

4 Alternative Dispute Resolution enables efficient negotiations

It would be ambitious to assume that negotiations in markets where power is distributed asymmetrically are an easy task. Nevertheless there could be something like an optimal negotiation structure just as there are typical ‘mistakes’ and reasons for failure in negotiations in special markets. The Power-Matrix is of help in establishing such a structure.

This chapter is laid out as follows: firstly, the results from the theory and the cases above are summarised to define the key focus of this chapter. What are efficient negotiations and what goes wrong in so many cases and why? The Harvard Negotiation Project¹ is introduced as a mechanism on the basis of which Alternative Dispute Resolution² (ADR) instruments can be set up to offer support in negotiations. Secondly, the three steps by which these promising alternatives ought to be implemented, co-ordinated and initiated will be discussed. Finally, a short conclusion sums up the study with a concrete recommendation on how to actually effect a change in the system of negotiations in network markets by establishing a basis for the promotion of efficient support processes.

4.1 Alternatives to ‘classic’ negotiations

The measure for ‘better’ negotiations is Pareto efficiency: in this individual situation there are no better solutions presently available, but this does imply that under different circumstances better solutions could be achieved.³ Pareto efficiency does not describe a state where the actors are

¹ The authors of ‘Getting to Yes’ (Fisher/ Ury/ Patton, 1991) are also the founders of the so-called ‘Harvard Negotiation Project’ which stands for interest-based/ principled negotiations. I have chosen to use the term ‘Harvard Negotiation Project’ in this study to reflect the whole idea and not just to focus on one aspect of it.

² See Bruce/ Marriott, 2002.

³ Better solutions might theoretically be available, but are, for example, not pragmatic.

‘symmetrically’ happier, but it is sufficient that both have experienced net gains compared to the initial situation.⁴ On the passage to efficiency in negotiations there are, as was shown above, problems and pitfalls. To counter these problems it could be necessary to find an alternative to the way negotiations are run today – ‘classic’ negotiations – or even to develop an alternative to negotiations altogether. The cornerstone of such a model needs to be a commitment to tackling the key problems in negotiations. Obviously, another solution could be to prohibit conflict.⁵ Such a solution would probably only lead to conflicts at another level or time and would most likely even accelerate the original conflict. Since the prohibition of conflict is not a realistic possibility it will here not be considered further.

Firstly, the cases described above will be analysed and the problems will be structured so as to enable the development of possible solutions. Secondly, the Harvard Negotiation Project is introduced as a behavioural scheme, which could, merged with the Power-Matrix, deliver a promising basis for alternatives to negotiations. Thirdly, alternatives to ‘classic’ negotiations will be analysed that can handle complex negotiation situations.

4.1.1 Is power a problem for negotiations in network markets?

Negotiations in network markets, despite all the possible problems, take place every day. To make them more efficient it is necessary to analyse the problems. Since the key characteristics of power in negotiations could also be the key problems of negotiations in network markets, this chapter first structures the problems along the Power-Matrix and considers whether power is the main or just an underlying problem in negotiations.

The **property rights** distribution in network markets is heavily influenced by regulation. This is deemed necessary as the process of liberalisation by regulation is thought to be the Achilles heel of the development of network markets.⁶ But regulation also causes problems in network markets because regulators are not reckoned to be very innovative;⁷ they cannot even keep up with the development of new technologies.⁸ It is therefore difficult for them to describe the best route to competition.⁹ Yet regulators still try to achieve a situation where power is distributed equally between the actors. The common understanding is that an equal distribution of

⁴ See Breidenbach, 1995, pp. 76 ff.

⁵ See Külpe, 1965, p. 97.

⁶ See Waesche, 2003, p. 2.

⁷ See Gifford, 2003, p. 477.

⁸ See Schmidt, 2005b, p. 19.

⁹ See Peltzman/ Winston, 2000.