

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.

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Name: Thomas Wessely / Angeline Woods

Date: 29 October 2012

Duly authorised on behalf of Hutchison 3G Austria Holdings