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THE THIRD NLU DELHI AND HERBERT SMITH FREEHILLS

# INTERNATIONAL NEGOTIATION COMPETITION

## LICENCE TO STREAM FOR JUDGES ONLY

9-11 SEPTEMBER 2016

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# GENERAL BACKGROUND INFORMATION

## The parties

Topstream plc ("**Topstream**") is a film and TV subscription service based in Oldland, a country in Europe. Its core business is to provide access to content through online streaming. The majority of its 70 million subscribers around the world are based in Europe and the Americas. Market research suggests the company is reaching market saturation in these regions and commentators have identified Asia as a region of huge potential as improvements in the telecommunication infrastructure now mean that streaming content is a more viable option for more people in the region.

GPT is one of the big four television production companies in Oldland. It is known for producing hard-hitting and critically acclaimed TV shows that are well-received by audiences in Europe and the Americas, especially by younger viewers. GPT's biggest hit is the fantasy/action series "Move, Change or Die" ("**MCD**"). GPT is looking to extend its viewership in countries with a young population, as opposed to the ageing population of Oldland.

## Background

Topstream announced earlier this year that the next stage of its Asia expansion strategy was to launch its streaming services in the country of Tedra. Topstream's streaming services are due to launch in the run up to Christmas to capitalise on seasonal growth at that time. As part of this process, it needs to secure licences from its content providers, and is specifically looking to licence a new hit TV show to headline its subscription service in the new market.

Tedra is a country that has recently re-engaged in world trade after a long period of sanctions and isolation, and is currently run by an authoritarian, socially conservative government. Since sanctions were lifted last year many international companies have been looking to invest in the economy which is ripe for rapid and substantial growth. Although Topstream have secured all necessary regulatory consents for their streaming service, the government has publically stated that it will impose restrictions on any fantasy-based characters and nudity shown in any streamed content.

GPT is also interested in securing an audience for its shows in Tedra, as the young population and unexploited market make it ideal for many of its shows, specifically MCD. Currently in its third season, the story of MCD centres on a struggle for power in a fictional futuristic universe. MCD is based on the best-selling fantasy book series of the same name by Meredith Benson, an ageing popular fiction writer based in Oldland.

Topstream and GPT have a good working relationship and have a number of existing exclusive partnerships for licencing content in other countries (e.g. Topstream has the rights to stream MCD in Oldland) and have

collaborated in the past to produce a number of successful shows. For Topstream a deal with GPT will secure the maximum viewership and subscription revenues and cement their brand as the number one provider of high quality content in Tedra. GPT are impressed by Topstream's policy to only allow streaming of content, as opposed to the download and watch later model of rivals such as Nile TV and Instant Video.

There are a number of issues that could impact the future success of MCD. First, Meredith Benson (presently 79 years old) is yet to finish the MCD book series, and fans of the series fear that she will not live to complete it. As the MCD TV show has now aired all that has been written, this is problematic as there will no longer be an established storyline for GPT producers to follow when preparing upcoming seasons of the show.

Secondly, the actor portraying the main character (Simon Frecknall) recently punched a guest star (TV personality Frankie Iron) in the head while shooting MCD on location in Western Europe, and now Iron is suing him for damages. Publically, Frecknall claims that he punched Iron after he did not stop mumbling under his breath during a particularly tense scene.

Thirdly, a report has been released recently which states that, due to the illegal download market, an estimated 10% of the world have seen MCD, despite it only currently being available in Oldland, Newland (a country in North America) and Farland (a country in the Asia-Pacific) (the latter two via Topstream's Newland and Farland operations) which together make up less than 5% of the world's population.

## GENERAL BACKGROUND INFORMATION (CONTINUED)

The contract under negotiation between Topstream and GPT is for a period ranging between three and seven years. It will cover MCD and potentially a number of other shows as part of the licence package.

# TOPSTREAM PLC

## Confidential information

Topstream sees MCD as becoming one of their flagship shows for the Tedra market. It is very important they come to an agreement with GPT, as market research carried out by their internal strategy team has shown that the subscription service which airs MCD is likely to be the most successful in Tedra. They suspect that other Oldland subscription services like Nile TV and Instant Video are also looking to expand into the Tedra market and will be very interested in licensing MCD from GPT.

Topstream are willing to pay up to £50 million per year for MCD on a 3 year contract, although they would like the price to be a lot lower (ideally around £20 million per year). They are concerned about the latest report on illegal downloads and the effect that this could have on viewership figures. They estimate that the return on their investment will be at least £3 million per month for the first year of their contract, £2 million per month for the second year and £1 million per month thereafter (although there is some flexibility in these numbers depending on the overall purchase price).

Topstream are also worried about reports which state that Meredith Benson will not be finishing her latest book until she has written a spin-off to the series. While she is in good health, she is getting older and there is no guarantee that future seasons will be as successful if the show is no longer based on Meredith Benson's original books. It is for this reason that they do not want a contract longer than three years, but Topstream would like to include an option to extend the contract on a yearly rolling basis. If pushed, they would be willing to agree to a longer contractual period, however, it is vital that this is reflected in the agreed price. Topstream are open to mitigating the risk through either (i) an option to terminate the contract early if Meredith Benson dies; or (ii) a reduced fee (20-40% off the annual fee) for any shows produced after she dies. If Topstream do agree to a longer contractual period they recognise they will likely need to increase the price paid, but under no circumstances are they willing to pay greater than £350 million.

Along with MCD, Topstream would also like to bulk licence a number of other GPT shows as part of the negotiated package with GPT. The intent is to stream a number of less high profile shows along with MCD in Tedra to increase the appeal of streaming as opposed to normal cable TV. Topstream would like to bulk licence 15 other GPT shows for a reduced contract price of £25 million. Topstream would like to licence five new shows per year for the next three years and then at the end of this period separately negotiate which shows they would like to continue licensing (again with a reduced purchase price).

Topstream have heard GPT are producing a new show which is meant to hit TV screens with the same success as MCD, they would like the opportunity to licence this show early so they can immediately start offering it to their subscribers. They would be willing to reduce the number of shows they licence from GPT to 10 for £20 million; however, the new GPT show must be included in the deal.

Topstream looks to secure exclusivity for all the shows that it purchases and would be keen to achieve a similar arrangement from GPT in relation to as many of the shows as possible. Topstream likes to remain flexible about when and how often it airs shows as their popularity might increase or decrease quickly and it needs to react to demand.

There are a number of censorship issues that Topstream are already aware they will face. In anticipation of this, they have started talking with the regulator about the extent of cuts which will need to be made to MCD (or any of their other shows) prior to them being made available to the public. They have been told that there can be no nudity shown on screen, and any scenes featuring aliens must be removed, unless there are clear markings on the screen displaying the content stating that such creatures are not real.

Topstream are aware of a large amount of bad press surrounding MCD actor Simon Frecknall. They are concerned that this will impact negatively on the ratings of the show if it continues. They would like an assurance from GPT that the court case between the actors has been settled before continuing agreeing to the deal.

# GPT

## Confidential information

GPT are very keen for MCD to start airing in Tedra, as they are currently producing a new series based in Tedra and would like to start improving their reputation in Tedra as soon as possible. If they do licence to Topstream, they would like a guarantee that the "streaming only" rule (set out in the general information) would continue (at the very least for any content they provide).

GPT know that MCD is a huge hit, and they would like to maximise their earnings. They would like to be paid at least £40 million per year under the contract, although they would be willing to reduce this to £25 million if they can secure a contract length of at least five years. Ideally, they would like the contract length to be seven years as this will allow them the opportunity to solidify their reputation in Tedra, and would line up with the number of seasons Meredith Benson has indicated to them that MCD is likely to last for.

While they are aware that they have now run out of published material, part of their contractual commitment with Meredith Benson states that she must guide the storyline in line with the books, and the ending has already been revealed to two senior executives of GPT (with the skeleton plotlines locked away safely for use when required). GPT have been required to sign confidentially agreements in relation to this information and to reveal the existence of this information to Topstream without Meredith Benson's authority would be a breach of the agreement. GPT are aware of the growing concern over future storylines and so will let them know this information if it becomes necessary to the negotiations. They are also willing to include a provision in the contract reducing the annual fee by 25% if Meredith Benson dies prior to finishing the series.

GPT have a number of other shows on their network they would also like to show on Topstream. They currently have ten flagged in their library, and would be willing to add in another five that they think would work well as part of a package deal. They are willing to licence these to Topstream for a reduced price of £30 million per year for the next three years, with a review period at the end of

this time to determine which shows are kept on, and an ongoing price. They are willing to agree to a 20% reduction in market value at this review as a signal of their ongoing relationship and cooperation with Topstream.

One show they would particularly like to licence to Topstream as part of this package is their new show based in Tedra – they believe this will make as big an impact on the market as MCD has done, and they would like it to be offered on a paid platform prior to it facing the same illegal downloading issues as faced by MCD.

GPT try to avoid granting exclusive rights to their shows in a particular country as it is often possible to resell older shows to be shown as repeats on other channels, but understand that this is difficult with new and popular shows. Additionally, GPT wants to ensure that its shows continue to be shown even if their popularity drops, as such they would like to agree a commitment from Topstream about when and how often the show will be aired with provisions included if they fail to achieve this.

GPT are aware that by allowing MCD to be shown in Tedra, each episode is likely to face some form of censorship. It is vital that any scenes featuring aliens are kept on screen, as these are absolutely necessary to the storyline (and it is part of their contract with Meredith Benson that they will show all the aliens she has written about). They are aware, however, that nudity is likely to be cut and, while they would like to keep as much as possible, they understand this may not be possible and a concession may have to be made in this area. They would prefer not to make a full concession to cut all scenes featuring nudity unless it is an absolute requirement.

GPT want to reassure Topstream that the scandal surrounding Simon Frecknall and Frankie Iron is not going to affect the ratings of the show. They have been privately informed that the court case was settled between the actors last week. A press conference will take place next week with both actors; at which Simon Frecknall will apologise publically and Frankie Iron will accept the apology. GPT have actually found that viewing figures have increased since the date of the scandal but GPT is keen to avoid a recurrence of the event.

# SUGGESTED NEGOTIATION POINTS

## Available to judges only

### Points for Topstream

- 1 Topstream are willing to pay up to £50 million per year for MCD for a 3 year contract, although they would like the price to be a lot lower (and ideally around £20 million per year). If pushed, they would be willing to agree to a longer contractual period, however, it is vital that they are compensated for the risk of Meredith Benson dying early. They are not willing to pay more than £350 million total.
- 2 Topstream are looking to make a return on their investment of at least £3 million per month for the first year of the contract, £2 million per month for the second year and £1 million per month thereafter from subscription revenue.
- 3 Along with MCD, Topstream would also like to bulk licence 15 other GPT shows for a reduced contract price of £25 million (including the new show that GPT has been working on).
- 4 Topstream would like to secure exclusivity for as many of the shows as possible and retain the right to drop the show if it becomes unpopular.
- 5 Topstream have been told that there can be no nudity shown on screen in Tedra, and any scenes featuring aliens must be removed, unless there are clear markings on the screen displaying the content stating that such creatures are not real.
- 6 Topstream would like an assurance from GPT that the court case between the actors has been settled before continuing agreeing to the deal.

### Points for GPT

- 1 GPT would like to be paid at least £40 million per year of the contract for MCD, although they would be willing to reduce this to £25 million per year if they can secure a contract length of at least five years (ideally seven years).
- 2 GPT have a number of other shows on their network they would also like to show on Topstream for a reduced price of £30 million per year for the next three years, with a review period at the end of this time to determine which shows are kept on, and an ongoing price (potentially with a 20% reduction in price going forward).
- 3 GPT are eager to licence their new show based in Tedra to Topstream as part of this package.
- 4 GPT are keen to ensure that their shows continue to air regularly and would like to avoid exclusivity if they can, but understand it is unlikely to achieve this.
- 5 GPT cannot allow the aliens that appear in MCD scenes to be censored, as this would breach their contract with Meredith Benson. They would prefer not to make a full concession to cut all scenes featuring nudity unless it is an absolute requirement.
- 6 GPT do not want to have to lower their contract value due to the actions of Frecknall, as the court case has been settled they do not think this is an issue.



## SUGGESTED NEGOTIATION POINTS (CONTINUED)

### Potential solutions (non-exhaustive)

- 1 One contract for MCD of £50million per year for five years, with an option for Topstream to terminate if Meredith Benson dies without finishing the MCD books, and a contract for 10 GPT shows (including the new GPT show) for £20million per year for three years. For all shows, though most relevantly MCD, all aliens will be shown on screen with the subtitle "This content is fictional", and scenes in the shows containing nudity will still be shown, but with the unclothed body parts blacked out.
- 2 One contract of five years by which GPT licences MCD and 10 other shows (including the new GPT show) to Topstream for £65million per year, with an option for Topstream to reduce the price of the contract by 20% if Meredith Benson dies before finishing the MCD books. Topstream can also require GPT to make up the difference in value if subscription revenues do not hit their required targets. Aliens will be shown on screen, and these will be shown on screen with the subtitle "This content is fictional", all scenes containing nudity in any show will be cut, and scenes with crucial dialogue will be remastered as voiceovers.