



Business Development Basics Course

Negotiation and Influence Strategies

by Jasper Schaible and Anjan Aralihalli



Biotechnology
Industry
Organization



*Negotiation and Influence
Strategies*

Instructors:

Jasper Schaible & Anjan Aralihalli



Objectives

Students will be able to ...

- 1) Organize a negotiation process and understand the activities of each step
- 2) Gain insight into negotiation tactics & theory
- 3) Practice negotiation skills



Disclaimer

The views presented today are those of the presenters and do not necessarily reflect the views of the entities with whom they are affiliated.



Negotiating Theory & Tactics Agenda

- | | |
|--------------------------------------|---|
| <i>10:30 – 12:00 noon</i> | “Managing the Process and Other Thoughts on Negotiating ”
<i>(Main Classroom)</i> |
| <i>12:00 – 1:00 pm</i> | <i>Lunch</i> |
| <i>1:00 – 2:30 pm</i> | “Softer aspects of Negotiations & Valuations”
<i>(Main Classroom)</i> |
| <i>2:30 – 3:30 pm</i> | <i>Case Negotiation</i> |
| <i>3:30 PM => SHARP!!!</i> | <i>SUBMIT RESULTS!!!</i> |
| <i>3:30 – 4:00pm</i> | <i>Case Wrap Up</i> |



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Negotiation and Influence Strategies:

*“Managing the Process and Other Thoughts
on Negotiating”*

by Jasper Schaible



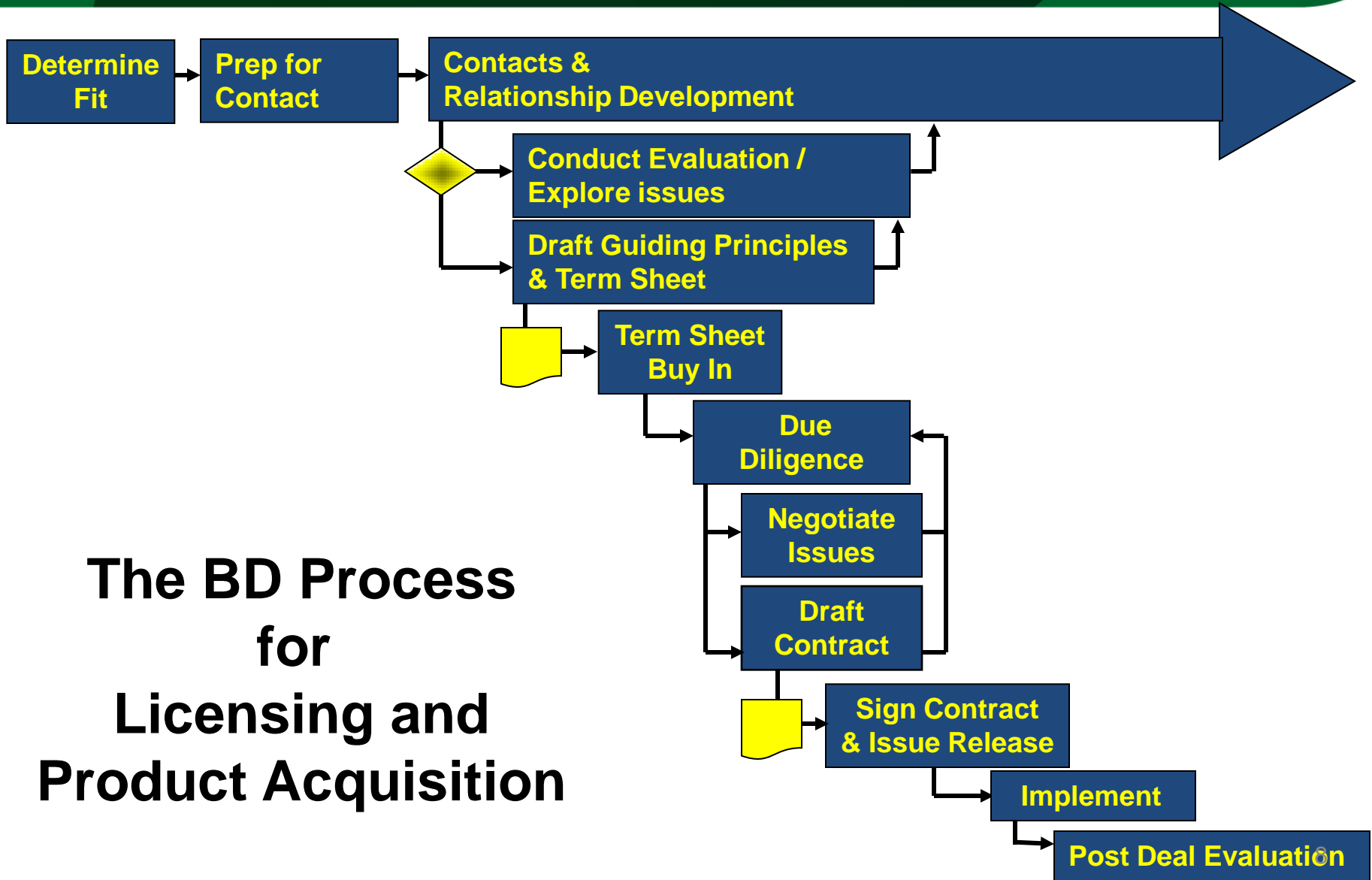


“Managing the Process”

- Negotiation is an integrated process requiring:
 - Development of Consensus (internal & external)
 - Process Management
 - Relationship Development
- Success depends on maximizing options before negotiations & working creatively during negotiations to optimize the outcome
- Success should be measured by a deal’s potential contribution to the bottom line of one’s overall portfolio
- Often the best deals are those not done!



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**The BD Process
for
Licensing and
Product Acquisition**

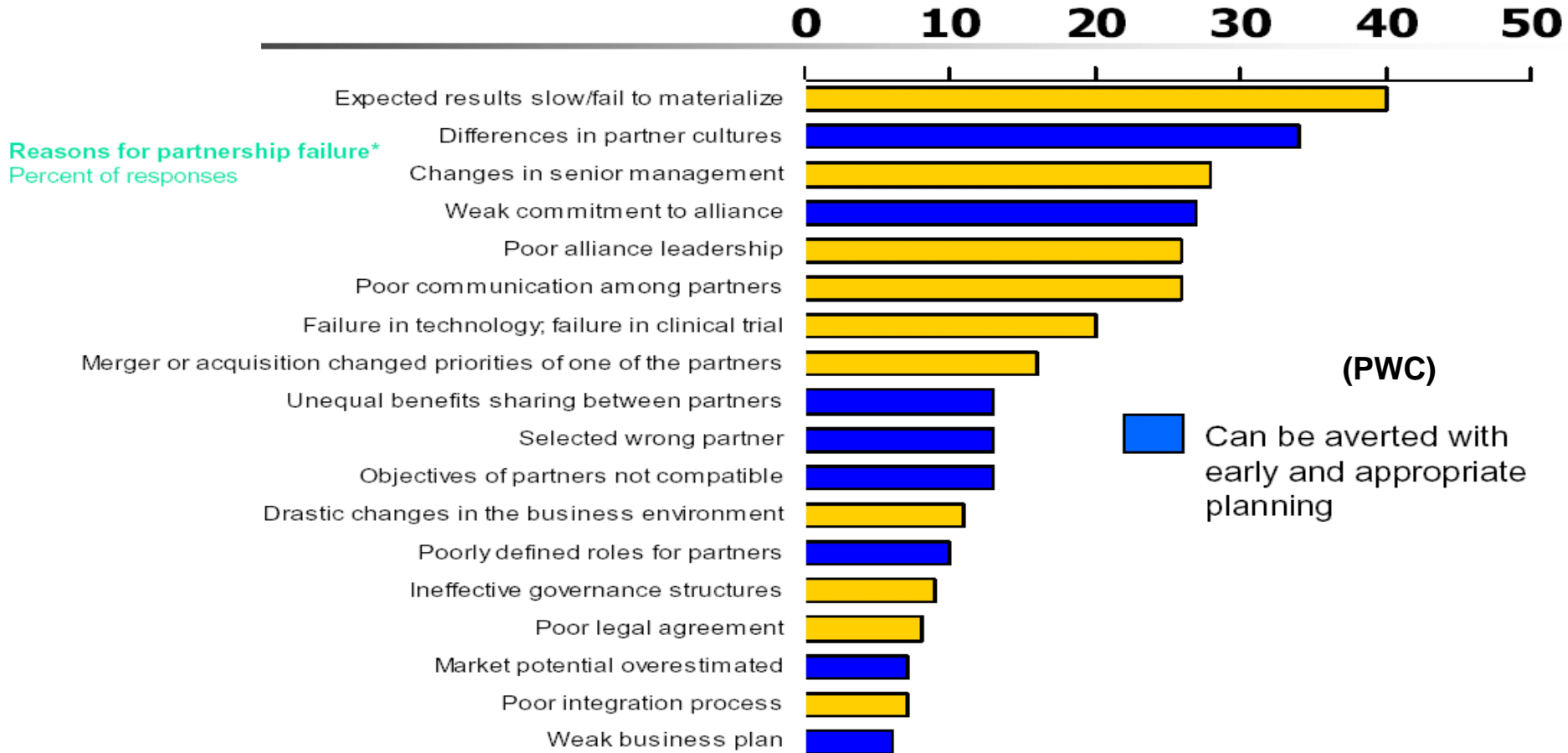


Strategic Fit

- First, Know Thyself:
 - Build Consensus on Organization’s Needs & Strategy
 - Develop Business Development Objectives & Priorities
 - Establish Criteria for Strategic Fit
- Proactive Reviews:
 - Forced Ranking Opportunity Assessments
- Reactive Reviews:
 - Degree of Fit w/ Criteria
- Don’t Forget “Culture Fit”



Reasons for Partnership Failure



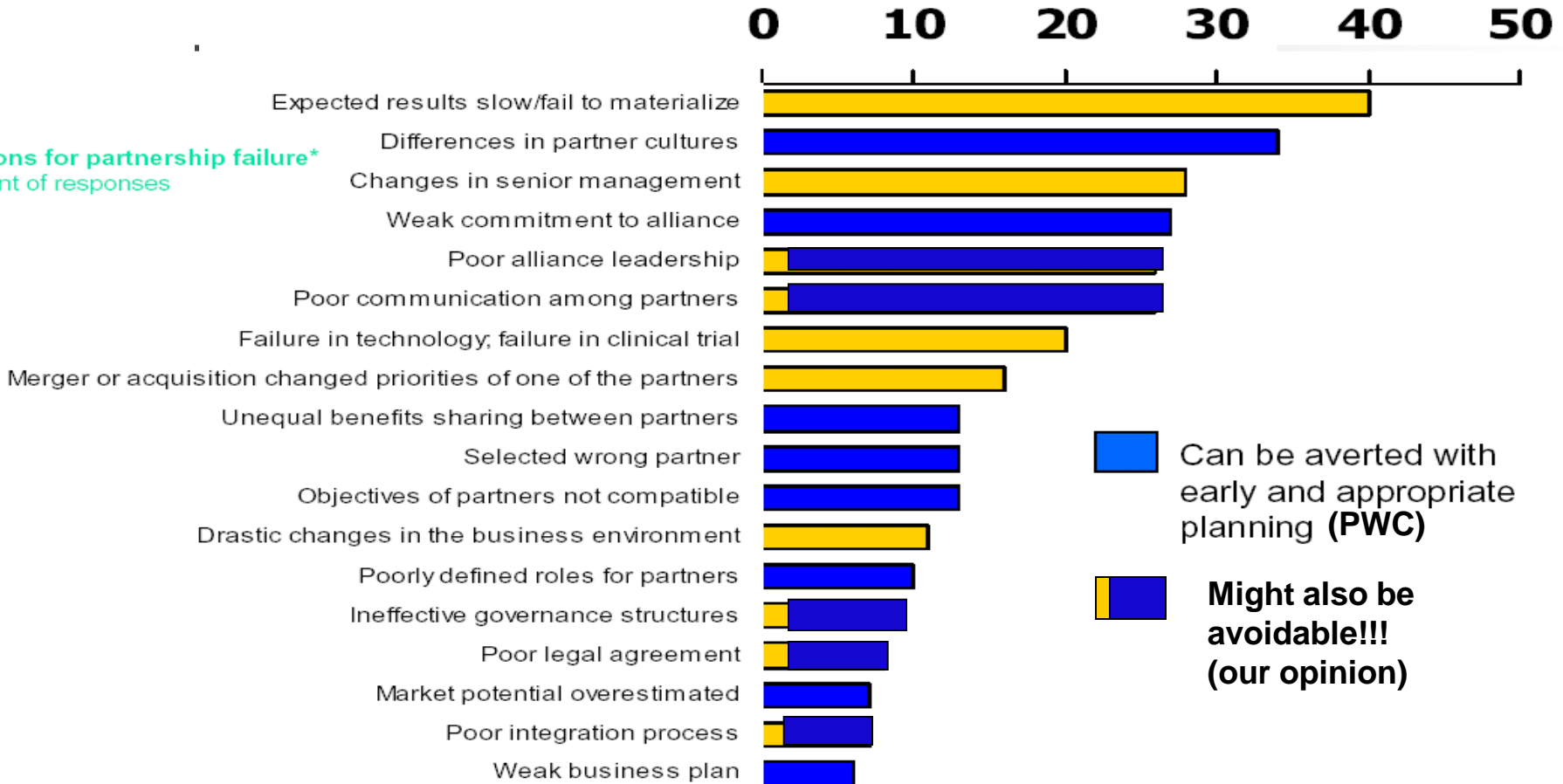
* Lists frequency of reasons for failure mentioned by 184 senior executives (VP level or above) surveyed.
Source: PriceWaterhouseCoopers



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Reasons for Partnership Failure +

Reasons for partnership failure*
Percent of responses



* Lists frequency of reasons for failure mentioned by 184 senior executives (VP level or above) surveyed.
Source: PriceWaterhouseCoopers



Preparation for Initial Contact

- Establish specific objectives for the activity
- Consider structures that meet the needs of both parties
- Identify information needs and gaps
- Determine who should be contacted & who should make the contacts – Agree to “one voice”
- Make initial contacts, establish & assess interest
- Discuss next steps (request face-to-face ?)
 - Define objectives and process
 - Select the team
 - Ink Confidential Disclosure Agreement (if required)



Initial Meeting

- Get to know the person(s) on the other side of the table
- Introduce individuals and organization
- Deliver message effectively;
be clear about timelines and expectations
- Seek understanding of how the other side views the opportunity, as well as its needs and priorities
- Establish an open dialog focused on flexible problem solving
for mutual gain – “Multiple Working Hypotheses”
- Define areas of agreement and those with gaps
- Follow-up on action items promptly and definitively



Develop Internal Consensus

- Within Technical Review Team
- With Project Owner (Manager with post-deal responsibility)
- Within Business Development Team
- With Project Stakeholders
- With Senior Management

May also require additional meetings with the other side, as well.



Guiding Principles

- Openly discuss needs and expectations of your organization
- Invite other party to describe the same
- Establish agreement on scope of the project
- Codify statements that define the spirit of the desired relationship



Understand the Other Party's Interests

It is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interests.
---Adam Smith

If there is any one secret to success, it lies in the ability to get the other person's point of view and see things from that person's angle as well as from your own.
--- Henry Ford

We spend a lot of time thinking about how the poor guy on the other side of the table is going to have to go sell this deal to his boss. We spend a lot of time trying to understand how they are modeling it.
--- Steve Holtzman, EVP Corp Dev Biogen Idec
(Founder of Infinity Pharma, former CBO of Millennium)



Put Yourself in Their Shoes!

- Establish interpersonal rapport with the opposite team
 - Use your entire organization to achieve this; a BD-centric approach is not sufficient
- Understand the other party: culture, interests, concerns, stakeholders (champions & decision makers), organization, R&D process, economy, time-table, etc.
- Identify the other party's needs and objectively define overlaps & gaps
- Although critical, it is often hard to “switch shoes”. Why?
 - Lack of opportunities: tight schedules, geography, etc.
 - Egocentrism and competitive attitude to negotiation.
 - Negotiation dynamics (bluffing, posturing) serve as obstacles.
 - Overconfidence...



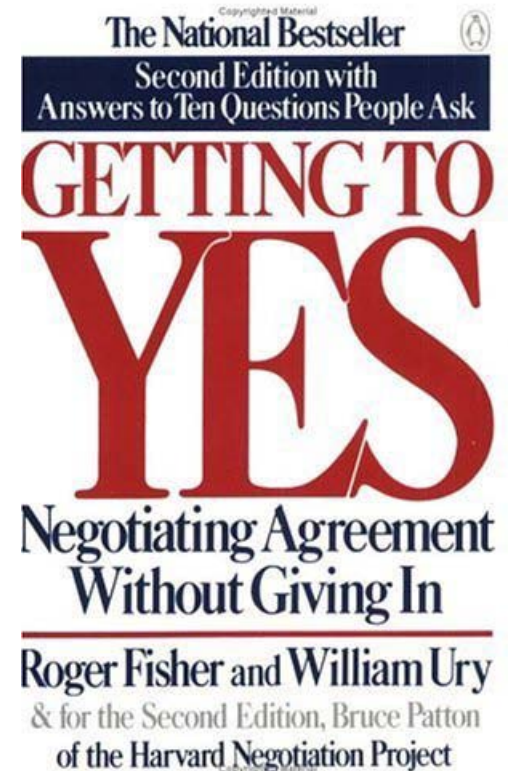
Preparation for Term Sheet

- Consensus on Guiding Principles
- Internal Financial Evaluation
 - Risk Adjusted Discounted Cash Flow Model (raDCF)
- Initial Due Diligence
 - Tech Ops (can you make it?)
 - Development Plan (can you get it approved?)
 - Commercial Plan (can you sell it?)
 - Intellectual Property & Regulatory (can you keep it exclusive?)
- The “BATNA”



Best Alternative To a Negotiated Agreement

- Simply put your BATNA is your next best option
- It is the point at which you would walk away given you have a better alternative than the likely outcome of the current negotiation
- One view is your BATNA is the measure of your “balance of power”
 - If the other party needs you in order to reach their objectives, your BATNA is strong & your negotiating position is strong
 - Ex: If you want to buy a new car and the same model is for sale at several car dealers, you have a strong BATNA because you can use their competition for your benefit



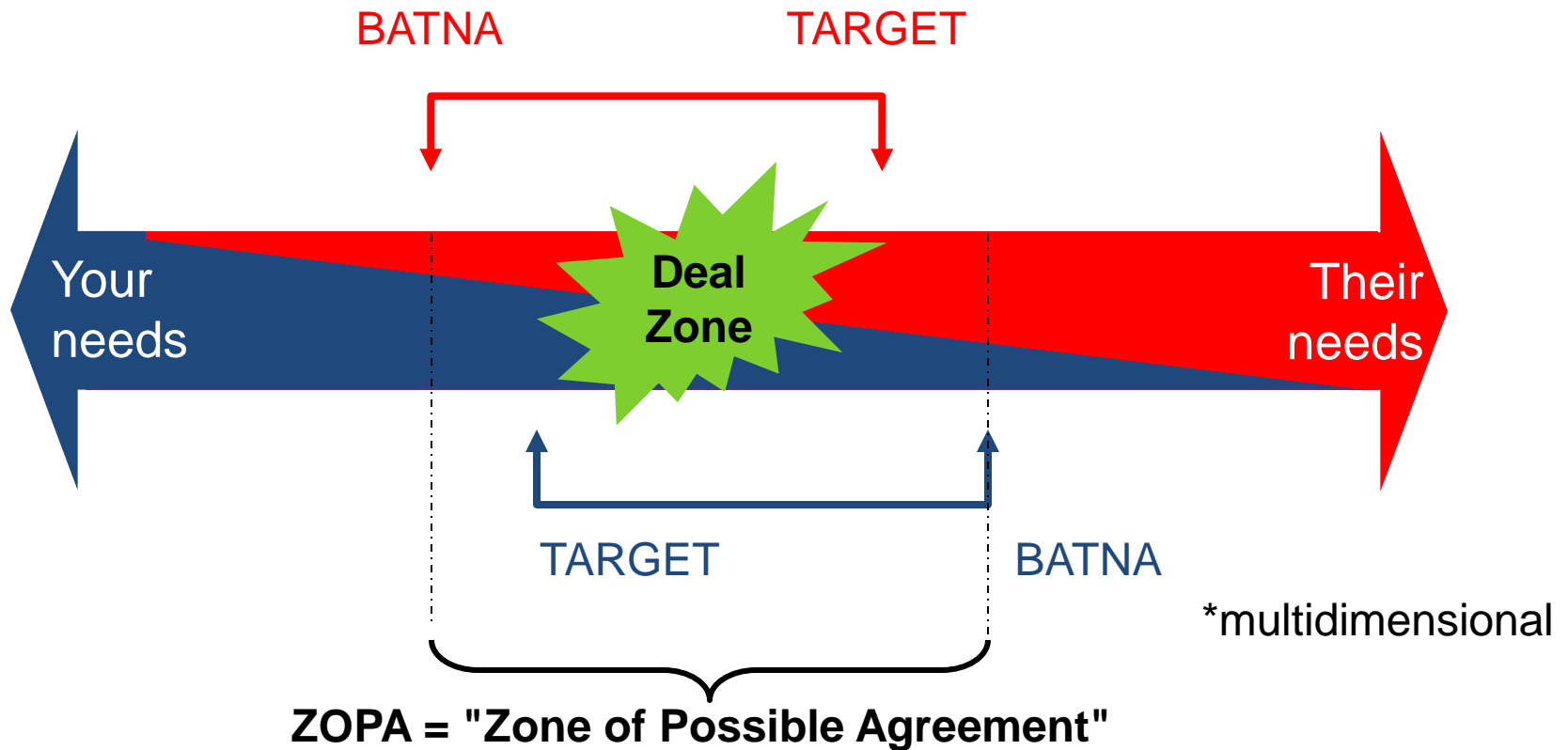


Best Alternative To a Negotiated Agreement

- BATNAs are dynamic – they can change during a negotiation
 - Start off with a 'walking-in' BATNA based on things you can influence or control before the negotiation begins
 - However, once negotiation starts, your BATNA may change as you derive information about the interests of other parties & as you compare the resources each party has available to fulfill an agreement
- Focusing on the BATNA, as a dynamic measure of negotiating strength and as a sign of when to quit, allows us to develop a disciplined approach to negotiations
- Understanding your BATNA is not enough; you'd be wise to investigate & estimate the BATNA of the other party as well!



The Deal Zone





Establishing a Term Sheet

- Work with functional management of your company to determine what you are really able & willing to perform – describe using accepted industry metrics
- Do your competitive analysis, market research and valuations
- Define what you really need – do not focus solely on economics
- Understand how your opposite will value your offer – if you don't know ask!



Term Sheet Basics

- Field
- Grant of rights
 - Make, have made, use, offer to sell or sell
 - License or Assignment of IP, Know-how & Materials
- Territory & Term
- Consideration
 - Funding
 - Milestones
 - Royalties
- Disclaimers



Term Sheet Disclaimer

“This letter is to facilitate discussion and is not intended to be legally binding. Any license arrangement is subject to negotiation and execution of appropriate legal documents by _____’s and _____’s authorized representatives.”



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Term Sheet – think strategic & long term!

- Remember most deals fail to realize downstream milestones and royalties payments due to early termination
- Strive to immunize your deal at the start against common partnership pitfalls
- Ameliorate your exposure from risks beyond your control



Ready to Send that Term Sheet? Are You Really? You Think.....

- You've carefully thought out all the angles
- You've done it a thousand times
- It comes naturally to you
- You know what you're doing - it's what you've been trained to do your whole life!
- Nothing could possibly go wrong right ?



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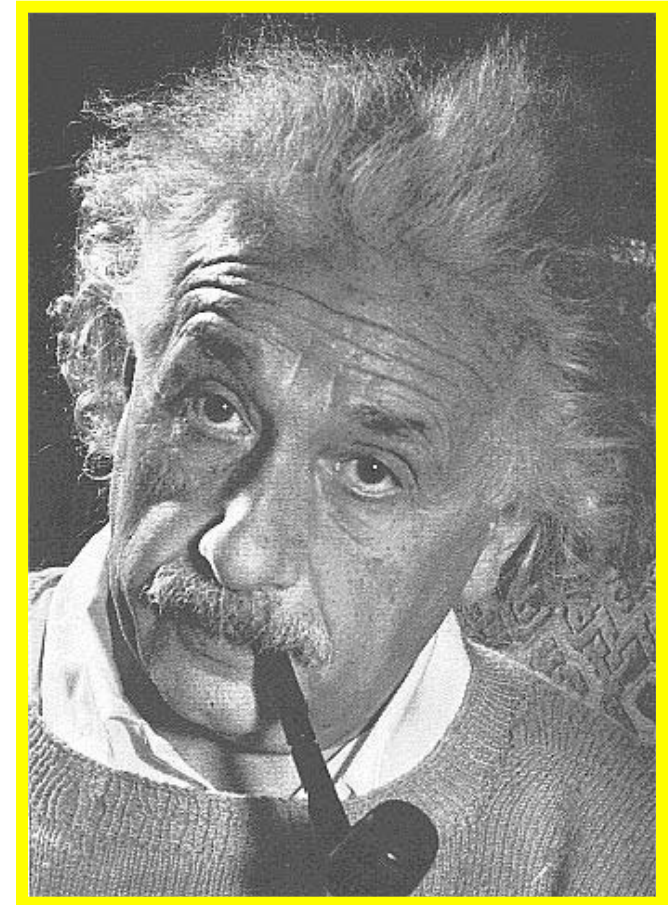
Think Again!!



Negotiating: Opening & Making Concessions

Should I go first with the Term Sheet?

- Going first is not a problem when you are familiar with the market.
- Going first is not a problem when you know that the other party values your relationship – but this is rare!
- By going first, you establish an anchor point for subsequent discussions – representing a good psychological advantage.
- Do not open with your BATNA – “take it OR leave it”. Most cultures expect you to make some concessions – helps preserve / improve the relationship.





Once the negotiation has begun...

- Proactively pursue responsive alignment
- Keep discussions grounded on operating principles
- Be creative; seek new options which satisfy both parties
- Explore resolving major issues by way of a mutually-beneficial compromise package
- Capture proposals in writing and stick to deadlines
- Stay on top of other party's approval process
- Be resourceful; nurture multiple paths to partnership
- Manage behaviors - not people...it's not personal!



Investigative Negotiation

1. Don't just discuss *what* your counterparts want – find out *why* they want it.
 2. Seek to understand and mitigate the other side's constraints.
 3. Interpret demands as opportunities.
 4. Create common ground with adversaries.
 5. Continue to investigate even after the deal appears lost.
- Effective negotiating requires not only selling your own products and services but also requires a strong focus on the other side's interests, priorities and constraints.



Investigative Negotiation: Getting Information from Distrustful Negotiators

- Share information and encourage reciprocity.
- Negotiate multiple issues simultaneously; identify them all up front and put everything on the table. Then go back and forth between the issues as offers and counteroffers are made.
 - Which issues keep coming up?
 - Which issues make them the most emotional?
 - Which issue causes counterpart to control conversation instead of listening?
 - When is the other side most obstinate when asked for a concession or compromise?
- Make multiple offers at the same time.



Responding to Threats at the Bargaining Table

- Examples of Classic Threats:
 - “If you try to back out, you’ll never work in this industry again.”
 - “Either you’ll give us what we want, or we’ll see you in court.”
 - “That’s our final offer. Take it or leave it.”
- Should you strike back with a counter threat?
 - NO! Counter threats raise emotional temperature of negotiation.
- Instead, call for a break – “You know, it’s been a long meeting... let’s re-group when we’re feeling fresh.”



Responding to Threats at the Bargaining Table

- Analyze threat – consider the following questions:
- Is he likely to follow through with the threat?
 - May be trying to save face with others.
 - Ignore threat all together.
- Did he say what I thought he said?
 - Try active listening, by paraphrasing back to counterpart. Tells the other party how his message came across and gives him the chance to clarify.
- What did I do to trigger the threat?
 - Are there legitimate complaints and concerns that underlie your counterpart's threats?
 - Voice these concerns and work towards a remedy.



“Tricky Tactics”

- **“Getting to Yes” divides tricky tactics into three categories:**
 - Deliberate deception
 - Psychological warfare
 - Positional pressure tactics
- **The basic method of response remains the same**
 - Separate the people from the problem
 - Focus on interests, not positions
 - Invent options for mutual gain
 - Insist on using objective criteria



Tactics and Counters: Personnel and Authority

- **END-RUN:** Suitor contacts someone more senior and/or other people in your organization, attempting to fragment your position.
 - Reinforce internal alignment around “one voice”.
- **STRAW MAN:** Your opposite negotiates to positions but then defers to another for approval and/or is over-ruled by his management.
 - Ensure your opposite is empowered, and respond only to written terms.
- **PERSONNEL CHANGE:** Your opposite is changed and the new person says they must start from the beginning. (A version of the Straw Man)
 - Call the old negotiator for understanding
 - Summarize status, emphasize cooperation and progress made to date
 - Ask of the new, “Can I rely on you, or will you be replaced as well?”



Tactics and Counters: Personnel and Authority

- **PERSONAL ATTACKS:** Rude behavior used to ruffle counterpart and undermine a negotiating team cohesiveness and fragment a party's position
 - If a one off, ignore it and move on
 - Address in private if and when it becomes serious
- **SILENCE:**
 - Return it... stay quiet
 - Ask what they are thinking
- **BIDDING AGAINST YOURSELF:** Opposite rejects proposal as “outrageous” and insists on new one without a counter.
 - Require guidance in writing. If you're desperate, you might comply once; but this tactic quickly erodes your bargaining strength.
 - Might be related to opposite's lack of authority (see Straw Man)



Tactics and Counters: Resolving Issues

- **DIVIDE AND CONQUER:** You're prepared to concede on an issue which was part of package proposal; but opposite pushes to set aside issue as "resolved" and move on to other issues.
 - Insist on package resolution or seek compensation elsewhere.
- **SALAMI:** Every time you resolve an issue, opposite brings up another one
 - Focus on a package deal, discussed all together, return to your map of the issues. Written term sheets often help.
- **ESCALATING DEMANDS:** Proactive, cooperative suitor becomes increasingly demanding and/or hostile.
 - Challenge opposite regarding intention and/or what this means for a prospective partnership. Draw line and be prepared to walk.



Tactics and Counters: Resolving Issues

- **INCOMPLETE/BIASED “FACTS”:** You’re a suitor having to bid on a “hot” new product with incomplete or possibly biased disclosures.
 - Link terms to full due diligence and/or validation studies.
- **NUMBER CONFUSION:** Party tries to confuse you with lots of numbers in a complicated matrix
 - Take your time, ask lots of questions, clarify
 - Pause to take the time to analyze and consult with your experts
- **STALKING HORSE:** You suspect suitor intends to reorient program to different objective, e.g., different compound with lower return.
 - Insist on compliance criteria, significant level of control, and/or retrieval rights if development progress is outside specified limits.



Tactics and Counters: Budgets and Deadlines

- **DEADLINE:** The deal must be signed by...
 - Ok, but why? Be reasonable, but seek to understand the reason behind the demand (sometimes there isn't one) before agreeing.
- **DELAY:** A deadline has been set and the other party delays to force the first party against their deadline (or to maintain access until a second, preferred transaction is completed.)
 - Maintain communication, keep pushing for commitments to agreed timeline, keep discussions open with other potential partners.
- **LIMITED BUDGET:** Opposite party says that the budget is not compatible with your terms
 - Ask questions: Whose budget? What is the budget? Which year?



Tactics and Counters: Budgets and Deadlines

- **SLOW-WALKING:** Chronically delayed responses.
 - Stress timing. Accelerate subsequent activities. Pursue other suitors.
- **BURIED ALIVE:** Your counter provides you with a deluge of new information post term sheet but insists on moving forward with closing.
 - Insist on compliance criteria, due diligence provisions, milestones and other risk sharing and/or rights retrieval features.
- **DIVERGENT VALUATIONS:** Parties disagree on asset value.
 - Identify where risk assessment differs & structure terms to protect the pessimist & reward the optimist. (Great place for tiered royalties!)
- **TIMELINE MANAGEMENT:** You're the asset owner and require a partner prior to next milestone (start of PIII, etc.)
 - Carry multiple suitors through capabilities presentation and term sheet negotiation. Schedule completion of exclusive contract talks with enough time so you can potentially go back to other parties.



Tactics and Counters: Miscellaneous

- **BAIT AND SWITCH:** Bait with one proposal to secure preferred negotiating position and then switch to another.
 - Return to original, question intentions and be prepared to walk away
- **BEAUTY CONTEST:** Opposite tells you that your competitors offer is better
 - Ask to see their offer (unlikely) or at least seek to understand key elements to compare if equivalent (and not just “cherry picking”).
- **WALK OUT:** Opposite walks out....not related to their BATNA
 - Clarify the issue. Is it a fatal flaw in your blind-spot?
 - Confirm internal position. Communicate flexibility, if any, and/or compromise while pursuing other options.



Negative Behaviors Require Decisive Action

- Was a delay a one-time hitch in communication, chronic slowness, or maneuvering for an advantage?
- Is the party serious about doing a deal? Does the pattern portend problems in a future partnership?
- An emerging pattern requires an escalating response
- Raise your concern of the apparent pattern with the other side, preferably with the lead negotiator(s) only - in private
- Resume negotiations with protection built into contract or “walk” depending on response and your options



What Do Negotiations Say About the Prospective Partnership?

- Cultural compatibility is critical to negotiating a partnership
 - “We’re getting married!”
- Negotiation “courtship” is not always pretty
- The Negotiation Paradox
 - Need to involve implementers in negotiation to establish compatibility and seamless implementation
 - But need to keep negotiation rhetoric from spilling into the implementation
- Negotiation behavior doesn’t predict potential success or failure of partnership; but beware!
- Individuals change; will the corporate cultures sustain effective social and legal contracts?



“Walking Away” - More Than a Tactic

- Remember the BATNA!
- Don't get “Deal Fever”
 - The objective of a negotiation is not to do a deal, but to satisfy needs.
 - If you want/need a deal in the “worst way”, that is exactly the type of deal you will get
- Be clear about which terms are absolute “must haves” or “deal-breakers”. Use “Guiding Principles” as a touch stone.
- If the negotiation fails, reflect on whether it was due to a weakness in the technology that need to be overcome or whether the parties objectives for the deal were unrealistic.
- Again, sometimes the best result is the deal not done!



On To Due Diligence...

- The basic function of due diligence is to assess the risks and benefits of a proposed transaction by assessing all relevant aspects of the past, present and predictable future of the opportunity
- Team will include (at a minimum) technical, financial and legal advisors
- Effort generally proportional to the size & scope of the deal
- Due diligence activities rarely hold up consummation of transaction and it is not advisable to treat them lightly



...But Still Negotiating Issues

- Consideration
- Other Non-Financial Considerations (Quids?)
- Scope of License (or other structure)
- Activities of the Parties
- Governance and Dispute Resolution
- Supply (Bulk / Formulation / Fill / Finish)
- IP Inventorship / Prosecution / Enforcement
- Registration Rights
- Representations & Warranties
- Term & Termination



Responsive Alignment: Manage your Organization's Expectations

- Maintain “one voice” for coherence
 - “Innocent” inquiries or end-runs can undermine position
 - Use caucuses freely to maintain internal alignment
- Pressure-test organization’s interests and priorities as negotiations proceed
 - Opposite’s counterproposal may create opportunity which changes your interests and/or shifts priorities
 - Compromise on particular issue isn’t always best
 - Differences in priorities may drive compromise
- Keep management informed to optimize flexibility and to manage organizational expectations
 - Reserve direct involvement of senior management for mediating critical breakdowns and, if necessary, resolving final issues



Press Release & Party

- Consider if you want to publicize your deal
- Consult Corporate Communications / Investor Relations well in advance as contract is being finalized – advise other party to do same
- Start feeding IR quotes and key messages on why this deal is important and/or unique
- Is the deal “Material”? If so to either party, and that party is public, they may be required to file with the SEC
- If possible, consider timing announcement of deal for optimal impact for financing and/or obtaining other partners
- Celebrate your success & don’t forget the “little people”!



Implement & Review

- Project Owners take over ... the baton pass.
- Beware “Post-Hawthorne Effect”
 - Hawthorne Effect “a short-term improvement caused by observing worker performance”, a term coined in 1955 by H.A. Landsberger
 - Post-Hawthorne then is the return to previous status...in this case, the status prior to the deal, so a killer of momentum in collaborations.
- BD to remain active to maintain relationship and participate in Agreement interpretations
- Process and Outcome Reviews
 - Process Review is qualitative and should occur soon after signing
 - Outcome Reviews is quantitative and should be conducted by non-BD personal (finance) at the time of first milestone or at least within a year or two of the deal



Our Pet Peeves

- Deceiving technical claims
- Outrageous (ridiculous & obscene) term sheets
- Nitpickiness – aggressive arguing over the inconsequential
- Negotiators that are clueless about science and drug discovery
- The End Run: Suitor opens discussions with your boss
- Demands to make good on sunk costs
- Practice used-car salesman hustling tactics
- Blind faith in deal comparables
- The “BURP”: Bring up issues that were already settled



Our Likes

- Active Listening
- Clear, consistent vision of goals
- Upfront regarding limitations and value perceptions
- Fair, trustworthy and professional
- Keeps promises
- Long-term vision
- Appreciation of counterparts organizational realities
- Discrete
- Sense of humor
- And gifts!



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Thank You!



On to the Case! *“A Fungus Among Us”*

- Two Companies:
 - Lithophyte Pharma => LP001 (Chemotherapeutic)
 - Rising Sun, K.K. => RS001 (Antibiotic)
- One source of supply ... a rare fungus
- Not enough to go around ??? What can we do?!?!



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“A Fungus Among Us” Lithophyte Pharma : LP001

_____ mg / treatment @ _____ GBM Treatments / year.

Need _____ grams of LP001 active / year, or at a _____ grams / kilo
raw extraction ratio, _____ Kilos of raw for 100% of annual need.

At \$____k net price / treatment & initial \$____k expense / treatment,
they had planed to clear ~\$_____ million EBITDA / year.

If margin falls to \$_____ / treatment (\$_____ in raw material)

Lithophyte’s BOD will kill the project (<\$_____ mil EBITDA).

BATNA? _____ (If cost per kilo of
raw increase to > \$_____/kilo, the project would be killed.)



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“A Fungus Among Us” Rising Sun, K.K. : RS001

_____ mg / dose @ _____ mil STD Treatments / year.

Need _____ grams of RS001 active / year, or at a _____ grams / kilo extraction ratio, _____ Kilos of raw for 100% of annual need.

At \$_____ net price / dose and initial \$_____ expense / dose they had planned to clear ~\$_____ million EBITDA/year.

If sales are limited by raw material supply to _____ doses (~ _____ kilos raw) Rising Sun’s Management likely to kill the project (<\$_____ mil EBITDA).

BATNA? _____



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*With special thanks to past presenters, Russ Barron & David Tiemeier,
who also have had a hand in shaping the content presented today.*



Further Reading

- **Negotiating Rationally**
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Further Reading

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