperative Negotiation Climate**

There are a number of basic prerequisites to the formation of a cooperative negotiation climate. The presence of these elements will ensure the proper environment for a cooperative negotiation is developed. These are the factors which enhance the probability the Trust Factor will be successfully infused into a negotiation:

1. Personal Chemistry
2. Generosity

### 3. Creativity

#### **Personal Chemistry**

If there is no personal chemistry between the delegates, the Trust Factor will not emerge. Personal chemistry is demonstrated through humility, mutual respect, trust and openness. Though critical, these attributes are not always sufficient. Enthusiasm and a positive attitude also play a major role. Deals are made between people. People require an interpersonal dynamic that facilitates openness and a free flow of information. If the signals customarily sent by people who want to establish good rapport—such as eye contact and inclusive gestures—are absent, it is almost impossible to build a foundation for the infusion of the Trust Factor.

A negotiation dynamic is built on trust, cooperation, open and honest communication between the parties, and a willingness to listen to and understand each other's needs and requirements. When the negotiator's actions are inconsistent with her words, the other party loses trust and becomes reluctant to continue the bargaining process. Lack of personal charisma and a reluctance to engage socially and emotionally can also create failures in communication. When opposite these personality types, delegates will have to work particularly hard to facilitate constructive dialogue and to build a foundation for cooperation and trust.

Lack of sympathy, understanding, and respect for cultural differences can also limit the space for success in negotiations. For instance, Eastern negotiators may

assume Western negotiators will be combative and operate primarily using a zero-sum strategy. It is important Western negotiators dispel this pre-conception, in order to generate a cooperative environment.

## **Generosity**

### **In Negotiations, Givers Are Smarter Than Takers**

Many people find it difficult to be generous. Their own assessment of what constitutes fair compensation, or a fair price is, more often than not, non-negotiable. They become indignant and are influenced by the classic who-do-you-think-you-are attitude. If you try to eliminate your opponent's ability to turn a profit, you are cutting off your nose to spite your face. Your counterpart will come to resent you and the organization you represent. And it's possible when it comes to future transactions, he will likely look for another partner.

In a recent New York Times article Mr. Adam Grants argues that generous people are more intelligent. Please read the article here: <https://www.ny-times.com/2020/03/27/smarter-living/negotiation-tips-giver-taker.html?referringSource=articleShare>

For example, one of my personal friends and business clients, Thomas we'll call him, is a tough, hard-nosed negotiator. A few years ago, he was purchasing a company being sold by a Swede. The negotiations took place over a period of months through meetings, emails, and telephone calls. As the months went on, Thomas no-

ticed that his counterpart was losing focus. He was making mental mistakes regarding the details of the deal and began unconditionally accepting Thomas's proposals.

While many negotiators would have taken advantage of the situation, Thomas decided to confront his counterpart about his behavior. To his amazement, upon asking he opened up that his wife had been diagnosed with a malignancy and was receiving treatment. Thomas could have closed the deal with at an extraordinary discount, but he chose to delay the negotiations. In the end he signed the agreement for a fair price so that his counterpart still made a profit. Thomas was able to complete the deal, but he got much more than that. He earned a lifelong friend and an advocate who would sing his highest praises to anyone around him.

In today's world of internet business relationships, fast-paced deal making, low trust, and single-minded focus on price, there is nothing more powerful than a display of generosity. It creates such a strong human emotion. People will quickly trust you and be more willing to cooperate when they see that you are operating from a position of the good intentions. They will spread the word, offer you referrals, and bring repeated business. As I discuss in my new book *The Trust Factor*, it creates an environment for more open, honest, and transparent negotiations to take place. And the creativity that results leads to more valuable outcomes.

Nelson Mandela once said, "A good head and a good heart are always a formidable combination." My call to action for you: maintain your generosity throughout the coming year. Do not let it slip away in the first

week of January, but seek to incorporate it into your career and your daily life. Generosity is not a sign of weakness. It can be one of your greatest strengths if you have the courage to show it. And by sharing your generosity with others, you allow the rest of the world to do the same.

## **Insist that your Supplier Make a Decent Profit**

The incompetent purchaser says, “If the supplier has earned money from the deal, we have *not* done our job.” The relationship between buyer and seller should be one of mutual benefit. Neither can succeed without the efforts of the other. Smart purchasing professionals recognize this and allow their suppliers to earn money. Really smart purchasers go one step further and demand that the supplier make a healthy profit on the transaction.

NegoEconomics requires that you demonstrate generosity when it is time to share the gains that have emerged in the course of the negotiation. Such behavior will enable you to earn Tru\$ Currency and ensure the likelihood of future business with your counterpart. Keeping your allies alive and financially successful is just as vital as succeeding yourself. However, such generosity can be difficult to practice, as the following example demonstrates.

### **Summary:**

- Think about and verbalize trust in your negotiations

- Trust can be quantified and represents a monetary value
- Trust is essential is a collaborative negotiation and essential creating NegoEconomics



## WHY NEGOTIATORS MUST INSIST THEIR OPPONENT MAKES A PROFIT

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**I**magine you're headed down Madison Avenue in New York City, when you pull up to a skyscraper on the corner of 77<sup>th</sup> Street. You hop out of the car, tip the driver, and take the elevator up to the 60<sup>th</sup> floor to meet with the head of advertising at one of the most prominent marketing companies in the world. You are here to negotiate the pricing on a new multi-million-dollar advertising contract. Your counterpart has a reputation for being a real hardball negotiator, so your palms start to sweat before you even enter the room.

You walk into the corner office, shake hands for the first time and take a seat across the table. You steady yourself for battle and are preparing to speak when your counterpart says this: "Dear X, thank you for coming in today to discuss the contract. I want to let you know that I am here today to help you reduce your costs, reduce your liabilities, and improve your profits. Is that something that you would be interested in?" You smile and

skeptically say, “Of course.” He nods his head, smiles too, and says, “Great! While then, all I ask for in return is that you help me reduce my costs, reduce my liabilities, and improve my profits. Do we have a deal?”

Every day, millions of commercial transactions fail to achieve their full potential value because of low trust and a zero-sum mindset. This is the belief that there can be only one negotiation winner, and it comes at the expense of the other person. The goal is to get the opponent to zero profit, or as close to that as possible. This mindset is a side effect of thinking that the deal’s value is a fixed size (no additional value can be created). Or, thinking that, even if there is potential for added value, the counterpart will not cooperate in the value creation process.

Karen Walch, former Professor of International Business and Negotiation at Thunderbird Global School of Management supports this idea. Over the course of a 20-year, ongoing study, she has polled students on how cooperative and trusting they believe they are personally and asked them to evaluate their counterpart on the same criteria. What do you think she discovered?

“What we’ve generally found so far is that 40% of people tend to believe that they are cooperative and trusting,” says Professor Walch. “Yet, when asked about the counterpart, people tend to believe that the other party is just looking to win. It’s this type of mentality that causes negotiators to take a defensive strategy, which often leaves a lot of value left on the table.”

People justify a zero-sum approach by convincing themselves that they are the only well-intentioned person at the table – the other party is just in it to win.

I believe that it is not only in your best interest to help your loyal opposition make a profit, it is your duty! From one standpoint, there are only so many organizations you can hardball before you develop a horrific professional reputation, and no one wants to partner with you. Secondly, even if you do have moderate success with this tactic, over time you will drive your vendors into the ground until there is only one survivor left standing. At that point, they have a monopoly and can name their price!

A far better idea is to create a relationship with your counterpart based on cooperation and trust. I call this a SMARTnership™, and it's the key to unlocking the full potential of a deal. Typically, low trust forces negotiations to focus on only one or two variables: price and quantity. But when both parties operate with honesty and transparency, it allows them to open a real discussion about shipping, storage costs, installation, warranties, payment terms, quality control, and additional services. Many people think that reason for cooperation is that both parties share the same values. But it's actually the differences you should look for and take advantage of!

For instance, if one party has lower shipping overhead, it might make sense that they take ownership of that part of the agreement. And if the other party has lower storage costs, then maybe that should be their responsibility. If the deal is optimized so that everyone is

handling the aspects that they do most effectively and efficiently, there is more value available to create a deal that leaves both parties happy. However, this is only possible when there is a spirit of trust and cooperation. It sounds simple, but it makes serious demands on negotiators.

Having studied over 25,000 negotiations, my firm Center for Negotiation, has found that up to 42% of a deal's value goes unutilized in a typical commercial transaction. This value is just sitting there for the taking! The key is to realize that it's up to YOU to create the right interpersonal dynamic for the deal to grow. See, in the eyes of your counterpart, you're not the nervous negotiator sitting across the table – you're the hardball executive on the 60<sup>th</sup> floor that *they* are unsure whether to trust. It's up to you to make the first move! Show them that you are here to help improve their profits, and watch as they magically do the same for you.

**A recent study shows that a majority of today's negotiations are conducted online, instead of in face-to-face meetings. What are the impacts and consequences?**

## **How Technology Has Changed Our Negotiating Behavior**

A recent study conducted by IACCM (International Association of Contract and Contract Management) and Mr. Keld Jensen found that most negotiators today conduct negotiations predominantly via email. At the same

time, an overwhelming majority of these same negotiators believe that face-to-face meetings yield the best results!

Clay tablets, dating from around 2,000 BC, feature ancient contracts for the exchange of goods. So, we can conclude that humans have been conducting negotiations and even creating contracts for quite some time.

However, we could also conclude that we have changed and developed the way we negotiate and contract more in the last twenty years than in the previous two millennia!

Still, continual efforts to drive down costs and increase efficiency have also meant more travel-budget cuts—so we tend to meet in person less and less frequently. Time is money, and technology offers rather inexpensive options.

What is the impact of this enormous increase of online and email negotiations?

One key factor to examine in answering that question is *trust*. In order for negotiating parties to generate the greatest value and the best possible deals, the element of trust is crucial. Unfortunately, without any prior in-person, face-to-face meeting, it is rather difficult to establish genuine trust through an email thread, phone call, or even a virtual meeting. Physical presence plays an enormous part in building trust; direct observation and interchange, handshakes, eye contact, the nuances of body language.

Written communication is so much more difficult, colder and less personal than verbal communication. Think about how often you have received an email that was either confusing or made you annoyed or perhaps even angry—when causing such reactions were never the sender’s purpose or intention.

### **Email negotiations *can* be successful...**

In our study we were surprised to learn that email tops virtual meetings, video calls and even phone calls as a negotiating medium. Email seems to be the preferred, “go-to” negotiating method in today’s world, despite 95% of the responders’ assertion that face-to-face meetings generate the very best results.

So you see, it’s not all bad. We can actually create good value through email negotiations. Still, in order to do so, we have to work harder and invest more time.

#### **...but it’s tougher than when you’re face to face**

What are the characteristics of negotiating by email that make it more difficult and less effective?

Email fails to fully or adequately communicate emotions and feelings. It utterly omits the nuances of voice tone and the highly important element of body language. You may be surprised to learn that as much as 93% of our communication is *non-verbal* – a combination of body language, tone of voice, all in addition to the words themselves.

It’s also been observed that we tend to negatively interpret an email’s content. That is, we naturally (and

unconsciously) assume an email's message to be more negative than if the same words were exchanged in a phone call or face-to-face meeting.

## **Building successful relationships**

Dr. Daniel Kahneman, winner of the Nobel Prize in Economics, has stated that all humans are irrational, and that we would rather do business with someone we *like*, even when their offer is less competitive than one from a person we don't like.

## **Looking at the upsides of email negotiation**

Only conducting negotiation via email is not recommendable. Combining email with online video calls, face2face meetings can further the relationship and shortcut the creation of trust.

One benefit of including email is obviously that you have the chance of evaluating your reply – a option you may not have in a face2face or video meeting. Taking the time to properly reply to a suggestion can be worth millions.

Many negotiations contain a number of complicated components that easily can create information overload. This is easier to deal with via email negotiation than in the face2face negotiation.

## **Lies, bluff and threats**

Studies confirm that the further we're removed from a negotiating counterpart, the more likely we are

to lie, bluff or attempt to cheat. So we're simply more likely to lie (and be lied to) in an email negotiation than one carried out face-to-face. Again, the email format blocks our ability to read body language; and, knowing our counterpart can't read our non-verbal signals either increases our willingness to take the risk of trying to "get away with something" ourselves.

## **Avoiding argumentation**

As in any negotiation, when negotiating via email, you must avoid arguments. Argumentation is a loser's game, one that serves no other purpose than defending your position. It in no way creates value for you or for your counterpart.

### **Summary**

- Email is not the preferred vehicle for negotiations. Always seek to establish face-to-face meetings or at least video calls.
- Email negotiations are not all bad. Use them when appropriate, but be aware of their limitations.
- Don't argue via email.
- Remember, we tend to lie and bluff more in emails than in face-to-face encounters.
- We can easily be misunderstood in any form of written communication, so take great care to be clear, and be alert for signs you haven't been understood correctly.



- Know when to negotiate via phone, via video call, face-to-face or via email.

## RENEGOTIATION OF RENTAL AGREEMENTS

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### **Tips for landlord and tenant**

**E**veryone in the market right now is having a hard time. Suppliers, manufacturers, distributors, tenants and landlords. In many situations, tenants lack revenue and suffer from lack of liquidity. Landlord lacks revenue after several tenants have stopped rent payment. All parties are struggling to fulfill their financial obligations.

Although the government has promised aid to many companies, this is limited and in most cases limited to financial compensation to maintain jobs, more than ensuring liquidity in companies. In many countries, emergency law has been introduced where it is not possible for a landlord to put rents on the streets, which does not, however, remove tenants' responsibility to pay their rent, which is why tenants can only watch while their debt grows and grows.

Landlord assistance is limited. Maybe they can get help from their bank, maybe not. The longer this situation lasts, the more pressure the landlord will naturally be.

From a legal perspective, there is now written material far and wide about force majeure. Frustration on both sides of the table is naturally growing, with the final step of involving legal assistance. I do not think there is a simple answer to whether such a clause in a lease can be applied. And by the way, I do not mean that we are in a situation where you have to look at the contract at all. We have risen above the use of ordinary law, and the parties should instead, in mutual interest, try to negotiate.

Let me say right away that I don't mean that you can just stop paying rent. Not from an ethical and moral point of view. *Pacta healthy servanda* agreements to be observed already found their basis in the Roman Empire. I think it is highly critical that large organizations not try to remove a liquidity problem by publicly announcing that they have no intention of paying rent for their leases. Confidence breeds back pressure and one day the opportunity for revenge will arise.

Crises tend to bring out the best and worst in people. I have, for example, also seen mention of situations where the landlord has proactively notified its tenants that they will not have to pay rent in the next months. I have talked to a landlord who just recorded this behavior and said, "Of course, we do this to help our tenants as we know they suffer, but also for selfish reasons. We do not want to be the reason why they go bankrupt. Then

we need to spend time, energy and resources on finding new tenants when the COVID19 crisis is over, and who knows if there will be tenants at that time?" A sensible point of view, I thought.

So what do we do?

In the first place, put the contract and the lawyer in the drawer and focus on a dialogue. Try to see the situation from the opposite party's point of view, and start talking together. Human to human. Tenant must understand that landlord has financial obligations, and landlord must understand that tenant certainly does not have liquidity.

Focus on NegoEconomics (Negotiation Economics)

NegoEconomics is the asymmetric value between two parties, described as the difference between the cost for one and gain for the other. Simple example. The party to a trade that carries the lowest interest rate should finance the trade, with the differences shared between the parties.

Look at variables other than the rent. Are there other parameters that can be drawn into the dialogue? A longer rental period? Refund of parts of the deposit? In other words, tenant benefits that cost less for tenants, but provide greater gain for the landlord.

Be transparent. Inform the other party of the actual situation. Don't be "proud." The vast majority are in agony right now. Share your balance sheet, profits and losses, agreements with the bank, etc.

Pay attention to maintaining your relationship. Hopefully, cooperation can continue long after this crisis. It certainly should. Loyalty tends to increase considerably when two parties have been through a crisis together and landed on their feet.

A renter may consider paying part of the rent due, rather than paying nothing. If *something* is paid, it at least fosters some confidence.

What is the alternative?

Both parties need to look at the NBA (Next Best Alternative). Is there any alternative at all? We can all quickly agree that court proceedings and attorneys are not free. So what is the walk-away scenario, and what is the best possible deal?

A landlord should ask the following questions:

What impact does this crisis have on your business?

Is the company still operating from home, or is it completely closed?

What percentage of normal revenue has been lost?

How quickly can business be restored when the crisis is over?

Is the business still open?

A tenant should ask these questions:

Who is the landlord—is it a private person, a small business or a large organization?

What other properties does the owner rent, and how much of their rental income comes from you?

What loan and interest rates are relevant to the property?

Is the landlord dependent on this rental income?

## HOW TO BECOME A BETTER NEGOTIATOR

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**M**aking a poor proposal can be compared to mis-driving a nail into the wall. It *can* be done just with one blow, but it takes time to pull the nail out again, and it cannot be done without leaving a mark where the nail was.

Examples and experiences in this book show that negotiation is a psychological game with high stakes – a game we humans play with (or against) one another. Sometimes we play with opponents we know, and sometimes with strangers. But, do you know *yourself*? Do you know what affects *you* in different ways, and how you can influence your opponent by varying your behaviour?

If you want to be better at negotiating, you have to start by confronting yourself. Dare to stare your own faults and skills right in the eyes. You can never change your opponents; they are who they are. It is your *own* behavior you have to get to know, develop and change.

If you are sympathetic and adjust your behavior to the situation and the opponent, you will experience progress.

Even though every negotiation is unique and calls for its own solutions, there is a lot you can learn from other people, trades and situations. Compare and dare to question what you do. Discussions are not dangerous. Discussions are there so we can get to know one another better, gain respect for one another and get new information on the table. As a skilled negotiator, you know it becomes much easier to reach an agreement if you can create added values, and then negotiate the distribution of these added values—even if the negotiation amounts to nothing more than a zero-sum game.

I have described a number of negotiation tools. Some are honest, others are questionable. If you try to make negotiation into a game, where you continually try to shine by being *superior* to your counterpart, then I have failed in getting my message across. If you think that negotiations must be won through ruthless battle tactics and clever methods, then again we have failed. On the other hand, if you choose not to use more negotiation strength then is called for to achieve your goals, and you manage to land a deal that results in two satisfied parties, then we have succeeded.

You must learn to use the tools. You then sharpen your skill by negotiating a *lot* and gaining experience. Our examples show that we can learn a great deal from the negotiations in which we all participate every day.



I wish you the very best of luck in your negotiations and in creating NegoEconomics using the SMARTnership concept.

If you have comments on this book, or would like to make contributions to future editions, you are very welcome to contact me at [keld@keldjensen.com](mailto:keld@keldjensen.com).