

Why wait for a conflict: Premediation

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Startupbootcamp is an accelerator program for promising start-ups in the media and technology sector (as shown in the box). These so-called startups are offered premediation to prevent potential conflicts. Roelof Vos is one of the mediators who works with the start-ups in the different programs. In this article he describes his experiences.

By Roelof Vos

At startupbootcamp (SBC), the participants are offered premediation. These are conversations I have with the co-owners or shareholders of the startups to prevent conflict. I use mediation techniques for these conversations. We can not speak of an official mediation at that point. At the beginning of the collaboration, the relationship between the parties is still good. But the positive start can also be treacherous: the parties do not realize that they may face each other very differently in the future. As is often said in the managementbooks: a business partner who is your opposite will make it a perfect cooperation because of the added value. An emotional personality can therefore go very well with a calm, rational character, as long as you can continue to understand each other. As a premediator you can help both parties not only to send information to each other but also receive information from each other. The offer of premediation means that the participants can conduct conversations at any desired time with the mediator if they wish to do so. The owners of the participating companies sometimes know each other from the past (for example from school or privately), sometimes just for a short time. After that, they intensively interact with each other in the SBC program and possibly due to the 'fast' SBC environment and the advice from third parties, internal conflicts at the startups are not excluded. The pressure to perform is high, partly because the participants are in a competitive environment. By regularly speaking with the startups in the form of premediation, I aim to prevent disputes at the startups as much as possible. If there is a conflict in a team that I have spoken to before in a premediation session, I will have the advantage of knowing the people and maybe I can put my finger on the underlying issues faster. This could make it a lot easier to ask the right questions. A possible disadvantage is that, because I have already known both parties for some time, I could have a certain preference or prejudices. Nothing human is foreign to a mediator. A premediation is in itself a free format, making a mediation agreement does not seem to be required to me. Only if the parties wish to so, we conclude a written agreement, for example to formalize the confidential nature of the discussions between parties and premediators. However, during the premediation I operate just like in a formal mediation: with regard for neutrality and independence that an NMI mediator advocates. I also inform the parties about this at the start of the premediation. As a variant of this form of premediation, there is also the possibility that a mediator is appointed in the shareholders' agreement of the startup in case of a future conflict. For example, the SBC's founders have appointed me as a mediator, in case they would have a conflict between themselves in the future. Such a mediation clause works fine, although I think it is important there is always the possibility to switch mediators in due course. It is important that the parties have already agreed in advance so that in the event of a future conflict they will seek the solution first through mediation.

Fictitious case

Below I will sketch how a premediation session takes place at a startup on the basis of a fictional case. I have combined my experiences from different practical situations. I have done it in a way that there is no comparison with one and the same concrete case. Through the SBC network I came in contact with a start-up with an environmentally friendly character. Founders Bart and Hans have been working since 2011 on the development of the environmentally friendly 'Double app' which also involves 'community building'. Bart and Hans got to know each other shortly before through Twitter. They do not share a common history with previous issues or disputes. On the contrary, they started a company entirely blank together. Although the app has already been put on the market, Double is still in its first stages. Both the shareholders keep a close eye on the traffic to their app. Their dream is to make a breakthrough like TomTom and Skype, and eventually being listed on the stock exchange would be amazing. Bart is more the commercial guy and Hans more the technical guy, he built the app and primarily focuses on the further development. They both work fulltime for Double. Even though they have built up some financial reserves from their previous individual companies, it is important they find an investor in autumn of 2012 who can give the company some financial support. The app is free for individuals but companies have to pay a fee. The further revenue model – for example, by offering advertising spots on the app – must be discussed between the shareholders. Bart is the typical salesman, a good talker, extrovert and gives his opinion straightaway. He also is fast with responding to emails so he expects Hans and himself to have a fast communication between each other. Hans is more of a techie: the thoughtful analyst and introvert. He does not give feedback or responds immediately. He saves things over a longer time and then comes back to it.

Bart and Hans have agreed with me that we will speak once every two months. In the first interview in February of 2012 Bart told me that he would like to have feedback from Hans on his activities. Because he himself is used to responding immediately, the absence of a reaction from Hans gives Bart an uncomfortable feeling. He had no idea what Hans thought of him. Bart says that he likes to be more in front for instance when the opportunity arose to present their app on television, Bart found it fantastic to show their app to an audience of millions. Hans was not at the broadcast. He does not need all that attention for himself. Hans tells me that he finds it great that Bart takes on the role in the spotlight. The parties had not spoken so explicitly to each other till now. Although Hans is a developer, Bart also has the necessary knowledge and experience. Hans says it is fine if Bart gives him input on the technical side. At the end of the conversation, the parties both let me know that they found the session very helpful: matters that had not been discussed before had been discussed here. After the first joint introduction meeting, I proposed to hold a caucus in the same week: an individual meeting with both of them. Why? Just as in a formal mediation, you notice that an individual meeting can help to speak freely without the other's presence. In the individual meeting it is particularly clear that Bart gets very nervous when Hans is very silent. The outcome of the meeting is that Bart will take more initiative to ask Hans for his opinion. He understands that he can not change Hans, but the insight alone that the other works differently helps him. I also ask both of them in the caucus about the ownership of the app. It appears that there has not been made any agreements about it yet. An obvious question for the developer (Hans) is whether he sees the app as something of them both or something more of him because he actually built the app. Hans is not surprised by my question and says that the app is theirs and that as result of agreed divisions of tasks he is the developer and Bart focuses on the marketing

but the app is their product. Hans wonders if Bart would be able to do something with the app if Hans was not there anymore. In the conversation with Bart it is discussed that he already mentioned the intellectual property of the app once but Hans indicated that they would still arrange it. Both indicate in their individual meeting that they will arrange this soon. I am glad that we have discussed this topic because I have the feeling that a future conflict has been prevented. The second joint meeting will take place in April 2012. At the start of the meeting, the gentlemen report that they will get together after the meeting. Until now they have not had the time to sit down together for an evaluation, but the appointment with me prompted them to actually plan the conversation. The gentlemen report that the visitor numbers are declining on their app. To support Hans in the field of development, he received support from an IT employee for two days a week. The intention is to launch a new version of the app to increase visitor numbers. Bart lets me know that his job is to look for one or more investors. To develop the app even further and for marketing extra money is needed. Both indicate that after the summer they need to work on financial support, otherwise Double is at risk. The third meeting is at the end of June 2012. Bart says he still has not found an investor. It is going to be interesting for Double. I ask Hans if he is satisfied with Bart's efforts on the financial level. Hans says that his impression is that Bart is doing everything he can do and because this is so important for the future of the company – he wants to help Bart more in this area. He also has more time for that because the app has been sufficiently developed for the time being. For this reason, the gentlemen also terminate the contract with the developer. Bart and Hans want to make as little costs as possible. However, for two days a week they have accepted a marketing employee with a contract until the end of the year that can help to increase visitor numbers. Both decisions were taken in consultation with each other. The next premediation is planned for September in 2012. I am curious how it goes with Double and both parties! For the time being the mutual understanding is excellent and that is also needed to survive.

Conclusion

Based on the first experiences I gained in 2012, I certainly see a future for premediation. By using mediation. By using mediation techniques, the premediator can identify and address potential conflicts. In this way, serious conflicts between business partners – and potentially a lot of misery – can be prevented. For me, this form of premediation is a bit similar to the periodic or preventive scan in the medical world, with which one hopes to prevent the worst by early diagnosis.

About the author

Mr. Roelof Vos is a lawyer and mediator at VMW Taxand in Amsterdam. At SBC he is both a mentor and a mediator. In his role as mentor gives advice to startups, and he offers his network of business people who can help in various areas.

What is startupbootcamp?

Startupbootcamp (SBC) started in April 2012 with an 'acceleration program' for new talented online/ media companies (www.startupbootcamp.org) The SBC program for startups already runs in a number of other European cities (Dublin, Copenhagen and Madrid) and since this year it also exists in Berlin and Amsterdam. It works closely with the American Techstars. In the Netherlands, Startupbootcamp is the initiative of Patrick de Zeeuw and Ruud Hendricks. The selected startups receive a lot of support and assistance from the SBC organization and

mentors from the business world to help them find investors and funding. The goal is to prepare the start-ups – small companies, so-called seed companies – in Europe for the European and global markets. All startups hope to become just as successful as companies such as Skype, TomTom and Facebook. In the Netherlands, participants receive a financial contribution of € 17,000 per team in order for them to focus fulltime on the activities of the startup for three months. Participants also receive free office space for three to six months and living space is offered. In exchange for participation, the SBC organization receives eight percent of the shares in the startup. Many companies have applied for SBC and ultimately a jury has selected ten startups: Poikos, Viewsy (Great Britain), Eigenta (India), Scrapconnection (United States/Netherlands), Localsensor, Mipagar and Layergloss (Netherlands), SocialExpress (Belgium), Doctorkinetic (Poland) and Geosophic (Spain).