Motivations, Influence & Mutual Value: What Nixon's Dog Can Teach Us About Negotiating Performance

By David Ferguson

Celebration of a high-value commercial deal between a Chinese supplier and Indian buyer was short-lived when one side failed to perform. Working for the Singaporean intermediary that had brokered the deal, our attempts at resolution failed and the contract was simply abandoned. Neither side wanted litigation due to the cost involved as well as the distraction from future business opportunities. Pursuing contract non-performance in New Zealand faces similar challenges, raising the question of the true value of some contracts.

By contrast, a decade earlier during the GFC we had successfully negotiated resolution of onerous contracts with customers from multiple jurisdictions. Solutions included deferred performance and reduced contract volumes; and valuable relationships were maintained while avoiding dangerous precedents. So why the very different outcomes? Causes will differ according to the circumstances, but I think key factors include underlying motivations, networks of influence and mutual value.

Modern negotiation is taught as being 'interest-based', but our view of interests or motivations ahead of a negotiation is often relatively shallow and static. We often fail to recognize that a change in context impacts the relative importance of various motivating factors. In the case of the failed deal described above, alternative spot-priced opportunities led to one side defaulting. Had we more deeply considered the likely response to motivations under various scenarios, we may have structured the deal very differently. There is a story of Kissinger discussing foreign policy with Nixon and illustrating this point by reference to Nixon's dog behaving badly because he was being rewarded for it. In short, if you set up a deal with given motivations, then you shouldn't be surprised by how your counterpart responds.

Networks of influence are sometimes considered in reaching an agreement, but also play a part in ensuring performance. The Centre of Competence in Humanitarian Negotiation has produced an excellent manual describing how

to map networks of influence,[1] but commercial negotiators often overlook this area and focus solely on their negotiation counterpart. A key factor in successfully securing performance during the GFC was that my predecessors had wisely developed customers that were part of networks where non-performance would seriously damage their reputation in the industry. By contrast in the failed deal, we had not adequately considered how to use networks of influence in the structure to encourage performance.

While contracts may be 'onerous' in the short-term, performance is far more likely where the relationship creates mutual value in the long-term. This is akin to a '[prisoner's dilemma]' situation and whether a party will 'keep faith' with the agreement for mutual benefit. In the GFC negotiations, contract performance reflected the fact that the balance of short and long term benefits from performing outweighed those of defaulting. For those who enjoy interactive online games, I'd suggest '[The evolution of trust]', which explores this decision to 'cheat' or 'cooperate' further.

Creating 'self-performing' contracts has been recommended for countries with less-developed legal systems. However, structuring a deal to encourage performance has value regardless of jurisdiction and beyond the actual contract. Ensuring performance of commercial agreements should be a key consideration in the overall negotiation strategy design, including consideration of motivations, networks of influence and mutual value.

1 https://frontline-negotiations.org/home/resources/.

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