

**CASE M.8124 – MICROSOFT / LINKEDIN  
COMMITMENTS TO THE EUROPEAN COMMISSION**

- (1) Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Microsoft Corporation (“*Microsoft*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the proposed acquisition of LinkedIn Corporation (“*LinkedIn*”) by Microsoft (jointly referred to as the “*Parties*”) compatible with the internal market and the functioning of the EEA Agreement.
- (2) The Parties understand that the Commission is concerned that upon completion of the Transaction, Microsoft might foreclose LinkedIn’s competitors in a hypothetical relevant market for professional social networking services through pre-installation of a LinkedIn application in the Microsoft Windows PC Operating System and/or through inclusion of LinkedIn’s features in Microsoft Office.
- (3) This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation 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 Merger Regulation, 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**

- (4) For the purpose of these Commitments, the terms below shall have the following meaning:

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

**Combined Entity** means the surviving entity upon completion of the Transaction.

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

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

**Consideration** means the value provided by a party entering into contractual obligations and includes any monetary payment, discount or the provision of preferential licensing terms; technical, marketing, and sales support; enabling programs; products and product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos or any other preferential treatment.

**Effective Date** means the date of the adoption of the Decision.

**Enterprise Social Networking Services** means applications, websites, or services that facilitate increased internal communication and collaboration amongst an organization's or company's employees.

**European Economic Area** or **EEA** means the territory of the European Union Member States, as well as Iceland, Liechtenstein and Norway, for as long as these countries remain members of the EEA.

**LinkedIn Features for Office** means any new functionality included in Office after the Effective Date that involves LinkedIn profile and activity information being displayed in Office and attributed in the user interface to LinkedIn. This does not include any new functionality that displays results returned from Bing and/or Cortana or their successors.

**LinkedIn Windows PC Application** means a branded "LinkedIn" application for the Windows PC Operating System built by Microsoft after the Effective Date, which is specifically designed to access the LinkedIn Professional Social Networking Services. This does not include applications whose primary purpose is to provide learning and development services.

**LinkedIn Windows PC Tile** means any branded "LinkedIn" Start tile or Taskbar button that links to the LinkedIn Professional Social Networking Services built by Microsoft after the Effective Date and which is accessible via the Windows PC Operating System "Start" menu or taskbar. This does not include tiles or buttons that link to a service whose primary purpose is to provide learning and development services.

**Microsoft Graph** means the unified gateway that enables developers to build applications and services that can, subject to user and tenant consent, access data (such as contact information, calendar information, email, and files from Azure Active Directory, Exchange

Online as part of Office 365, and SharePoint), intelligence, and insights, and to navigate between entities and relationships in the Microsoft cloud (as described at <https://graph.microsoft.io/en-us/>), including updates and successors thereto.

**Microsoft Office** or **Office** means Microsoft's Outlook 2013, Word 2013, PowerPoint 2013, and Excel 2013 desktop clients for Windows PC Operating Systems licensed as part of an Office Suite or via an Office 365 subscription, including any updates or successors thereto made available or released during the term of the Commitments.

**Microsoft PC Distribution Partner** or **MDP** means a third-party original equipment manufacturer of PCs who licenses Windows PC Operating System directly from Microsoft, as well as any distribution partner who vis-à-vis the third-party OEM has a right to determine which applications are installed on these PCs that run the Windows PC Operating System.

**Monitoring Trustee** means one or more natural or legal persons who are approved by the Commission and appointed by Microsoft, and who have the duty to carry out the functions specified in these Commitments for a Monitoring Trustee.

**Office Store** means the store for Microsoft Office (<https://store.office.com>) or successor, through which Office customers can acquire Office Add-ins that comply with requirements in the Office Store Application Provider Agreement (available at [https://sellerdashboard.microsoft.com/Assets/Content/Agreements/en-US/Office\\_Store\\_Seller\\_Agreement\\_20120927.htm](https://sellerdashboard.microsoft.com/Assets/Content/Agreements/en-US/Office_Store_Seller_Agreement_20120927.htm)) or successor.

**Office Add-ins** means add-ins that are built and implemented by third parties for Microsoft Office and its successors, as described at: <https://dev.office.com/docs/add-ins/overview/office-add-ins> and <https://dev.office.com/add-in-availability>.

**Office Add-in Program** means the program that third parties can use to design and implement Office Add-ins (tools available at <https://dev.office.com/getting-started/addins>), and any update or successor thereto.

**Office Add-in APIs** means the application programming interfaces, including any associated call-back interfaces, that third parties can use to build Office Add-ins (including those available through the Microsoft's Office Dev Center at <https://dev.office.com/docs/add-ins/overview/office-add-ins>) and any update or successor thereto.

**Personal Computer** or **PC** means a desktop computer, designed for use in a fixed location, or a portable laptop computer that comes with a fixed keyboard that cannot be removed. For

the avoidance of doubt, this does not include smartphones or portable tablet computers that use touch as a primary input.

**Professional Social Networking Services** means applications, websites, or services that are primarily targeted to professionals wherein users create public or semi-public profiles based on their real identity, connect with professional contacts, and interact with these contacts on the basis of professional content. This does not include Enterprise Social Networking Services. This definition is without prejudice to the delineation of the relevant product market in which LinkedIn is active.

**Third-Party Professional Social Networking Services Providers** means entities that are not controlled by or related to Microsoft or LinkedIn and which design, operate, and offer Professional Social Networking Services.

**Transaction** means the proposed acquisition of LinkedIn by Microsoft.

**Updates and Upgrades to the Windows PC Operating System** means those updates or upgrades to the Windows PC Operating System, whether procured through Windows Update mechanisms or otherwise installed on a User's PC, that provide system updates to the Windows PC Operating System, including upgrades to a new version of the Windows PC Operating System.

**User** means any user of a given Microsoft product, including organizations and end users (whether consumers or employees within organizations), irrespective of the distribution channel (acquisition from MDP or download from the Internet).

**Windows Store Application Promotional Mechanisms** means the mechanisms that Microsoft uses for first-party and third-party Windows PC Operating System applications to (i) promote an application available in the Windows Store; (ii) inform the User that an application is available in the Windows Store; or (iii) assist the User in downloading an application from the Windows Store.

**Windows PC Operating System** means Microsoft's Windows 10 Operating System for Personal Computers, including any update or successor thereto released during the term of the Commitments. For the avoidance of doubt, Windows PC Operating System does not include Windows 10 Mobile or Windows 10 IoT, including any updates or successors thereto.

**SECTION B. COMMITMENTS**

**B.1. Add-Ins for Third-Party Professional Social Networking Service Providers**

- (5) Microsoft shall make available the Office Add-in Program and the associated Office Add-in APIs to Third-Party Professional Social Networking Service Providers. Microsoft shall apply the standard terms and policies applicable to the Office Add-in Program and the Office Add-in APIs (including access to all software development kits, code samples, developer tools, and support resources), without discrimination against Third-Party Professional Social Networking Service Providers.
- (6) Microsoft shall make available the Microsoft Graph to Third-Party Professional Social Networking Service Providers. Microsoft shall apply the standard Microsoft Graph terms and policies applicable to the Microsoft Graph without discrimination against Third-Party Professional Social Networking Service Providers.
- (7) Microsoft shall make available the Office Store for distribution and downloading of Office Add-ins for Professional Social Networking Services. Microsoft shall apply the standard terms and policies applicable to Office Store developers without discrimination against Third-Party Professional Social Networking Service Providers.
- (8) With respect to Professional Social Networking Services, Office Add-Ins shall be able to run independently of any LinkedIn Features for Office and be accessible to Users in Office.
- (9) Users in the EEA will have the ability to disable and re-enable the LinkedIn Features for Office using mechanisms as accessible and prominent as those typically used to disable and re-enable other connected services to Office.

**B.2. LinkedIn Windows PC Application**

- (10) If Microsoft builds a LinkedIn Windows PC Application and includes it in the Windows PC Operating System, Microsoft shall allow Windows PC MDPs not to install the LinkedIn Windows PC Application on their PCs that are distributed in the EEA. Users in the EEA will also have the ability to remove the LinkedIn Windows PC Application from the Windows PC Operating System.
- (11) Microsoft shall not through the Windows PC Operating System prompt or offer Users in the EEA the LinkedIn Windows PC Application. Microsoft shall also not include the LinkedIn Windows PC Application, or any prompts or offers to Users to install the LinkedIn Windows PC Application, as part of any Updates or Upgrades to the Windows PC Operating System in

the EEA that it may release, unless the LinkedIn Windows PC Application is already installed on the PC being updated or upgraded in which case Microsoft may update the LinkedIn Windows PC Application as part of its Updates or Upgrades to the Windows PC Operating System. Nothing in these Commitments prevents Microsoft from (i) using Windows Store Application Promotional Mechanisms, which are also used to promote third-party applications available in the Windows Store, to inform the User that a standalone LinkedIn Windows PC Application is available in the Windows Store and to assist the User in downloading that standalone LinkedIn application from the Windows Store (the act of downloading the LinkedIn Windows PC Application through these mechanisms shall not set it as the default Professional Social Networking application, nor otherwise negatively interfere with any Third-Party Professional Social Networking application); or (ii) offering or promoting the LinkedIn Windows PC Application on first-party and third-party websites, in email solicitations, on the homepage or new tab page displayed in a web browser, in video or audio clips accessed from the internet, and in other standard promotional means which could be viewed through a Windows PC Operating System and which are typically used for Microsoft and third-party Windows PC Operating System applications.

### **B.3. LinkedIn Windows PC Tile**

- (12) If Microsoft builds a LinkedIn Windows PC Tile and includes it in the Windows PC Operating System, Microsoft shall allow Windows PC MDPs not to install the LinkedIn Windows PC Tile on their PCs that are distributed in the EEA. Users in the EEA will also have the ability to remove the LinkedIn Windows PC Tile from the Windows PC Operating System.
- (13) Microsoft shall not through the Windows PC Operating System prompt or offer Users in the EEA the LinkedIn Windows PC Tile. Microsoft shall also not include the LinkedIn Windows PC Tile, or any prompts or offers to Users to install the LinkedIn Windows PC Tile, as part of any Updates or Upgrades to the Windows PC Operating System in the EEA that it may release, unless the LinkedIn Windows PC Tile is already installed on the PC being updated or upgraded in which case Microsoft may update or maintain the LinkedIn Windows PC Tile as part of its Updates or Upgrades to the Windows PC Operating System.

### **B.4. Ancillary obligations**

- (14) Microsoft shall not in any way retaliate against any MDP for developing, using, distributing, promoting, installing or supporting a Windows PC application and/or a Windows PC tile for

Third-Party Professional Social Networking Services Providers, in particular by altering Microsoft's commercial relations with that MDP or withholding Consideration.

- (15) Microsoft shall not enter into any agreement with a MDP that links or conditions the grant of any Consideration on the MDP's refraining from developing, using, distributing, promoting, installing or supporting a Windows PC application and/or a Windows PC tile for Third-Party Professional Social Networking Services Providers. Without prejudice to the above, nothing in these Commitments shall prohibit Microsoft from providing Consideration to a MDP as part of a non-exclusive agreement with any MDP to promote LinkedIn, including through the pre-installation of a LinkedIn Windows PC Application and/or a LinkedIn Windows PC Tile. This is without prejudice to the application of EU Competition law.

#### **B.5. General considerations**

- (16) The undertakings submitted by Microsoft under Sections B.1 to B.4 above apply for a duration of five (5) years starting from the Effective Date.

### **SECTION C. MONITORING TRUSTEE**

#### **C.1. Appointment procedure**

- (17) No later than January 31, 2017, Microsoft shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.
- (18) The Monitoring Trustee shall:
- a. at the time of appointment, be independent of Microsoft and its Affiliated Undertakings;
  - b. possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience; and
  - c. neither have nor become exposed to a Conflict of Interest.
- (19) The team of the Monitoring Trustee involved in the implementation of the Commitments shall not have had any direct or indirect work, consulting or other relationship with any of the Parties in the last three (3) years and shall not have a similar relationship with the Parties for three (3) years after completing its mandate.
- (20) The Monitoring Trustee shall be remunerated by Microsoft in a way that does not impede the independent and effective fulfilment of its mandate.

- (21) *Proposal by Microsoft.* No later than three weeks after the Effective Date, Microsoft shall submit the name or names of one or more natural or legal persons whom Microsoft proposes to appoint as the Monitoring Trustee to the Commission for approval. 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 (18) and shall include:
- a. 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
  - b. the outline of a work plan which describes how the Monitoring Trustee would carry out its assigned tasks.
- (22) *Approval or rejection by the Commission.* The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) 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, Microsoft shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Microsoft 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.
- (23) *New proposal by Microsoft.* If all the proposed Monitoring Trustees are rejected, Microsoft 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 (18) and (21) of these Commitments.
- (24) *Monitoring Trustee nominated by the Commission.* If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom Microsoft shall appoint, or cause to be appointed, in accordance with a Monitoring Trustee mandate approved by the Commission.



### **C.2. Functions of the Monitoring Trustee**

- (25) The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Microsoft, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
- (26) The Monitoring Trustee shall:
- a. monitor the performance of the Commitments by Microsoft;
  - b. broker a resolution of any dispute that would arise between Microsoft and Third-Party Social Networking Services Providers regarding compliance with the conditions and obligations set out in Section B if Microsoft and Third-Party Social Networking Service Providers are unable to resolve the dispute within a period of 30 days from the date Microsoft is contacted in writing regarding the dispute;
  - c. advise and, if need be, make written recommendations to the Commission as to Microsoft's compliance with the conditions and obligations attached to the Decision when any dispute between a Third-Party Professional Social Networking Services Provider and Microsoft regarding such compliance would be brought before the Arbitral Tribunal referred to in Annex 1 below;
  - d. provide to the Commission, sending Microsoft a non-confidential copy at the same time, a report on each anniversary of the Effective Date during the term of the Commitments as indicated in paragraph (16), regarding the status and outcome of any dispute between a Third-Party Professional Social Networking Services Provider and Microsoft in which the Monitoring Trustee has participated; and
  - e. promptly report in writing to the Commission, sending Microsoft a non-confidential copy at the same time, if it concludes on reasonable grounds that Microsoft is failing to comply with the Commitments.

### **C.3. Duties and obligations of the Parties**

- (27) Microsoft 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 Microsoft's books, records, documents, management or other personnel, facilities, sites

and technical information reasonably necessary for fulfilling its duties under the Commitments and Microsoft shall provide the Monitoring Trustee upon request with copies of any document not subject to legal professional privilege as defined in the case law of the European Union Courts except where such disclosure would give rise to a loss of legal professional privilege.

- (28) Microsoft 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 Microsoft 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.
- (29) At the expense of Microsoft, the Monitoring Trustee may appoint advisors (in particular for legal advice), subject to Microsoft’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 the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should Microsoft refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard Microsoft. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph (29) of these Commitments shall apply *mutatis mutandis*.
- (30) Microsoft agrees that the Commission may share Confidential Information proprietary to Microsoft with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
- (31) The Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

#### **C.4. Replacement, discharge and reappointment of the Monitoring Trustee**

- (32) 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 and Microsoft, require Microsoft to replace the Monitoring Trustee; or

- b. Microsoft may, with the prior approval of the Commission, replace the Monitoring Trustee.
- (33) If the Monitoring Trustee is removed according to paragraph (32) of these Commitments, 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 (18)-(21) of these Commitments.
- (34) Unless removed according to paragraph (32) of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented.

#### **SECTION D. DISPUTE RESOLUTION**

- (35) In the event a Third-Party Professional Social Networking Services Provider informs the Combined Entity and the Monitoring Trustee in writing that the Combined Entity has failed to comply with its obligations arising from these Commitments the Fast-Track Dispute Resolution Procedure described in Annex 1 shall apply.

#### **SECTION E. GENERAL PROVISIONS**

- (36) These Commitments shall take effect upon the date of adoption of the Decision.
- (37) If the Transaction is abandoned, unwound or otherwise terminated, these Commitments shall automatically cease to apply.
- (38) These Commitments shall be effective throughout the EEA and shall remain in effect for the duration specified in paragraph (16).
- (39) For a period of five years from the Effective Date the Commission may request all information from the Parties that is necessary to monitor the effective implementation of these Commitments.

#### **SECTION F. REVIEW**

- (40) The Commission may, where appropriate, in response to a reasoned request from the Combined Entity 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 the Combined Entity. 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.

Signature: \_\_\_\_\_

Lars Kjølbye

Partner

Latham & Watkins LLP

Duly authorized and acting for and on behalf of  
Microsoft

Brussels, 29 November 2016

### **Annex 1: Fast-Track Dispute Resolution Procedure**

- (1) A Third-Party Professional Social Networking Services Provider that wishes to avail itself of the fast track dispute resolution procedure (the “DR Requester”) shall inform Microsoft and the Monitoring Trustee in writing, setting out in detail the reasons leading the DR Requester to believe that Microsoft is failing to comply with the requirements of the Commitments. The DR Requester and Microsoft will use 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 working days (such period being extendable by mutual consent of Microsoft and the DR Requester) after receipt of the Request.
- (2) Following the explicit written request by the DR Requester, the Monitoring Trustee shall present its own proposal (the “Trustee Proposal”) for resolving the dispute within eight working days, specifying in writing the action, if any, to be taken by Microsoft in order to ensure compliance with the Commitments *vis-à-vis* the DR Requester and be prepared, if requested, to facilitate the settlement of the dispute.
- (3) Should the DR Requester and Microsoft (together, the “Parties to the Arbitration”) fail to resolve their differences of opinion in the consultation phase, the DR Requester may 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 Microsoft.
- (4) 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 Microsoft (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.
- (5) Microsoft shall, within ten 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 Microsoft proposes to undertake *vis-à-vis* the DR Requester (including, if appropriate, a draft contract comprising

all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

*Appointment of the Arbitrators*

- (6) The Arbitral Tribunal shall consist of three persons. The DR Requester shall nominate its arbitrator in the Notice; Microsoft shall nominate its arbitrator in the Answer. The arbitrator nominated by the DR Requester and by Microsoft shall, within five working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators.
- (7) Should Microsoft fail to nominate an arbitrator, or if the two 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.
- (8) The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the "Arbitral Tribunal".

*Arbitration Procedure*

- (9) The Dispute shall be finally resolved by arbitration under the ICC Rules of Arbitration, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "Rules"). The arbitration shall be conducted in London, U.K., in the English language. For good cause, any Party may apply to the Arbitral Institution (or Arbitral Tribunal as may be appropriate) for an extension of the timelines provided in this Annex.
- (10) 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.
- (11) The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organizational 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 Arbitral Tribunal at the organizational 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.

- (12) 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.
- (13) The Arbitral Tribunal shall not disclose confidential information and apply the standards attributable to confidential information under the Merger Regulation. 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.
- (14) The burden of proof in any dispute under these Rules shall be borne as follows: (i) the DR Requester must produce evidence of a prima facie case; and (ii) if the DR Requester produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the DR Requester unless Microsoft can produce evidence to the contrary.

*Involvement of the Commission*

- (15) The Commission shall be allowed and enabled to participate in all stages of the procedure by
  - a. Receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
  - b. 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 time-table);
  - c. Giving the Commission the opportunity to file *amicus curiae* briefs; and
  - d. Being present at the hearing(s) and with the permission of the Arbitral Tribunal, it may also make oral observations.
- (16) The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.
- (17) 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.



*Decisions of the Arbitral Tribunal*

- (18) 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 Merger Regulation, EU 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.
- (19) Upon request of the DR Requester, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one 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.
- (20) The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by Microsoft in order to comply with the Commitments *vis-à-vis* the DR Requester (*e.g.*, specify a contract including all relevant terms and conditions). 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.
- (21) The final award shall, as a rule, be rendered within six 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.
- (22) 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.
- (23) 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 Merger Regulation.