

## ELSA Negotiation Competition – Model Case

### Boy Band Banter

#### **COMMON FACTS FOR TEAM A AND B**

Bohlen & Consort (GmbH) is a music industry company that specialises in putting together ‘boy bands’ that resemble Boyzone, Westlife etc., arranging their recordings with the use of hired producers, songwriters and musicians, and marketing their records to the general public. For the last few years, one of their biggest successes has been a boy band called ‘The Kübels’, which has been made up of four good-looking young men. The Kübels have been a massive international success, selling some twenty million CDs throughout the world and a large amount of singles on iTunes and other services, and have a very high media profile as a clean-living, earnest pop group. Their music, including huge hits such as ‘The Hole in My Heart that You Left Behind’ and ‘I Am Ruled By Your Touch’ has been of the soft romantic variety, and the band has been untouched by tabloid scandals. The short term association of one of the band members with Maylor Swifty led to increased positive publicity and the huge success in Asia was crowned with the bands’ own smartphone app.

What is generally not known is that three of the four band members, Dieter, Daniel and David, are not particularly good singers, and Bohlen & Consort have relied heavily upon their main producer, Tom Jones, to ensure that the songs are made to sound good. Tom Jones is also largely responsible for writing most of the band’s music and putting together the team of session musicians, engineers and backing singers that have made the records a big success. Tom Jones has also been very closely involved in supervising the publicity campaigns that have made The Kübels famous, and in co-ordinating their choreography, videos and live shows.

However, in contrast to his fellow band members, the fourth band member, Seb Devine, can sing well, and even wrote the words and music for ‘The Hole in My Heart that You Left Behind’, the band’s biggest hit thus far. Seb also has the highest profile and largest fan-base within the band (e.g. five times more facebook likes than the rest of the band put together).

For some time now, Seb has been unhappy at the limitations of ‘The Kübels’ music and the need for the band members to adhere to their carefully controlled public image. First he has talked in meetings with Bohlen & Consort and lately in media interviews about his desire to ultimately develop a solo career, just like ‘Robbie Williams or George Michael’. He has recently decided to act upon this ambition, and has told Bohlen & Consort that he wishes to leave the band and to go solo.

While Bohlen & Consort are reluctant to break up The Kübels, they are aware that such boy bands have a limited shelf life. They are also eager to handle Seb’s solo career and be his chosen managers. However, they are anxious that The Kübels finish the work they have been doing on their latest CD before Seb can start his solo trip.

In order to settle all issues a meeting has been arranged.

## TEAM A

### Confidential Information for Früh & Sion, representing Seb Devine

Seb Devine is most anxious to ensure that his solo career gets off to a great start, but is not sure whether Bohlen & Consort are the appropriate recording company to manage and support his new artistic career. He has tried to pre-negotiate with other record labels but despite some serious interest none of them has yet shown strong interest. Seb is therefore very keen on an agreement.

Despite still negotiating with other firms, he is aware that he has close ties to Bohlen & Consort at present and that his career could suffer if he were to break with them. There may also be serious legal consequences for him as a result of a contract he signed with them when he initially joined The Kübels, which committed him to record with Bohlen & Consort or pay 'appropriate and proportionate compensation'. While this contract may not survive a sustained legal challenge, Seb is not eager to provoke an unnecessary court case. He, however, does not want to be treated as a child anymore by Bohlen & Consort, and feels that he is in a strong position to dictate terms, as other record companies have already begun to put out feelers to him.

Seb is most eager to cut links with The Kübels: he feels that the best way to launch his career is 'to do a Robbie Williams' and dissociate himself from his previous band. Seb wishes to minimise his association with The Kübels, in order to focus attention upon his new career. Seb has also talked about developing a new 'harder' and more 'adult' image.

He will require some serious inducements to contemplate any further association with The Kübels. He is not very happy about continuing the recording work currently in progress to complete The Kübels' final album, of which six songs out of a total of ten are currently complete and ready. He would prefer not to record any more songs and let the other band members finish the final four without him.

However, if necessary to start his new career, he is willing to support the final stages of the recording but does not wish to be involved in publicity for the CD release, beyond appearing on the front cover of the CD. In particular, he is unwilling to do any further media interviews, but is open to appearing in videos for songs from the new album, provided that his new 'adult' image is presented in these videos, that he is not shown as singing with his fellow band members, and that he has full artistic veto over the contents of the video. Seb thinks these videos could effectively launch his career by representing him as rebelling against the rest of the band and the image they convey.

Any agreement by him to continue to participate in recording and publicity of any kind will have to be appropriately rewarded: Seb feels that he should obtain 10% of any profits generated by the CD, any online sales and follow-on single and DVD proceeds.

He remains unwilling to be associated with any future greatest hits package, and is not interested in undertaking any publicity for this, as he feels that future reminders of his past career will hurt his new image.

As regards his new image, Seb wants to ensure that Bohlen & Consort have no control over how he presents himself, and that their contribution should be to market and sell his records, not to dictate his image.

As a consequence, he wants full artistic control over CD packaging, any photographs, pictures and video images (meaning he can select appropriate directors and artists and design the end product himself in collaboration with what he describes as ‘real artistic talent’). He also wants a veto over all other forms of images and publicity, and wants all publicity material for his solo career to be focused upon the ‘serious adult’ market.

He is not interested in doing publicity for the teenager market, and especially will not agree in any circumstance to sign or abide by any new contractual terms requiring him to behave in a particular manner in his private life.

Seb also is unwilling to work with Tom Jones on his solo material. Seb intensely dislikes Tom Jones, who he accuses of stifling and being dismissive of his natural talent. He feels that he is fully capable of writing, singing and arranging his own material, as shown by the stunning success of ‘The Hole in My Heart that You Left Behind’, the global hit that he wrote and arranged. He would like his new friend, Heino, a leading gangsta-rap producer, to produce his new ‘harder’ material. Seb wants to write all his own material, but is interested in ‘collaborating’ with good songwriters if necessary and if their material reflects his “new” tastes and artistic direction.

Seb also wants the going rate for singer-songwriters of profits from recording material, which he hears is 40% of post-tax profits. He also wants full songwriting credit in the form of 10% pre-tax profits, and an initial bonus of 2 Mio EUR to commit to Bohlen & Consort. Seb has tried to find out the current deal with Tom Jones and believes that he receives 30% of the post-tax profits from The Kübels’ records and an additional songwriting and arranging credit which amounts to 10% of pre-tax profits. In addition, Seb wants to own the IP rights to the music for future royalties but could agree to jointly own the rights with Bohlen & Consorts if this is the only agreeable way to them.

Seb is willing to negotiate, especially on his commitment to the final recording by The Kübels and his future financial terms. However, he wants ‘respect’ and to be treated as a serious artist, both in financial rewards and in his ability to control his career.

## **TEAM B**

### **Confidential Information for Gaffel & Partner, representing Bohlen & Consort GmbH**

Bohlen & Consort are most concerned about Seb Devine's decision to go 'solo'. The Kübels have been a major money spinner for them, and Bohlen & Consort estimate that a final album with a subsequent Greatest Hits package, if fully supported by Seb as the leading figure in the band, could sell fifteen million copies. Without Seb's participation in recording and publicity, however, the new CD might fail to sell well at all.

Bohlen & Consort are also very concerned about whether Seb's solo career will prove successful without appropriate guidance. While Seb is talented, the material he has written and sung thus far has been firmly in the boy band genre and strongly reflects the approach and standard format adopted with great success by Tom Jones, the producer. Bohlen & Consort have no doubt that Seb's fan base is sufficiently large to support some initial success, but are worried that a new 'adult' approach will alienate his existing fans and lack the ability to gain new ones. They are willing to give him an initial bonus of 1 Mio EUR.

As a consequence, they are eager to retain a large degree of control over his image and music, and are unwilling to give him too much independence or to commit themselves to an excessively generous promotion and enumeration package. Bohlen & Consort are aware that they have existing contractual arrangements with Seb that could be used as a valuable point of pressure to encourage him to accept their terms, but are weary of an antagonising Seb.

Bohlen & Consort are particularly anxious to ensure that Seb completes the recording work currently in progress to complete 'The Kübels' final album, of which six songs out of a total of ten are currently complete and ready. Bohlen & Consort believe that this CD could sell a very large amount and are eager to maximise their return on their investment in 'The Kübels'. They also require him to fully join in publicity for the new recording, including appearing on the front cover, media interviews, and associated events. They also want him to appear in the videos that will accompany the new recording as a full member of the band, especially in the videos produced for the Asian market. However, they may be willing to contemplate a particular focus on Seb in the videos for the European market, to help launch his career: however, at no point are they willing to portray him in the videos as antagonistic to other band members or the idea and concept of 'The Kübels' as a boy band, fearing that this will alienate his and their fan base.

Bohlen & Consort also want to ensure that Seb commits himself to churn some publicity for the greatest hits package they intend to produce, but are willing that this could take the form of an ironic reflection upon his past or some similar tactic. They are prepared to be flexible in agreeing some extra remuneration for this, but also consider that they have essentially 'made' Seb's career and are unwilling to cause a situation where his fellow band members also demand more. If Seb is taking part in the promotion of both CDs Bohlen & Consort are willing to consider a special bonus payment of 1 Mio EUR and top up his signing bonus with another 500 000 EUR.

Bohlen & Consort want to retain considerable control over publicity and marketing, however, they may be willing to allow Seb a say in how publicity campaigns (including videos) are designed.

Bohlen & Consort are also anxious that Seb commits himself to a 'good behaviour' clause in his new contract, requiring him to abstain from taking illegal drugs or otherwise behaving in a manner that may constitute 'inappropriate behaviour'. They are very worried about his new friendship with the notorious gangsta-rapper Heino, and have obtained information that Seb has begun to take cocaine, marijuana and other illegal substances. He has also begun to frequent strip clubs in Köln, and they are seriously worried that his new lifestyle will lead to tabloid exposure.

Bohlen & Consort are very eager to ensure that they retain control over his musical direction. They consider that Seb's success is based on the skills of Tom Jones, and want Seb to work with Jones, at least for his first single. They may be willing to discuss alternative suggestions of individuals who could act as producers (along similar lines to Tom Jones), but will not in any circumstances agree to having Heino as a single producer. They might however agree on Heino teaming up with Tom Jones.

Bohlen & Consort are unwilling to grant Seb at present the full going-rate for individual singer-songwriters, at least until his career has proven to be a success. They would be willing to give him an initial yearly salary of 250 000 EUR with a 5% share of pre-tax profits. You were told that some levy in the pre-tax profit is possible if all other points are agreed as Bohlen & Consort are very keen on keeping Seb as one of their artists. Furthermore, you do not know how much information Seb has about the existing agreement with Tom Jones. Currently, the post-tax profits from 'The Kübels' records have been shared by Bohlen & Consort and Tom Jones in a 70:30 ratio, except that Tom Jones also receives an additional songwriting and arranging credit which amounts to 10% of pre-tax profits. All of the IP rights to the new songs will remain with Bohlen & Consort.

Bohlen & Consort are quite committed to retain Seb, especially as he could generate immense profits from the last recording of 'The Kübels', and think that his solo career could work out, if appropriately guided. Despite being able to react flexibly to some of his requests, they are unwilling however to indulge him excessively.

**JUDGES' SUMMARY** (*for judges ONLY*)

Früh & Sion Seb Devine	Points to settle:	Gaffel & Partner Bohlen & Consort GmbH
<ul style="list-style-type: none"> <li>• Would not like to record any more songs</li> <li>• Might contribute if this helps his career</li> <li>• Wants 10% of the profits of the CD</li> </ul>	<b>Last CD of The Kübels</b>	<ul style="list-style-type: none"> <li>• Seb needs to contribute to all 10 songs</li> </ul>
<ul style="list-style-type: none"> <li>• No publicity events</li> <li>• Will only appear on the CD front cover</li> </ul>	<b>Marketing for last CD</b>	<ul style="list-style-type: none"> <li>• Seb needs to fully support marketing the new album</li> </ul>
<ul style="list-style-type: none"> <li>• Can appear in videos</li> <li>• Does not want to appear singing next to the other 3 boys</li> <li>• His adult image should be portrayed</li> <li>• Wants artistic veto over the content of the videos</li> </ul>	<b>Music Video</b>	<ul style="list-style-type: none"> <li>• Seb should appear in all videos</li> <li>• Asia: needs to be portrayed as a member of the band</li> <li>• Europe: more focus on his own career</li> </ul>
<ul style="list-style-type: none"> <li>• Does not want to be involved in the albums or related publicity</li> </ul>	<b>Greatest Hits Package</b>	<ul style="list-style-type: none"> <li>• Seb needs to take part in the publicity but will get 1 Mio and a top up in signing bonus</li> </ul>
<ul style="list-style-type: none"> <li>• Bohlen shall have no control over his image</li> <li>• Seb wants full artistic control</li> <li>• Wants all material to portray him as a serious adult</li> </ul>	<b>Image of Seb</b>	<ul style="list-style-type: none"> <li>• Seb's songs do so far not fit his future image</li> <li>• Old fans might turn away due to his new style</li> <li>• Considerable control but Seb can make major decisions</li> <li>• Seb has to sign a "good behavior clause"</li> </ul>
<ul style="list-style-type: none"> <li>• Does not want to work with Tom Jones</li> <li>• Wants to write his own songs</li> <li>• Would like Heino to produce his songs</li> </ul>	<b>Tom Jones</b>	<ul style="list-style-type: none"> <li>• Tom Jones shall produce the first single</li> <li>• After that other producers can be found</li> <li>• Heino is only accepted in a team with Jones</li> </ul>
<ul style="list-style-type: none"> <li>• 40% of post-tax profit</li> <li>• 10% pre-tax credit for the songwriting</li> <li>• Initial bonus of 2 Mio EUR</li> </ul>	<b>Profit</b>	<ul style="list-style-type: none"> <li>• Initial signing bonus of 1 Mio EUR</li> <li>• Possible top up to 1,5 Mio EUR and 1 Mio EUR if he helps promoting the CDs (possible total 2,5 Mio EUR)</li> </ul>

---

		<ul style="list-style-type: none"><li>• 5% pre-tax credit (which might be slightly increased)</li><li>• 250 000 EUR for the first year</li></ul>
<ul style="list-style-type: none"><li>• Retain all rights but is happy for a joint ownership</li></ul>	<b>IP Rights</b>	<ul style="list-style-type: none"><li>• Retain all rights to new songs</li></ul>