

**Joint report**  
**of the Board of Management of Deutsche Telekom AG**  
**and**  
**the Managing Board of Interactive Media CCSP GmbH**  
pursuant to § 293a Stock Corporation Act (AktG)  
on the conclusion of the  
**control and profit and loss transfer agreement of February 26, 2009**  
between Deutsche Telekom AG and  
Interactive Media CCSP GmbH.

**I. General**

The Board of Management of Deutsche Telekom AG (hereinafter referred to as "DTAG") and the Managing Board of Interactive Media CCSP 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 Dr. Karl-Gerhard Eick, 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 Director Guido Sachs and "Prokurist" Michael Plate, on February 26, 2009.

The Board of Management of DTAG resolved to conclude the agreement at its meeting on February 9, 2009.

The Supervisory Board of DTAG approved the conclusion of the agreement at its meeting on February 26, 2009.

The Managing Board of the subsidiary resolved to conclude the agreement on February 12, 2009.

The Advisory Board of the subsidiary approved the conclusion of the agreement on February 13, 2009.

The partners' meeting of the subsidiary approved the conclusion of the agreement on February 26, 2009.

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 April 30, 2009 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 DTAG consists of René Obermann (Chairman), Dr. Karl-Gerhard Eick (Deputy Chairman) (until February 28, 2009), Hamid Akhavan, Dr. Manfred Balz, Reinhard Clemens, Timotheus Höttges 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 Darmstadt and is entered in the commercial register of the Darmstadt District Court under HRB 8947. The subsidiary's financial year is the calendar year.

The articles of association of the subsidiary currently contain the following regulation concerning the object of the company: "The object of the company is the marketing and use of advertising media in information and communications services, particularly TV and the Internet, and the marketing of cross-media communications services, in particular for T-Online International AG and its associated companies pursuant to §§ 15 et seq. AktG. In addition, the company provides services in the area specified with an emphasis on consultancy and training. With its range of services, the company primarily targets business customers (so-called B2B customers)."

However, on February 17, 2009, the partners' meeting of the subsidiary decided to amend the business purpose and the Managing Board regis-

tered the amendment in the commercial register on February 17, 2009. With its entry in the commercial register of the company, the following regulation shall therefore enter into effect concerning the object of the company: "The object of the company is the marketing and use of advertising media in information and communications services, particularly the Internet, mobile portals and TV, and the marketing of cross-media communications services, in particular for Deutsche Telekom AG and companies associated with it pursuant to §§ 15 et seq. AktG. In addition, the company provides services in the area specified with an emphasis on consultancy and training. With its range of services, the company primarily targets business customers (so-called B2B customers)."

The sole shareholder of the subsidiary is DTAG, which directly holds a 100% interest in the subsidiary. The fully paid share capital is EUR 901,000.

The Managing Director of the subsidiary is Mr. Guido Sachs. In accordance with § 8 (1) of its articles of association, the company shall be represented by one managing director alone, if he/she is the sole managing director or if the partners have authorized him/her to have sole power of representation. Otherwise, the company shall be represented jointly by two managing directors or jointly by a managing director and a "Prokurist".

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

The company currently has 104 employees. It generated income of EUR 5,455,570.69 in the 2008 financial year. With a balance sheet total of EUR 20,313,195.41, the balance sheet contains shareholders' equity of EUR 7,939,570.69 as of December 31, 2008.

## **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.

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. As a result, Group tax cash flow and Group tax expense can be optimized. In addition, the 5 % taxation otherwise payable in the case of profit distribution (taxation in accordance with § 8b (1) and (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 (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 (1) 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. There is however one exception to this provision. With reference to § 299 AktG, § 2 (2) of the agreement specifies that the authority to give instructions shall not include the amendment, maintenance or termination of the control and profit and loss transfer agreement itself.

As is the case with § 1 of the agreement, these are also customary regulations within the framework of a control agreement.

### **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 in corresponding application of § 301 AktG, the profit is deemed to be the net income, reduced by any loss carried forward from the previous year, that would have occurred under the relevant commercial law without the profit transfer.

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) no. 4 of the German Corporate Income Tax Act.

§ 3 (3) of the agreement specifies that amounts allocated to other retained earnings during the term of the agreement can be taken from other retained earnings and transferred as profit.

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

Further, the agreement expressly standardizes the date of origination and the due date for the right to transfer profit: pursuant to § 3 (1) sentence 2 of the agreement, the right to transfer profit arises at the end of the financial year and, pursuant to § 3 (1) sentence 3 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 requires DTAG, as the controlling company, pursuant to § 302 (1) AktG to compensate any net loss for the year otherwise arising – i.e., without any compensation of losses – during the term of the agreement unless this was offset through amounts being taken from other retained earnings to which such amounts were appropriated 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 AktG. The reference is dynamic in that it refers to the currently applicable version of the relevant legal provisions. 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 (1) sentence 2 of the agreement, the right to transfer loss arises at the end of the financial year and, pursuant to § 4 (1) sentence 3 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. This is stipulated in § 5 (1) of the agreement with respect to the provisions contained in § 1 and § 2 of the agreement (Management and Authority to give instructions). This clause further specifies that the remaining provisions of the agreement shall apply retrospectively from January 1, 2009. The fiscal unity for the purposes of corporate income tax and trade tax is thus deemed to have existed for the subsidiary's full financial year.

§ 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, 2013. Notice of termination must be given 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 26, 2009

Deutsche Telekom AG,  
Board of Management

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René Obermann (Chairman)

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Dr. Karl-Gerhard Eick (Deputy  
Chairman)

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Hamid Akhavan

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Dr. Manfred Balz

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Reinhard Clemens

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Timotheus Höttges

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Thomas Sattelberger

Darmstadt, February 27, 2009

Interactive Media CCSP GmbH,  
Managing Board

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Guido Sachs

Annex: Copy of the agreement

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