

Case M.6497 Hutchison 3G Austria / Orange Austria

# **Principles guiding the Commitment to make Wholesale Access Available to Requesting Parties**

15 October 2013

## **Principles guiding the Commitment to make Wholesale Access to Requesting Parties**

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the "Merger Regulation"), Hutchison 3G Austria Holdings GmbH (legal predecessor and of and since July 2013 changed into Hutchison Drei Austria Holdings GmbH, "H3G Austria Holdings") provided Commitments (the "Commitments") to the European Commission ("Commission") in order to enable the Commission to declare the acquisition of Orange Austria Telecommunications GmbH by H3G Austria Holdings compatible with the common market by a decision pursuant to Article 8(2) of the Merger Regulation in Case COMP M.6497 H3G/Orange Austria. As part of its Commitments, H3G Austria Holdings committed to procure that Hutchison Drei Austria GmbH ("H3A") would make available wholesale access to the H3A Network to Requesting Parties.

Pursuant to paragraph 2 of the Commitments, H3G Austria Holdings commits to procure that upon Closing, H3A will make available wholesale access to the H3A Network to Requesting Parties up to the defined Requesting Party Limit of 16 Requesting Parties. With a view to the access referred to in paragraph 2 being available on fair and non-discriminatory terms, the process of granting wholesale access to the H3A Network will be implemented by H3A according to the following terms and conditions (hereinafter referred to as the "Guiding Principles"). These Guiding Principles clarify how Requesting Parties may apply for access under the Commitments and the commencement of the Technical Implementation. The experience gained by applying the Guiding Principles will form the basis for possible future changes and improvements of the process of granting wholesale access to the H3A Network.

### **A. Definitions**

1. If not assigned meanings in these Guiding Principles capitalised terms used in these Guiding Principles shall have the meanings assigned to them in the Commitments.
2. In these Guiding Principles the term:
  - i. Technical Implementation means any action necessary for H3A to connect an MVNO to the H3A Network in order to provide the Requesting Party with the wholesale access services to be provided under the MVNO agreement.
  - ii. "Written Request" shall mean a completed Request Form. The Request Form can be found at <http://www.drei.at/wholesale> which shall constitute a written request pursuant to paragraph 4(b) of the Commitments.

### **B. Process for H3A to make wholesale access available to Requesting Parties and computation of deadline for negotiations**

3. Pursuant to paragraph 4(b) of the Commitments where a Requesting Party requests in writing to become an MVNO on the H3A Network, H3A shall enter into good faith negotiations with a view to agreeing an MVNO Agreement on the basis of the principles set out in the Reference Offer.

4. The process for the obtaining of wholesale access to the H3A Network will commence upon receipt by H3A of a duly completed and signed **Request Form**. Request Forms must be duly completed and signed by authorized signatories of your company and submitted to the following address:

Mr. Alexander Gratzner  
Head of MVNOs and Reselling  
Hutchison Drei Austria GmbH  
Telephone: +43 1 27728 3866  
E-mail: mvno@drei.com

5. Pursuant to paragraph 4(b) of the Commitments, if the parties have not agreed upon the terms of the MVNO Agreement within a period of 5 months of H3A's receipt of the written request, and provided that the CEOs of H3A and the Requesting Party have not resolved the matters in dispute within 2 weeks of the matter being escalated to them in writing by either party, a fast track dispute resolution procedure shall apply in accordance with Section F of the Commitments.
6. The period of 5 months stipulated by paragraph 4(b) of the Commitments, for H3A and the Requesting Party to agree upon the terms of the MVNO Agreement shall be deemed to commence from the date of receipt of the Request Form by H3A.
7. H3A shall confirm receipt of the Request Form to the Requesting Party and the Monitoring Trustee without undue delay.
8. H3A shall provide written confirmation to the Monitoring Trustee of signature of an MVNO Agreement including a copy of such agreement without undue delay.

**C. *Technical Implementation and computation of deadlines***

9. Paragraph 3 of the Commitments limits to 2 the number of MVNOs for which H3A shall be obliged to carry out the Technical Implementation of wholesale access on the H3A Network at any one time. If the Technical Implementation of an MVNO continues for more than 12 consecutive months, the relevant MVNO shall not be included in the number of MVNOs for the purposes of calculating the preceding limit.
10. H3A shall carry out the Technical Implementation for any Requesting Party on a "first come, first served" basis subject to the Requesting Party having signed an MVNO Agreement, paid the first instalment of the set-up fee in accordance with Section D 19 of the Reference Offer and having submitted the Technical Implementation Information Sheet. As part of the negotiation of the MVNO agreement, the Requesting Party may be asked to confirm its target commercial launch date, and to agree a "ready for service" date with H3A.
11. In order to commence the Technical Implementation the Requesting Party is required to submit to H3A the relevant information required for this purpose. Requesting Parties are asked to submit the information by completing the ["Technical Implementation Information Sheet"] which can be found at <http://www.drei.at/wholesale>.

It is assumed that Technical Implementation includes a joint specification and planning phase. The information submitted in the Technical Implementation Information Sheet is intended as basis for this joint specification and planning phase. The phase ends with one or more mutually agreed final specification documents which are the binding basis for the purchase of equipment and actual implementation of interfaces and functions by both partners.

It is assumed that one of the specification documents contains the binding time schedule, if not already included in the MVNO agreement. H3A shall not be deemed to be non-compliant with

the Commitments if this binding schedule is not met for reasons beyond the scope of its responsibility.

12. Subject to the limit of the maximum of 2 technical implementations that H3A shall be obliged to carry out pursuant to paragraph 3 of the Commitments, Technical Implementation will commence from the date the Requesting Party having signed an MVNO Agreement, paid the first instalment of the set-up fee in accordance with Section D 19 of the Reference Offer and having submitted the completed Technical Implementation Form Sheet ["Technical Implementation Information Sheet"]. If H3A is carrying out Technical Implementation for less than 2 MVNOs pursuant to the terms of paragraph 3 of the Commitments, H3A will commence the Technical Implementation for any relevant Requesting Party without undue delay. If the timetable for a planned Technical Implementation is subsequently changed such that there are no longer 2 Technical Implementations taking place at the same time, H3A will notify the other MVNOs who have entered into MVNO agreements with H3A (also on a "first come, first serve" basis) that a slot has become available for an earlier Technical Implementation.
13. Confirmation that the limit of 2 Technical Implementations has been reached is to be confirmed by H3A to the Monitoring Trustee and the relevant Requesting Parties.
14. The Technical Implementation for an MVNO shall end when the services of the MVNO are "Ready for Service" as defined under the MVNO Agreement or the date on which the MVNO starts to provide services to customers, if earlier.

**D. Further information**

15. Questions relating to requests for access to the wholesale network of H3G may be directed to:

Mr. Alexander Gratzner  
Head of MVNOs and Reselling  
Hutchison Drei Austria GmbH  
Telephone: +43 1 27728 3866  
E-mail: mvno@drei.com

and

Monitoring Trustee  
Email: H3G.Trustee@competitionrx.com  
For Attention Of: Justin Menezes  
Telephone: +32 2 514 9756  
Fax: +32 514 2183

16. Further information in respect of the processing of applications for MVNO access under the Commitments are provided in the Q&A regarding the Commitments which can be found at <http://www.drei.at/wholesale>.