

NEGOTIATION STRATEGIES AND STYLES

IMPLEMENTATION OF AGREEMENTS



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Let's start this section with a case published in PON: Program On Negotiation of Harvard Law School

On April 12, 2012, the Department of Justice (DOJ) in the US sued Apple company and some other companies for collusion for trying to raise the price of electronic books (eBooks). Two of the publishers reached an agreement, Apple and two others resisted.



Two years later, in January 2010, the publishers had negotiated a business model for the price of eBooks that used the platform on Apple iPad, in exchange for a 30% commission on sales. This gave the publishers enormous advantages compared with the wholesale agreement that they had had with Amazon. When one of the publishers threatened to delay the sale of its digital books, Amazon begrudgingly substituted its flat tariff of \$9.99 for eBooks

with the Apple model. After that, prices increased on the average by \$14.99 in the whole sector.

The lawsuit executed by the Department of Justice clearly showed that, on occasions, negotiators tend to omit the effects of an agreement that looks ambitious in the beginning, without considering its impact on the interest groups and the violation of antitrust laws, including adverse legal and ethical implications.

This case shows the importance of considering the implementation of an agreement as an essential part of the negotiating process. Many agreements end in failure when they can't be implemented. But how is this possible? With the advances in professional practical and the wealth of information available in literature on negotiation, it is surprising that something so obvious is overlooked. In fact, it wasn't until Danny Ertel (2003) published his iconic work in the Harvard Business Review: Getting Past Yes: Negotiating as if Implementation Mattered, that the business community was alerted for the need to change their mentality of achieving agreements to that of implementation of agreements.

Paradoxically, companies like IBM and AT&T, among others, have continued to make this omission for the last twenty years.

Danny Ertel and Mark Gordon (2008) recommend passing from negotiation to implementation by avoiding the following errors:



- Forgetting that implementation is the final goal of the negotiation, beyond the deal.
- Not sharing the lessons learned during the negotiation process with those in charge of implementation.
- Failing to communicate to the implementers any verbal (non-written) agreements made during the negotiation.
- Transmitting ambiguous messages in different versions to the implementers with respect to “**What**” and “**Why**” in the agreements.
- Lack of awareness of the implementers of what is known as the “spirit of the deal,” those implicit assumptions in the understandings that led to the deal.
- Hurried negotiators who rush to make the next deal in the agenda, forgetting the implementers, who often don’t know where to start.

To avoid these situations, Hallam Movius and Lawrence Susskind (2009) suggest that the negotiators ask the following questions:



1. How can we achieve agreements with self-enforcing mechanisms, creating incentives for the parties to fulfill their commitments?
2. How can we monitor the performance and compliance of the agreement during the implementation stage?
3. How can we resolve the conflicts among the parties that are caused by misinterpretation of the information and who will cover the follow-up costs?
4. What are the deadlines or official goals to be confirmed, reconsidered, and elaborated during our agreements?
5. How can we create a culture oriented to implementation and give follow-up to the process of change?
6. How can we build trustworthy relationships and commitments among the negotiators and those responsible for the implementation of the deal?
7. What mechanisms for conflict resolution will we have for problems arising during the implementation and who will pay for these mechanisms?
8. What adverse scenarios can surprise us during implementation and how can we establish alerts for developing contingency plans?



When speaking of changing our mentality to accept agreements without regarding implementation, we need to **recognize the behaviors associated** with these paradigms in order to modify them. We should remember that for years the business environment has encouraged a culture oriented to making deals, undermining implementation. Business literature abounds in books on how to reach “yes” without going beyond the deal. **Bad practices** began to proliferate among negotiators, such as precipitous improvisation of agreements without adequate planning or agendas, and without options to clarify strategic issues and maintain key information for the implementers.

Furthermore, there was the practice of creating artificial deadlines, documenting procedures without considering their applicability, and limiting the participation of third parties who questioned such mechanisms. Another frequent practice was the absence of consideration for the interest groups and stakeholders that would eventually be affected by any deals made.

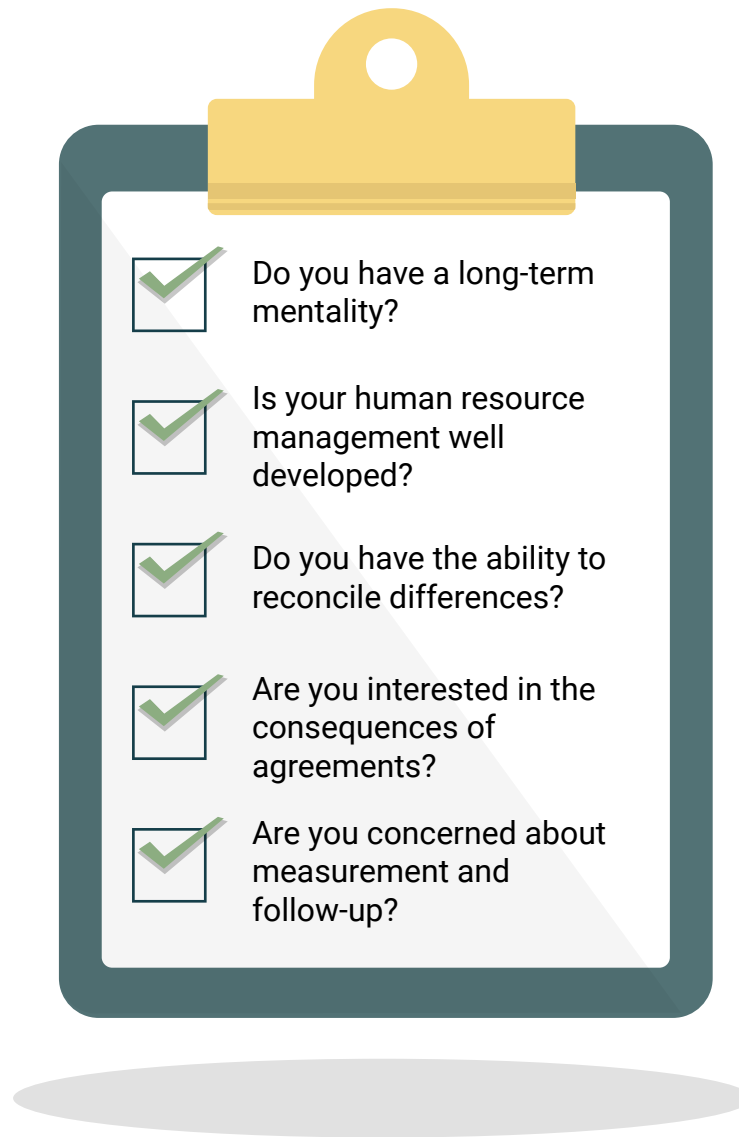


After Danny Ertel's (2004) contributions, best practices were established that have changed the orientation of negotiators into a mentality directed to implementation. Here are some of those recommendations:

- **Begin the negotiation with the result in mind.**
Think of the result of the agreement within, say, the next twelve months. Try to imagine how the implementation has developed and if something didn't occur as anticipated.
- **Create a collaborative culture**
Avoid surprises by asking the opinions of the implementers about the viability and practicality of the actions required by the agreements.
- **Develop alignment mechanisms**
The interests of the parties should be similar or complementary to the agreements that could be implemented.
- **Consider the negotiation as a process**
Combine a disciplined preparation stage with an evaluation of the results obtained in the implementation stage.

Today organizations such as HP Services and Blue Shield have managed to institutionalize an implementation culture that has given them credibility in highly competitive markets. Clients appreciate their special service because they fulfill their commitments to the very end, making the clients feel supported during the whole process.

Are you willing to be an negotiator that achieves implementations or do you prefer to stay in the past and be content with agreements that may never be done as you continue to lose credibility on the way?



If your answers were affirmative, **you're headed in the right direction!** Keep practicing!

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