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Negotiations with Asymmetrical Distribution of Power
Conclusions from Dispute Resolution in Network Industries

With 7 Figures

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In a globalised world with an ever increasing division of labour, negotiations are becoming an enormously important and complex tool. As they take place everyday and everywhere, it is indeed necessary to know more about their complexity and their associated problems. This necessity is also proven by the growing number of studies related to negotiations and conflicts. With *Negotiations with Asymmetrical Distribution of Power - Conclusions from Dispute Resolution in Network Industries*, Klaus Winkler is providing a vital contribution to this important strand of the literature.

He offers an explanation of why negotiations successfully take in place in situations with asymmetrical access to power and thereby demonstrates that power is a relative rather than an absolute concept. Power differences may well be only perceived, as power is disappearing and reappearing during the process of negotiations. Different cost categories, different layers of negotiations and different strategies lead to the creation of very complicated and non-transparent situations. So, power may be rather the result than the basis of negotiations.

By showing this complexity in a straightforward political economic reasoning and by demonstrating its high policy relevance in a number of case studies taken from network industries, the author demonstrates that asymmetrical distribution of power in negotiations needs no longer to be seen as a problem – but rather as an opportunity. This opens a window of opportunity for negotiating, even in situations, which are perceived to be difficult to handle. This book makes it possible to grasp power in negotiations.

However, the book does not stop there. In the final chapter, Winkler shows that the topic is a political one. Obviously, it is very difficult to lay down rules that allow one to deal with all problems related to negotiation. In particular, network regulation suffers from the dynamics of the market. In other words, the regulator is always a few steps behind the latest developments in the markets. As a remedy, the author discusses a toolbox of support mechanisms which can enable one to run power-negotiations efficiently.

The book benefits from Winkler’s exceptional understanding of economic policy. Although it meets high scientific standards, it is also recommended reading for practitioners and government representatives as it
offers new insights into the theory of regulation – not only with a view of network markets. This study has been accepted as a doctoral thesis at the Friedrich Schiller-University Jena in February 2006.

Jena, May 2006

Andreas Freytag
Professor of Economics
### Contents

**Foreword** .................................................................................................................................................. V

1  **Asymmetrical distribution of power makes negotiations difficult** ... 1  
   1.1  Efficiency of negotiations in network markets ................................................. 2 
   1.2  Asymmetrical power a core issue of negotiations................................. 3 
   1.3  Grasping the complexity of power in negotiations ............................... 5 

2  **Theory of negotiations and power display common characteristics**  7  
   2.1  Negotiations in asymmetrical power markets ...................................... 7 
       2.1.1  The relation between trade, bargain, negotiation and conflict  
              situations....................................................................................... 8 
       2.1.2  From perceived, to resulting, to real power ................................. 10 
       2.1.3  Setup of a power concept in three dimensions ........................... 14 
   2.2  Power-Matrix structures key-characteristics of power....................... 16 
       2.2.1  Framework reveals the possibility of access to the different  
              levels of a negotiation........................................................................ 16 
       2.2.2  Cost forces actors to create options in negotiations .................... 35 
       2.2.3  Strategy makes transparency a favourable concept................... 51 
   2.3  Common characteristics define power in negotiations ...................... 63
3 Negotiations in network markets .......................................................... 65

3.1 Network characteristics in telecoms and rail ....................................... 66
  3.1.1 Telecommunication – a dynamic market .................................... 66
  3.1.2 Rail – a sedate market ............................................................. 70
  3.1.3 The need for negotiations in network markets ....................... 73

3.2 Power in network market negotiations............................................... 73
  3.2.1 Framework – the different levels of activity in negotiations ......... 74
  3.2.2 Cost – Profit from differences in size ........................................ 89
  3.2.3 Strategy – Coopetition bridges the power-gap ......................... 112

3.3 Relevance of the findings for negotiations........................................... 127

4 Alternative Dispute Resolution enables efficient negotiations...... 129

4.1 Alternatives to ‘classic’ negotiations ............................................... 129
  4.1.1 Is power a problem for negotiations in network markets? ...... 130
  4.1.2 Merging the Power-Matrix with guidelines on how to run
    negotiations – The Harvard Negotiation Project ..................... 133
  4.1.3 Alternative Dispute Resolution mechanisms support
    negotiations ............................................................................ 141

4.2 Three steps to running efficient power-negotiations....................... 157
  4.2.1 Step one: Implement the structural approach of the Harvard
    Negotiation Concept and the Power-Matrix to boost
    efficiency .................................................................................. 158
  4.2.2 Step two: Coordinate the instruments by creating a feedback
    mechanism ............................................................................. 162
  4.2.3 Step three: Initiate the use of the new tools ............................ 166

4.3 Enabling support processes ............................................................... 168

List of abbreviations ............................................................................... 173

References ............................................................................................. 175
1 Asymmetrical distribution of power makes negotiations difficult

"In slightly different terms, the economist's task is simply that of repeating in various ways the admonition, 'there exist mutual gains from trade', emphasizing the word 'mutual'..."

James M. Buchanan

People and companies have an urgent need to make a good deal. Coming to an agreement demands a negotiation of some sort. Chances are high that a negotiated agreement works to the advantage of all actors; otherwise they would not have agreed to make it. Still there are situations where a problem arises that makes it difficult to reach a common solution. In such situations the actors often feel worse off than before the deal, as they have invested time and resources for ‘nothing’.

In an economic analysis this waste of resources is called inefficiency. Efficiency as a scale in negotiations will therefore, firstly, be introduced in this chapter, to enable the later analysis of how negotiations could be handled better. Negotiations in markets where one actor heavily depends on another more often than not seem to lead to problems. It will thus, secondly, be asked if an asymmetrical distribution of power is a core issue of negotiations. It soon becomes evident that the everyday task of making a deal is more complex than would have first been expected. To allow one to grasp the complexity of power in negotiations in an economic analysis, thirdly, a structural approach is introduced. Altogether this can help to gain

---

1 Buchanan, 1962, p. 354.
2 From the various terms for participants in power relations Dahl, 1957, p. 203, chooses the term actor. Cross, 1969, p. 7, discusses more terms. I agree that power is a relation among people, not subjects. The term ‘actor’ describes this best, as actors are actively involved in a negotiation, trying to reach a goal, not playing games. For the thesis I have chosen the term actor as the one that best describes the participants in negotiations. When using the term ‘actors’ in combination with ‘both’ the number of actors is not necessarily exactly two. To make it easier to handle, the terms ‘actors’ and ‘both’ are here to be understood as a representation of several (most often two) actors negotiating. See Hauser, 2002, p. 16, for a similar discussion.
more insight into the complexity of negotiations in general, hence allowing
for more efficient future negotiations.

1.1 Efficiency of negotiations in network markets

Negotiations seem to make sense in general or, in other words, negotia-
tions are an efficient tool for actors. Do negotiations always take place or
work out to everyone’s advantage, though? By trying to avoid ‘difficult’
negotiation situations, many negotiations that are (potentially) valuable for
all actors involved are prevented from even starting. On the other hand,
‘difficult’ negotiations can take place and still lead to (good) results. But
why do negotiations go wrong? The three main issues that cause problems
and thus endanger the efficiency of negotiations will be analysed here.\(^3\)

Firstly, the environment in a negotiation situation, creating different lev-
els of access to the problem for the different actors, may forestall their at-
ttempts to focus on the relevant issues. The negotiation itself already con-
sists of many different details and the actors only have a limited processing
ability. Together this might prevent the actors from identifying and gaining
access to the necessary levels of a negotiation to unleash the opportunities
available to them. If then the institutional framework does not (actively)
support efficient negotiations, for example by providing the actors with the
possibility to rely on external third parties for a process support, it is likely
that negotiations fail or deliver inefficient results. This demonstrates the
relevance of the interaction between the different stakeholders\(^4\) for effi-
cient negotiations.

Secondly, the actors may not be willing to calculate what the advantages
of a negotiation for them are on the basis of a cost-benefit-analysis, or re-
garding the alternatives that they have. It seems as if actors often are not
interested in creating value in negotiations, but rather in defending existing
positions. Such a form of behaviour is not necessarily irrational, but one
where calculations of short-term effects prevail. This demonstrates the im-
portance of being able to create alternative options in negotiations.

\(^3\) Efficiency is here measured in terms of Pareto optimality and will be discussed
in more detail below. See Buchanan, 1966, p. 32.

\(^4\) The term ‘stakeholders’ is here used to refer to all the actors, i.e. individuals
and institutions, that have an interest of some sort in the negotiation situation;
most likely stakeholders are thus actively involved in the negotiation. In con-
trast to this definition the term ‘environment’ includes the stakeholders, but
also those that do not actively take part in a negotiation situation.
Thirdly, actors often try to make use of instruments that are available to them. They do so in order to exhibit resistance but without knowing exactly what effect such behaviour will have. Instead of creating a common transparency, decisions are made on the basis of non-transparent individual parameters affecting all actors. This highlights the importance of transparency to allow for individual best choices in negotiations.

Since negotiations are as individual as the actors and the situations in which they find themselves, a focus on the difficulties of negotiations in a special market is appropriate. On the one hand both the telecommunications and the rail transport industries have many common economic properties as they are both network markets. With regard to the negotiation style, however, these two industries are in a different stage of development, which has to do with the liberalisation of these markets. This makes it possible to highlight the different problems of a negotiation in the different time phases. The main question posed here is whether or not negotiations in a network market industry are possible, and if they are, how they can be run in an efficient manner. Such a focused approach allows one to make use of these results and draw conclusions for other markets as well.

1.2 Asymmetrical power a core issue of negotiations

An asymmetrical power distribution in a negotiation is not atypical, whereas perfect symmetry is rather uncommon. If power were evenly distributed between the actors, there would be no need to discuss power concepts: it would be a zero-sum weight in negotiations – existent maybe, but of no relevance. An asymmetrical distribution of power adds weight to the status of one actor, which can affect the course of the negotiations between the actors. When power is distributed in an asymmetrical manner to his disadvantage, the actor will certainly ask himself if he even has a chance of negotiating a good result. The fact is that David was able to slay Goliath at the right moment. David was not afraid of Goliath’s overwhelming power but instead used this asymmetry to his advantage. This points to the fact that asymmetry is not a stable state, and it is this fact which makes it necessary to analyse power asymmetries with regard to their sources and dynamics. The question is how actors negotiate under the influence of power and which constraints power imposes upon the negotiators. To answer these questions, power and negotiations will here be looked at as a problem of economic theory. This also sets the structure of the study and provides a link to the key terms of power in negotiations.
Who the actors at the negotiating table are is obvious, but even those not at the table influence the negotiation. To better understand how the stakeholders stand in relation to each other the setting, i.e. the (institutional) framework, of the negotiation will be analysed. It could be that only those that own certain property rights are in a position to negotiate. To sum it up: the actors are part of a larger environment based on institutional rights causing an asymmetrical distribution of power between the actors and necessitating negotiation if change is sought. (Key term: framework)

An actor negotiates because he wants to be better off. In network markets this is mostly about gaining access to so-called essential facilities. The actor is sure that he can improve his situation, otherwise he would not enter into negotiations. The actors create their own negotiation situation by making the decision as to when to start and how to participate in a negotiation. This decision is based on the relative position of the actors to each other in an effort to achieve their goals with the least possible cost. In some situations, though, actors might not be able to participate in a negotiation, even if they would like to, as a minimum prerequisite amount of power is missing. To sum it up: the actors are interested in exchanging products, services or rights in order to improve their post-negotiation position relative to their position before. (Key term: cost)

The balance of power between the actors only describes the status of short term situations. Actors will review their strategies and the option to cooperate or not before and during each round of negotiations, as the power distribution between the actors changes over time. To negotiate, the actors will use power to improve their relative position. Because of the strategies used, the power distribution is not stable, but changes constantly. The individual decision of the actors on how to negotiate is most likely based on experiences of the past which are not necessarily the appropriate scale for forthcoming rounds. To sum it up: the actors plan their actions with or against the others based on the power accessible to them to influence the result of the trade. (Key term: strategy)

The available literature on negotiations describes power as one of the things which very often makes negotiations ‘difficult’. It is likely that the existence of power sources creates dynamics and asymmetries which are then a cause of problems or at least a challenge in negotiations. Altogether this makes the asymmetrical distribution of power a core issue of negotiations.

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5 See Pen, 1952, p. 24, for a discussion that negotiations are only about the price.
1.3 Grasping the complexity of power in negotiations

The theory developed in this study aims to explain the results of negotiations in markets with an asymmetrical distribution of power. Even though there are, obviously, many reasons why negotiations can go wrong, there are still many possibilities for efficient negotiations that leave the actors involved better off than they were before. The main questions asked here are targeted at finding out if efficient negotiations are possible, even where power seems to be unevenly distributed between the actors. The study uses specific examples to demonstrate the theory developed here, but it will not only look at specific national trends. National differences in the way that negotiations take place have diminished over the years. The overall international experience will be used as a benchmark for further discussion.

Following this introductory chapter, in chapter 2, (asymmetrical) power is analysed in a positive manner by combining different theories with an analysis of its impact on negotiations. Hypotheses are set up and then tested with the help of case studies in the following chapter. Like an umbrella, power covers the main problems of negotiations, here summarised with the key terms ‘framework’, ‘cost’ and ‘strategy’. To be able to grasp the sources and dynamics of power in negotiations these three key terms are structured in three dimensions in a so-called ‘Power-Matrix’.

In chapter 3 the theory will be applied to case studies from network markets. As these markets demonstrate unique characteristics, an overview of the telecommunications and the rail transport industries will firstly be given. Network markets operate within a framework of governmental regulation. This framework has a significant impact on the way that negotiations are handled by the companies. Firms that operate within network markets use and depend on essential basic infrastructures (e.g. a railroad line between two points) which are, by their very nature, scarce and unique. Scarce and unique basic infrastructures can easily provide their owners with a cost structure that may not be available to other players in the industry. Basic infrastructure can easily become a significant cost burden for newer players in a network market. As access to basic infrastructure creates special inter-dependencies between the actors, the actors might make use of strategy to try to improve their relative and absolute position in the game of negotiation.

Chapter 4 outlines and discusses steps that can be taken to make negotiations more efficient. The so-called Harvard Negotiation Project, which

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7 See Fant, 1995, p. 177; Huntington, 1996, notes that the differences have diminished only within certain civilizations, i.e. in the so-called western civilization.
is a ‘principled negotiations’ approach, will be presented as a basis for an alternative dispute resolution mechanism that can help to counter the known problems of negotiations in markets with an asymmetrical power distribution. Merging the Power-Matrix and the Harvard Negotiation Project could provide a guideline for efficient negotiations. In the normative part of the study there will thus be a discussion, by way of conclusion, of how the results from the case studies, together with the theory developed here, can help to set up a general process support for other cases and markets. If the alternative negotiation approaches were to be used, would power (still) be a problem for negotiations? Finally, there will be a discussion of how such alternative mechanisms can be implemented, coordinated and initiated within the existing framework.

Figure 1 highlights the power-structure which is also the red thread of this study.

<table>
<thead>
<tr>
<th>Framework dimension</th>
<th>Cost dimension</th>
<th>Strategy dimension</th>
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</thead>
<tbody>
<tr>
<td>Chapter 2: Source and dynamics of power</td>
<td>Section 2.2.1</td>
<td>Section 2.2.2</td>
</tr>
<tr>
<td>Chapter 3: Network market case studies</td>
<td>Section 3.2.1</td>
<td>Section 3.2.2</td>
</tr>
<tr>
<td>Chapter 4: Alternatives to ‘classic’ negotiations</td>
<td>Section 4.1.2</td>
<td>Section 4.1.2</td>
</tr>
</tbody>
</table>

**Figure 1:** Overview of the power-structure of the study
2 Theory of negotiations and power display
common characteristics

What is the relationship of power and negotiations? How can power be grasped in a concept in order to support the analysis of its effects in negotiations? The goal of chapter 2 of the study is to find a workable definition of power and negotiations.

To achieve this goal, firstly an overview of the terms and definitions will be given to provide the ground-work for the theoretical structure of the study. Power is derived from more or less static sources, but the state of power in negotiations is transient and the environment of negotiations is dynamic. To capture both the sources and the dynamics, secondly, a new concept of power is developed and established as the structural element of the study. The so-called Power-Matrix is an arrangement of the different theoretical approaches designed to act as a support for the case studies in chapter 3 and the normative discussion in chapter 4. Thirdly, the common characteristics of negotiations where power seems to play an important role are discussed to conclude with a new power definition for this study.

2.1 Negotiations in asymmetrical power markets

Negotiations in markets where power is distributed in an asymmetrical way might pose special problems for the actors and for the institutions such as regulators that oversee these markets. In this sense asymmetry could be a reason why negotiations fail and are seen as a hurdle to cooperation.¹ The underlying question is “how can weaker actors negotiate with stronger actors and still get something?”²

In this section, firstly, the connection between the different terms that describe (difficult) negotiations will be presented in order to facilitate an understanding of negotiations in network markets. Secondly, various approaches to different power concepts in negotiations will be discussed in

¹ See Breidenbach, 1995, p. 83.
² Zartman/ Rubin, 2000, p. 3.