

THE ART OF THE DEAL

Petroleum negotiations in an age of social distancing and low oil prices

Oil & gas negotiations have always been a complex matter, where often parties with differing views and interests try to reach an agreement on how to best explore for and develop a valuable resource, to the benefit of them all. If different corporate and national cultures weren't enough to complicate things for negotiators, when you throw in a Host Nation or a NOC, it gets a lot more interesting.

With this backdrop, a lot has been written about the "art of the deal" in the oil & gas sector, numerous negotiation skills courses and workshops abound, some markedly better than others, and it is nowadays relatively common for corporations to hold internal workshops on negotiations for their younger or more inexperienced staff, through which they can learn directly from more experienced colleagues. But no matter how you learned to negotiate, or who your teachers and mentors were, nothing could have prepared us for what we are living through today.

Traditional Negotiations

Negotiations in a traditional scenario have typically involved alternating sessions of in-person negotiations, exchange and analysis of documents and drafts, sharing of revised documents, followed by subsequent in-person negotiations, etc., for as long as necessary to achieve one of two outcomes: or an agreement was reached, or one of the parties decided it was time to walk away from the deal.

This relatively prolonged interaction and the opportunity for face-to-face meetings created specific negotiation dynamics, and plenty of opportunities for building trust between teams, and for informal problem solving and discussions (for instance during coffee breaks, at meals, etc.). It also allowed for the building of relationships that were often key to getting a deal done.

In addition, being face to face allowed the negotiators on both sides of the table to read body language and see the direct impact of their words and actions on the other side in "real time". As a consequence, a good negotiator learned early on to control their body language, at the same time as being able to read the other side's reactions.

A world turned on its head

The normal negotiating process described above was turned completely on its head due to the COVID-19 pandemic and international and local restrictions on travel and the adoption of social distancing measures. All of sudden,

ongoing negotiations (some that had already been in progress for months or even years), and newly planned deals that were about to commence negotiation, were left in limbo.

To make things worse, the oil price crashed, leading some potential deals to stall, be postponed or outright canceled. Negotiation teams on both sides of the table were left with no option but to reinvent themselves and their activity, and seek alternative (and to a certain extent untried) solutions to be able to continue with their work.

The Challenges of Remote Negotiations

The obvious solution to the impossibility of meeting face-to-face was to adopt the "default mechanism" for all meetings in the era of COVID-19: video conferencing. However, if video calls may work for certain type of work with people with whom we have a long working relationship and have been able to build trust with over the years, it falls short in certain negotiating scenarios. As anyone who has ever been involved in protracted negotiations involving conference or video calls instead of face-to-face meetings can tell you, nothing helps move things along like being in a room together.

One area in respect of which this new negotiating paradigm has led to added difficulties is in building trust, as there are limited to no opportunities for informal interaction, not to mention the absence of prolonged exposure to the members of the other negotiating team. When you are no longer in the same city, hotel, or often even the same



Conversing socially during a coffee break can build trust and ease tensions

country, how do you get to know your counterparties? This also raises another problem, which is the lack of informal deadlock breaking situations that typically take place during coffee breaks and other occasions on the sidelines of negotiations.

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Photo by Jessica Sysengraff on Unsplash

To add to this, we have also noticed that, to a certain extent surprisingly, it is not uncommon for people to let their guard down in terms of body language control when attending video conferences. This may be caused by the lack of psychological pressure that arises from not having someone sitting a couple of meters across the negotiating table from you, or other reasons, but it is nevertheless a tendency we have identified. When a negotiator is less alert to their body language, it makes it easier for the counterparty to read their reactions. But another situation we have verified on a number of occasions also creates a certain disadvantage to one of the parties: when the other party has their video transmission turned off. In these cases, only one side gets to see the other, with all that this implies. In addition to all this, the fact that different members of the same team may be at different locations during negotiation sessions may also create unwanted inefficiencies.

Finally, all the above challenges intensify the language and cultural barriers that are often present in a negotiation, giving rise to misunderstandings, some of which may be fatal. Never mind the fact that everyone's nerves are frayed due to the stress of the risk of contamination, prolonged social distancing, lock downs, and overall economic and health uncertainty.

Don't Forget the Oil Price...

If things weren't hard enough for negotiators, we are once again faced with a low (and uncertain) oil price scenario, that has thrown a spanner into a lot of prior hard work and planning.

This has caused a number of difficulties to an industry already on the edge, with a significant number of companies (both in the E&P and services sectors) going through a hard time. Faced with rapidly declining demand for crude oil and natural gas, investor pressure, and future economic uncertainty, some players have been tempted to renege on past commitments, deliberately stall projects or negotiations, or to abandon projects altogether. These types of decisions, especially when companies are not upfront about the difficulties they are facing and what their real intentions are, in a context where negotiations have

become increasingly difficult, can create additional mistrust, or outright hostility from counterparties, damaging relationships for the long run, and having potential spillover effects to other joint ventures or markets where the companies are active (or may wish to move into in the future).

The Current State of the "Art of the Deal"

Notwithstanding the doomsday scenario described above, the "art of the deal" continues to be, to a certain extent, the same as it has always been. If we were to establish a set of principles to guide negotiations, they would be something along these lines:

- When you come to the table, have a clear understanding of what you are seeking, and what are your red lines. Be prepared to discuss critical aspects with your counterparty, and never lose sight of your objectives or get distracted by "side shows".
- Understand your counterparty. Different IOCs have different objectives, concerns, priorities and ways of doing business. The same goes for NOCs and Host Nations, whose objectives and priorities may vary significantly from country to country and region to region, and are, more often than not, not fully aligned with those of the IOCs. The secret to getting closer to a deal is to understand what motivates the other side of the table. If you don't get it, you won't stand a chance of closing the deal.

- It is nice to say that negotiations should end in a win-win situation... but for someone to win, normally the other side has to lose. The best description that anyone has ever given me of a good negotiating outcome is "lose-lose". If both parties don't feel that they and their counterparty have left something on the table, then someone has won and someone has lost... and when this happens, there is a greater possibility of the deal unraveling in the future with costly and ugly litigation just around the corner. Long term stability and trust (crucial in any oil or gas investment) comes


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from both parties believing they got a fair deal. Not necessarily ideal, but fair.

- Negotiate hard but be ethical. Remember that you should be in it for the long run. Don't promise what you know you won't be able to deliver. Don't lie, and don't push a bargain that is so good for you that the other party will soon understand it has been "taken to the cleaners".
- Choose your lead negotiator and team well. If there is past bad blood between members of the opposing negotiating teams, consider choosing a different negotiating team or a different lead negotiator for your deal. Sometimes all it takes is to change the lead negotiator for things to run smoothly, even between companies or entities that have had difficult negotiations in the past. Some of the best outcomes I have seen have come from both parties acknowledging that they need to make changes to their line up as a confidence building measure.
- Put in place mechanisms and tools for live interaction during negotiations between members of your team that are working remotely. Also consider how to establish informal channels of

communication with your counterparty. This can save a “distance negotiation.”

- Check in often with the other side. This is even more important if things are starting to get ugly and there is no breakthrough in sight, and especially if there is past bad blood between members of the opposing negotiating teams. Sometimes it helps to pause, take a step back, and jointly reflect on what’s not working. Leave an avenue open to higher level interaction. No matter the size of your company or client, try to avoid involving the CEO/top management in the negotiations. This allows you to have a fallback position in case of deadlock. Sometimes escalating a hotly contested issue to the respective CEOs (or VPs in charge of a given matter) is the best way to allow for a solution to be found that does not compromise the position of either negotiating team, nor leave one side feeling humiliated.
- Unless you are willing to throw it all away, always leave a dignified way out for your counterparty. Don’t back them into a corner they cannot get out of without losing face. On the other hand, know when the time comes to walk away, and do it in a dignified manner. No one wins if one party feels offended.
- If your company comes to a point where you are no longer interested in progressing with a project, it is better to be upfront about it and step away or negotiate a way out. If your partners wish to move ahead, don’t hold up a project just because of pride, or other subjective factors. This is a long-term business, and good relationships are worth their weight in gold.
- Use capable and knowledgeable advisors and, when coming into markets that are new to you or that you don’t fully comprehend, understand who they truly are. It is crucial to understand if they have political links, may be subject to third-party pressure, or have any business or other interests that may negatively affect their independence or their ability to be upfront with you.

This is by no means a negotiating Bible, but we truly believe that if you follow some (if not all) of the above principles to a greater or lesser extent, you are on your way to mastering the “art of the deal.” As to negotiating in this new “pandemic paradigm” the main recommendation is to come prepared with a large dose of patience, additional attention to detail, and cultural and emotional awareness. Add to that a pinch of good old common sense and everything will work out just fine. 

About the Author

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