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European Commission
DG Competition
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CASE M.6992

**HUTCHISON 3G UK HOLDINGS LIMITED/
TELEFÓNICA IRELAND LIMITED**

COMMITMENTS TO THE EUROPEAN COMMISSION

22 MAY 2014

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the ***Merger Regulation***), Hutchison 3G UK Holdings Limited (***H3GUKH***) and Hutchison 3G Ireland Holdings Limited (***H3GIH***) hereby enter into the following commitments (the ***Commitments***) vis-à-vis the European Commission (the ***Commission***) with the view to rendering the acquisition of Telefónica Ireland Limited (***O2 Ireland***, together with H3GUKH and H3GIH, the ***Parties***) (the ***Concentration***) compatible with the internal market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption of the Decision (***Effective Date***).

This text shall be interpreted in the light of the Commission's Decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the ***Decision***), in the general framework of Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the ***Remedies Notice***).

A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: means any undertakings controlled by the Parties and/or the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Capacity Agreement: means an agreement between Three and the Upfront MVNO or the Second MVNO under which Three will make available capacity and wholesale access to the Three Network substantially on the terms set out in paragraphs 4 and 8 respectively.

Capacity Allocation: means an amount of capacity expressed as a percentage of the Three Network Total Capacity made available to each of the Upfront MVNO and the Second MVNO under a Capacity Agreement.

Closing: means the completion of the acquisition of O2 Ireland by H3GUKH or its nominee (*inter alia*) through the transfer of the share capital of O2 Ireland to H3GUKH or its nominee.

ComReg: means Ireland's Commission for Communications Regulation.

Confidential Information: means any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: means any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestiture Trustee: means one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by H3GIH, and who has/have received the exclusive mandate to make available the Capacity Allocation in accordance with the provisions in paragraphs 35 and 36.

Divestment Spectrum: means:

(a) 2 x 5 MHz of 900 MHz spectrum in Time Slice 2 (13 July 2015 to 12 July 2030);

(b) 2 x 10 MHz of 1800 MHz spectrum in Time Slice 2 (13 July 2015 to 12 July 2030); and

(c) 2 x 10 MHz of 2100 MHz spectrum for the remainder of the licence period until 24 July 2022.

Eircom: means eircom Limited, a company incorporated under the laws of Ireland under number 98789 whose registered office is at 1 Heuston South Quarter, St. John's Road, Dublin 8, and its affiliated undertakings including Meteor.

Eircom Offer: means as defined in paragraph 1.

HWL: means Hutchison Whampoa Limited.

Meteor: means Meteor Mobile Communications Limited a company incorporated under the laws of Ireland under number 282645 whose registered office is at 1 Heuston South Quarter, St. John's Road, Dublin 8, which is a wholly owned subsidiary of Eircom.

Monitoring Trustee: means one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by H3GIH, and who has/have the duty to monitor H3GUKH and H3GIH's compliance with the conditions and obligations attached to the Decision.

MOU: means the draft Memorandum of Understanding attached as **Annex 1** which is to be entered into between H3GUKH (or an Affiliated Undertaking) and Eircom.

MVNO Entry Period: means the period of […]* from the Effective Date.

Network Share Agreement: means the network share agreement between O2 Ireland and Meteor dated 5 April 2011.

O2 Ireland: means Telefónica Ireland Limited, a company incorporated under the laws of Ireland under number 234895 whose registered office is at 28/29 Sir John Rogerson's Quay, Dublin 2.

Second MVNO: means as defined in paragraph 8.

Second MVNO Commercial Launch Date: means the date of the commercial launch of the Second MVNO.

Three: means Hutchison 3G Ireland Limited, a company incorporated under the laws of Ireland under number 316982 with its registered office at 3rd Floor, One Clarendon Row, Dublin 2.

Three Network: means the mobile communications network operated or used by Three in Ireland from time to time (including for the avoidance of doubt as it evolves through the integration of the O2 Ireland network, as well as components owned by Three and third parties) subject to any limitations contained in national roaming or infrastructure (including site) sharing agreements with third parties.

Three Network Total Capacity: means […]* Gbps for data traffic and […]* Erlangs for voice and SMS traffic, which is forecast to be achieved in 2018.

Trustee(s): means the Monitoring Trustee and/or the Divestiture Trustee as the context requires.

Trustee Divestiture Period: means the Trustee Divestiture Period I and the Trustee Divestiture Period II.

Trustee Divestiture Period I: means the period of […]* from the end of the MVNO Entry Period.

Trustee Divestiture Period II: means the period of […]* from the end of Trustee Divestiture Period I.

Upfront MVNO Commercial Launch Date: means the date of the commercial launch of the Upfront MVNO.

Upfront MVNO: means as defined in paragraph 4.

B. COMMITMENT TOWARDS EIRCOM RELATING TO NETWORK SHARING

1. H3GUKH and H3GIH commit to procure that Three and/or O2 Ireland will offer to Eircom that the existing Network Share Agreement is amended to become the amended and restated Network Share Agreement, including in particular the following amendments (***Eircom Offer***):

   […].

2. In order to achieve such a result, H3GUKH and H3GIH commit to make, or procure the making of, the Eircom Offer to Eircom on substantially the same terms as the MOU attached as **Annex 1**. The Eircom Offer shall remain open until […]*, unless otherwise extended by H3GUKH and/or H3GIH (or an Affiliated Undertaking).

3. H3GUKH and H3GIH will be deemed to have complied with the Commitment in this Section B upon the earlier of Eircom accepting the Eircom Offer and the Eircom Offer lapsing in accordance with paragraph 2.

C. COMMITMENT TO ENTER INTO A CAPACITY AGREEMENT WITH AN UPFRONT MVNO

4. H3GUKH and H3GIH commit to procure that Three will enter into a Capacity Agreement with an MVNO to be approved by the Commission (***Upfront MVNO***) on substantially the following terms:

   (a) Three will make available a minimum Capacity Allocation of […]* for use by the Upfront MVNO on a non-transferable basis for a period of 5 years starting from the earlier of the Upfront MVNO Commercial Launch Date and the payment of the first annual fee referred to in sub-paragraph (f) in accordance with a reasonable capacity glide path leading to a […]* Capacity Allocation in year 5 (such as […]* in the first 5 years respectively);

   (b) in consideration of the use of the Capacity Allocation, the Upfront MVNO shall pay Three a fixed annual fee which can reflect an agreed discounted payment glide path in years 1 to 5;

   (c) during the 5 year term of the Capacity Agreement, the Upfront MVNO will have the option to increase the Capacity Allocation up to a maximum Capacity Allocation cap of 15%. If the Upfront MVNO exercises this option, the fixed annual fee shall increase in proportion to the increase in the Capacity Allocation based on the fee(s) payable for the applicable years remaining during the 5 year term. However, Three shall not be obliged to make available any additional capacity above the minimum […]* Capacity Allocation unless and until the Three Network Total Capacity (as defined in Section A) has been achieved;

   (d) during the 5 year term of the Capacity Agreement, the Upfront MVNO will have the option to increase the Capacity Allocation in proportion to any increase in the size of the Three Network Total Capacity. If the Upfront MVNO exercises this option, the fixed annual fees during this period will increase in proportion to the increase in the Capacity Allocation based on the fee(s) payable for the applicable years remaining during the 5 year term. For the avoidance of doubt, if there is an increase in the Three Network Total Capacity during this period, the maximum Capacity Allocation cap of 15% shall apply to the increased Three Network Total Capacity;

   (e) at the end of the 5 year period, the Upfront MVNO will have the option to extend the term of the Capacity Agreement for a maximum additional period of 5 years (10 years in total). If the option to extend is exercised, the following will apply during any such additional period:

(i) Three will continue to provide wholesale access to the Three Network on the basis of a Capacity Allocation model, in consideration for the payment of fixed annual fees. Three shall not provide wholesale access to the Upfront MVNO during years 6-10 on the basis of a different model;

(ii) the fixed annual fees for years 6-10 will be set out in the option to extend and shall be proportionate to the fees payable in years 1-5 excluding any discount agreed as part of the payment glide path in years 1-5;

(iii) the maximum Capacity Allocation cap of 15% shall continue to apply and the Upfront MVNO shall be entitled to (aa) increase its Capacity Allocation up to this 15% cap or (bb) reduce its Capacity Allocation in each year to an amount equivalent to its actual usage of the Three Network Total Capacity in the immediately preceding year; and

(iv) the Upfront MVNO will have the option to increase its Capacity Allocation in proportion to any increase in the size of the Three Network Total Capacity in consideration for the payment of an incremental fee calculated by reference to any increase in the operating costs of the Three Network between the 12 month period ending 31 December 2018 and the date when the option is exercised. Provided that this incremental fee shall not exceed an amount equal to the Upfront MVNO’s then current % Capacity Allocation multiplied by the increase in the operating costs. For example, if the Upfront MVNO’s Capacity Allocation is 10%, then the incremental fee would at a maximum equal 10% of the increase in operating costs. For the avoidance of doubt, if there is an increase in the Three Network Total Capacity during this period, the maximum Capacity Allocation cap of 15% shall apply to the increased Three Network Total Capacity;

(f) the first annual fee for the Capacity Allocation shall be payable by the Upfront MVNO by a date no later than 12 months from the date of the signing of the Capacity Agreement or 12 months from the Effective Date, whichever is later; and

(g) the Upfront MVNO will have the option to acquire the “48” brand (a sub-brand of O2 Ireland) and/ or the “48” customer base (being such number of “48” customers in existence as at the date the offer is accepted) at fair value and Three/ O2 Ireland will use its reasonable efforts to achieve an effective transfer of such customers. The option to acquire these customers will be exercisable by the Upfront MVNO at the time of entry into the Capacity Agreement and thereafter the offer will lapse.

5. The Concentration shall not be implemented before Three has entered into a final binding Capacity Agreement with the Upfront MVNO and the Commission has approved the Upfront MVNO and the terms of the Capacity Agreement in accordance paragraph 22.

6. H3GUKH and H3GIH will be deemed to have complied with the Commitment in this Section C upon approval by the Commission of the Upfront MVNO and Three having entered into the Capacity Agreement with the Upfront MVNO.

7. During the term of the Capacity Agreement (being the initial 5 year period and a maximum additional period of 5 years (up to 10 years in total)), H3GUKH and H3GIH shall procure that Three shall (i) make the Capacity Allocation available for use by the Upfront MVNO in accordance with paragraph 4 and in the manner described in **Annex 2** and (ii) provide the Upfront MVNO with the wholesale access services described in **Annex 2** together with technical assistance that may reasonably be required from time to time by the Upfront MVNO.

D. COMMITMENT TO ENTER INTO A CAPACITY AGREEMENT WITH A SECOND MVNO

8. H3GUKH and H3GIH commit to procure that Three will enter into a Capacity Agreement with one additional MVNO to be approved by the Commission (***Second MVNO***) on substantially the following terms:

   (a) Three will make available a minimum Capacity Allocation of […]* for use by the Second MVNO on a non-transferable basis for a period of 5 years starting from the earlier of the Second MVNO Commercial Launch Date and the payment of the first annual fee referred to in sub-paragraph (f) in accordance with reasonable capacity glide path leading to a […]* Capacity Allocation in year 5 (such as […]* in the first 5 years respectively);

   (b) in consideration of the use of the Capacity Allocation, the Second MVNO shall pay Three a fixed annual fee which can reflect an agreed discounted payment glide path in years 1 to 5;

   (c) during the 5 year term of the Capacity Agreement, the Second MVNO will have the option to increase the Capacity Allocation up to a maximum Capacity Allocation cap of 15%. If the Second MVNO exercises this option, the fixed annual fee shall increase in proportion to the increase in the Capacity Allocation based on the fee(s) payable for the applicable years remaining during the 5 year term. However, Three shall not be obliged to make available any additional capacity above the minimum […]* Capacity Allocation unless and until the Three Network Total Capacity (as defined in Section A) has been achieved;

   (d) during the 5 year term of the Capacity Agreement, the Second MVNO will have the option to increase the Capacity Allocation in proportion to any increase in the size of the Three Network Total Capacity. If the Second MVNO exercises this option, the fixed annual fees during this period will increase in proportion to the increase in the Capacity Allocation based on the fee(s) payable for the applicable years remaining during the 5 year term. For the avoidance of doubt, if there is an increase in the Three Network Total Capacity during this period, the maximum Capacity Allocation cap of 15% shall apply to the increased Three Network Total Capacity;

(e) at the end of the 5 year period, the Second MVNO will have the option to extend the term of the Capacity Agreement for a maximum additional period of 5 years (10 years in total). If the option to extend is exercised, the following will apply during any such additional period:

(i) Three will continue to provide wholesale access to the Three Network on the basis of a Capacity Allocation model, in consideration for the payment of fixed annual fees. Three shall not provide wholesale access to the Second MVNO during years 6-10 on the basis of a different model;

(ii) the fixed annual fees for years 6-10 will be set out in the option to extend and shall be proportionate to the fees payable in years 1-5 excluding any discount agreed as part of the payment glide path in years 1-5;

(iii) the maximum Capacity Allocation cap of 15% shall continue to apply and the Second MVNO shall be entitled to (aa) increase its Capacity Allocation up to this 15% cap or (bb) reduce its Capacity Allocation in each year to an amount equivalent to its actual usage of the Three Network Total Capacity in the immediately preceding year; and

(iv) the Second MVNO will have the option to increase its Capacity Allocation in proportion to any increase in the size of the Three Network Total Capacity in consideration for the payment of an incremental fee calculated by reference to any increase in the operating costs of the Three Network between the 12 month period ending 31 December 2018 and the date when the option is exercised. Provided that this incremental fee shall not exceed an amount equal to the Second MVNO's then current % Capacity Allocation multiplied by the increase in the operating costs. For example, if the Second MVNO's Capacity Allocation is 10%, then the incremental fee would at a maximum equal 10% of the increase in operating costs. For the avoidance of doubt, if there is an increase in the Three Network Total Capacity during this period, the maximum Capacity Allocation cap of 15% shall apply to the increased Three Network Total Capacity; and

(f) the first annual fee for the Capacity Allocation shall be payable by the Second MVNO by a date no later than 12 months from the date of the signing of the Capacity Agreement.

9. H3GUKH and H3GIH commit to find a Second MVNO and to enter into a Capacity Agreement substantially on the terms set out in paragraph 8 within the MVNO Entry Period. H3GUKH and H3GIH further commit to procure that Three shall enter into good faith negotiations during the MVNO Entry Period with parties that reasonably request to enter into a Capacity Agreement with a view to concluding a Capacity Agreement and making the Capacity Allocation available for use by the Second MVNO in the manner described in **Annex 2**. In the course of such good faith negotiations and, dependent on the stage of negotiations, H3GUKH and H3GIH shall

procure that Three shall provide to potential Second MVNOs sufficient information as regards the available Capacity Allocation.

10. If Three has not entered into a Capacity Agreement with a Second MVNO by the end of the MVNO Entry Period, H3GIH shall grant the Divestiture Trustee an exclusive mandate to make available the Capacity Allocation in accordance with the provisions of paragraph 35 and 36.

11. H3GUKH and H3GIH will be deemed to have complied with the Commitment in this Section D if:

(a) by the end of the MVNO Entry Period, Three has entered into a Capacity Agreement with a Second MVNO in accordance with paragraph 8 and the Second MVNO and the Capacity Agreement have been approved by the Commission as being consistent with the Commitments in accordance with the procedure in Section F; or

(b) by the end of the Trustee Divestiture Period I, Three or the Divestiture Trustee has entered into a Capacity Agreement with a Second MVNO following the procedure in paragraph 35 and the Second MVNO and the Capacity Agreement have been approved by the Commission as being consistent with the Commitments in accordance with the procedure in Section F; or

(c) by the end of the Trustee Divestiture Period II, Three or the Divestiture Trustee has entered into a Capacity Agreement with the Second MVNO or the Upfront MVNO following the procedure in paragraph 36 and the Second MVNO (if applicable) and the Capacity Agreement have been approved by the Commission as being consistent with the Commitments in accordance with the procedure in in Section F.

12. During the term of the Capacity Agreement (being the initial 5 year period and a maximum additional period of 5 years (up to 10 years in total)), H3GUKH and H3GIH shall procure that Three shall (i) make the Capacity Allocation available for use by the Second MVNO in accordance with paragraph 8 and in the manner described in **Annex 2** and (ii) provide the Second MVNO with the wholesale access services described in **Annex 2** together with technical assistance that may reasonably be required from time to time by the Second MVNO.

E. COMMITMENT TO OFFER THE DIVESTMENT SPECTRUM

13. In order to enable either the Upfront MVNO or the Second MVNO (but not both) to develop into an MNO, H3GUKH and H3GIH commit to procure that Three will offer each of them the option to acquire, by way of transfer from Three, the rights of use to some or all of the Divestment Spectrum (at the election of the MVNO) (***Spectrum Option***). The Spectrum Option may be exercised by the Upfront MVNO or the Second MVNO for a period of ten years commencing from 1 January 2016 (***Spectrum Option Period***) subject to the following:

(a) once the Spectrum Option is exercised by either the Upfront MVNO or the Second MVNO (the ***Purchasing MVNO***), either in whole or in part, the Spectrum Option will no longer be available to the other MVNO;

(b) the Spectrum Option is to be exercised by the Purchasing MVNO sending a written notice to Three indicating that it intends to exercise the Spectrum Option subject to the provisions of the Commitments;

(c) the Spectrum Option may only be exercised by the Upfront MVNO or the Second MVNO if there is a Capacity Agreement in place between it and Three, otherwise its right to exercise the Spectrum Option will lapse;

(d) if the Purchasing MVNO exercises the Spectrum Option to acquire the rights to use only part of the Divestment Spectrum, the Spectrum Option with respect to the remaining Divestment Spectrum will continue to be available to the Purchasing MVNO until the end of the Spectrum Option Period and sub-paragraph (c) shall not apply to the further exercise of the Spectrum Option in respect of the remaining Divestment Spectrum. At the end of the Spectrum Option Period, any remaining part of the Spectrum Option will lapse; and

(e) the Spectrum Option may only be exercised by the Upfront MVNO or the Second MVNO (as the case may be) if it demonstrates to the Monitoring Trustee (at the time it first seeks to exercise the Spectrum Option) that it has a concrete business plan to use the Divestment Spectrum to become an MNO within a reasonable period of time following the first exercise of the Spectrum Option.

14. H3GUKH and H3GIH commit to procure that Three shall offer (i) the rights of use to the 1800 MHz and 2100 MHz Divestment Spectrum at no minimum price but shall not be obliged to transfer this Divestment Spectrum at […]* and (ii) the rights of use to the 900 MHz Divestment Spectrum at […]*.

15. If the transfer of the rights of use to the Divestment Spectrum is subject to ComReg approval then the Commitment in paragraph 13 shall be conditional on that approval.

16. Upon the Spectrum Option being exercised by the Purchasing MVNO either in whole or in part, H3GUKH and H3GIH shall no longer be required to procure that Three makes available the Capacity Allocation to the Purchasing MVNO, and Three shall have the right to terminate the applicable Capacity Agreement, subject to providing a reasonable transitional period which shall be agreed between Three and the Purchasing MVNO by reference to its business plan to become an MNO. If Three and the Purchasing MVNO cannot agree a transitional period, the matter shall be determined by the Commission, following a report from the Monitoring Trustee, and having heard representations from H3GUKH/H3GIH and the Purchasing MVNO.

17. If the Spectrum Option is exercised in accordance with this Section, H3GUKH and H3GIH commit to procure that Three shall clear and transfer the Divestment Spectrum within a period of 6 months from the date of the exercise of the Spectrum Option.

18. If at any point following the transfer of the Divestment Spectrum until the expiry of the applicable rights of use under the relevant spectrum licences (i) the Purchasing MVNO is no longer independent of and unconnected to any mobile network operator active in Ireland or (ii) the Purchasing MVNO seeks to transfer the rights of use to the Divestment Spectrum to a third party, Three shall have the right, subject to applicable

approvals under Irish and/or EU law, to re-acquire the rights of use to the Divestment Spectrum by way of transfer from the Purchasing MVNO at the same price as the Purchasing MVNO has paid to Three and, in such circumstances, the Purchasing MVNO shall be required to clear and return the Divestment Spectrum to Three within a period of 6 months from the date of Three exercising its rights to re-acquire the Divestment Spectrum. Provided that (i) above shall not prevent the Purchasing MVNO entering into network sharing, spectrum pooling or roaming agreements with mobile network operators in Ireland.

19. When Three has reached or is about to reach a legally binding agreement with the Purchasing MVNO to transfer all or part of the Divestment Spectrum, H3GUKH and H3GIH shall provide the Commission with a copy of the agreement and a reasoned statement in writing, enabling the Commission to verify that the commitment to transfer the rights of use to some or all of the Divestment Spectrum has been fulfilled in a manner consistent with these Commitments.

20. H3GUKH and H3GIH will be deemed to have complied with the commitment in this Section E upon the earlier of the acquisition of the rights of use to the Divestment Spectrum by the Upfront MVNO or the Second MVNO and the option lapsing in accordance with paragraph13.

F. CRITERIA FOR APPROVAL OF THE UPFRONT AND SECOND MVNO

21. In order to be approved by the Commission, the Upfront MVNO or the Second MVNO must:

    (a) be independent of and unconnected to Three or any mobile network operator active in Ireland;

    (b) possess the financial resources, proven expertise and incentive to be a viable and active competitive force in competition with Three and other competitors on the Irish market for mobile communications to end customers. Companies which fulfil the aforementioned criteria may (*inter alia*) include existing MVNOs in or outside Ireland, companies with telecoms activities, specialised electronic retailers in or outside Ireland or mass market retailers in Ireland; and

    (c) neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the MVNO must reasonably be expected to obtain all necessary approvals (if required) from the relevant regulatory authorities to operate as an MVNO in Ireland.

22. The final binding Capacity Agreement shall be conditional on the Commission's approval. When Three has reached, or is about to reach, an agreement with the relevant MVNO, H3GUKH and H3GIH shall provide a reasoned proposal including a copy of the final Capacity Agreement, within one week to the Commission and the Monitoring Trustee. H3GUKH and H3GIH must be able to demonstrate to the Commission that the MVNO fulfils the criteria in paragraph 21 and that the Capacity Agreement is being entered into in a manner consistent with the Commission's

Decision and the Commitments. For the approval, the Commission shall verify that the relevant MVNO fulfils criteria in paragraph 21 and that the Capacity Agreement is being entered into in a manner consistent with the Commitments.

G. TRUSTEE

Appointment procedure

23. H3GIH shall appoint a Monitoring Trustee to carry out the functions specified in paragraph 32 below. H3GUKH and H3GIH commit not to close the Concentration before the appointment of a Monitoring Trustee.

24. If Three has not entered into a Capacity Agreement with a Second MVNO before the end of the MVNO Entry Period or if the Commission has rejected an MVNO proposed by H3GUKH and H3GIH at that time or thereafter, H3GIH shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

25. The Trustee shall, at the time of the appointment, be independent of the Parties and their Affiliated Undertakings, possess the necessary qualifications to carry out its mandate, including telecoms sector expertise, and shall neither have nor become exposed to a Conflict of Interest.

26. The Trustee shall be remunerated by H3GIH in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by H3GUKH and H3GIH

27. No later than two weeks after the Effective Date, H3GUKH and H3GIH shall submit the name or names of one or more natural or legal persons whom they propose H3GIH appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the MVNO Entry Period or on request by the Commission, H3GUKH and H3GIH shall submit a list of one or more persons whom they propose H3GIH appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 25 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under the Commitments;

    (b) the outline of a work plan, which describes how the Trustee intends to carry out its assigned tasks; and

    (c) an indication whether it is anticipated that the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees may be proposed for the two functions.

Approval or rejection by the Commission

28. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, H3GIH shall appoint or cause to be appointed, the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, H3GIH shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within 1 week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by H3GUKH and H3GIH

29. If all the proposed Trustees are rejected, H3GUKH and H3GIH shall submit the names of at least 2 more natural or legal persons within 1 week of being informed of the rejection, in accordance with paragraphs 23 and 28 of these Commitments.

Trustee nominated by the Commission

30. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom H3GIH shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission. This Trustee shall also fulfil the requirements set out in paragraph 25.

Functions of the Trustee

31. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or H3GUKH or H3GIH, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

32. The Monitoring Trustee shall:

(a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(b) monitor compliance by H3GUKH and H3GIH with the obligations and conditions provided in Sections B-E of the Commitments;

(c) review and assess potential parties that are interested in concluding a Capacity Agreement as the Second MVNO and verify that, dependent on the stage of the divestiture process, these interested parties receive sufficient and correct information relating to the conclusion of a Capacity Agreement;

(d) act as a contact point for any requests by third parties, in particular potential Second MVNOs, in relation to the Commitments;

(e) following the signing of the Capacity Agreement with the Upfront MVNO and the Second MVNO, monitor developments regarding the commercial launch of the Upfront MVNO and the Second MVNO;

(f) following the Upfront MVNO Commercial Launch Date and the Second MVNO Commercial Launch Date be available to receive any complaints from the Upfront MVNO and the Second MVNO regarding Three's compliance with the Commitments in Sections C and D;

(g) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(h) propose to H3GUKH and H3GIH such measures as the Monitoring Trustee considers necessary to ensure their compliance with the conditions and obligations in the Commitments;

(i) in order for the Commission to assess whether H3GUKH and H3GIH are complying with its obligations under the Commitments, provide to the Commission, sending H3GIH a non-confidential copy at the same time, written report(s) in accordance with the following:

  (i) a written report covering developments in relation to the Eircom Offer to be provided within 15 calendar days of the end of every month from the appointment of the Monitoring Trustee until H3GUKH and H3GIH have been deemed to have complied with the Commitment in Section B in accordance with paragraph 3;

  (ii) a written report covering developments in relation to the negotiation of the Capacity Agreement with the Upfront MVNO and the Second MVNO to be provided within 15 calendar days of the end of every month from the appointment of the Monitoring Trustee until the end of the MVNO Entry Period;

  (iii) a written report covering developments in relation to the commercial launch of the Upfront MVNO and (if applicable) the Second MVNO to be provided within 15 calendar days of the end of every quarter from the entering into of the relevant Capacity Agreement until the Upfront MVNO Commercial Launch Date and (if applicable) the Second MVNO Commercial Launch Date respectively; and

  (iv) a written report covering developments in relation to the exercise of the Spectrum Option as contemplated in Section E (including the determination pursuant to paragraph 13(e) and the determination of the transitional period pursuant to paragraph 16) to be provided within 15 calendar days of the end of every month following notification that the Upfront MVNO or Second MVNO (as the case may be) wish to exercise the Spectrum Option and until the Divestment Spectrum (or part thereof) has been transferred;

(j) in addition to these periodic reports, promptly report in writing to the Commission, sending H3GIH a non-confidential copy at the same time, if it concludes on reasonable grounds that H3GUK and H3GIH are failing to comply with any of the Commitments;

(k) within one week after receipt of the documented proposal referred to in paragraph 22 of these Commitments, submit to the Commission, sending H3GIH a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed Upfront MVNO or Second MVNO (as the case may be) and whether the Capacity Agreement is being entered into in a manner consistent with the conditions and obligations attached to the Decision.

33. The documents provided for above shall be prepared in English.

34. If the Monitoring and Divestiture Trustee are not the same persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

35. Within Trustee Divestiture Period I, the Divestiture Trustee shall:

(a) offer, on behalf of Three, to make available to a Second MVNO a […]* Capacity Allocation for use on a non-transferable basis for a period of 5 years with a reasonable capacity glide path in accordance with paragraph 8 at a (capacity unit) price which is not less than […]* of the pro rata price payable under the terms of the Capacity Agreement with the Upfront MVNO in years 1-5; and

(b) enter into on behalf of Three or cause Three to enter into, a Capacity Agreement with the Second MVNO substantially in accordance with the terms at paragraph 8, provided that the Commission has approved the Second MVNO and the Capacity Agreement in accordance with Section F.

36. If Three or the Divestiture Trustee has not entered into a Capacity Agreement with a Second MVNO by the end of the Trustee Divestiture Period I, then within the Trustee Divestiture Period II, the Divestiture Trustee shall:

(a) offer, on behalf of Three, to make available to a Second MVNO or the Upfront MVNO, at […]*, a […]* Capacity Allocation for use on a non-transferable basis for a period of 5 years with a capacity glide path under which the Capacity Allocation would be fixed at […]* in each of the 5 years respectively. Any increase in this fixed Capacity Allocation or extension of the term of 5 years shall be made available on the same terms and subject to the same limits as set out in the Capacity Agreement with the Upfront MVNO; and

(b) enter into on behalf of Three or cause Three to enter into, a Capacity Agreement with the Second MVNO or the Upfront MVNO a Capacity Agreement in accordance with the terms of sub-paragraph (a) provided that the Commission has approved the Second MVNO (if applicable) and the Capacity Agreement in accordance with Section F.

37. The Divestiture Trustee shall make the Capacity Allocation available for use by the Second MVNO in the manner described in **Annex 2**, and shall provide that Three shall provide the Second MVNO with the wholesale access services described therein together with technical assistance that may reasonably be required from time to time by the Second MVNO.

38. Notwithstanding the provisions in paragraphs 35 and 36, the Divestiture Trustee shall act prudently to protect the legitimate financial, legal and operational interests of H3GUKH, H3GIH and Three and shall negotiate reasonable terms for the Capacity Agreement with the Second MVNO.

39. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly written report written in English on the progress of the process to enter into a Capacity Agreement with a Second MVNO. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to H3GIH.

<u>Duties and obligations of H3GUKH and H3GIH</u>

40. H3GUKH and H3GIH shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Three's business books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments. H3GUKH and H3GIH shall, and commits to procure that Three shall, provide the Trustee upon request with copies of any document which is relevant for the fulfilment of the tasks of the Trustee. H3GUKH and H3GIH shall procure that Three makes available to the Trustee one or more office(s) on its premises, and that Three shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

41. H3GUKH and H3GIH shall submit written reports in English on potential parties that are interested in concluding the Capacity Agreement with the Second MVNO, and on developments in the negotiations with such interested parties, to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date, or otherwise at the Commission's request.

42. H3GUKH and H3GIH shall inform the Commission and the Monitoring Trustee of the receipt of a written notice within the meaning of paragraph 13(b) (i.e., a notice from the Upfront MVNO or the Second MVNO indicating that it intends to exercise the Spectrum Option) no later than 10 days following receipt of such notice.

43. H3GUKH and H3GIH shall procure that its advisors provide the Monitoring Trustee, on request, with the information submitted to all third parties that express an interest in becoming the Second MVNO and keep the Monitoring Trustee informed of all developments in the negotiation process.

44. H3GUKH and H3GIH shall procure that Three shall grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to conclude the Capacity Agreement with the Second MVNO in accordance with these Commitments, and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to conclude the Capacity Agreement with the Second MVNO in accordance with these Commitments, including the appointment of advisors in accordance with paragraph 46 to assist it in the conclusion of the Capacity Agreement. Upon request of the Divestiture Trustee, H3GUKH and H3GIH shall cause the documents required to effect the entry into of a Capacity Agreement with a Second MVNO to be duly executed.

45. H3GIH shall indemnify the Trustee and its employees and agents (each an ***Indemnified Party***) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to H3GUKH or H3GIH for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

46. At the expense of H3GIH, the Trustee may appoint advisors which are independent of the Parties (in particular for legal advice), subject to H3GIH's prior approval (this approval not to be unreasonably withheld or delayed) if the Trustee reasonably considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under its mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should H3GIH refuse to approve the appointment of advisors proposed by the Trustee, the Commission may approve the appointment of such advisors, after having heard representations from H3GIH. Only the Trustee shall be entitled to issue instructions to any appointed advisors. Paragraph 45 shall apply to the advisors *mutatis mutandis*. Subject to the consent of H3GUKH and H3GIH, the relevant advisors and any conflict of interest, in the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served H3GUKH and H3GIH during the MVNO Entry Period if the Divestiture Trustee considers this in the best interest of achieving an expedient entry into of a Capacity Agreement.

47. H3GUKH and H3GIH agree that the Commission may share Confidential Information proprietary to them with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.

48. H3GUKH and H3GIH agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential Second MVNOs, of the identity and the tasks of the Monitoring Trustee.

49. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

Replacement, discharge and re-appointment of the Trustee

50. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including exposure to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and H3GIH, require H3GIH to replace the Trustee; or

(b) H3GIH, with the prior approval of the Commission, may replace the Trustee.

51. If the Trustee is removed according to paragraph 50 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the outgoing Trustee has effected a full hand-over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 23 to 30 of these Commitments.

52. Besides the removal according to paragraph 50 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the Commitments might not have been fully and properly implemented.

H. FINAL PROVISIONS

I. REVIEW

53. The Commission may extend the time periods foreseen in the Commitments in response to a request from H3GUKH or H3GIH or, in appropriate cases, on its own initiative. Where H3GUKH or H3GIH request an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to H3GIH. Only in exceptional circumstances shall H3GUKH or H3GIH be entitled to request an extension within the last month of any period.

54. The Commission may further, in response to a reasoned request from H3GUKH or H3GIH showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in the Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall at the same time send a non-confidential copy of the report to H3GIH. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

55. In determining whether exceptional circumstances may justify a waiver, modification or substitution of the Commitments at the request of H3GUKH or H3GIH, the Commission will take into account *inter alia* significant changes in market circumstances, applicable laws and/or the regulatory environment.

II ENTRY INTO FORCE

56. The Commitments shall take effect upon the date of adoption of the Decision.

[*signature*]

Name: […]*

Date: 22 May 2014

Duly authorised on behalf of Hutchison 3G UK Holdings Limited and Hutchison 3G Ireland Holdings Limited

Annex 1 – draft MOU with Eircom

[…]*

Annex 2

1. In this Annex:

- Section A explains how the Capacity Allocation for both data and voice traffic is calculated.
- Section B describes the interconnection points between the MVNO's network and Three's network as well as the technical controls that will be implemented to make available the Capacity Allocation.
- Section C broadly describes the MVNO wholesale access services which are included in the fixed annual fee paid by the MVNO for its Capacity Allocation.

For the avoidance of doubt, the descriptions in this Annex 2 are provided for background information purposes only, and do not constitute representations and warranties to the MVNO.

A. Calculation of the Capacity Allocation

2. The key principles for determining and making available the Capacity Allocation are as follows:

- A dedicated "pipe" from the Three network for each of voice and data traffic will be allocated to the MVNO.
- The size of each pipe will represent a percentage of the total Packet Switched capacity and Circuit Switched capacity in the Three network (i.e. the post-merger consolidated network of Three and O2 Ireland[1]).
- The Capacity Allocation will be defined in Gigabits per second (***Gbps***) for Packet Switched traffic, and in Erlangs (***Erl***) for Circuit Switched traffic.

B. Interconnection with the Three Network

3. The implementation of the MVNO onto the Three network will be in accordance with a standard MVNO agreement and architecture. The MVNO must have its own Circuit Switched core network and Packet Switched core network and these will interconnect with Three's Packet Switched and Circuit Switched Networks respectively.

Packet Switched Interconnection – 15% Capacity Allocation Example

4. The enabling of […]* of bandwidth between the MVNO and the Three Packet Switched core networks would require the provision of four […]* Ethernet links. This is to allow for resilience in case of failure. Under normal conditions only two of the links will be used giving a possible […]* between the networks.

[…]*

1 […]*.

5. Bandwidth control would be implemented as follows:

- To ensure that the maximum delivered bandwidth does not exceed […]*, a limit on the links will be required.

- To enforce this limit, a quality of service software feature known as a traffic policing will be configured on the IP gateways. This feature is implemented using a token bucket principle. The IP gateway will allocate a bucket of defined size to allow for a maximum transmission rate (in this case […]*).

- All Packet Switched traffic traversing this link will be treated equally.

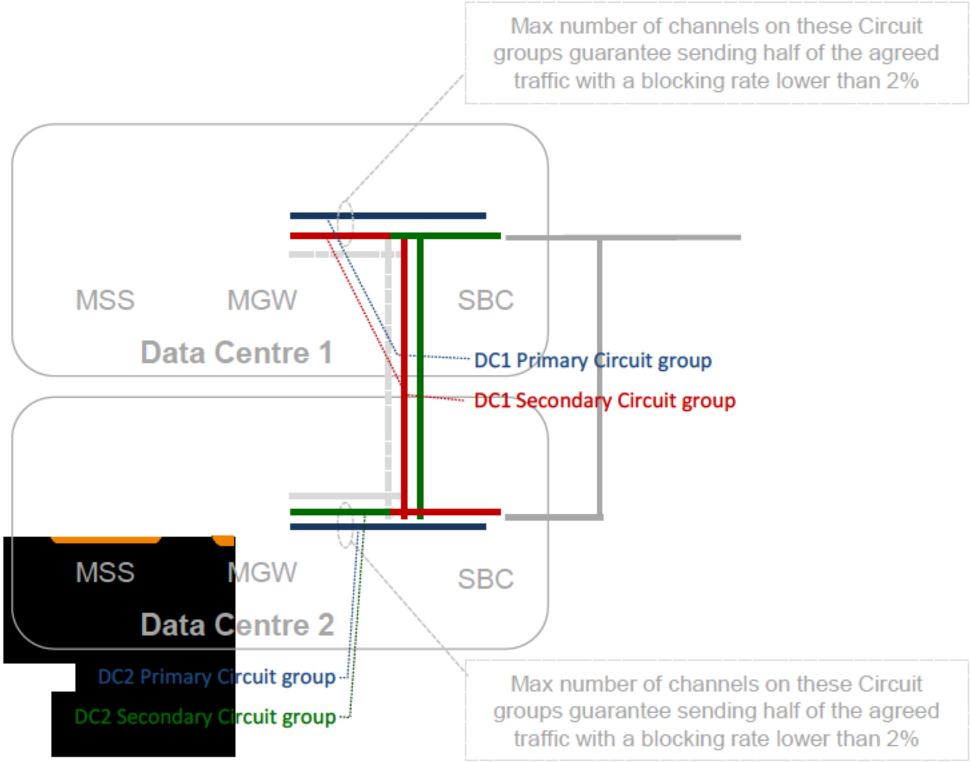
- Within the Three Packet Switched core network, both the Three and the MVNO traffic will be treated equally utilising the same quality of service values.

- The MVNO will be able to monitor the bandwidth traversing the data interconnect in terms of throughput and performance. The MVNO will be able to readily identify if there is any capping of traffic below the […]* threshold.

Circuit Switched Interconnection – 15% Capacity Allocation Example

6. The limit on voice traffic for the MVNO to […]* would be implemented in a way which ensures resiliency and a blocking probability lower than 2%. This would be carried out as follows:

(a) Three's data centres will be connected to the MVNO's Circuit Switched core network on SIP-I for voice. Three circuit groups will be created on the MGWs of each data centre, namely: Primary, Secondary and Overflow. The Primary and the Secondary circuit groups will be connected to the SBCs and from there to the MVNO core on SIP-i. The Overflow circuit group will connect the Three MGWs in one data centre to the MGWs in the other data centre on BICC.



(b) SBC resiliency:

(i) The Primary circuit groups in each data centre will connect to the SBC of the same data centre. The Secondary circuit groups will connect the MGWs of one data centre to the SBC of the other data centre. Each MGW will therefore be connected to both SBCs guaranteeing no service impact in case that one SBC goes down.

(c) Simultaneous calls limitation:

(i) It is standard to define the size of a SIP-I circuit group in terms of channels or simultaneous calls. The number of channels allocated to the Primary and Secondary circuit groups of each individual site will be dimensioned to carry not more than half of the traffic agreed with the MVNO with a blocking probability of the virtual circuit group lower than 2%.

(ii) If the Primary and Secondary circuit groups from one data centre were congested because half of the maximum agreed traffic had been reached, the traffic will overflow to the other data centre via the Overflow circuit groups. The MGWs in the other data centre will forward the traffic to their SIP-I connections until the other half of the maximum agreed traffic is reached. The objective of this is to maximize the utilization of the SIP-I circuit groups preventing call dropping caused from unbalanced traffic between sites.

SMS Design

7. The MVNO will have its own SMSC. SMS traffic will be routed on the same links as the voice interconnects to the MVNO. SMS traffic is carried in the control plane of the links alongside all the signalling. It only constitutes a very small proportion of the overall bandwidth so therefore it is not practical to dimension the circuit switch interconnect specifically for SMS. The practical solution for SMS is to ensure that a fair usage policy is agreed with the MVNO.

8. Within the MSSs, Global Title (GT) analysis is performed. When the GT for the MVNO's SMSC is used, the MSS will route the signalling towards a dedicated signalling link to this SMSC, upon which only SMS traffic will be permitted. This signalling link is associated to a VLAN, which is connected to a router which can be used to manage the amount of signalling traffic throughput, thereby limiting the amount of SMSs that may be passed to the MVNO's SMSC at any given time.

C. MVNO Wholesale Access Services

9. The following services will be included in the fixed annual fee paid by the MVNO for its Capacity Allocation:

   a) wholesale access to the Three Network for the origination and termination of circuit switched, SMS, packet switched data (including MMS) services to MVNO customers. For the the avoidance of doubt, such wholesale access will enable the MVNO (using its own core network) to provide services to MVNO customers such as call forwarding, caller line identification services, multi-party call services, call waiting, and call transfer;

   b) wholesale access to the Three Network for the provision by MVNO of its value added services to MVNO customers;

   c) call routing to MVNO and location data for emergency call delivery services; and

   d) location data and real time CDRs for legal interception services with respect to the MVNO customers.

   The technical specification for the services and the network access requirements will be made available on request and without undue delay.

10. The above wholesale access services are available using the mobile network technologies which Three uses to deliver services to its customers from time to time (UMTS, HSPA, HSDPA and LTE as well as GSM and GPRS to the extent available under its 2G and 2.5G roaming arrangements).

11. Subject to paragraph 12, the MVNO shall be responsible for making its own arrangements to meet its obligations as a public communications network operator under Irish law.

12. In response to reasonable requests, Three shall provide additional services (to those services referred to at 9 (c) and (d) above) with respect to the provision of emergency call delivery services, legal intercept services, numbering by MVNO and assistance

with respect to the MVNO's integration into and participation in the mobile industry's porting database. The provision of any such assistance by Three shall be charged at a price not below Three's incremental cost in providing the service.

13. Three shall consider reasonable requests for additional services other than those set out in paragraph 9 and 12 above (to the extent that it is within Three's technical capability and functionality to provide such additional services) including:

(a) the provision of all or part of the core network infrastructure such as the interconnection between the Three and the MVNO, or between the MVNO and other mobile or fixed network operators;

(b) the provision of a mobile number portability platform;

(c) transit or routing services; or

(d) international roaming services.

The provision of any such services by Three shall be subject to separate negotiation and agreement between Three and the MVNO of the terms and conditions (taking into account the investment and operational expenditures made by Three and allowing for a reasonable rate of return on the investment and these expenditures).

14. Three shall supply the same quality of service and coverage to the MVNO in respect of the MVNO customers as it does to its own customers.