

European Commission
DG Competition
Rue Joseph II 70
B-1000 Brussels

CASE M.6497

**HUTCHISON 3G AUSTRIA HOLDINGS GMBH /
ORANGE AUSTRIA TELECOMMUNICATIONS GMBH**

COMMITMENTS TO THE EUROPEAN COMMISSION

11 NOVEMBER 2012

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the *Merger Regulation*), Hutchison 3G Austria Holdings GmbH (*H3G Austria Holdings*) hereby provides the following commitments (the *Commitments*) in order to enable the European Commission (the *Commission*) to declare the acquisition of Orange Austria Telecommunications GmbH (*Orange*) (H3G Austria Holdings and Orange are together the *Parties*) compatible with the common market by a decision pursuant to Article 8(2) of the Merger Regulation (the *Decision*).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision, to the extent that the Commitments are attached as conditions and obligations, in the general framework of Union law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

A. DEFINITIONS

1. For the purposes of the Commitments, the following terms shall have the following meanings:

Auction Spectrum: means the spectrum that the TTK reserves for a new entrant in the TTK Auction.

Closing: means the completion of the acquisition of Orange by H3G Austria Holdings (inter alia) through the transfer of the share capital of Styrol Holding 1 GmbH to H3G Austria Holdings.

Divestment Spectrum: means the spectrum as defined in paragraph 9.

Effective Date: means the date of the adoption of the Decision.

First Divestiture Period: means the period from the Effective Date and ending on the date that the TKK publishes the tender documents for the TKK Auction.

H3G Austria Holdings: means Hutchison 3G Austria Holdings GmbH, a company incorporated under the laws of Austria with its registered office at Guglgasse 12/10/3, Gasometer C, 1110 Vienna.

H3G: Hutchison 3G Austria GmbH, a company incorporated under the laws of Austria with its registered office at Guglgasse 12/10/3, Gasometer C, 1110 Vienna.

H3G Network: means the mobile telecommunications network operated or used by H3G in Austria from time to time (including for the avoidance of doubt as it evolves through the integration of the Orange network, as well as components owned by H3G and third parties) subject to any limitations contained in national roaming or infrastructure (including site) sharing agreements with third parties.

Licence: means a licence issued under the Austrian Telecommunications Act.

Mobile Virtual Network Enabler: means an entity that provides infrastructure and services (including core infrastructure services) to enable a mobile virtual network operator to offer services to end customers.

Monitoring Trustee: means one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by H3G Austria Holdings, who has the duty to monitor H3G Austria Holdings' compliance with the conditions and obligations attached to the Decision.

MVNO: means a person that:

- (a) does not directly or indirectly control, is not controlled by or is not under common control with or is not otherwise affiliated to a mobile network operator active in Austria; and
- (b) provides (or wishes to provide) mobile services to end customers under its own brand name using the network of a mobile network operator; and
- (c) provides for its own core network infrastructure, either through owning some or all of its own core network or through obtaining some or all of it from a third party such as a Mobile Virtual Network Enabler or under separate negotiation and agreement with H3G on the terms and conditions (and cost-oriented charges, taking into account the investment and operational expenditures made by H3G and allowing for a reasonable rate of return on the investment and these expenditures); and

- (d) does not hold spectrum frequency licence(s) in Austria (i) with respect to which it has achieved at the date of the signing of the MVNO Agreement outdoor coverage exceeding 5% of the Austrian population or (ii) which at the date of the signing of the MVNO Agreement contain outdoor coverage obligations exceeding 5% of the Austrian population. For this purpose, population coverage is defined in the same manner as used in the coverage obligations contained in the existing spectrum licences for the respective spectrum in Austria or if there is no defined method, then in the same manner as set out in the Telekom-Control Commission's decision of 20 November 2000, K 15e/00 (schedule IV, § 9).

MVNO Agreement: means an agreement for wholesale access to the H3G Network entered into between H3G and the Upfront MVNO (as defined in paragraph 6) or a Requesting Party, as the context requires.

Purchaser: means the Qualifying New MNO that has been approved by the Commission as the acquirer of the Divestment Spectrum and the Auction Spectrum.

Qualifying New MNO: means any undertaking that wishes to become a new entrant mobile network operator in Austria through the acquisition of the Divestment Spectrum and the Auction Spectrum and does not directly or indirectly control, is not controlled by or is not under common control with or is not otherwise affiliated to, a mobile network operator active in Austria.

Requesting Party: means an MVNO seeking wholesale access to the H3G Network for the purposes of offering retail mobile communications services to end customers as an MVNO in Austria, and which does not directly or indirectly control, is not controlled by or is not under common control with or is not otherwise affiliated to a mobile network operator active in Austria.

Requesting Party Limit: means the number of Requesting Parties with respect to which their aggregated forecasted traffic at any point in time during the term of the Commitments is no more than 30% of the capacity of the H3G Network. For this purpose, the limit of 30% of the capacity of the H3G Network shall be deemed to have been reached if the traffic volume on the H3G Network exceeds any of the following thresholds in any given month: 180 million voice minutes or 900 million MB or 120 million SMS. To take account of future capacity expansions of the H3G Network, these thresholds shall be indexed according to the volumes published in the latest available RTR Telekom Monitor for the whole mobile communications market whereby the base value for indexation shall be the latest volumes published in the RTR Telekom Monitor as per 1 January 2013. For this purpose, the thresholds shall be indexed on the day following the publication of the most recent RTR Telekom Monitor.

Reference Offer: means the document attached as **Annex 1** which is to be published on H3G's website in accordance with paragraph 4(a) below.

Second Divestiture Period: means the period of 3 months commencing from the later of: (a) the end of the period in which an appeal of the TKK Auction may be lodged and no appeal has been made; or (b) if an appeal has been lodged with the administrative court and/or the constitutional court within the applicable time-limit, the date on which the final judgment of such appeal is handed down.

TKK: means the Telekom-Control Commission, a panel authority established under section 116ff of the Austrian Telecommunications Act.

TKK Auction: means the forthcoming auction to be held by the TKK which is currently scheduled to take place in 2013 and which comprises spectrum in the 800 MHz frequency range reserved for a new entrant to the Austrian market.

B. COMMITMENT TO MAKE WHOLESALE ACCESS AVAILABLE TO REQUESTING PARTIES

2. H3G Austria Holdings commits to procure that upon Closing, H3G will make available wholesale access to the H3G Network to Requesting Parties up to the Requesting Party Limit subject to a maximum of 16 Requesting Parties.
3. H3G shall not be obliged to carry out the technical implementation of wholesale access for more than 2 MVNOs on the H3G Network at any one time. Provided that if the technical implementation of an MVNO continues for more than 12 consecutive months, the relevant MVNO shall not be included in the number of MVNOs for the purposes of calculating the preceding limit.
4. With a view to the access referred to in paragraph 2 being available on fair and non-discriminatory terms, H3G Austria Holdings commits to procure that:
 - (a) the details of the terms upon which access is available are published on the H3G website in the form of the Reference Offer subject to minor amendments which may be required from time to time; and
 - (b) where a Requesting Party requests in writing to become an MVNO on the H3G Network, H3G shall enter into good faith negotiations with a view to agreeing an MVNO Agreement on the basis of the principles set out in the Reference Offer. If the parties have not agreed upon the terms of the MVNO Agreement within a period of 5 months of H3G's receipt of the written request, and provided that the CEOs of H3G and the Requesting Party have not resolved the matters in dispute within 2 weeks of the matter being escalated to them in writing by either party, a fast track dispute resolution procedure shall apply in accordance with Section F below.
5. If H3G wishes to enter into MVNO agreements with additional MVNOs above the Requesting Party Limit, it may do so in its sole discretion and these

Commitments (including for the avoidance of doubt the terms contained in the Reference Offer) do not apply.

C. UPFRONT COMMITMENT TO ENTER INTO AN MVNO AGREEMENT

6. H3G Austria Holdings commits to procure that H3G will enter into an MVNO Agreement based on the Reference Offer with an MVNO to be approved by the Commission (*Upfront MVNO*). H3G will not close the acquisition of Orange before the signing of the MVNO Agreement with the Upfront MVNO and the prior approval of the Commission for the Upfront MVNO.
7. For this purpose, an Upfront MVNO, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to H3G or any mobile network operator active in Austria;
 - (b) possess the financial resources, proven expertise and incentive to be a viable and active competitive force in competition with H3G and other competitors on the Austrian market for mobile communications to end customers. Companies which fulfil the aforementioned criteria may (*inter alia*) include existing MVNOs, companies with telecoms activities, specialised electronic retailers in Austria or mass market retailers in Austria; and
 - (c) be expected to obtain, in light of the information available to the Commission, all necessary approvals from the relevant regulatory authorities to operate as an MVNO in Austria.
8. When H3G has or is about to reach an agreement with the Upfront MVNO, H3G shall provide the Commission with a copy of the MVNO Agreement and a fully documented and reasoned statement in writing, enabling the Commission to verify that the above criteria have been fulfilled and that the MVNO Agreement is being entered into in a manner consistent with these Commitments. H3G Austria Holdings will be deemed to have complied with the Commitment in Section C upon approval by the Commission of the Upfront MVNO and H3G having entered into an agreement with the Upfront MVNO.

D. COMMITMENT TO OFFER FOR SALE THE DIVESTMENT SPECTRUM

9. The Divestment Spectrum consists of 2 x 10 MHz of contiguous spectrum in the 2.6 GHz frequency band.
10. H3G Austria Holdings commits to procure that H3G shall offer to divest to a single Qualifying New MNO the Divestment Spectrum in the First Divestiture Period. Provided that the agreement to sell the Divestment Spectrum in the

First Divestiture Period shall be subject to a condition precedent that the Qualifying New MNO also acquires the Auction Spectrum.

11. If: (a) H3G has not entered into an agreement in the First Divestiture Period to divest the Divestment Spectrum; or (b) the acquirer of the Divestment Spectrum in the First Divestiture Period does not also acquire the Auction Spectrum, H3G Austria Holdings commits to procure that H3G shall offer the Divestment Spectrum for sale to the acquirer of the Auction Spectrum in the Second Divestiture Period. In the case of (a), H3G shall offer the Divestment Spectrum at no minimum price, but shall not be obliged to sell the Divestment Spectrum for a price below zero. In the case of (b), the price payable for the Divestment Spectrum shall be the same price agreed with the acquirer who has been approved by the Commission during the First Divestiture Period, provided that such price does not appear unreasonably high, having regard to the prices paid for similar amounts of spectrum in previous spectrum auctions in Austria.
12. The Commitment to divest the Divestment Spectrum is subject to the Divestment Spectrum carrying an obligation on the Purchaser to roll-out its network within a reasonable time period, to be determined by the TKK, to a coverage area that is equivalent to the minimum coverage area currently required within the 2.6 GHz frequency band.
13. H3G Austria Holdings will be deemed to have complied with the divestment Commitment in paragraphs 10 and 11 of Section D if H3G has entered into a binding sale and purchase agreement to sell the Divestment Spectrum to the acquirer of the Auction Spectrum by the expiration of the Second Divestiture Period and that acquirer has been approved by the Commission in accordance with the provisions at paragraphs 16-17 below. Provided that if the Auction Spectrum is not acquired or if the acquirer of the Auction Spectrum chooses not to acquire the Divestment Spectrum there shall be no further obligation on H3G Austria Holdings to procure the divestment of the Divestment Spectrum and H3G shall be entitled to continue to use the Divestment Spectrum in accordance with the terms and conditions of the relevant Licence.
14. If the Divestment Spectrum is divested, the Divestment Spectrum will be cleared and all related Licences, to the extent they relate to the Divestment Spectrum, will be transferred by H3G to the Purchaser by no later than 1 month after the Second Divestiture Period.
15. If at any point following the divestment of the Divestment Spectrum, the Purchaser no longer qualifies as a Qualifying New MNO, H3G shall have the right, subject to applicable approvals under Austrian and/or EU law including from the TKK, to re-acquire the Divestment Spectrum from the Purchaser at the same price as the Purchaser has paid to H3G and, in such circumstances, the Purchaser shall be required to clear and return the Divestment Spectrum to H3G within a period of 6 months.

The Purchaser

16. The Divestment Spectrum shall be divested only to a Qualifying New MNO that has been approved by the Commission. In order to be approved by the Commission, the Qualifying New MNO must:
- (a) have acquired or intend to acquire the Auction Spectrum;
 - (b) be independent of and unconnected to H3G or any mobile network operator active in Austria;
 - (c) have the serious and *bona fide* intention to enter the Austrian market for mobile communications to end customers;
 - (d) have the financial resources, proven expertise and incentive to use the Divestment Spectrum as a viable and active competitive force in competition with H3G and other competitors on the Austrian market for mobile communications to end customers; and
 - (e) neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Spectrum, (the ***Purchaser Requirements***).
17. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When H3G has reached or is about to reach an agreement with a Qualifying New MNO, H3G Austria Holdings shall submit a fully documented and reasoned proposal including a copy of the final agreement to the Commission and the Monitoring Trustee. H3G Austria Holdings must be able to demonstrate to the Commission that the Qualifying New MNO meets the Purchaser Requirements and that the Divestment Spectrum is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Qualifying New MNO fulfils the Purchaser Requirements and that the Divestment Spectrum is being sold in a manner consistent with the Commitments.

Related commitments

18. If the Divestment Spectrum is divested, H3G Austria Holdings shall procure that:
- (a) H3G shall offer the Purchaser national roaming on the H3G Network on the basis of the same charges and substantially the same terms as contained in the Reference Offer attached as Annex 1 mutatis mutandis except that paragraphs 9, 10, 46, 48 and 49 of the Reference Offer will not apply. The term of the national roaming agreement will be for a period of up to 6 years from the end of the Second Divestiture Period provided that this term shall not extend beyond 10 years after the

Effective Date. H3G shall have a right to terminate the national roaming agreement if the Purchaser requests more than 30% of the capacity of the H3G Network (as defined in accordance with the Requesting Party Limit in Section A above). H3G shall offer mobility scenarios (hand over and reselection) and potential radio network adoptions (e.g. location area barring), based on the principle that the Purchaser shall bear any network implementation costs which H3G may reasonably incur in order to accommodate such requests. The detailed terms shall be subject to good faith negotiation and agreement between H3G and the Purchaser;

- (b) H3G shall offer the Purchaser co-location (within the meaning of section 8 (2) of the Austrian Telecommunications Act) on its existing sites, if technically feasible and subject to the underlying terms of the relevant site leases. Co-location rights shall be granted to the Purchaser on standard market terms. In addition, for the period of up to 6 years from the end of the Second Divestiture Period provided that this term shall not extend beyond 10 years from the Effective Date:
 - (i) H3G shall inform the Purchaser in a timely manner before new sites are being installed in the H3G Network;
 - (ii) in the event of simultaneous requests for co-location on the same site by the Purchaser and a third party, the Purchaser shall have a preferred right to enter into a co-location agreement for such space on standard market terms for a period of two weeks from the day on which H3G has informed the Purchaser of the third party co-location request. This right of the Purchaser is subject to any contractual rights of third parties which may have already been granted by H3G prior to the Effective Date; and
 - (iii) H3G shall inform the Purchaser of any co-location requests by third parties to the extent that granting a co-location right in response to such a request would eliminate the last available co-location possibility on the relevant site. In the event of such a request, the Purchaser shall have a preferred right to enter into a co-location agreement on standard market terms for a period of two weeks from the day on which H3G has informed the Purchaser of the third party co-location request. This right of the Purchaser is subject to any contractual rights of third parties which may have already been granted by H3G prior to the Effective Date; and
- (c) H3G shall offer to divest to the Purchaser on commercial terms any sites which, following the acquisition of Orange, are not required by H3G for the H3G Network and which have not been separately sold to third parties. This Commitment shall be implemented as follows:

- (i) for a period of 2 years from the end of the Second Divestiture Period H3G shall provide the Purchaser on a monthly basis with a list of sites for which H3G intends to terminate the site lease contracts provided that H3G shall not be required to offer or divest any sites to the Purchaser under this paragraph 18(c) after 31 August 2015; and
- (ii) upon the issue of each such list, the Purchaser shall have a period of 1 month to make a binding selection of the sites on that monthly list which it will purchase. This binding selection shall include a commitment by the Purchaser to purchase the sites at a maximum price of book value and the legal title to such sites shall be transferred to the Purchaser as soon as practically possible for H3G and thereafter all operational and other costs related to the relevant sites shall be the responsibility of the Purchaser.

The above shall not prevent H3G from terminating site contracts as part of its network consolidation project, provided that there shall be 2000 sites for potential divestment as at 1 September 2013.

E. MONITORING TRUSTEE

Appointment of the Monitoring Trustee

- 19. H3G Austria Holdings shall appoint a Monitoring Trustee to carry out the functions specified in paragraph 26 below. The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, and shall neither have nor become exposed to a conflict of interest.
- 20. The Monitoring Trustee shall be remunerated by H3G Austria Holdings in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee's mandate.

Proposal by H3G Austria Holdings

- 21. No later than 1 week after the Effective Date, H3G Austria Holdings shall submit a list of two or more persons whom H3G Austria Holdings proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in paragraph 19 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under the Commitments; and
 - (b) the outline of a work plan, which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

22. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, H3G Austria Holdings shall appoint or cause to be appointed, the individual or institution concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, H3G Austria Holdings shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within 1 week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by H3G Austria Holdings

23. If all the proposed Monitoring Trustees are rejected, H3G Austria Holdings shall submit the names of at least 2 more individuals or institutions within 1 week of being informed of the rejection, in accordance with the requirements and procedure set out in paragraphs 19 and 22.

Monitoring Trustee nominated by the Commission

24. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom H3G Austria Holdings shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission. This Monitoring Trustee shall also fulfil the requirements set out in paragraph 19.

Functions of the Monitoring Trustee

25. The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or H3G Austria Holdings, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

26. The Monitoring Trustee shall:
- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
 - (b) monitor compliance by H3G Austria Holdings with the obligations and conditions provided in Sections B and D of the Commitments;

- (c) upon notification from H3G Austria Holdings, verify (and confirm to the Commission) whether 30% of the H3G Network has been reached for the purpose of the obligations in paragraphs 2 and 18;
- (d) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (e) in case of a divestment of the Divestment Spectrum by way of private sale, review and assess potential purchasers as well as the progress of the divestiture process in Section D;
- (f) report to the Commission on the design and progress of the TKK Auction;
- (g) in case a Purchaser requests co-location, monitor H3G's compliance with the obligations in paragraph 18(b);
- (h) in case of a divestment of sites, monitor H3G's compliance with the obligations in paragraph 18(c);
- (i) propose to H3G Austria Holdings such measures as the Monitoring Trustee considers necessary to ensure H3G Austria Holdings' compliance with the conditions and obligations attached to the Decision;
- (j) provide to the Commission, sending H3G Austria Holdings a non-confidential copy at the same time, a written report within 15 calendar days after the end of every calendar month for the first 3 months and from then on within 15 calendar days after the end of each 6 month period for the duration of the Commitments. The report shall cover developments in relation to the negotiation of MVNO Agreements with Requesting Parties and the progress of the divestiture process, the co-location process and the divestiture process, so that the Commission can assess whether H3G Austria Holdings is complying with its obligations under the Commitments;
- (k) within one week after receipt of the documented proposal referred to in paragraph 17, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and whether the Divestment Spectrum is sold in a manner consistent with the Commitments
- (l) in addition to these periodic reports, promptly report in writing to the Commission, sending H3G Austria Holdings a non-confidential copy at the same time, if it concludes on reasonable grounds that H3G Austria Holdings is failing to comply with any of the Commitments; and
- (m) monitor the fast-track dispute resolution process in Section F and, in this context, provide to the Commission:

- (i) a report (on a fortnightly basis) on the progress of any ongoing dispute resolution process; and
 - (ii) a final report detailing the outcome of any dispute resolution procedure within 7 days of a determination by the Expert.
27. The documents provided for above shall be prepared in English.

Duties and obligations of H3G Austria Holdings

28. H3G Austria Holdings shall, and commits to procure that H3G shall, provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of H3G's business books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments. H3G Austria Holdings shall, and commits to procure that H3G shall, provide the Monitoring Trustee upon request with copies of any document. H3G Austria Holdings shall procure that H3G makes available to the Monitoring Trustee one or more office(s) on its premises, and that H3G shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
29. H3G Austria Holdings shall indemnify the Monitoring Trustee and its employees and agents (each an ***Indemnified Party***) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to H3G Austria Holdings for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
30. At the expense of H3G Austria Holdings, the Monitoring Trustee may appoint advisors which are independent of the Parties (in particular for legal advice), subject to H3G Austria Holdings' prior approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee reasonably considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under its mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should H3G Austria Holdings refuse to approve the appointment of advisors proposed by the Monitoring Trustee, the Commission may approve the appointment of such advisors, after having heard representations from H3G Austria Holdings. Only the Monitoring Trustee shall be entitled to issue instructions to any appointed advisors. Paragraph 29 shall apply *mutatis mutandis*.

Replacement, discharge and re-appointment of the Monitoring Trustee

31. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including exposure to a conflict of interest:
 - (a) the Commission may, after hearing the Monitoring Trustee, require H3G Austria Holdings to replace the Monitoring Trustee; or
 - (b) H3G Austria Holdings, with the prior approval of the Commission, may replace the Monitoring Trustee.
32. If the Monitoring Trustee is removed according to paragraph 31, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the outgoing Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19 to 24.
33. Besides the removal according to paragraph 31, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments might not have been fully and properly implemented.

F. FAST-TRACK DISPUTE RESOLUTION

34. A fast-track dispute resolution procedure shall apply in respect of any dispute arising between H3G and a Requesting Party concerning the negotiation of terms of an MVNO Agreement prior to the signing of an MVNO Agreement.
35. If H3G and a Requesting Party have not agreed upon the terms of an MVNO Agreement within a period of 5 months from H3G's receipt of a written request, and provided that the CEOs of H3G and the Requesting Party have not resolved the matters in dispute within 2 weeks of the matter being escalated to them in writing by either party, the fast track dispute resolution procedure below shall apply upon written notice by one party to the other.
36. H3G and the Requesting Party shall appoint a panel of experts (the *Expert*) to determine any such dispute.
37. This panel shall comprise:
 - (a) one expert appointed by H3G;
 - (b) one expert appointed by the Requesting Party; and

- (c) one expert appointed by the two experts so appointed provided that if they fail to appoint the third expert within 15 calendar days from their appointment, either party may request the Chairman of the Rundfunk und Telekom Regulierungs-GmbH to appoint the third expert,

provided that each person so appointed shall be an independent, suitably qualified and experienced expert.

- 38. The process shall be conducted in private and shall be confidential but under supervision of the Monitoring Trustee. The language of the process shall be in English or German, and shall be so determined by the unanimous agreement of the Expert and the Monitoring Trustee.

- 39. The Expert shall act on the following basis:

- (a) the Expert shall act fairly and impartially;
- (b) each party shall submit to the Expert its brief and its submission in relation to the matter in dispute within 5 calendar days of the Expert's appointment;
- (c) the Expert shall decide the procedure to be followed within 5 calendar days of their appointment, which may be the rules of arbitration and conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (Vienna Rules);
- (d) the parties shall assist and provide such documentation as the Expert reasonably requires for the purposes of the determination;
- (e) the Expert shall make its determination taking into account the following principles:
 - (i) the Requesting Party's ability to obtain wholesale access to the H3G Network on the terms set out in Section B;
 - (ii) the provisioning of the H3G Network for access by a Requesting Party not compromising or threatening to compromise the integrity, quality, capacity and operational performance of the H3G Network to the detriment of either H3G or other MVNOs providing services over the H3G Network; and
 - (iii) the provision of wholesale access being effected in the most cost effective manner for both H3G and the MVNO, and not increasing the cost of the operation of the H3G Network beyond what would be reasonably expected in order to implement an MVNO Agreement on the basis of the terms and conditions (including charges) in the Reference Offer.
- (f) decisions of the Expert shall be based on majority votes of the panel;

- (g) the Expert's determination shall be given within a maximum period of 3 months of the Expert's appointment;
 - (h) the Expert's determination shall (save for manifest error or fraud) be final and binding on the parties;
 - (i) each party shall carry out the actions required to comply with the obligations set out in the Expert's determination within any time-limits specified by the Expert. If the Requesting Party fails to comply with applicable obligations set out in the Expert's determination, H3G Austria Holdings, acting reasonably, may choose not to continue negotiations, or enter into an MVNO Agreement, with that Requesting Party; and
 - (j) the Expert shall determine how and by whom the costs of the determination including the fees and expenses of the Expert are to be paid.
40. The Commission shall be allowed and enabled to participate in all stages of the fast-track dispute resolution procedure by:
- (a) receiving all written submissions (including documents and reports, etc.) made by the parties to the procedure;
 - (b) receiving all documents exchanged by the Expert with the parties to the procedure;
 - (c) filing any Commission amicus curiae briefs; and
 - (d) being present at the hearing(s) in Vienna and being allowed to ask questions to parties.
41. The Expert shall forward, or shall order the parties to the procedure to forward, the documents mentioned to the Commission without delay.
42. The Monitoring Trustee shall receive copies of:
- (a) all submissions made by the parties in relation to the matters they wish to have resolved by the Expert, on the day when these have been submitted to the Expert;
 - (b) all other documentation provided by the parties, on the day when these have been submitted to the Expert; and
 - (c) the determination made by the Expert, on the day when the determination has been provided to the parties.
43. Following the signing of an MVNO Agreement, the dispute procedure set out above shall no longer apply. This is without prejudice to any other rights and remedies that may be available to a Requesting Party or H3G as the case may be in respect of any breach of an MVNO Agreement as a matter of contract

law or otherwise, including without limitation a party's right to seek, obtain and implement injunctive, interlocutory or other immediate relief.

G. FINAL PROVISIONS

I. DURATION

44. The Commitment in Section B shall expire on the date which is the earlier of:
- (a) the date on which (i) H3G has transferred the Divestment Spectrum to a Purchaser and (ii) the Auction Spectrum has been transferred to the Purchaser;
 - (b) the date on which a new entrant MNO enters the market; or
 - (c) 10 years from the Effective Date.

Provided that:

- (i) in the case of sub-paragraphs (a) and (b), H3G shall continue to fulfil its obligations under all existing MVNO Agreements it has entered as at that date in accordance with the terms and conditions of such agreements (including, for the avoidance of doubt, the rights of extension contemplated in paragraph 46 of the Reference Offer and the relevant MVNO Agreement); and
 - (ii) in the case of sub-paragraph (c), in 2022 (being the tenth year of the Commitments), H3G shall not be obliged to enter into an MVNO Agreement for a period longer than 2 years.
45. The Commitment in Section C shall expire upon fulfilment in accordance with paragraph 8.
46. The Commitments in paragraphs 10 and 11 of Section D shall expire upon fulfilment in accordance with paragraph 13. The Commitments in paragraph 18 of Section D shall expire at the end of the respective periods specified in paragraphs 18 (a), (b) and (c).

II. REVIEW

47. The Commission may, where appropriate, in response to a request from H3G Austria Holdings showing good cause and accompanied by a report from the Monitoring Trustee:
- (a) grant an extension of the time periods foreseen in the Commitments; or
 - (b) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in the Commitments.
48. In determining whether exceptional circumstances may justify a waiver, modification or substitution of the Commitments at the request of H3G

Austria Holdings, the Commission will take into account *inter alia* significant changes in market circumstances, applicable laws and/or the regulatory environment.

.....

Name: Thomas Wessely / Angeline Woods

Date: 29 October 2012

Duly authorised on behalf of Hutchison 3G Austria Holdings

ANNEX 1: REFERENCE OFFER

This Reference Offer is published pursuant to Commission Decision M. 6497 Hutchison 3G Austria Holdings GmbH / Orange Telecommunication GmbH.

This Reference Offer sets out the key commercial principles and charges for the provision of MVNO wholesale access to the H3G Network for the purpose of providing electronic communications services to end users in Austria.

A. WHOLESALE ACCESS OFFER

1. Where a Requesting Party reasonably requests in writing to become an MVNO on the H3G Network, H3G shall offer the following services:
 - (a) wholesale access to the H3G Network for the origination and termination of circuit switched, SMS, packet switched data (including MMS) services to MVNO customers;
 - (b) wholesale access to the H3G Network for the provision of value added services to MVNO customers;
 - (c) location data for emergency call delivery services with respect to MVNO customers; and
 - (d) location data and real time CDRs for legal interception services with respect to MVNO customers.

The technical specification for the services and the network access requirements will be made available on request and without undue delay.

2. The above wholesale access services are available using the mobile network technologies which H3G uses to deliver services to its customers from time to time (UMTS, HSPA, HSDPA and LTE, as well as GSM and GPRS to the extent available under its 2G and 2.5G roaming arrangements).
3. H3G shall grant the MVNO access to future evolutions in mobile technologies and/or new products based on existing technologies which were not offered by H3G in Austria as at [*insert Effective Date*] (for example differentiated quality of service offers) within a reasonable period of the commercial launch of the new technology and/or new products by H3G unless such access is not technically feasible, and subject to negotiation and agreement between H3G and the MVNO of the terms and conditions (and, if applicable, charges). Such period is not to exceed 8 weeks if H3G is the first operator in the market to launch the new technology and/or new product or 4 weeks if the new technology and/or new product has already been commercially launched by a competitor of H3G. If the terms and conditions (and, if applicable, charges) for access to such future evolutions in mobile technologies and/or new products are agreed between H3G and the MVNO, such “service” will become a service under the MVNO Agreement.

4. At the request of the MVNO, H3G shall, at no extra cost, make available a copy of its mobile number portability database as at the date of the MVNO Agreement.
5. Subject to Section A 6, the MVNO shall be responsible for making its own arrangements to meet its obligations as a public communications network operator under Austrian law.
6. H3G will consider all reasonable requests to provide assistance with respect to emergency call delivery services, legal intercept services, numbering and mobile number portability. The provision of any such assistance by H3G shall be subject to separate negotiation and agreement between H3G and the MVNO of the terms and conditions (and charges).
7. This Reference Offer covers only the services set out in Section A 1 above, and not, for instance, the following services (a) the provision of all or part of the core network infrastructure such as the interconnection between the H3G and Requesting Party, or between the Requesting Party and other mobile or fixed network operators (b) the provision of a mobile number portability platform (c) transit or routing services or (d) international roaming services. H3G shall consider reasonable requests for additional services. The provision of any such services by H3G shall be subject to separate negotiation and agreement between H3G and the MVNO of the terms and conditions (and cost-oriented charges, taking into account the investment and operational expenditures made by H3G and allowing for a reasonable rate of return on the investment and these expenditures), and shall not form part of the MVNO Agreement.
8. This Reference Offer is subject to the Requesting Party and H3G entering into an MVNO agreement on reasonable terms and conditions which shall include the commercial terms set out in this Reference Offer.
9. This Reference Offer is available to up to (a) 16 Requesting Parties enabling them to offer retail mobile communications services to end customers in Austria or (b) such lower number of MVNOs for which the aggregate forecasted traffic at any point in time during the term of the MVNO Agreements is no more than 30% of the capacity of the H3G Network.
10. H3G Austria Holdings shall not be obliged to carry out the technical implementation of wholesale access for more than 2 MVNOs on the H3G Network at any one time. Provided that if the technical implementation of an MVNO continues for more than 12 consecutive months, the relevant MVNO shall not be included in the number of MVNOs for the purposes of calculating the preceding limits.

B. CHARGES

11. The charges payable by the MVNO for the services in Section A 1(a) above (circuit switched, SMS, packet switched data (including MMS) services) shall be calculated in accordance with the rates and conditions set out in Appendix

A of this Reference Offer. Provided that H3G may pass on to the MVNO any additional fees or charges that have been levied on H3G under Austrian law and/or at the direction of a competent authority (or which H3G is required to charge to the MVNO) to the extent that they relate to the network access services being provided to the MVNO. The rates in Appendix A are subject to price indexation in accordance with Section C below.

12. Charges payable for the services in Section A 1(b) (value added services) or any other service (including differentiated quality of service offers or any administrative and other handling services with respect to emergency call delivery and legal intercept) shall be subject to negotiation and agreement between H3G and the MVNO of the terms and conditions (including charges).
13. All interconnection fees for the termination and origination of circuit switched services and SMS by or to MVNO customers shall be for the account of the MVNO, and shall be paid and settled directly between the MVNO and the interconnecting mobile and/or fixed network operator (including H3G) as the case may be.
14. The MVNO shall provide an on demand financial security (in the form of a bank guarantee) (“Security”) to H3G in an amount equal to the Security Amount. For this purpose the “Security Amount” shall be an amount equal to the average monthly charge payable based on the 12 month rolling forecast provided by the MVNO from time to time multiplied by 3. The Security Amount shall be recalculated each time the MVNO provides its 12 month rolling forecast as described in Section F below. H3G may drawdown on the Security in accordance with its terms at any time during or after termination of the MVNO Agreement to satisfy any amounts due and payable to H3G (including any charges) that remain unpaid by the relevant due date. The MVNO shall maintain the level of the applicable Security Amount and shall replenish the Security within 30 working days of (a) receipt of notice from H3G that it has drawn down on the Security or (b) the provision of its 12 month rolling forecast if there is a shortfall between the Security Amount calculated on the basis of that forecast compared to the Security Amount calculated in relation to the immediately preceding 12 month forecast.
15. All charges will be payable in Euros and are exclusive of VAT.
16. H3G will issue invoices monthly, which shall be payable within 30 days.

C. PRICE INDEXATION

17. The charges set out in Appendix A are subject to retail price indexation. H3G and the MVNO shall negotiate in a good faith a reasonable price indexation mechanism, taking into consideration the ability of the MVNO to offer competitive products and services to end-users. Reasonable price indexation mechanisms may include an index based on retail prices published by the Rundfunk & Telekom Regulierungs-GmbH or an index based on the prices of H3G.

D. IMPLEMENTATION AND IMPLEMENTATION FEE

18. The MVNO Agreement shall specify the technical implementation work required in order to provide wholesale access to the H3G Network, including the responsibilities of H3G and the MVNO and the agreed project plan.
19. H3G may charge the MVNO a set-up fee of up to €200,000, payable in two equal instalments. The first instalment shall be payable on signature of the MVNO Agreement and the second instalment shall be payable on the earlier of the commercial launch by the MVNO of its retail services and 9 months from the signature of the MVNO Agreement. The implementation fee is subject to the Austrian consumer price index (“Verbraucherpreisindex”).

E. NON-DISCRIMINATION OBLIGATION

20. H3G shall supply the same quality of service and coverage to the MVNO in respect of the MVNO customers as it does to its own customers and to those of other MVNOs on the H3G Network, including with respect to suspension of services for maintenance (including repairs, upgrades and modifications to the H3G network) and emergencies.
21. H3G has the right to manage the traffic flow on its network (including that of the MVNO customers) in order to maintain network integrity or to improve the service for a larger range of customers in a cell. The reduction of the portfolio of services offered by H3G to its customers could also result in comparable limitations on the services offered by the MVNO to its customers, subject to H3G providing the MVNO a lead time of 1 month.
22. For the avoidance of doubt, the retail offer by H3G to its customers of any new technologies or products which H3G has offered to the MVNO in accordance with Section A 3, and which the MVNO has chosen not to offer to its customers, shall not be considered a breach of the non-discrimination obligations contained in this Section E.
23. H3G shall be permitted to monitor and conduct internal analyses of the MVNO customers for network quality assurance purposes as it does so with respect to its own customers and those of other MVNOs on the H3G Network.

F. FORECASTS

24. The MVNO Agreement shall include forecast requirements which shall be limited to the minimum extent necessary for capacity management purposes.
25. Following the commercial launch by the MVNO, the MVNO shall on an annual basis provide H3G, no later than on the 15th of September of each year (the “**Forecasting Date**”), a forecast for each month of the ensuing 12 month period from the September to the August inclusive and an annual forecast for a further 4 years (the “**Forecast**”). In the absence of any Forecast for the applicable 12 month period, the actual traffic volumes of the immediately

preceding 12 month period (September to August inclusive) shall be deemed to be submitted as the Forecast.

26. Each Forecast shall show the volume of voice (minutes), data (megabytes) and SMS traffic (SMS messages) expected to be generated by the MVNO's customers per calendar month within the 12 month Forecast and on an annual basis for the remaining 4 years of the forecasting period.
27. Each 12 month Forecast for each type of traffic (voice, data and SMS) shall be non-binding on the MVNO as long as the individual monthly forecasts (for each type of traffic) in any Forecast do not exceed the respective non-binding thresholds of 30 million voice minutes, 150 million MB or 20 million SMS respectively (the "**Maximum Non-Binding Forecast**"). The components of the Maximum Non-Binding Forecast shall at the beginning of each forecasting period be indexed according to the volumes published in the latest available RTR Telekom Monitor for the whole mobile communications market whereby the base value for indexation shall be the latest volumes published in the RTR Telekom Monitor as per 1 January 2013, reflecting market development on voice, data and SMS traffic. The reference date for the indexation of the Maximum Non-Binding Forecast shall be the most recent RTR Telekom Monitor preceding the Forecasting Date. Any forecast for a particular traffic type (voice, data or SMS) in excess of the relevant Maximum Non-Binding Forecast shall be binding ("**Binding Forecast**"). For the avoidance of doubt, the Binding Forecast shall only refer to the first 12 month period of the Forecast.
28. In addition to the Forecast, the MVNO shall provide H3G with non-binding quarterly update forecasts which shall be taken into account for interim capacity planning purposes.
29. If on the basis of the Binding Forecast H3G envisages the need for investment in capacity upgrades to the H3G Network, H3G shall within 20 business days from receipt of the Forecast notify the MVNO in writing: (a) with its best estimate of the cost of such investment attributable to the MVNO on the basis of the proportion of traffic increase forecast by the MVNO relative to the total forecast increase in capacity required by H3G (for all retail and wholesale customers); and (b) the maximum possible volumes to be handled without the need for such investment. If the MVNO adjusts its Binding Forecast in writing within 10 business days from such notification, the updated Forecast shall be deemed to be the Forecast for the applicable Forecasting Date.

H3G shall provide for the required capacity to handle the forecasted traffic (including Binding Forecasts) on the condition that:

- (a) the MVNO acknowledges and accepts that H3G is permitted to manage the traffic in relation to, and selectively for, the MVNO's customers if and to the extent that the actual usage is in excess of 125% of the Forecast and if such excess usage would cause degradation of the quality of the H3G Network; and

- (b) if actual usage falls short of 75% of the Binding Forecast and H3G has invested in the capacity upgrade of the H3G Network earlier than necessary for its own forecasted traffic in order to meet volumes in the Binding Forecast, and H3G has duly notified the MVNO, H3G is entitled to charge the MVNO reasonable financing costs for such investment. Provided that the financing costs shall only be payable by the MVNO if: (i) the period is more than 6 months between the actual investment made by H3G to the time the MVNO's actual usage meets 75% of the highest monthly volume in the Binding Forecast or (ii) the period is more than 6 months between the actual investment made by H3G to the time when such investment becomes necessary for H3G's own traffic requirements plus the actual usage of the MVNO. If neither event occurs, and will not foreseeable occur within 5 years from the Forecasting Date, the MVNO shall be responsible for both the financing costs and the investment costs. The amount of the investment costs for this purpose shall be capped at the charges which would have become due and payable for the shortfall between the actual usage and 75% of the Binding Forecast.

G. ACCESS TO AND USE OF MVNO CUSTOMER INFORMATION

30. To the extent that H3G personnel have access to the forecast information provided under Section F above or to data relating to the MVNO's customers, H3G shall ensure that access is limited to persons who require access solely for the purposes described in Section F above (in relation to the forecast information) and paragraph 31 below (in relation to any customer data).
31. H3G and the MVNO shall agree that customer data provided by the MVNO to H3G shall be limited to the minimum necessary for the purposes described below. The MVNO shall permit H3G to use traffic and location data related to the MVNO customers, and to supply such data to third parties, solely to the extent necessary for the purposes of legal interception, billing, capacity management, traffic management, fraud detection, routing and cell identification and other technical purposes required for the provision of wholesale access to the MVNO or otherwise in order to comply with applicable laws or the directions of a competent authority.

H. NUMBERING

32. The MVNO shall be solely responsible for meeting its numbering requirements under Austria law and H3G shall be under no obligation to manage any part of its numbering requirements.
33. In order to allow proper system configuration and unique user identification by H3G, the MVNO shall provide H3G with (a) the IMSI range to be used by the MVNO's customers on the H3G Network (including any sub-ranges being used by the MVNO's customers) and (b) the MSISDN range to be used by the MVNO's SIMs on the H3G Network.

I. PRIVACY AND DATA PROTECTION

34. H3G and the MVNO shall each comply with relevant data protection and privacy laws with respect to the processing of the MVNO customer data (including traffic and location data).

J. USE OF THE H3G NETWORK

35. The MVNO shall take all reasonable steps to maintain the quality of the H3G Network.

36. The MVNO shall:

- (a) not use the wholesale access services or allow any customer or other third party to use the services for any immoral, obscene, harmful, offensive or unlawful purpose;
- (b) not connect or allow any customer or other third party to connect to the H3G Network any mobile device (whether a handset, USIM or other device) unless the device is compliant with international technical standards;
- (c) provide H3G with information on all planned UE (user equipment) / CPE (customer premises equipment) at least 10 days before the MVNO makes such equipment commercially available;
- (d) not connect or allow any customer or other third party to duplicate MVNO SIM cards (with one and the same IMSI) or manipulate MVNO SIM cards for roaming fraud, premium rate service abuse, SMS spamming/faking, interconnect fraud, subscription fraud or similar fraud and abuse;
- (e) not connect or allow any customer or other third party to connect or continue the connection of any equipment that allows the bypass of interconnect costs through terminating fixed to mobile calls as mobile to mobile calls (“**Gateway**”) to the H3G Network without H3G’s prior written consent;
- (f) monitor activities involving fraud, artificially inflated traffic and any other breaches of security connected with the use of the H3G Network including the unauthorised use of any Gateway, and notify H3G immediately of such activities;
- (g) comply with any security requirements in relation to access to the H3G Network and systems, and comply with all reasonable instructions issued by H3G in relation to the use of the wholesale access services;
- (h) not make any disparaging remarks about the H3G Network, nor mislead or make any false statements or representations in respect of the H3G Network;

- (i) comply with all directions issued by H3G reasonably necessary to assist it in complying with any regulatory requirement;
 - (j) not use the wholesale access purchased from H3G in conjunction with with services it has acquired from another mobile network operator in Austria (excluding, for the avoidance of doubt, interconnection);
 - (k) not use the H3G Network to allow a third party to provide mobile communications services in Austria to end customers;
 - (l) not seek to sell MVNO services to any customer whose residence or place of business is outside Austria; and
 - (m) not act in a manner which would lead to a lower quality of service and coverage for H3G's customers compared to the customers of the MVNO.
37. H3G may suspend or terminate an MVNO's customer if the customer is using devices or other equipment which is defective or illegal or non-compliant with international technical standards, the customer is causing technical problems on the H3G Network, the customer is suspected of fraudulent or unauthorised use or authentication of the subscription is not possible. Prior to any suspension or termination, H3G will inform the MVNO unless it is not expedient to do so in which case it will inform the MVNO immediately thereafter.
38. H3G may request the MVNO to block a SIM card used contrary to the prohibited uses above and the MVNO shall investigate such request and block the relevant SIM to the extent the MVNO deems it so required, acting reasonably.
39. If either H3G or the MVNO suspects any kind of fraud or abuse which involves the services offered by the MVNO under the wholesale access offer they shall inform each other immediately and co-operate in good faith and use all appropriate means to identify, eliminate and the prevent the fraud or abuse as soon as feasible.

K. INTELLECTUAL PROPERTY AND BRANDING

40. All intellectual property rights which are owned by, or proprietary to, a party shall remain the exclusive property of that party.
41. All intellectual property rights in the H3G marks and the H3G Network shall remain the property of H3G. The MVNO shall not brand or promote its services under the H3G brand.
42. All intellectual property rights in the MVNO marks shall remain the property of the MVNO.

L. COMPLIANCE WITH ALL APPLICABLE LAWS

43. Each party to the MVNO Agreement shall comply with all applicable laws, regulations and rules applicable to its obligations under the MVNO Agreement, including for the avoidance of doubt Austrian telecommunications laws.

M. LIMITATIONS OF LIABILITY AND WARRANTIES

44. Subject to the limitations set out in the MVNO Agreement, the liability of the parties shall be governed by Austrian law. The parties shall only be liable for damages caused by intentional misconduct (“Vorsatz”) or gross negligence (“grobe Fahrlässigkeit”). Liability for negligence shall to the extent legally permitted be excluded. Neither party will be liable to the other, whether for negligence, breach of contract, misrepresentation or otherwise for loss of profit or revenue, or indirect loss/damage or consequential loss/damage suffered by the other party whether or not foreseeable.
45. The MVNO Agreement shall contain standard representations and warranties regarding the capacity and authority to enter into the Agreement, the holding of all necessary permits, registrations, filings and licences and the compliance with applicable laws.

N. TERM AND TERMINATION

46. The term of the MVNO Agreement will be for an initial term of 3 years, with a right for the MVNO to extend the term up to a date no later than the date 10 years from [*insert the Effective Date*]. Provided that the term of any MVNO Agreement entered into in 2022 shall not exceed a period of 2 years unless otherwise agreed between the parties.
47. Each party will have the right to terminate the MVNO Agreement for material breach, insolvency events and force majeure. It will be deemed to be a material breach if the MVNO is 2 months or more late in paying any invoice.
48. H3G shall have a right to terminate the MVNO Agreement if (a) the MVNO is acquired (directly or indirectly) by another MNO in Austria or (b) the MVNO holds spectrum frequency licence(s) with respect to which it has achieved outdoor coverage exceeding 10% of the Austria population or (c) the MVNO holds spectrum frequency licence(s) which contain outdoor coverage obligations exceeding 10% of the Austrian population. For this purpose, population coverage is defined in the same manner as used in the coverage obligations contained in the existing spectrum licences for the respective spectrum in Austria or if there is no defined method, then in the same manner as set out in the Telekom-Control Commission’s decision of 20 November 2000, K 15e/00 (schedule IV, § 9).
49. On termination of the MVNO Agreement, H3G will use reasonable endeavours to assist the MVNO to port or migrate its customers to the network

of another mobile network operator, provided that any costs related to such migration shall be borne by the MVNO. If H3G exercises its right to terminate as contemplated in Sections N 48(b) and (c) above, H3G will continue to provide the MVNO with the wholesale access services that it is providing as at the date of termination, and until such time as the MVNO's customers are ported or migrated to the network of another mobile network operator or its own network, up to a maximum period of twelve (12) months from the date of termination. The terms and conditions of the MVNO Agreement will continue to apply to the provision of such services during this post-termination period. For the avoidance of doubt H3G's obligations in Section A 3 would not apply during the such period.

O. GOVERNING LAW AND JURISDICTION

50. The MVNO agreement shall be governed by the laws of Austria.
51. The competent court in Vienna, Austria, shall have sole and exclusive jurisdiction over any disputes between the parties arising in connection with the execution of the MVNO Agreement.

APPENDIX A: CHARGES

1. H3G shall charge the MVNO for each Transaction Type submitted over the H3G Network by, or to, an MVNO Customer, calculated in accordance with the terms and conditions set out in this Appendix.
2. With respect to each Year of the MVNO Agreement (and subject to paragraph 8 below):
 - (a) the Base Rates shall apply to all Transactions paid for in that Year up to (and including) the Discount Threshold for that Year;
 - (b) the Discount Rates shall apply to all Transactions paid for in that Year in excess of the Discount Threshold up to (and including) the Discount Ceiling for that Year; and
 - (c) thereafter, the Base Rates shall apply to all Transactions paid for in that Year in excess of the Discount Ceiling.
3. There are two pricing options available to the MVNO with respect to packet switched data Transactions: (i) fixed unit pricing (as set out in Tables 3 and 7 below, as applicable) or (ii) tiered pricing (as set out in Tables 4 and 8 below, as applicable). The MVNO must elect the charging option it wishes to be applied at the time it first enters into an MVNO Agreement. The additional retail minus pricing option set out in paragraph 19 below may be elected by the MVNO from time to time during the term of the MVNO Agreement, subject to the terms and conditions set out therein.
4. For the purposes of this Appendix, the following capitalised words have the following meanings:
 - (a) **Base Rates:** mean the rates set out in Tables 1 to 4 in paragraph 5 below;
 - (b) **Discount Ceilings:** mean the figures set out in column 3 of Table 9 in paragraph 7 below;
 - (c) **Discount Rates:** mean the rates set out in Tables 5 to 8 in paragraph 6 below;
 - (d) **Discount Thresholds:** means the figures set out in column 2 of Table 9 in paragraph 7 below;
 - (e) **Transaction:** means (i) mobile originated or terminated circuit switched traffic (i.e. voice, fax, video and circuit switched data) (ii) mobile originated or terminated SMS (iii) or packet switched data (each being a “**Transaction Type**”); and
 - (f) **Year:** means the applicable 12 month period, with Year 1 being the 12 month period starting from the date of the commercial launch by the

MVNO of retail services in Austria over the H3G Network and Years 2 onwards being construed accordingly.

5. The Base Rates are:

Table 1: Circuit Switched

Transaction Type	Billing Unit	Charge Rate per Minute (€)	Charge Rate per Second (€)
Mobile originated or terminated circuit switched (i.e. voice, video, fax and circuit switched data) incl. calls made to emergency numbers (112 etc.)	1 Second	0.01	0.000167

Table 2: SMS

Transaction Type	Billing Unit	Charge Rate (€)
Mobile originated or terminated SMS	1 SMS	0.004

Table 3: Packet Switched Data - Fixed Unit Pricing

Transaction Type	Billing Unit	Charge Rate per MB (€)**
Data (inclu. MMS) up to 30 Mbit/sec*	1 kilobyte (rounded to the nearest kilobyte)	0.002

**For services using UMTS, HSPA, HSDPA and LTE technologies, as well as GSM and GPRS technologies to the extent available under the H3G 2G & 2.5G roaming arrangements.*

***The wholesale charge rate for higher speed data services will be calculated in accordance with paragraph 18 below.*

Table 4: Packet Switched Data - Tiered Pricing

Transaction Type	Billing Unit	Volume Tier (MB)		Per MB Charge Rate (€)**
		From	To	
Data (inclu. MMS) up to 30 Mbit/sec*	1 kilobyte (rounded to the nearest KB)	0	< 30	0.015
		30	< 200	0.004
		200	< 1000	0.003
		1000	< 5000	0.0016
		5000	Upward	0.0011

**For services using UMTS, HSPA, HSDPA and LTE technologies, as well as GSM and GPRS technologies to the extent available under the H3G 2G & 2.5G roaming arrangements.*

***The wholesale charge rates for higher speed data services will be calculated in accordance with paragraph 18 below.*

6. The Discount Rates are:

Table 5: Circuit Switched

Transaction Type	Billing Unit	Charge Rate per Minute (€)	Charge Rate per Second (€)
Mobile originated or terminated circuit switched (i.e. voice, video, fax and circuit switched data) incl. calls made to emergency numbers (112 etc.)	1 Second	0.0085	0.0001416

Table 6: SMS

Transaction Type	Billing Unit	Charge Rate (€)
Mobile originated or terminated SMS	1 SMS	0.0034

Table 7: Packet Switched Data - Fixed Unit Pricing

Transaction Type	Billing Unit	Charge Rate per MB (€)**
Data (inclu. MMS) up to 30 Mbit/sec*	1 kilobyte (rounded to the nearest kilobyte)	0.0017

**For services using UMTS, HSPA, HSDPA and LTE technologies, as well as GSM and GPRS technologies to the extent available under the H3G 2G & 2.5G roaming arrangements.*

***The wholesale charge rate for higher speed data services will be calculated in accordance with paragraph 18 below.*

Table 8: Packet Switched Data - Tiered Pricing

Transaction Type	Billing Unit	Volume Tier (MB)		Per MB Charge Rate (€)**
		From	To	
Data (inclu. MMS) up to 30 Mbit/sec*	1 kilobyte (rounded to the nearest KB)	0	< 30	0.01275
		30	< 200	0.0034
		200	< 1000	0.00255
		1000	< 5000	0.00136
		5000	Upward	0.000935

**For services using UMTS, HSPA, HSDPA and LTE technologies, as well as GSM and GPRS technologies to the extent available under the H3G 2G & 2.5G roaming arrangements.*

***The wholesale charge rates for higher speed data services will be calculated in accordance with paragraph 18 below.*

7. The Discount Thresholds and Discount Ceilings are:

Table 9: Discount Thresholds and Discount Ceilings

Year	Discount Threshold (€)	Discount Ceiling (€)
Year 1	1,700,000	2,720,000
Year 2	5,000,000	8,000,000
Year 3	7,000,000	11,200,000
Year 4	9,000,000	14,400,000

8. The Discount Thresholds and Discount Ceilings are based on the total amounts (in Euros) paid by the MVNO to H3G for the wholesale access services specified in section A1(a) of the Reference Offer in the relevant Year (excluding units purchased in accordance with the retail minus pricing in paragraph 18 below).
9. If an MVNO Agreement continues or is extended for more than 4 years, H3G will negotiate in good faith with the MVNO to agree (before the end of Year 4) the Discount Thresholds and Discount Ceilings for the Years in the remainder of the term of the MVNO Agreement which shall not exceed a period of more than 10 years from [*insert Effective Date*]. If the parties cannot agree on new thresholds, the following Discount Thresholds and Discount Ceilings shall apply:

Table 10: Discount Thresholds and Discount Ceilings

Year	Discount Threshold (€)	Discount Ceiling (€)
Year 5	11,000,000	17,600,000
Year 6	12,500,000	20,000,000
Year 7	14,000,000	22,400,000
Year 8	15,000,000	24,000,000
Year 9	16,000,000	25,600,000
Year 10	16,500,000	26,400,000
Year 11	17,000,000	27,200,000
Year 12	17,500,000	28,000,000

Charging Principles Applicable to Circuit Switched Transactions

10. H3G shall charge the MVNO for each circuit switched transaction (originating and terminating) submitted over the H3G Network by, or to, an MVNO customer.
11. The charge for each circuit switched transaction shall be calculated by multiplying the applicable rate per second by the call duration. The call duration for each transaction is the number of seconds from the time the call is answered until it is terminated. If the duration of the call is a fraction of a second, it shall be rounded up or down as the case may be (≥ 0.5 rounded to 1.0 and < 0.5 rounded to 0.0).
12. A circuit switched transaction sent by one MVNO customer to another customer of the same MVNO shall be charged as a single transaction.

Charging Principles Applicable to SMS Transactions

13. H3G shall charge the MVNO for each SMS message (originating and terminating) submitted over the H3G Network by, or to, an MVNO customer, even if the SMS is not successfully received by the recipient.
14. An SMS sent by one MVNO customer to another customer of the same MVNO is charged as a single SMS.
15. There is no charge for an SMS delivery report.

Charging Principles Applicable to Packet Switched Data Transactions

16. If an MVNO has elected the tiered pricing option for packet switched data Transactions, H3G shall charge the MVNO on a per SIM basis, calculated by multiplying the volume of data used by that SIM in the relevant calendar month (rounded to the nearest KB) by the applicable charge rate. The applicable charge rate is the rate which corresponds to the volume tier (MB) in which that SIM's monthly data volume falls.
17. H3G shall charge the MVNO for each MMS message (originating and terminating) submitted over the H3G Network by, or to, an MVNO customer,

even if the MMS is not successfully received by the recipient as a packet switched data transaction.

18. With respect to the wholesale charge rates for higher speed data services (not less than 30 Mbit/s), the rates in tables 3, 4, 7 and 8 will apply to the data service offered by H3G from time to time to its retail customers which has the second highest data throughput speed (“Standard Data Service”). If H3G charges a premium to its retail customers for directly comparable data-only services at a higher speed (“Premium Data Service”), then the wholesale charge rate for the comparable wholesale Premium Data Service provided by H3G to the MVNO will be charged at a premium which will be equivalent to the ratio of H3G's retail price for the Premium Data Service and the Standard Data Service. For example, if the ‘up to 100 Mbps’ flat rate service is offered by H3G to its retail customers at €49 per month and the second fastest comparable product (‘up to 30 Mbps’) is charged at €24 per month then a premium of 204% will be applied to the wholesale charge rates in tables 3, 4, 7 and 8 (both the fixed unit pricing and tiered pricing) for the wholesale data service using ‘up to 100 Mbps.’

Additional Retail Minus Pricing Option for Packet Switched Data Transactions

19. The MVNO may elect a retail tariff which is offered by H3G to which retail minus pricing will be applied, whatever the mobile network technology being used by H3G to deliver the service to its customers from time to time (UMTS, HSPA, HSDPA and LTE, as well as GSM and GPRS to the extent available under the H3G 2G and 2.5G roaming arrangements). Retail minus pricing shall only be available for data access SIM-only services (and shall not be available for other products or market developments such as NFC offerings, handset subsidies or content offerings). In this case, H3G shall charge the MVNO for packet switched data Transactions at a 25% discount on the retail price H3G charges its own customers under the relevant tariff. To ensure accurate wholesale billing, the flat rated IMSIs of the MVNO will be separately identified. The election of retail minus pricing does not prevent the MVNO offering retail tariffs to its customers based on the Base Rates or Discount Rates, as applicable. However, in relation to the same customer, the MVNO may only apply either retail minus pricing or per unit pricing (whether the Base Rates or the Discount Rates). Units purchased in accordance with the retail pricing are not counted towards the Discount Thresholds and Discount Ceilings above.