

From persuasion to understanding:

The study on the new possibility of corporate negotiating power

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I. Introduction

Regardless of the corporate, it sometimes faces a situation where the business performance is determined by the negotiating power in many areas such as merger and acquisition, price negotiations, real estate transactions, government regulations, and industrial relations. As such, despite negotiations are frequently occurring, even corporates that are likely to have sufficient know-hows fail for various reasons. Why do they fail at the negotiation? Through a study of corporate failure cases due to lack of negotiating power, the meaning of negotiating power for corporates that they are facing today is reconsidered.

II. Needs and methods of negotiating power

Stuart Diamond who is the world's best negotiation skills expert and provides consultations to Google, Facebook, U.S. Army Special Forces, Microsoft (MS), and the World Bank stated that cooperation among

people and building transparent relationships are the key elements to be successful in negotiations. That is, the human relation is the most important element that determines the success and failure of negotiations (Stuart, 2012). If so, why human relation is important in negotiations?

The reason is that the formation of human relations requires trust. Without the cooperation and trust in the negotiation, the involved parties will be vigilant and suspicious, and the negotiation is likely to progress in the negative direction rather than the positive direction. Accordingly, forming a human relation based on trust taking sufficient time becomes an important element (Stuart, 2012).

Stuart additionally points out the attitude participating in the negotiation as another important element for forming the negotiation power. Commonly, negotiation is easily considered as bringing advantageous results to oneself by acquiring an advantageous position for negotiation by getting a hold of the weakness of the other party (Stuart, 2012). According to recent studies, it is quite the contrary. Research findings indicate that a positive relationship building in which one finds the strength of the other party and acknowledges it, and emphasizes one's cooperation is needed for the other party to make the strength more valuable is the key point that leads to a successful negotiation (Axelrod, 1984).

The persuasive power can be considered as an essential element to acknowledge the strength of the other party and build trust to lead the negotiation to success. The persuasive power in negotiation does not mean accomplishing ones contention by using all means and methods on the other party as generally think. That is, it is not lopsidedly expressing and making the other party to persuade accept one's opinion, but it means to induce the other party to take ones position by itself

to understand and accept the situation and actively cooperate. For example, let us assume that the takeoff of the airplane is canceled due to the deteriorating weather condition (Habeeb, 1988). As the weather turns for the better and normal flights were resumed, however, only a limited number of passengers can immediately get on board due to several flights already canceled. In such a situation, what would be the ideal way to persuade the airline staff for one to get on the airplane?

Most people give all possible reasons that they must get on board first. A negotiating power expert, however, would first make a relationship so that the listener thinks from the expert's position rather than stating the reason for them to get on board first. For example, if the staff appears to be in the age group having a school age child, the expert will confirm that the staff has a child attending school as expected while having a casual conversation for a moment and then make the staff empathize the expert's position by saying "How would you feel if tomorrow is your child's graduation like me?" (Coffin, 1976).

As such, the persuasive power in negotiation, even though it is important to logically state one's contention, can be viewed as an action to make the listener empathize with one's position. If so, what should corporates do to utilize the negotiating power in the process of establishing management strategies.

First of all, thorough 'preparation' for the negotiation should be made. The preparation in here means the things to do before coming to the negotiation table. In fact, the time corporates spend in the preparation stage for the negotiation takes longer than the negotiation itself. It is because the corporate has to do many tasks such as preparing the negotiation framework, checking the negotiation flow, making a checklist,

managing the expected negotiation time, building the negotiation team, selecting a lawyer, making various patterns of negotiation scenarios, and preparing a BATNA (Best Alternative To a Negotiated Agreement).

Of course, due to the negotiation timing, there is not much time to invest in such a preparation process. Maybe because of it, many corporates say the preparation stage is the most difficult stage in the process of negotiation. Furthermore, many corporates say they failed due to insufficient preparation for the lack of time.

Japanese corporates are different. They expend enough energy to make the preparation near perfect by considering all variables in the preparation stage. After all, negotiations bound to have an element of coincidence between the contention and interest of the other party and the contention of one's corporate to a certain degree. But Japanese corporates prepare for the negotiation with all possibilities in mind, and even considers something they have to discard in the process of negotiation, which ultimately bring about confusions and negotiation failure.

Over preparation causes yet another problem. Aiming at perfection by considering all variables causes preparation fatigue. The negotiation preparation is a preparation stage to implement persuasion phase at the negotiation table in all respects. Accordingly, as soon as they relax their tension thinking they are safe because they considered every variable and made every effort, they cannot do their job properly at the negotiating table. In addition, when something they have not considered yet emerges, they will be at a loss bringing about the worst outcome of showing their weakness to the other party.

Let us take a look at the negotiation surrounding intellectual property

rights as an example. Especially for licensing negotiations, analysis of both other party's patent and one's own are important. Of course, the analysis work takes enormous amount of time in preparation. What is important in that case is not to waste time uselessly but to invest focused time in analyzing patent in a specific area and discard unnecessary concerns. Also, it can buy an opposition from the technical personnel who wants a perfect work. The preparation stage of negotiation, however, is the process of arbitrating intra-company oppositions, by intra-company politics. The intra-company politics should be appropriately arbitrated at the negotiation preparation stage so that one can sit at the negotiating table in the best condition without over-preparing or falling into preparation fatigue (Fisher, Ury, & Patton, 1991).

III. Principles of negotiating power and intrinsic problems

What is the next step once the preparation stage is over and sitting at the negotiating table? It is the persuasion. The persuasion stage is a process to derive a conclusion one wants sitting at the negotiating table with the other party. What one should do to succeed in persuasion then? It is necessary to develop one's contention based on the following three principles.

First, share the vision. The decision maker at the persuasion stage is the other party, but the success of persuasion depends on how closely the vision the other party is pursuing matches with the vision one is pursuing. It is important to build the process of understanding so that the other party understands one and empathizes with one's vision rather than forcing the other party follow one's vision (Fisher, Ury, & Patton,

1991).

Second, one must conduct the negotiation based on scientific analysis and data. The amount of information usable in the negotiation process is remarkably increasing these days. Therefore, it is necessary to scientifically analyze the information and conduct the discussion Raiffa, 2002).

Third, it is useful to persuade under a task force system in a business environment where various interests are crossing or various negotiating parties. Especially in persuasion stage, many unexpected things happen due to severe time constraints. Accordingly, even a negotiator with considerable training can have an unexpected failure. In that case, failures may be minimized by organizing a task force team. In fact, Apple Inc. has such a team within the company. Despite its small number of members, it maintains close cooperation with external partner agencies, and the negotiating team is also divided into an attack team and a defense team with leaders in each team, and in constant readiness for various litigations.

If the persuasion stage is carried out based on the three elements, the value of the other party and one's own can be rediscovered even in the process of a complex negotiation. Since negotiations are carried out among people, however, the occurrences of oppositions and conflicts are frequent by the human relationships in the actual negotiation process no matter how perfect the preparation is and how faithfully the three elements are followed in the negotiation stage. Accordingly, there are a few things for the people who actually participate in negotiations to watch out for.

First, that is to distinguish between negotiation and bargaining.

Negotiation tries to find out the possibility of agreements based on a scientific analysis and should be conducted by following the proper process. Negotiation should be distinguished from bargaining, which feels the other party out on one's own intention according to one's own emotions, even in consideration for the other party to negotiate (Griffin & Russell 1990).

Second, it is important to distinguish like or dislike emotions on the negotiation target from the issues to be handled in the negotiation in the negotiation process. As discussed above, because the negotiation target is people, the nature of negotiation can sometimes be distorted by the emotional judgments of like or dislike the other people despite the judgment should be based on the validity of the subject.

Third, one should always be concerned about the solution of mutual benefit. In fact, it is not an easy task. That is because it is difficult to produce unique ideas that can maximize the mutual benefits since the consciousness to criticize the other party by finding the problems with them in the negotiation process. Therefore, it is important to proceed the negotiation finding out if it is beneficial for the other party at all times.

Fourth, one should do one's best to find out the solution based on objective criteria the other party can accept. There are occasions that the negotiating parties bluff to persuade the other party one way or another in a short time. In this case, the trust on the data prepared in the preparation stage and the scientifically analyzed data used in the persuasion stage can be lost. Therefore, progression based on objective criteria that the other party can accept is essential in the negotiation process.

Looking into the negotiation process of Japan's Nihon Geizai Shimbun and England's Financial Times, it can be seen that the solution that was mutually beneficial and based on objective criteria acted as important factors to make the negotiation successful.(Nihon keizai shinbun 2015. Novemebr 30th). There are many cases for a newspaper, which is classified as the declining industry, to reach out to other businesses than Newspaper to survive as a survival strategy, and in case of those two companies, they produced a merger through the negotiation as they empathize a sense of purpose desiring to keep their historical traditions as newspaper companies and pride as business newspapers representing Japan and England, respectively. They considered the synergy effect that can be created when they combine each other's readers based on an objective analysis.

The negotiation outcomes of many companies are not always successful, however. In most cases, negotiations end up either one party is unsatisfied or both parties are unsatisfied. Such an outcome sometimes puts a company in a crisis situation. Accordingly, implications are sought after in the next chapter by looking into the cases of corporates in a crisis by falling into the bottomless pit of conflicts rather than mutual cooperations between corporates due to the absence of negotiating power.

IV. Management failure and negotiating power

Despite negotiations are frequently occurring, even corporates that are likely to have sufficient know-hows fail for various reasons. Why do they fail at the negotiation? The tunnel vision that only sees the profit in front of the eyes may be the biggest reason for reducing the

negotiating power and persuasive power. So then, is not there an insight to obtain happy ending called mutual 'understanding' beyond persuasion in the negotiation? Let us find the answer in reverse through corporate negotiation failure cases.

There are people who are strong in negotiations. They are Jewish people. Jewish people accumulated wealth through numerous negotiations in the business sector as they wander without a country for 3000 years. Actually, their negotiating power has a unique method (Berton., Kimura, and Zartman, W.I., (1999).

First, observe the principle of 'Do not try to make an ocean but build a stream first'. It means taking care of the clearly achievable goals first rather than attempting a large goal from the beginning. In addition, always try to understand the issue with macro perspective so that not to fall into dogmatism or a bias. Jewish people engage in the negotiation based on a maxim passed down among the Jews 'a worm lives in a cauliflower thinks the cauliflower is the whole world' (Lewicki., Barry., Saunders, and John 2003).

Even if they fail pushing ahead with the negotiation, Jewish people think as follows. 'Failure is not the end but the next beginning.' Yes, it is. The most important thing in strengthening the negotiating power is not to think a failure as the end but to think of it as the beginning for the next. Here, let us try to find out a new point of view to pay attention to strengthen the negotiating power through corporate cases failed in the negotiation.

1) The eBay's acquisition of Skype at the enormous expense

Many people were surprised to hear that Skype Technologies was

acquired by eBay of the US at USD2.6 billion. That was because people questioned why an online auction company wants to have an Internet phone service such as Skype that is uncertain of raising revenue. In fact, eBay admitted that it failed in the process of the negotiation two after it acquired Skype. At that time, eBay expected Skype to grow as the core business segment of eBay along with eBay's auction business segment. Even though Skype was in the black after taken over by eBay, the margin was far less than expected. A more fundamental issue was that there was no plan to integrate Skype with eBay's existing services such as auction and PayPal as it planned at the time of acquisition (George and Anandkumar, 2015).

Of course, eBay once considered auction proceeding through Skype. Realistically, however, it was not as expected. It was because if Skype was to be utilized, the auction participants ultimately have to be at the Internet phone at the set time as an offline auction while the advantage of the Internet auction, unlike the offline auction, is that the auction can be proceeded at any time 24 hours a day even if the participant is not at the auction site. After all, the plan that eBay dreamed of when it acquired Skype had a problem in itself.

Another problem was that the profit model of Skype was weakened by the appearance of a competition. Not only large businesses such as Yahoo and Microsoft but also numerous venture businesses in instant message service participated in free Internet phone business. Due to the increased number of competitors, it was naturally difficult to create the revenue expected at the time of Skype acquisition.

The third problem was that the actual number of users was less than 20% of the 220 million subscribers at the time of eBay's acquisition of

Skype. According to TeleGeography, an IT specialized market research firm, only 20-30% of Skype subscribers were actually using the service. After all, eBay acquired Skype by paying an expensive price without giving consideration on that point. Actually, eBay analyzed that it purchased Skype at more than one billion US dollars higher (George and Anandkumar, 2015).

Why did eBay obstinately acquire Skype at the expensive price? At that time, eBay had a desire to be the leading company in the Internet market following Google and Microsoft. It wanted to develop value-added services after securing a stable source of revenue by acquiring Skype.

Once eBay looked into the business after it acquired Skype, it found the average due a paid landline subscriber on a measured rate system paid only 12-13 cents per month. Even though eBay tried to find other sources of revenue using Skype, it did not have a clear direction for service development. While the situation continued, the founder and executives who knew Skype best left the company and eBay ended up taking over the enormous acquisition costs without finding a new value-added service of Skype (George and Anandkumar, 2015).

So then, what was the cause for eBay to pay extra one billion dollars in the process of negotiation to acquire Skype? The first is in the preparation stage before it sits at the negotiating table. The eBay already made a decision to acquire Skype one way or another to catch up with Google and Microsoft. For that reason, eBay's intention was revealed and eventually it had no choice but to acquire Skype at the price Skype was asking.

The second is that eBay overlooked the sharing of vision, which is the most important in negotiation. Ebay proceeded the negotiation without

having a specific strategy to merge its own auction business segment with Skype. The eBay was making a hard effort on acquisition itself only despite the fact that mutually understandable negotiation outcomes can only be achieved when the vision to make a new framework in the Internet business is presented once both companies are merged. Naturally, since Skype was only concerned with the profit and tried to sell the company for as much as it can get while eBay tried to accomplish its goal of acquiring Skype even if it is unreasonable, the negotiation was concluded without sharing any vision.

Looking into the negotiation between eBay and Skype, only the facts are remaining that for eBay, expenditure of one billion dollars as a blemish, and for Skype, the fact that it sold its company at one billion dollars. The negotiation was concluded with the social value that can be created in the negotiation process such as customer satisfaction or presentation of new direction in the Internet business cannot be found in anywhere.

2) Escalation of conflicts between labor and management due to the absence of flexible negotiating power

Verizon Communications is a representative communications company in the Eastern United States headquartered in New York. Recently, the news has it that the biggest intra-company conflict since its foundation is occurring due to the opposition between labor and management.

The conflict between labor and management started as the company initiated restructuring due to the reduction in landline service supplied to homes.

Among the 40,000 employees actually participated in the strike,

most were either telephone wiring work related workers or call center counselors. The strike participating workers contented that “the company tries to take our jobs away by using lower wage subcontractors and overseas call centers even though the company makes hundreds of millions dollars in profits”. In response to the contention, the company proposed it will normalize its operation by reducing the cost by cutting down the benefits related to medical insurances and pensions for the next three years instead of workforce restructuring (Kunur, 2011),

The Labor union Communications Workers of America and the International Brotherhood of Electrical Workers engaged in the negotiation on behalf of 37,000 landline telephone division employees, however, stood up to the company demanding job security and upward adjustment of pension (Kunur, 2011). In addition, they proposed the withdrawal of health insurance cost reduction proposal and the company cannot contract out or outsource the jobs union members are in charge.

The negotiation agendas of both parties that were in tense opposition were not accepted by each other and resulted in a 10-month strike.

As the union decided to go on strike for the collapse of the negotiation, they stated to the media that the company rejected a serious negotiation for fair conclusion of contract despite their best effort. On the other hand, Marc Reed, the head of the company negotiating team, expressed his regret stating that “despite our sincere negotiations and hard efforts in the last six weeks we were not able to reach a new agreement with the union”. While both parties were shifting the responsibility to each other, the strike continued for 10 months. As it continues, the public opinion criticizing both parties was formed and the company image began to fall (Zartman,& Alfredson, 2005).

By the way, was not there other ways to solve the situation while the strike continued for 10 months even though the negotiation between the company and the union collapsed? The negotiation experts analyzed that despite the company was in an overwhelmingly advantageous position in the negotiation preparation stage it was led around by the union backed by national organizations. In fact, two-third of 196,000 Verizon Communications employees, which is 135,000, were non-union employees (Raiffa., 2000).

Of course, the half of the employees in the fixed network division that was going to be restructured was union members, but since the majority of employees in the wireless Internet division that Verizon communications was implementing as a focused business were non-union members, even if the union members refuse to work the company's business was not significantly affected . Furthermore, the aftermath was not big because the landline telephone lines were automated, and the only problem was delay in repair and installation work.

As such, looking into the inside facts, there was no reason for the company to be led around by the union, but then why did Verizon communications lost its hegemony? The problem was that the company carried out the negotiation relying only on the labor and management negotiation response manual.

One of the errors easily made by companies focusing on the negotiation preparation stage is relying on the negotiation manual too much. As mentioned above, the most important principle of negotiation is flexibly carrying out the negotiation according to the characteristics of the other party after forming a trustworthy relationship with the opposite negotiation party. In case of frequently occurring negotiations such

as labor-management relations or contracts, however, there are many cases that corporates attempt to cope with crisis situations by creating a manual because it is not easy for corporates to form a relationship with each one of them. That is, a manual is created to prepare in advance for mistakes that can be made by oneself in the process of the negotiation and so that no problem will occur even if the negotiating human resource is replaced in the middle.

If the manual is considered to be an absolute principle that must be followed in the process of carrying out the negotiation, however, it will function as an interfering factor for conducting a flexible negotiation. In the case of Verizon Communications also, the manual functioned rather as an unfavorable factor in creating active and creative negotiation strategies to solve problems in labor and management negotiation. Therefore, it should be noted that the manual prepared to cope with a crisis in the negotiation can become fetters that interfere with the establishment of various forms of negotiation strategies.

V. Strengthening the negotiating power and the aesthetics of slow

As looking into corporate cases that failed due to the absence of the negotiating power, suddenly a thought comes to mind. Many corporates routinely conduct negotiation after negotiation in various areas such as contracts between corporates, price negotiations, and labor and management negotiations, and certainly one party will make a profit while the other party will take a loss in the negotiation process. The losers in the failure cases introduced in this issue were eBay, Sharp, and Verizon Communications. Why did these corporates fail in the

negotiations? Even though the causes of failure for each company were different, there was essentially a common reason for losing in the negotiation. The immediate gains were the judgment criteria in the negotiations (Tompson, 1990).

Of course, the mentality that they should not fall behind rivals in a rapidly changing business environment probably made them to make quicker decisions in the negotiation. As the success case of Nidec Corporation, however, a 'Slow Bargaining' is needed to make a conclusion that is understandable for both parties without persuading or being persuaded. That is, the other party should take time to sufficiently think and understand. And, it is not easy for the corporate. A counterargument can be raised saying that the negotiation cannot continue endlessly since the debt ratio of a corporate facing financial difficulties such as Sharp will increase as time passes by. Such an impatient thought itself, however, is already an admission that one is in the unfavorable situation on the stage of negotiation. Sharp should have made effort to keep cool to take time to think within a limited time. After all, 'Slow Bargaining' means the effort to maintain 'slowness' as much as possible in a given situation. By doing so, an understandable result can be obtained even at the negotiation table where tension is continuous (Shell, 1990).

Then, what is the most frequently occurring mistakes in the process of corporates actually carrying out negotiations? There are following three kinds mentioned in studies on the negotiating power.

First, too many alternatives that can be chosen in the process of the negotiation are presented. Generally, one may think as many choices as possible should be presented to derive a conclusion that can be

acceptable by both parties in the negotiation. The idea is that if there are many alternatives, the other party might agree with one of them. On the contrary, as the paradox of Choice, either the other party is not able to choose anything or fall into a dilemma of “complaints if there are too little choices, renunciation if there are too many choices” (Tompson, 1990). For example, when purchasing a t-shirt, choosing one that fits out of 20 pieces is much more difficult and burdensome than choosing one out of three pieces. That is because one has to spend more time and energy to make the decision which t-shirt is the one that one wants. Therefore, it is necessary to properly limit the breadth of choice lest fall into The Paradox of Choice.

Second, making a contention filled with confidence. In the eBay and Skype case discussed above, eBay judged it will certainly make profits if they acquire Skype. Its expectation failed, however, and it only brought about acquiring Skype at one billion dollars more expensive. That is, opinions or contentions full of confidence at the time of negotiation are the elements to calmly take time to improve (Shapiro, 2006).

Third, follow the general opinion in the negotiation field that says the shorter the negotiation time the better the outcome is. In the past when persuading the other party is the ultimate goal of the negotiation, clearly determining the answer in a short time was the best. The time taken to obtain acceptable results by both parties, however, is valuable enough to return as a profit greater than the invested cost in the long run. Therefore, it is wise to consider the time as an investment, not as a cost, by improving the perspective on the time involved in the negotiation.

VI. Conclusion

It is common for the negotiation process to progress from the preparation stage to persuasion stage. A successful negotiation, however, is making the other party to understand the content proposed to them, not persuading them. What is the difference between persuasion and understanding in the negotiation? First, persuasion is an attempt to make the other party understand one's thoughts. In this case, because it can give off the nuance of trying to dominate the other party with one's logic if not cautious, it will hurt the emotion of the other party who accepted one's proposal, and it will be difficult to build a deep trusting relationship. As an example, let us assume that one is contending that restructuring is necessary after a merger to overcome a crisis. Even though the other party was persuaded by the contention that a restructuring is needed, a scar and distrust remain in the mind of the persuaded party. In addition, persuasion has the disadvantage of the negotiation time being long. That is because people have the tendency of unconsciously rejecting to be persuaded by somebody. That is to say, they have the mind wanting to reject as much as possible even though they accepted the persuasion of the other.

On the other hand, understanding is, unlike persuasion, making the other party accept one's proposal voluntarily. It is frequently observed in Nidec Corporation's mergers and acquisitions in that the companies merged and acquired by Nidec Corporation actively make various proposals for the revival of the company. Conducting numerous negotiations, thoroughly analyzing what the other party wants from their position at the preparation stage, and making a proposal the other

party needs, empathizes, and wants to follow is the way of reaching to understanding. Therefore, the complete form of negotiation is not 'preparation-persuasion' but 'preparation-understanding'.

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