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THE THIRD NLU DELHI AND HERBERT SMITH FREEHILLS

INTERNATIONAL NEGOTIATION COMPETITION

STRATEGIC SNACKING FOR JUDGES ONLY

9-11 SEPTEMBER 2016

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GENERAL BACKGROUND INFORMATION

The parties

Robert Perez is the founder and sole shareholder of Food of Your Soul Limited ("**FOYS**"), an instant noodle producer in Newdonia. He has spent his life building FOYS which has a 20% market share of instant noodles in Newdonia. The main brand that FOYS produces is called Uncle Bobi's Noodles which are generally considered Newdonia's favourite snack. However, Robert is now looking for a new challenge and wants to establish himself as an entrepreneur in a different field. He is looking to sell all of his shares in FOYS, step away from Uncle Bobi's Noodles and move on to bigger and better things.

Universal Trade Group ("**UTG**") are a fast moving consumer goods company with a particular focus on large scale food production whose existing products include powdered hot drinks, instant and tinned soups and a small branch of ready meals. They are looking to acquire the Uncle Bobi brand as they feel it will perfectly fit in with their range of meals and snacks.

Background

The snack industry in Newdonia has evolved and undergone a dramatic increase in the last ten years. Modern lifestyles have moved away from traditional meals, with the focus of eating on the go and the appeal of eating any time anywhere. Industry commentators predict that the industry will continue to grow in the future. There is no doubt that flavoured instant noodles have become a national favourite, their cheap price coupled with large amounts of flavour has meant that they appeal to everyone from students to families.

Robert was ahead of the curve when, twenty years ago, he founded FOYS and developed Uncle Bobi's Noodles. At that time he was the only producer of the quick and easy snack and it soon became a household name. Now, despite attempts by competitors to introduce different ranges into the market, there is no doubt that Uncle Bobi is the market leader, and his competitors are playing catch-up.

Not only has Robert developed a winning product he has also found fame in Newdonia through his promotion of his noodles. As well as Uncle Bobi's Noodles carrying his name, Robert has been media savvy over the years and has boosted his brand with a large amount of personal involvement. A core part of his marketing strategy to adults has been to highlight his family values – he often mentions in the press that he has used his business to help his family. In addition, Uncle Bobi's success in the children's snack market has been largely attributed to a series of advertisements in which Robert and his family care for a pet baby dinosaur, Dino Soar. These have gone viral on the internet and have a cult following as the story line develops.

Robert's values and commitment to his business have been reflected in the way in which he has managed the company over the years. He has been complimented in the business press for building a committed and loyal workforce. Retention rates of staff are high and of the current senior management of the company many have worked at FOYS for many years. The entire board and management of FOYS are key figures of the Newdonian business community, and considered experts in the industry.

After building such a successful company and brand Robert is looking to try something new. Robert has not made a formal announcement of his wish to sell but has let it be known through various business channels that he is open to receiving offers. Uncle Bobi's has long been a sought after brand and there are rumours that private equity firm Red Action LP has made an offer already.

UTG are very interested in buying FOYS. They are a global company with a small but growing interest in Newdonia. Although snacks are not their main product line they recognise the real commercial benefits of expanding their range into this growing sector. Given that they already have a presence in Newdownia, and this is an established snack and brand within the country, this seems like an ideal fit for UTG.

UTG have an active M&A strategy and have bought companies before. They are known for their aggressive negotiating stance and high demands. Usually they are in the position of power, given their large global presence and ability to pay high. Uncle Bobi's Noodles is a high street brand and as such UTG will be keen to make sure it works.

GENERAL BACKGROUND INFORMATION (CONTINUED)

Newdonia is becoming increasingly health conscious and there have been a series of scandals in recent months all focussing on the unhealthy ingredients in snacks. Last month the Newdonia Food Standards Agency ("**NFSA**") announced that they were investigating a number of food producers to ensure that their products do not have

unsatisfactory levels of AFC49, an additive which has been shown in recent tests to have damaging effects on kidneys. As a result a number of FOYS' competitors have received formal warnings and have been asked by the NFSA to recall certain product lines.

FOOD OF YOUR SOUL LIMITED

Confidential information

Robert is looking to use the popularity of the Dino Soar character to develop children's toys and books based around Dino Saur's adventures in Dinodia, a fictional ancient island off the coast of Newdonia.

Consequently, Robert is looking to sell FOYS relatively quickly. He is looking for a purchase price of at least £150 million but would prefer around £200 million. His priority is to complete the sale within the next six weeks. Robert can be flexible with the payment structure, but needs to receive at least £90 million immediately on completion. He has worked out that to set-up his new business he needs at least £100 million within the first month to pay up-front costs and would like as much as possible on completion. Ideally, Robert would like a buffer in case start-up costs are higher than expected. Robert is optimistic about the future financial performance of FOYS but recognises that he is looking to complete the sale within a short timeframe. As such, Robert is willing to consider an earn-out mechanism over a period of two - three years, provided that he receives enough consideration up front to start his new venture.

In order to fully commit to his new enterprise, Robert is not looking to stay involved in FOYS once the deal has been completed. Although he is willing to agree to some ad-hoc help on a limited basis, part of the motivation for moving on from FOYS is to spend less time travelling around the country, and more time with his family. For this reason, Robert is determined that any continued role at FOYS is not permanent or onerous. In order to achieve this he would need clear agreement on his role and time commitments.

Robert's next business venture is to take the Dino Soar character and create a collection of children's toys. Robert is keen to market the Dino Soar brand in a similar fashion to that used with Uncle Bobi's – using his personal credibility and likeability to promote the Dino Soar universe. Although he has no current plans to use

the Dino Soar brand to re-enter the snack foods industry, he has been thinking about possible future expansion of Dino Soar into the drinks business, possibly targeting children with healthy fruit-based alternatives to fizzy drinks.

The NFSA investigation into the use of AFC49 has recently announced that they will be carrying out a broad investigation into the snack food industry, as it suspects that a high number of snacks include unacceptable levels of AFC49. The FOYS R&D team have reported that Uncle Bobi's chicken curry flavoured noodles contain higher levels of AFC49 than permitted under NFSA guidelines. However, Robert has not received any correspondence from the NFSA in relation to the on-going investigation and is pretty relaxed about this as his long standing contact at the food standards agency, Terry Henry, told him off the record that Uncle Bobi's "shouldn't be too worried". Robert intends to instruct his R&D team to tweak the recipe for the affected flavour so that future productions are compliant with NFSA regulation.

Currently Uncle Bobi's has a distribution agreement with Invincible Solutions Limited ("**Invincible Solutions**"), a Newdonian logistics firm. The distribution agreement can be terminated with six months' notice. Under a separate and more lucrative agreement, Invincible Solutions also operates the maintenance and security of all six FOYS manufacturing sites across Newdonia. This contract is due for renewal in four months' time. The owner of Invincible Solutions, Patrick Vera, is Robert's brother-in-law, and Robert wishes to assure Patrick he will not be out of pocket as a result of the sale. Robert is a family man, and does not want to jeopardise his family ties under any circumstances. Robert has discussed this with Patrick and while Patrick would be keen to keep both contracts in place, the security contract is Patrick's priority as it is more lucrative and a core part of Invincible Solutions business.

UNIVERSAL TRADE GROUP

Confidential information

UTG recognise the strong brand presence of Uncle Bobi's Noodles, and the board have authorised a maximum of £180 million to acquire FOYS. However, the banking facilities of UTG provide that, unless the prior consent of the bank is obtained: (i) UTG cannot make any payments over £100 million; and (ii) UTG can only make one payment over £50 million on a rolling two weeks basis. The bank's consent process can take up to eight weeks.

UTG see the current senior management of FOYS as vital to the success and strength of the Uncle Bobi brand, and hence as a very valuable asset. They are looking to retain all the senior staff members and are hoping that Robert will agree to some continued degree of involvement in FOYS to ensure a smooth transition and to offer continued advice and strategy input. In order to incentivise senior staff members, in particular Robert, UTG are considering various conditions that could be included in the transaction to ensure that Robert remains with the firm for a period of time and if he were to leave he would receive a reduced consideration. Ideally for UTG, Robert would stay as a director for 12 months or more, but they are willing to accept a more flexible arrangement.

Given that Uncle Bobi's brand and goodwill heavily relies on Robert as an individual, UTG want to ensure that he does not become a competitor in the food market and will

not by using his name and image substantially reduce Uncle Bobi's value and market share. UTG have heard rumours that Robert's next venture is setting up a health food brand. The board have said this would be unacceptable for a sale, and wants a broad non-compete to this effect preferably for three years while they establish themselves in the market.

UTG have an impeccable record for food standards and safety, something they are very proud of and will maintain at almost all costs. They are also a relatively new company in Newdonia and are therefore keen to keep a good relationship with the NFSA. They require some comfort from Robert that FOYS will not be required to recall products under the current investigation.

UTG have a group distribution agreement with 1886 Limited ("**1886**"), a major logistics firm, whereby 1886 acts as the exclusive distributor of UTG's products in certain territories, including Newdonia. Under the terms of the contract, UTG must procure that any newly acquired subsidiaries in such territories sign up to the group distribution agreement within three months of the date of acquisition. UTG get a very good deal with this firm and will not accept using a different distributor. They have in past acquisitions made arrangements to terminate existing distribution agreements when acquiring new subsidiaries by paying a break fee – an option which they would consider in this case or any other creative idea.

SUGGESTED NEGOTIATION POINTS

Available to judges only

Points for FOYS

- 1 Robert is looking to receive the maximum amount of the purchase price upfront in order to start up his new business, this must be at least £90 million. He wants at least £150 million in total, but preferably more. He is willing to make some compromise on price in order to receive a larger amount of the purchase price on completion.
- 2 Robert does not want to continue to be formally involved in FOYS; he is looking to make a clean break. At most he will agree to continued involvement on an ad-hoc basis with restrictions on the amount that he will travel during his work.
- 3 Robert is leaving in order to set up a toy company using the existing Dino Saur brand. While he is not intending to re-enter the snack industry he does have plans to at some point to use the Dino Saur brand to market some healthy drinks aimed at children. He also wants to use his personal brand in the marketing of the Dino Saur brand.
- 4 Robert is not worried about a NFSA investigation into the levels of AFC49 in Uncle Bobi's Noodles – he has been reassured he doesn't need to worry and changed the recipe.
- 5 Robert wants to ensure that at least one of the contracts with Invincible Solutions continues.

Points for UTG

- 1 UTG cannot pay any more than £180 million and have restrictions on how much they can pay at a time. They would prefer to pay after receiving bank consent, which takes eight weeks.
- 2 UTG are looking to retain all of the senior management of FOYS and they see Robert as being important to that; they are also looking for some broader input on strategy. Ideally they would like him to remain as a director for 12 months.
- 3 UTG are keen to limit the risk of Robert becoming a competitor in the food market. The board are looking for a broad non-compete in this regard.
- 4 UTG are concerned about the AFC49 issue as they pride themselves on their reputation for an impeccable record of food safety. They are looking for some assurance from FOYS that this is not an issue.

SUGGESTED NEGOTIATION POINTS (CONTINUED)

Potential solutions (non-exhaustive)

- 1 The price should be a relatively simple point to agree. The two parties are broadly matched on price; any price from £150-180 million would be a success. The main point of negotiation is the structure of the payment, balancing FOYS' need to be paid quickly with UTG's compliance with their banking restrictions. Robert will not accept less than £90 million on completion and UTG can make a maximum upfront payment of £100 million.
- 2 The issue of Robert's continued involvement would ideally be resolved by some sort of consultant arrangement whereby Robert offers support with staff, strategy and other advice but he is not obliged to commit vast amounts of time. The negotiation can include points on his position, the scope of his responsibilities, restrictions on travel and term of the agreement.
- 3 The negotiation on the non-compete could be very broad. Anticipated topics of negotiation include the scope of the non-compete (i.e. as to whether it includes drinks or only food), the term of the non-compete (Robert's plans are future plans therefore he could agree to delaying the launch of the healthy drinks for a period of time).
- 4 The NFSA investigation should be relatively easy to agree with an anticipated solution being that a warranty is given to cover the risk of the NFSA finding that FOYS has breached acceptable levels of AFC49.