

**Joint report of the management boards of United Internet AG and United Internet Mail & Media SE concerning the Profit and Loss Transfer Agreement between United Internet AG and United Internet Mail & Media SE pursuant to Section 293a German Stock Corporation Act (AktG) (ITEM 11)**

The Management Board of United Internet AG and the management board of United Internet Mail & Media SE hereby submit the following joint written report on the Profit and Loss Transfer Agreement dated February 12, 2015 between United Internet AG and United Internet Mail & Media SE:

**1. Conclusion and effectiveness of the Agreement**

The Profit and Loss Transfer Agreement between United Internet AG as parent company and United Internet Mail & Media SE as subsidiary was concluded on February 12, 2015. A notarized copy of the Agreement dated February 12, 2015 is attached to this report.

To become effective, the Profit and Loss Transfer Agreement must first be approved by the Annual Shareholders' Meeting of United Internet AG, which is expected to be given at the Annual Shareholders' Meeting convened for May 21, 2015. Moreover, the Agreement must also be approved by the annual shareholders' meeting of United Internet Mail & Media SE, which was given on February 12, 2015. Finally, the Profit and Loss Transfer Agreement becomes effective with its entry in the commercial register of United Internet Mail & Media SE.

On the basis of the regulation made in Section 1 in conjunction with Section 4 (1) of the Agreement, the income of United Internet Mail & Media SE is to be allocated to United Internet AG, within the framework of the affiliation founded and continued through the Agreement and on establishment of the aforementioned effectiveness conditions, as of January 1, 2015.

**2. Explanation of the Profit and Loss Transfer Agreement**

The Profit and Loss Transfer Agreement between United Internet AG and United Internet Mail & Media SE, including its individual provisions, is explained as follows:

**2.1 Profit transfer (Section 1 of the Agreement)**

On the basis of the regulation in Section 1 (1) of the Agreement, the affiliated company, i.e. United Internet Mail & Media SE, undertakes to transfer its entire profit, as calculated according to the prevailing commercial law regulations and under consideration of Section 1 (2) as well as Section 301 German Stock Cor-

poration Act (AktG), in its current version, to the parent company, i.e. United Internet AG.

The amount to be transferred is thereby the net income without profit transfer, less any loss carryforward from the previous year, less that amount to be transferred to statutory reserves pursuant to Section 300 German Stock Corporation Act (AktG), and less the amount barred for distribution pursuant to Section 268 (8) HGB.

Section 1 (2) of the Agreement stipulates that, subject to approval by the parent company, the affiliated company may transfer amounts from the net income to revenue reserves (Section 272 (3) German Commercial Code (HGB)), insofar as this is economically justifiable in a fair commercial view. In such cases, the amount to be transferred to the parent company is correspondingly less.

According to Section 1 (3) of the Agreement, the transfer of amounts from capital reserves as defined by Section 272 (2) of the German Commercial Code (HGB) which were formed during the period of affiliation is excluded. The parent company can demand, however, that other revenue reserves formed during the Agreement be reversed and used to balance a loss or transferred as profit.

According to Section 1 (4) of the Agreement, the parent company can demand an interim profit transfer if and insofar as an interim payment can be paid. This is pursuant to Section 59 AktG.

## **2.2 Loss assumption (Section 2 of the Agreement)**

In accordance with the legal provisions of Section 302 German Stock Corporation Act (AktG), in its current version, the Agreement obliges United Internet AG to offset any loss of its subsidiary which accrues during the term of the Agreement. The loss can also be offset by withdrawing amounts from other revenue reserves of the affiliated company, which were formed during the term of the Agreement.

## **2.3 Due date, settlement, interest (Section 3 of the Agreement)**

Section 3 (1) sets out the accrual and due date of rights to profit transfers or loss assumptions. They accrue on the respective balance sheet dates of the affiliated company and are also due on this date.

Section 3 (2) regulates the fulfillment of rights to profit transfers or loss assumptions. They are to be fulfilled no later than three months after the annual financial statements of the affiliated company have been adopted.

Section 3 (3) stipulates the interest payment for the period between the due date and the actual payment date. Pursuant to Section 352 and 353 German Commercial Law (HGB), the party required to make a payment is obliged to pay additional interest of 5% p.a. of the respective amount owed for the aforementioned period.

## **2.4 Term (Section 4 of the Agreement)**

Section 4 of the Agreement regulates the term and the possibilities to serve notice on the Profit and Loss Transfer Agreement.

Section 4 (1) of the Agreement stipulates that the Profit and Loss Transfer Agreement begins on January 1, 2015.

Section 4 (2) of the Agreement states that the Agreement cannot be terminated before December 31, 2020, 24:00 p.m.. The Agreement is firm until this time. The regulations with a minimum term of five years, i.e. until the end of 2020, have been included with regard to the intended acknowledgement of an intercompany grouping for tax purposes (Section 14 German Corporate Income Tax Law - KStG). It also indicates that the conclusion of the Profit and Loss Transfer Agreement is part of a long-term concept. If the Agreement is not terminated, it is extended each time for a further one-year period. The period of notice is six months to the end of the economic year.

Moreover, in Section 4 (3) of the Agreement it is specified that the right to terminate for cause remains unaffected. Such cause is in particular the assignment of shares in the affiliated company by the parent company, an IPO of the affiliated company, an investment of an external shareholder pursuant to Section 307 German Stock Corporation Act (AktG) in the subsidiary, the merging of the affiliated company with another company and the conversion of the affiliated company into a legal form which may not be an affiliated company. Cause for the extraordinary termination of the Agreement also includes in particular the occurrence of other circumstances deemed material by the currently valid version of the corporate tax guideline (currently: R 60 (6) KStR 2004). The requirement to give notice in writing is in accordance with legal regulations pursuant to Section 297 (3) German Stock Corporation Act (AktG).

## **2.5 Final provisions (Section 5 of the Agreement)**

Section 5 (1) of the Agreement states that all amendments and additions to the Agreement must be made in writing.

Section 5 (2) of the Agreement also states that if individual provisions of the Agreement be void for any reason, this does not invalidate the other provisions of the Agreement. This stipulation is a standard component of agreements and was included for reasons of legal precaution. There is no indication that any of the provisions in the Agreement might be invalid.

Finally, Section 5 (3) of the Agreement states that the costs of the Agreement are to be borne by the affiliated company.

## **2.6 Compensation and indemnity provisions**

As all shares in United Internet Mail & Media SE are held by United Internet AG, no compensation and indemnity provisions have been included in the Profit and Loss Transfer Agreement (Sections 304, 305 German Stock Corporation Act (AktG)).

There is therefore no need to discuss their assessment.

### **3. Legal and economic reasons for the conclusion of the Profit and Loss Transfer Agreement**

#### **3.1 Background situation of the companies involved**

##### **3.1.1 United Internet AG**

###### **3.1.1.1 Overview of the company**

The company was founded as 1&1 Aktiengesellschaft & Co. Kommanditgesellschaft auf Aktien on January 29, 1998 (registration in the commercial register of the district court of Montabaur under HRB 5762 on February 16, 1998) with a capital stock of DM 2,529,600.00. Following several capital increases and the translation of its capital stock to euros, the company changed its legal status to that of a public limited company ("Aktiengesellschaft") named United Internet AG with a resolution of the Extraordinary Shareholders' Meeting of February 22, 2000 with a capital stock of EUR 13,211,782.22 (registration in the commercial register of the district court of Montabaur under HRB 5762 on March 23, 2000). After further capital increases from company funds, from conditional and approved capital, as well as various capital reductions, the company's capital stock now amounts to EUR 205,000,000.00 (registration in the commercial register of the district court of Montabaur under HRB 5762 on September 17, 2014).

###### **3.1.1.2 Holding structure**

United Internet AG acts as a management holding for its subsidiaries, including United Internet Mail & Media SE.

###### **3.1.1.3 Result situation**

For further details on the development and result situation of United Internet AG, please refer to the Company's consolidated financial statements and management report for the fiscal year 2014.

##### **3.1.2 United Internet Mail & Media SE**

###### **3.1.2.1 Overview of United Internet Mail & Media SE**

United Internet Mail & Media SE was formed as Atrium 69. Europäische VV SE on August 6, 2014 with a capital stock of EUR 120,000.00 and first entered in the commercial register of the district court of Charlottenburg under the number HRB 160932 B on August 22, 2014. Amongst other things, the annual shareholders' meeting of December 10, 2014 adopted resolutions to change the company name to United Internet Mail & Media SE and move its registered office from Berlin to Montabaur. The new name and location were entered in the commercial register of the district court of Montabaur under the number HRB 24401 on January 12, 2015.

###### **3.1.2.2 Equity relationship**

United Internet AG is the sole shareholder of United Internet Mail & Media SE and thus holds 100% of its shares. The capital stock amounts to EUR 120,000.00 and is fully paid in.

###### **3.1.2.3 Business activity**

The object of United Internet Mail & Media SE is the provision of consulting and other services of all kinds regarding the use of telecommunication products and value-added data services, especially via the internet or similar transmission

media, as well as the production of and trading with information technology products of all kinds for its own account as well as for others. In addition, it publishes, distributes, and acquires data of all kinds in data networks. In this connection, it markets, installs and trains in the field of electronic data, communication and network connection systems. The company's object also includes acquiring, holding and managing equity interests, especially in companies active in the fields stated above. The company's object does not include transactions which require a license under the German Banking Act ("Kreditwesengesetz"). The company is currently preparing to begin business as an interim holding company of the Group.

### **3.1.2.4 Result situation**

No significant description of the development and result situation of United Internet Mail & Media SE can be provided as the company is currently preparing to begin business.

## **3.2 Reasons for the conclusion of a Profit and Loss Transfer Agreement**

### **3.2.1 Company law reasons**

The United Internet AG group has a holding structure, within which its legally independent subsidiaries operate, which in turn is led by United Internet AG as a management holding company. In this way, United Internet AG can bundle and efficiently handle its management tasks. In line with this holding concept, United Internet Mail & Media SE is to be included in the group organization as a contractual group company. This ensures, in particular, the optimal employment of financial resources within the group. The formation of a contractual group company offers the possibility of coordinating the interests of United Internet Mail & Media SE with those of the group as a whole – while still maintaining the profit responsibility of United Internet Mail & Media SE in all other respects.

### **3.2.2 Tax reasons**

United Internet Mail & Media SE is a legally independent subsidiary, whose result is taxed at company level and thus cannot be consolidated with profits and losses of United Internet AG. Following the change from the tax imputation method to the half-income procedure as part of Germany's corporation tax reform of 2001, and to the partial-income procedure as part of Germany's corporation tax reform of 2008, consolidation of profits and losses for purposes of corporation tax is no longer possible via dividend distribution and the respective imputed tax charge. Moreover, the system-related tax exemption of dividend payments between corporations is connected with a restriction of the deductibility of operating expenditure on the holding level.

These disadvantages can be avoided by the establishment of a fiscal unity for corporation tax purposes. A substantial condition for the establishment of a fiscal unity for corporation tax purposes between United Internet AG as parent company and United Internet Mail & Media SE as subsidiary is the conclusion or continuation of a Profit and Loss Transfer Agreement (Section 14 German Corporate Income Tax Law - KStG).

As a consequence of the fiscal unity for corporation tax purposes, the entire income of the affiliated company is transferred to the parent company for taxation. This enables fiscal consolidation of the subsidiary's income with that of the parent company on the one hand, but also allows one subsidiary to offset losses against the profits of another. Moreover, the fiscal unity also ensures the deductibility of operating expenditure of United Internet AG.

The foundation or continuation of a subsidiary relationship between United Internet AG (parent company) and United Internet Mail & Media SE (affiliated company) is thus an ideal structure for corporation tax purposes, as well as for trade tax and sales tax purposes.

Despite the Profit and Loss Transfer Agreement, the income of United Internet Mail & Media SE is first determined according to general regulations and separately from the parent company. According to commercial law, the other net income of United Internet Mail & Media SE is to be transferred to United Internet AG, less any loss brought forward from periods prior to the subsidiary relationship. This transfer obligation is disclosed in the annual financial statements of United Internet Mail & Media SE as a liability to affiliated companies. In the case of a net loss, this is to be offset by the parent company.

This must be differentiated from the profit calculation according to tax law. The parent company does not receive the net income, or loss, but the commercial balance sheet result of the affiliated company modified according to tax law principles. Due to operating expenses not deductible for tax purposes, tax-exempted income and allocation to reserves according to commercial law, for example, differences occur between the income to be allocated and the commercial balance sheet result.

Montabaur, April 2015

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