Legitimacy

Stay Objective and Maximize Legitimacy

In negotiation parlance, legitimacy refers to the perceived fairness, reasonableness, and objective justification of an offer or outcome. It is the degree to which a proposal aligns with established standards, precedents, or independent benchmarks rather than relying on pure power or arbitrary demands. Establishing legitimacy regarding a particular issue can assist negotiators in moving past positional demands and personal interests in order to build trust and cooperation with the other party.

Ultimately, maximizing legitimacy reduces conflict as parties are more likely to accept the outcome when the terms are anchored in objective standards. Negotiators should strive to remain principled, disciplined, and fact-based and a focus on legitimacy facilitates that objective. In addition, it prevents impasse as the discussion shifts from a “what I want” positional demand to a “what is fair” market relevant standard. Finally, it facilitates a more collaborative relationship as a legitimate standard is more likely to be accepted as fundamentally fair by both parties.

Legitimacy relies upon objective, measurable, and verifiable criteria and may consist of the following:

- **Benchmarks:** Industry standards, prevailing market prices for similarly situated products and services, and historical precedent between the parties

- **Independent Standards:** Legal precedent, expert opinions, or other well-documented and established principles

- **Process Fairness:** Utilizing a transparent and unbiased metric or process to reach an agreement (i.e., a third-party expert opinion or mediator or established financial benchmark or index)

Legitimacy Breaks Positional Logjams

Some negotiations can be challenging and contentious. Time is limited, emotions flare and bullying or aggressive tactics might be deployed by the other party to achieve a concession or other accommodation. For example, a customer might say, “The proposal is unacceptable. The delivery timeline is too long, the price is too high, and the quality standard is too low.” Given the lack of specificity, this appears to be a demand based upon a subjective desire or need.

Despite efforts to remain principled, disciplined, and fact-based, many negotiators find themselves bogged down and haggling like fish mongers over a handful of substantive issues. Their response to the above request might be, “With more time and more money, the quality standard might improve slightly.” With this type of response, unskilled negotiators allow the negotiation to deteriorate into a contest of wills and a struggle for who can coerce the other party to commit to something against their interests. An outcome of this type does not create mutual value; will yield a quick path to a future dispute; and will detrimentally impact the customer relationship.

Conversely, skilled negotiators do not react with ill-considered concessions they hope will close the gap and they will never split oranges. Rather, they take a step back and seek to understand the underlying rationale for the request or demand of the other party. They break positional logjams by maximizing legitimacy.

They ask: “What is the other party’s underlying rationale for their proposal? What objective criteria make their request legitimate? What criteria are being used?” In other words, they remain principled, disciplined, and fact-based and bring the discussion back to finding a legitimate outcome for the issue at hand. By focusing on objective benchmarks to legitimize a request rather than the subjective demands voiced at the table, disciplined negotiators turn a difficult conversation into a collaborative discussion of the “appropriate” action each party can justify. They use rationales that address the issue precisely and specifically, which maximizes their credibility and improves the working relationship.

Maximizing Legitimacy When Facing Illegitimate Requests

Consider a systems integrator that has been collaborating with a prospective customer on an opportunity to implement the SAP financials product suite. The system integrator’s sales and delivery teams have been working diligently with their customer counterparts to properly scope (level of customization, interfaces to legacy systems, data conversion, roles and responsibilities, and implementation timeline) the project for the past three months and the final proposed fixed price is $100M. Two days before the agreement is to be executed, the customer says, “A 15% discount is required to close the deal” without any reasonable basis to support the $15M price reduction.

The customer is making a last-minute positional demand to test the legitimacy of the $100M price and the willingness of the systems integrator to concede. Rather than considering if the demand for a price reduction can be objectively justified and concerned about losing the deal, the unskilled negotiator panics, decides to split the difference, and comes back with a $7.5M price reduction. In doing so, the unskilled negotiator will quickly be deemed untrustworthy and lacking in credibility by the customer. The likely next step in this scenario will be the customer awarding the implementation effort to a competitor.

Conversely, disciplined negotiators understand this is a tactic and challenge the legitimacy of the request. They ask: “Where did the 15% number come from? Has there been a change in the staffing profile of the team responsible for delivering the outcome? Has the scope decreased? Is there less risk in achieving a timely go-live than previously proposed? Is the customer taking on additional responsibilities? Is there a new process or tool in the market that would allow the systems integrator to be 15% more efficient?” If none of these are true, then what is the basis for the 15% decrease? Disciplined negotiators are open to persuasion, but if there is no legitimate basis for the change, they do not agree to this type of request. They remind the customer of the effort which has been undertaken to develop the price, reaffirm the $100M price, and let the customer render a decision.

In this type of scenario, a skilled negotiator can seek to understand what might be driving the discount request; however, unilaterally cutting the price is not legitimate, erodes trust, and undermines the credibility of the negotiator. In addition, agreeing to this request will set a bad precedent that the customer will use on the next opportunity. Instead, if the client legitimately needs a lower price, try changing the deal shape: restructure the deliverables, reallocate the roles and responsibilities of the parties, limit the level of customization, adjust the implementation timeline, rework the payment terms or secure other support from the customer that yields corresponding value for the system integrator.

Rules of Thumb for Preparation and Negotiation

During the preparation process, ask these questions to better understand the underlying legitimacy:

- **What market metrics are being used to persuade the customer they are being treated appropriately?** Are those metrics relevant in this context (a similarly situated scope of services or product from a similarly situated provider) and for this specific issue? Have those metrics been validated by others internally to confirm their relevance and applicability?

- **What market metrics might the customer use to yield a more attractive price or more favorable terms and conditions?** Are those metrics relevant in this context (a similarly situated scope of services or product from a similarly situated provider) and for this specific issue? If not, can they be persuaded to see the issue differently?

- **How might a disinterested third party examine this issue?** Would a third-party advisor or subject matter expert suggest standards of legitimacy that might help break a deadlock?

During the negotiation, consider the following strategies:

- **Use legitimacy even if the other party does not:** Do not be afraid to share market or industry standards, expert opinions, legal precedent, precedent between the parties, or other objective standards to maximize legitimacy.

- **Insist on understanding why a proposal or demand from the other party is objective and fundamentally fair:** Remain open to persuasion, but do not concede and split oranges just to avoid confrontation.

- **Use the "test of reciprocity":** Ask the other party how they might handle a similar issue with their customers. For example, if they charge a fee and interest for delinquent payments, why is it inappropriate for them to be treated the same way they treat their own customers?

Conclusion

Negotiators must understand market relevant terms and conditions in the industry in which they operate. When faced with an illegitimate demand, take a step back and seek to understand the underlying rationale for the request of the other party.

Research criteria from the perspective of both parties and check with both internal and external subject matter experts on the appropriateness of the criteria within the specific context of the issue being contemplated. When in doubt, attempt to break positional logjams by focusing on objective, measurable, and verifiable standards.