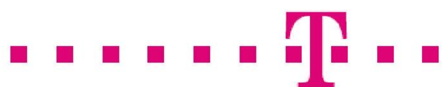

Dear Sirs,

The undersigned companies are among a growing number of information and communications technology companies that are deeply involved in the evolution of open standards environments through the activities of standards setting organisations. Standards in the telecommunications sector are essential to ensure interoperability and to reach efficiency gains through economies of scale - which at the end benefits the European consumers through a better user experience and decreasing prices.

All of the undersigned companies are also highly innovative and hold patent portfolios which include patents essential to various standards. All companies have been active participants and contributors in the former ETSI IPR Review ad hoc group and the current ETSI IPR Special Committee to evolve the ETSI IPR policy to increase transparency and prevent misuse of the standardisation process.

Therefore, we welcome the new guidelines on standardisation agreements provided by the Commission in chapter seven of the draft document SEC(2010) 528/2. The guidelines help to bring clarity in the context of the potential area of conflict between standardisation and IPR. Especially helpful are the paragraphs that provide guidance on: preventing patent hold-ups; the charging of unfair/unreasonable/abusive royalties; good faith disclosure of essential IPR; irrevocable commitments to license on FRAND terms and the undertakings necessary when IPR are transferred.

We also value the Commission's guidance on the relationship between IPR royalties being charged and the economic value of the patents, that ex ante declarations of maximum royalties may provide a method for comparison and assessment of the economic value of the patents and that unilateral ex ante disclosures of the maximum terms would not give rise to competition concerns.

Nevertheless, we believe that in some cases further clarifications would be beneficial. One specific paragraph that we have identified is the following:

Paragraph 286 is very important to maintain security and predictability in the standardization eco-system. It is of utmost importance that a FRAND commitment given by a member to a standards setting organisation *always* follows the IPR if the IPR is transferred to a new owner. This has always been our understanding and – we believe – failure to do so would lead to a breach of article 101. Any uncertainty on this matter would threaten the established elements of standardisation processes which are working well and pose a big uncertainty on the implementers of the standards. We would welcome if the Commission would strengthen the language and e.g. use "**must**" instead of "should" in the sentence *"... there **should** also be a requirement on all IPR holders who provide such a commitment to take all necessary measures to ensure that any undertaking…."*. A specific explanation of what is meant by *"all necessary measures"* could also prove useful, especially for the case when the selling company has made a general FRAND commitment but the IPR has not been specifically disclosed to a standards setting organisation.

The comments made above reflect the views of the undersigned companies but may not reflect the entirety of views that any particular company may have and further comments may be provided by individual companies.

Yours Faithfully

Deutsche Telekom AG
Friedrich-Ebert-Allee 140
53113 Bonn
Germany

Huawei Technologies Duesseldorf GmbH
Riesstraße 25
80992 München
Germany

Vodafone Group Plc
Vodafone House
The Connection
Newbury
Berkshire
RG14 2FN
England