



TERM SHEET  
BATTLE  
BERLIN  
-2012-

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## AN IMPROVISED MOCK NEGOTIATION OF A SERIES A FINANCING

### THE CAST

*Magdalena Boettger*

*Sven Morawek*

*Bernhard Schmid*

*Brad Furber*

*Alex Farcet*

### THE CHARACTERS

*Magdalena - Co-Founder – Product, PC Mama, Inc.*

*Sven – Co-Founder – Marketing, PC Mama, Inc.*

*Bernhard – Managing Partner of Ravenous Ventures II, L.P.*

*Brad – Referee, Creator, Writer and Director*

*Alex – Master of Ceremonies and Producer*



## Setting the Stage/Background

Parental Control Mama, Inc. ("PC Mama") was co-founded by three German entrepreneurs, Magdalena (Product & HR), Sven (Marketing & Partner Relations) and Carsten (Technology and Finance) in October, 2010. PC Mama is creating a business focused on providing parents with editorial recommendations and downloadable apps to empower parents to make more informed decisions regarding the access and consumption of digital goods and products by their children on the Internet and via smartphones and tablets. There are at least three other relatively early stage competitors, two of which have already closed on seed funding of € 750K to € 2M, and one of which was recently acquired by a large technology company for € 10 million within one year of its initial funding. To date, PC Mama has been able to bootstrap and its way to building (i) a double opt-in email list/community currently approaching 250,000 members, (ii) downloads of its Android App exceeding 30,000, and (iii) downloads of its iOS (iPad and iPhone) app exceeding 20,000.

PC Mama was originally organized as a GmbH under German law, but it reorganized its top level entity as a Delaware corporation shortly after it was accepted and enrolled into the Spring 2012 program of Startupbootcamp ("SBC"), a well-known European accelerator. The three co-founders of PC Mama each own 800,000 shares of common stock. SBC owns 240,000 shares of common stock. Options to purchase an additional 360,000 shares of common stock have been granted to individuals who have joined the PC Mama team as employees, contractors, consultants and advisors since its inception. PC Mama participated in the SBC Investor Day program in late April 2012. Bernhard, a General Partner of Ravenous Ventures II, L.P. ("Rave"), a French venture capital firm with over € 300 Million in assets under management, attended the SBC Investor Day and was impressed enough by the PC Mama pitch that he invited the PC Mama team to make a presentation to his firm two weeks ago. PC Mama management let it be known that PC Mama would be very pleased to sell a 20% equity stake in exchange for € 750K, and management was also confident that with that amount of equity at its disposal PC Mama could achieve the following milestones within twelve months or less: (i) a double opt-in email list/community exceeding 500,000 members, (ii) downloads of its Android app exceeding 125,000, (iii) downloads of its iOS (iPad and iPhone) app exceeding 100,000, and (iv) monthly gross revenue run rate exceeding € 50,000. After three follow-up meetings with PC Mama management and considerable market due diligence, Rave delivered to PC Mama on Friday, May 18, 2012, a proposed Term Sheet to lead a Series A financing, a copy of which is attached to this Playbill as Addendum A.

Rave has engaged Dewey Cheatem & Howe, a law firm that represents dozens of venture capital firms doing business in the USA and Europe, to draft the Series A Term Sheet and definitive documents contemplated thereby, perform legal due diligence, and provide such other legal services as may be necessary and appropriate to negotiate and close the proposed Series A financing.

PC Mama has engaged Wolfgang, a partner at in the Berlin offices of Sword & Shield, a boutique Berlin law firm that has substantial experience representing startup, emerging growth and mature companies doing business in Germany and internationally.



Wolfgang has reviewed the proposed Series A Term Sheet, and provided his initial written comments and feedback thereon to PC Mama's executive and Board of Directors.

Magdalena and Sven have requested a meeting with Bernhard to discuss the proposed Series A Term Sheet. Bernhard is very experienced negotiating term sheets, and he has asked that initial meeting be among principals only, so that he has a chance to explain the purpose and intent of the various proposed terms and conditions, and to provide Magdalena and Sven with ample time and opportunity to ask questions and receive answers without concern for the meter/billable hours.

## Talking Points

Magdalena and Sven have a number of questions regarding the proposed Term Sheet. They suggests that in their experience, meetings of this sort are most efficient and productive if the parties can first identify the main questions and potential points of contention.

### ***Economic Issues***

1. Price
  - A. Pre- and Post-Money Valuation. PC Mama was asking for € 3.75M in pre-money valuation, and Rave is meeting that request. PC Mama is asking for € 4.5M post-money valuation, and Rave is offering € 4.5M (1<sup>st</sup> Closing) and € 5.25 (2<sup>nd</sup> Closing).
  - B. Equity Dilution: PC Mama is asking for 20%. Rave is offering 20% (1<sup>st</sup> Closing) and 28.57% (2<sup>nd</sup> Closing).
  - C. Questions/Issues: What is the purpose of Rave's proposal to create a tranching financing? Is the 2<sup>nd</sup> Closing a "call" (i.e., "mandatory" at the option of PC Mama) or an "option" ("discretionary" at the option of Rave)? Who decides if milestones have been achieved?
2. Liquidation Preference
  - A. Why is there a 2X liquidation preference? How does that work in operation?
  - B. What is the rationale behind a term that gives Rave both a liquidation preference, first, and full participation rights on an as-converted basis, second? Isn't that getting two bites at the apple? Is that fair?
  - C. What is "market"? Are "market" terms different in Germany and France vs USA?
3. Vesting/Reverse Vesting on Founders Stock and Options
  - A. If the founders' stock has already been issued, then why would VC, angel and/or *co-founders* want "reverse vesting" (i.e., buyback rights)? Is it "fair"?
  - B. What is "market" in terms of reverse vesting on founders stock. What are the tax consequences? Who could/should incur the tax risks/expenses?
  - C. What is "market" for vesting on forward-looking option grants?
  - D. Is there a big difference in what is "market" between Germany and France vs USA?
  - E. What about acceleration provisions in the event of M&A? What is the difference between a "single trigger" and "double trigger" acceleration provision?



4. Option Pool
  - A. How much is "enough"? For how long a period is it intended to last?
  - B. How does size of unallocated option pool affect pre- and post-money valuation?
  
5. Anti-dilution Formula
  - A. What is the difference between "full ratchet" and "weighted average" antidilution formulas? What is difference between "broad-based" and "narrow-based" weighted average antidilution formulas?
  - B. What is "market"?
  - C. Are there differences between Germany and France vs USA?
  - D. Is this solely an "economic" issue, or is this also a "control/voting" issue?

### **Control Issues**

1. Composition and Election of Board of Directors
  - A. What is the "right" number of directors for an early stage company – 3, 4 or 5?
  - B. If common holders have right to elect one (or two) directors, and Series A holders have right to elect one (or two) directors, then how is the third (or fifth) director selected (i.e., by mutual consent of other directors, or by vote of all shareholders as a single class, or what)?
  - C. Should one board seat automatically go to the CEO?
  - D. Are there differences between Germany and France vs USA in terms of standard board composition and corporate governance?
  - E. What about board observers – is that a good idea or common practice?
  - F. How are inside and outside directors generally compensated?
  
2. Protective Provisions
  - A. Why should investors get the right to veto certain actions?
  - B. Are protective provisions/veto rights generally meant to restrict or intrude into operations or ordinary course of business matters?
  - C. What is "market"?
  - D. What about using "materiality" qualifiers?
  - E. What about use of "belt and suspenders" protective provisions – at both the board level (Series A board designee), and shareholder level?
  - F. When should these protection provisions terminate?
  
3. Drag-Along Rights
  - A. Why and when should the preferred stock holders (in this case a minority of the voting stock) be able to force a sale of the company?
  - B. How might founders and management be adversely impacted, and what alternatives exist as protection?
  - C. What is "market"?
  - D. Are there differences between Germany and France vs USA (and even in USA, among different states/coasts) in terms frequency and structure of drag-along rights?



4. Redemption Rights
  - A. What is the rationale for redemption rights?
  - B. Are there any traps for the unwary, such as adverse change provisions or mandatory features that create accounting and balance sheet issues?
  - C. What is market?
  
5. Right of First Refusal/Right of Co-Sale
  - A. How has the emergence of private secondary markets changed standard terms and conditions for this once universally accepted agreement?
  - B. If it's good for the geese (the common holders), should it be good for the ganders (the preferred holders) too?
  - C. What is market?
  
6. No Shop/Confidentiality
  - A. What is the rationale for shutting down the dating process?
  - B. Would a simple nonsolicitation be good enough instead?
  - C. How long is "long enough" and should obligations terminate immediately if the VC terminates the process?
  - D. Should acquisitions be carved out?

## To Follow-Up with Cast Members

### THE CAST

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