

## Global Warming

Axel and Marie-Claire got married in 1999. In 2001, they quit their jobs (they were both working for an international headhunting firm in the US) and together started a business in Luxembourg called Ozone Agence SA. The company operates in executive recruitment, placing people experienced in the climate change, corporate responsibility and sustainable development fields and Ozone is the only niche recruitment firm in this area of expertise in Europe. In 2001, it was just the two of them, working from their own home in Luxembourg, but the business started growing immediately, and they now have a staff of 40 and have just moved into a new expanded office in the centre of the city. Ozone Agence's clients include many of the leading companies in Germany, France and Benelux, plus foreign multinationals, and they now have a database of 10,000 people working in this professional field. Turnover has been increasing by an average of 20% per annum, and now stands at €20m of billings a year. Axel and Marie-Claire each own 50% of the business. The gross profit margin is 10% and each is expecting to collect €1m in dividends this year, much of which they reinvest.

Blue Sky Green is an American recruitment agency based in New York but with offices in London and Copenhagen. BSG is wholly owned by a Monaco-based private equity group called Mama Mia who bought BSG two years ago and have been investing and expanding its business by 50% each year. BSG is a general recruitment firm, specializing in senior executives but make their money mainly from searching for and placing executives in corporate affairs, PR and lobbying departments of international corporations. Mama Mia's owners are former insurance brokers Marta and Martin, who have been in partnership for over 10 years. Together, they also run BSG. Mama Mia have assets exceeding €2 billion and numerous investments and shareholdings in many service fields.

Marta & Martin approached Axel & Marie-Claire. They said they were interested in expanding BSG into the areas in which Ozone is operating, and to do so on a broader geographic basis. They asked if Axel & Marie-Claire might be interested in having a discussion about folding Ozone into BSG, and if so, whether a meeting to explore the prospect might be in order. Marie-Claire replied saying they always listened to serious proposals and would be happy to meet, but that at present the Ozone business was going very well and selling out was not top of their agenda.

Martin responded that dialogue is always a good thing, even it led nowhere, but when exploring options for mutual gain, it often helped to engage a neutral person to facilitate discussions. Martin said he knew from Mama Mia's lawyer that there was a very good expert independent deal facilitator and asked Marie-Claire if she and Axel would agree to take this path, and if so to share the cost of a top facilitator for a day. After consulting their separate lawyers Marie-Claire and Axel agreed.

The meeting is about to take place in a hotel with the deal facilitator chosen by the respective lawyers. Axel & Marie Claire attend with their joint lawyer, and Marta and Martin attend with their lawyer.

**Private Instructions  
for  
Axel & Marie Claire, co-owners of Ozone Agence and their lawyer**

Coincidentally, the day before Mama Mia/BSG made contact you had agreed to split up. You had been living together for 10 years, married for most of that time, and you had both worked like crazy in the business. It had placed great strains on your relationship, you had drifted apart psychologically, and you both felt like a complete change. You are on good terms, there are no children, and you want to stay friends, but platonically so. Axel wants to go exploring the world and to enjoy the sun, but Marie-Claire cares about the 40 Ozone staff and enjoys being in business – though not the long hours. However, you both agree that now might be the ideal moment to sell. The business is still expanding, there were no credible competitors yet, and you are both relatively youthful. You decided to seek a professional valuation.

The accountancy firm you approached to value Ozone estimated that in the present market, given the absence of debt and the positive prospects for the business, a buyer of a niche recruitment consultancy ought to pay somewhere in the region of x4 to x6 gross billings for 100% of the Ozone shares – ie €80m-€120m. Talking about it later, Axel said that anything over €50m was fine with him, which would generate at least €25m for each of them and they could both live very comfortably for the rest of their lives. If a deal was on the table at that amount, Axel wanted to take it.

Marie-Claire does not agree to sell at a discount under any circumstances. After tax, the number is suddenly not so attractive. In fact Marie-Claire wants over €110m for all the Ozone shares. Anything less is out of the question. Axel says this is unreasonable, but this was typical of how their relationship had recently gone out of control. In the past, they had agreed everything. Now, it's so much more difficult.

Before going into the meeting, you both agree not to let the Mama Mia/BSG people know your relationship is breaking up otherwise they may try to divide and rule. You both agree to play it cool and project to Mama Mia a picture of perfect harmony and strong optimism. You also agree to do more listening and questioning than talking and proposing. But you don't want to lose these people, because right now nobody else has expressed interest in Ozone - although, of course, someone might do so later.

Axel owes a €2m gambling debt in cash and needs to pay this off quickly – he has received threatening phone calls. It is one of the factors that has driven Axel and Marie-Claire apart. Axel, actually, is scared. Hen needs the cash.

Marie-Claire wants to invest in a new business in another field. This will cost over €30m. She wants Ozone's employees looked after, and will not sell at any price. Marie-Claire feels they have worked too hard to see someone else take the profit.

You have great faith in your lawyer, who you have known and used for many years.

Be completely honest about everything, in private, with the neutral and your lawyer.

**Private Instructions  
for  
Marta & Martin, co-owners of Mama Mia/BSG & their lawyer**

You two are business partners. And that's it. It's worked really well. You are both very wealthy and hard-nosed, but you are also both utterly charming and gregarious.

You have done a lot of research and due diligence on Ozone. The business is doing well, but the sector they are in is absolutely exploding internationally. They are not leveraging their position, and if they don't do it soon, someone else will come in and overtake them. Remarkably, although other recruitment firms have tried to get a slice of the action in the field Ozone operate in, none has really succeeded, not least because Axel's and Marie-Claire's reputations and their high public profile are very positive and well-known. Their candidate database is a gold mine.

Ozone is a really attractive proposition. Al Gore and his movie *An Inconvenient Truth* has set in train a momentum where climate change and sustainable development is a "must-have" staff resource for any major American corporation and many foreign companies. They are eagerly searching for expertise in this emerging profession. You can see that accessing Ozone's international database will enable you to leapfrog into this market and develop the field. You will be able to expand the business globally with a bit more investment and just own this sector, internationally.

Although you are publicly known to be cash rich investors, you didn't get to that point by paying value for your investments. Take BSG, for example – you got that a few years ago for half its real value because the owners at the time were just naïve and poorly advised and they focused on the risks more carefully than on the opportunities. It's now worth 5 times more than you paid for it.

You have worked out that the value of Ozone, which has no debt and is increasing its billings (currently €20m per annum) by 20% per annum, is somewhere around x5 gross billings, or €100m. You also know the business is expanding. But you don't want to spend that kind of money. Your brains ache when you think about paying fair value! It's almost against your principles!

But this is a unique little opportunity. There's nothing else like it out there.

You agree to pitch an offer of €50m, pointing out that you would have to spend at least another €75m to open up a string of Ozone branches in the US, Japan and other parts of Asia (like China). These investment costs are actually greatly exaggerated numbers, but nobody can contradict them.

Your goal – get Ozone for no more than a total of €80m. You would consider paying less now (say €40m) but with an earn-out for Axel & Marie-Claire if they stay with the business and if it expands as indicated at a 20% rate in its current markets for at least 3 years. Then you would pay a further €40m bonus. Only with extreme reluctance will you pay more. You want to snap a deal at this meeting, and you don't want to lose it. You are leaving town tomorrow. You want a deal in principle today.

Be completely honest about everything, in private, with the neutral and your lawyer.

**Private Instructions  
for  
The lawyer of Ozone Agence  
(please also read the private instructions for Axel & Marie-Claire)**

You have counselled Ozone and its two owners for around 10 years now, and you have come to know both Marie-Claire and Axel, and their business, very well. The personal relationship between Axel and Marie-Claire became strained about a year ago, and you were not really surprised when they told you yesterday that they had decided to get divorced. It was poor timing, however.

Marie-Claire is more level-headed than Axel, particularly right now when he has debt collectors harassing him. Axel is capable of doing something irrational, driven by his need for immediate cash.

You regard Ozone Agence as your client. You want what's best for both the Ozone Agence shareholders – Axel and Marie-Claire – but you can't favour one over the other even if you think Axel is starting to go off the rails.

It is obvious to you that something needs to be done to fix things between Axel and Marie-Claire if there is any realistic prospect of concluding a favourable deal with Mama Mia/BSG.

Help the mediator, though your first duty is to your clients. Consider how you can best do this while retaining the trust of your clients. Step carefully, but decisively. Also consider your relationship with the lawyer of Ozone Agence. Play a role in this negotiation – don't just sit on the sidelines and give legal advice if requested – your clients have asked you to participate because they value your wise counsel. Participate as a constructive and creative solution provider.

**Private Instructions  
for  
The lawyer of Mama Mia/BSG  
(please also read the private instructions for Marta & Martin)**

You have been a big admirer and student of mediation in the dispute resolution context for many years. Last year, for another client, you participated as an adviser in a deal negotiation that was done with the help of a deal facilitator. It worked very well indeed. Given that Marta and Martin have allocated only a day to try and meet the owners of Ozone and persuade them to sell their business, you thought that cutting through the positional dance as quickly as possible to get to the bottom line interests was critical, and that's why you urged them to negotiate with the help of a facilitator.

You have been the lawyer of Marta and Martin for a good number of years. They are classic new-age entrepreneurs – move fast, make quick concessions, say they are throwing their cards on the table, expect instantaneous reactions and want to cut a deal right away. They get impatient when they meet resistance or hesitation.

Acquiring Ozone Agence is exactly the right opportunity for Mama Mia right now. Combined with the infrastructure they have built into BSG, this would be a very shrewd investment. You hope they don't trip because of their quest for speed and their notorious black-and-white, bottom line approach to things.

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**Private Instructions  
For  
The Deal Facilitator**

You are an experienced dispute resolution mediator, but you have never acted as a deal facilitator before. Assume the principles are similar.

In your opening statement, please take a moment to explain that the goal of the meeting is to determine whether Mama Mia/BSSG and Ozone Agence can make a deal and that you are neutral. Explain the possibility of caucus, confidentiality and your own impartiality. Also ask the parties if they will permit their respective lawyers to assist you as and when appropriate, and, if agreeable, raise the possibility that you may suggest private sessions between you and the lawyers if that makes sense at any point. Explain that since it was Marta & Martin who suggested the discussion, you propose to invite them to start.