

## **Joint report of the Management Board of United Internet AG and the management of United Internet Corporate Services GmbH regarding the Control Agreement between United Internet AG and United Internet Corporate Services GmbH pursuant to Section 293a German Stock Corporation Act (AktG) (ITEM 10)**

The Management Board of United Internet AG and the management of United Internet Corporate Services GmbH hereby submit the following joint written report on the Control Agreement dated February 12, 2015 between United Internet AG and United Internet Corporate Services GmbH:

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

The Control Agreement between United Internet AG as parent company and United Internet Corporate Services GmbH 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 Control 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 shareholders' meeting of United Internet Corporate Services GmbH, which was granted on February 12, 2015. Finally, the Control Agreement becomes effective with its entry in the commercial register of United Internet Corporate Services GmbH.

### **2. Explanation of the Control Agreement**

The Control Agreement between United Internet AG and United Internet Corporate Services GmbH, including its individual provisions, is explained as follows:

#### **2.1 Management (Section 1 of the Agreement)**

Section 1 (1) of the Control Agreement includes the constituent provision for a Control Agreement, whereby United Internet Corporate Services GmbH as the dependent company is placed under the management of United Internet AG as the controlling company. This gives United Internet AG the right to issue instructions to the management of United Internet Corporate Services GmbH regarding the management of the company. According to Section 1 (1) Sentence 4 of the Control Agreement, instructions must be issued in written form.

The scope of this instruction right is determined by the provisions of Section 308 German Stock Corporation Act (AktG). In accordance with Section 308 (2) Sentences 1 and 2 German Stock Corporation Act (AktG), the management of

United Internet Corporate Services GmbH is obliged to comply with such instructions (Section 1 (2) of the Control Agreement).

## **2.2 Right to receive information (Section 2 of the Agreement)**

Section 2 (1) of the Control Agreement sets forth that United Internet AG is entitled at all times to inspect the books and documents of United Internet Corporate Services GmbH, and further that the management of United Internet Corporate Services GmbH is obliged to provide United Internet AG with all information requested.

Section 2 (2) of the Control Agreement specifies that United Internet Corporate Services GmbH has an ongoing obligation to report to United Internet AG.

## **2.3 Loss assumption (Section 3 of the Agreement)**

Section 3 (1) of the Control Agreement determines that Section 302 German Stock Corporation Act (AktG), as amended, shall be applied. Section 302 German Stock Corporation Act (AktG) obliges the controlling company, in this case United Internet AG, to offset any loss arising during the term of the Agreement. The loss can also be offset by withdrawing amounts from other revenue reserves of the dependent company, which were formed during the term of the Agreement.

Section 3 (2) of the Control Agreement regulates the due date of the loss assumption requirement. The obligation to assume losses accrues on the respective balance sheet dates of the dependent company and is also due on this date.

In the case of termination for cause, United Internet AG is only obliged to offset the prorated annual net loss up to the date on which the termination becomes effective (Section 3 (3) of the Control Agreement).

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

Section 4 of the Control Agreement regulates the effectiveness of the Agreement. We refer here to the explanations under Section 1.

## **2.5 Term, termination (Section 5 of the Agreement)**

Section 5 of the Agreement regulates the contractual term and possibilities to serve notice on the Control Agreement.

The Agreement is concluded for an indefinite period (Section 5 (1) of the Control Agreement). It can be terminated at any time with a notice period of three months to the end of each month. Notice must be served in written form (Section 5 (3) of the Control Agreement), in accordance with the legal provisions of Section 297 (3) German Stock Corporation Act (AktG).

Section 5 (4) of the Agreement also clarifies that the right of termination for cause remains unaffected. Such cause is in particular (i) the loss of the majority of voting rights of the controlling company in the dependent company, (ii) the loss of controlling company's position as sole shareholder of the dependent company, (iii) the merger or division of the controlling company or the dependent company, (iv) the opening of insolvency proceedings over the assets of the controlling company or the dependent company or the rejection of such pro-

ceedings due to lack of assets, (v) the liquidation of the controlling company or the dependent company, and (vi) the transformation or relocation of the registered office of the controlling company or dependent company in such a way that they can no longer be party to a Control Agreement.

If the Agreement ends, the controlling company must provide security for the creditors of the dependent company in accordance with Section 303 of the German Stock Corporation Act (AktG) (Section 5 (5) of the Control Agreement).

## **2.6 Final provisions (Section 6 of the Agreement)**

Section 6 (1) of the Agreement states that all amendments and additions to the Agreement must be made in writing.

Section 6 (2) of the Agreement 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.

## **2.7 Compensation and indemnity provisions**

As all shares in United Internet Corporate Services GmbH are held by United Internet AG, no compensation and indemnity provisions have been included in the Control 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 Control 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 Corporate Services GmbH.

### **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 Corporate Services GmbH**

### **3.1.2.1 Overview of United Internet Corporate Services GmbH**

United Internet Corporate Services GmbH was founded as 1&1 Corporate Services GmbH on March 27, 2012 and entered in the commercial register of the district court of Montabaur under HRB 23031 on March 30, 2012 with a capital stock of EUR 25,000.00. The shareholders' meeting of June 10, 2013 resolved to change the company's name to United Internet Corporate Services GmbH. The change of name was entered in the commercial register on June 14, 2013.

### **3.1.2.2 Equity relationship**

United Internet AG is the sole shareholder of United Internet Corporate Services GmbH and thus holds 100% of its shares. The capital stock amounts to EUR 25,000.00 and is fully paid in.

### **3.1.2.3 Business activity**

United Internet Corporate Services GmbH provides services of all kinds, especially in the field of Marketing/Sales, IT, HR, Purchasing and Accounting. This includes acquiring, holding and managing equity interests, especially in companies active in the fields stated above.

### **3.1.2.4 Profit and Loss Transfer Agreement / result situation**

For further details on the development and result situation of United Internet Corporate Services GmbH, please refer to the company's financial statements for the fiscal year 2014 prepared in accordance with commercial law guidelines. There has been a Profit and Loss Transfer Agreement with United Internet AG, as the parent company, since April 10, 2012. Following a negative result before profit and loss transfer of EUR 47,111.46 in fiscal year 2012, there was a negative result before profit and loss transfer of EUR 13,562.90 in fiscal year 2013, and a negative result before profit and loss transfer of EUR 2,879,094.52 in fiscal year 2014. The increase of the loss in 2014 results mainly from the transfer of staff at the beginning of the fiscal year from United Internet AG to United Internet Corporate Services GmbH and the resulting rise in personnel expenses and in other operating expenses.

## **3.2 Reasons for the conclusion of a Control Agreement**

### **3.2.1 Company law reasons**

The United Internet AG group is led by United Internet AG as the holding company, whereby its legally independent subsidiaries conduct its operating activities. Due to the Control Agreement, United Internet AG has additional legal instruments for issuing instructions to the management of United Internet Corporate Services GmbH. However, the legal right to issue instructions also exists without a Control Agreement with the management of the GmbH. The main

reasons for the conclusion of the Agreement are thus related to tax issues (see below).

### **3.2.2 Tax reasons**

United Internet Corporate Services GmbH is integrated into the sales tax fiscal unity of the United Internet Group. The sales tax fiscal unity means that sales tax and input tax claims of the subsidiary United Internet Corporate Services GmbH can be ascertained via the parent company United Internet AG. As a result, the sales tax obligations of the subsidiary, such as advance sales tax returns or the filing of sales tax declarations, can be pooled and managed efficiently by the parent company. Moreover, services between the two companies are regarded as untaxed inter-company revenues. In a fiscal unity, the only company responsible for tax is the parent company. However, the subsidiary is still liable for its share of sales tax.

The conditions for the existence of a sales tax fiscal unity were adapted and further refined by amendments to the Sales Tax Application Decree stated in a letter of the German Federal Ministry of Finance (BMF) dated March 7, 2013 (IV D 2 – S 7105/11/10001) and the BMF letter of May 5, 2014 (IV D 2 – S 7105/11/10001/IV D 2 – S 7105/13/10003). This states that on conclusion of a Control Agreement pursuant to Section 291 AktG, it can generally be assumed that there is organizational integration. Should the conditions for the sales tax fiscal unity between the two companies no longer exist, this would mean a return of sales tax obligations for United Internet Corporate Services GmbH and thus a high administrative effort for United Internet Corporate Services GmbH. This is to be avoided. The conclusion of a Control Agreement is therefore necessary to ensure the legally compliant continuation of the sales tax fiscal unity between United Internet Corporate Services GmbH and United Internet AG. It ensures the optimum structure for sales tax purposes also in the future.

Montabaur, April 2015

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