

## ARBITRAL AWARD SOUGHT BY RED CORPORATION

1. Confirm that Red shall have no obligation to provide the  $\beta$ -7 series ( $\beta$ -7') to Blue.
2. Blue shall pay US\$3 million to Red.
3. Blue shall pay US\$ 2.1 million to Red.
4. Blue's submission shall be dismissed.

## SUMMARY OF RED CORPORATION'S SUBMISSIONS

- I. Red has no obligation to provide  $\beta$ -7 to Blue.
- II. The tribunal should not order Red to provide  $\beta$ -7 to Blue.
- III. The tribunal should allow Red to setoff Blue's obligation of US\$3 million to Red against its obligation to pay liquidated damages.
- IV. Blue shall pay US\$2.1 million to Red.
- V. Red is not obligated to share the profit of US\$1 million from Internet streaming with Blue.

### $\beta$ Case

#### I. Red shall have no obligation to provide $\beta$ -7 to Blue.

##### Summary of the submission I

Blue may claim that Red is obligated to supply  $\beta$ -7 to Blue, based on Maintenance Agreement [Ex.5] ('Maintenance Agreement 1') or Memorandum of Understandings [Ex.6] ('Memorandum'). However, Red is not under the obligation based on either of the contracts.

Red submits that:

- A. Red is not obligated to provide  $\beta$ -7 under Maintenance Agreement 1;
- B. Red is not obligated to provide  $\beta$ -7 under Memorandum.

#### A. Red is not obligated to provide $\beta$ -7 under Maintenance Agreement 1.

1. Under Maintenance Agreement 1, Red is obligated to replace parts and offer program updates of the equipment for the fees Blue pays [Maintenance Agreement 1 Article ('Art') 2]. Maintenance Agreement 1 Art 6(e) stipulates "Provision of the new version of the equipment" as one of the services that are not provided under Art 2 of the contract.

2. The “new version of the equipment” shall be interpreted as “a version upgrade of the  $\alpha$  and  $\beta$  series requiring major changes affecting the sensors and analytics for sports” because:
  - 2.1 preliminary negotiation between the parties illustrates the common intention of Red and Blue (‘the Parties’) that “a version upgrade of the  $\alpha$  and  $\beta$  series requiring major changes affecting the equipment” is not provided under Maintenance Agreement Art 2 [UNIDROIT Principles of International Commercial Contract 2016 (‘UPICC’) Art 4.1(1), 4.3(a)]. At the meeting on April 1, 2011, when Blue asked about the cost of version upgrade, Red replied “We will replace parts and offer program updates free of charge if you sign up for our maintenance agreement.... But we will still charge you for any major change” [para.22]. During the same conversation, Red contrasted “massive changes affecting the equipment” with “minor changes...like improving select parts...and programs” [para.22]. It was clear for the Parties that Red was referring to “massive changes affecting the equipment” when it mentioned about “major change”, because of the identity of the speaker, timing of the remark, and the comparison with “minor changes”;
  - 2.2 the equipment of the  $\beta$  series consists of the sensors and analytics for sports. Maintenance Agreement 1 Equipment Schedule stipulates the  $\beta$ -4 series as “the sensors and analytics for sports”.
3. There is the common intention of the Parties concerning the criteria to judge whether changes made to the equipment are “major changes” [UPICC Art 4.1(1), 4.3(a)]. In the meeting on April 1, 2011, Red described the upgrade to the  $\alpha$ -3 series as “some major changes were made, including the basic design changes and significant changes to the specifications of the equipment that resulted in the major improvements in the product performances” [para.22]. Thus, it was clear for the parties that the criteria to judge a “major change” are “design changes”, “specifications of the equipment” and “product performances”.
4. The version upgrade to  $\beta$ -7 is “a version upgrade of the  $\beta$  series requiring major changes affecting the sensors and analytics for sports”. Thus, Red is not obligated to provide  $\beta$ -7.
  - 4.1 the basic design was changed. Before  $\beta$ -7, all the  $\beta$  series had wearable sensors [para.21, 25 and 26], but  $\beta$ -7 does not require any physical sensors to be worn in order to analyze athletes’ movements, physical conditions and mental state [para.33] (‘Sensor Change’). Since one of the main functions of the  $\beta$  series is to capture the movements and conditions of athletes with its sensors, it is reasonable to infer that eliminating physical sensors to be worn resulted in the basic design changes;
  - 4.2 major improvements in the product performance were achieved.  $\beta$ -7 is equipped with the new feature to analyze the performance and identify weaknesses of the opponents during a game [para.33] (‘New Feature’). It may now send strategic advice on how to attack the opponents’ weaknesses during a match, whereas the previous  $\beta$  series only had the function to train athletes before a match. This is a major improvement in the product performances, concerning that New

Feature would support the athletes strategically during a game and directly contribute to the win. Also, Sensor Change made it possible to analyze athletes' movements, physical condition and mental state without giving physical and mental stress to athletes. This is a major improvement in product performances, considering that professional athletes are more sensitive to the physical and mental stress since they strive to improve their performance even by one one-hundredth of a second.

**B. Red is not obligated to provide  $\beta$ -7 under Memorandum.**

5. Memorandum Art 4 stipulates that when Red upgrades the  $\beta$  series using the data and feedback collected at Blue Village ('Data'), Red will provide the new version as the test version to Blue for a one-year period before releasing them to other customers ('Exclusive Provision').
6. In upgrading the  $\beta$  series, Red could use Data for either "main changes" or "negligible changes". In the former case, greater part of the changes made in the upgrade are based on Data, and in the latter case, only a small fraction of the changes is based on Data. The phrase "upgrades using Data" shall be interpreted as "upgrades using Data for main changes" [UPICC Art 4.1, 4.3(a), (d)].
  - 6.1 In the meeting in December 2012, Blue proposed to offer Data to Red, expecting that Red would use it to develop future upgrades. Red replied "very attractive suggestions...Feedback from first-rated athletes and promising youth...who gather at Blue Village...will take the quality and quantity of data and opinions we gather to a higher level" [para.25]. Also, Red uses data and feedback collected from other sources ('other Data') for version upgrades as well [para.25]. Therefore, it is inferred that Memorandum was signed since Data was more beneficial than other Data and was expected to contribute more to develop upgrades. If Data is used for "negligible changes", it is contributing less than other Data and thus contradicts the usage of Data expected at the preliminary negotiation [UPICC Art 4.3(a)].
  - 6.2 Exclusive Provision makes it impossible for Red to provide upgraded versions of the  $\beta$  series to other customers for one year [UPICC Art 4.3(d)]. Many customers purchasing the  $\beta$  series sign a maintenance agreement, which offers program updates for free [para.22]. Some of the upgrades would be program updates that are provided under the contract. Also, for version upgrades, Red uses other Data as well [para.25]. Because of Exclusive Provision, other customers who are signed up with the contract or provide data to Red could not get version upgrades, which they could have gained otherwise. As a result, Red would be required to give reasonable explanations for prioritizing Blue compared to other customers. If Data is used only for "negligible changes", the contribution of Data in upgrading the  $\beta$  series is little. In such a case, Red may not be able to justify Exclusive Provision. Therefore, Exclusive Provision to Blue shall be granted when Data is used for "main changes" [UPICC Art 4.3(d)].
7. Red did not use Data for "main changes" in upgrading to  $\beta$ -7. Blue used Data only to resolve some bugs found in the  $\beta$ -6 series and to make minor changes of the design of the display screen and the color of

the text [para.33]. It is clear that compared to New Function and Sensor Change, resolving bugs and changing the design of the display screen are negligible changes. Thus, Red is not obligated to provide  $\beta$ -7.

## II. The tribunal should not order Red to provide $\beta$ -7 to Blue.

### Summary of the submission II

Blue may require Red to provide  $\beta$ -7 to Blue based on UPICC Art 7.2.2. However, Blue may not rely on UPICC 7.2.2 to require Red to provide  $\beta$ -7, since its provision is unreasonably burdensome [UPICC Art 7.2.2(b)].

Red submits that:

A. Even if Red is under obligation to provide  $\beta$ -7 to Blue, Blue may not require Red to provide  $\beta$ -7.

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8. UPICC Art 7.2.2(b) stipulates that if performance or enforcement of a non-monetary obligation is unreasonably burdensome, the other party may not require the obligor to perform it. In order to judge whether the performance of the obligation is unreasonably burdensome, “the major factor should be taken into account is the proportionality between the expenses which the non-performing party has now to incur in order to render performance, and the actual value of the contract<sup>1</sup>.”

9. Provision of  $\beta$ -7 became unreasonably burdensome for Red, because of the directive asking Red to refrain from distributing  $\beta$ -7 issued by the Sports Agency [para.34]. The expense Red may incur would be greater than the value of the contract for Blue, considering the probability and degree of the expenses and values.

9.1 Provision of  $\beta$ -7 is too onerous to Red. If Red does not comply with the directive, the relationships with the Agency would deteriorate [para.34]. The Agency has been one of Red’s most important partners in doing sports business, as it enables Red to be involved in government projects for athletes and to gain various sports information [para.13]. As a result of violating the directive, Red might lose its major business partner for the Sports Business Department.

9.2 The value of the performance for Blue is limited to some degree. Blue runs a business in the field of professional athlete management, athlete training and development, among others (para.15). In addition to it, Blue has utilized the  $\beta$  series in the Blue Village, a *training* center run by Blue [para.16,

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<sup>1</sup> Stephan Vogenauer, *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* Second Edition, Oxford University Press, 2015, p.894 (para.27)

21, 25, 26 and 27]. Since Blue's target is limited to the management, training and development of athletes, Blue does not need  $\beta$ -7.  $\beta$ -7 had greatly changed from the previous version in that it was newly added a *strategic* function, and the previous version is enough for training purposes which Blue basically focuses on. Although had greatly changed from the previous version in that it was newly added a *strategic* function, and the previous version is enough for training purposes which Blue basically focuses on. Thus, the performance would not greatly bring merits to Blue's business.

### **III. The tribunal should allow Red to set off Blue's obligation of US\$3 million to Red against its obligation to pay liquidated damages.**

#### Summary of the submission III

Yellow assigned Blue's obligation of US\$3 million ('Blue's Obligation 1'), which Yellow had acquired based on Sales Agreement [Ex.7] Art 2.1, to Red. If Red is obligated to pay US\$5 million as liquidated damages to Blue ('Red's Obligation 1'), Red may set off Blue's Obligation 1 against Red's Obligation 1.

Red submits that:

- A. Blue's Obligation 1 was assigned from Yellow to Red;
- B. Red may require Blue to perform Blue's Obligation 1;
- C. If Red is obligated to pay US\$5 million as Liquidated Damages 1 to Blue, Red may set off Blue's Obligation 1 against Liquidated Damages 1;
- D. There is an arbitration clause concerning the dispute arising from Blue's Obligation 1;
- E. Blue may not terminate Sales Agreement;
- F. Blue may not set off Blue's Obligation 1 against its claim for damages against Yellow.

#### A. Blue's Obligation 1 was assigned from Yellow to Red.

10. On June 15, 2017, Yellow acquired Blue's Obligation 1 based on Sales Agreement Art 2.1 [para.30].
11. On October 1, 2017, Red loaned US\$3 million to Yellow and Yellow pledged Blue's Obligation 1 to Red as collateral [para 31; UPICC Art 9.1.1]. Assignment of a right includes transfer by way of security [UPICC Art 9.1.1]. Thus, Blue's Obligation 1 was assigned to Red on October 1, 2017.
12. Since the assignment of a right transfer to the assignee all the assignor's right to payment under the contract in respect of the right assigned [UPICC Art 9.1.14(a)], Blue is obligated to pay US\$3 million to Red.

#### B. Red may require Blue to perform Blue's Obligation 1.

13. Red may require Blue to perform Blue's Obligation 1. At the end of January 2018, although Blue's Obligation 1 became due, Blue refused to pay US\$3 million to Red. Since Blue did not perform its obligation, Red may require payment [UPICC Art 7.2.1].

C. If Red owes Red's Obligation 1, Red may set off Blue's Obligation 1 against Red's Obligation 1.

14. If Red is obligated to pay Liquidated Damages 1 to Blue, Red may set off Blue's Obligation 1 against Red's Obligation 1, because:

14.1 Blue owes Red Blue's Obligation 1 and Red owes Red's Obligation 1 to Blue. Both Blue's Obligation 1 and Red's Obligation 1 are monetary obligation [UPICC Art 8.1 (1)(a)];

14.2 both Blue's Obligation 1 and Red's Obligation 1 are ascertained as to its existence and amount and performance is due [UPICC Art 8.1(1)(b)].

D. There is an arbitration clause concerning the dispute arising from Blue's Obligation 1.

15. Although there is no express arbitration clause in the Sales Agreement, which Blue's Obligation 1 is based on, Red may use Blue's Obligation 1 for off-setting in this tribunal. The Sales Agreement Art 12 shall be interpreted as an arbitration clause based on the common intention of the parties [UPICC Art 4.1].

15.1 Sales Agreement stipulates a "*non-exclusive jurisdiction* of the Nego-Town District Court of Negoland" [Sales Agreement Art 12, UPICC Art 4.3(e)]. Thus, the Sales Agreement does not exclude other dispute resolutions, including arbitration.

15.2 The Sales Agreement and Maintenance Agreement [Ex.8] ('Maintenance Agreement 2') were signed on June 15, 2017, between Blue and Yellow [para.30, UPICC Art 2.1.1], and cover Yellow's underwater cameras and sensors [Sales Agreement Art 1, Maintenance Agreement 2 Art 1, UPICC Art 4.3(d)]. Considering the identity of the timing of the signature, parties, and the objects, it is highly likely that the both contracts would be contended under the same occasion. Under this condition, it is reasonable for the parties to allow disputes arising out of or in connection with the contracts to be settled by the same dispute resolution. The Maintenance Agreement 2 Art 12.b stipulates an *exclusive jurisdiction* of arbitral tribunal. Thus, the Sales Agreement shall be interpreted as setting an arbitration clause.

15.3 Yellow and Blue started their transaction on May 15, 2011, and signed Agreement [Ex.4] ('β-4 Agreement') [para.24]. β-4 Agreement had an arbitration clause [β-4 Agreement Art 12]. In addition, Maintenance Agreement 2 has an arbitration clause as well [Maintenance Agreement Art 12.b]. Considering these facts, it is inferred that Yellow and Red has established an arbitration agreement by usages [UPICC Art 1.9]. Thus, based on the usages between the parties, the Sales Agreement shall be interpreted as having an arbitration clause [UPICC 4.3(b)].

#### E. Blue may not terminate the Sales Agreement.

16. Blue may not terminate Sales Agreement due to Yellow's failure to perform its obligation under Maintenance Agreement 2 Art 2 ('Yellow's Obligation'). In order to terminate a contract, "the failure of the other party to perform an obligation *under the contract* must amount to a fundamental non-performance" [UPICC Art 7.3.1(1)]. Since the obligation Yellow failed to perform is based on Maintenance Agreement 2, Blue may not terminate Sales Agreement.

#### F. Blue may not set off Blue's Obligation 1 against its claim for damages against Yellow.

18. Blue may not set off its claim for damages of US\$3 million against Yellow, which it acquired due to Yellow's non-performance of Yellow's Obligation, against Blue's Obligation 1.
19. UPICC Art 9.1.13 (2) stipulates that "the obligor may exercise against the assignee any right of set-off against the assignor up to the time notice of assignment was received." Blue received the assignment of Blue's Obligation 1 on October 1, 2017 [para.31]. Blue did not have the right of set-off based on UPICC Art 8.1 when it received the assignment because:
- 19.1 Blue was not entitled to perform Blue's Obligation 1 on October 1, 2017 [UPICC Art 8.1 (1)(a)]. Blue's Obligation 1 became due on January 31, 2018 [Sales Agreement Art 2.1];
- 19.2 Blue did not have its rights to damages from Yellow on October 1, 2017, since Yellow failed to perform Yellow's obligation on November 2017 [para.32]. Therefore, Blue's claim for damages against Yellow was not ascertained as to its existence and amount and the performance was not due at the time notice of assignment was received [UPICC Art 8.1(1)(b)].

## Event Case

### **IV. Blue shall pay US\$2.1 million to Red as a compensation for the damage caused by the breach of the obligation.**

#### Summary of the submission IV

Red and Blue entered into Agreement [Ex.9] ('Agreement') on December 15, 2016 and set their rights and obligations concerning Nego-Abu Cup ('Event'). Blue had an obligation to have participate in Event in condition which is in good moral and exhibiting sportsmanship, Carl Bolt ('Bolt') ('Obligation B'), Margaret Williams ('Williams') ('Obligation W'), and Sara Hosszu ('Hosszu') ('Obligation H'). However, Blue failed to perform the obligation [para.41, 42 and 44]. As a result of the cancellation of the participations, Red incurred damages of US\$2.1 million in total, because of the lost ticket sales and revenue from the sale of broadcasting rights [para.41, 43, 45 and 46]. Blue is responsible for the damages caused by Blue and shall pay US\$2.1 million in total, based on the Art 3(9) of Agreement.

Red submits that:

- A. Blue breached Obligation B and shall pay US\$750,000 to Red;
- B. Blue breached Obligation W and shall pay US\$750,000 to Red;
- C. Blue breached Obligation H and shall pay US\$600,000 to Red.

A. Blue breached Obligation B and shall pay US\$750,000 to Red.

20. Blue shall perform Obligation B.

20.1 Based on Agreement Art 3(2), Blue is obligated to have athletes listed on Agreement Art 2(8) ('List') participate in Event in good condition, and Bolt was on List.

20.2 The "good condition" shall be interpreted as the condition which is in good moral and exhibiting sportsmanship, considering the nature and purpose of the contract [UPICC Art 4.1, 4.3(d)]. The purpose of Agreement is holding the sports event to celebrate the diplomatic relationship, the unveiling of the Red Stadium and the anniversary of Blue Village [Agreement, WITNESSETH]. Event was supported by the governments of Negoland and Arbitria [para.37] and the name of Event, *Nego-Abu* Cup, utilizes the names of both countries. Regarding this nature of holding sports event that may influence the images of the countries and festive purposes of Agreement, the Parties expected Event commanded considerable attention and every action of athletes participating was looked on by the public. Hence, the athletes were expected to participate in condition in good moral and exhibiting sportsmanship. Therefore, the "good condition" shall be interpreted as the condition which is in good moral and exhibiting sportsmanship

21. Blue has already breached Obligation B before Event, because Blue was negligent about supervising Bolt and it became impossible to perform Obligation B.

21.1 Since Bolt's trainer was Blue's employee [para.40], Blue was responsible for supervising Bolt in terms of the compliance. For example, the trainer is expected to strictly test supplements administered to Bolt. However, the trainer did not test all supplements given to Bolt but checked only a few of them [para.40]. Blue's negligence should not be excused unless there were exceptional reasons for that Blue was not able to test all of them.

21.2 It became impossible for Blue to perform Obligation B, because of Blue's negligence. In UPICC, non-performance is defined so as to include all forms defective performance [UPICC Art 7.1.1 Comment]. Moreover, UPICC establishes the principle that a non-performance which is to be expected is to be equated with a non-performance which occurred at the time when performance fell due [UPICC Art 7.3.3 Comment]. In January 2018, doping test was conducted by Arbitria's Anti-Doping Organization and a prohibited substance was found in Bolt [para.40]. The doping goes against good moral and sportsmanship. Thus, the non-performance of Obligation B was expected at the time of the test in last January. Therefore, Blue breached Obligation B.



21.3 After the cancellation of Bolt's participation, TV stations cancelled their purchase of broadcasting rights and Red had to refund the tickets. Thus, in total, Red incurred the damages of US\$750,000 [para.41, 46]. According to Art 3(9) of Agreement, the aggrieved party, Blue shall indemnify Red from all damages when Blue is liable for and the damages were arisen out of or related to the breach of Agreement of the indemnifying party and its employees. Therefore, Blue shall pay US\$750,000 to indemnify Red from the damages.

**B. Blue breached Obligation W and shall pay US\$750,000 to Red.**

22. Blue shall perform Obligation W, because Williams was on List [Agreement Art 3(2), 20.2].
23. Blue also breached its obligation regarding the participation of Williams. Two weeks before Event, Blue decided to excuse Williams from the games and she did not appear for Event [para.43].
24. After the cancellation of Williams's participation, TV stations cancelled their purchase of broadcasting rights and Red had to refund the tickets. Thus, in total, Red incurred the damages of US\$750,000 [para.43, 46]. Therefore, Blue shall pay US\$750,000 to Red [Agreement Art 3(9)].
25. Blue may argue Red may not rely on Blue's non-performance since such non-performance was caused by Red's omission that it did not perform the obligation to arrange the venue suitable for a game, stipulated in Agreement Art 3(3) [UPICC Art 7.1.2].
- 25.1 Red was obligated to rearrange the venue when the reservation of a different venue is needed for the success of Event. The obligation based on Art 3(3) shall be interpreted as such, because Agreement was concluded for the success of Event [UPICC Art 4.1, 4.3(d)] and the venues for all games were once decided by Red and Blue [Agreement Art 2(4), UPICC Art 4.4].
- 25.2 However, Red performed its obligation, because there was no need for rearrangement of the venue. Williams made a specific request for a change of venue from Nego-Town Tennis Center ('Tennis Center') to Negoland Tennis Coliseum ('Tennis Coliseum'), fearing the heatwave. Although the participation of Williams was important for the success of Event [Agreement Art 3(2)], it was not necessary or a premise of the success. In addition to that, there was enough possibility the temperatures would not reach 40 degrees Celsius during Event [para.42]. Moreover, considering that the success of Event includes an economical success, it was reasonable for Red not to change the venue from Tennis Center to Tennis Coliseum because there would be an additional cost of US\$1.6 million and the decrease in the capacity [para.42].

**C. Blue breached Obligation H and shall pay US\$600,000 to Red.**

26. Blue shall perform Obligation H, because Hosszu was added to List on April 1, 2018 based on Agreement between Red and Blue [Agreement Art 3(2), 20.2].
- 26.1 On April 1, 2018, Blue suggested to the steering committee ('Committee') to add the name of Hosszu to List through a notice [Ex.10] ('Notice'). Committee welcomed the suggestion

[para.38]. From these facts, it is reasonably inferred Committee has made a resolution [Agreement Art 1(2)] just as Notice.

- 26.2 Committee is jointly organized by Red and Blue to determine the matters concerning Event and oversee the operation of Event [Agreement Art 1(1)]. Hence, the resolution made by Committee shall be regarded as a conduct that is sufficient to show Agreement between Red and Blue. Thus, there was an agreement that Hosszu would be added to List, between Red and Blue [UPICC Art 2.1.1].
27. Blue failed to perform Obligation H [para.44]. After the cancellation of Hosszu's participation, TV stations cancelled their purchase of broadcasting rights and Red had to refund the tickets. Thus, in total, Red incurred the damages of US\$600,000 [para.45, 46]. Therefore, Blue shall pay US\$600,000 to Red [Agreement Art 3(9)].
28. Blue may argue that its non-performance shall be excused, based on Art 4(1) of Agreement. However, the liability of Blue shall not be exempted. Art 4(1) stipulates that in order to insist on the exemption, Blue's non-performance should be due to the event beyond the reasonable control of Blue.
- 28.1 Since Blue was responsible for Hosszu's participation, Blue is also responsible toward Red for the arrangement of transportations for Hosszu. Blue concluded a contract with Committee that Committee would book a first-class flight after her appearance in Europe. Thus, Blue owes the responsibility for Committee's booking. Emerald, a member of Committee negligently booked an economy-class flight and because of this, Hosszu did not take the flight and she could not participate in Event. Thus, Blue's non-performance of Obligation H was not due to the volcanic eruptions.

## **V. Red is not obligated to share the profit of US\$1 million from Internet streaming with Blue.**

### **Summary of the submission V**

Red distributed videos of Event, through Red's streaming programs, based on Art 3(7) of Agreement. After the cancellations of athletes' participation, Red urgently booked other athletes, Asuka and Erika from Negoland and gained profit of US\$1 million [para.48]. Although Blue claims Red shall share the profit of US\$1 million, Red is not obligated to share the half of the profit.

Red submits that:

- A. Red was not obligated to share the profit from Red's streaming programs;
- B. if arguendo, Blue still cannot request Red to pay US\$500,000.

A. Red was not obligated to share the profit from Red's streaming programs.

29. Both parties shall share the profits from Event telecasting, according to Art 3(8) of Agreement. “Profits from Event telecasting” shall be interpreted as profits arising directly from broadcasting Event through TV [UPICC Art 4.1, 4.3(a)(d)(e)], because:

29.1 telecasting can generate profits in and influence various fields, thus it is impossible to calculate the profits. For example, telecasting may give effects to the sales of β-7 since it contributes to the branding of Red itself [UPICC Art 4.3(d)]. Thus, the profits shall be limited to the profits generated directly from Event telecasting;

29.2 the word “telecasting” generally means broadcast on television [O.A.L.D.<sup>2</sup>, Longman<sup>3</sup>, UPICC Art 4.3(e)]. Red’s streaming program is broadcasted through Internet. Thus, profit from Red’s streaming service does not fall onto the scope of Art 3(8) of Agreement;

29.3 according to the preliminary negotiations between the Parties in addition to the wording in the contract, there is a common intention that both parties shall share profits from telecasting [para. 37 (12)] which means broadcasting on television [UPICC 4.3(a)].

**B. If arguendo, Blue still cannot request Red to pay US\$500,000.**

30. Even if Red was obligated to share the profit, Blue may not request Red to perform the obligation. Red made efforts to minimize the damages caused by Blue and gained profits of US\$1 million. It goes against the principle of good faith [UPICC Art 1.7] to permit Blue getting profits generated by the aggrieved party, Red.

30.1 The profit from Internet streaming would have been about US\$800,000 if the Athletes had participated Event. In addition to it, without the great performance of Asuka and Erika, the profit would have been US\$300,000. There are no disputes between Red and Blue about these possible amount of profit [para.48]. If it had not been for Red’s efforts to book athletes to fill the posts vacated by Blue’s non-performance, Red would have incurred damages of US\$250,000 from Blue’s breach of the obligation regarding the Athletes’ participations.

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<sup>2</sup> Oxford Advanced Learner's Dictionary 8<sup>th</sup> Edition, Oxford University Press, 2010

<sup>3</sup> Longman Dictionary of Contemporary English 5<sup>th</sup> Edition, PEARSON, 2009