COMPETITION LAW COMPLIANCE MANUAL

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1.1 Scope

This manual (**Manual**) has been prepared to help you understand how competition laws apply to LORCA TELECOM BIDCO, S.A. and its affiliates (**Company or MASMOVIL**) business activities, so there can be identified and avoid arrangements or behavior that are or may be prohibited.

Competition laws in essence aim to ensure a fair and level playing field for businesses. They achieve this by (broadly speaking) prohibiting:

- Anti-competitive agreements between two or more companies (*e.g.*, price-fixing), and
- "Abusive" practices by a dominant firm (*e.g.*, below-cost selling).

A violation of competition laws, even in connection with a minor transaction or business activity, can lead to severe sanctions for the Company and, in some cases, individual Company employees. Sanctions include fines, damages, the nullity of agreements, and even jail sentences.

1.2 Ensuring Awareness and Compliance

1.2.1 Role of the Legal Department

In any situation that may involve competition law issues, the Legal Department should be contacted.

In particular, the Legal Department should be consulted:

- Before entering into any agreement (including any kind of partnership) with actual or potential competitors.
- Before providing or receive from a competitor any competitively sensitive information.
- Before entering into negotiations on a merger, acquisition or establishment of any kind of entity with a competitor.
- About standard forms of contracts with suppliers, customers or distributors and before entering into significant contracts with such parties (e.g., long-term or exclusive contracts).
- Whenever a supplier, customer or distributor is complaining about unfair treatment or where there may be a reason for such party to make such a claim.

1.2.2 Training

All employees of the Company are expected to be aware of and comply with applicable competition laws. Periodic information and training sessions for targeted audiences will be organized where appropriate.

2 Overview of the Main Competition Law Rules

Ordinary business practices may (inadvertently) raise issues under the competition laws. This section summarizes some of the most important rules in dealings with competitors, customers, suppliers, and distributors.

2.1 Restrictive Agreements

The competition laws prohibit agreements and concerted practices that may restrict competition. An "agreement" for these purposes can be written, oral or even result from a tacit understanding.

Any situation from which an anti-competitive agreement or understanding may be inferred must be avoided. This applies to:

- Legal contracts;
- Informal agreements, arrangements and understandings, even if not legally binding;
- Unwritten arrangements, such as a discussion at a meeting or a chat during a coffee break;
- Trade association decisions; and
- "Concerted practices" − *i.e.*, competitors coordinating their behaviour, for example by informing each other in advance of planned price or tariffs increases.

Restrictive agreements may give rise to heavy fines if they are successfully challenged by the competition authorities or a competitor, customer or supplier in a Court.

2.1.1 Dealings with Actual or Potential Competitors

Communications with competitors may be perfectly legitimate but may in certain cases present competition risks.

Anti-competitive agreements/concerted practices among competitors (so-called "horizontal agreements") are among the most significant violations of competition law. Examples of anti-competitive agreements include agreements to fix prices; to allocate markets, territories or customers; to limit production or supply of products or services; or to engage in bid rigging. The intent of the competition rules is to ensure that these matters are determined by competitive forces rather than by agreement or collusion.

(a) Price fixing

It is illegal for competitors to agree, whether directly or indirectly (*e.g.*, through distributors), the price level at which their products will be sold to third parties.

Price fixing covers any agreements that would have the effect of influencing the prices/tariffs at which products/services are sold or commercialized, including agreements to end price wars, agreements designed to stabilize prices/tariffs, and arrangements to share competitively sensitive information that facilitate price "understandings" or reduce price/tariffs competition. For example, an arrangement among competitors that they will not discount from their published price lists or that they will give a specified period of notice prior to putting price/tariffs increases or reductions into effect may well be illegal.

More generally, the prohibition against price fixing covers agreements or arrangements concerning any aspect of "price", including the terms and conditions of sale, such as terms of payment, tariffs, discounts, rebates or allowances.

(b) Allocation of markets, territories or customers

An agreement or understanding with a competitor to share or to divide up markets, territories or customers is illegal. For example, it is not permissible to reach an understanding with a competitor that the Company will not sell to the competitor's customers if it does not sell to the Company's.

(c) Exchange of competitively-sensitive information

Generally, the exchange between competitors of competitively sensitive information raises serious competition law issues and should be avoided. There is a danger that such contact may lead to anti-competitive co-ordination between competitors, *e.g.*, competitors aligning their commercial strategies, which in turn may result in a reduction in competition.

Although "competitively sensitive information" is difficult to define precisely, three general rules of thumb may be identified.

- First, information is likely to be competitively sensitive if the Company would not want its competitors to know that information.
- Second, information is likely to be competitively sensitive if competitors might change a commercial decision or strategy on the basis of the exchanged information.

- Third, information should be considered competitively sensitive if a current or potential customer or supplier may object to the exchange of that information.

In general, information relating to the following factors is considered competitively sensitive: prices, tariffs, costs, profit margins, terms of sale, sales territories, sales development (turnover information), commercial strategy, customers, status of negotiations, inventory levels, technological development, R&D effort, *etc*.

It is not permissible to gather competitively sensitive information directly from competing companies. However, competitive information can be obtained from third parties, in particular market research organizations. While competitive information, in particular pricing information, is sometimes voluntarily provided by customers (*e.g.*, in the context of a price negotiation), customers should not be used to actively seek sensitive commercial information about competitors.

Competitive information is likely to be deemed highly sensitive where it is recent, current or future. The exchange of historical information is generally permitted (there is no predetermined threshold when data becomes "historic," but, as a rule of thumb, data that is more than one year old is generally likely to be considered historic), provided it does not enable an inference of current or future conduct. The exchange of current information can exceptionally be permitted if the information is public and/or if it is provided in an aggregated manner (*i.e.*, whereby one cannot identify to which entity it relates).

Finally, disclosure of competitively sensitive information can violate competition law even if it does not accompany an illegal agreement or if it is unilateral. It is sufficient for one competitor to transmit information and for another to accept it – even in the course of a single meeting.

(d) "Bid-rigging" − manipulating competitive tenders

Bid-rigging is an arrangement with any other person not to bid, to withdraw a bid or to bid in a particular manner in response to a competitive tender or call for bids. Bid-rigging arrangements are prohibited even where the volume of sales is small.

(e) Boycotts

An arrangement with any other company to refuse to sell to or buy from a particular customer or supplier may be illegal (though such provisions in vertical agreements such as distribution agreements are often permitted, subject to conditions).

(f) Industry/trade associations

While trade associations can perform many important and valuable functions for the industry, they also provide potential opportunities for competitors to collude with one another.

Accordingly, membership in a trade association must be approved by the Legal Department.

When attending a trade association meeting, we must make sure that:

- A copy of the agenda for the meeting has been prepared in advance;
- Minutes of the meeting are taken, and such minutes (unedited) are submitted to the Legal Department for their knowledge and/or approval;
- The members at the meeting strictly adhere to the prepared agenda, which should be limited to industry-wide concerns; and
- If matters not included in the prepared agende are discussed (*e.g.*, discussions on pricing, tariffs terms and conditions of sale, customers, costs, future production or supply, marketing plans, *etc.*), we must insist that such discussions cease and, if they do not, we must leave the meeting, clearly stating the reasons for leaving (silence may be interpreted as consent). Request that our leaving (and the reasons for doing so) be recorded in the minutes of the meeting and, in any case, record them by way of internal notes or correspondence with the meeting organizer.

Any trade associations to which the Company belongs to must have formal procedures regarding the preparation and circulation of written agendas and minutes of meetings. The activities of such associations and any minutes and agendas should be periodically reviewed by counsel retained by the association to make sure that the association does not become involved in any improper activity.

Finally:

- Trade associations must not impose or agree binding rules as to the terms and conditions on which its members trade with third parties;
- In deciding which members to admit, trade associations must be transparent, objective and non-discriminatory; and
- If a trade association infringes the competition rules, all its members may be liable.

2.1.2 Summary of principles in dealings with actual or potential competitors

The list below provides a general guide to the Company's dealing with actual or potential competitors. No agreement (including joint ventures or alliances) should be entered into with a competitor without prior approval from the Legal Department.

- DO NOT enter into any agreement or understanding (whether written or oral, express or implied, formal or informal) with any competitor regarding prices or any element of price (such as tariffs, surcharges, commissions, rebates or discounts, profit margins, *etc.*); costs; terms or conditions of sale; quantity or quality of production or supply; markets; customers; territories; and channels or methods of distribution or supply.
- DO NOT discuss past, present or future requests for bids or tenders with any person outside the Company. This includes agreements regarding the amount of any bid, the intention to bid or not bid or to withdraw a bid, bidding schedules or the basis on which a bid is calculated.
- Under no circumstances may a competitor be warned to "retaliate" unless the competitor increases its prices or otherwise reduces the level of competition.

- DO NOT discuss the Company's response to competitive pressures with competitors.
- DO NOT discuss or exchange with, or accept from, any competitor any competitively-sensitive information unless it has been previously approved by the Legal Department.
- DO NOT actively seek information from customers on competitors' prices or other competitive conditions.
- DO NOT, at any (formal or informal) meeting where competitors are present (including a trade association meeting or social gathering), extend your activities or discussions beyond the legitimate purpose for which you are present and, specifically, to any competition matter. If improper matters are discussed, leave the meeting after noting your objection and inform the Legal Department of the incident.

2.1.3 Dealings with Suppliers, Customers and Distributors

Many agreements with companies operating at a different level of the production or distribution chain, such as agreements with suppliers, customers or distributors (so-called "vertical agreements") may contain provisions that would generally be prohibited in an agreement with competitors. In certain cases, however, even vertical agreements may raise competition law concerns. Because the rules on vertical agreements are complex, you must consult with the Legal Department before entering into vertical agreements that deviate from the Company's standard forms or are otherwise unusual (for instance because they are long-term or exclusive).

(a) Fixing resale prices - resale price maintenance

When working with distributors or other resellers, competition laws generally prohibit companies to set price floors, *i.e.*, minimum prices, for the resale of their products or services to end-customers. Maximum or recommended prices are allowed to the extent that they are not coupled with incentives to use them as price floors.

(b) Territorial allocation

In general, allocating a specific territory to distributors or other resellers and restricting their freedom to seek customers in other territories is allowed. In the EU, however, distributors/resellers must be entitled to respond to requests for services emanating from buyers located outside their assigned territory (so-called "passive sales").

(c) Exclusivity

Exclusive dealing arrangements include contracts in which a customer/distributor agrees to fulfill all its requirements for a particular product or service only from the Company. Such arrangements are not automatically illegal (*e.g.*, when they are entered into for a reasonable duration and have the effect of assuring product availability), but the Legal Department should be consulted before entering into any such contracts.

Similarly, exclusive dealing arrangements obligating a supplier to sell products or services exclusively to the Company rather than the Company's competitors may be illegal in certain situations. You should consult the Legal Department if you are considering entering into such an agreement.

(d) Non-compete obligations

Agreements whereby a supplier, customer or distributor agrees not to produce, purchase, sell or resell goods or services that compete with Company's products or services may raise competition law issues if they are entered into for a long duration (*e.g.*, more than five years).

(e) Most favored nation provisions

Most favored nation (MFN) provisions usually obligate a supplier to sell products or services to a company at the seller's lowest price or most favorable terms. Such provisions can raise significant legal and compliance concerns. Consult with the Legal Department before entering into an agreement containing a clause that may constitute an MFN obligation.

2.1.4 Summary of principles in dealings with suppliers, customers and distributors

The list below provides a general guide to dealings with the Company's suppliers, customers and distributors. Advice from the Legal Department should be reqested when planning to enter into such agreements that deviate from the Company's standard forms or are particularly significant:

- DO NOT impose a fixed or minimum resale price.
- DO NOT require a distributor/reseller to adhere to recommended resale prices or provide financial incentives to the same effect.
- DO NOT prohibit passive sales by exclusive distributors/resellers out of their assigned territory.
- DO NOT impose or agree any exclusivity of a long duration.
- DO NOT impose non-compete obligations that are long-term or extend beyond the scope of the relevant agreement.

2.2 Abuse of Dominance/Market Power

Competition laws prohibit abuses of "dominant positions" in antitrust markets or "monopolization" of such markets. This prohibition applies to unilateral conduct − *i.e.*, even where there is no agreement or understanding with another business − by a business that has a "dominant position" or "market power" on the market concerned.

2.2.1 What is "dominance" or "market power"?

A dominant position is a position of economic strength and market power that enables the company to behave independently from its competitors, customers, and ultimately consumers, to an appreciable extent. In general, a dominant position derives from a combination of several factors, but market shares are a useful first indication. In the EU, there may be a risk of being found dominant if a company has a share of a relevant market around 40% or higher.

2.2.2 Examples of abuse

Where a company holds a dominant position on a relevant market, the competition rules must be carefully considered in almost every business relationship, since a dominant company has special responsibilities and must not abuse its position. The following are examples of abuse when a firm has a dominant position:

- **Pricing below cost.** Competition laws generally require that, in markets where they have a strong market position, companies price their products and services above an appropriate measure of cost (usually marginal cost or an analogous measure). The concern is that below-cost pricing could drive smaller rivals out of a market. Certain limited defenses may apply, *e.g.*, for new product promotions or to secure follow-on service revenues.

- **Unfair pricing.** Pricing may also be subject to upper limitations. A dominant firm's pricing may be considered unfairly high, depending on the degree of market power the firm holds and other market conditions.

- **Price discrimination and loyalty discounts.** Price discrimination occurs when different prices are charged to comparable customers for similar products or services (including by means of rebates, discounts or promotional allowances). A particular form of price discrimination that can raise problems are so-called "loyalty discounts," where a discount is conditional upon a customer achieving a certain share or quantity of sales over a period that exceeds the normal purchases frequencies in the industry.

- **Tying/Bundling.** Tying provisions obligating a buyer simultaneously to purchase two separate goods and/or services from the Company or discounts on a "bundle" of multiple products or services could restrict a competitor's ability to compete effectively. Risks are reduced, however, if the two products (or services) remain separately available under competitive conditions so long as the price of each product remains above cost.

- **Refusal to deal.** Unilateral refusals to deal may raise competition concerns in certain cases, *e.g.*, refusal to grant a potential customer access to inputs or intellectual property rights that are essential to the customer's ability to compete. However, refusals to deal may be justified by legitimate business reasons (*e.g.*, creditworthiness of the customer, lack of capacity, *etc.*).

2.2.3 Summary of principles for dominant companies

The list below provides a general guide as to how the Company, if it were considered to have a dominant position on a particular market, should behave. However, you should always seek advice from the Legal Department when planning to enter into a particular transaction in a market where the Company is a major player:

- DO NOT price below-cost.
- DO NOT impose or agree any exclusivity of a long duration.
- DO NOT illegitimately discriminate between customers (*e.g.*, by applying different prices without considering the economic or cost considerations for variations).
- DO NOT engage in tying and bundling practices.
- DO NOT, without good reason, refuse to deal with an existing or would-be customer. The legitimate reasons (*e.g.*, lack of capacity, concerns about security, quality, creditworthiness, *etc.*) should be objective and documented.

3 Investigations/Dawn Raids

Competition authorities may send members of their staff (sometimes unannounced) to inspect the Company offices. An on-site inspection is, of course, a very serious matter, but should not be cause for undue alarm. An inspection does not mean that the Company has violated any law. It is nevertheless imperative to handle an on-site inspection appropriately.

3.1 Searches of Premises

Investigating officials have broad powers to examine and copy books and business records relevant to the investigation, including confidential documents, electronic files and emails.

3.2 Requests for Information

The purpose of an on-site inspection is primarily to gather documentary evidence and not to interview employees, although officials have the power to ask certain questions. If competition authorities request an interview with you or ask you for information or copies of documents, the request should immediately be brought to the attention of the Legal Department.

3.3 Duty of Cooperation

The Company will be under a duty to cooperate actively with any investigation conducted by the Competition authorities of its premises. The Company should refrain from any action that is likely to constitute an obstruction of the investigation, as this could result in the imposition of heavy fines and/or in certain circumstances criminal sanctions against the company or its officers.

If competition officials arrive to conduct a search of the Company premises:

- Check the officials' identity and authorization documents before allowing them to enter the premises.
- Contact the Legal Department immediately and provide them with copies of the officials' documents.
- DO NOT refuse entry to the officials or otherwise obstruct the officials without first taking legal advice. The officials are entitled to review the relevant files and computer databases, which should be made available to them. This includes unlocking cabinets, opening briefcases and demonstrating use of the computer system to allow the officers to review the documents and computer files.
- DO NOT hide, destroy or delete any documents or records, including emails.
- DO NOT tamper with or break any seals that have been placed by an official on any item.
- DO NOT replace files until after any de-briefing meetings.
- DO NOT mislead officials and/or senior executives or lawyers that are assisting.
- DO NOT volunteer information or views about the investigation.

- DO NOT attempt to answer questions if unsure of their meaning or their relevance. When in doubt, seek clarification from the inspectors and the Legal Department.

4 Reporting and Penalties

4.1 Reporting

All employees have an obligation to report any suspected competition violations immediately. Timely identification of any issue is critical, among other reasons, because several jurisdictions, including the EU, have leniency programs that allow companies to avoid liability if they are the first to report participation in activity that is unlawful under the competition laws.

A report may be made to your immediate supervisor, any other higher level of management, the Legal Department or through canaletico@masmovil.com.

Regardless of how you choose to report any suspicious activity, the Company will take your report in confidence and do everything it can to maintain that confidence and ensure protection against retaliatory measures.

4.2 Penalties

4.2.1 Fines

The financial penalties for undertakings that breach competition rules can be very severe. In the EU, fines of up to 10 per cent of global group turnover can be imposed.

For cartels, the largest fine to date imposed by the European Commission on all the members of a single cartel thus far exceeds €3.8 billion, whereas the top fine imposed on a single cartel member is more than €1 billion.

In abuse of dominance cases, the European Commission has imposed a top fine of over €4.3 billion.[1]

4.2.2 Other Consequences

Infringements of the competition rules may also lead to other consequences:

- **Contractual risk.** Contractual provisions that infringe competition rules are generally void and unenforceable.
- **Civil liability.** Third parties affected by the anti-competitive agreement can seek damages.
- **Criminal liability.** Under certain circumstances, companies and their executives and employees involved in illegal practices (breach of competition laws) can be criminally sanctioned.
- **Reputation risk.** Infringement of competition laws is more and more perceived by the stakeholders as unethical behaviour, which can seriously impact the image and reputation of the Company for observing the highest standards of corporate governance.

[1] This fine is currently under appeal before the courts of the European Union.

In light of the foregoing, it is of the utmost importance that you fully understand that any breach of applicable competition laws and/or this Manual might be to the extreme detriment for the Company.

4.2.3 Disciplinary Action

Compliance with this Manual is mandatory. Disciplinary action (including termination of employment) will be taken against employees that direct, participate or acquiesce in conduct infringing competition laws, regardless of the penalty prescribed by law. Also, individuals that fail to cooperate with an investigation, including by withholding information, may be subject to disciplinary action.