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Beyond the Courtroom: A Negotiation Analysis of a Long-Term Distribution Contract Dispute in Brazil

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ABSTRACT:

This paper examines the use of negotiating strategies in a complex conflict between two businesses following the sudden cancellation of a 22-year commercial distribution contract. The parties engaged in a protracted dispute spanning fifteen years and finally reached a compromise. This paper emphasizes the importance of effective negotiating techniques in achieving a mutually beneficial outcome. It examines the case using features such as a Type II negotiation.The case demonstrates how a well-organized negotiating strategy can help parties avoid prolonged litigation, reduce lawsuit expenses, and reach a reasonable conclusion.

Keywords:

Termination Contract; Type II Negotiation; Commercial Distribution; Lawsuit; Brazil.

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1. INTRODUCTION

In this article, we present a descriptive single-case study, following Yin (2004), regarding a negotiation between two companies over a contractual dispute, which serves as the unit of analysis. The case presents an example of a long-standing distribution contract that culminated in a protracted legal battle in Baixada Santista, São Paulo state, southeastern

Brazil. The parties initiated a Type II negotiation (Dias, 2020), during which representatives from the two companies negotiated several issues. "Negotiation is an interpersonal decision-making process necessary whenever we cannot achieve our objectives single-handedly (Thompson, 2001, p.2). According to Dias (2019), negotiations comprise three dimensions: (a) people, (b) process, and (c) substance negotiated. In this case, *people* are represented by the representatives of the two companies; *the process* involved a fifteen-year lawsuit, and *the substance* of the case is the distribution contract.

The research domain has garnered scholarly attention over the past years (Dias, 2019; Fisher, Ury & Patton, 1981; Kissinger, 1969; Lax & Sebenius, 1986; Navarro & Dias, 2024; Pruitt, 1981; Raiffa, Richardson & Metcalfe, 2002; Rubin & Brown, 1975). In addition, Negotiation is studied under different perspectives, such ascommunication pathway (Acuff, 1993; Dias, 2016; Schatzki & Coffey, 1981;Salacuse, 2003, 2006; Shell, 2006); mediation (Zartman, 1988); including managerial decisions (Bazerman & Moore, 1994); business negotiations (Dias, 2023; Dias, Almeida, Silva, Russo et al., 2022; Dias, Lafraia, Schmitz et al., 2024; Dias, Leitão, Batista & Medeiros, 2022; Dias, Pereira, Teles & Lafraia, 2023; Dias, Pereira, Vieira et al., 2023; Dias, Pires et al., 2022; Dias, Toledo, Silva et al., 2022; Dias, Toledo, Silva, Santos et al., 2022; Santos & Dias, 2024; Valente & Dias, 2023). The aforementioned negotiation addresses a Type II negotiation, following Dias (2020), as depicted in Figure 1:

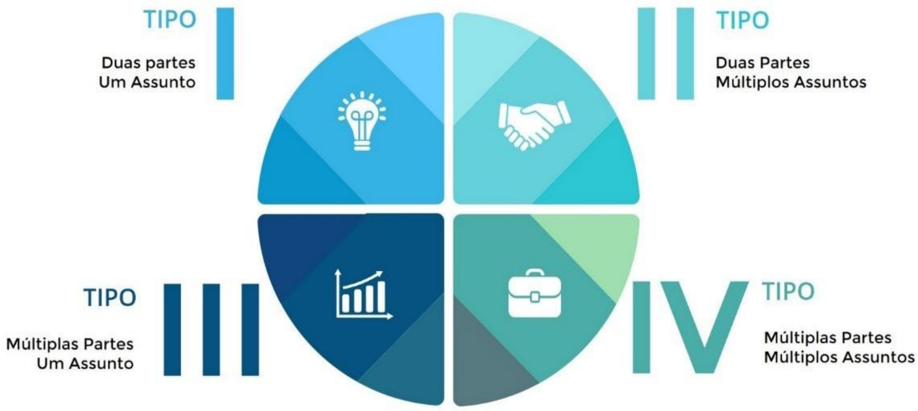

Figure 1: Four-Type Negotiation Matrix
Source: Dias (2020). Reprinted under permission

2. METHODOLOGY

We employed a qualitative case study method to help us navigate the complexity of the contractual conflict between the two organizations. We sought to capture the essence of the parties' interactions and identify key elements influencing the outcome by carefully reviewing the court records, agreements, and negotiating dynamics. This detailed study helped us to situate the conflict within the broader framework of negotiation theory and technique (Saunders et al., 2009; Yin, 2004).

Our approach was designed to capture the nuances of the negotiating process, including the strategic choices, interests, and demands of the participants. Examining the use of BATNA and ZOPA, following Fisher, Ury, and Patton (1981), in this real-world setting, we sought to demonstrate how successful negotiating strategies can help create mutually beneficial settlements, even in the most difficult and lengthy conflicts. Through this case study, we aim to expand our understanding of negotiating dynamics and offer solutions for complex corporate conflicts (Yin, 2004). Finally, for compliance and ethical reasons, we preserved the names and identities of companies and persons involved, respectively. Hereafter the companies are simply *Manufacturer* and *Distributor.*

3. BACKGROUND

The company Manufacturer maintained with the company Distributor an exclusive distribution contract for an indefinite period for the products of the company Distributor in Baixada Santista, São Paulo. Given the exclusivity, the company Manufacturer was even prohibited from selling other products that conflicted with those of Super Vermelho.However, in May 2002, the company Distributor. Sent a letter to the Manufacturer informing that it was granted 18 (eighteen) months, counted from January 2001, for adjustments to be made for future termination of the contract, with the effective termination in January 2003, with a duration of 22 years, since August 1981.

Given the contractual relationship between the parties that lasted for 22 (twenty-two) years and which obliged the Manufacturer to resell exclusively Distributor products, the abrupt termination of the contract - and without being granted a compatible period for its restructuring and amortization of its investments - caused enormous losses to the Manufacturer, not only of a material order, but also of a moral order, and practically led the Green and Yellow to close its activities.Thus, feeling aggrieved by the abrupt termination of the contract and without respecting the prior notice, the Manufacturer filed an action for compensation against the company Distributor, requesting the condemnation of the latter to the payment of loss of profits, material damages, including compensation for the loss of the customer portfolio, emerging damages, moral damages, and others.

The Manufacturer alleged in the lawsuit that distribution contracts are contracts of continuous purchase and sale in which the Manufacturer undertakes to sell its products to the Distributor with certain advantages, and the latter, in turn, undertakes to resell them to the consumer market in a determined zone or not, for a fixed or indefinite period.It so happens that, in order for the termination of a contract for an indefinite period, some requirements had to be met, among them, the prior notice, which aims to avoid the sudden rupture of the bond, harming the investments of the accused.Thus, the distributor, in order to terminate the contract signed with the manufacturer, should provide prior notice that is compatible with the nature of the business and its investments, taking into account that the contract signed between the parties has lasted for more than 20 (twenty) years. The entire history of the manufacturer was built exclusively based on this contract, not least because its revenue was practically concentrated on the sale of the distributor products.

4. CHALLENGES AND LAWSUIT

Thus, it could not be imagined that, after 22 years as the exclusive distributor, the latter, in May 2002, would inform the manufacturer that it would have 18 months to restructure. Moreover, there are more 18 (eighteen) retroactive months, that is, counted from January 2001 and not from the date of notification. Hence, the manufacturer claimed that attitudes such as that of the distributor – of terminating indefinite contracts with minimal notice periods – are illegal and generate the compensation.

The initial filing was received. The Distributor was summoned and filed a response and counterclaim, requesting the condemnation of the manufacturer for payment of specific invoices issued for a quantity of products. After reviewing the evidence in the records, including an accounting technical expert's assessment of the Distributor's losses, the Judge partially sentenced the case, granting the initial claims of the manufacturer and upholding the Distributor's counterclaim.

Therefore, after calculating the amounts due, it was concluded that the distributor remained a debtor to the manufacturer for R$ 1,996,036.48 ($332,672), updated as of November 2022, and the manufacturer owed the distributor the amount of R$ 250,000.00 ($45,000). Both parties were ordered to pay loss fees of 15% of the amount of the conviction.However, both parties filed successive appeals, resulting in the case being heard by the Federal Court of Justice (STJ) after more than 15 years of processing. Recently, we successfully closed an agreement between the parties, bringing the process to a conclusion.

5. NEGOTIATION PLANNING

The distributor could prolong the dispute in court, seeking to reduce the amounts to be paid to Green and Yellow, which would imply the risk of prolonging the litigation even further and increasing procedural costs. We followed Fisher, Ury Paton (1981) regarding two acronyms: Best Alternative to a Negotiated Agreement, or BATNA, and Zone of Possible Agreement (ZOPA), the application of technique, in particular, whereby formulating the three most important questions, identifying what the client wants, what the other party wants, and how to reach the goal, facilitates the zoning of ZOPA and BATNA, bringing clarity to the objectives and making it effective.Thus, the application of a technique based on knowledge of the ZOPA and having a BATNA allows the parties the freedom to negotiate, not tying them to the interests of the other party.When evaluating the concrete case from the application of negotiation techniques, the definition of alternatives and options were assessed in the signed agreement.

From the point of view of the BATNA, the manufacturer could maintain the execution of the indemnity award, being able to obtain a higher payment than agreed, considering all compensations, monetary adjustments, and calculations related to fees, but which would also imply a longer time to receive the amounts, in addition to the possibility of costs with loss and procedural uncertainties/obstacles.

Evaluating the agreement based on the application of the ZOPA, a zone of possible agreement, we can conclude that the manufacturer sought to receive an amount equivalent to or greater than the principal debt of R$1,996,036.48 ($332,672) recognized in the judgment as well as that the distributor would seek to reduce the amount as much as possible, without admitting responsibility for additional costs.

The parties agreed on an amount minimally above the monetary adjustment, which we can identify as the zone of potential agreement (ZOPA) of the agreement. However, it represented a point of balance between the parties, as the agreement provided an advantage for both parties.

In addition, as an alternative, the distributor could have opted for payment in installments, which would represent a significant relief to the company's cash flow. This issue would remain attractive to the distributor, as it also implies the certainty of receiving the amounts due.

Alternatively, as an alternative to the signed agreement, the parties could have included a clause to review the value under certain conditions, such as if the manufacturer's products suffered depreciation, the values could be increased, a situation that could help maintain the balance of the relationship.

Additionally, the distributor could assume responsibility for the final costs or any costs of appeals that could be arbitrated in the records, which would guarantee the manufacturer greater predictability in relation to future costs.

Another strategy that could have been adopted by the parties, based on the alternatives and options, would be to adopt alternatives to payments through a mutual compensation agreement, with the manufacturer being able to accept products or services from the distributor as partial payment.

6. CLOSING THE DEAL

Based on what has been learned in the subject, the application of negotiation and mediation techniques enables the effective and efficient formation of an agreement.The parties settled the dispute, where the distributor undertook to pay the total amount of R$ 2,400,000.00 ($400,000) to the manufacturer, including the payment by the distributor of the contractual fees that The manufacturer would pay to its lawyers, in payment within 45 days, counted from the judgment ratifying the agreement, and the amount indicated above R$ 2,400,000.00 ($400,000) already contemplated the amount that the manufacturer would have to pay to its lawyers as contractual fees, as well as the procedural expenses and the loss fees that both parties were sentenced to.

9. IMPLICATIONS AND DISCUSSION

The implications of this negotiation include the flexibility and creativity in the case involves a 22-year distribution contract between a manufacturer and a distributor in Brazil. The distributor terminated the contract with an 18-month notice period, counted from January 2001, which the manufacturer deemed insufficient and abrupt. The manufacturer filed a lawsuit claiming compensation for losses, and the case went on for 15 years. The parties settled the dispute, with the distributor agreeing to pay R$ 2,400,000.00 ($400,000) to the manufacturer, including payment of contractual fees and procedural expenses.

Beyond the contract, this issue has significant implications for companies that affect relationships, cost-ffectiveness, regulatory compliance, sustainability, reputation, and general success. Integrative negotiating strategies help participants to reach mutually advantageous agreements that support long-term relationships, increase trust, and propel economic development. Also, effective negotiations may also result in compliance, cost control, and risk reduction, therefore improving the bottom line of a business. Moreover, good negotiating also helps to improve team morale, internal cohesiveness, and a reputation for professionalism.Fair negotiating techniques can help companies negotiate complex contracts and conflicts, therefore producing win-win results that open doors for next prospects and expansion.

This article has implications and usefulness to negotiators, scholars, other practitioners and in some areas of research, including buyer-seller trading (Dias & Lopes, 2020; Dias & Lopes, 2021; Dias & Navarro, 2020; Dias & Silva, 2021; Dias, 2020a; Dias, 2020b; Dias, 2020c; Dias, 2021; Dias, Duzert & Lopes, 2021; Dias, Lopes & Duzert, 2020; Dias, Lopes & Teles, 2020; Dias, Lopes, Cavalcanti & Golfetto, 2020; Dias, Netto, Oliveira et al., 2021; Dias, Waltz & Oliveira, 2021; Dias, et al., 2021; Sartori et al., 2020), to name a few.

10. CONCLUSION

In conclusion, the negotiation between the manufacturer and Distributor demonstrates how the application of BATNA and ZOPA techniques, along with the formulation of alternatives and options, can result in an effective and satisfactory agreement for both parties. The agreed amount of R$ 2,400,000.00 ($400,000) was a point of balance, reflecting the combination of interests of both parties. However, other alternatives, such as payment in installments, the inclusion of review clauses, or even mutual compensation agreements, could have been considered to make the agreement even more advantageous and flexible. Therefore, it is evident that applying effective negotiation techniques and tactics in a well-structured manner is practical for achieving solutions that meet the interests of all parties involved, thereby avoiding the waste of financial resources, time, and emotional distress.

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