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Case M.8864 — Vodafone/Certain Liberty Global Assets

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the “**EUMR**”), Vodafone Group plc (with its Affiliated Undertakings, “**Vodafone**”) hereby enters into the following commitments (the “**Commitments**”) *vis-à-vis* the European Commission (the “**Commission**”) with a view to rendering the acquisition by Vodafone of Liberty Global plc’s (with its Affiliated Undertakings, “**Liberty Global**”, and together with Vodafone, the “**Parties**”) telecommunications business in Germany (“**Unitymedia GmbH**”) (the “**Transaction**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 8(2) of the EUMR to declare the concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the EUMR, 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**”).

Section A. Definitions

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

Access Date: has the meaning given in paragraph 5.

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

Broadband Customers: consumers located in Germany that have a subscription to the Merged Entity’s broadband internet services either on a stand-alone basis or as part of a bundle.

Broadcaster: a provider of one or more linear TV channels.

Cable Broadband Access Agreement: has the meaning given in paragraph 4.

Cable Network: Vodafone’s coaxial cable infrastructure in the Combined Footprint post-Transaction.

Closing: the completion of the Transaction.

Combined Footprint: the technical reach of the Parties' combined cable networks in Germany.

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

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

Daily Peak Utilization: the daily 95th percentile over 5-minute average bits transferred sample intervals (technically Vodafone takes 288 measurements of interface bit input counters per day, the highest 14 values are discarded and 15th highest is used for this purpose) of the sum of measured inbound capacity.

Effective Date: the date of adoption of the Decision.

Feed-In Agreement: any agreement between one of the Parties (or the Merged Entity) and a FTA Broadcaster with respect to the wholesale signal transmission by that Party over its cable network (or by the Merged Entity over the combined cable network) of the FTA Broadcaster's free-to-air TV channels in exchange for the payment of Feed-in Fees by the FTA Broadcaster to that Party (or to the Merged Entity).

Feed-in Fees: fees per connected household that a FTA Broadcaster pays to Vodafone and/or Unitymedia (or the Merged Entity) for the transmission of the FTA Broadcaster's free-to-air TV channels in their respective cable networks (or in the Merged Entity's combined cable network) to the connected households.

FTA Broadcaster: any Broadcaster providing free-to-air TV channels.

HbbTV Signal: the hybrid broadcast broadband TV signal of a FTA Broadcaster with respect to one or more of its channels, consisting of application information tables and stream events included in the DVB-C broadcast.

Merged Entity: the combined business of Vodafone and Unitymedia in Germany following completion of the Transaction.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties and their respective Affiliated Undertakings, who is approved by the Commission and appointed by Vodafone, and who has the duty to monitor Vodafone's compliance with the conditions and obligations attached to the Decision.

Network Readiness: has the meaning given in paragraph 5.

New Cable Provider: Telefónica Germany GmbH & Co. OHG.

OTT Service: any service that allows consumers access to audio-visual content, whether linear or non-linear, over the internet (howsoever delivered) via one or more devices.

Transaction: the proposed acquisition by Vodafone of Liberty Global's telecommunications businesses in the Czech Republic, Germany, Hungary and Romania.

Unitymedia: Unitymedia GmbH.

Vodafone DSL: Vodafone's DSL (digital subscriber line) broadband product offered to retail customers, which is based on regulated wholesale access to Deutsche Telekom's fixed telecommunications network in Germany.

Vodafone's TV Platform: television content distributed pursuant to a contract for such distribution on the Merged Entity's cable network and/or IPTV platforms, as well as their mobile network, in Germany.

Wholesale Cable Broadband Access: has the meaning given in paragraph 1.

Working Day: refers to the calendar followed by the Federal Republic of Germany. For the avoidance of doubt, this shall not include Saturdays or Sundays.

Section B.I

The Commitment to provide Wholesale Cable Broadband Access

1. Vodafone commits to provide the New Cable Provider with wholesale access to the Cable Network, in order for the New Cable Provider to be able to offer retail broadband services (and, if desired, fixed voice services) throughout the Cable Network, in accordance with paragraph 5 below ("**Wholesale Cable Broadband Access**").
2. The Transaction shall not be implemented before Vodafone has entered into a final binding Cable Broadband Access Agreement and the Commission has approved the Cable Broadband Access Agreement. Vodafone shall be deemed to have complied with these Commitments if by Closing, Vodafone has entered into a final binding Cable Broadband Access Agreement with the New Cable Provider and the Commission has approved the Cable Broadband Access Agreement.
3. In order to maintain the structural effect of the Commitments, Vodafone shall, for a period of ten (10) years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the New Cable Provider's activities in relation to the supply of retail fixed broadband services (and fixed voice services, if applicable) in Germany unless, following the submission of a reasoned request from Vodafone showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 78 of the Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the New Cable Provider's activities is no longer necessary to render the Transaction compatible with the internal market.

Wholesale Cable Broadband Access

4. Vodafone commits that it shall enter into an agreement (including any ancillary agreements) for the provision of Wholesale Cable Broadband Access to the New Cable Provider in the Combined Footprint on substantially the terms set out in paragraph 5 below (the "**Cable Broadband Access Agreement**").

5. Wholesale Cable Broadband Access shall be provided to the New Cable Provider on substantially the following terms:
- (i) The Cable Network shall be enabled for the provision of Wholesale Cable Broadband Access to the New Cable Provider as soon as practicable and in any event within [...] of Closing (“**Access Date**”), subject to any delays caused by acts or omissions of the New Cable Provider or otherwise outside the control of the Parties (“**Network Readiness**”). The procedure by which Network Readiness is achieved shall be substantially in accordance with Annex A.1;
 - (ii) Wholesale Cable Broadband Access shall be provided to the New Cable Provider on the retail fixed broadband download and upload speeds set out in Annex A.2 (or as otherwise agreed by Vodafone and the New Cable Provider with the approval of the Monitoring Trustee);
 - (iii) The New Cable Provider shall commit to purchase from Vodafone, on an annual upfront basis for so long as the Cable Broadband Access Agreement remains in operation, a minimum number of cable connections as set out in Annex A.3;
 - (iv) In consideration for the provision of Wholesale Cable Broadband Access, the New Cable Provider shall pay to Vodafone the fees set out in Annex A.4;
 - (v) Vodafone shall make available sufficient capacity on the Cable Network to accommodate traffic of the New Cable Provider and, to the extent necessary, Vodafone shall make any capacity expansions that are necessary to accommodate traffic from the New Cable Provider as at the Access Date (but the New Cable Provider shall bear sole responsibility for requesting sufficient interface capacity to enable Vodafone to handover the New Cable Provider’s traffic);
 - (vi) Vodafone shall provide Wholesale Cable Broadband Access on a non-discriminatory basis, meaning that Vodafone shall treat the traffic of access seekers in the same way as Vodafone’s own traffic on the Cable Network and, in particular, Vodafone shall (subject to the cooperation of the New Cable Provider) apply the same prioritisation rules to the New Cable Provider’s traffic as Vodafone applies to its own traffic on the Cable Network. For the avoidance of doubt, this excludes any differences in quality of service due to elements installed, owned or controlled by the New Cable Provider and which are outside the scope of the Wholesale Cable Broadband Access commitment;
 - (vii) Vodafone shall be responsible for second and third line technical support services in connection with the Cable Network as set out in Annex A.5 (but Vodafone shall not, for the avoidance of doubt, be responsible for first line technical support);
 - (viii) Vodafone shall handle the New Cable Provider’s voice traffic in the Combined Footprint (including handover to the New Cable Provider) on the same basis as it handles its own voice traffic in the Combined Footprint. The New Cable

Provider shall be solely responsible for all other services required in order to be able to offer retail voice services; and

- (ix) Wholesale Cable Broadband Access under the Cable Broadband Access Agreement shall be provided for a minimum term of [...] from the Access Date, which shall be extendable by [...] unless terminated by either of the parties on [...] notice prior to the end of the initial [...] term.

Section B.II

The Commitment not to restrict OTT distribution of content

- 6. By the below commitment (the “**OTT Commitment**”), Vodafone seeks to remove any link that could exist between:
 - (i) Commercial negotiations of the Merged Entity with Broadcasters, and conditions agreed with Broadcasters in such negotiations, regarding the distribution of Broadcasters' linear channels and catch-up TV services relating to content on such linear channels via Vodafone's TV Platform, and/or the distribution of Broadcasters' platforms offering linear channels and catch-up TV services relating to content on such linear channels via DVB-C, in Germany; and
 - (ii) Such Broadcasters' OTT activities, including as regards the content that such Broadcasters could offer for inclusion in such OTT activities.
- 7. As of the Effective Date, Vodafone shall not enter into or renew any agreement (whether in writing or oral and whether formal or informal, including but not limited to e-mails, side letters or other) with a Broadcaster that includes the distribution of such Broadcaster's linear channels and catch-up TV services relating to content in such linear channels via Vodafone's TV Platform, and/or the distribution of a Broadcaster's platform offering linear channels and catch-up TV services relating to content on such linear channels via DVB-C, in Germany and that contains terms that would directly or indirectly restrict such Broadcaster's ability to offer to third parties and/or end-users, on a stand-alone basis or in partnership with another entity or third party:
 - (i) An OTT Service in Germany;
 - (ii) Its linear channels via an OTT Service in Germany; or
 - (iii) Any content owned and controlled by such Broadcaster (that is to say any content in respect of which that Broadcaster holds the relevant intellectual property rights for OTT distribution in Germany, for so long as it is so owned and controlled), including content from such linear channels, for inclusion in an OTT Service in Germany.
- 8. To the extent any such terms are included in agreements with Broadcasters regarding the distribution of linear channels and catch-up TV services relating to content on such linear channels of such Broadcasters on Vodafone's TV Platform, and/or the distribution

of Broadcasters' platforms offering linear channels and catch-up TV services relating to content on such linear channels via DVB-C, in Germany made before the Effective Date, Vodafone shall not enforce such terms and shall promptly after the Effective Date inform the relevant Broadcaster that it waives its rights to enforce such terms and commit to remove such terms from its existing agreements. Furthermore, Vodafone shall not make the entry into or renewal of agreements with Broadcasters regarding the distribution of linear channels and catch-up TV services relating to content on such linear channels of such Broadcasters on Vodafone's TV Platform in Germany in any way conditional upon the conclusion of a separate agreement with such Broadcasters relating to any OTT Service and/or the linear and non-linear content contained therein.

Interconnection Capacity Commitment

Purpose

9. By the below commitment (the "**Interconnection Capacity Commitment**"), Vodafone seeks to ensure that it maintains at least three uncongested routes into the Merged Entity's IP network in Germany. By doing this, Vodafone seeks to ensure it has an incentive to provide sufficient interconnection capacity to allow the Merged Entity's Broadband Customers to access any OTT Service in Germany either via the interconnection points described in paragraph 10 or otherwise.

Practicality

10. To this end, Vodafone will ensure that the Daily Peak Utilization across the Merged Entity's interconnection points with each of a group of at least three (3) reputable interconnectivity providers (ICPs) who are willing to sell transit services via one or more physical interconnection points in Germany over which traffic may flow to Broadband Customers, will not exceed eighty (80) percent. That is to say that there will be at least twenty (20) per cent capacity available above the daily peak as calculated in arriving at Daily Peak Utilization.
11. Vodafone will further ensure that the capacity available above the daily peak, as calculated in arriving at Daily Peak Utilization across that group of at least three (3) reputable ICPs, shall be at least twenty (20) Gbit/s. This figure shall be reviewed annually in accordance with the procedure described in paragraph 38.
12. Subject to paragraph 13 below, this group of at least three (3) reputable ICPs may vary from time to time but no more than once per quarter generally and once per year in respect of the one (1) ICP declared as being one of the ten (10) largest ICPs in accordance with paragraph 14.
13. By way of exception to paragraph 12, where there is an urgent need to upgrade capacity with a particular ICP and it does not prove possible to agree or implement such upgrade in a timely manner Vodafone will seek the approval of the Commission via the Monitoring Trustee in accordance with paragraph 38 to replace that ICP with another ICP irrespective of when it was last changed. In that case Vodafone will use its reasonable commercial endeavours to agree and implement an upgrade with that ICP and, if it can do so, to immediately return that ICP to the group of three (3), in place of

the ICP which replaced it, at least until it would otherwise have been possible to change that ICP in accordance with paragraph 12.

14. Annex B.1 contains a long list of ICPs which will include the three (3) reputable ICPs referred to above in paragraph 11. This list may be changed from time to time in coordination with the Commission and the Monitoring Trustee, in particular by the addition of other reputable ICPs. This long list shall include the ten (10) largest ICPs who are willing to sell transit services via one or more physical interconnection points in Germany over which traffic may flow to Broadband Customers. The group of three (3) reputable ICPs referred to above in paragraph 10 shall include at least one of these ten (10) largest ICPs.
15. Vodafone shall request each ICP with whom the Merged Entity directly interconnects in Germany and over which interconnection points traffic may flow to the Merged Entity's Broadband Customers for permission to publish in arrears on a monthly basis the highest Daily Peak Utilization in the preceding month, as a percentage of available aggregated direct capacity between that ICP and the Merged Entity. As long as at least half of such ICPs agrees to such publication Vodafone shall publish, on a publicly available website, on a monthly basis, this information with respect to any such ICP who is and remains willing for this to be published. Where fewer than half such ICPs agrees to such publication Vodafone shall publish, on a publicly available website, on a monthly basis, only an aggregated figure based on the highest Daily Peak Utilization in the preceding month of aggregated direct interconnect capacity in Germany.

Feed-in Fee Commitment

16. By the below commitment (the "**Feed-in Fee Commitment**"), Vodafone seeks to ensure that it will have no ability to increase the Feed-in Fees paid by FTA Broadcasters.
17. No later than four (4) weeks from the Effective Date, Vodafone shall send the irrevocable offer set out in Annex C.1 to all FTA Broadcasters listed in Annex C.2.
18. Where the Merged Entity enters into a Feed-in Agreement with a FTA Broadcaster that does not currently have a Feed-in Agreement with one of the Parties, the Feed-in Fees included in that Feed-In Agreement shall not exceed the rates set out in Appendix 1 (No. 1-4 and 7) to Annex C.1.
19. For the avoidance of doubt, all other provisions of the Feed-in Agreements remain unaffected by this Feed-in Fee Commitment.

HbbTV Commitment

20. By the below commitment (the "**HbbTV Commitment**"), Vodafone seeks to ensure that it will have no ability to refuse to continue carrying the HbbTV Signal of FTA Broadcasters over its Cable Network.
21. No later than four (4) weeks from the Effective Date, Vodafone shall send the irrevocable offer set out in Annex C.1 to all FTA Broadcasters listed in Annex C.2.

22. Upon request from a FTA Broadcaster that does not currently have an agreement with one of the Parties for the transmission of HbbTV Signal for one or more of that FTA Broadcaster's channels, the Merged Entity shall carry the FTA Broadcaster's HbbTV Signal over the Cable Network, subject to the conclusion of a separate contract covering the transmission of such HbbTV Signal. The Merged Entity will transmit such HbbTV Signal under at least the minimum technical terms set out in Annex C.1 and without charging any fees for such transmission.
23. For the avoidance of doubt, the obligation to transmit HbbTV signals in the Cable Network does not include any obligation of the Merged Entity in connection with the functionality of its or any third parties' customer premises equipment ("CPE"), in particular, no obligation to design or change CPE in such a way that they react to HbbTV signals.

Section C. Monitoring Trustee

I. Appointment Procedure

24. Vodafone shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments.
25. The Monitoring Trustee shall:
 - (i) At the time of appointment, be independent of the Parties;
 - (ii) Possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker, consultant or auditor; and
 - (iii) Neither have nor become exposed to a Conflict of Interest.
26. The Monitoring Trustee shall be remunerated by Vodafone in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by Vodafone

27. No later than two (2) weeks after the Effective Date, Vodafone shall submit a name or names of one or more natural or legal persons whom it proposes to appoint as the Monitoring Trustee to the Commission for approval.
28. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 25 and shall include:
 - (i) 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; and

- (ii) The outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

- 29. 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 name is approved, Vodafone shall appoint, or cause to be appointed, the individual or institution concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Vodafone shall be free to choose the Monitoring 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 Vodafone

- 30. If all the proposed Monitoring Trustees are rejected, Vodafone shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 24 and 28.

Monitoring Trustee nominated by the Commission

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

II. Functions of the Monitoring Trustee

- 32. 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 Vodafone, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
- 33. At any point in time, the Monitoring Trustee may seek the expert advisory opinion of the Bundesnetzagentur (the "**BNetzA**"), and take due consideration of such opinion, on specific issues concerning: (a) the German regulatory framework for telecommunications, (b) changes to the publically regulated Deutsche Telekom Layer 3 DSL bitstream contingent pricing, and (c) technical aspects of the implementation of the Cable Broadband Access Commitment. To this end, the Monitoring Trustee shall be entitled to share with the BNetzA Confidential Information proprietary to the Merged Entity, provided that the Monitoring Trustee provides the Merged Entity with prior notice and a reasonable opportunity to make representations before sharing such information with the BNetzA and that the BNetzA confirms that: (a) it will protect confidentiality according to its statutory mandate and cannot share the Confidential Information with any other person, entity or regulatory body; and (b) cannot use the Confidential

Information for any purpose other than for providing an expert advisory opinion pursuant to this clause.

34. The BNetzA shall seek to deliver its expert advisory opinion in due time. The BNetzA is under no obligation to issue the requested expert advisory opinion(s), including (but not limited to) as a result of staffing shortage or lack of information on the relevant issue. The BNetzA may deliver its expert advisory opinion in German or in English. Should its opinion contain Confidential Information proprietary to third party other than the Merged Entity or personal data, the BNetzA may address a confidential version of its opinion to the Commission, sending the Monitoring Trustee and the Merged Entity a non-confidential copy at the same time.
35. Vodafone hereby acknowledges and agrees that the BNetzA shall not under any circumstances be held liable for any liability, loss or damage caused or alleged to be caused directly or indirectly through any action or inaction on the part of the BNetzA, including but not limited to, by any fault and/or delay in issuing the expert advisory opinion, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the BNetzA (which, for the avoidance of doubt, includes any liability arising from any breach of its confidentiality obligations in paragraph 33 above). The same applies to the BNetzA's acting employees or civil servants which are involved in issuing the expert advisory opinion.

Duties and obligations of the Monitoring Trustee as regards the Cable Broadband Access Commitment

36. The Monitoring Trustee shall:
- (i) 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;
 - (ii) Monitor compliance by Vodafone with the conditions and obligations attached to the Decision. In particular, the Monitoring Trustee shall specifically monitor compliance with the Commitments in paragraph 5;
 - (iii) Propose to Vodafone such measures as the Monitoring Trustee considers necessary to ensure Vodafone's compliance with the conditions and obligations attached to the Decision;
 - (iv) Act as a contact point for any requests from third parties, and in particular the new Cable Provider, in relation to the Commitments;
 - (v) Provide to the Commission, sending Vodafone a copy at the same time, a written report within fifteen (15) days after the end of each quarter in relation to:
 - (i) the implementation of Wholesale Cable Broadband Access, from entering into the Cable Broadband Access Agreement until the Access Date, and (ii) compliance with the Commitments from the Access Date until the termination or expiry of the Commitments;

- (vi) Promptly report in writing to the Commission, sending Vodafone a non-confidential copy at the same time, if it concludes on reasonable grounds that Vodafone is failing to comply with any of the Commitments; and
- (vii) Assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee with regard to the OTT Commitment

37. The Monitoring Trustee shall make use of the methodology in Annex B.2 for reviewing existing and new agreements with Broadcasters in order to monitor compliance with the OTT Commitment.

Duties and obligations of the Monitoring Trustee with regard to the Interconnection Capacity Commitment

38. The Monitoring Trustee shall monitor compliance with the Interconnection Capacity Commitment set out in Section B.II. To that end the Monitoring Trustee shall:
- (a) Verify, on the basis of information provided to it by Vodafone that, in accordance with paragraph 10, the Daily Peak Utilization across the relevant interconnection points does not exceed 80%;
 - (b) Review Annex B.1 every three (3) months with the aim of ensuring that Annex B.1 will always contain a sufficient number of reputable ICPs;
 - (c) Identify which of the ICPs referred to in Annex B.1 are amongst the ten (10) largest ICPs for the purposes of paragraph 14. It shall determine the appropriate metric for defining the 10 largest ICPs in consultation with Vodafone, having regard to paragraph 9;
 - (d) Review every year the minimum capacity level described in paragraph 11 to determine whether such commitment is still required to prevent the Transaction giving rise to a significant impediment to competition and if so, to agree with Vodafone a number which allows for a reasonable level of spare capacity;
 - (e) In the event that Vodafone contends that it needs to vary the group of three (3) ICPs in the circumstances referred to in paragraph 13, where there is an urgent need to upgrade capacity and it does not prove possible to agree or implement such upgrade in a timely manner, to review this matter with Vodafone and if deemed appropriate, to allow Vodafone to make this change;
 - (f) Provide to the Commission, sending Vodafone a copy at the same time, a written report within fifteen (15) days after the end of each quarter that shall cover, for that period: (i) the three (3) ICPs referred to in paragraph 10 and (ii) the Daily Peak Utilization; and

- (g) Promptly report in writing to the Commission, sending Vodafone a copy at the same time, if it concludes on reasonable grounds that Vodafone is failing to comply with any of the Commitments.

Duties and obligations of the Monitoring Trustee with regard to the Feed-in Fee Commitment

39. The Monitoring Trustee shall:

- (i) Ensure that Vodafone sends the irrevocable offer set out in Annex C.1 to the FTA Broadcasters listed in Annex C.2 within four (4) weeks from the Effective Date and keep a record of the FTA Broadcasters who have accepted the irrevocable offer within the specified timeframe;
- (ii) Where a FTA Broadcaster has accepted the offer and enters into an amended or new Feed-in Agreement with the Merged Entity (e.g. upon expiry of its existing agreement or for additional channels), review the amended or new Feed-in Agreement to ensure that the Feed-in Fees included in that Feed-in Agreement do not exceed the sum of the Feed-in Fees due under Appendix 1 (No.1-4 and 7) and Appendix 2;
- (iii) Where the Merged Entity enters into a Feed-in Agreement with a FTA Broadcaster that does not currently have a Feed-in Agreement with one of the Parties, review the new Feed-in Agreement to ensure that the Feed-in Fees included in that Feed-In Agreement do not exceed the rates set out in Appendix 1 (No.1-4 and 7) to Annex C.1; and
- (iv) Promptly report in writing to the Commission, sending Vodafone a copy at the same time, if it concludes on reasonable grounds that Vodafone is failing to comply with any of the Commitments.

Duties and obligations of the Monitoring Trustee with regard to the HbbTV Commitment

40. The Monitoring Trustee shall:

- (i) Ensure that Vodafone sends the irrevocable offer set out in Annex C.1 to the FTA Broadcasters listed in Annex C.2 within four (4) weeks from the Effective Date and keep a record of the FTA Broadcasters who have accepted the irrevocable offer within the specified timeframe;
- (ii) Where a FTA Broadcaster has accepted the offer and enters into an amended or new agreement for the transmission of HbbTV Signal (e.g. upon expiry of its existing agreement or for additional channels), review such agreement to ensure that the Merged Entity will transmit the HbbTV Signal over its Cable Network under at least the minimum technical terms set out in Annex C.1 and without charging any fees for such transmission;
- (iii) Where the Merged Entity enters into an agreement for the transmission of HbbTV Signal with a FTA Broadcaster that does not currently have an

agreement with one of the Parties for such transmission, review such agreement to ensure that the Merged Entity will transmit the HbbTV Signal over its Cable Network under at least the minimum technical terms set out in Annex C.1 and without charging any fees for such transmission; and

- (iv) Promptly report in writing to the Commission, sending Vodafone a copy at the same time, if it concludes on reasonable grounds that Vodafone is failing to comply with any of the Commitments.

III. Duties and obligations of Vodafone

- 41. Vodafone shall provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of Vodafone's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Vodafone shall provide the Monitoring Trustee upon request with copies of any document. Vodafone shall make available to the Monitoring Trustee one or more offices on its premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
- 42. Vodafone shall indemnify the Monitoring 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 Vodafone 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, its employees, agents or advisors.
- 43. At the expense of Vodafone, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Vodafone's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee 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 Monitoring Trustee are reasonable. Should Vodafone refuse to approve the advisors proposed by the Monitoring Trustee, the Commission may approve the appointment of such advisors instead, after having heard Vodafone. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 42 of these Commitments shall apply *mutatis mutandis*.
- 44. Vodafone agrees that the Commission may share Confidential Information with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the EUMR apply *mutatis mutandis*.

45. Vodafone agrees that the contact details of the Monitoring Trustee be published on the website of the Commission's Directorate-General for Competition and shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.
46. For a period of ten (10) years from the Effective Date the Commission may request all information from Vodafone that is reasonably necessary to monitor the effective implementation of the Commitments.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

47. 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 Vodafone to replace the Monitoring Trustee; or
 - (b) Vodafone, with the prior approval of the Commission, may replace the Monitoring Trustee.
48. If the Monitoring Trustee is removed according to paragraph 47, 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 effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 24 to 31.
49. Unless removed according to paragraph 47, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after 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 relevant Commitments might not have been fully and properly implemented.

Section D. Arbitration

50. In the event that there is a dispute between the Merged Entity and a third party (in the case of the commitment relating to the Wholesale Cable Broadband Access, the New Cable Provider) as to the implementation of the Commitments in paragraphs 5 (including Annexes A.1 to A.5), 6 to 15 (including Annex B.1) and 16 to 24 (including Annex C.1), the third party and the New Cable Provider shall have recourse to the following dispute resolution procedure. For the avoidance of any doubt, the New Cable Provider shall have recourse to the following dispute resolution procedure also in relation to disputes related to the clauses of the agreement entered into between Vodafone and the New Cable Provider which reproduce paragraphs 5 (including Annexes A.1 to A.5) of the Commitments as well as in relation to disputes related to any other clause of the agreement entered into between Vodafone and the New Cable Provider which have a bearing on the effectiveness of the Wholesale Cable Broadband Commitment, provided that the New Cable Provider is not using any other formal dispute resolution procedure in relation to the same dispute.

I. **Fast Track Dispute Resolution**

51. Should a third party (in the case of the commitment relating to the Wholesale Cable Broadband Access, the New Cable Provider) wish to avail itself of the fast track dispute resolution procedure (a “**Requesting Party**”), it shall send a written request to the Merged Entity (with a copy to the Monitoring Trustee) setting out in detail the reasons leading it to believe that the Merged Entity is failing to comply with the requirements of the Commitments. The Requesting Party and the Merged Entity will use their commercially reasonable efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not exceeding fifteen (15) Working Days after receipt of the request.
52. The Monitoring Trustee shall present its own proposal (the “**Trustee Proposal**”) for resolving the dispute within eight (8) Working Days, specifying in writing the action if any, to be taken by the Merged Entity in order to ensure compliance with the Commitments vis-a-vis the Requesting Party and be prepared, if requested, to facilitate the settlement of the dispute. To the extent that the Merged Entity and the Requesting Party have settled a dispute on the basis of the Trustee Proposal and the Merged Entity complies with such settlement, the Merged Entity shall be deemed not to be in breach of the Commitments.
53. Should the Requesting Party and the Merged Entity (together the “**Parties to the Arbitration**”) fail to resolve their differences of opinion in the consultation phase described above, the Requesting Party may, within twenty (20) calendar days of such failure, serve a notice (the “**Notice**”), in the sense of a request for arbitration, to the International Chamber of Commerce (hereinafter the “**Arbitral Institution**”), with a copy of such Notice and request for arbitration to the Merged Entity.
54. The Notice shall set out in detail the dispute, difference or claim (the “**Dispute**”) and shall contain, *inter alia*, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements. The Notice shall also contain a detailed description of the action to be undertaken by the Merged Entity and the Trustee Proposal, including a comment as to its appropriateness.
55. The Merged Entity shall, within ten (10) Working Days from receipt of the Notice, submit its answer (the “**Answer**”), which shall provide detailed reasons for its conduct and set out, *inter alia*, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which Merged Entity proposes to undertake vis-a-vis the Requesting Party and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

II. **Appointment of the Arbitrators**

56. The Arbitral Tribunal shall consist of three (3) persons. The Requesting Party shall nominate its arbitrator in the Notice; the Merged Entity shall nominate its arbitrator in the Answer. The arbitrator nominated by the Requesting Party and by the Merged Entity

shall, within five (5) Working Days of the nomination of the latter, nominate the chairman, making such nomination known to the Parties to the Arbitration and the Arbitral Institution which shall forthwith confirm the appointment of all three (3) arbitrators.

57. Should the Requesting Party wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Requesting Party and the Merged Entity shall agree on the nomination of a sole arbitrator within five (5) Working Days from the communication of the Answer, communicating this to the Arbitral Institution which shall forthwith confirm the appointment of the arbitrator.
58. Should the Merged Entity fail to nominate an arbitrator, or if the two (2) arbitrators fail to agree on the chairman, or should the Parties to the Arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution.
59. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the **Arbitral Tribunal**.

III. **Arbitration Procedure**

60. The Dispute shall be finally resolved by arbitration under the Rules of the Arbitration Court of the International Chamber of Commerce, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "**Rules**"). The arbitration shall be conducted in London (or, at the option of the Requesting Party, Dusseldorf) in the English language.
61. The procedure shall be a fast track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The Parties to the Arbitration shall consent to the use of e-mail for the exchange of documents.
62. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.
63. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the Parties to the Arbitration agree.
64. The Arbitral Tribunal shall not disclose Confidential Information and apply the standards attributable to confidential information under the EUMR. The Arbitral Tribunal may take the measures necessary for protecting Confidential Information in particular by

restricting access to Confidential Information to the Arbitral Tribunal, the Monitoring Trustee, and outside counsel and experts of the opposing party.

65. The burden of proof in any dispute under the Rules shall be borne as follows: (i) the Requesting Party must produce evidence of a prima facie case; and (ii) if the Requesting Party produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Requesting Party unless the Merged Entity can produce evidence to the contrary.

IV. Involvement of the Commission

66. The Commission shall be allowed and enabled to participate in all stages of the procedure by:

- (i) Receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
- (ii) Receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural timetable);
- (iii) Having the opportunity to file *amicus curiae* briefs; and
- (iv) Being present at the hearings and being allowed to ask questions to parties, witnesses and experts.

67. The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.

68. In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitments, the Arbitral Tribunal may seek the Commission's interpretation of the Commitments before finding in favour of any party to the Arbitration and shall be bound by the interpretation.

V. Decisions of the Arbitral Tribunal

69. The Arbitral Tribunal shall decide the dispute on the basis of the Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the EUMR, European Union law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.

70. Upon request of the Requesting Party, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one (1) month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.

71. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by the Merged Entity in order to comply with the Commitments vis-à-vis the Requesting Party. The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
72. The final award shall, as a rule, be rendered within six (6) months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitments if asked by the Arbitral Tribunal.
73. The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award. The Parties to the Arbitration, the Arbitral Tribunal, all other persons participating in the proceedings and all further persons involved, i.e. in the administration of the arbitral proceedings, shall maintain confidentiality towards all persons regarding the conduct of arbitral proceedings. All proceedings will be held in private and remain confidential.
74. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitments in accordance with its powers under the EUMR.

Section E. Duration

75. The Wholesale Cable Broadband Access Commitment set out in Section B shall not expire before [...] from the Access Date except as determined in the Cable Broadband Access Agreement, or unless, in response to a request by Vodafone in accordance with the Review Clause, the Commission decides to waive, modify or substitute this commitment on grounds that the conditions of competition would no longer justify the undiminished continuation of this commitment.
76. The OTT Commitment, the Interconnection Capacity Commitment, the Feed-in Commitment and the HbbTV Commitment set out in Section B.II shall expire eight (8) years from the Effective Date, unless in response to a request by Vodafone in accordance with the Review Clause, the Commission decides to waive, modify or substitute this commitment on grounds that the conditions of competition would no longer justify the undiminished continuation of this commitment.

Section F. The Review Clause

77. The Commission may extend the time periods foreseen in the Commitments in response to a request from Vodafone or, in appropriate cases, on its own initiative. For the avoidance of doubt, the Commission cannot extend the duration of the Wholesale Cable Broadband Access Commitment, the OTT Commitment, the Interconnection

Capacity Commitment, the Feed-in Fee Commitment or the HbbTV Commitment set out in Section B. Where Vodafone requests an extension to a time period, it shall submit a reasoned request to the Commission no later than one (1) 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 Vodafone. Only in exceptional circumstances shall Vodafone be entitled to request an extension within the last month of any period.

78. The Commission may further, in response to a reasoned request from Vodafone showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these 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 Vodafone. 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.

Section G. Entry into Force

79. The Commitments shall take effect on the Effective Date.

June 2019

.....
Duly authorised for and on behalf of Vodafone Group plc

ANNEXES

SECTION A: WHOLESALE CABLE BROADBAND ACCESS

Annex A.1: Network Readiness

1. Following the Effective Date, Vodafone and the New Cable Provider shall (under the supervision of the Monitoring Trustee where necessary) discuss and agree a workplan to implement Cable Access by the Access Date. The workplan shall in particular take account of and reflect the elements listed in this Annex A.1. Such a workplan shall include the following:
 - (i) Agreement in principle on technical specifications and network connection points.
 - (ii) Detailed technical specifications (including for interfaces and network interconnections).
 - (iii) Implementation of technical and procedural requirements and the definition and scope of a pilot operational phase.
 - (iv) Successful completion of the pilot operational phase.

Broadband Cable Connections (“Connections”)

2. By the Access Date, in order to provide Wholesale Cable Broadband Access in the Combined Footprint, Vodafone shall ensure that Connections are available to the New Cable Provider. Each Connection will comprise a connection from the first multimedia socket at the end customer's premises to a local transfer interface.

Local Interfaces

3. By the Access Date, in order to provide Wholesale Cable Broadband Access in the Combined Footprint, Vodafone shall set up local interfaces for traffic exchange in order to transport data traffic in the Combined Footprint to the regional locations where it transfers the traffic to the New Cable Provider.
4. Vodafone shall provide the New Cable Provider with transfer interfaces at Vodafone locations in the following regions in the Combined Footprint:
 - [...]
 - [...]
 - [...]
 - [...]
 - [...]
 - [...]
 - [...]
 - [...]

- [...]
5. The transfer interface shall have the following features:
- A transmission speed of [...] Gbps.
 - All necessary technical equipment for the network infrastructures of the New Cable Provider and Vodafone, in particular the output port from Vodafone's network element and, if applicable, a terminating device (transfer point).
 - An A10 network-to-service provider connection comprising one or more transfer interfaces (gigabit ethernet or optical interfaces). There is no limit to the number of Connections that can be connected to each A10-NSP, other than the available bandwidth.
6. Voice data traffic shall be transferred to the New Cable Provider via agreed network cross points. Vodafone shall set up Session Border Controllers as demarcation points for the transfer of signalling (SIP) and voice data (RTP) to the New Cable Provider, which shall be prioritized over other data traffic in the Combined Footprint.

Traffic and devices

7. The data traffic of the New Cable Provider shall be transmitted in the Combined Network on a non-discriminatory basis, meaning that Vodafone shall treat the traffic of access seekers in the same way as Vodafone's own traffic on the Cable Network and, in particular, Vodafone shall (subject to the cooperation of the New Cable Provider) apply the same prioritisation rules to the New Cable Provider's traffic as Vodafone applies to its own traffic on the Cable Network.

Addresses and authentication

8. Vodafone shall use IPv6 addresses from the address range of the New Cable Provider to address eRouters and end devices. Vodafone shall configure the address ranges in the Cable Modem Termination System (without charging a setup fee).
9. Authentication for network access is based on the MAC address of the cable modem used by the New Cable Provider's end customer. The MAC address is assigned to an existing LineID by the New Cable Provider using an authentication interface.
10. Vodafone shall provide the configuration files for DOCSIS operation of the end devices of the New Cable Provider's end customers.

IT interfaces

11. Vodafone and the New Cable Provider shall define key features for IT interfaces in a joint design and development process following the Effective Date. If Vodafone and the New Cable Provider do not agree on the scope of the design and development process, Vodafone shall, in consultation with the Monitoring Trustee (who may also consult with the New Cable Provider), determine the relevant specifications.

12. Vodafone shall carry out a conformity test for each IT interface together with the New Cable Provider. A successful test is prerequisite for the use of each IT interface.

Annex A.2: Speeds

1. Vodafone shall provide Cable Broadband Access to the New Cable Provider on the retail fixed broadband download and upload speeds set out in Table 1 below (or as otherwise agreed by Vodafone and the New Cable Provider with the approval of the Monitoring Trustee).

Table 1: Speeds

Bandwidth profile	Downstream (mbps)	Upstream (mbps)	Optional upstream increase (mbps)
50/4	50	4	10
100/6	100	6	50
300/25	300	25	50

2. After the [...], the New Cable Provider can request Vodafone to include a product with a download speed of 500mbps, with an upload speed equal to the standard upload speed Vodafone offers its customers for its 500mbps product in the Combined Footprint, provided that [...] Vodafone will provide such a product within [...] of such a request.

Annex A.3: The Contingent

1. The New Cable Provider shall commit to purchase from Vodafone, on an annual upfront basis for so long as the Cable Broadband Access Agreement remains in operation, a minimum number of connections as set out in Table 1 below.

Table 1: Contingent

	Minimum contingent size (Cable Connections)
Year 1	[...]
Year 2	[...]
Year 3	[...]
Year 4	[...]
Year 5 and beyond	[...]

2. [...]

Annex A.4: Prices

1. In consideration for the provision of Wholesale Cable Broadband Access, the New Cable Provider shall pay to Vodafone the fees set out below.

The Contingent

2. The New Cable Provider shall pay €[...] per connection for each connection in the annual minimum contingent. This equates to an upfront cash payment to Vodafone as set out in Table 1 below.

Table 1: Contingent fees

	Minimum contingent size (Cable Connections)	Upfront cash payment
Year 1	[...]	[...]
Year 2	[...]	[...]
Year 3	[...]	[...]
Year 4	[...]	[...]
Year 5 and beyond	[...]	[...]

3. [...]
4. The New Cable Provider may adjust the annual purchase commitment upwards or downwards [...] provided that the quantity does not fall below the minimum sizes contained in Table 1 above.

Monthly fees

5. The New Cable Provider shall also pay the monthly fees for each active cable connection as set out in Table 2 below.

Table 2: Monthly Fees

Bandwidth profile	Downstream (mbps)	Upstream (mbps)	Monthly fee (€)
50/4	50	4	[...]
100/6	100	6	[...]
300/25	300	25	[...]

6. In the event that the New Cable Provider exceeds the number of active connections available in its annual Contingent commitment, it shall pay an additional €[...] / month for each active connection in excess of such amount.

7. The New Cable Provider is entitled to request upgrades to the upstream speeds, for which an additional fee shall be payable as set out in Table 3 below.

Table 3: Upgrades to Upstream Speeds

Bandwidth profile	Standard Upstream (mbps)	Optional upstream increase (mbps)	Fee for upload upgrade (€)
50/4	4	10	[...]
100/6	6	50	[...]
300/25	25	50	[...]

[...]

8. [...]

9. [...]

Table 4: [...]

[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

Addition of 500 Mbps product

10. After the [...], the New Cable Provider can request Vodafone to include a product with a download speed of 500 Mbps, with an upload speed equal to the standard upload speed Vodafone offers its customers for its 500 Mbps product in the Combined Footprint, [...] Vodafone will provide such a product within [...] of such a request.
11. The monthly fee for the 500 Mbps product will be [...].

Transfer interface fees

12. Vodafone will charge a one-off fee of €[...] for each [...] gbps transfer interface. The annual fee for each transfer interface is €[...].

Activation and termination fees

13. The New Cable Provider shall pay the fees set out in Table 5 for the activation and termination of cable connections and transfer interfaces.

Table 5: Activation and Termination Fees

	Activation fee (€)	Termination fee (€)
Cable Connection	[...]	[...]
Transfer interface	[...]	[...]

Annex A.5: Technical Support Quality requirements

1. Vodafone shall be responsible for second and third level technical support services in connection with the Cable Network.
2. In particular, Vodafone and the New Cable Provider will assume the following responsibilities:
 - (i) Availability: In response to requests from the New Cable Provider via an electronic interface, Vodafone will provide information to the New Cable Provider on the availability of bandwidths at a given address. The New Cable Provider will be responsible for managing any subsequent sales process and other communication with the customer.
 - (ii) Provisioning: Vodafone will provide access provisioning services, namely the connection to the end-customer premises as well as necessary installation services that are required, as communicated to Vodafone by the New Cable Provider using an electronic interface.
 - (iii) Activation: The New Cable Provider shall be responsible for the provision of any customer premises equipment (“**CPE**”) that may be required for the remedy taker to provide services to the end customer. Vodafone shall activate and configure CPE as regards broadband connections; the New Cable Provider shall be responsible for configuring of CPE for voice services. The New Cable Provider shall be responsible for organising access for its customers to the public internet and public telephone networks.
 - (iv) Fault clearance: Vodafone shall be responsible for executing fault clearances when the reason for such faults is Vodafone’s responsibility (because it occurs in its network e.g. faults in customer access lines or the backbone). The New Cable Provider shall be responsible for fault clearance relating to CPE, voice services and its own network.

SECTION B: OTT COMMITMENT / INTERCONNECTION CAPACITY COMMITMENT

Annex B.1 — LONG LIST INTERCONNECTIVITY PROVIDERS

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

[...]

Annex B.2 - REVIEW OF AGREEMENTS

1. Pursuant to Section B.II, the following methodology shall be applied for reviewing agreements with Broadcasters by the Monitoring Trustee in order to monitor compliance with the OTT Commitment, set out in Section B.II:
 - (i) Any (part of an) agreement with a Broadcaster regarding the distribution of linear channels and catch-up TV services relating to content on such linear channels of such a Broadcaster on Vodafone's TV Platform and any OTT Service of such Broadcaster in Germany, existing on, amended or signed after the Effective Date, in so far as it directly or indirectly relates to any OTT Service, and regardless its form ("**Relevant Agreement**"), shall be provided to the Monitoring Trustee for review in a database to which the Monitoring Trustee and Commission have access.
 - (ii) Vodafone will maintain a rolling list of potential Relevant Agreements to be reviewed by the Monitoring Trustee with an indication of the expected commencement, duration and finalisation of negotiations. This rolling list is to be updated every three months.
 - (iii) Vodafone has the discretion whether to submit an agreement for review either before or after its signature. If after signature, Vodafone will not delay submission of the agreement for review.
 - (iv) In the event that Vodafone and the Broadcaster are enforcing terms, without signing a formal agreement, Vodafone will provide the Monitoring Trustee with the then current draft of such agreement (or any summary of such terms including by e-mail) to the extent it directly or indirectly relates to any OTT Service.
 - (v) The Monitoring Trustee will have 48 hours to review agreements which have not yet been signed and one week to review if the agreement has been signed.
 - (vi) Communication with the Commission:
 - (I) The Monitoring Trustee will keep the Commission informed of any potential concern identified by the Monitoring Trustee relating to terms addressing any OTT Service, identified by the Monitoring Trustee, regardless of whether it is ultimately (quickly) resolved in cooperation with Vodafone.
 - (II) Vodafone will have the opportunity to discuss queries with the Monitoring Trustee before the Monitoring Trustee escalating any issue identified to the Commission.

Annex B.3 – INFORMATION PROVISION

1. Pursuant to Section B.II, Vodafone shall secure that the Monitoring Trustee shall be provided with all information reasonably required in order to undertake its functions. To this end, Vodafone shall provide the Monitoring Trustee, on a regular basis, but and at least automatically every quarter, and in addition in timely manner on request, with the following (which may vary from time to time by agreement with the Monitoring Trustee):
 - (i) A chart showing for the last month for each of the three ICPs, daily peak capacity (as a percentage of total), daily capacity (as a percentage of total) and daily available bandwidth in Tera bits per second (Tbps).
 - (ii) Three documents in a format mutually agreed with the Monitoring Trustee, containing the following:
 - (I) Capacity planning notes;
 - (II) Hourly data (one line every hour for each interface of the three ICPs) with data on Device, Interface, Timestamp, Average usage, Minimum Usage and Maximum Usage;
 - (III) Interface speeds (total physical capacity for each interface of the three ICPs) snapshot of one day per month with data on Device, Interface and Speed; and
 - (IV) Daily interface 95th percentile capacity (one line for each interface of the three ICPs, one column per day, done monthly).

SECTION C: FEED-IN FEE COMMITMENT / HBBTV COMMITMENT

Annex C.1: Irrevocable offer to FTA Broadcasters

[Broadcasting Company]

[Date]

Confidential

Dear [Madam or Sir],

We make reference to the European Commission's merger control decision in relation to Vodafone's acquisition of certain assets from Liberty Global, Case M. 8864, (the "**Transaction**").

In accordance with the terms of that decision and the commitments offered by Vodafone to the Commission, we make the following binding, irrevocable offer:

Irrevocable Offer

by **Vodafone GmbH** (hereafter „**Vodafone**“) to **[Broadcasting Company]**, (hereafter „**Broadcaster**“), together the "**Parties**":

[Broadcaster] and [Vodafone] have entered into the following agreement:

- i. [*framework/ cooperation agreement*],

[and, in addition, into several separate agreements, including the following:]

- ii. [*further agreements, including e.g. separate feed-in agreement, HbbTV agreement*]

(together the "**Vodafone Feed-In Contract**")

[Broadcaster] and [Unitymedia NRW GmbH, Unitymedia Hessen GmbH Co. KG and Unitymedia BW GmbH] (together „**Unitymedia**“) have entered into the following agreement:

- i. [*framework/ cooperation agreement*],

[and, in addition, into several separate agreements, including the following:]

- ii. [further agreements , *including e.g. separate feed-in agreement, HbbTV agreement*]

(together the “**Unitymedia Feed-In Contract**”)

(together the “**Feed-In Contracts**”).

In light of the European Commission having approved the Transaction and in the event that the Transaction then completes, Vodafone makes the following binding and irrevocable offer to [Broadcaster] (the “**Offer**”):

1. Obligation of Vodafone not to raise Feed-In Fees

- (1) Vodafone will procure that Vodafone and Unitymedia will not increase the fees per connected household that [Broadcaster] pays to Vodafone and/or Unitymedia for the transmission of free-to-air TV programs via their respective cable networks to the connected households (“**Feed-in Fees**”), as provided for in the Feed-In Contracts, as long as these contracts are in effect.
- (2) Vodafone and/or Unitymedia may, with the [Broadcaster’s] consent, amend the structure or other aspects of the Feed-in Fees, e.g. for purposes of network integration.
- (3) Vodafone will procure that, under any amended Feed-In Contract with [Broadcaster], the Feed-In Fees that [Broadcaster] pays for any transmitted TV program will not exceed the sum of the Feed-In Fees due under each of Vodafone’s and Unitymedia’s current rate cards for Feed-In Fees (**Appendix 1, No. 1-4 and 7** and **Appendix 2**), each applied to the households in the respective federal states where each network provider is currently active.
- (4) The obligation in 1(3) above also applies if the Feed-In Contract has ended and Vodafone and/or Unitymedia enter into a new feed-in agreement with [Broadcaster] or agree on the feed-in of additional TV programs.

2. **Obligation of Vodafone to transmit HbbTV signals**

- (1) Vodafone will procure that Vodafone and Unitymedia will continue to transmit hybrid broadcast broadband TV (“**HbbTV**”) signals together with any TV programs Vodafone transmits in DVB-C format, as and to the extent provided for in the Feed-In Contracts, as long as these contracts are in effect.
- (2) Vodafone and/or Unitymedia may, with the [Broadcaster’s] consent, amend any obligation to transmit HbbTV signals.
- (3) Vodafone will procure that, under any amended Feed-In Contract providing for the transmission of TV signal in the DVB-C standard, Vodafone and Unitymedia will transmit [Broadcaster’s] HbbTV signals in their cable networks at least under the following minimum technical terms and without charging any fees for such transmission:
 - (i) The HbbTV signal consists of AIT (application information tables) and stream events (in the transmission standard DSM-CC). The HbbTV signal will be included in the DVB-C broadcast. All other data components that [Broadcaster] requires must be separately obtained via an IP network.
 - (ii) The HbbTV signal may have a maximum data rate of 15 kbit/s per TV program (SD or HD).
- (4) The obligation in 2(3) above also applies to any agreement to transmit HbbTV signal together with TV programs in the DVB-C standard that is not currently covered by an agreement to transmit HbbTV or upon expiry of such agreement and/or of the Feed-In Contracts.
- (5) For the avoidance of doubt, the obligation to transmit HbbTV signals in the cable network does not include any obligation of Vodafone or Unitymedia in connection with the functionality of their or any third parties’ customer premises equipment (“CPE”), in particular, no obligation to design or change CPE in such a way that they react to HbbTV signals.

3. Acceptance of the Offer

- (1) [Broadcaster]'s acceptance of this Offer must be made in writing by returning a signed copy of this letter to the address specified below.
- (2) The written declaration of acceptance must be received by Vodafone at the latest [...] after receipt of this Offer by [Broadcaster].
- (3) If [Broadcaster] fails to accept the Offer within the time period specified in 3(2), the Offer shall expire.

4. Effective Period of Obligations

The obligations of Vodafone set out above under 1 and 2 are effective for a period of eight years from the date of the European Commission's approval decision for the Transaction.

5. Others

- (1) All other provisions of the Feed-in Contracts remain unaffected.
- (2) Nothing in this Offer shall be interpreted as a duty of Vodafone, Unitymedia or [Broadcaster] to prolong, renew or enter into a feed-in contract or as a waiver of any termination rights.
- (3) Any amendments to this Offer, including any amendments to this clause, must be made in writing.
- (4) In case any provision in this Offer is invalid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by an effective provision that will meet the purpose of the invalid or unenforceable term as closely as possible. The same applies if a gap in this Offer arises that requires filling.

If [Broadcasting Company] accepts this Offer, we kindly ask to return a signed copy of this letter to the following address within [...] of receipt of this letter:

Vodafone GmbH,
[...],
Ferdinand-Braun-Platz 1,
D-40549 Düsseldorf
E-Mail: [...]

cc.: [...], Vodafone Group Plc.
E-Mail: [...]

Yours sincerely,

Vodafone GmbH

Düsseldorf, [Date]

[Signature]

[Broadcaster] accepts the Offer set out above:

[Broadcaster]

[Place, date]

[Signature]

Appendix 1

[...]

(b) [...]

1. [...]

2. [...]

3. [...]

4. [...]

4.1 [...]

4.2 [...]

5. [...]

[...]

6. [...]

[...]

7. [...]

7.1 [...].

7.2 [...]

7.3 [...]

7.4 [...]

Appendix 2

[...]

Distribution type	Feed-in Fee
[...]	[...]
[...]	[...]
[...]	[...]

Annex C.2: List of FTA Broadcasters to be sent irrevocable offer

The table below sets out the list of FTA Broadcasters to be sent an irrevocable offer – in each case, for the purposes of the Feed-in Fee Commitment, relating only to the channel(s) for which the FTA Broadcaster pays Feed-in Fees and, for the purposes of the HbbTV Commitment, relating only to the channel(s) for which the FTA Broadcaster has an agreement for the transmission of HbbTV Signal.

Broadcaster	
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
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[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]