

**DISCLAIMER: This is an interim text of the non-confidential version of the commitments in Case COMP/M.5669– CISCO/TANDBERG. The text is made available for information purposes only and does not constitute an official publication. The full text of the decision and the commitments in Annex will be published on DG COMPETITION's website.**

## **COMMITMENTS PACKAGE**

### **CASE COMP/M.5669 - Cisco/ Tandberg**

Pursuant to Article 6(2) of Council Regulation (EC) 139/2004 (“Merger Regulation”), Cisco Systems Inc. (“Cisco”) submits the commitments specified below (the “Commitments”) in order to enable the European Commission (the “Commission”) to declare the proposed concentration (the “Concentration”) between Cisco and Tandberg ASA (“Tandberg”) compatible with the common market by means of a decision pursuant to Article 6(1)(b) of the Merger Regulation (“Decision”).

These Commitments shall take effect upon receipt of the Commission’s Decision declaring the Concentration compatible with the common market and will be binding on Cisco, its subsidiaries, successors and assigns. These Commitments are offered exclusively in the context of the Concentration between Cisco and Tandberg and are without prejudice to the position of Cisco and/or its subsidiaries in future cases examined by the European Commission.

Cisco’s commitments are worldwide. Specifically, Cisco’s obligation to license TIP for evaluation and implementation purposes, and to license the open source library for TIP 7 shall be applicable to any licensee located anywhere in the world. Likewise, Cisco’s assignment of the TIP protocol and TIP 7 source code library to the IMTC or another independent industry body will require the IMTC or other industry body to grant worldwide licenses to implementers of TIP located anywhere in the world.

This text shall be interpreted in the light of the Decision to which the Commitments are attached as conditions and obligations, and in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies.

## **DEFINITIONS**

### **Cisco**

Cisco Systems Inc. and Tandberg ASA, and companies and/or affiliated businesses controlled by these entities after the Consummation of the Concentration.

### **Consummation of the Concentration**

The date on which Cisco, through Cisco Netherlands Holding B.V., acquires at least 90% of the share capital in Tandberg as provided for in the offer document of the voluntary public offer of 1 October 2009, as amended by the improved offer dated 16 November 2009.

### **Effective Date**

The date of the Decision, unless otherwise specified.

**Independent Industry Body**

The International Multimedia Telecommunications Consortium (“IMTC”), or a consortium of companies the creation of which Cisco will initiate, meeting the requirements of Section 2.2 of these Commitments.

**Implementation Profiles**

Documentation that Cisco has developed or develops in the future to illustrate specific choices that Cisco has made between implementation options provided for in TIP

**Parties**

Cisco, Tandberg and their respective subsidiaries.

**Prospective Implementer**

A Company or institution that downloads the TIP Specification under the TIP License Agreement.

**Recognized Standard Setting Body**

An internationally recognized standards development organization with broad membership active in past standards development efforts in the area of internet protocol streaming media standards, for example the Internet Engineering Task Force.

**Review Section**

Has the meaning given to it in Section 7.

**TIP**

Telepresence Interoperability Protocol, which is referred to as the TIP Specification in the TIP License Agreement at **Appendix 1**.

**TIP License Agreement**

Agreement as described in Section 1.1 below and in the form provided in **Appendix 1**.

**1. COMMITMENTS REGARDING LICENSING TIP TO THIRD PARTIES**

- 1.1 During an interim period pending fulfilment of Cisco’s commitment to divest its rights to TIP and assign responsibility for managing and updating TIP to an Independent Industry Body in accordance with Section 2 below, Cisco commits to provide any third party (a "Prospective Implementer") a worldwide royalty-free license to any claim in any of its current or future patents essential for the implementation of the Telepresence Interoperability Protocol (the "Protocol" or "TIP") and the Implementation Profiles by means of the TIP License Agreement attached to this Commitments Package as **Appendix 1**. The TIP License Agreement provides that any Prospective Implementer can download the TIP Specification and Implementation Profiles from Cisco’s website. For third parties wishing to evaluate TIP prior to deciding whether to license TIP, Cisco will provide the Protocol and Implementation Profiles under a time-limited (90 day) evaluation license. The Evaluation License is attached to this Commitments Package as **Appendix 2**. The TIP License Agreement, the Evaluation License, the Protocol and Implementation Profiles will be made available on the website Cisco uses to describe TIP and its licensing program immediately following the Consummation of the Concentration.

1.2 For the avoidance of doubt, Cisco will also offer the terms of this TIP License Agreement to any third party that has already signed an agreement with Cisco regarding licensing of TIP prior to the Effective Date and give each such company the opportunity to substitute the TIP License Agreement. Again for the avoidance of doubt, Cisco commits, at the request of a third party that has already signed a TIP-related licensing agreement prior to the Effective Date, to release that third party from the terms of its prior agreement to license TIP. Likewise, as soon as Cisco divests its rights to TIP as required under Section 2 below, Cisco will release any licensee under the TIP License Agreement from its obligations under that agreement.

1.3 Cisco will publish the TIP License Agreement and the Evaluation License on its website.

## **2. COMMITMENTS REGARDING DIVESTMENT OF RIGHTS AND ASSIGNMENT OF CHANGE CONTROL FOR TIP TO AN INDEPENDENT INDUSTRY BODY**

2.1 Cisco commits to divest its copyright to TIP, and assign responsibility for managing and updating TIP, to an Independent Industry Body as soon as reasonably possible, but in any event within 120 days following the Effective Date.

2.2 Cisco has approached the International Multimedia Telecommunications Consortium (IMTC) for this purpose. If, and only if, the IMTC does not agree to accept the assignment of copyright to TIP and assume responsibility for further standardization of TIP, Cisco will create a not-for-profit consortium (referred to in these commitments as Independent Industry Body), which would not be controlled (solely or jointly) by Cisco within the meaning of Article 3 of the Merger Regulation. Membership of this organisation will be open to any and all interested parties, including Internet application developers and service providers, teleconferencing hardware and software suppliers, telecommunications service providers, teleconferencing service providers, end users, educational institutes, government agencies, and non-profit corporations. Members will have equal voting rights, and decisions regarding the finalization of revisions to TIP would be based on the consensus views of members, as is typical in the internal procedures of standards development organizations. The Independent Industry Body will make available all information necessary to apply the TIP Protocol and Implementation Profiles to those wishing to enter the market. The Independent Industry Body will make publicly available information on its decision making procedures and publish its decisions. Cisco will assume all reasonable costs related to the creation of such an Independent Industry Body and pay reasonable expenses necessary for its ongoing work.

2.3 Cisco will assign its copyright to the TIP Specification, and grant a worldwide royalty-free patent license to the IMTC or other Independent Industry Body. The license will include the pertinent terms of the TIP License Agreement, as well as all rights necessary to modify and create derivative works, and to license the TIP Specification to implementers on a royalty-free basis. The license will also include the right to sublicense Implementation Profiles to implementers, also on a royalty-free basis. Cisco's license to the IMTC or other Independent Industry Body will be a blanket license to all Essential Claims (as defined in the TIP License Agreement), if any, that Cisco holds or may hold in the future, for use in implementing TIP. After assigning copyright for the TIP specification to IMTC or another Independent

Industry Body, Cisco will have the same rights to the TIP protocol as those enjoyed by any other member of IMTC or Independent Industry Body.

- 2.4 If it is not available by the Effective Date, Cisco also commits to assign to the IMTC or other Independent Industry Body the copyright to the next version of the TIP protocol (version 7), the development of which is underway at Cisco, and which Cisco would continue to work on by dispensation of the IMTC or other Independent Industry Body. TIP version 7 will be backwards compatible with TIP version 6, the current version of TIP, and will contain no less functionality than that contained in TIP version 6.

### **3. COMMITMENTS REGARDING OPEN SOURCE LIBRARY AND OPEN SOURCE LICENSING**

- 3.1 Cisco will publish a source code library for its TIP version 7, which will be made available under an open source license. Cisco will publish the source code library as soon as possible after the Effective Date, but not later than 1 July 2010. Work beyond that point would take place under an open source structure, in which interested developers propose improvements to the code library. Cisco will request that the IMTC or other Independent Industry Body assume stewardship over the source code library for TIP version 7. Cisco would participate in the open source development effort along with other interested developers. The open source license Cisco anticipates using is the Apache Software Foundation's Apache License, Version 2.0, available here: <http://www.apache.org/licenses/>. The source code Cisco distributes under the open source license will contain embedded comments (descriptions and annotations). Developers will be able automatically to generate a HTML manual containing these comments. When it releases the source code for TIP version 7, Cisco will also publish a TIP Version 7 API Guide for programmers.

### **4. COMMITMENT TO IMPLEMENT TIP**

- 4.1 Beginning on the Effective Date and continuing until a time at least three years after the date on which a Recognized Standard Setting Body adopts an industry standard for multi-screen interoperability, Cisco agrees to implement and support TIP:
- (a) as of the Effective Date, on all codecs it ships with the Cisco CTS500, 1000, 1100, 1300, 3000, or 3200 products, or any successor products to any of those products, thereby enabling interoperability with the installed base of Cisco TelePresence endpoints through implementation of TIP on competitive products;
  - (b) within 90 days following the Effective Date, on the Tandberg Telepresence Server MCU to connect Cisco multi-screen endpoints with competitive single- and multi-screen endpoints; and
  - (c) no later than 31 December 2010, (i) on all other current and future HD-capable MCUs Cisco makes available and promotes for multi-screen interoperability, to connect Cisco multi-screen endpoints with competitive single- and multi-screen endpoints, and (ii) natively, on the codecs provided with any new multi-screen, multi-codec videoconferencing endpoint Cisco first makes

available for sale after 31 December 2010. The 31 December 2010 date for the implementation of TIP on additional MCUs reflects anticipated testing effort with the large number of Tandberg and third-party endpoints with which MCUs must successfully interoperate.

- 4.2 As of the Effective Date, Cisco will implement and support the latest version of TIP which Cisco has publicly released. As new versions of TIP are finalized by the IMTC or another Independent Industry Body, Cisco will implement and support those versions as soon as reasonably possible. Cisco will publish and make available for evaluation and licensing updated Implementation Profiles as soon as reasonably possible following the finalization of new versions of TIP.
- 4.3 Cisco will notify the Commission promptly upon the finalization of an industry standard for multi-screen interoperability.

## **5. MONITORING TRUSTEE**

### **5.1 APPOINTMENT**

- 5.1.1 A Monitoring Trustee shall be appointed in accordance with the procedure described in Section 5.1.2. The Monitoring Trustee shall be independent of the Parties, possess the necessary experience, competence and qualifications to carry out its mandate and shall neither have nor become exposed to a conflict of interest. In particular, the Monitoring Trustee shall be familiar with standard setting procedures in the IT sector. The Monitoring Trustee shall be remunerated by Cisco in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee's mandate. Cisco will publish the Monitoring Trustee's name and contact details on the website Cisco uses to describe TIP and its licensing program and will note the Monitoring Trustee's role in overseeing Cisco's fulfilment of its obligations under the Commitments.

#### ***Proposal by the notifying party***

- 5.1.2 No later than one week after the Effective Date, Cisco shall submit a list of three or more persons whom Cisco proposes to appoint as the Monitoring Trustee to the Commission for approval.

The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in Section 5.1.1 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan, which shall describe how the Monitoring Trustee intends to carry out its duties under these Commitments.

#### ***Approval or rejection by the Commission***

The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications

it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one potential Monitoring Trustee is approved, Cisco shall appoint or cause to be appointed the individual or institution concerned as Monitoring Trustee. If more than one potential Monitoring Trustees are approved, Cisco shall be free to choose the Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

### ***New proposal by the notifying party***

If none of the Monitoring Trustee candidates suggested by Cisco have been approved, Cisco shall propose at least two more candidates within one week of being informed of the rejection, in accordance with the requirements and procedure set out in the aforementioned rules.

### ***Trustee nominated by the Commission***

If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Cisco shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

5.1.3 Cisco undertakes not to consummate the Concentration until it has appointed a Monitoring Trustee approved by the Commission.

## **5.2 MONITORING TRUSTEE'S MANDATE**

5.2.1 The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Cisco, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with these Commitments. The Monitoring Trustee's mandate shall include, in particular, the following responsibilities:

- (a) to submit to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision within two weeks from the date of appointment of the Monitoring Trustee. In particular, the detailed work plan should include details on how the Monitoring Trustee intends to monitor (i) the divestment of Cisco's copyright to TIP and assignment of responsibility for managing and updating TIP to an Independent Industry Body; and (ii) the publication of the source code library for TIP version 7 and the assumption of stewardship over the source code library by an Independent Industry Body.
- (b) to monitor Cisco's compliance with the conditions and obligations attached to the Decision;
- (c) to deal with complaints on the implementation, monitor the setting up of the Independent Industry Body and report to the Commission in particular on the appropriateness of the structure of the Independent Industry Body;

- (d) to propose to Cisco such measures as the Monitoring Trustee considers necessary to ensure Cisco's compliance with the conditions and obligations attached to the Decision;
- (e) to advise and make a written recommendation to the Commission as to Cisco's compliance with the conditions and obligations attached to the Decision;
- (f) to provide to the Commission a report on 1 July and 31 December of every year during the term of the Commitments as indicated in Section 6.3 of these Commitments, sending Cisco a non-confidential copy at the same time, on: (a) the progress of the discharge of the Monitoring Trustee's mandate, identifying any respects in which the Monitoring Trustee has been unable to discharge its mandate; and (b) the progress made by Cisco to comply with the conditions and obligations attached to the Decision.
- (g) The Monitoring Trustee shall promptly also report in writing to the Commission, sending Cisco a non-confidential copy at the same time, if it concludes on reasonable grounds that Cisco is failing to comply with these Commitments;
- (h) to mediate any disagreements relating to the execution of the Commitments; if mediation is agreed to by the other party or parties to the disagreement in question, and submit a report upon the outcome of the mediation to the Commission; and
- (i) at any time, to provide to the Commission, at its request, a written or oral report on matters falling within the scope of these Commitments.
- (j) to submit promptly to the Commission a report once it considers that a Recognised Standard Setting Body has adopted an open standard for multi-screen interoperability.

5.2.2 The reports provided for in Section 5.2.1 shall be prepared in English.

5.2.3 Cisco shall provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out its mandate.

5.2.4 The Monitoring Trustee shall have full and complete access to any of Cisco's books, records, documents, management or other personnel facilities, sites, technical information necessary for fulfilling its duties and Cisco shall provide the Monitoring Trustee upon request with copies of any document.

5.2.5 Cisco shall indemnify the Monitoring Trustee (and, where appropriate, its employees and agents) (each an Indemnified Party) and hold each Indemnified Party harmless, and hereby agrees that an Indemnified Party shall have no liability to Cisco for any liabilities arising out of the performance of the Monitoring 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 Monitoring Trustee (or, where appropriate, its employees, advisors and agents).

5.2.6 At Cisco's expense, the Monitoring Trustee may appoint advisors, subject to the Commission's prior approval, if the Monitoring Trustee considers the appointment of such advisors necessary for the performance of its duties under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 5.2.5 shall apply mutatis mutandis.

### **5.3 TERMINATION OF MANDATE**

5.3.1 If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:

- (a) the Commission may, after hearing the Monitoring Trustee, require Cisco to replace the Monitoring Trustee; or
- (b) Cisco, with the prior approval of the Commission, may replace the Monitoring Trustee.

5.3.2 If the Monitoring Trustee is replaced, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has affected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to Section 5.1.2.

5.3.3 Aside from being removed in accordance with Section 5.3.1, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the Commitments might not have been fully and properly implemented.

5.3.4 Without prejudice to Cisco's general right to seek a review under Section 7 of these Commitments, upon request by Cisco, the Commission shall consider whether to discharge the Monitoring Trustee from its duties once it is satisfied that Cisco has fulfilled its obligations under Sections 1, 2 and 3 of the Commitments, and has continuously met its obligations under Section 4 until such a request has been made.

## **6. GENERAL PROVISIONS**

6.1 If the Concentration is abandoned, abrogated, unwound, not approved or disapproved by a relevant Government Authority, or otherwise terminated, then these Commitments shall automatically cease to apply.

6.2 If the approval of the Concentration by another governmental authority is made subject to requirements that are potentially inconsistent with these Commitments, Cisco may request a review and adjustment of these Commitments in order to avoid such inconsistencies.



6.3 The term of these Commitments shall be either (a) five years from the date of the adoption of the Decision; or (b) three years after a Recognized Standard Setting Body has adopted an open standard for multi-screen interoperability, whichever is shorter.

## **7. REVIEW SECTION**

7.1 The Commission may, where appropriate, in response to a request from Cisco showing good cause and accompanied by a report from the Monitoring Trustee:

- (a) Grant an extension of the time periods foreseen in the Commitments, or
- (b) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

7.2 Where Cisco seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Cisco be entitled to request an extension within the last month of any period.

24 March 2010

---

duly authorized to act for and on behalf of Cisco Systems Inc.