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Diagnosing the Situation

In late 1997, Daniel Riley, the thirty-seven-year-old director of Alpha Microsystems' Technology Center in Austin, Texas, received a call from a headhunter. She told Daniel that a Colorado-based entrepreneur wanted to talk to him and members of his team about joining a new software venture.

Barely a month earlier, Alpha Micro had announced its decision to close the Austin facility and transfer its personnel elsewhere. The move was intended to consolidate Alpha's programming staff. Daniel, recruited by Alpha five years earlier to build the Austin center, had successfully assembled and led a respected forty-member team of skilled programmers. Nevertheless, he had learned of Alpha's decision only one day before the formal announcement. Because the Austin center had a very low attrition rate, Alpha management expected most of its engineers to agree to move. But Daniel knew otherwise:

The executive team at Alpha mistook the low attrition rate for an indication of pure love of Alpha. And that was certainly a factor, because we had a lot of dedicated Alpha employees. But I think a very significant reason was that people were very rooted in the community. They were motivated to stay here if they could. I conveyed this to management.

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I said that there are lots of high-tech opportunities here in Austin, and I think people will elect to stay.

Daniel himself had long toyed with launching his own business in Austin, and now he began to think seriously about doing so. He had been with a start-up before joining Alpha and had found it exhilarating to build an enterprise from the ground up. His top people all expressed interest in joining him. By year's end, Daniel's warning to Alpha had been borne out: few of his colleagues were planning to leave Austin.

When the headhunter heard that a team of experienced software engineers was scouting opportunities, she had told Ken Gourlay, an accomplished forty-five-year-old Colorado entrepreneur with a Stanford M.B.A. and solid experience in the software industry. Ken envisioned Omega Systems, his new start-up, as a provider of turnkey systems solutions to managed care organizations. Ken immediately flew from Colorado to Austin to meet with Daniel and four of his top engineers.

Daniel and the other engineers knew little about managed care, but Ken's vision and the strength of his business plan excited them all. They were confident they could deliver the core technology rapidly and reliably. For all five, the main issue was that the company be located in Austin. For his part, Ken was delighted to come across the core of an experienced engineering team whose proven ability to work together was likely to have a positive impact on time to market. Potential competitors were sure to be eyeing the same opportunity, and it was essential to get there first.

Ken made simultaneous written offers to Daniel and the four other engineers. His offers were all well in line with what they thought they could get elsewhere. Daniel was offered the position of vice president of engineering, a competitive salary, and 2 percent of the equity in the company. The other four engineers would be team leaders; each would get 0.5 percent of equity. The options would vest at 25 percent per year for four years. Ken expressed reluctance to move the company to Austin but left the question

open. The key to making the move, he said, was that the five engineers would have to take the lead in recruiting the rest of a thirty- to forty-member engineering team from among their group at Alpha. Ken also said that he was negotiating with venture capitalists for early financing and wanted to tell them that he had engineers on board. He needed their decisions within a week.

What would you advise Daniel to do?

In reality, Daniel and the four other engineers accepted Ken's offers. Ken's willingness to move the company was easily implemented, because he was its sole employee at the time. To Daniel's delight, all but three members of his forty-person Alpha team decided to follow him to Omega Systems, giving the company a running start in developing its core systems. Three years later, Omega Systems went public, with a market capitalization of over \$350 million. The company's ultimate success was still uncertain, but Omega Systems had a dozen major accounts. Daniel was worth several million dollars on paper, but he had been replaced as vice president of engineering once development of the system was complete; he was languishing in a special-projects assignment waiting for his options to vest. His four team leaders remained in their positions, but many other team members had departed once the bulk of the software development was complete. This was far from a disastrous outcome, of course—but suppose Daniel had it to do over. What could he have done differently?

The first step in preparing to negotiate from a position of strength is to diagnose the particulars of the situation thoroughly. For Daniel, this would have meant taking a hard-headed look at each of the seven key structural elements of his negotiation with Ken:¹

Parties: Who will participate, or could participate, in the negotiation?

Rules: What are the rules of the game?

Issues: What agenda of issues will be, or could be, negotiated?

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Interests: What goals are you and others pursuing?

Alternatives: What will you do if you don't reach agreement?

Agreements: Are there potential agreements that would be acceptable to all sides?

Linkages: Are your current negotiations linked to other negotiations?

The purpose of exploring these questions is to identify barriers to achieving your goals and ways to overcome them.² Naturally, there are constraints on your ability to gather all the information you might like to have. But as Louis Pasteur so aptly put it, "Chance favors the prepared mind." It's essential to do this kind of analysis in order to gain the informational high ground. Daniel should undertake an information-gathering blitz: he should talk to colleagues in the industry, recruiters, and venture capitalists, and he should do some background research on the managed care industry and on Ken. And because diagnosis is never a one-time event, he should continue to invest in learning and update his assessments as the negotiation proceeds.

PARTIES: WHO WILL PARTICIPATE, OR COULD PARTICIPATE, IN THE NEGOTIATION?

The key parties to a negotiation may appear self-evident, and sometimes they are exactly as they appear to be. Often, however, particularly in a nominally two-party negotiation, other less conspicuous players are already involved. Sometimes other parties unexpectedly enter the negotiation and change it in unforeseen ways. And sometimes you would gain by pulling in other parties yourself. It is essential to take the time to identify the active and potential parties to the negotiation and ask yourself whether you would benefit from the participation of others.

Identify All the Players (and Potential Players)

First, Daniel should try to find out who else Ken is negotiating with. What venture capitalists is he talking to, and what are they offering? Has Ken interviewed other candidates for the vice president of engineering position? Are there key technologies that are not yet under Ken's control? Is he talking to anyone about situating the company somewhere other than Austin? These are questions that Daniel can legitimately put to Ken and expect to get accurate information. By asking such questions, gauging Ken's responses, and cross-checking his answers, Daniel could also gain insight into the character of his negotiating partner. Other information (such as what terms Ken is being offered by the venture capitalists) he will have to pursue by more indirect methods, such as consulting another venture capitalist or friends who have launched companies.

Daniel should then ask himself whether it would be advantageous to try to shape the game by pulling in other parties.³ Should he try to cultivate offers from other potential employers? Negotiate jointly with the other engineers? Talk to venture capitalists about other companies in need of engineering talent? If so, how should he go about it? In what order should he undertake such discussions?

Analyze Coalitions

In negotiations involving more than two parties, outcomes are almost always strongly shaped by coalitions.⁴ So one of the first orders of business is to look for existing and potential alliances, both supportive and antagonistic.

The other engineers on Daniel's team are potential allies. Ken is clearly trying to deal with Daniel and his colleagues separately rather than as a group, perhaps as an intentional divide-and-conquer strategy to prevent them from coalescing. But if Daniel and his team negotiated collectively, they could substantially

increase their bargaining power. Their value as an intact team is far greater than their value as a collection of individuals.

Alone or with his colleagues, Daniel should explore questions about other coalitions. What alliances might Ken try to create? Whose support is necessary to achieve his objectives? Who wields influence over other key players? If they learn that Ken is talking to another group of engineers, that changes the equation. And if they conclude that Ken needs a team in place before the venture capitalists will fund the company, the venture capitalists are de facto allies.

Look into the Other Side

It's always a mistake to treat the other side as a monolithic block. You don't negotiate with an organization; you negotiate with the people who make the decisions, only some of whom are typically at the table. Daniel should probe how decisions are made within Omega Systems. Has Ken recruited a board of directors? Have "angel" investors already committed funding to the company, and, if so, what say do they have in deals with Daniel and the other engineers? What about other key management positions? Who is in place, and who isn't?

Daniel should clarify Ken's authority to commit to a deal. If he has full authority, fine. If not, Daniel should expect him to use the need for others' approval to veto deals particularly favorable to Daniel and his team—a *ratification tactic* that car salesmen and their managers often use.

In negotiations with large organizations, the crucial questions about decision-making authority within the other side are:

- Who has the authority to make which decisions? Does the other side's representative have the authority to make a deal, or do others have to ratify it?
- How is the performance of the people at the table measured and rewarded?

- Are there any differences between the interests of the ultimate decision makers and those of their representatives at the table?

These questions often arise in commercial negotiations in which the authority of the salesperson or purchasing agent is restricted. Business development representatives in alliance negotiations often need sign-offs from higher-ups. Salespeople are typically rewarded for meeting quotas and hence may become more flexible as their deadlines draw near.

Draw Up a Party Map

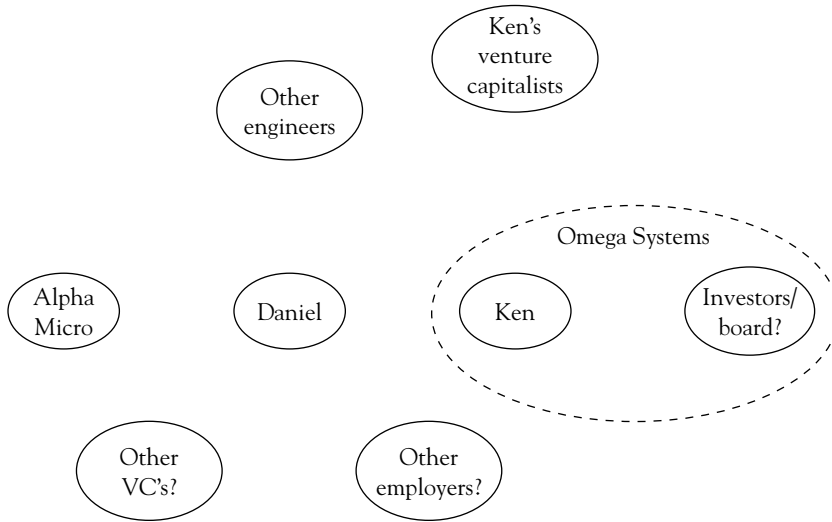
Sketching a party map can help clarify who the participants and potential players are. Daniel's party map for his negotiation with Ken, shown on page 12, includes possible participants whom he hasn't even contacted yet, such as other venture capitalists and other potential employers. He could consider extending the analysis even further by including parties whom Ken might involve, such as other job candidates.

PRACTICAL APPLICATION: DIAGNOSING THE PARTIES

This is the first of a series of boxes that will help you to apply key concepts to your own negotiations. Choose a negotiation you know well—past, ongoing, or upcoming—and want to understand better. Apply these questions to that negotiation, making an effort to think inventively and broadly.

- Are the right parties at the table?
 - Are there too many parties? Too few?
 - Could other parties get involved and change the game?
 - Could opposing coalitions form?
 - Could you build supportive coalitions?
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RULES: WHAT ARE THE RULES OF THE GAME?

At this point, Daniel and Ken are feeling their way into a negotiation, inventing it as they go along, but they aren't making up all the rules from scratch. Their interactions are unavoidably subject to certain established codes of conduct, or rules of the game. The nature of these rules and conventions varies with the circumstances, making it particularly important for Daniel to ask himself which set of rules governs his negotiation with Ken. The rules of business negotiations, for example, are quite different from those of personal injury lawsuit settlement talks or international trade negotiations. And even within business, the logic of merger negotiations is very different from that of union-management bargaining. What we are calling rules here can consist of laws and regulations, social conventions, and professional codes of conduct.

For Daniel, the rules that matter most flow from intellectual property law and employment law. Omega Systems is not a direct competitor to Alpha Micro, Daniel's current employer, but if Alpha considers the tools and techniques that Daniel developed under its aegis as trade secrets, he may not be allowed to take them with

him to a new employer. Failure to understand these constraints could trigger litigation that would cripple Omega.

Soliciting other Alpha employees to work for Omega could also pose problems. Fortunately, Daniel isn't explicitly prohibited from doing so by his employment contract, but Alpha may sue him and Omega anyway in order to delay or deter a hemorrhaging of talent. Daniel should discuss these issues with an employment lawyer before he makes any decisions about Ken's employment offer.

A thorough understanding of the rules of the game can be a source of advantage because other players may not fully understand their implications. If Daniel doesn't hire a good lawyer and doesn't understand the employment law issues, he may inadvertently make serious errors. For example, suppose Ken asks him to sign a restrictive noncompete agreement, and Daniel does so without fully understanding the consequences. Or suppose he fails to realize that Ken can unilaterally change his job responsibilities later.

PRACTICAL APPLICATION: DIAGNOSING THE RULES

Return to the negotiation you have begun analyzing and answer the following questions:

- What laws and regulations apply here?
 - What social conventions shape the parties' behavior?
 - Are there professional codes of conduct that apply here?
 - What other rules of the game will influence other parties' behavior?
-

ISSUES: WHAT AGENDA OF ISSUES WILL BE, OR COULD BE, NEGOTIATED?

It's easy but dangerous to treat the agenda as fixed. To do so is to fail to take actions to shape it in favorable ways. The agenda—the set of issues the parties decide to negotiate—is itself subject to negotiation. Ken will have his preferred agenda, but Daniel

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may want to add or subtract issues. If Daniel wants to get his issues considered, he will have to introduce them early on and perhaps even press for a prenegotiation session with Ken about the agenda. As we will see in Chapter Two, efforts to mold the agenda are an important piece of shaping the structure of negotiations.

Identify the Full Set of Issues

However obvious the issues in a negotiation appear to be, it is worthwhile to probe beneath the surface. How has the agenda of issues been defined, and who defined it? Is the agenda too narrow, or overly broad? What existing or potential sources of conflict could become blocking issues?

It's particularly useful to think through contingencies that might occur, such as a sale of the company before it goes public; doing so will point you to issues you might otherwise miss. It's impossible to foresee all potential contingencies, but failure to lay out all the relevant issues often flows from imprecise shorthand thinking. In a situation where both sides are jockeying for advantage, the side that fails to identify the full set of issues can be exploited.

Unbundle the Issues

As David Lax and Jim Sebenius have noted, issues often get intertwined, so it's crucial to unbundle them.⁵ In Daniel's negotiation, the issues are typical of a hiring negotiation: location, compensation, and job title. Compensation bundles salary and equity (in the form of stock options); equity in turn is a question not just of how many options but also of how quickly they vest. And what about protecting them against dilution? Should Daniel try to add that to the agenda?

Job title and responsibilities can also be unbundled. Daniel should ask himself whether he cares about being a founder of the

company. Should he press to be chief technology officer (CTO), or is the vice president of engineering title okay? Should he ask for a seat on the board? How will his job responsibilities be defined, and—crucially—under what conditions can they be changed? What will happen once the technical work on the system is done? Should he seek some protection (such as immediate vesting) in the event that another firm acquires Omega? The table below sets out what a fully unbundled list of Daniel's issues might look like.

Assess Whether Relationships Are an Issue

What is the nature of Daniel's relationship with Ken, and how does it influence their negotiation? There is a world of difference between negotiating a *deal* and resolving a *dispute*. In a deal, pre-existing antagonism is not an issue; the parties tend to approach the negotiation coolly and rationally, at least at the start. In disputes, feelings of grievance or victimization often provoke urges to harm the other side, even at a cost to oneself.⁶ Conflict also tends to distort perception, leading to breakdowns in communication and tendencies to dismiss conciliatory gestures by the other side. As a result, the relationship between the contending parties often

Daniel's Issues

| <i>Location</i> | <i>Compensation</i> | <i>Job Responsibilities</i> | <i>Status</i> |
|-------------------------------|--|---|-----------------------|
| Location of engineering group | Salary Options Number Vesting schedule Antidilution protection | Title Protection against changes in job responsibilities Protection in the event of sale or change in control | Founder Board seat |

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becomes the central issue in a dispute, and it is wise to address the relationship early on.

We can differentiate similarly between a negotiation whose context is a long-term *relationship* (established or anticipated) and a one-time *transaction*. You are likely, for instance, to negotiate differently with a neighbor over the joint purchase of a fence than with a stranger whose car you're buying. With your neighbor, the desire to maintain a good relationship promotes equity and consensus rather than back-and-forth bargaining over price.

The intersection of deal versus dispute and transaction versus relationship yields four distinct types of negotiations: deal making, relationship building, dispute resolution, and conflict management (see the table below). The type of negotiation says a great deal about its internal logic and has implications for the behavior of the participants. The most difficult of all negotiations are those that arise in a long-term bitter dispute between parties who must continue to interact on an ongoing basis. Such conflicts can rarely

Four Types of Negotiations

| | <i>Transaction</i> | <i>Relationship</i> |
|----------------|--|---|
| <i>Deal</i> | <p><i>Deal making</i></p> <ul style="list-style-type: none"> • Selling a business unit <p>Parties will not interact in the future, but there are no preexisting animosities.</p> | <p><i>Relationship building</i></p> <ul style="list-style-type: none"> • Creating a corporate alliance <p>Parties anticipate a long-term relationship, but its basis has not yet been determined.</p> |
| <i>Dispute</i> | <p><i>Dispute resolution</i></p> <ul style="list-style-type: none"> • Resolution of a personal injury lawsuit <p>Relationship is likely to be characterized by animosity, but parties will not interact after resolution.</p> | <p><i>Conflict management</i></p> <ul style="list-style-type: none"> • Settling a strike <p>The current dispute is likely to be part of a longer-term pattern of contention, which may create barriers to agreement.</p> |

be definitively resolved; negotiations focus instead on managing tensions and ensuring the continuation of uneasy coexistence. Fortunately, this is not Daniel and Ken's situation—at least not yet.

What Daniel and Ken are engaged in is relationship-building negotiations. We can thus predict that in the name of building the relationship, both will abstain from highly aggressive value-claiming behavior (trying to claim the biggest piece of the pie at the other party's expense). The need to cooperate and engage in an ongoing relationship may lead both sides to moderate their demands and refrain from doing anything to poison the relationship early on.

The type of negotiation they are pursuing, however, can easily shift over time: every effort at deal making is a dispute waiting to happen. If Daniel and Ken fail to address important contingencies in their initial agreement, they could easily end up negotiating to manage damaging conflicts later on. And efforts to negotiate a merger or work out a restructuring of a company's debt can easily escalate into a dispute and break down in acrimony.

Identify and Deal with Toxic Issues

Certain issues can be toxic in the sense that they are exceedingly difficult to agree on. Their inclusion thus poisons the potential for agreement on less contentious issues. A classic example of a toxic issue in merger negotiations is the question of who will lead the combined entity, an issue fraught with dueling egos and other pitfalls. In cross-border mergers, the question of where the headquarters will be located can also prove highly contentious.

It may be prudent to defer a toxic issue until most of the rest of the deal is worked out. Alternatively, it could be best to resolve it early so that it doesn't cast a shadow over the entire process. Which way to go will depend on whether you consider the tough issue to be resolvable early. If so, success in doing so can create momentum. If not, it's best to wait until your counterparts have more invested in the process and, ideally, until you have developed

more confidence in each other. For Daniel, the question of location has the potential to be toxic. There is no point in continuing to negotiate if Ken isn't willing to consider locating the company in Austin. Should Daniel make that a precondition? Should he propose a package deal? Should he postpone it until the end?

PRACTICAL APPLICATION: DIAGNOSING THE ISSUES

- Are you negotiating the right agenda of substantive issues?
 - Are relationships an issue in this negotiation, or is it a transaction? What are the implications for how people will behave?
 - Is past conflict part of the picture? Does the prospect of a long-term relationship create opportunities?
 - Would deferring toxic issues or dealing with them up-front help move things forward?
-

INTERESTS: WHAT GOALS ARE YOU AND OTHERS PURSUING?

Early on, often in parallel with efforts to nail down the agenda, negotiators typically begin to stake out positions. *Positions* are essentially demands, often backed up by some combination of rationales, principles, commitments, and threats. When Ken made Daniel and his colleagues industry-standard employment offers, he was simultaneously framing the agenda—defining the issues he wanted to negotiate—and taking a position. Daniel could respond with a counteroffer on Ken's agenda items, perhaps asking for more equity or accelerated vesting of his options. Or he could try to broaden the agenda by indicating that he wants to discuss a seat on the board, an antidilution clause, and a different job title.

As a rule, though, taking a hard position early is rarely a good idea. As Roger Fisher and William Ury stress in *Getting to Yes*,

Daniel is likely to benefit more in the long run by concentrating first on assessing *interests*—the underlying goals and desires he and Ken are pursuing.⁷ By analyzing interests, you can often discover ways to *create value*—to enlarge the pie—and avoid focusing only on claiming value, or getting the biggest possible slice of a small pie.⁸

Suppose Ken says he wants to keep Omega Systems in Colorado. The question of where to situate the company could easily become a battle of incompatible positions. Now suppose Daniel probes further and learns that Ken wants to be near key investors and customers and that Ken's family is rooted in Colorado. By exploring interests in this way and then generating creative options, Daniel and Ken could decide to situate the engineering group in Austin and the headquarters and marketing arm in Colorado—a value-creating outcome.

When exploring interests, keep in mind the three basic principles for creating value in negotiations:

Seek out shared interests. Look for things that you and your counterpart both care about and can achieve better by combining your resources.

Propose mutually beneficial trades. Identify things that are more valuable (costly) to your counterpart than to you, and trade them for things that are more valuable to you than your counterpart. For example, Daniel is willing to give up some compensation if Ken will agree to locate the engineering group in Austin.

Secure insecure contracts. If you don't fully trust each other, find ways to minimize your vulnerability and thus avoid the defensiveness that constrains value creation. By getting clear guarantees about what happens if the business is sold, for example, Daniel might feel more secure about entering into an employment agreement.

Seek Out Shared Interests

Even negotiators with many conflicting interests may be able to cooperate to advance the interests they share. This can be true even when the parties are engaged in a bitter dispute. “Two elements must normally be present for negotiation to take place: there must be both common interests and issues of conflict,” a shrewd commentator on negotiation has observed. “Without common interests there is nothing to negotiate for; without conflicting interests there is nothing to negotiate about.”⁹ If the parties to a lawsuit want to see it resolved expeditiously, for example, they may implicitly cooperate to speed things up. But to do so, they have to be willing to acknowledge their shared interests and not let spite govern their decisions.

Achieving shared goals is sometimes as simple as combining forces to accomplish something you can't do alone. In a merger, for example, rationalizing purchasing systems can generate economies of scale and reduce costs. If the companies have complementary technologies or operate in different markets, they can also realize economies of scope in serving diverse markets. The key is to do a thorough analysis of interests, and then to identify and explore promising opportunities to advance shared goals.

Both Daniel and Ken want Omega to have a strong engineering team, so they share an interest in recruiting Daniel's team members from Alpha. Daniel and Ken bring complementary resources to this endeavor, and the potential for joint economic gain is the core rationale for entering into an agreement. At the same time, Daniel may be able to use Ken's need to get a good team on board quickly to claim some value, such as by proposing that the size of his own equity stake be tied to his success at recruiting.

Propose Mutually Beneficial Trades

If you and your counterpart weigh the importance of specific issues differently, your differences could create opportunities for

cross-issue trades. Start by thinking hard about your own interests and the kinds of trades you would be willing to make; you are unlikely to care equally strongly about achieving gains on all the issues. Suppose you and a friend are negotiating to trade some wine. You are willing to trade two bottles of chardonnay to get one bottle of cabernet. Now suppose it emerges that your counterpart prefers chardonnay to cabernet. You have the basis for a mutually beneficial trade.

This process of assessing *trade-offs*—concessions you are willing to make in exchange for gains—can be made more rigorous by explicitly ranking the relative importance of achieving gains on each issue. For Daniel, location is of prime importance. But what about job title, a board seat, protection against dilution, and changes in responsibilities, salary, and options? What trade-offs would he be willing to make across these issues? How much compensation would he forgo to get the company to move to Austin? What is founder status or a board seat worth to him?

Once you have a clear grasp of your own interests, analyze the other parties' as best you can, asking yourself how much weight they are likely to assign to each issue and what trade-offs they might be willing to make. If this analysis reveals complementary differences in interests, it may be possible to realize gains through trade.

The trade-off matrix shown on page 22 summarizes Daniel's appraisal of his own trade-offs and his provisional assessments of Ken's.¹⁰ The direction of the arrows in the matrix signifies the nature of a preference, and the number of arrows indicates its relative strength (on a scale of 1 to 5). What opportunities for trades show up here? We have already discussed possible shared interests on job title and Daniel and Ken's differences on location (as well as a possible creative resolution). Equity seems likely to be a sticking point, because both care a lot about it. But trades appear possible on other issues: Daniel probably cares less than Ken does about a seat on the board, antidilution protection, and accelerated vesting; he cares more about protection against changes in his job responsibilities. If Daniel succeeds in broadening the agenda, he may be able to

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A Trade-Off Matrix

| <i>Issue</i> | <i>Daniel</i> | <i>Ken</i> |
|--|---------------|------------|
| Location in Austin | ↑↑↑↑↑ | ↓↓↓ |
| Higher salary | ↑↑ | ↓ |
| More equity | ↑↑↑ | ↓↓↓↓↓ |
| Quicker vesting | ↑ | ↓↓ |
| Antidilution protection | ↑ | ↓↓↓ |
| Seat on the board | ↑ | ↓↓↓ |
| Chief technology officer title | ↑↑↑ | ↑ |
| Restrictions on changes in responsibilities | ↑↑↑↑ | ↓↓↓ |

fashion a package deal by ceding on issues he cares less about in exchange for concessions on those he cares more about.

It may also be possible to create value by trading on other differences in interests:

Are there differences in sensitivities to time? Ken appears to be in far more of a hurry than Daniel is. Daniel will get a decent severance package from Alpha, and he has some savings, so he should be in no rush. Because Ken wants to capitalize on first-mover advantage in carving out a new market, he may be willing to give on other issues in return for getting a deal done quickly.

Are there differences in attitudes toward risk? If there are, it might be possible to craft agreements that shift risk (and return) to the less risk-averse party. Daniel is more risk-averse than Ken, so he might accept more compensation in the form of salary and less in equity.

Are there differences in expectations of the future? Suppose Daniel is more optimistic than Ken that he will be able to recruit a full thirty-person team quickly. A contingent

agreement would reward Daniel with more equity if he meets certain recruiting goals.

Secure Insecure Agreements

Worry about the sustainability of an agreement effectively shrinks the pie, because hedging against risk makes negotiators conservative and even defensive. Right now, Daniel's value to Ken's enterprise is very high. But he would be wise to think about what will happen once he and his team have finished building the system. If he trusted Ken, it might be possible to rely on goodwill to resolve ambiguities and deal with future contingencies. But because they barely know each other, he should recall the admonition against leaving the fox in charge of the henhouse even if you have an agreement that he will care for the chickens.

What can you do if you don't fully trust your counterparts, or if you simply don't know whether they might ignore or try to renegotiate your agreement if things change? To find ways to secure agreements in the absence of trust or if future contingencies could threaten the integrity of your agreements, ask yourself the following questions:

Would it help to set standards or establish guiding principles?

Daniel could press for additional stock options tied to specific performance goals.

Would it help to embed decision-making and dispute-resolution mechanisms in the agreement? Daniel and Ken can't

possibly anticipate every circumstance that will arise in the next four or five years. But Daniel can insist on a decision-making and dispute-resolution mechanism that gives him adequate control over how he is treated in the future. For example, he could press for a clause specifying that his job responsibilities cannot change without mutual agreement and a provision for mediation if no agreement can be reached.

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Would it help to set up monitoring regimes? Daniel could press for a seat on the board, which would involve him in regular reviews of company strategy and direction.

Would it help to create guarantees? Daniel might negotiate a golden parachute if his job responsibilities change substantially or the company is sold.

Would it help to proceed incrementally? It is sometimes wise to implement agreements in small, mutually verifiable steps. This approach makes future gains contingent on meeting current obligations so as to avoid *end-game effects*—the tendency to claim as much value as you can when you know a relationship is about to end. This is why venture capitalists and entrepreneurs like Ken require stock options for key personnel to vest over time and not right away.

Advancing shared goals, trading on differences, and securing insecure agreements jointly constitute a toolbox for crafting attractive package deals. But it is important to guard against focusing too narrowly on the substance of the deal and ignoring the people across the table.

Factor in Personal Interests

Along with forging a good deal, virtually all negotiators care about their self-images, reputations, and future effectiveness. Your counterparts may even be willing to give up something of substance to protect these intangible assets. Conversely, threats to their sense of competence or reputations can hobble a good substantive agreement. The questions in the box will help you think about how your counterparts experience (or want to experience) the process.¹¹

ASSESSING YOUR COUNTERPARTS' PERSONAL INTERESTS

Every negotiator seeks to protect and advance personal interests in every negotiation. Sometimes your counterparts'

reputations and tactics are well known. Sometimes others who have negotiated with them in the past can offer insight into their styles and personalities. And sometimes you just have to reach your own conclusions by carefully observing them at the table. As a starting point, ask yourself how much the following values matter to your counterparts:

- *Preserving reputation.* Do they care a lot about maintaining or enhancing their reputations as effective (firm or tough) negotiators?
- *Demonstrating competence.* How urgently do your counterparts want to feel competent and skillful at negotiation? Are they seasoned experts or novices insecure about their skills?
- *Remaining consistent.* Do your counterparts care about consistency with their prior commitments or statements of principle, and about avoiding undesirable precedents?¹²
- *Minimizing transaction costs.* Do your counterparts care about minimizing the direct costs (time and resources) of negotiation and about the opportunity costs of forgoing other initiatives?
- *Achieving side effects.* Are your counterparts using the negotiation with you to pursue objectives external to it, such as improving relationships with other influential parties or tapping into new resources?¹³

PRACTICAL APPLICATION: DIAGNOSING INTERESTS

- What do the other parties care most about? What trade-offs might they be willing to make across the issues?
- Do you and they share any goals that could be achieved by combining resources? Are there ways to realize economies of scale or scope?
- Could you create value by making trades across issues or

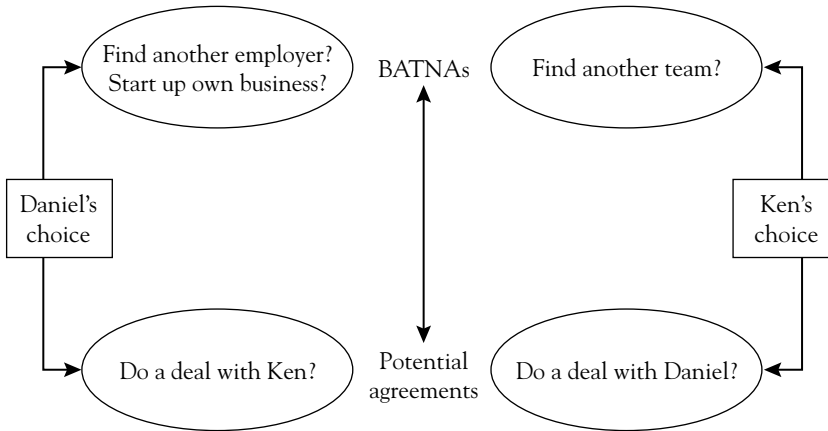
by trading on your differences with regard to time, risk, or expectations of the future?

- Is sustainability a potential problem? Would it help to incorporate standards or dispute-resolution provisions into the agreement?

If Daniel is going to organize the engineers and press Ken for more equity and more decision making in the running of Omega, he should think hard about how to manage the process so that Ken doesn't react defensively. Roger Fisher and William Ury counsel negotiators to "separate the people from the problem." By collecting data on what others have received in similar situations, Daniel can ground his position in facts and head off emotional reactions. A demand without a supporting rationale risks poisoning the relationship and the deal. To take the sting out of his demands, he could also link them to successful recruitment of a full engineering team, ensuring the creation of more value for Ken. As William Ury puts it, Daniel should build Ken a "golden bridge" and not push him to the edge of a cliff.¹⁴

ALTERNATIVES: WHAT WILL YOU DO IF YOU DON'T REACH AGREEMENT?

It sounds self-evident that you should enter into an agreement only if that will yield more value than not doing so. But negotiators contemplating a potential agreement often fail to ask themselves the obvious question: As compared to what? Unless you have worked out what you will do if you can't reach agreement, you won't know how to answer this question. Roger Fisher and William Ury have called this option your best alternative to a negotiated agreement, and its acronym, *BATNA*, has entered the standard vocabulary of negotiation.¹⁵ The diagram on page 27 illustrates the decisions that Daniel and Ken face between agreement and their respective *BATNAs*.



Work Out Your BATNA

A BATNA is a course of action; it is what you will do if there is no agreement. Depending on what's at issue, it could be to go to court, strike, or seek a divorce. Taking time to think through your BATNA rigorously will solidify your alternatives and clarify your situation. The better your BATNA is, the better your agreement is likely to be. A strong BATNA has to be built; it isn't just handed to you. What are Daniel's alternatives to a deal with Ken? He hasn't cultivated other offers or developed a compelling idea for starting his own business. At this point, his BATNA is vague and weak.

Daniel should also make a careful assessment of Ken's BATNA. It's easy to forget that the other side also has to be convinced that a deal is beneficial—that it yields more value than their BATNA. Daniel can't hope to craft an advantageous deal if he doesn't understand how Ken perceives and values his alternatives (as distinct from how Daniel thinks Ken *should* perceive his alternatives, a common mistake). Can Ken quickly recruit another skilled and cohesive team? If so, Ken probably would have mentioned it, so his silence conveys information about his BATNA. Does he need to move quickly before someone else makes a move into the same

market? If so, Ken's BATNA is weak and Daniel is in a strong position. Discussions with venture capitalists who specialize in this area might help Daniel gain some insight.

Define Your Walk-Away Position

The next step is to define your *walk-away* position: What minimum value do you need to get to enter into an agreement? Establishing this value as a benchmark and keeping it in the forefront of your mind helps protect against the pitfalls of getting so committed to your demands that you refuse deals that are better than your walk-away and allowing yourself to be pushed below your walk-away in the heat of the process.

Translating a BATNA (a course of action) into walk-away positions (the minimum values you would accept in an agreement) isn't always straightforward.¹⁶ Suppose you're buying a new car and debating whether to sell your old one or trade it in. Is your walk-away in a private sale identical to your walk-away in a trade-in at a dealership? It may be higher, because you don't want the hassle of advertising and selling your car.

Suppose Daniel's BATNA is to find another employer. How should he go about pinpointing his walk-away in negotiations with Ken? Thorough analysis of the market for engineering talent is a good starting point. He thinks Ken's offer is approximately what he could get elsewhere, but he needs to make sure, perhaps by talking with recruiters and colleagues who have recently taken new jobs. Another way to establish value is to generate competing offers.

Assessing walk-aways is harder when you are negotiating multiple issues. The key is to identify possible trade-offs across the issues (how many bottles of chardonnay is one bottle of cabernet worth to me?) and then to develop an approach—even a spreadsheet model—that enables you to compare the value of different package deals. If Daniel can't assess the value of the packages Ken offers, he will have trouble either creating or claiming value. Suppose Daniel is offered 3 percent of the equity in the company and

the title of vice president of engineering. How should he compare that offer to 2 percent of the equity, the title of chief technology officer, and founder status?

Explore the Effect of a Coalition on Your BATNA

When there are more than two parties to a negotiation, it is more complicated to establish BATNAs and walk-aways. Parties who find their alternatives to submitting to others' demands unappealing can often dramatically improve their BATNAs by joining a coalition. And changes in coalitional alignments can dramatically change BATNAs or even cause coalitional BATNAs to vanish.

Suppose Daniel and his engineers negotiate as a team. Collectively, they are worth much more than they are individually, but what is an intact engineering team worth to an early-stage start-up in the current market? Suppose they contacted venture capitalists and offered to auction the team to the highest bidder: What could they hope to get under such circumstances? Certainly much more than the 2 percent of the company that Ken is currently offering them, as well as representation on the board. So building a solid coalition can substantially improve your BATNA.

At the same time, Daniel must be careful not to become too dependent on a coalition. It is often better to "hang together rather than hang separately," but it's essential to think through what will happen if the coalition breaks down. For Daniel, this means developing his own personal BATNA as well as collective options.

Consider the Impact of Time

Never forget that one option in negotiation is always to do nothing, and that patient negotiators often have an advantage over their less patient counterparts. Ask yourself whether there is a good reason to act now. Will your alternatives improve or worsen as time passes? What about those of your counterparts? Will options that are currently unavailable open up?

Now suppose Daniel can convince Ken that delay costs him practically nothing. If Ken will incur substantial costs as time passes (including opportunity costs if he risks falling behind his competitors), we can expect him to make concessions to close the deal.¹⁷ No specific event triggers this action; instead, the pressures of cumulating costs eventually provoke activity.

Action-forcing events like deadlines, by contrast, are break points that compel action. They are intended to change the game by eliminating doing nothing as an option and compelling your counterparts (and perhaps others on your own side) to make hard choices in order to avoid large and irreversible costs. Ken has imposed a deadline on Daniel and the others by linking his negotiations with them to his negotiations with venture capitalists, and by making them *exploding offers*—offers that will expire after a deadline, backed by an assertion that they will not be renewed. He has also pumped up a sense of urgency by suggesting that the opportunity will be lost if they don't move quickly. But it isn't clear what time constraints Ken really faces. Does he need to conclude this deal quickly to get funding, or is this simply a negotiating ploy? Is he really worried that allowing more time to pass will allow Daniel to explore other offers or to organize the engineers to negotiate as a group? It is probably in Daniel's interest to slow things down. "I understand that you want to move quickly," Daniel can say, "but we need more time to consider our options. In the meantime, I would be pleased to talk with the venture capitalists about the opportunity."

It's essential for Daniel to understand that his bargaining leverage is greatest *before* he makes a commitment to join Omega Systems. He can use the power of coalitions and competition to build his BATNA (and, by extension, to weaken Ken's). Once he has signed an employment agreement and joined the company, his ability to renegotiate terms is extremely limited. This is why it's crucial for him to secure the time to improve his BATNA so he can negotiate the best possible deal.

Guard Against Overconfidence and Overcommitment

It's sometimes difficult to nail down your BATNA because of uncertainty about what will happen in the event of no agreement. If I turn down this job, will another good one come along? If I refuse the union's terms, will they strike? If I go to court, will I win? By and large, people are notoriously poor at evaluating their no-agreement options in the face of uncertainty. Overconfidence about winning in court, for example, is a well-recognized barrier to settlement of legal disputes.¹⁸ So it's essential to be rigorous and realistic about assessing potential outcomes and their probabilities in order to clarify your BATNA when there is uncertainty. Is the company's likelihood of success 10 percent, or is it 25 percent? Consulting a venture capitalist with experience in this area might help to sharpen Daniel's estimates.

PRACTICAL APPLICATION: DIAGNOSING BATNAS

- What will you do if you are unable to reach agreement? What will your counterpart do?
 - Can you think of ways to strengthen your BATNA or weaken your counterpart's?
 - Are you or your counterpart overconfident about what you will get if you don't reach agreement? How do you know you aren't overconfident?
 - Can you alter others' perceptions of their BATNAs by building coalitions? By promoting competing offers?
 - Are cumulating costs forcing you to make concessions? If so, can you reduce your costs or raise your counterparts'?
 - Are action-forcing events pressuring you to make unattractive choices? If so, can you find ways to neutralize deadlines or impose your own?
-

AGREEMENTS: ARE THERE POTENTIAL AGREEMENTS THAT WOULD BE ACCEPTABLE TO ALL SIDES?

If potential agreements exist that would leave both you and your counterpart better off than your respective walk-away values, we say that there is a bargaining range.¹⁹ Ordinarily, negotiators won't know whether such a range exists until they begin to explore interests and options at the table. Even so, Daniel should try to discern the rough outlines of the bargaining range before meeting with Ken.

Try to Find the Bargaining Range

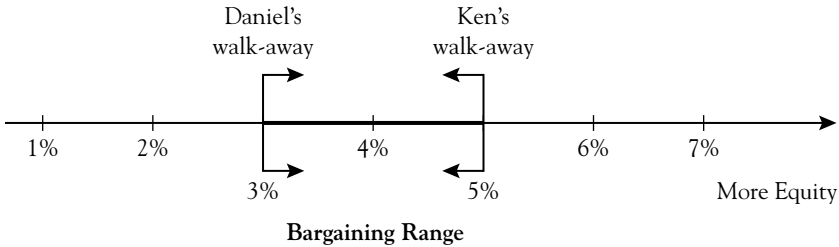
Using his assessment of Ken's interests and BATNA, Daniel can try to estimate Ken's walk-away. He will be dealing in uncertainty, of course, but so will Ken. And the exercise of trying to locate the bargaining range is likely to stand Daniel in good stead when negotiations begin, because he will be in a position to probe more effectively. He will probably have to revise his assessment, but at least he'll have an assessment to revise.

Bargaining Range in Distributive Negotiations

The nature of the bargaining range depends on whether a negotiation is, or its participants believe it to be, purely about *claiming value* (dividing the pie) or whether there are opportunities to create value and enlarge the pie.²⁰ Sometimes negotiations are *distributive*: there is a fixed pie to be divided among the parties, and anything one side gains, the other loses. The objective of both sides is therefore to claim value—to get as big a wedge of the pie as possible.

If the negotiation between Daniel and Ken were solely about the size of Daniel's equity stake in Omega, Ken would have to lose for Daniel to gain and vice versa. A hypothetical bargaining range for this negotiation could look like the one in the following diagram.

Bargaining Range for a Pure Value-Claiming Negotiation



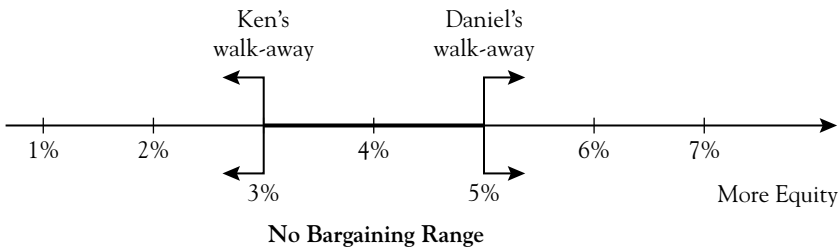
Ken won't give Daniel more than 5 percent, and Daniel is willing to accept a minimum of 3 percent, so the bargaining range occupies the region between 3 percent and 5 percent. The range defines the universe of potential agreements, but it doesn't specify where within it (or even whether) they will reach an agreement. The exact outcome will emerge from the process and will depend on the tactics that Ken and Daniel employ.

It is also possible that Daniel and Ken have incompatible walk-aways. If this is the case and nothing can be done to enlarge the pie, no agreement is possible and there is no bargaining range. Suppose, as illustrated in the diagram on page 34 showing no bargaining range, Ken is unwilling to give Daniel more than 3 percent, but Daniel won't accept less than 5 percent. Unless something happens to transform one or both of their walk-aways, no agreement is possible. Such lack of agreement isn't necessarily a bad thing: it's essential to keep in mind that no agreement is better than a bad one.

As David Lax and Jim Sebenius recognized, if you are negotiating over a fixed pie and there is no way to enlarge it, you need to be adept at claiming value.²¹ Common approaches to doing this, which we will discuss further in Chapter Three, are anchoring and commitment tactics. *Anchoring* means using offers and concessions to anchor the negotiations at the favorable end of the bargaining range by shaping your counterpart's perceptions of your walk-away. For instance, Daniel could ask for 6 percent and gradually concede

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No Bargaining Range



to 5.5 percent, then 5.15 percent, and finally 5 percent. Of course, Ken could counter with 2 percent, then 2.5 percent, and so on. The risk of anchoring, obviously, is that both participants will conclude there is no bargaining range.

Negotiators employ *commitment tactics* when they assert a position so unequivocally that it will be costly, even humiliating, to make additional concessions.²² If Daniel says, for example, “Five percent is the very least I could possibly take,” his reputation will suffer if he makes further concessions. Constraints imposed by others—such as “I promised my wife I wouldn’t move the kids out of Austin”—can also operate as commitments.

Commitments have to be used with caution; they can lock you into untenable positions, undermining the potential for beneficial agreements. On the other hand, if you can credibly commit to a position that is within the bargaining range but favorable to you, you may be able to create value.

Bargaining Range in Integrative Negotiations

Few real-world negotiations are purely a matter of claiming as much value as possible. Most situations offer opportunities for *creating value*—enlarging the pie through cooperation and mutually beneficial trades. Eventually, of course, the value that gets created still

has to be divided or claimed. Negotiations of this kind are therefore *integrative*: they combine efforts to integrate interests and create value (to enlarge the pie) with efforts to claim value (to divide the pie). Typically, value creation is accomplished by negotiating several issues simultaneously and creating package deals.

Suppose you are negotiating to buy a house that needs extensive repair. You have tentatively agreed on a price, with the proviso that the seller will make certain repairs. The seller plans to hire a contractor, which will take time and cost several thousand dollars. Now suppose you want to occupy the house quickly, enjoy home repair, and think the materials would cost no more than five hundred dollars. This is an opportunity to create value: the seller can take a lower price, and you can perform the repairs. How much lower the price will be remains to be negotiated: value has been created, but it must also be claimed.

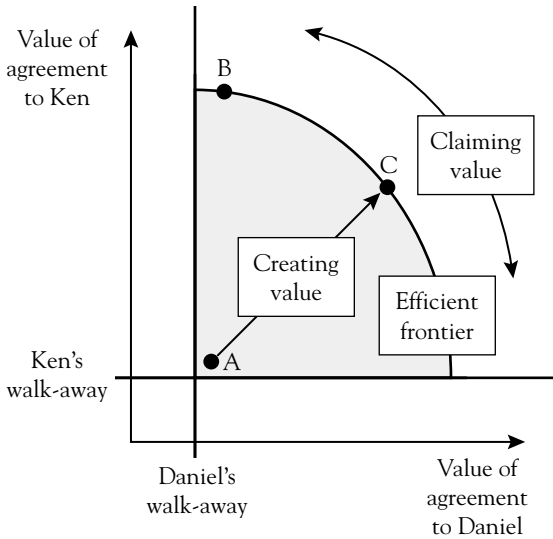
Let's look at this point another way. If Daniel and Ken expand their negotiation to include other issues besides the amount of Daniel's equity, the possibility of creating value by means of package deals transforms the bargaining range for their negotiation from a line to a region. In the figure on page 36, the x -axis represents the total value of potential package deals to Daniel, and the y -axis represents the value of the same package deals to Ken.

To make this more concrete, suppose Daniel and Ken negotiate the issues sequentially and agree first that Daniel's equity stake will be 4 percent. The resulting partial deal, shown as point A in the diagram, is acceptable to both, but just barely. It's better for both Daniel and Ken than their respective walk-aways, but opportunities to create joint gains have gone unrealized.

Now let's hypothesize a package deal B that gives Daniel a guaranteed 2.5 percent equity stake and another 2.5 percent contingent on successful recruitment of a complete team by a certain date. Value gets created here, but Ken captures most of it because Daniel gets only a bit more equity than in deal A if he succeeds, but ends up substantially worse off if he fails.

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Bargaining Range for an Integrative Negotiation



Let's also hypothesize a deal C that gives Daniel the same equity stake contingent on successful recruitment but with contractual protections against changes in job responsibilities, including provisions in case the company is sold. Here, value has been created, and both sides have claimed balanced portions of it.

There are limits to the amount of joint value the parties can create through trades. Negotiation theorists call the outer limits of joint value the *efficient frontier*,²³ represented in the bargaining range diagram as a line. Agreements situated on this frontier are termed efficient because neither party can be made better off without making the other worse off. Agreements inside the frontier (such as the one at point A) are inefficient because other feasible agreements would benefit at least one party without harming the other's interests.

The take-away lesson from this short detour into theory is that value gets simultaneously created and claimed in most negotiations. The implication for action is that you need to think both

about whether you can create more value and about how you will claim value. In real-world negotiations, of course, it is often very difficult to tell whether more value can be created. Daniel and Ken may never know how near they have gotten to the efficient frontier. And appraisals of who has claimed how much value are inevitably murky and subjective, mainly because of uncertainty about the other party's interests and alternatives.

Harness the Power of Good Information

If you and your counterpart know a lot about each other's interests and bottom lines, you can work together openly to create value with little risk. Usually, though, you know far more about your own interests, BATNA, and walk-away than about your counterpart's. Daniel understands his own side of the equation but is much less certain about what Ken will accept. This means that he must be very cautious about sharing information. Otherwise he could succeed in creating value, only to end up letting Ken claim the lion's share.

Suppose that Ken has learned a lot more about Daniel's interests and BATNA than Daniel has about Ken's, perhaps simply by asking the right questions. Ken could exploit this informational imbalance by concealing information, or even by being actively misleading, in order to shape Daniel's perceptions of the bargaining range. Daniel, because of his informational disadvantage, can't do the same. Because there is no alternative to acting on the basis of your own understanding, however partial it is, having better information is a clear advantage. That's why prenegotiation information gathering and effective learning at the table are so important.

Now suppose that both sides are highly uncertain about each other's interests and BATNAs: both will work to shape each other's perceptions of the bargaining range, and their efforts to claim value may prevent them from finding a bargaining range even when it exists.

Probe Shared Uncertainties

Both Daniel and Ken are uncertain how Omega Systems will do: Will it attract customers and achieve critical mass, or will it encounter unexpected competition and crash and burn? In the face of shared uncertainties about the future, negotiators tend to make self-serving predictions about their BATNAs. Ken may be overconfident that Omega will succeed, and he may believe that he can easily find another engineering team. Daniel may be comparably overconfident about finding a more attractive offer of employment. As a result, both could mistakenly conclude that no agreement is preferable to agreement. (However, as we saw when discussing trade-offs, these differing beliefs about the future can also be grist for mutually beneficial trades through contingent agreements.)

The key to situations characterized by extreme uncertainties and high stakes is good scenario planning. This doesn't mean evaluating the full range of potential outcomes; it means developing a set of plausible scenarios: best guess, optimistic, and pessimistic. Daniel would imagine that Omega does okay and gets acquired, that it is a huge success and goes public, and that it fails. Then he would use these scenarios to probe potential contingencies and structure deals that take them into account. Without such scenarios, he could end up blindsided by an unexpected outcome.

PRACTICAL APPLICATION: DIAGNOSING POTENTIAL AGREEMENTS

- Have your negotiations been taken over by value claiming at the expense of opportunities to create value? If so, how could the negotiation be reframed?
- Are you being unrealistic about your BATNA? Is your counterpart? Can you create a bargaining range by altering your perceptions of your own alternatives or theirs?
- Do you and your counterpart have more or less equivalent

knowledge, or are asymmetries generating uncertainty and feelings of vulnerability?

- Are there important unknowns? Could differing beliefs about the future make it possible to fashion contingent agreements?
-

LINKAGES: ARE YOUR CURRENT NEGOTIATIONS LINKED TO OTHER NEGOTIATIONS?

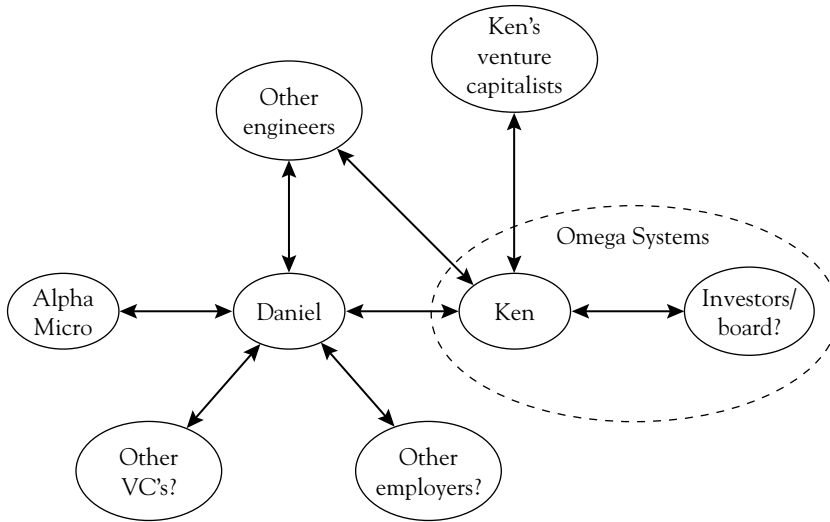
Stand-alone negotiations are surprisingly rare.²⁴ Even as simple a negotiation as buying a house typically involves competition with other purchasers, dealings with mortgage lenders, and sometimes interactions with several sellers. Negotiators' BATNAs tend to be strongly influenced by such linkages. If the prospective seller gets another offer or the prospective buyer finds another attractive house, the dynamics of the negotiation can shift dramatically.

Mapping Linked Negotiations

As it happens, Daniel's negotiations with Ken interact with at least seven other sets of negotiations. The party map Daniel constructed earlier can help him get a handle on these links:

- Daniel's negotiations with Ken
- Daniel's negotiations with the other engineers
- The other engineers' negotiations with Ken
- Ken's negotiations with venture capitalists
- Daniel's (possible) negotiations with other employers
- Daniel's (possible) negotiations with venture capitalists about a start-up of his own
- Daniel's (possible) negotiations with Alpha Microsystems to keep the Austin facility open

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- Negotiations within Omega if other key players (investors or a board) are already involved

If Daniel were talking to another potential employer, those negotiations would be *competitively linked* to his negotiations with Ken. Only one deal could reach fruition, and Daniel might be able to play off the two potential “buyers” of his talent against each other. If the other offer gave him a larger equity stake, he could use that fact to persuade Ken to sweeten his offer—possibly giving him still more leverage with the other potential employer.

By contrast, Ken’s negotiations with venture capitalists and his negotiations with Daniel are *reciprocally linked*: both must reach fruition if the overall enterprise is to go forward. Ken is clearly trying to bootstrap by getting the talent lined up first and then going to the venture capitalists. But if Daniel hesitates to commit himself before Ken has funding, Ken has a chicken-and-egg problem. One solution is for Ken to negotiate *conditional commitments* with Daniel and the venture capitalists whereby each agrees to a deal if the other also agrees.

Types of Linked Negotiations

Linkages between separable issues

Synergistic linkages combine issues that could be negotiated separately in ways that potentially create value.

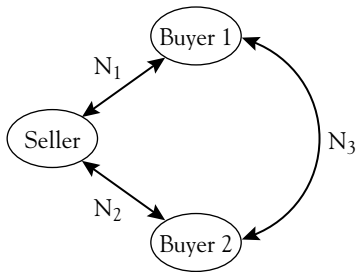
Antagonistic linkages poison the potential for agreement. Some toxic issues not only can't be settled but also hinder settlement of other issues.

Linkages in time

Sequential linkages arise when earlier negotiations affect later ones, or future negotiations cast a shadow over current talks.

Concurrent linkages arise when linked negotiations coincide in time or overlap.

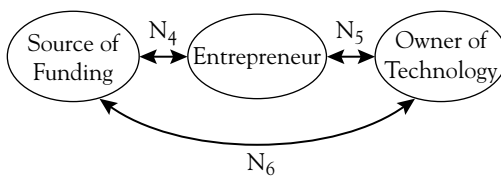
Competitive linkages occur when one party negotiates with two or more others, but only one of these negotiations can reach fruition.



Competitive Linkage

- Negotiations N_1 and N_2 are competitively linked
- Seller cycles between buyers
- Buyers may attempt to collude in negotiation N_3

In **reciprocal linkages**, one party negotiates with two or more others, and all of the negotiations must reach fruition for an overall deal to occur. In **conditional agreements**, each deal is made conditional on reaching agreement in the others.



Reciprocal Linkage

- Negotiations N_4 and N_5 are reciprocally linked
- Entrepreneur must secure conditional commitments in both negotiations
- Entrepreneur risks being cut out of the loop in negotiation N_6

Restructuring the Linked System

Mapping the links sets the stage for the next step: restructuring the linked system in favorable ways. We will look at this process in more detail in Chapter Two, but it is worth noting here that Daniel could do a number of things to shape the structure in favorable ways. He could agree with the other engineers that they will negotiate collectively and that Daniel will be their representative. This move would prevent Ken from playing them off against each other. On his own, Daniel could seek out offers from other employers or investors.

Daniel should also think about the sequence of his moves in the linked negotiations. Whom should he talk to first, and what should he try to achieve? Daniel's first priority should be to talk to the other engineers and solidify his coalition. Then he should probably talk to local venture capitalists about opportunities.

PRACTICAL APPLICATION: DIAGNOSING LINKAGES

- Can you combine separate issues to create new opportunities for trades?
 - Can you build momentum by undertaking negotiations in a particular sequence?
 - Can you use competitive linkage to enhance your bargaining power?
 - Have reciprocal linkages created any constraints that hinder agreement? If so, can you delink negotiations or relax the constraints?
-

IDENTIFYING BARRIERS AND OPPORTUNITIES

Having undertaken this thorough diagnosis, Daniel is in a much stronger position to proceed. He now has some ideas about ways to create value by broadening the agenda and seeking mutually beneficial trades. He also recognizes that he has opportunities to

improve his BATNA by building a coalition with the other engineers, creating competitive linkages, and buying himself time to explore his options.

As Jim Sebenius has noted, the point of all this analysis is to pinpoint potential barriers to agreement and opportunities to shape the negotiation favorably.²⁵ The accompanying table lists typical barriers and opportunities associated with each element in a negotiation. You may want to use it to help diagnose the situation in your next negotiation.

Identifying Barriers and Opportunities

| | <i>Barriers</i> | <i>Opportunities</i> |
|-----------|---|---|
| Parties | The wrong parties are at the table. Too many parties are at the table. | Invite in allies, and try to exclude adversaries. Reduce the number of parties by convincing some to be represented by others. |
| Rules | Legal, historical, social, or cultural factors constrain strategy. | Understand the rules better than your counterparts do. Try to change the rules by influencing rule makers and referees. |
| Issues | The agenda is too narrow or too broad. The sequence in which issues are being negotiated is disadvantageous. Bad relationships have become an issue in their own right. | Broaden or narrow the issue agenda. Establish control of the sequence in which issues get negotiated. Build productive working relationships with counterparts. |
| Interests | Parties are locked into incompatible positions. | Focus on interests, and find opportunities to enlarge the pie. |

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Identifying Barriers and Opportunities (*continued*)

| | <i>Barriers</i> | <i>Opportunities</i> |
|--------------|---|--|
| Alternatives | <p>The alternatives to agreement are unattractive.</p> <p>You are overconfident about prevailing if there is no agreement.</p> <p>The cost of delay is high.</p> <p>Action-forcing events limit your flexibility.</p> | <p>Take away-from-the-table actions that transform alternatives.</p> <p>Try to establish a common basis of facts with your counterpart to temper overconfidence.</p> <p>Shape your counterparts' perceptions to create a sense of urgency.</p> <p>Relax or set up other action-forcing events.</p> |
| Agreements | <p>Negotiations are framed purely in value-claiming terms.</p> <p>No bargaining range seems to exist.</p> | <p>Reframe the negotiations to enhance opportunities to create value.</p> <p>Alter perceptions of walk-aways to create a bargaining range.</p> |
| Linkages | <p>Linkages cause binding constraints.</p> <p>Your counterparts use competition to your disadvantage.</p> | <p>Try to decouple negotiations to create more flexibility.</p> <p>Create new linkages of your own.</p> |