

Joint Report
of the Management Board of
NFON AG, Munich,
and the Management of
Deutsche Telefon Standard GmbH, Mainz,
according to Section 293a of the German Stock Corporation Act (AktG)
to the Profit and Loss Transfer Agreement dated 11 July 2022

1. Introduction

On 11 July 2022, NFON AG (hereinafter “NFON”), registered in the commercial register of the Local Court of Munich under HRB 168022 and Deutsche Telefon Standard GmbH (hereinafter “DTS”) with its registered office in Mainz, registered in the commercial register of the Local Court of Mainz under HRB 48904 entered into a Profit and Loss Transfer Agreement (hereinafter “Agreement”) in which DTS undertakes to transfer its entire profit to NFON. NFON, in turn, undertakes to assume the losses of DTS.

The Management Board of NFON and the Management of DTS jointly submit the following report in accordance with Section 293a AktG of the German Stock Corporation Act (AktG).

2. Contractual partners

The contractual partners are NFON AG and Deutsche Telefon Standard GmbH.

NFON is a listed public limited company with its registered office in Munich. Its financial year corresponds to the calendar year. The purpose of NFON is to develop, market and operate innovative communication solutions and applications for business-critical use by companies.

In 2019, NFON's total assets amounted to EUR 75,972,786, its net loss to EUR 13,957,285 and its revenue to EUR 37,629,010. In 2020, NFON's total assets amounted to EUR 64,801,171, its net loss to EUR 8,724,492 and its revenue to EUR 44,366,765. In 2021, NFON's total assets were EUR 71,433,944, its net loss EUR 17,381,498 and its revenue EUR 48,114,769.

NFON AG expects a slightly higher growth rate for recurring revenues in financial year 2022 compared to 2021, with their share of total revenues expected to remain constant. Customer-operated extensions (seats) are expected to grow at a comparable level in 2022 as in 2021. The Management Board is optimistic about the further development of the company.

DTS is a limited liability company registered in the Commercial Register of the Local Court of Mainz under HRB 48904 and a wholly owned subsidiary of NFON. It was founded in 2007 as Deutsche Telefon Standard AG and acquired by NFON on 1 March 2019 for EUR 17.5 million and subsequently became Deutsche Telefon Standard GmbH by way of transformation by changing its legal form. Its financial year corresponds to the calendar year. The purpose of DTS is to provide telecommunications services using fixed and mobile networks, in particular to provide network-based business communications functionalities and develop, manufacture and supply of telecommunications equipment.

In 2019, DTS's total assets amounted to EUR 4,241,853, its net loss to EUR 61,038 and its revenue to EUR 10,248,201.

In 2020, DTS's total assets amounted to EUR 6,583,939, its net profit to EUR 1,560,368 and its revenue to EUR 13,879,492.

In 2021, DTS's total assets amounted to EUR 6,714,531, its net profit to EUR 2,593,192 and its revenue to EUR 16,617,528.

DTS GmbH is planning to achieve a significant increase in recurring revenue and a slight rise in sales revenue. With significantly lower planned non-recurring revenues, a clearly recognisable increase in the share of recurring revenues is expected. For 2022, DTS GmbH plans a significant growth in seats, with a slightly increased growth rate in seats.

In general, the Management of DTS GmbH expects a positive future development in the long term, accompanied by a long-term consolidation of the annual results it achieves.

3. Legal and economic reasons for concluding the Agreement; effects of the Agreement

The objective of the Agreement is to establish a consolidated tax Group for corporate income tax and trade tax purposes between NFON and DTS with retroactive effect from the beginning of financial year 2022.

On the basis of this consolidated tax Group relationship, the profits and losses of DTS as the consolidated tax group company will be directly attributed to NFON as the consolidated tax Group parent for tax purposes. Depending on the tax result situation of the companies involved, this can lead to tax advantages. Without this Agreement, such complete offsetting of results for tax purposes would not be possible.

In addition, within the framework of the tax Group, the profits of DTS are transferred to NFON without any additional tax burden. Without such fiscal unity, the profits of DTS could at best be distributed to NFON by way of profit distribution; in this case, under current tax law, 5% of the profit distribution would be subject to corporate income tax and trade tax at NFON.

The conclusion of the Agreement does not entail any changes in the shareholdings in the contracting companies.

Apart from NFON's obligation to assume losses, there are no special consequences from the point of view of NFON's shareholders arising from the Agreement, in particular because compensation and settlement for outside shareholders are not owed.

The use of the shares in DTS as collateral for a loan, e.g. by means of a pledge, which NFON could undertake, is not ruled out by the Agreement, however, a financing partner could accept a lower value of the shares as collateral due to the profit transfer.

4. Alternatives to the conclusion of the contract

There is no economically reasonable alternative to the conclusion of the Agreement.

In accordance with Section 14 (1) sentence 1 of the German Corporation Tax Act (“KStG”) in conjunction with Section 17 (1) KStG, the conclusion of this Agreement is a mandatory prerequisite for corporate and trade tax grouping between DTS as the controlled company and NFON as the controlling company, so that the related tax benefits can only be realised by concluding the Agreement.

In particular, a form-changing conversion of DTS into a partnership would not lead to a comparable result for tax purposes, as the income of the subsidiary would be subject to taxation for trade tax purposes at the level of the partnership, whereas in the case of the fiscal unity it is taxable at the level of the controlling company and can be offset there against positive or negative income of the controlling company.

In contrast, the conclusion of a mere control agreement in accordance with Section 291 (1) sentence 1 of the German Stock Corporation Act (AktG) is not an equivalent alternative, since without the obligation of DTS to transfer profits, a fiscal unity with DTS for corporate or trade tax purposes cannot be established.

5. Explanation of the Agreement

This Agreement is a profit and loss transfer Agreement and thus an inter-company Agreement in accordance with Section 291 (1) sentence 1 of the German Stock Corporation Act (AktG). It requires the approval of the Annual General Meeting of NFON and the shareholders’ meeting of DTS and is to be entered in the commercial register of the registered office of DTS. The Agreement is to be submitted to NFON’s Annual General Meeting on 24 August 2022. The shareholders’ meeting of DTS approved the Agreement on 11 July 2022.

The following should be noted with regard to the individual provisions of the Agreement:

Regarding Section 1 Profit transfer

DTS is obliged to transfer its entire profit to NFON in accordance with the provisions of Section 301 of the German Stock Corporation Act (AktG). Accordingly, the profit to be

transferred – subject to the formation or release of reserves – shall be the net profit for the year arising without the profit transfer, reduced by any loss carried forward from the previous year, an amount to be allocated to the statutory reserve and by the amount blocked from distribution pursuant to Section 268 (8) of the German Commercial Code (“HGB”). Furthermore, Section 1 provides for a dynamic reference to Section 301 of the German Stock Corporation Act (“as amended”). In order for the fiscal unity between DTS and NFON to be effective, the transfer of profits is mandatory pursuant to Section 14 (1) sentence 1 in conjunction with Section 17 (1) of the Corporate Income Tax Act (KStG).

DTS is entitled, with the consent of NFON, to transfer amounts from the annual net profit to other revenue reserves in accordance with Section 272 (3) of the German Commercial Code (HGB) to the extent that this is permissible under commercial law and economically justified on the basis of reasonable commercial considerations. The formation of statutory reserves is permissible. Other revenue reserves formed during the term of the contract pursuant to Section 272 (3) HGB shall be reversed at the request of NFON and used to offset a net loss for the year or be transferred as profit. The transfer of pre-contractual capital and revenue reserves is not allowed. In this respect, these are customary provisions within the framework of a profit transfer Agreement.

NFON may require DTS to transfer profits in advance during the year if and to the extent that this is legally permissible. Insofar as the Agreement does not end before the end of the financial year of DTS, the claim for profit transfer arises at the end of its financial year. It is due with the value date at this point in time. The obligation to transfer profits shall apply retroactively from the beginning of the financial year of DTS in which the Agreement becomes effective upon entry in the commercial register of the registered office of DTS. This is expected to be 2022.

Regarding Section 2 Loss transfer

Pursuant to Section 2 of the Agreement, NFON is obliged to assume the losses of DTS in accordance with the provisions of Section 302 of the German Stock Corporation Act (AktG). According to this, NFON must offset any annual loss of DTS that would otherwise arise during the term of the Agreement – i.e. without taking the obligation to

offset losses into account – insofar as this is not offset by withdrawing amounts from the other revenue reserves that were allocated to them during the term of the Agreement. Furthermore, Section 2 provides for a dynamic reference to Section 302 of the German Stock Corporation Act (“as amended”). In order for the fiscal unity between DTS and NFON to be effective, it is imperative for tax purposes that NFON, as the controlling company, in turn undertakes to compensate for any loss incurred by DTS as the controlled company (Section 17 of the German Corporation Tax Act (“KStG”)). In this respect, these are standard provisions within the framework of a profit and loss transfer Agreement.

Insofar as the Agreement does not end before the end of DTS’s financial year, the claim for the transfer of losses arises at the end of its financial year. It is due with the value date at this point in time. The obligation to assume losses applies retroactively from the beginning of the financial year in which the Agreement becomes effective upon entry in the commercial register of the registered office of DTS. This is expected to be 2022.

Regarding Section 3 Effective date and duration

Section 3 of the Agreement states that the Agreement requires the approval of the Annual General Meeting of NFON and the approval of the shareholders’ meeting of DTS. The Agreement shall become effective upon entry in the commercial register at the registered office of DTS.

The Agreement is concluded for an indefinite period of time. It may be terminated by either party by giving three months’ notice to the end of a financial year of DTS, but for the first time to the end of the financial year of DTS ending at least five years after the beginning of the financial year of DTS in which the Agreement became effective. In order for the fiscal unity to be effective, the Agreement must be concluded for a period of at least five years in accordance with Section 14 (1) sentence 1 no. 3 in conjunction with Section 17 (1) of the German Corporation Tax Act (KStG) and must actually be implemented during its entire period of validity.

The right to extraordinary termination without notice for good cause shall remain unaffected. Good cause shall be deemed to exist in particular in the event of a merger,

demerger or liquidation of NFON or DTS; furthermore, in the event of a sale or contribution of the shareholding in DTS by NFON.

The termination must be in writing.

Regarding Section 4 Final provisions

According to Section 4 of the Agreement, Sections 14 and 17 of the German Corporate Income Tax Act (KStG), as amended, must be taken into account when interpreting individual provisions of the Agreement.

The contract contains a customary so-called severability clause and is intended to ensure the maintenance of the Agreement in the event that individual provisions should prove to be wholly or partially invalid, unenforceable or incomplete. Should any provision of the Agreement be or become invalid or unenforceable in whole or in part, or should the Agreement contain a loophole, this shall not affect the validity of the remaining provisions of the Agreement. In place of the invalid or unenforceable provision, the contracting parties shall agree on the valid or enforceable provision that comes closest to the economic result of the invalid or unenforceable provision. In the event of a loophole in the contract, that provision shall be agreed which would have been agreed in accordance with the meaning and purpose of the contract if the loophole had been known.

Insofar as the Agreement requires a declaration to be made in writing, this declaration must be signed in person by the declaring contracting party by means of a signature in his name and be sent to the contracting party in original form. This written form cannot be replaced by the electronic form.

The place of performance and jurisdiction for both contractual partners is Munich.

No compensation and no settlement, no review of the Agreement

All shares in DTS are held directly by NFON as the sole shareholder. There are no outside shareholders. Compensation payments or settlements for outside shareholders pursuant to Sections 304, 305 of the German Stock Corporation Act (AktG) are therefore not to be granted. Furthermore, there is no need for a contractual

audit pursuant to Section 293b (1) of the German Stock Corporation Act (AktG), nor is an audit report required pursuant to Section 293e of the German Stock Corporation Act (AktG). In the absence of compensation to be determined pursuant to Section 304 of the German Stock Corporation Act (AktG) and a settlement pursuant to Section 305 of the German Stock Corporation Act (AktG), there is also no need for a valuation of the contracting companies to determine appropriate compensation and a reasonable settlement. This would not be changed by a possible pledge of the shares.

A summary assessment of the Agreement shows, for the reasons set out above, that it is of benefit to both NFON and DTS.

Munich, 11 July 2022

NFON AG

The Management Board

(Dr. Klaus von Rottkay)

(Jan-Peter Koopmann)

Mainz, 11 July 2022

Deutsche Telefon Standard GmbH

The Management

(Thomas Muschalla)

(Dr. Klaus von Rottkay)