

## **Joint report**

**by the Board of Management of Deutsche Telekom AG**

**and**

**the Managing Board of T-Mobile Global Holding Nr. 2 GmbH**

pursuant to § 293a Stock Corporation Act (AktG)

on the conclusion of the control and profit and loss transfer agreement dated  
February 25, 2010

between Deutsche Telekom AG and  
T-Mobile Global Holding Nr. 2 GmbH

### **I. General**

The Board of Management of Deutsche Telekom AG (hereinafter referred to as "DTAG") and the Managing Board of T-Mobile Global Holding Nr. 2 GmbH (hereinafter referred to as "subsidiary") issue the following report on the control and profit and loss transfer agreement between DTAG and the subsidiary pursuant to § 293a AktG.

### **II. Conclusion of the control and profit and loss transfer agreement**

DTAG, represented by 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 a control and profit and loss agreement (hereinafter referred to as "agreement") with the subsidiary, represented by managing directors Frank Stoffer and Detlef Markowski, on February 25, 2010.

The Board of Management of DTAG resolved to conclude the agreement at its meeting on February 8, 2010.

The Managing Board of the subsidiary resolved to conclude the agreement on February 25, 2010.

The Supervisory Board of DTAG approved the conclusion of the agreement at its meeting on February 24, 2010.

The partners' meeting of the subsidiary approved the conclusion of the agreement on February 25, 2010.

The 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 will therefore propose at the DTAG shareholders' meeting called for May 3, 2010 that the agreement be approved.

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

### **III. Parties to the control and 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.

Pursuant to the Articles of Incorporation, the object of the enterprise is activity in all areas of telecommunications, information technology, multimedia, information and entertainment, as well as security services and 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), Timotheus Höttges (Deputy Chairman), Niek Jan van Damme, Reinhard Clemens, Dr. Manfred Balz, Guido Kerkhoff 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 a limited liability company with its registered office in Bonn and is entered in the commercial register of the Bonn District Court under HRB 12609. The subsidiary was established on July 18, 2003 and entered under HRB 12609 in the commercial register of the Bonn District Court on August 1, 2003. The subsidiary's financial year is the calendar year.

Pursuant to the Articles of Association, the object of the subsidiary is the performance of activities in all areas of mobile communications and related areas in Germany and abroad. The company may take over or acquire a stake in other companies of the same or similar nature within Germany or in other countries, even as a personally liable partner.

The subsidiary operates as a pure holding company and, in this capacity, holds 100 percent of the shares in CMobil B.V. in 6970AD Brummen - Amsterdam, Netherlands, 100 percent of the shares in T-Mobile Austria Holding GmbH, Vienna, Austria, and 100 percent of the shares in T-Mobile Service GmbH, Vienna, Austria.

DTAG is the subsidiary's sole shareholder. The fully paid share capital of the subsidiary is EUR 25,000.

The Managing Directors of the subsidiary are Detlef Markowski, Frank Stoffer and Roman Zitz. In accordance with § 6 (1) of its articles of association, the company is represented by two managing directors or by one managing director together with one holder of commercial power of attorney ("Prokurist").

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

The subsidiary does not have any staff and does not engage in any operational activities. The company reported net income of EUR 232 million for 2009.

Income related to associated and related companies of EUR 236 million was reported. It was attributable to a dividend payment in 2009 by CMobil B.V., Amsterdam for the 2008 financial year.

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

The conclusion of a control agreement is the best way to ensure the uniform management of the subsidiary and its integration in the Deutsche Telekom Group. Under the control agreement, the DTAG Board of Management is able, in particular, to issue instructions to the managing board of the subsidiary in the overriding interest of the Group and ensure that DTAG and the subsidiary will conduct their operations uniformly.

Although the subsidiary's partners' meeting has the authority to give instructions to the Managing Board, the extent to which the partners' meeting (or other body authorized in the articles of association) may issue even disadvantageous instructions to the Managing Board is not legally ensured. Here, the control loss transfer agreement provides the necessary legal clarity and, to a large extent, also permits disadvantageous instructions. Moreover, a formal resolution is required each time the partners' meeting issues any instructions. For these reasons, the authority of the partners' meeting to give instructions is not as appropriate for ensuring the desired uniform management of the subsidiary as is a control agreement.

This translation is for courtesy purposes only. The German original prevails.

The combined control and profit and loss transfer agreement allows DTAG to optimize the taxation situation. The conclusion of an effective and enforced profit and loss transfer agreement is a prerequisite for establishing a fiscal unity status both for corporate tax as well as trade tax. Fiscal unity status for both corporate income tax and trade tax purposes has the advantage that positive or negative results of a subsidiary can be simultaneously offset against positive or negative results of DTAG or another company belonging to the fiscal unity. This makes it possible to optimize the Group's tax cash flow.

In addition, the 5 % taxation otherwise payable in the case of profit distribution (taxation in accordance with § 8b (5) of the German Corporate Income Tax Act) is avoided.

## **V. Explanation on the control and profit and loss transfer agreement**

A copy of the agreement is enclosed with this report. The provisions of the agreement are explained as follows.

### **1. § 1 Management**

Pursuant to § 1 of the agreement, the subsidiary places management of its company under the control of DTAG. Thus, the transfer of decision-making powers to the controlling company, which is an essential part of a control agreement, is standardized.

### **2. § 2 Authority to give instructions**

§ 2 of the agreement standardizes the controlling company's authority to give instructions, which is characteristic for control agreements. Under § 2 sentence 1 of the agreement, DTAG is entitled to give the subsidiary's Managing Board instructions regarding the management of the subsidiary. The instructions shall be given in writing or by fax, or, if they are given verbally, by telephone, by telex, or by electronic mail, they shall be confirmed immediately in writing, or by fax.

This authority to give instructions shall have no effect upon the fact that the subsidiary is a legally independent company with its own executive bodies. The subsidiary's Managing Board continues to be responsible for managing the business and representing the subsidiary. This is stipulated in § 2 sentence 3 of the agreement.

Instructions may also be issued – unless otherwise provided for in the agreement – pursuant to § 308 (1) sentence 2 AktG that are disadvantageous for the subsidiary as long as such instructions serve the interests of DTAG or the Deutsche Telekom Group. DTAG can thus extensively intervene and control the management of the subsidiary.

### 3. § 3 Transfer of profit

§ 3 (1) sentence 1 of the agreement standardizes the obligation to transfer the entire profit to the other party to the agreement, which is characteristic for a profit and loss transfer agreement. It obliges the subsidiary to transfer its entire profits to DTAG during the term of the agreement.

§ 3 (1) sentence 2 of the agreement stipulates that the amount in accordance with § 301 sentence 1 of the Stock Corporation Act (as amended) is to be transferred. Only if the amount in accordance with § 301 sentence 1 of the Stock Corporation Act is transferred is the fiscal unity established (§ 17 sentence 2 no. 1 of the German Corporate Income Tax Act). Under current legislation the amount to be transferred is the income after taxes that would have occurred under the relevant commercial law without the profit transfer, reduced by any loss carried forward from the previous year and the amounts to be allocated to the statutory reserves in accordance with § 268 (8) HGB which are blocked from distribution (deferred taxes). § 3 (1) sentence 3 of the agreement specifies that § 301 AktG as amended shall also apply otherwise. Under current legislation, this means that in accordance with § 301 sentence 2 of the German Stock Corporation Act, amounts that have been transferred to other retained earnings during the term of the agreement can be taken out of other retained earnings and transferred as profit.

With the consent of DTAG, the subsidiary is entitled, pursuant to § 3 (2) of the agreement, to allocate amounts from net income to retained earnings (§ 272 (3) of the German Commercial Code (HGB)), except for the statutory reserves, to the extent that this is permissible under commercial law and economically justifiable based on reasonable commercial assessment. The profit to be transferred by the subsidiary would be reduced accordingly. The restriction that transfers to the aforementioned retained earnings may only be made to the extent permissible under commercial law and economically justifiable based on reasonable commercial assessment is in response to § 14 (1) sentence 1 no. 4 of the German Corporate Income Tax Act.

These are customary regulations within the framework of a profit and loss transfer agreement.

Further, § 3 (3) of the agreement expressly standardizes the date of origination and the due date for the right to transfer profit: pursuant to § 3 (3) sentence 1 of the agreement, the right to transfer profit arises at the end of the financial year and, pursuant to § 3 (3) sentence 2 of the agreement, also carries this due value date. This ensures that DTAG does not sustain a reduction in interest when profit is transferred from the subsidiary on the due date.

#### 4. § 4 Transfer of loss

§ 4 (1) of the agreement obligates DTAG as the dominant company to compensate any loss after taxes in accordance with § 302 (1) of the German Stock Corporation Law that would otherwise – i.e., without compensation – have been incurred during the term of the agreement.

The reference is dynamic in that it refers to the currently applicable version of the relevant legal provisions. In accordance with § 302 (1) of the German Stock Corporation Act, 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 control and profit and loss transfer agreement.

§ 4 (2) of the agreement contains a reference to the legal provisions contained in the subsequent sections of § 302 of the German Stock Corporation Act which are to be applied as amended. The validity otherwise of § 302 of the German Stock Corporation Act 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. The reference is dynamic, however. Under current legislation, the provisions of § 302 (3) and (4) AktG are relevant:

§ 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 of the German Commercial Code (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 § 4 are therefore customary regulations within the framework of a control and profit and loss transfer agreement.

Further, the agreement standardizes the date of origination and the due date for the right to transfer loss: pursuant to § 4 (3) sentence 1 of the agreement, the right to transfer loss arises at the end of the financial year and, pursuant to § 4 (3) sentence 2 of the agreement, also carries this due value date. This ensures that the subsidiary does not sustain a reduction in interest when loss compensation is paid by DTAG on the due date.

## **5. § 5 Commencement, term, effective date**

In accordance with § 294 AktG, the agreement will not enter into force until its existence has been entered in the commercial register responsible for the subsidiary's registered office. § 5 (1) specifies that profits are transferred or losses assumed for the first time at the end of the financial year in which the agreement comes into effect. § 5 (2) of the agreement specifies that the agreement can only become effective upon approval by the shareholders' meeting of DTAG and the partners' meeting of the subsidiary.

The agreement is concluded for an indefinite period and, pursuant to § 5 (3), 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) no. 3 in conjunction with § 17 of the German Corporate Income Tax Act (KStG)), this is the case after five years; consequently, under current legislation, the agreement cannot be duly terminated before December 31, 2014. Terminations shall be made in writing. If the agreement is not terminated, it shall be automatically extended for one further year with the same notice period.

Furthermore, under the provisions of § 5 (4) of this 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.

## **6. § 6 Severability clause**

The "severability clause" contained in § 6 of the agreement guarantees the validity and enforceability of the agreement in the event that individual provisions are already invalid or not enforceable when the agreement is concluded or become invalid or non enforceable at a later date, e.g. through amendment to a law or a change in legislation.

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

It was decided to refrain from determining adequate compensation in the control and profit and loss transfer agreement, as the subsidiary does not have any external partner. 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 to subject the control and profit and loss transfer agreement to review by independent auditors (contract auditors).

Bonn, February 25, 2010

Deutsche Telekom AG,  
Board of Management

René Obermann (Chairman)      Timotheus Höttges

Dr. Manfred Balz                      Reinhard Clemens

Niek Jan van Damme                  Guido Kerkhoff

Thomas Sattelberger

Bonn, February 25, 2010

T-Mobile Global Holding Nr. 2 GmbH, Managing Board

Frank Stoffer                              Detlef Markowski

Roman Zitz

Annex: Copy of the agreement