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The truth about cross-cultural B2B relationships

PART 4: WIN-WIN VS. WIN-LOSE



Introduction

Global business disputes are growing two times faster than global trade.

Although the world is getting smaller, our ways of doing business are becoming more automated, more digital, and less human, potentially leading to missed opportunities and friction in business relationships.

This paper continues our series on enhancing cultural fluency and embracing a more human approach to business. It offers practical tools to help you and your organization navigate the B2B journey, minimizing moments that increase the risk of business disputes.

Business relationships, often stretched across diverse cultural and legal landscapes, are not just business transactions but deeply human interactions full of expectations and emotions. This paper explores the premise that, in the world of B2B engagements, working towards win-win outcomes is better than a win-lose approach to business. This approach not only nurtures long-term partnerships but also mitigates the risks and costs associated with disputes.



Key insights for this series include:

Part 1 - Emotional influence in B2B

Understanding that emotion is key to B2B decisions should frame the understanding of other steps in the business journey. It's also important to anticipate the right emotions at the right time. Not only are business leaders two times more emotionally connected to B2B brands than FMCG brands, but these emotions range from a high positive at the start of a new B2B business journey and during long-term delivery to strong negativity when business relationships hit moments of friction.

Part 2 - Business culture fluency reduces friction

Business cultural fluency goes beyond understanding local customs. By understanding business behaviors through a lens of business cultural segments, business leaders can anticipate potential differences between their own business culture and that of their client or supplier. Remapping the world by business culture instead of geographic criteria offers insights that help avoid friction and increase cultural business fluency.

Part 3 - Contracts or people?

For some people in business, the contract is an opportunity to lock a scope; for others, it's the basis for a flexible relationship. Understanding your own team's view and your client's or supplier's cultural perspective on contracts helps provide clearer approaches to using them.

CURRENT

Part 4 - Win-win is better than win-lose

Business leaders say that prioritizing win-win outcomes over win-lose scenarios is crucial for fostering long-term partnerships and business success.

Employing strategies that favor amicable, interest-based dispute resolutions rather than relying on adversarial legal proceedings helps businesses understand and adapt to the cultural and emotional influences

on business interactions.

By highlighting the benefits of direct negotiation and collaborative problem-solving, the paper advocates for integrating mutual interests and fostering clear, constructive communication to enhance business dealings, ensuring that both parties achieve sustainable growth and reduce the risk of disputes.

Part 5 - Siloed departments limit business success

Departments traditionally assigned a single role (like legal teams or marketing teams) can be more deeply integrated into the B2B journey to apply their skills at other stages of the process.

Part 6 - One size does not fit all

This series of reports not only shows that a single global approach to B2B relationships doesn't work but also highlights differences between countries and within various groups, such as different genders, ages, and professions.

Use the lessons from past disputes to help your business avoid them

No one in business sets out to initiate deals that will later end in legal disputes.

As part of this research project, conducted by ICC, Jus Connect, and McCann Worldgroup Truth Central, we carried out over 20 hours of in-depth interviews with business leaders, general counsel, and arbitration lawyers. We also surveyed 1,701 business leaders from nine different countries and analyzed over 20,000 data points from economic data, arbitration cases, and previous cultural studies supported by desk research.

Three significant data points set the foundation for this paper:



Source: Data from the 15 main arbitral institutions ICC, ICSID, SCC, LCIA, SIAC, HKIAC, CAM-CCBC, DIS, VIAC, SAC, ICDR, CIETAC, PCA, KCAB, JCAA. globalarbitrationnews.com & World Bank

Business disputes are growing 2x faster than global trade

From 2013 to 2022, the landscape of global trade and arbitration has evolved significantly. The number of arbitration cases registered at the 15 main arbitral institutions rose from 28,423 between 2013 and 2017 to 36,623 from 2018 to 2022, marking a 29% increase.

During the same period, global trade expanded from \$106.7 trillion to \$120.9 trillion, an increase of only 13%. This data highlights that disputes are growing at a faster rate than global trade, reflecting the increasing complexity and challenges of international business dealings.

This rise in disputes is driven by numerous factors, most notably the growing complexity of global business interactions and the diverse cultural and legal frameworks across countries. As businesses expand into new markets, they often encounter unfamiliar regulatory and legal landscapes, which can lead to conflicts. Additionally, the emotional and cultural dimensions of business relationships, as explored in various studies, play a significant role in the management and resolution of these disputes.

One arbitration lawyer emphasized the challenge of differing ways of doing business, how misunderstandings can arise, and the influence of local government and law on business dealings:

“ In some markets, there are *too many stakeholders*— you'll have state government, central government, and local government. They could all impact the deal. In other countries, you just talk to one level of government to solve everything. You deal with one person, and you'll solve all the problems. ”

— International Arbitration Lawyer

Another arbitration lawyer we spoke to shared his experience of the different attitudes to disputes as part of doing business:

“ In some parts of the world, for example, North America, they regard disputes as an ordinary, regular, and acceptable part of a relationship. They find it puzzling that people would take it personally, even if they're extremely rough-and-tumble about it. ”

— International Arbitration Lawyer

While some countries and regions are comfortable with disputes as part of the business process, others actively try to avoid them, seeing disputes as a disruption or a failure of the business journey:

“ In other areas, for example Northern Europe, they essentially adopt a view of pragmatism that they don't actually like litigating anything to conclusion. They prefer to avoid decision making in litigation. So, the judges won't decide. The lawyers won't decide. Everybody really just wants to settle and get it over with and get back to trading with each other. ”

— International Arbitration Lawyer

Why does this matter?

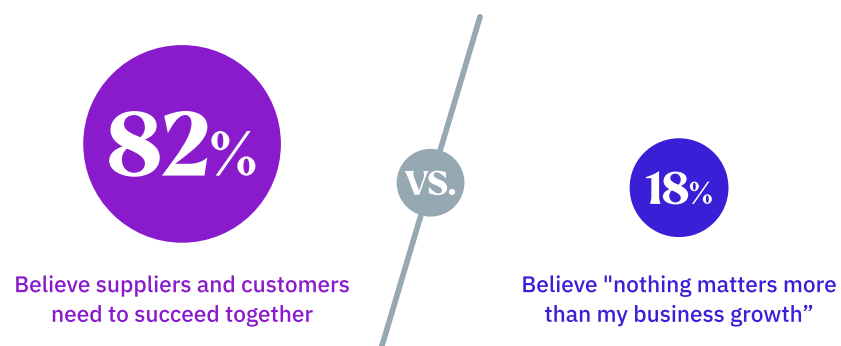
In global B2B deals, the local market's attitude toward resolving disputes will influence how a contract is set up in the first place and how a dispute clause is incorporated into a contract during negotiation and signing.

The challenge is that not only are attitudes toward this different around the world, but universally, it's also the moment in the B2B journey when senior business leaders are paying the least amount of attention.

Assuming things will go right creates the biggest risk of going wrong

Business leaders don't expect deals to go wrong, and this is potentially their biggest blind spot. A significant challenge lies in the tendency of business leaders to overlook potential conflicts during the negotiation phase.

It's human nature to assume the best and hope to succeed together. When we asked business leaders whether it was more important for both parties in a business deal to succeed than to prioritize their own business's success, more than eight out of ten businesspeople agreed.



Base: Global Business Leaders (n=1701)

Although 82% of business leaders agree that mutual growth is important—prioritizing the success of both the supplier and client—there is often a neglect of how deals might falter.

This oversight can be explained by revisiting what we call “The B2B Emotional Roller-Coaster.” We’ve referred to it in previous papers, and it’s relevant again here to highlight how lower emotional engagement during contract negotiation creates a greater moment of risk than the concern or anticipation of something going wrong in the future.

A lack of emotion means a lack of attention

Many previous studies in psychology and advertising have shown that it's human nature to pay attention and be actively engaged when emotions are high. Whether those emotions are strongly positive or strongly negative, they grip us and hold our attention.

Our brains are resource-hungry organs, consuming a significant portion of our body's energy. While the brain represents just 2% of the body's mass, it uses 20–25% of the body's resources, such as oxygen and glucose.

Why does this matter?

Because the brain needs to determine when it's important to pay attention.

Paying attention is like pressing the accelerator of a car—it helps you go further faster, but it burns more fuel.

Our brains use emotions—both positive and negative—as signals to determine what's important and only fully engage when emotions are running high or low.

One academic study, “*The Impact of Emotion on Perception, Attention, Memory, and Decision-Making*,” examines research comparing brain signals and attention levels in response to emotionally relevant stimuli, which capture attention more effectively than neutral stimuli. Emotions prioritize perception and direct attention to important aspects of our environment, effectively guiding cognitive resources to these areas.

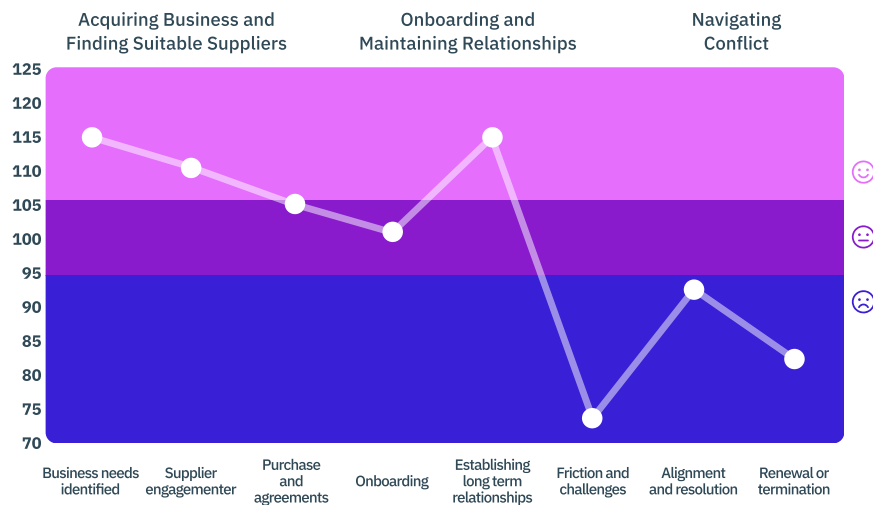
This emotional attention ensures that emotionally charged stimuli not only capture our attention more quickly but also hold it longer compared to neutral items. Conversely, stimuli that evoke neutral feelings are less likely to attract and maintain attention, resulting in reduced cognitive engagement and processing.

You can read the full article in [Swiss Medical Weekly](#).

And during the B2B journey, when do you suppose emotion is at its most neutral?

It's at the moment when the details of a contract are being finalized and when new teams or supplier arrangements are being onboarded.

In our research, we asked 1,701 business leaders to rate how emotionally positive or negative they felt at each stage of the journey.



Index of emotional engagement by business leaders in each stage of the B2B journey. 100 = average emotional engagement. **Base:** 1,701

The most positive stages are:

Stage 1

The positive excitement of identifying a business need and starting a new business initiative.

Stage 2

The search for collaborators. Clients look for suppliers who can deliver their needs, and suppliers look for clients wanting to buy their solutions.

Stage 5

Getting to the delivery of the idea. This is the emotional high point when relationships are established and the product or service is delivered—when the idea turns into reality.



The most negative stages are:

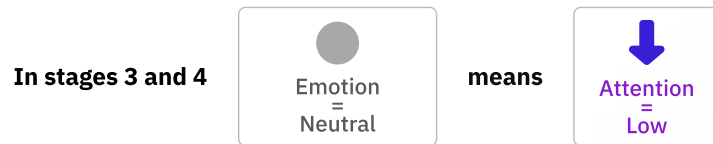
Stages 6, 7, and 8

They represent the moments when things sometimes start going wrong. Challenges enter the business relationship, deadlines are missed, and delivery may not align with expectations. These stages involve working through a dispute resolution process, which may either solve the concerns and renew the relationship or, in some cases, lead to its termination.



But what happens when emotion is neutral?

When purchase agreements are drafted and agreed upon, and the initial stages of technical onboarding begin, business leaders admit they are the least emotionally engaged.



The combined risk of lower attention and assuming the best

During the contract negotiation phase, business leaders often take their emotional “eye off the ball,” frequently delegating these tasks to procurement, legal, and operations teams. This phase of the relationship is often rushed in an eagerness to move on to the exciting stage of project delivery.

In this process, business leaders often neglect to be open and transparent about dispute clauses. Like in any relationship, when rose-tinted glasses are on, no one wants to imagine things going wrong. Humans tend to avoid considering the possibility that things won’t work out.

Humans tend to avoid thinking things won’t work out.

As an example, consider these two facts about marriages in the United Kingdom and the United States:

- The average divorce rate is nearly 50%.
- Only 20% of marriages include a prenuptial agreement.

So even though there’s a 1-in-2 chance a marriage will end in dispute and dissolution, 4 out of 5 people don’t start their marriage with a prenup, preferring instead to imagine a happily-ever-after.

While there might not be quite as much “love in the air,” the same rose-tinted glasses are often worn in B2B relationships. Business leaders don’t want to imagine a deal failing because they’ve created a business relationship to build something emotionally exciting. They tend to shift their attention and focus from the emotionally exciting start of an idea to the equally exciting delivery of the idea.

One arbitration lawyer we spoke to mentioned that the dispute clause in most contracts is often referred to as the “midnight clause” within the industry.

“ We call it the ‘midnight clause’ because business leaders will often only remember to add a dispute clause to the new contract at the last minute before midnight when the contract is due. Sometimes, the clause is hastily copy-pasted from another old contract. Business leaders are not having an open, proactive conversation with their client or supplier about what will happen if things go wrong. ”

— International Arbitration Lawyer



When business deals fail, business leaders prefer a win-win resolution

When business deals go wrong, business leaders aim to find a mutually beneficial resolution—a win-win scenario.

Previous research into approaches to resolving disputes has identified three possible strategies for businesspeople and lawyers to take:

1. Interest strategy

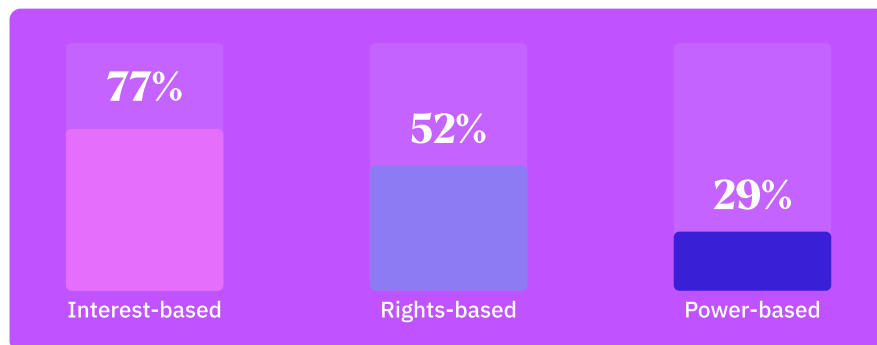
Focuses on reconciling the basic interests of disputants through problem-solving or interest-based negotiations, fostering better outcomes and stronger relationships.

2. Rights strategy

Determines who is right through legal proceedings or arbitration. While this approach provides a clear and legally binding resolution, it often results in higher costs and can strain relationships.

3. Power strategy

Resolves disputes based on who has more power, using methods such as leverage or threats. This approach is risky and can significantly damage relationships.



When faced with a business dispute and considering their options, 77% of business leaders say they prefer approaches categorized as interest-based, emphasizing amicable solutions such as direct negotiations. Around half of business leaders would consider transitioning to rights-based methods, including arbitration and litigation. Just over a quarter lean towards power-based strategies, such as canceling contracts or making public disclosures. This reflects a global trend toward constructive conversations rather than confrontational dispute resolution.

We presented business leaders with ten different steps they could consider taking in response to a contract running into problems. The top four were all actions that could be described as win-win or interest-based approaches to resolution. These steps are typically conducted directly between the two parties and do not require court involvement.



Read more about interest-based outcomes in Ury, W.L., J.M. Brett, and S.B. Goldberg. 1993. *Getting disputes resolved*. 2nd ed. San Francisco: Jossey-Bass.

What's also significant about these steps is that they all allow lawyers to play a role in the process. Some steps need to be established at the beginning by ensuring there's a strong contract to refer to, while others involve a more active role for lawyers, such as leading direct negotiations.

One general counsel we spoke to discussed this direct negotiation role. Her approach within her business prioritized the ideal of resolving disputes without involving the courts. She acknowledged, with a wry smile,

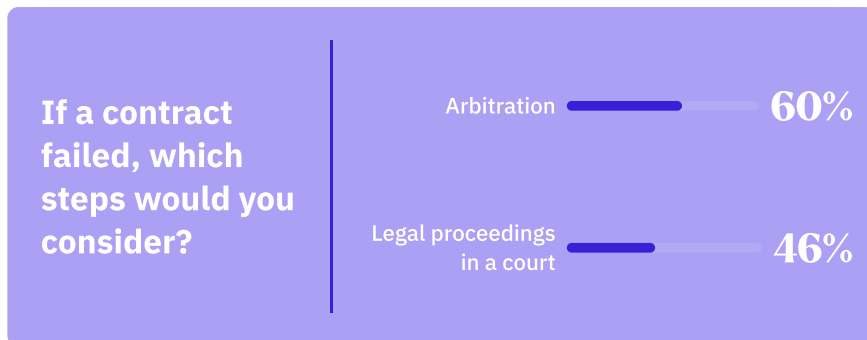
that this approach meant fewer opportunities for court experiences that might benefit her personally.

“ The best interest for my company, is zero disputes... even if that limits my personal and professional development to have court experiences. ”

— Business Leader

When interest-based approaches shift to rights-based legal resolution

Among global business leaders, arbitration and court-based legal proceedings are considered viable options in about half of situations. Arbitration is generally viewed as a better option than litigation in court if legal resolution becomes necessary.



Base: Global Business Leaders (n=1701)

When we asked business leaders why they considered legal proceedings a relevant option for their business, they cited a range of benefits it offered.

The biggest benefit was still based on the aim of achieving a positive outcome, with the primary advantage being the perception of balance and fairness. As we’ve seen in other parts of the research, business leaders consistently lean toward finding resolutions to business friction that have the potential to foster positive and collaborative outcomes.

While lawyers may be more likely to view legal disputes as matters of compliance and enforceability of claims, business leaders see it differently. Only half of the business leaders surveyed viewed legal proceedings in this way.



Base: Global Business Leaders (n=1701)

We conducted a statistical segmentation on these attributes across different countries to explore how they cluster, based on which attributes businesspeople in those countries agreed with more than others:



Cluster 1

Value legal processes to “keep things open and transparent” and “reach a fair resolution for both parties.”

Business people with this mindset prioritize transparency and fairness, aiming for resolutions that enhance clarity and equitable outcomes for all parties involved. They value open communication, ensuring that legal processes are fair, which supports long-term business relationships.

Cluster 2

Important to “reach decisive outcomes to solve the problem” and to “ensure enforceability and the ability to satisfy your claim.”

Business leaders in this cluster focus on achieving decisive and enforceable outcomes. They prefer legal solutions that are swift and definitive, ensuring claims are resolved satisfactorily and backed by legal authority. This approach provides a solid foundation for business security and future interactions.

Cluster 3

Want “a detailed investigation” and “to reach a final agreement and commitment.”

Businesspeople in this cluster are thorough in their legal approach, seeking detailed investigations and comprehensive agreements. They dive deeply into every aspect of a dispute to secure agreements that are well-understood, meticulous, and mutually accepted, leading to lasting commitments.

Cluster 4

Want to “keep sensitive commercial information private” or “find errors by the other party.”

Business leaders in this cluster prioritize protecting sensitive information and meticulously identifying any contractual errors. They prefer to operate discreetly, shielding proprietary details while carefully examining agreements to prevent oversights, safeguarding their business interests, and maintaining a competitive edge.

Power strategy (or guerilla tactics) ... The last resort!

Sometimes, even after seeking solutions that serve everyone's best interests and attempting to resolve a business dispute through legal processes, no resolution is reached between the parties.

At this point, only a few options remain. These are considered by just one in three or one in four business leaders:



Base: Global Business Leaders (n=1701)

As we spoke to lawyers and arbitrators around the world about their experiences in managing dispute processes, we heard interesting stories of organizations resorting to steps beyond interest-based or legal and contractual resolutions. Sometimes, the only option remaining for businesses is to use their position of power to leverage a positive outcome. Between one in five and one in three business leaders would consider one or more actions based on their position of power—or even actions some describe as guerilla tactics.

In the previous paper, we discussed the willingness to cancel a contract. One general counsel shared that, as the business issuing the contract,

they hold the position of power to walk away from a deal and cancel it.

“ We don't even think twice about walking away. If we're issuing the contract, there's a skewed balance of power. ”

— General Counsel

Sometimes, canceling a contract isn't possible, and businesses must resort to even more proactive measures to push through a resolution.

In one example, a lawyer shared a case where they were stuck in a joint venture after exhausting every other step to resolve the deal. They began with an interest-based direct negotiation, followed by court action. The dispute remained stuck in court for years, partly because the original deal included a termination clause that didn't cover the specific scenario (perhaps another one of those “midnight clauses”). Left with few alternatives, they resorted to a more power-based approach—blocking the other party's business plans through the industry regulator until a settlement was reached:

“ We tried everything to exit the joint venture. We tried direct negotiation; they kept us tied up in court for years. In the end we just blocked their spin off until they settled! ”

— International Arbitration Lawyer

Conclusions

Senior business leaders cannot pay 100% attention 100% of the time—human nature doesn't allow it. Emotional and neural motivations naturally drive their engagement toward areas of business they find most stimulating.

It's also human nature to assume the best and avoid spending time contemplating worst-case scenarios.

These human factors combine to explain why many people in business are not fully attentive when two businesses finalize a deal.

They're excited by the idea and eager to start the relationship, but they're less engaged with the details of the contract—especially the clauses that govern disputes if the business deal fails.

Working toward an interest-based resolution to business friction remains the priority for business leaders. Legal steps are also valued as a means to achieve fair and positive outcomes for both parties.

Implications

With business disputes growing twice as fast as global trade and representing \$80 billion in new legal disputes annually, business leaders must recognize that taking their eye off the ball during the contract and onboarding stages can lead to significant cost implications.

Understanding what will happen if things go wrong also makes it much easier to work together to find ways to make things go right.

A well-crafted contractual dispute clause reduces the likelihood of disputes in business deals and breakdowns in relationships. In other words, the business equivalent of a “prenup” is a smart strategy.

Recommended actions:

1. Avoid the pitfalls of “the midnight clause”

Business leaders in both client and supplier roles need to remember that their emotional attention is often low during contract negotiations, the drafting of statements of work, and onboarding steps.

Establish teams and processes to maintain high levels of attention during these critical phases. Keep in mind the long-term benefits of business fluency and reduced friction that come with having a well-thought-out dispute process built into contracts.

2. Understand human emotion and its impact on attention

Recognize your own points of emotional engagement to identify where your involvement is highest. Build teams of individuals, such as contract lawyers and arbitration experts, who find the contract negotiation stage emotionally engaging as well.

Importantly, give these teams a high profile and empower them to hold other senior stakeholders accountable. This ensures that contracts and dispute clauses are not treated as afterthoughts.

3. Understand most people want to reach a win-win solution

Most businesspeople prefer to resolve disputes in ways that serve the best interests of both parties, aiming for mutual success between clients and suppliers.

Create room in your early discussions and negotiations for win-win solutions. Start conversations early about what will happen if things go wrong—this helps lay the foundation for achieving positive, mutually beneficial outcomes.

About the organizations

International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.

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Jus Connect

Originating from the extensive Jus Mundi arbitration and international law database and empowered by Conflict Checker, Jus Connect epitomizes informed decision-making. We provide legal teams with unparalleled data-backed profiles and analytics, enabling them to strategically choose external counsel, experts, or arbitrators while avoiding conflicts of interest. But it's not just about selection; law and expert firms find in us a partner that amplifies their reach and revenue. With our tailored business development solution, arbitration teams can showcase their practice, setting them apart in a competitive market.

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McCann Worldgroup Truth Central

McCann Worldgroup Truth Central is McCann's global intelligence unit dedicated to unearthing the macro-level truths that drive people's attitudes and behaviors about life, brands, and marketing. Truth Central leverages its expertise in global marketing and communications to navigate and articulate complex cultural nuances, shaping insights that drive strategic business decisions.

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→ Next time

In the next installment of this series, we delve into how siloed departments can limit business success. Departments traditionally focused on a single role, such as legal or marketing, have untapped potential to contribute across the B2B journey. By breaking down silos and integrating their expertise at critical stages, businesses can unlock new opportunities for collaboration, efficiency, and long-term success. So, how can businesses better align their teams to ensure every department adds value throughout the process?