

**Joint report**  
**of the Board of Management of Deutsche Telekom AG**  
**and**  
**the Board of Directors of MagyarCom Holding GmbH**

pursuant to § 293a in conjunction with § 295 (1) of the Stock Corporation Act (*Aktiengesetz – AktG*)

regarding the amendment of the

**profit and loss transfer agreement dated March 9/10, 2005**

between Deutsche Telekom AG and  
MagyarCom Holding GmbH

**I. General**

Deutsche Telekom AG (hereinafter referred to as "DTAG") and MagyarCom Holding GmbH (hereinafter referred to as "subsidiary") concluded a profit and loss transfer agreement (hereinafter referred to as "profit and loss transfer agreement") on March 9/10, 2005. The Board of Management of DTAG and the Board of Directors of the subsidiary jointly draw up the following report pursuant to § 293a in conjunction with § 295 (1) AktG governing the amendment of the profit and loss transfer agreement between DTAG and the subsidiary.

**II. Amendment of the profit and loss transfer agreement**

DTAG, represented by Mr. Timotheus Höttges, Member of the Board of Management, who is authorized to represent Deutsche Telekom in conjunction with a "Prokurist" (holder of a general commercial power of attorney), and the "Prokurist" Dieter Cazzonelli, concluded an amending agreement to the profit and loss agreement (hereinafter referred to as "amending agreement") with the subsidiary, represented by directors Wolfgang Hauptmann and Roman Zitz, on February 11, 2011.

The Board of Management of DTAG resolved to conclude the amending agreement at its meeting on February 1, 2011.

The Board of Directors of the subsidiary resolved to conclude the amending agreement on February 4, 2011.

The shareholders' meeting of the subsidiary approved the conclusion of the amending agreement on February 15, 2011.

The amending agreement shall only come into effect subject to the approval of the DTAG shareholders' meeting. The Board of Management and the Supervisory Board of DTAG shall therefore propose at the DTAG shareholders' meeting called for May 12, 2011 that the amending agreement be approved.

Pursuant to § 294 (2) in conjunction with § 295 (1) AktG, the amending agreement will not take effect until its existence has been entered in the commercial register responsible for the subsidiary's registered office.

### **III. Parties of the amending agreement to the profit and loss transfer agreement**

#### **1. Deutsche Telekom AG**

DTAG, with its registered office in Bonn and entered in the commercial register of the Bonn District Court under HRB 6794, is a publicly listed company and the parent company of the Deutsche Telekom Group. DTAG's financial year is the calendar year.

Object of the enterprise under the Articles of Incorporation is activity in all areas of telecommunications, information technology, multimedia, information and entertainment, as well as security services, sales and brokerage services, e-banking, e-money, collection, factoring, and reception and surveillance services as well as any services connected to these areas, and also in related areas in Germany and abroad. DTAG is entitled to enter into all other transactions and take all other measures deemed appropriate to serve the object of the enterprise pursuant to the Articles of Incorporation. It may also set up, acquire and participate in other undertakings of the same or similar kind in Germany and abroad, as well as run such undertakings or confine itself to the administration of its participation. It may spin off its operations wholly or partly to affiliated undertakings.

The Board of Management of Deutsche Telekom AG consists of René Obermann (Chairman), Dr. Manfred Balz, Reinhard Clemens, Niek Jan van Damme, Timotheus Höttges, Guido Kerkhoff, Edward R. Kozel and Thomas Sattelberger. In accordance with § 7 sentence 1 of its Articles of Incorporation, DTAG is legally represented by two members of the Board of Management or by one member of the Board of Management jointly with a "Prokurist."

#### **2. The subsidiary**

The subsidiary is exclusively a holding company and does not perform own operational activities.

The subsidiary has its registered office in Bonn and is entered in the commercial register of the Bonn District Court under HRB 7148. The subsidiary's financial year is the calendar year.

The subsidiary's Articles of Association include at present the following provisions regarding the object of the enterprise: The object of the enterprise is the acquisition, ownership and administration of holdings or shares of stock in companies working in the area of telecommunications in the Republic of Hungary.

The sole shareholder of the subsidiary is DTAG, which directly holds a 100% interest in the subsidiary. The fully paid share capital is EUR 316,009,000.

Directors of the subsidiary are: Wolfgang Hauptmann and Roman Zitz, who represent the company in accordance with § 6 (1) of the Articles of Association either jointly or by one of them acting jointly with a holder of commercial power of attorney ("Prokurist"). In accordance with § 6 (1) of its Articles of Association, the company is represented by one managing director alone if only one managing director is appointed.

### **3. Earnings situation of the subsidiary**

The company has no employees. In its annual financial statements prepared in accordance with the provisions of German GAAP, the company reported net income before profit/loss transfer of EUR 164,433,095.88 in the 2010 financial year.

With a balance sheet total of EUR 2,344,526,627.88, the balance sheet contains shareholders' equity of EUR 2,344,520,427.88 as of December 31, 2010.

## **IV. Legal and commercial reasons for the conclusion of the amending agreement to the profit and loss transfer agreement**

The existing profit and loss transfer agreement is brought into line with current legislation by means of the amending agreement (with wording chosen that should also make amendments to the text of the agreement unnecessary in the case of future amendments to legislation) and, at the same time, takes account of new fiscal requirements:

As a result of the German Accounting Law Modernization Act (*Bilanzrechtsmodernisierungsgesetz* – BilMoG) dated May 25, 2009 the provisions of § 301 AktG (profit and loss transfer) were amended. § 301 AktG was extended to the effect that pursuant to § 268 (8) German Commercial Code (*Handelsgesetzbuch* – HGB) amounts prohibited from transfer must not be transferred. Amounts prohibited from transfer are profits from the recognition of internally generated noncurrent intangible assets and profits from the recognition of deferred taxes. With the introduced reference to the particular wording of § 301 AktG, this new provision becomes part of the profit and loss transfer agreement.

In its rulings dated March 3, 2010 and July 28/September 15, 2010 the Federal Fiscal Court (BFH) specified the form requirements for the income tax recognition of profit and loss transfer agreements pursuant to §§ 14, 17 German Corporate Income Tax Law (*Körperschaftsteuergesetz* – KStG). Thus the BFH now demands reference to § 302 AktG in its entirety. The Federal Ministry of Finance (BMF) adopted this requirement in its circular dated October 19,

2010 for all profit and loss transfer agreements. Reference in its entirety to the particular wording of § 302 AktG takes account of this requirement.

This dynamic reference means the new § 302 (4) AktG added on January 1, 2006, which governs the limitation period for claims arising out of profit and loss transfer agreements, is also included in the profit and loss transfer agreement.

The modifications have no commercial or operational impact on the companies concerned.

The essential contractual duties of the two Parties, namely transfer of profits by the subsidiary and compensation for losses by Deutsche Telekom AG shall remain unaffected.

With the aforementioned modifications which prompted the conclusion of the amending agreement, other amendments to the profit and loss transfer agreement were made at the same time, which bring about further standardization of the different profit and loss transfer agreements.

The minimum period required for taxation purposes is restarted with the amending agreement. The minimum period required for taxation purposes in the profit and loss transfer agreement in its unamended version had already expired so that this amendment can be adopted without any problems. Effects for the future are also not expected in this respect since it can be assumed that the amended profit and loss transfer agreement will remain in place in any case for the duration of the reset minimum period required for taxation purposes.

## **V. Explanation of the amending agreement to the profit and loss transfer agreement**

A copy of the amending agreement is enclosed with this report. The provisions of the amending agreement and the amended profit and loss transfer agreement are explained as follows.

### **1. Transfer of profit**

Section 2 of the amending agreement envisages new wording for § 1 of the profit and loss transfer agreement.

§ 1 (1) of the amended profit and loss transfer agreement standardizes the obligation of transferring profits – the prime characteristic of a profit and loss transfer agreement –, and it also standardizes the obligation of the subsidiary to transfer the entire profits in accordance with all the provisions in § 301 AktG as amended. It obliges the subsidiary to transfer its entire profits to DTAG during the term of the agreement, insofar as this is permitted pursuant to § 301 AktG. The new version of § 1 (1) is required to make clear in the event of a profit transfer pursuant to § 301 AktG that reference is made – dynamically – to the amended ver-

sion of the paragraph so that future amendments to § 301 AktG are automatically incorporated in the contract provisions (see above, section IV. of this report).

By virtue of the introduction of the BilMoG dated May 25, 2009, § 301 AktG refers to the new provision governing the amount prohibited from distribution pursuant to § 268 (8) HGB (see above, IV. of this report). The amending agreement takes account of this restriction on transfer as § 1 (2) of the amended profit and loss transfer agreement now states specifically that in all other respects the provisions of § 301 AktG as amended are applied accordingly.

With the consent of DTAG, the subsidiary is entitled, pursuant to § 1 (3) of the amended profit and loss transfer agreement, to allocate amounts from net income to retained earnings (§ 272 (3) of the German Commercial Code (HGB)) to the extent that this is permissible under commercial law and economically justifiable based on reasonable commercial assessment. Here an amendment was made to standardize the wording in relation to other profit and loss transfer agreements.

## **2. Transfer of loss**

Section 3 of the amending agreement envisages redrafting § 2 of the profit and loss transfer agreement.

§ 2 (1) of the amended profit and loss transfer agreement includes the obligation on DTAG as controlling entity to compensate any net loss arising for the subsidiary during the term of the agreement in accordance with all the provisions in § 302 AktG as amended. The reference is now dynamic in that it refers to the currently applicable version of the relevant legal provisions. In accordance with § 302 (1) AktG, the loss after taxes is only to be compensated to the extent that it cannot be compensated by taking from other retained earnings amounts that were transferred to other retained earnings during the term of the agreement. This obligation to compensate for losses is a mandatory consequence of the profit and loss transfer agreement.

The validity otherwise of § 302 AktG as amended is necessary for a fiscal unity with a limited liability company (GmbH) in accordance with § 17 (1) sentence 2 no. 2 of the German Corporate Income Tax Act. Reference must be made to the provisions in § 302 (3) and (4) AktG:

§ 302 (3) AktG governs the subsidiary's option to waive its claim for compensation and to settlement of such a claim. The primary consequence of the reference to § 302 (3) AktG is that the subsidiary may not waive or settle any claim for compensation until three years after the date on which the registration of the cancellation or termination of the agreement in the commercial register was announced pursuant to § 10 HGB. The foregoing shall not apply if DTAG is unable to make payments when due and enters into composition with its creditors to avoid

insolvency proceedings or if the liability for compensation is subject to an insolvency plan.

Pursuant to § 302 (4) AktG, the right to compensation for loss shall be limited to 10 years from the date on which the registration of the cancellation or termination of the agreement in the commercial register was announced pursuant to § 10 HGB.

Insofar, the provisions under § 2 of the amended profit and loss transfer agreement are therefore customary provisions within the framework of a profit and loss transfer agreement.

Section 3 of the amending agreement also envisages that in future the accrual and due date of the right to compensation for loss are governed expressly in accordance with the rulings of the Federal Supreme Court (BGH): Pursuant to § 2 (2) sentence 1 of the amended profit and loss transfer agreement it is thus stated that the right to compensation for loss accrues at the end of the financial year and pursuant to § 2 (2) sentence 2 of the amended profit and loss transfer agreement it falls due with the value date at this time. This ensures that the subsidiary does not sustain a reduction in interest when loss compensation is paid by DTAG on the due date.

The aforementioned amendments in § 2 of the profit and loss transfer agreement promote standardization, just as does the amendment to § 1 of the profit and loss transfer agreement set out under V. 1 in relation to other profit and loss transfer agreements.

### **3. Commencement, term, effective date**

In accordance with § 3 (1) of the profit and loss transfer agreement, the agreement will not enter into force until its existence has been entered in the commercial register responsible for the subsidiary's registered office. The shareholders' meeting of DTAG and the shareholders' meeting of the subsidiary approved the original profit and loss transfer agreement in 2005, and the agreement was entered into the commercial register on June 20, 2005. Hence under the terms of the agreement, the obligation to transfer profits started on January 1, 2005.

In addition, the amending agreement envisages (in section 4) the addition of a sentence 2 in § 3 (1) in the profit and loss transfer agreement, according to which the amendments by virtue of the amending agreement apply retroactively at the start of the financial year in which all the effective date requirements of "this agreement", i.e. the amending agreement, have been fulfilled for the first time.

As with the original profit and loss transfer agreement, this amendment is also subject to the approval of both the shareholders' meeting of DTAG and the shareholders' meeting of the subsidiary, as well as entry into the subsidiary's commercial register. The approvals granted by resolution of the shareholders' meeting of DTAG and the shareholders' meeting of the subsidiary must also be certified by a notary public.

Compliance with these prerequisites will bring into force the amending agreement, which is planned before the end of the year.

To ensure standardization of the provisions governing termination and cancellation options in relation to other profit and loss transfer agreements, § 3 (3) of the profit and loss transfer agreement has been re-drafted and the existing § 3 (3) sentence 3 and 4 made into a new § 3 (4) (section 4 of the amending agreement).

The agreement is concluded for an indefinite period and, pursuant to § 3 (3) of the amended profit and loss transfer agreement, may be terminated with due notice of one month with effect from the end of the year, at the end of which the fiscal unity for German corporate income tax purposes established in the agreement shall have existed for the minimum period required for taxation purposes. Under current legislation (§ 14 (1) sentence 1 no. 3 in conjunction with § 17 KStG) this is the case after five years; consequently, under current legislation, the agreement could thus not be duly terminated before December 31, 2015 if it is entered in the commercial register in 2011. The termination must be made in writing.

Furthermore, under the provisions of § 3 (4) of the amended profit and loss transfer agreement, the parties are able to terminate the agreement for good cause in writing. This shall also be possible before the agreement may be terminated by giving due notice. Good cause is especially the sale or contribution of the subsidiary by DTAG, or the merger, split-up or liquidation of either of the two parties to the contract.

#### **4. Severability**

Similarly for reasons of standardization of the profit and loss transfer agreements, a “severability clause” was added (section 5 of the amending agreement).

The “severability clause” contained in § 4 of the amended profit and loss transfer agreement guarantees the validity and enforceability of the agreement in the event that individual provisions are already invalid or unenforceable when the agreement is concluded or become invalid or unenforceable at a later date, e.g. through amendment to a law or a change in legislation.

If individual provisions of this agreement are or become invalid or unenforceable under this provision, this shall not affect the validity of the remaining provisions of the agreement. Any invalid or unenforceable agreement is then to be replaced by one that most closely approximates the economic effect of the invalid or unenforceable clause in a permissible way.

#### **5. Other**

The introductory segment in the agreement has been modified for clarity and the names of the parties have been redefined in the agreement (sections 1 and 6 of the amending agreement).



Section 7 of the amending agreement clearly states that the provisions in the profit and loss transfer agreement not amended by the amending agreement remain unchanged. Section 7 of the amending agreement also sets out that the amending agreement comes into effect retroactively at the start of the financial year in which all the effective date requirements of this agreement were fulfilled for the first time. This provision that applies to the relationship between the parties does not however amend in any way the fact that the amendment to the profit and loss transfer agreement will not enter into force until its existence has been entered in the commercial register of the subsidiary.

Section 8 of the amending agreement states that the final version of the amended profit and loss transfer agreement attached to the amending agreement is only provided for the purposes of clarity, but does not include binding provisions on the parties. If this final version differs from the provisions in the amending agreement, the provisions in the amending agreement shall apply solely.

**VI. Determination of adequate compensation/consideration pursuant to § 304 and § 305 AktG/examination of the amending agreement to the profit and loss transfer agreement**

It was decided to refrain from determining adequate compensation in the amending agreement to the profit and loss transfer agreement, as the subsidiary does not have any external shareholder. DTAG directly holds a 100% interest in the subsidiary. For this reason, there was also no need to determine any compensation in the agreement. The companies concerned therefore did not have to be valued to determine an adequate compensation and an adequate consideration. Nor, since DTAG directly holds all shares in the subsidiary, is there any need pursuant to § 293b (1) AktG also in conjunction with § 295 (1) AktG to subject the amended profit and loss transfer agreement or the amending agreement to review by independent auditors (contract auditors).

Bonn, February 21, 2011

Deutsche Telekom AG  
Board of Management

signed by René Obermann

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René Obermann (Chairman)

signed by Timotheus Höttges

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Timotheus Höttges

signed by Dr. Manfred Balz

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Dr. Manfred Balz

signed by Reinhard Clemens

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Reinhard Clemens

signed by Niek Jan van Damme

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Niek Jan van Damme

signed by Guido Kerkhoff

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Guido Kerkhoff

signed by Edward R. Kozel

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Edward R. Kozel

signed by Thomas Sattelberger

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Thomas Sattelberger

Bonn, February 16, 2011

MagyarCom Holding GmbH

The Board of Directors

signed by Wolfgang Hauptmann

signed by Roman Zitz

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Wolfgang Hauptmann

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Roman Zitz

Annex: Copy of the amending agreement (including the amended profit and loss transfer agreement)