

**Joint report**  
**of the Board of Management of Deutsche Telekom AG**  
**and**  
**the Managing Board of DeTeMedien, Deutsche Telekom Medien GmbH**  
pursuant to § 293a in conjunction with § 295 (1) of the Stock Corporation Act  
(*Aktiengesetz – AktG*)  
regarding the amendment to the  
**profit and loss transfer agreement dated March 29/April 18, 1996**  
between Deutsche Telekom AG and  
DeTeMedien, Deutsche Telekom Medien GmbH

**I. General**

Deutsche Telekom AG (hereinafter referred to as "DTAG") and DeTeMedien, Deutsche Telekom Medien GmbH (hereinafter referred to as the "subsidiary") concluded a profit and loss transfer agreement (hereinafter referred to as "profit and loss transfer agreement") on March 29, 1996 / April 18, 1996. The Board of Management of DTAG and the Managing Board of the subsidiary jointly issue the following report pursuant to § 293a in conjunction with § 295 (1) AktG on the amendment to the profit and loss transfer agreement between DTAG and the subsidiary.

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

DTAG, represented by Mr. Timotheus Höttges, Member of the Board of Management, and a "*Prokurist*" (holder of a general commercial power of attorney), Dieter Cazzonelli, concluded an amending agreement to the profit and loss transfer agreement (hereinafter referred to as "amending agreement") with the subsidiary, represented by its managing director Stephan Schmitt and "*Prokurist*" Michael Wolf on February 28, 2013.

The Board of Management of DTAG resolved to conclude the amending agreement at its meeting on February 12, 2013.

The Managing Board of the subsidiary resolved to conclude the amending agreement on February 22, 2013.

The shareholders' meeting of the subsidiary approved the conclusion of the amending agreement on February 28, 2013.

The amending agreement will 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 16, 2013 that the amending agreement be approved.

Pursuant to § 294 (2) in conjunction with § 295 (1) AktG, the amendment to the profit and loss transfer 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 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 listed company and the parent company of the Deutsche Telekom Group. DTAG's financial year corresponds to the calendar year.

According to its Articles of Incorporation, the object of the enterprise is to engage in all areas of telecommunications, information technology, multimedia, information and entertainment (including gambling or betting business), security services, sales and brokerage services, e-banking, e-money and other payment solutions, collection, factoring, and reception and surveillance services as well as any services connected with these areas, and in related areas in Germany and abroad. Furthermore, the object of the enterprise according to its Articles of Incorporation includes engaging in business in the area of venture capital, including the acquisition, holding, management, and sale of venture capital interests, in particular but not exclusively in companies that operate in the areas stated above. Moreover, the object of the enterprise according to its Articles of Incorporation is to engage in the field of reinsurance in connection with the areas specified above; however, this activity must not be performed directly by the Corporation itself. 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), Reinhard Clemens, Niek Jan van Damme, Timotheus Höttges, Dr. Thomas Kremer, Claudia Nemat and Prof. Dr. Marion Schick. 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**

Together with 108 publishing partner firms the subsidiary forms 158 editing and publishing communities for the *Gelbe Seiten* (Yellow Pages), *Das Telefonbuch* (phone directory) and *Das Örtliche* (local phone directory). These editing and publishing communities are organized in non-trading partnerships under German law (Gesellschaft

The subsidiary has its registered office in Frankfurt am Main and is entered in the commercial register of the Frankfurt am Main District Court under HRB 8959. The subsidiary's financial year corresponds to the calendar year.

The subsidiary's partnership agreement includes at present the following provisions regarding the object of the company: The object of the company is the publication of data of residential and commercial subscribers to telecommunications services in the form of directories or in some other way, the provision of information services and other services, the handling of technical, administrative and commercial tasks, business advertising including selling and brokering activities according to the provisions of individual or overall agreements, and business activities in related areas.

According to its partnership agreement, the subsidiary may participate in other companies or establish such companies and also assume similar tasks in other countries in the execution of the above tasks.

The sole shareholder of the subsidiary is DTAG, which directly holds a 100 % interest in the subsidiary. The fully paid share capital is EUR 23,008,134.65.

The subsidiary's managing directors are Ralf Coenen, Dr. Oliver Faber and Stephan Schmitt. In accordance with § 6 (1) of its partnership agreement, the subsidiary is represented by two managing directors jointly or by one managing director together with one holder of commercial power of attorney ("*Prokurist*"). In accordance with § 6 (1) of its partnership agreement, 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 138 employees. In the 2012 financial year, it reported net income before profit and loss transfer in the annual financial statements pursuant to the provisions of the German Commercial Code (HGB) of EUR 83,915,051.74.

With a balance sheet total under HGB of EUR 61,778,650.07, the balance sheet contains shareholders' equity of EUR 24,572,258.28 as of December 31, 2012. For the current financial year the company is expected to report net income before profit and loss transfer of approx. EUR 80 million.

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

The amending agreement brings the existing profit and loss transfer agreement into line with current legislation, with wording relating to loss

transfer chosen so that it makes amendments to the text of the agreement unnecessary in the case of future amendments to legislation (dynamic referencing) and, at the same time, takes account of new fiscal requirements:

The law modifying and simplifying company taxation and the tax treatment of travel expenses amends the requirements under § 17 (2) Corporation Tax Act (*Körperschaftsteuergesetz* - KStG). The amendment stipulates that, to achieve what is known as fiscal unity on the grounds of a profit and loss transfer agreement, it is additionally necessary that the profit and loss transfer agreement contain an explicit dynamic reference to the provisions of § 302 AktG relating to the obligation to transfer losses.

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

The essential contractual duties of the two parties, namely transfer of profits by the subsidiary and assumption of losses by Deutsche Telekom AG, remain unaffected.

The minimum term for tax purposes of the profit and loss transfer agreement before amendment has already expired. The amending agreement should not restart the minimum period required for taxation purposes. The law modifying and simplifying company taxation and the tax treatment of travel expenses also specifies that a new 5-year period will not start if a dynamic reference has to be included. Even if the minimum period for taxation purposes were restarted, this would not have any effect on the fiscal unity established on the grounds of the profit and loss transfer agreement, since it can be assumed that the amended profit and loss transfer agreement will remain in existence for the duration of the new minimum taxation period.

## **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 in the following.

### **1. Profit transfer**

The regulations set out in § 1 of the profit and loss transfer agreement remain unaffected. § 1 (1) of the profit and loss transfer agreement standardizes the obligation to transfer profits, which is characteristic for a profit and loss transfer agreement, and in doing so standardizes the obligation of the subsidiary to transfer its entire profits. Pursuant to § 1 (2) of the profit and loss transfer agreement, the amount to be appropriated to the statutory reserve is limited to the amount required by law. Pursuant to § 1 (3) of the profit and loss transfer agreement, the amount to be transferred to reserves in accordance with the Articles of Incorporation is only permitted at a level which is economically

justifiable based on a reasonable commercial assessment. Pursuant to § 1 (4) of the profit and loss transfer agreement, beyond that, economically justifiable amounts and amounts permissible under commercial law are only appropriated to retained earnings with the consent of DTAG.

## **2. Transfer of loss**

Section 2 of the amending agreement provides for a redraft of § 2 of the profit and loss transfer agreement.

§ 2 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. The reference is now dynamic in that it refers to the relevant legal provisions in their amended form. In accordance with § 302 (1) AktG, any other loss after taxes which occurs during the term of the agreement 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. In this respect, DTAG bears the economic risk of the subsidiary. This obligation to transfer losses is a mandatory consequence of the profit and loss transfer agreement.

The validity otherwise of § 302 AktG as amended is necessary for fiscal unity with a limited liability company (GmbH) in accordance with § 17 (1) sentence 2 no. 2 KStG. Reference must be made to the provisions of § 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 is 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 now customary provisions within the framework of a profit and loss transfer agreement.

The above amendments to § 2 of the profit and loss transfer agreement must be standardized with respect to other profit and loss transfer agreements.

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

The contents of § 3 (1) and (2) of the profit and loss transfer agreement remain unchanged. (1) states that the agreement will enter into force as soon as it is entered in the commercial register responsible for the subsidiary's registered office. (2) specifies that, to enter into effect, the profit and loss transfer agreement requires the approval of all the subsidiary's directors and the shareholders' meeting of DTAG, that it must be entered into the commercial register of the subsidiary and that the resolution taken by the partners' meeting of the subsidiary must be certified by a notary public. The shareholders' meeting of DTAG and the partners' meeting of the subsidiary approved the original profit and loss transfer agreement in 1996, and the agreement was entered in the commercial register on September 6, 1996. Hence, under the terms of the agreement, the obligation to transfer profits started on January 1, 1996.

Additionally to this, the amending agreement (in 4 thereof) also sets out that the amending agreement enters into effect retroactively at the start of the financial year in which all the requirements for the effectiveness of this amending agreement are fulfilled for the first time. This means that the amendments also apply retroactively.

As with the original profit and loss transfer agreement, this amendment is also subject to the approval of the shareholders' meeting of DTAG and the shareholders' meeting of the subsidiary, as well as to 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. The amending agreement / amendments will enter into effect upon fulfillment of these requirements, which is planned to take place before the end of the year.

The provisions set out in § 3 (3) of the profit and loss transfer agreement also remain unaffected. They state that, notwithstanding the right to terminate for good cause, the profit and loss transfer agreement will be in effect until the end of the fifth year following the year when it first came into effect, and will be extended in each case by one year unless it is terminated in writing before the start of the final year of the agreement term.

### **4. Miscellaneous**

The introductory segment in the agreement has been modified for clarity and the names of the parties in the agreement have been redefined (sections 1 and 3 of the amending agreement).

Section 4 of the amending agreement specifies that the provisions in the profit and loss transfer agreement which are not amended by the amending agreement remain unchanged. Section 4 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 are fulfilled for the first time. This provision, which applies to the relationship between the parties, does not however in any way change the fact that the amendment to the profit and loss transfer agreement will not enter into force until it is entered in the commercial register of the subsidiary.

Section 5 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 purpose 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 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 partner. DTAG directly holds a 100% interest in the subsidiary. For this reason, there was also no need to determine any settlement in the agreement. The companies concerned therefore did not have to be valued to determine an adequate compensation and an adequate settlement. Nor, since DTAG directly holds all shares in the subsidiary, is there any need pursuant to § 293b (1) AktG 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, March ....., 2013

Deutsche Telekom AG,  
Board of Management

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René Obermann (Chairman)

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Niek Jan van Damme

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Reinhard Clemens

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Timotheus Höttges

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Dr. Thomas Kremer

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Claudia Nemat

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Prof. Dr. Marion Schick



Frankfurt, March....., 2013

DeTeMedien, Deutsche Telekom Medien GmbH

Managing Board

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Ralf Coenen

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Dr. Oliver Faber

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Stephan Schmitt

Annex:

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