

TOPIC 7

Evaluation of Negotiation

7.0 Introduction

This chapter introduces students to evaluation of negotiation in performance in order to ascertain whether success has been achieved or not. It is vital to whether success has been achieved or not in order to plan for improvement or change strategies and tactics.

7.1 Learning Objectives / Outcomes

At the end of this chapter students will be able to:

1. Evaluate the importance of negotiation performance evaluation
2. Analyse the criteria used to evaluate negotiation performance
3. Identify the challenges faced in negotiation performance evaluation
4. Design relevant and applicable solutions to the challenges faced during evaluation

7.2 Why Evaluate Negotiation Performance?

It is very important that after a major negotiation, the team hold a session in order to evaluate their performance during the negotiation.

- ❖ To determine the extent to which the negotiation was successful or not.
- ❖ To determine the extent to which the targets set for the negotiation were achieved or not, and the easiest way to do this is a comparison against the original MILS (Must, Intent, Likes to achieve) set at the planning stage of the negotiation.
- ❖ It acts as an opportunity for learning and improvement in future negotiations.
- ❖ To identify what was done well and what was done badly so that good practice can be reinforced and mistakes learned from and not repeated. Note that this is an opportunity for learning, not for blaming; the discussion should be open and not specifically critical of individuals, by referring to the team at all times as 'we'. Negotiations can be evaluated in the same way like any other organisational activity / process.
- ❖ Immediate evaluation provides rapid feedback to individuals for performance improvements and corrective actions can be made before problems arise between parties.

- ❖ Evaluation is important for identifying where skills development is needed, what aspects of performance should be repeated.
- ❖ To ascertain how future negotiations should be evaluated. Improvement arising from evaluation should be a continuous process and not a one – off. Lessons from evaluation can be incorporated in future performance in two key ways: learning before doing (training and development) and learning by doing (outcome evaluation).
- ❖ It helps determine what negotiation tactics and strategies are effective and which ones are not
- ❖ It's a session for coming up with new ideas and knowledge for future negotiation.

Evaluation considers the effectiveness of the outcome and the efficiency with which it is achieved.

Evaluation and review of negotiation should focus on:

- ❖ Process, rather than individuals
- ❖ Facts, rather than opinion
- ❖ Alternative scenarios, like “what would have happened if...?”
- ❖ Problem – solving techniques rather than premature conclusions
- ❖ Evaluating cause and effect

Activity

Explain the importance of evaluating negotiation performance

7.3 Aspects to Be Evaluated / Evaluation Criteria

What aspects should be considered during performance evaluation in negotiation? What criteria should be used to evaluate a negotiation?

When evaluating a negotiation, focus can be placed on

- ❖ Outcome achievement – did we achieve what we wanted to achieve? If not, why? If yes, how can we become better at achieving what we want in future?
- ❖ Process appropriateness – did we use the right process during the negotiation? If not, why? If yes, how can the process be improved to ensure future success?
- ❖ Personal and team communication performance – how did we perform in communication as individuals and as a team? What hindered the communication between team members and negotiating parties? How could the hindrances have been overcome?

An evaluation criterion includes:

- ❖ Goals – what were our goals? Were they achieved? What are the reasons for the outcomes in relation to the goals?
- ❖ Financial – what is the cost variance? What is the variation between the final deal and the budgeted / targeted deal?
- ❖ Human resources – did people play the roles they were assigned? Why not? If yes, how can they be motivated to perform even better? Did they possess the appropriate skills and possess the needed knowledge? How could the skills and knowledge have been improved? What hindered the use of the skills and knowledge?
- ❖ Planning - was planning well undertaken? Was enough time dedicated to planning? Did we forecast during our planning session? Did we use appropriate planning techniques?
- ❖ Control – how much control did we have during the negotiation? How much control did the team leader have? How can control levels be improved? How can we ensure that evaluation will provide a basis for improvement?

Activity

Suggest and other criteria that you think should be considered when evaluating a negotiation

The other approach towards evaluating negotiation performance is reviewing outcomes against each negotiation phase. Questions that may be asked include but are not limited to the ones listed below:

(a) Implementing the Deal Phase

- ❖ Did the objectives for the negotiation remain realistic at the point of implementation?
- ❖ Were any important issues impacting on implementation left unresolved? How could they have been better dealt with?
- ❖ Have market dynamics influenced the implementation phase?

(b) Preparation Phase

- ❖ Did analysis of the market context mean that all appropriate variables were identified?
- ❖ How accurate were financial evaluations?
- ❖ Were ranges for all variables established realistic?
- ❖ Did team members contribute appropriately to preparation?
- ❖ Was the strategy selected appropriate to the negotiation situation?

(c) Relationship Building Phase

- ❖ Did we have sufficient knowledge of the other party involved before commencing the negotiation?
- ❖ Was there an appropriate rapport (understanding / connection) between us that we could build on in the negotiation?
- ❖ Was trust established between the individuals before negotiations started?

(d) Information Gathering Phase

- ❖ Did we ask enough questions?
- ❖ Were the questions relevant?
- ❖ Did we understand the answers given to the questions that were asked?
- ❖ Did team members participate? Was the team effective in gathering information?

(e) Information Using Phase

- ❖ Did we explore all variables?
- ❖ Did we focus on common interests?
- ❖ Were we creative in identifying solutions to problems?

(f) Bidding Phase

- ❖ What messages were sent by the compromises we made – and were they received as they were intended to be?
- ❖ Were proposals appropriate and accepted by the other party?
- ❖ What impact did our tactics have on the other party?
- ❖ Were our persuasive techniques appropriate?
- ❖ Were we flexible and yet firm at the same time?
- ❖ Did we use power appropriately?
- ❖ Did we trade variables effectively?

(g) Closing the Deal Phase

- ❖ Did we summarise effectively?
- ❖ Did we capture the points made so that a follow – up agreement was easy to write?
- ❖ Could visuals have improved the closing phase, for example, use of a flip chart, white board or PowerPoint presentation?

Other questions that can be asked during evaluation are:

- ❖ How good was our preparation?
- ❖ Were our entry and exit points realistic?
- ❖ Did we follow and achieve our goals?
- ❖ Did we maintain relationships?
- ❖ Did we close correctly and at the time?
- ❖ all parties happy with the deal?
- ❖ Did the team perform well-if not what did we do wrong?
- ❖ How did we perform in the face-to-face sense, did we handle the situation well?

FAILURE IN NEGOTIATION

When faced with a negotiation outcome that is considered a failure, the review could examine the following aspects in more detail:

- ❖ Were the goals we set realistic and achievable?
- ❖ Were we able to identify the variables that the other side would use in the negotiation?
- ❖ Was there sufficient overlap of the parties' variables to enable agreement to be reached?
- ❖ What variables were prioritised on both sides?
- ❖ Did we understand the underlying interests and motivation for the position of the other party?
- ❖ Were we able to convince the other party of our argument?
- ❖ Did we understand their needs? Did they understand ours?
- ❖ Could we answer all their questions?
- ❖ Did we understand their proposals?

And in case of a break down in relationships, the following aspects could be considered:

- ❖ How could the deadlock have been prevented?
- ❖ How could we have dealt more effectively with difficult behaviour?
- ❖ How could we overcome their fixed position?
- ❖ How could we have behaved different to avoid a breakdown in relationships?

Challenges faced in negotiation performance evaluation

- ❖ The participants may become defensive and refuse to accept faults in negotiation
- ❖ Pointing fingers at each other and refusing to accept blame as a whole
- ❖ It's a costly and time-consuming event

- ❖ It requires expert knowledge which may not be available
- ❖ Lack of enough data and information on the negotiation if proper records were not taken
- ❖ Performance evaluation may fail to make sense to some members and hence fail to participate in it
- ❖ Biasness by evaluators towards participants
- ❖ Failure to provide evaluation feedback to participants which renders the evaluation useless
- ❖ Failure to implement corrective action after performance evaluation
- ❖ Failure determines a right evaluation criteria or approach
- ❖ etc

Solutions to the challenges faced during evaluation

- ❖ taking proper records during negotiation sessions
- ❖ only using experts to evaluate to prevent biasness
- ❖ Sensitization of members about negotiation performance evaluation so that they can see its importance and accept it.
- ❖ Provide feedback to participants immediately after the evaluation so that they learn from their mistakes.
- ❖ Effective implementations of the ways forward from evaluations to improve performance
- ❖ Encouraging negotiators to work as a team so that they carry blame together
- ❖ Budgeting for negotiation performance evaluation to avoid budget constraints
- ❖ Use the negotiation objectives to determine a negotiation approach that is appropriate
- ❖ etc

Activity

Highlight any causes of breakdown in relationships during negotiations

Note: evaluating a negotiation process will entirely depend on how the objectives that were to be achieved at the different stages negotiating and the feedback will determine the plans that will be drawn for improvement in the areas identified.

5.4 Questions

1. Performance evaluation has never been easy because of the challenges faced. Identify and describe the challenges that may be faced during negotiation performance evaluation. Give suggestions on how these challenges can be overcome or their effect minimised.

2. You have been part of team that was negotiating a deal on behalf of your company. The negotiation has been evaluated and important information for improvement and future negotiations generated.

Required

(a) Develop a plan on how you will incorporate the generated information in future negotiations.

(b) Describe the methods you will use to pass on the evaluation feedback to your team member

Explain why you have chosen these methods.

3. How does the preparation stage influence the achievement of negotiation objectives?

4. Explain what aspects of a negotiation should be evaluated on completion and why

CASE BASED EXAMPLES

Example 1 — Price negotiation between Amazon and Whole Foods

Actual case:

The case study is based on a real-life price negotiation between Amazon.com and Whole Foods Market.

Whole Foods Market has been declining in performance in the market for the last two years. Due to this, the activist hedge fund that owns almost 9% of the common stock is pressuring the former.

The activist hedge fund is eyeing the reform of the management style of the executive officers as it asserted that they are the ones responsible for the poor results achieved by Whole Foods Market. In other words, the CEO of Whole Foods Market needs help to retain his position.

In light of the pressure that comes from the activist hedge fund, four different equity firms sent separate inquiries to Whole Foods Market. One of the equity firms offered a share cash price of \$36.00. This is in line with the historical share price of Whole Foods Market. Private investment in public equity (PIPE) is a shortcut for companies that are in need.

However, pursuing this will put Whole Foods Market at numerous disadvantages. The result of the buy-out might make shareholders quickly sell their stocks. If a large number of stocks are sold at a lower price, the private equity firm may pressure the company. Additionally, it may claim ownership of the company.

A few days ago, Amazon's CEO reached out to Whole Foods Market. It was expected as many news outlets reported that Amazon is interested in acquiring the latter for opportunities in the retail sector.

The reason why Whole Foods Market is a good candidate for Amazon to acquire is its attractive value and strategic deal. Amazon expects that it can guarantee a substantial premium. The first signal of commitment by Amazon is the face-to-face meeting with Whole Foods Market's CEO. Moreover, Amazon just launched a new service called Amazon Fresh that fits perfectly with what Whole Foods Market has developed which is the local-based fresh-goods delivery system.

Before the prospect of acquiring Whole Foods Market, Amazon has another candidate which is Sylvia's Market. The strategy of this company is focused on becoming the best supermarket that a middle-class family can trust. However, looking at the collaborative opportunity of the two parties, you will start to have some doubts. This is because Sylvia's Market's mission is too far away from the core value of Amazon which is innovation.

That is why the most attractive option is to choose Whole Foods Market rather than Sylvia's Market because the synergies between Amazon and Whole Foods Market are the best option.

One core aspect of Amazon is high-velocity decision-making. However, this strategy does not line up with Whole Foods Market. That is why Whole Foods Market suggested the decisional strategy of disagreeing and committing.

Most negotiators face challenges within themselves thinking about what to offer, what is the reasonable agreement to accept, and the real interest in the negotiation. For this, you would need high-velocity decision-making because time is important in negotiations and the time you will need to decide is crucial.

Whole Foods Market needs to know that Amazon is not used to long bidding wars. It needs to be interested in Amazon's proposal exclusively or else Amazon will find another company for opportunities in the retail sector.

In the negotiation, Amazon has the upper hand as it can inflict damage on Whole Foods Market by not pursuing the negotiation. The threats looming the Whole Foods Market will cease if it collaborates with Amazon.

Additionally, Amazon demands secrecy. Any leakage will force Amazon to terminate the negotiation. In bidding situations, secrecy is important. Any leak of confidentiality will have disastrous outcomes

regarding the agreements. A non-disclosure will allow Amazon to have steadiness, speed, and information symmetries in the negotiation.

Final Deal:

The limits of the offering price for each party are laid out in the agreement which makes them able to compute their reservation price (RP).

When Amazon first bid, it evaluated the historical value per share of Whole Foods Market which is about \$35.00 per share. At first glance, the \$42.00 per share bidding price of Amazon seems too high. However, the calculations of Amazon were totally inclined toward the prospect of growth of Whole Foods Market in the case of an acquisition.

The Whole Foods Market's attempt to counter-offering the bid with \$45.00 per share was just to hold onto the financial resources of Amazon. However, we must take note that Whole Foods Market does not expect Amazon to be willing to bid at a higher price. Simultaneously, Amazon expects Whole Foods Market to accept its high offer. The expectations of both parties have coincided with one another which makes the negotiation reasonable and advantageous for both parties.

Additionally, a profitable outcome depends on how negotiators deal with and discuss during the negotiation process. Being an active listener and discussing issues is pivotal in the negotiation to be successful.

Finally, after rigorous research and consideration between one another, Whole Foods Market approved the deal with Amazon which acquired the former for \$42.00 per share which amounts to \$13.7 billion including its debt.

What can we learn from it?

We learn from this case study that both parties must make an effort to retrieve data from both sides to quantify and evaluate the outcome of every possible solution.

Another is that a good negotiator can anchor the positioning battle around the other party's reservation price. It is important to consider the other party's perspective to take action in their situation rather than our own.

This will help negotiators to obtain information and interest with the other party while also building trust and a fruitful negotiation process management.

Lastly, we can learn from their negotiation that a final outcome can be reached once both parties meet on the same ground or terms. Both sides must be convinced that there is no use in retreating when the outcome will be good and that the negotiation is about to end.

Featured Download: Want to get better at negotiation skills? Click [here](#) to accelerate your career: Negotiation Preparation Toolkit template to help you prepare for your upcoming negotiation.

Example 2 – “Vaccine Nationalism”: A lose-lose negotiation strategy

Actual case:

The onslaught of the pandemic has made national governments across the world face the challenge of securing enough safe doses of COVID-19 vaccines when it becomes available.

A coordinated global plan is sought to promote fairness and efficiency. However, it may be a little too late, especially for least-developed countries.

This case study highlights the best and worst practices when negotiating limited resources.

In the early days of the COVID-19 pandemic, many drug manufacturers around the world focused on developing vaccines that can provide immunity to the virus without any harmful side effects.

The governments of developed countries began negotiating with drug manufacturers to ensure that their citizens would get the vaccine first. The competition was on with developed countries while poorer countries were left on the sidelines.

Many nations bought more than what they needed because they knew that only a few vaccines would likely be safe and effective; Vaccine hoarding has now begun.

As wealthy nations begin to outsmart each other through negotiation because of their limited resources, poor countries are left to wonder how they can protect their citizens.

The World Health Organization (WHO) came up with a plan that aims to ensure that the vulnerable populations in the world will have access to the COVID-19 vaccine.

On August 24, 2020, WHO announced that 172 nations that comprise over 70% of the world's population had made commitments to participate in the COVID-19 Vaccines Global Access (COVAX) facility.

COVAX is a global initiative to secure two billion doses of safe and effective COVID-19 vaccines from companies such as Pfizer, AstraZeneca, Moderna, etc. for vulnerable populations worldwide.

At first glance, COVAX seems to be a charitable enterprise founded by wealthy nations. However, this is not the case. Wealthy nations see this opportunity as a win-win situation for them.

Wealthy nations will be guaranteed access to the world's largest portfolio of vaccines. Additionally, they will negotiate as part of the 172 nations which will bring the price of the vaccines down.

A week after the announcement of COVAX, the previous Trump administration said that it would not be joining the global effort. The decision was inclined toward "America First".

Kendall Hoyt, a professor from Dartmouth's Geisel School of Medicine, said that backing out or not joining the global effort of COVAX is like passing an insurance policy. Because if none of the vaccine candidates that the United States has proved to be effective, then the nation will be left unprotected.

Many nations that cannot afford to purchase the vaccines directly have made creative deals with other countries. For example, Pakistan has allowed China to conduct vaccine trials on its citizens in exchange for enough doses to vaccinate its citizens, especially its most vulnerable population.

Final Deal:

Each country has negotiated with drug manufacturers without thinking of other countries. This is normal, especially when you are procuring scarce resources. However, the problem with the vaccines can be handled better if countries have cooperated instead of negotiating by themselves with drugmakers.

To encourage coordination when allocating scarce resources, countries must plan, show the benefits of cooperation, and take a broader view of the problem.

When emotions are running high amidst a crisis, it is difficult to keep in check your behavior. If the perception of your country is that the others will hoard, your country will also hoard. The time to negotiate the outlines of an agreement is before the start of a crisis and not in the middle of it.

Negotiators usually think that when they lose, the other one wins. However, this is far from the truth. Professor Max H. Bazerman from Harvard Business School explains that to move beyond this mindset, one must show what one can gain from cooperating.

Organizations always feel the special duty to protect and look out for those they represent. This is true but we should also take time to consider how our actions can affect other people. This includes the most vulnerable population in the world.

Ingroup bias does not stop solutions that can benefit others. You can expand it by considering what those people outside of your organization can provide that will benefit you too.

What can we learn from it?

Ecologist Garrett Hardin shares the parable of a group of herdsmen who graze their cattle in the same pasture in his 1968 article.

In the parable, all herdsmen are motivated to increase the size of their respective herds to increase their profits. However, the increase in the number of cattle would mean that the pasture will be destroyed due to overgrazing.

We can learn from his parable that the best solution to the dilemma of the herdsmen was to negotiate with one another to limit the size of their herds.

With a finite resource at stake, those who are involved will usually have better long-term outcomes by negotiating to divide the resource equitably rather than trying to claim the biggest piece for themselves.

If we just imagine that all the leading economies in the world agree to put all their budgets for vaccines in the COVAX or a similar global effort and not sign bilateral deals with pharmaceutical companies, then the efficiency of the coordination will help lower the cost and streamline the production and distribution.

If countries just broadened their views in negotiating with other countries to strive for coordination, then many lives would have been spared by the pandemic.

Example 3 — Negotiation Case Study: Sincerity's Power in Negotiation

Actual Case:

The Golden Donut Chain, a Philippine-based company, has faced difficulty in negotiating with its labor union. The donut chain and the labor union have talks regarding their problem.

When the donut chain's management team arrived late with the said talks, the labor union stormed out in protest to show great dismay over their delay in the negotiation.

In order to continue their talks with the labor union, the management team of the donut chain has sent a letter that includes an apology.

However, from the perspective of the labor union, the apology is insufficient to forgive the inconvenience that the donut chain has caused. The labor union refused to meet for talks and continued with their strikes.

This case study has focused on how to convey your sincerity when apologizing in a negotiation. How can one deliver their sincerest apology that the other party will accept?

Final Deal:

The case with the Golden Donut Chain and the labor union has ended in a bad way. Due to the lack of concession due to the insufficient apology from the donut chain, the labor Union has brought it to court.

When both parties brought it to the courts, it took years before a party was compensated. In this case, the labor union has won the case against the donut chain.

What can we learn from it?

Professor Edward Tomlinson and Professor Roy Lewicki from Carroll and Ohio University have found out that people view apologies to be sincere when they include internal attributions of harm. This simply means that people will see your apologies as sincere when you own up to your mistakes.

The credibility of a person is a significant factor in making apologies sincere from the perspective of the other party.

A study showed that unfulfilled promises, deception, and breaking the trust of the other party are some factors that a negotiator cannot work out in giving their sincerest apology. Moreover, giving assurance even if you cannot attain or fulfill it is counterproductive in a negotiation.

Many negotiators advance their case by persuading the other party or listening to their side. But sometimes, the greatest thing you can do in a negotiation is to straightforwardly admit your mistake.

Many apologies have failed to achieve their aim—to be forgiven. The delivery of some people is usually the culprit as to why apologies are not accepted.

The importance of an apology in a heated argument or negotiation cannot be overstated enough. When the other party thinks that your apology is not sincere enough to make amends, the heat in the negotiation will rise further—leaving both disliking each other.

The power of apology in negotiation and dispute resolution is significant to fixing relations between parties. It is important to apologize and own up to your mistakes to make the other party feel that you are sincere.

We must remember that if we cannot fulfill or attain our promise, we must not push it further to the other party. Doing so will only aggravate the emotions of the other party. Because we all know that no one wants to be left hanging—so do not promise during a negotiation that you cannot follow through.

Example 4 — The East China Sea Dispute

Actual Case:

In November 2013, China established an air defence zone over the disputed Islands in the East China Sea. This has been seen as an act of aggression in an escalating international dispute.

Japan and China are both claiming the islands. It is known as Senkaku in Japan and Diaoyu in China. According to CNN, the islands are believed to be rich in oil. Additionally, the islands are said to be an advantage for military defence strategically which is why the dispute on the islands is hard to resolve.

China began patrolling the islands and its plane has come near the international airspace of Japan several times. When this happens, Japan launches its fighter jets in response to the tactics of China. Additionally, Vietnam and the Philippines had made claims to the islands as well.

The conflict over scarce resources can be tricky and difficult to resolve. In the business field, negotiators who face this conflict are able to avoid the conflict by considering and thinking about every party's contribution and claims with the resources. However, in our own business negotiation, how can you convince the other parties that concession is possible?

Final Deal:

Japan has bought the disputed islands which have enraged China. Today, the tension has increased and no negotiation has been settled. In 2019, Japan built military bases to keep China from further developing its military capabilities in the region.

All negotiators must keep in mind that the first thing they need to work out is building trust with the other party.

First, when you are negotiating with a new party or the negotiation with them in the past has not gone as planned, you cannot expect them to trust you right away.

You must give them time to adjust. Additionally, you must let them tell their concerns and past grievances, and apologize for any actions that have created mistrust from the other party.

Second, when negotiators discuss agreements, they must devote a lot of time to asking questions to tackle all the issues circulating the agreement.

By asking the other party questions regarding their positions in the negotiation, you will know their underlying interest.

Also, you can share your information to show your own interest in the negotiation. This will allow you to unfold potential trade-offs that are tolerable to both of you.

Lastly, negotiators must look for solutions that can make the other party whole. This means that you must let the other party know that they can benefit greatly from the negotiation.

Demanding a unilateral concession with a corresponding benefit to the other party will make the negotiation fail. You cannot expect anyone to compromise without them gaining any benefit from the negotiation.

What can we learn from it?

From this case study, we can learn how to negotiate without making the outcome self-serving for any of the parties.

We all know that during an international negotiation, even if negotiators believe that they sincerely want a fair outcome, their perspective of a fair outcome is likely to be self-serving. This kind of perspective will make the negotiator believe that they must have a greater share of the resource—making them biased on their own terms.

We can learn from here that trust is the foundation of every negotiation. Without trust, it will not be possible to produce a fruitful outcome of the negotiation.

We must also consider the interest of the other party to make concessions that both of you will benefit from the negotiation.

If you cannot make the other party realize that they can gain from your negotiation, the outcome of the negotiation will always fail.

Example 5 — Negotiation in Business: Apple and Samsung's Dispute Resolution Case Study

Actual Case:

In April 2011, Apple accused Samsung of copying the look and feel of its products when it launched its Galaxy line of phones. The situation has made Apple file a lawsuit against Samsung.

However, Samsung has countersued Apple stating that it has not paid royalties for using its wireless transmission technology. After this, the number of disputed patents has gone up to the sky.

Since then, the two giant tech companies have repeatedly accused one another of copying the appearance and functions of their respective products.

Both companies have shown willingness for mediation in an effort to avoid going to court. Due to this, they have cut the number of disputed patents by half. However, even if the CEOs of both companies had sat down at a table for mediation, Apple started striking Samsung again.

Apple has filed a motion to bar the sale of one of Samsung's products on the grounds that the tablet is created to replicate its second-generation iPad.

Final Deal:

Both companies have hoped to avoid legal battles. However, the mediation of both companies has ended in an impasse. Neither one wants to back down from their arguments. The lawsuit has been pursued and went to trial twice and Apple has ultimately won more than \$409 million.

What can we learn from it?

We must take note that both parties need to negotiate or mediate a solution before escalating it to the courts. Additionally, both parties must be willing to work together to resolve the problem or deal with the situation.

In many situations, mediation is viewed as the last step of adjudication rather than the first step in a collaborative effort to work on a solution.

From the standpoint of preserving the image of the organization, mediation is preferable. Mediation that leads to voluntary agreements will always ensure compliance with whatever the parties have agreed upon.

For this case study, we have seen that mediation as a dispute resolution technique is not possible when both parties are grudging participants. In order for mediation to succeed, both must be actively engaged in finding a solution.

Additionally, Both companies have already invested too much time and resources with all the lawsuits that they have bombarded one another. Due to this, they will feel that it is too late to back down as they have invested too much in it.

The talks for concession will fail and the aggressiveness from both parties will increase the longer they spend fighting rather than finding a solution.

We can learn that when a business dispute arises, both parties must be willing to negotiate to find a solution before they take the matter to the courts. Taking it to the courts will end any negotiation for meeting halfway.