

CENTRAL ARBITRATION COMMITTEE
TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES
REGULATIONS 1999 AS AMENDED
DECISION ON COMPLAINT UNDER REGULATION 21

The Parties:

Verizon European Works Council

and

The Central Management of the Verizon Group

Introduction

1. On 12 February 2020, Mr. Simon Harding of the 36 Group submitted a complaint to the CAC on behalf of the Verizon European Works Council (the VEWC), (the Complainant) under Regulation 21 of the Transnational Information and Consultation of Employees Regulations 1999, as amended (TICER) in relation to the actions of the Central Management of the Verizon Group, which is based in Reading, UK (the Employer). The CAC gave both parties notice of receipt of the complaint on 13 February 2020. The Employer submitted a response to the CAC on 27 February 2020 which was copied to the Complainant.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chair established a Panel to consider the case. The Panel consisted of Professor Gillian Morris as Panel Chair and Mr. Mike Cann and Mr. Paul Noon OBE as Members. The Case Manager appointed to support the Panel was Nigel Cookson.

Background

3. The background to the complaint, based on material supplied by the parties, is as follows. Verizon Communications Inc. is an American communications technology company. It has subsidiaries in the USA and in the European Union (EU); these, together with Verizon, constitute the “Verizon Group”. The Verizon Group employed approximately 144,500 employees worldwide as at 31 December 2018 (the date of Verizon USA’s latest Annual Report). Verizon is its representative agent in the EU for the purposes of Directive 2009/38/EC (the Directive) and TICER. On 20 October 2016 the VEWC entered into the Verizon European Works Council Agreement (“the Charter”) with the Employer; this replaced a previous agreement dating from 2008. The Charter, a copy of which is set out in Appendix 2, is governed by TICER.

4. Oath Inc. (Oath) is an American subsidiary of Verizon USA. Oath was incorporated in 2017 to serve as the holding company for more than 50 of the Verizon Group’s media and technology brands such as AOL, acquired by the Verizon Group in 2015, and Yahoo, acquired by the Verizon Group in 2017. Tumblr Inc. (Tumblr) was a subsidiary of Yahoo and became part of the Verizon Group in 2017. Its business was to operate a blogging and social networking website. The complaint relates to the proposed sale of Tumblr to Automattic Inc (Automattic). At the material time in 2019, Tumblr and its subsidiaries had 188 employees accounting for around 0.1% of the Verizon Group’s employees worldwide. 181 were employed in the USA and two were employed in Canada, together accounting for over 97% of Tumblr’s employees. Three were employed in the UK, one was employed in Germany and one was employed in Spain, together accounting for around 0.1% of the Verizon Group’s 4,380 employees in countries covered by the Charter.

5. The proposed sale of Tumblr to Automattic was announced by a press release dated August 12 2019 prior to any notification to or discussion with the VEWC . On 13 August 2019, the VEWC Select Committee and the VEWC members of the affected countries were provided by the Employer with a slide deck about the sale by email. A conference call was held on 28 August 2019 to discuss the matter. The 'Business Lead' for the Project did not participate in the conference call. On 10 September 2019, the VEWC responded with questions to the Employer. On 11 September 2019, Tumblr users were emailed notifying

them of the sale to Automattic. On 18 September 2019, the Employer provided answers to the VEWC's questions. On 9 October 2019, the VEWC indicated that it would not be able to issue an Opinion Statement.

6. The VEWC made a number of complaints in a document sent to the Employer on 10 January 2020. The Employer responded to those complaints on 22 January 2020. The complaints were referred to a tripartite arbitral panel convened pursuant to Article XII.2 of the Charter which gave its rulings and recommendations on the alleged breaches of the Charter in February 2020.¹ A copy of these rulings and recommendations was enclosed with the Employer's response to the complaints.

The Complaints

7. The VEWC raised the complaints under Regulation 21 of TICER as amended in relation to the failure of Central Management to comply with the terms of the Charter in the following respects:

- The timing of the information and consultation exercise
- No Business Lead present in the Question and Answer (Q and A) session
- Inadequate information

The substance of each of these complaints is set out in the paragraphs below.

Summary of the Complainant's submissions

8. *The timing of the information and consultation exercise.* The Complainant referred to Article VI.3 of the Charter which reads as follows:

Information and Consultation shall take place at a time when the decision on the proposed changes has not been finalized yet and can still potentially be changed, so that the EWC can have an input that brings added value ...

¹ The document was signed by two members of the panel on 17 February 2020 and by the third on 19 February 2020. One member of the panel was appointed by each party and a third was appointed by those members.

The Complainant said that it was clear that the information and consultation process took place after a definitive agreement had been reached between the Employer and Automattic. The Complainant said that on 18 September 2019, in answer to a question following the 28 August 2019 Q and A session, the Employer had said:

There is a settled intention that VZ will sell Tumblr to Automattic subject to customary closing obligations. The deal is expected to close on 25 September.

The Complainant said that, given that the decision on the proposed changes had been finalized prior to the information and consultation process, any input on the VEWC's part would have been meaningless. The Complainant said that the Employer's response to the question why the VEWC was informed only after the decision to sell to Automattic was taken was as follows:

As mentioned during our call, the SC and the EWC representatives from the impacted countries were provided a detailed Information deck on 13 August. This was discussed during the Consultation meeting first on 28 August and 5 September, in accordance with the Agreement terms. Information was provided to the EWC in good time before Deal Close on 25 September. The EWC will be aware that under Article 1.7 of the Agreement, Central Management is only obliged to provide information '...in such fashion and with such content as are appropriate to enable the EWC to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultation' (our emphasis added). Accordingly, only once there was a settled intention to sell Tumblr, did the obligation on Central Management to inform and consult with the EWC on the employee impacts associate with the transaction crystallise. The position in the Charter is consistent with TICER and subsequent CAC caselaw (see Oracle).

The Complainant said that when the Employer was expressly asked when the deal was concluded the VEWC was told that it was not a relevant question.

9. *No Business Lead present in the Q and A session.* The Complainant said that Article VI. 7 of the Charter reads as follows:

In the Information and Consultation process, the following parties will be involved:

- The HR Business Partner
- The Select Committee
- EWC members of the affected countries covered by this Agreement
- Business Lead if a Q&A session is requested

National employees' representatives can also be invited to participate in the Information and Consultation process.

The Complainant said that in breach of Article VI.7 the Business Lead was not involved in the Q and A session that was conducted on 28 August 2019 or at all. The Complainant said that the Q and A session appeared to have been provided by the Employer of its own motion. The Complainant said that there was, therefore, an implied and understood request for such a session and that this had become custom and practice. The Complainant said that to read the Charter otherwise suggested that the Employer could simply offer a Q and A session and therefore sidestep its obligations under this part of the Charter so that the fact that it may not have been expressly requested by the VEWC was not fatal to this issue.

10. *Inadequate Information.* The Complainant drew attention to Articles 1.7 and VI.5 of the Charter.

Article 1.7 reads as follows:

“Information” shall mean transmission of data by the employer to the EWC in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as is appropriate to enable the EWC to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultation.

Article VI.5 reads as follows:

Written and verbal information provided by Central Management to the EWC will be so that the employees' representatives:

- Are acquainted with the motivation behind the strategies implemented;
- Understand the objectives pursued;
- Can form an opinion on the possible impact on employees.

For this purpose, it shall answer a minimal list of questions under a Business Template as per Appendix 1. This list is not restrictive. If necessary, other questions will be answered by Central Management and/or additional documents will be provided.

The Complainant submitted that, in breach of Articles I.7 and VI.5 of the Charter, the VEWC was not sufficiently informed. The Complainant said that:

- (i) the process was fundamentally flawed as it took place after a time when consultation and information was meaningful and
- (ii) without a clearer view of the added value of having Tumblr within VMG and its financial contributions or burden (in Europe and for Verizon as a whole) and the proceeds of the sales, the EWC could not understand the decision and the rationale for that decision and make an assessment of the economic and strategic impact of the transaction. Accordingly, it was not able to provide an Opinion.

Summary of the Employer's response to the complaints

11. In a letter to the CAC dated 27 February 2020 the Employer responded to the complaints. The Employer explained the background to the sale. The Employer said that Tumblr was a user generated content site and that an increase in adult content posted on Tumblr became problematic during 2018. Tumblr initially adopted an increasingly aggressive approach to removing such content and subsequently banned such content altogether on 17 December 2018 on the basis that hosting such content was inconsistent with Oath's and the wider Verizon Group's aims and values. The Employer said that Tumblr's approach led to a reduction in the number of its users and that this coincided with weak performance by other brands owned by Oath. These factors together led Oath and Verizon USA to consider Oath selling Tumblr as part of a policy of strengthening its portfolio and reducing its operating costs. It was also part of its corporate strategy to move away from user generated content to focus more on owned and operated premium products such as HuffPost and Yahoo News. The Employer said that the potential sale of Tumblr was highly

confidential because Verizon USA and Oath were concerned that Tumblr would be very hard to sell because of the difficult market in which Tumblr operated and its profitability challenges. Verizon USA and Oath were also concerned about rumours of the deal leaking and the consequential risk of a loss of key Tumblr personnel if that were to happen.

12. The Employer said that Automattic was a realistic and credible prospective purchaser of Tumblr which wanted exclusivity and confidentiality protections for itself during negotiations. Verizon USA and Oath also wanted to keep information relating to the deal confidential and contained within a relatively small group of employees who were responsible for working on the deal for the reasons stated in the paragraph above. The Employer said that these commercial imperatives led Verizon USA, Oath and Automattic to enter into binding confidentiality arrangements in respect of their negotiations. These arrangements were governed by the laws of the State of New York in the USA. In particular:

- On 30 April 2019, Automattic entered into a Nondisclosure Agreement with Verizon USA (the “NDA”). Section 10 of the NDA provided that Automattic enjoyed the following contractual protection in respect of the preliminary negotiations:

Except as required by applicable Law, without [Automattic’s] prior written consent, [Verizon USA] agrees that it shall not, and shall direct its Representatives not to, directly or indirectly, reveal [Automattic’s] identity; provided, however, such information may be disclosed to [Verizon USA’s] Representatives who need to know such information for the sole purpose of evaluating, negotiating and, if applicable, consummating any such potential Transaction.

- On 27 July 2019, Automattic entered into an exclusivity agreement with Oath (the “Exclusivity Letter”). It provided that Automattic enjoyed contractual protection in consideration for it being “prepared to move quickly and devote substantial resources” including “significant time and expense” in negotiating the purchase of Tumblr from Oath in the following standalone section:

This Exclusivity Letter, its terms and the terms of our proposal, as well as the contents of the discussions between you and us are confidential and subject to the terms of the [NDA].

Copies of the NDA and the Exclusivity Letter were enclosed with the Employer's response. The Employer said that Verizon USA and Oath had complied strictly with their obligations. This helped to prevent any leak of Oath's potential sale of Tumblr to Automattic and to ensure that a sale agreement was ultimately signed on 12 August 2019. The Employer said that information about the potential sale to Automattic was kept highly confidential even within the Verizon Group's senior management.

13. The Employer invited the Panel to give weight to the findings of the arbitral panel (see paragraph 6 above) which had ruled that the Employer had not breached the Charter by failing to inform the VEWC about the sale of the Tumblr business before 13 August 2019 as disclosure prior to that date would have resulted in a breach of confidentiality obligations owed to Automattic. The arbitral panel had also found that there was no evidence that the VEWC had requested a Q and A session to trigger further involvement by the Business Lead in line with the provisions of Art VI.7 of the Charter and that therefore the Employer "did not breach the Charter by failing to involve the Business Lead". The Employer said that it was disappointed that the VEWC was choosing to relitigate this dispute without giving proper consideration to the outcome of the industrially agreed dispute resolution process. The Employer was particularly concerned that the complaint to the CAC did not acknowledge or address the key issue of confidentiality that the arbitral panel unanimously held to be fatal to the VEWC's central complaint about the Employer failing to inform and consult before 13 August 2019.

14. The Employer said that the Charter obliged the Employer to inform and consult the VEWC on matters of a transnational nature in certain circumstances. The Employer accepted that in those circumstances information and consultation should ordinarily take place before the proposed changes had been finalised but said that the Charter carefully balanced these obligations with protections for the Employer. The Employer said that provisions of the Charter that were relevant to identifying when the Employer was under a legal obligation to inform and consult included:

- a) article I.5 of the Charter distinguishing European management from the American management of Verizon USA;
- b) article I.9 of the Charter providing that a matter was only “transnational” when it affected “employees” (noting the use of the plural) in more than one country covered by the Charter;
- c) articles II.1 and II.4 of the Charter providing that the EWC’s remit was limited to topics taking place at “European level”;
- d) article VI.1 of the Charter providing that matters were only within the EWC’s scope if they were “of a transnational nature and significantly affect the employees (sic)² interest in all countries covered by this agreement or at least two of them” (noting the use of the plural once again);
- e) article VI.3 of the Charter providing that any consultation process shall neither affect management’s prerogatives nor, as a separate concept, its power to take appropriate decisions at the time required by the business; and
- f) article XI.2 of the Charter providing that there was no requirement to provide any information when its nature was such that, according to objective criteria, the disclosure would seriously harm the functioning of, or would be prejudicial to, the Verizon Group.

15. The Employer said that the CAC had indicated in *Vesuvius (I)*³ that there “is no de minimis threshold which applies to transnational matters falling within the scope of the Agreement or indeed any other EWC agreement unless specifically negotiated and agreed in the relevant EWC agreement”. The Employer said that, in contrast to the Vesuvius agreement, there was such a threshold in the Charter as only matters which “significantly affect” employees were covered and that it was in accordance with the “underlying principle of the autonomy of the parties” when negotiating an EWC agreement⁴ that when the parties consensually concluded provisions that they had tailored for their needs that their agreement should be respected. The Employer submitted that the sale of Tumblr (a North American business with almost no employees in countries covered by the Charter) to Automattic fell outside of the scope of the Charter; it was not a “transnational” matter and it was not taking place at a “European level”. The Employer said that this alone meant that each of the EWC’s

² There is no apostrophe after “employees” in the text of the Charter.

³ EWC/20/2019

⁴ *Manpower*, UKEAT/0096/18/DA

complaints was without merit because the CAC had no jurisdiction to consider the adequacy of an information and consultation process that, as a matter of law, the Employer was not obliged to undertake under the Charter.

16. The Employer said that it had carried out an appropriate information and consultation process from 13 August 2019 notwithstanding that the transaction did not strictly fall within the scope of the Charter. The overriding reason why information and consultation was not carried out earlier and before signing on 12 August 2019 was because of the vital confidentiality requirement. The Employer said that, in addition to Article XI.2 of the Charter, regulation 24(1) of TICER provides that

The central management is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the undertaking or group of undertakings concerned.

The Employer said that its recognition that this issue was likely to recur (whereas transactions involving single employees in a country covered by the Charter were unlikely to do so) contributed to the Employer primarily relying on the argument about confidentiality during the dispute resolution process. The Employer said that, having regard to regulation 24(1) of TICER and article XI.2 of the Charter, it was under no obligation to inform and consult the VEWC on the sale of Tumblr at a time when the mere act of disclosure would objectively and reasonably have been prejudicial to the Verizon Group. For example, a breach of confidentiality would have seriously harmed the ability of Oath to continue to pursue the sale of Tumblr to Automattic as a counterparty that Automattic could trust to honour its obligations.

17. The Employer said that the complaint that there was no Business Lead present during the Q and A session was not valid because the VEWC had not requested a Q and A session involving the Business Lead; had it done so the Employer would have held one. The Employer said that it could not be made liable as a result of the VEWC's choice not to exercise its right to make such a request. The Employer denied that any custom and practice

existed in August 2019 of meetings being “deemed” to be held at the request of the VEWC despite such meetings not having been requested by it.

18. The Employer denied that it had provided inadequate information. The Employer said that it had voluntarily informed the EWC about the sale on 13 August 2019 which was the earliest time at which it could do so having regard to regulation 24 of TICER and article XI.2 of the Charter. The Employer said that, even if it had been under a duty to inform and consult under the Charter, the information provided was sufficient for the VEWC to understand the essential nature of the transaction and its likely effects on the handful of employees covered by the Charter. The Employer said that if the EWC had chosen fully to engage in the process it could have provided an opinion following consultation that could have been taken into account before completion and implementation of the transaction.

Summary of the Complainant’s comments on the Employer’s response

19. In a letter to the Complainant dated 2 March 2020 the Case Manager invited the Complainant to comment on the Employer’s response. The letter stated that the Panel would welcome, in particular, the Complainant’s comments on the following matters:

- that the sale of Tumblr fell outside the scope of the Charter;
- that disclosure prior to 13 August 2019 would have resulted in a breach of confidentiality obligations owed to Automattic. The Complainant was invited to address the terms of the NDA and the Exclusivity Letter; Article X1.2 of the Charter; and regulation 24(1) of TICER as amended;
- that the VEWC did not request a Q and A session involving the Business Lead;
- that the information provided was sufficient.

20. In comments received by the CAC on 13 March 2020 the Complainant submitted that it was striking that the contention that the sale of Tumblr fell outside the scope of the Charter was being raised now rather than at the beginning of the process. The Complainant queried why, if this was the case, the VEWC was consulted and arbitration engaged with at all. The Complainant said that the presentation that was given to the EWC had stated as follows:

Project Trident: Employee Impacts

- At Close – unlikely to be before 30 September - all staff wholly or mainly assigned to support the Tumblr product at VMG will be given the opportunity to transition to Automattic
- In the US – employees will transition into Tumblr Inc which is the acquired entity
- In Europe...
- UK – 3 employees
- ES – 1 employee
- DE – 1 employee

The Complainant said that under the Charter a “matter is considered transnational when it affects all employees in Europe or the employees in at least two countries covered by this Agreement.” The Complainant said that the sale affected employees in at least two countries covered by the Charter so it was hard to see how this was not an impact on a ‘European level’. This presumably was a distinction from a ‘national level’, which clearly this was not. The Complainant said that the argument about “. . . significantly affect” in the Employer’s response was not understood and that the project fell within the Charter.

21. The Complainant said that the Employer’s argument on the NDA/Confidentiality Agreement was misconceived as Verizon Communications Inc was the ‘Receiving Party’ under the Agreement. The Complainant said that paragraph 3 of the NDA stated that:

... The Receiving Party shall . . . (a) restrict disclosure of such Confidential Information solely to its Representatives who need to know such Information for purposes of evaluating, negotiating and, if applicable, consummating the Transaction and who agree or are obligated to keep such information confidential in accordance with the terms hereof, and not disclose such Confidential Information to any other person...

The Complainant said that the Employer was a representative who needed to know as the Project fell within the Charter and there was a need to consult with the VEWC as a matter of international law. The Complainant said that the Employer could not opt out of its obligations due to the existence of an NDA and that if it could the whole object of TICER could be

always be avoided by suitable agreements. The Complainant said that in any event, if this was an issue, clause 5 of the NDA provided a mechanism to deal with it and the fact that the Employer had not invoked clause 5 could not be used in its own defence.⁵ The Complainant said that the Employer had presented no evidence as to whether Clause 5 was considered or involved and if not, why not. The Complainant said that regulation 23 of TICER offered full protection to the Employer in any event.⁶ The Complainant said that the only basis for withholding information was defined by regulation 24 of TICER. The Complainant said that the fact that the arbitral panel came to a different view about the confidentiality argument was irrelevant if its view was wrong. It did not have full legal argument on the subject in any event.

22. In relation to the VEWC not having requested a Q and A session the Complainant repeated the points made in the complaint, stating that that it appeared that Q and As were never formally requested but were always given. The Complainant said that it would be odd if the very act of volunteering a Q and A allowed the Employer to get round the requirements of the Charter and that it must be an implied term that if a Q and A was volunteered, it would have the same consequences as if it were formally requested.

23. In relation to the adequacy of information, the Complainant stated that the relevant paragraphs of the complaint were “repeated”. No further comments were provided on this issue.

Summary of the Employer’s comments on the Complainant’s response

24. In a letter to the Employer dated 16 March 2020 the Case Manager invited the Employer to comment on the points made by the Complainant in relation to the NDA/Confidentiality Argument (see paragraph 21 above) and Requesting a Q and A and the

⁵ The material part of clause 5, not quoted in the Complainant’s response, reads as follows: “If the Receiving Party is required by statute, applicable law, regulation or by legal or regulatory authority to disclose any Confidential Information the Receiving Party shall promptly notify the Disclosing Party in writing of such requirement (including the scope of the proposed disclosure) so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement”.

⁶ Regulation 23 provides that it is a breach of statutory duty for specified persons, including a member of an EWC, to disclose information which the central management has entrusted to him or her on terms requiring it to be held in confidence.

Business Lead (see paragraph 22 above). The letter stated that the Panel had asked for the following points in particular to be addressed:

- Is it your submission that you can always opt out of your obligations under the Charter and TICER by a suitably drafted NDA? If so, how do you answer the VEWC's point that the whole object of TICER can thereby be nullified? If this is not your submission, why should you be able to do so in this case?
- Why did you not seek to rely on regulation 23 of TICER and Article XI of the Charter which allow information to be shared with the VEWC on a confidential basis?
- Do you accept that it was open to you under clause 5 of the NDA to have notified Automattic of the requirements under the Charter and TICER to disclose information to the VEWC? If so, why was this not done? If you do not accept that it was open to you to do this, please explain why this is the case.
- Is it your submission that if you pre-emptively offer a Q and A session this means that such a session can never be treated as being at the VEWC's request for the purposes of Article VI.7 of the Charter? If so, does this not mean, as the VEWC suggests, that the very act of volunteering allows you to get round the requirements of the Charter? If not, how can and should the VEWC respond to a pre-emptive offer of a Q and A by you to ensure that the Business Lead is involved in the Information and Consultation process?

25. The Employer responded to the invitation to comment in a letter dated 27 March 2020. The Employer said that it would never suggest that it could 'opt out' of its obligations to inform and consult by contractual arrangements with third parties; the CAC would properly scrutinise contracts that limited the Employer's obligations in this regard and would rightly ignore any 'sham' arrangements. However, the Employer said that the CAC would also recognise and protect genuine business confidentiality that would be prejudicial to both the business and all its employees if breached. The Employer said that regulation 24 of TICER, which transposed article 8.2 of the Directive, and article XI.2 of the Charter limited the obligation to inform and consult in certain circumstances which would be rare but which arose on this occasion. The Employer said that the legitimate aim being pursued by Automattic in imposing the confidentiality obligations from which it benefitted was clear on the face of the Exclusivity Letter. Automattic sought protection in consideration for it being

“prepared to move quickly and devote substantial resources” including “significant time and expense” in negotiating the purchase of Tumblr from Oath.

26. The Employer said that disclosing information to the VEWC would have amounted to a breach of the NDA and Exclusivity Letter irrespective of the terms on which it might have been done under regulation 23 or article XI.1 of the Charter. Such a breach of obligations owed to Automattic would have prejudiced the Employer as it risked Automattic not entering into a sale contract. That was why disclosure to the Employer’s managers was also heavily restricted. Most of them were not told at all and confidentiality restrictions were placed on those few who were.

27. The Employer did not accept that it was open to it under clause 5 of the NDA to have notified Automattic of the requirements under the Charter and TICER to disclose information to the VEWC and said that the Complainant had been inviting the Panel to consider an irrelevant part of the NDA. The Employer said that the opening paragraph of the NDA indicated that Automattic was the Receiving Party and that the Complainant had been inviting the CAC to take account of provisions that concerned Automattic’s duty of confidentiality not that of the Employer.

28. The Employer confirmed its submission that if the Employer pre-emptively offered a Q and A session that meant that such a session could never be treated as being at the VEWC’s request for the purposes of Article VI.7 of the Charter. The Employer said that the VEWC could request a Q and A even if one had already been offered but there had to be such a request. The Employer did not accept that this meant that it could “get round the requirements of the Charter” in any way as nothing prevented the VEWC from making a request. The Employer said that only the VEWC was at fault if it wished to rely on a provision that it forgot to trigger. The Employer said that the VEWC could (a) ask in advance of the Q and A session whether the Business Lead would be in attendance and, if they would not be, request that they attended either the scheduled session or a further session. That would trigger the obligation; or (b) attend a Q and A session at which the Business Lead was not present and then exercise its right to request a further Q and A session at which the Business Lead was present. The Employer said that if it were to fail to hold a Q and A session attended by the

Business Lead after receiving a request then it would be in breach of the Charter irrespective of whether it had already separately held a Q and A session without the Business Lead.

Considerations

29. The VEWC raised complaints under Regulation 21 of TICER as amended in relation to the failure of Central Management to comply with the terms of the Charter in the following respects:

- The timing of the information and consultation exercise
- No Business Lead present in the Question and Answer (Q and A) session
- Inadequate information

These specific complaints are considered in turn below following the Panel's consideration of the Employer's submission that the proposed sale of Tumblr to Automattic fell outside the scope of the Charter and that there was no legal obligation to inform or consult the Complainant.

Was the proposed sale of Tumblr to Automattic covered by the Charter?

30. The Employer submitted that the sale of Tumblr to Automattic fell outside the scope of the Charter because it was not a "transnational" matter and it was not taking place at a "European level". The Employer said that under Article I.9 of the Charter a matter was only transnational when it affected "employees" (noting the use of the plural) in more than one country covered by the Charter. The Employer also stated that Articles II.1 and II.4 of the Charter provide that the VEWC's remit is limited to topics taking place at "European level" and that Article VI.1 of the Charter provides that matters are only within the VEWC's scope if they are "of a transnational level and significantly affect the employees⁷ interest in all countries covered by this agreement or at least two of them" (noting the use of the plural once again).

31. The Panel is not persuaded by this submission. The definition of "transnational" in Article I.9 reads as follows:

⁷ As noted in paragraph 14 above, there is no apostrophe after "employees" in the text.

A matter is considered transnational when it affects all employees in Europe or the employees in at least two countries covered by this Agreement.

The Panel considers that this definition, to have the meaning for which the Employer contends, would need to make clear that it must cover the employees *in each of* a minimum of two countries covered by the Agreement. In this case the sale covered three employees in the UK, one in Spain and one in Germany (see paragraph 4 above). The Panel is satisfied that this matter is capable of falling within the definition of “transnational” in Article I.9. The Panel is also satisfied that it constitutes a matter taking place at “European level” for the purposes of Article II.1 and II.4. Finally the Panel is satisfied that the matter is “of a transnational level and significantly affect(s) the employees interest in all countries covered by this agreement or at least two of them.” The Panel considers that this definition is capable of referring to the interest of employees taken collectively in at least two countries covered by the Charter and would need to have been drafted more precisely to have the meaning for which the Employer contends. The Panel has therefore concluded that the definition is capable of covering the employees affected in this case. The Panel shares the view of the Complainant that the implication of the emphasis by the Employer that the matter must “significantly affect” the employees interest is unclear. The Employer did not explain why it considered that the sale of Tumblr would not “significantly affect” the employees impacted by the sale so the Panel has been unable to place any weight on this aspect of the Employer’s submission.

The timing of the information and consultation exercise

32. The Complainant submitted that the information and consultation process took place after a definitive agreement had been reached between the Employer and Automattic and that any input on the VEWC’s part would therefore have been meaningless. The Employer submitted that the confidentiality arrangements incorporated in the NDA and Exclusivity Letter meant that it was unable to commence the process prior to the proposed sale having been announced on 12 August 2019 and that it had informed the VEWC of the sale on 13 August 2019 which was the earliest time at which it could do so having regard to regulation 24 of TICER and Article XI.2 of the Charter. Article 24 of TICER reads as follows:

The central management is not required to disclose any information or document to a recipient when the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the undertaking or group of undertakings concerned.

Article X1.2 of the Charter states that

Central Management is not required to disclose any information when its nature is such that, according to objective criteria, the disclosure would seriously harm the functioning of, or would be prejudicial to the company.

33. The Panel shares the view of the Employer that the obligation to inform and consult cannot be avoided or restricted merely by a contractual arrangement with a third party which imposes an obligation of confidentiality on the Employer. The Panel would not, therefore, have been prepared to find that the Employer had complied with the Charter in respect of the stage at which information was provided on the basis of the NDA and Exclusivity Agreement alone without consideration of the context in which these agreements had been reached. The Panel also agrees with the Employer that the circumstances in which the obligation to inform and consult can be limited under regulation 24 of TICER and Article X1.2 of the Charter will be rare. The Panel has looked closely at the circumstances surrounding the sale of Tumblr to Automatic. The Panel has noted the fears on the Employer's part that Tumblr would be difficult to sell and that key personnel could be lost if rumours of the deal had circulated. The Panel accepts that these fears were genuine. The Panel has also noted the importance of exclusivity and confidentiality on the part of Automatic. The Panel has concluded that in this case the commercial background to the transaction coupled with knowledge of the deal being confined to a relatively small group within the Employer means that the requirements of regulation 24 and of Article XI.2 of the Charter are satisfied. In reaching this conclusion the Panel notes that the Complainant did not directly challenge the application of regulation 24 of TICER and Article XI.2 of the Charter;⁸ rather its substantive submission was based on the erroneous contention that the Employer was the "Receiving" rather than the "Disclosing"

⁸ The Complainant referred to regulation 24 (see paragraph 21 above) but did not submit that it did not apply in this case.

Party under the NDA. The Panel accepts the Employer's submission that it was not open to the Employer under clause 5 of the NDA to notify Automatic of the requirements under the Charter and TICER to disclose information to the VEWC as Automatic, not the Employer, was the "Receiving Party" under this provision. For the avoidance of doubt the Panel also accepts that regulation 23 of TICER, which provides that it would be a breach of statutory duty for a member of the VEWC to disclose information entrusted to him or her in confidence, would not have sufficed to protect the Employer in this case where the mere act of disclosing the information would have been prejudicial to it.

No Business Lead present in the Question and Answer (Q and A) session

34. Article VI.7 of the Charter sets out the parties to be involved in the information and consultation process including the "Business Lead if a Q & A session is requested". The Complainant said that the Business Lead was not involved in the Q and A session that was conducted on 28 August 2019 or at all. The Complainant said that the Q and A session appeared to have been provided by the Employer of its own motion; that there was therefore an implied and understood request for such a session; and that this had become custom and practice. The Complainant said that to read the Charter otherwise suggested that the Employer could simply offer a Q and A session and thereby sidestep its obligations under the Charter. The Complainant subsequently additionally submitted that it must be an implied term that if a Q and A session were offered it would have the same consequence as if it were formally requested. The Employer submitted that a Q and A session offered pre-emptively by the Employer could not be deemed to be at the VEWC's request but said that this would not prevent the VEWC subsequently making a request. The Employer said that in order to trigger the obligation under Article VI.7 the VEWC could (a) ask in advance of the Q and A session whether the Business Lead would be in attendance and, if they would not be, request that they attended either the scheduled session or a further session or (b) attend a Q and A session at which the Business Lead was not present and then exercise its right to request a further Q and A session at which the Business Lead was present.

35. It appears to be common ground between the parties that no express request was made by the VEWC for a Q and A session in this case. The issue for the Panel to consider, therefore, is whether such a request can be implied. The Complainant contended that this was

custom and practice, which the Employer disputed. The Panel has no evidence before it which would enable it to conclude that such a custom and practice or any other basis for implying a request exists nor does the Panel accept the Complainant's submission that if a Q and A were volunteered it would necessarily have the same consequence as if it were formally requested. The Panel has therefore decided that no such request was made prior to or following the Q and A session on 28 August 2019 for the purposes of Article VI.7 and that the Employer did not, therefore, breach the Charter in holding the sole Q and A session which took place in relation to this matter in the absence of the Business Lead.

Inadequate information

36. The Complainant submitted that, in breach of Articles I.7 and VI.5 of the Charter, the VEWC was not sufficiently informed. The Complainant said that, without a clearer view of the added value of having Tumblr within VMG and its financial contributions or burden (in Europe and for Verizon as a whole) and the proceeds of the sales, the VEWC could not understand the decision and the rationale for that decision and make an assessment of the economic and strategic impact of the transaction. Accordingly, it was not able to provide an Opinion. The Employer denied that it had provided inadequate information. The Employer said that the information provided was sufficient for the VEWC to understand the essential nature of the transaction and its likely effects on the handful of employees covered by the Charter. The Employer said that if the EWC had chosen fully to engage in the process it could have provided an opinion following consultation that could have been taken into account before completion and implementation of the transaction.

37. The Complainant failed to provide sufficient information to enable the Panel to conclude that the complaint should be upheld. In the Case Manager's letter to the Complainant of 2 March 2020 the Complainant was asked specifically to comment on the Employer's submission in its response to the complaint that the information provided had been sufficient. In the reply received by the CAC on 13 March 2020 the Complainant stated that the relevant paragraphs of its initial complaint under this heading were "repeated" and did not provide any further comments on this issue. The Panel considers that the Complainant was given a sufficient opportunity to substantiate and/or expand on this complaint and that its failure to do means that the Panel cannot find this complaint to be well-founded.

Decision

38. For the reasons given in paragraphs 32-37 above the Panel does not consider the complaints set out in paragraph 29 above to be well-founded.

Concluding observation

39. The Panel notes that the Employer did not make the submission to the arbitral panel that the sale of Tumblr fell outside the scope of the Charter nor, as far as the Panel is aware, was it made elsewhere prior to responding to the complaints before the CAC. The arbitral panel noted that the Employer did not disclose the NDA and the Exclusivity Letter to the VEWC prior to the complaint being sent to the Employer at the start of the arbitration process. The Panel shares the view of the arbitral panel that it would be helpful if the parties could use their best efforts to make their positions clear to each other in at least general terms as soon as any dispute appears to be arising⁹ particularly in relation to an issue as fundamental as whether a matter falls within the scope of the Charter.

The Panel

Professor Gillian Morris – Panel Chair

Mr Mike Cann

Mr Paul Noon OBE

3 April 2020

⁹ Rulings and Recommendations of the arbitral panel convened pursuant to Article XII.2 of the Verizon European Works Council Agreement dated 20 October 2016 (the Charter), paragraph 3.5.

Appendix 1

Transnational Information and Consultation of Employees Regulations 1999, as amended: regulations relevant to this decision

Information and consultation

18A.—(1) This regulation applies where—

(a) a European Works Council or information and consultation procedure has been established under regulation 17; or

(b) a European Works Council has been established by virtue of regulation 18.

(2) The central management, or any more appropriate level of management, shall give information to—

(a) members of a European Works Council; or

(b) information and consultation representatives,

as the case may be, in accordance with paragraph (3).

(3) The content of the information, the time when, and manner in which it is given, must be such as to enable the recipients to—

(a) acquaint themselves with and examine its subject matter;

(b) undertake a detailed assessment of its possible impact; and

(c) where appropriate, prepare for consultation.

(4) The central management, or any more appropriate level of management, shall consult with—

(a) members of a European Works Council; or

(b) information and consultation representatives,

as the case may be, in accordance with paragraph (5).

(5) The content of the consultation, the time when, and manner in which it takes place, must be such as to enable a European Works Council or information and consultation representatives to express an opinion on the basis of the information provided to them.

(6) The opinion referred to in paragraph (5) shall be provided within a reasonable time after the information is provided to the European Works Council or the information and consultation representatives and, having regard to the responsibilities of management to take decisions effectively, may be taken into account by the central management or any more appropriate level of management.

(7) The information provided to the members of a European Works Council or information and consultation representatives, and the consultation of the members of a European Works Council or information and consultation representatives shall be limited to transnational matters.

(8) Where information as to the employment situation in the Community-scale undertaking or, as the case may be, the Community-scale group of undertakings, is disclosed by the central management or any more appropriate level of management, this shall include suitable information relating to the use of agency workers (if any).

Disputes about operation of European Works Council or information and consultation procedure

21.—(1) Where—

(a) a European Works Council or information and consultation procedure has been established under regulation 17; or

(b) a European Works Council has been established by virtue of regulation 18,
a complaint may be presented to the CAC by a relevant applicant where paragraph (1A) applies.

(1A) This paragraph applies where a relevant applicant considers that, because of the failure of a defaulter—

(a) the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule, have not been complied with; or

(b) regulation 18A has not been complied with, or the information which has been provided by the management under regulation 18A is false or incomplete in a material particular.

(1B) A complaint brought under paragraph (1) must be brought within a period of six months beginning with the date of the alleged failure or non-compliance.

(2) In this regulation, "failure" means an act or omission and a failure by the local management shall be treated as a failure by the central management.

(3) In this regulation "relevant applicant" means—

(a) in the case of a failure concerning a European Works Council, either the central management or the European Works Council; or

(b) in the case of a failure concerning an information and consultation procedure, either the central management or any one or more of the information and consultation representatives,
and "defaulter" means the persons mentioned in sub-paragraph (a) or (b) against whom the complaint is presented.

(4) Where the CAC finds the complaint well-founded it shall make a decision to that effect and may make an order requiring the defaulter to take such steps as are necessary to comply with the terms of the agreement under regulation 17 or, as the case may be, the provisions of the Schedule.

(5) An order made under paragraph (4) shall specify—

(a) the steps which the defaulter is required to take;

(b) the date of the failure; and

(c) the period within which the order must be complied with.

(6) If the CAC makes a decision under paragraph (4) and the defaulter in question is the central management, the relevant applicant may, within the period of three months beginning with the date on which the decision is made, make an application to the Appeal Tribunal for a penalty notice to be issued.

(6A) Where such an application is made, the Appeal Tribunal shall issue a written penalty notice to the central management requiring it to pay a penalty to the Secretary of State in respect of the failure.

(7) Paragraph (6A) shall not apply if the Appeal Tribunal is satisfied, on hearing the representations of the central management, that the failure resulted from a reason beyond the central management's control or that it has some other reasonable excuse for its failure.

(8) Regulation 22 shall apply in respect of a penalty notice issued under this regulation.

(9) No order of the CAC under this regulation shall have the effect of suspending or altering the effect of any act done or of any agreement made by the central management or the local management.

Appendix 3 - The Verizon Group EWC Agreement (“the Charter”).



Verizon European Works Council Agreement

The Agreement is made by and between:
**The Central Management of Verizon
and
Verizon European Works Council representing
Verizon's employees within the geographical scope
of this Agreement.**

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- XIII. Duration of the Agreement
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I Definitions

When used in this Agreement, each of the following terms shall have the following meaning:

1. "Agreement" shall mean this Agreement on the establishment of the Verizon European Works Council, signed by Central Management and the European Works Council of 20.10.2016.
2. "EWC Directive" shall mean Council Directive 2009/38/EC of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.
3. "UK TICER" shall mean Statutory Instrument 1999 No. 3323, the Transnational Information and Consultation Regulations and the amendment by Statutory Instrument 2010 No.88 of the United Kingdom.
4. "EWC" shall mean the European Works Council, a transnational employee representative body consisting of employees' representatives, as defined in article IV below.
5. "Central Management" shall mean the management team based in Reading, UK representing Verizon's European Headquarters, while the main headquarters is located in Basking Ridge, New Jersey, U.S.A. (Verizon)
6. "EWC members" means the persons who have either been appointed or elected as employees' representatives in the EWC in accordance with this Agreement or such individuals as replace them in accordance with this Agreement.
7. "Information" shall mean transmission of data by the employer to the EWC in order to enable them to acquaint themselves with the subject matter and to examine it; information shall be given at such time, in such fashion and with such content as are appropriate to enable the EWC to undertake an in-depth assessment of the possible impact and, where appropriate, prepare for consultation
8. "Consultation" shall mean the establishment of dialogue and exchange of views between the EWC and Central Management and, as the parties agree, any more appropriate level of management, at such time, in such fashion and with such content as to enable the EWC to express an opinion on the basis of the information provided about the proposed measures to which the consultation is related, without prejudice to the responsibilities of Central Management, and within a reasonable time, which may be taken into account in the decision making process.
9. "Transnational": A matter is considered transnational when it affects all employees in Europe or the employees in at least two countries covered by this Agreement.

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II. Purpose of the Agreement

1. This EWC Agreement describes the remit and proceedings of the Verizon European Works Council, which is established for the purpose of Information and Consultation on transnational topics taking place at European level between the Central Management and the European Works Council.
2. Central Management and the European Works Council have concluded this Agreement pursuant the EWC Directive and its UK transposition law, UK TCER. This Agreement has been negotiated under the conditions of article XIII of the Verizon EWC Agreement from 1 October 2008. This Agreement succeeds and replaces the Verizon European Works Council Agreement of 1 October 2008.
3. This Agreement fosters social dialogue defined as the process of negotiation by which the EWC and Central Management reach agreement to work together on policies and activities in undertakings controlled by Verizon by strengthening a common sense of belonging and contributing to an enhanced climate of trust and mutual respect. It is recognized that social dialogue takes place at national and sectorial as well as European level.
4. Both parties promote the co-operation between Central Management, all levels of management, and European employees' representatives through this Agreement and to enter into a constructive dialogue to meet social and economic challenges at the European level. Both parties acknowledge the importance of the establishment of dialogue and exchange of views on strategic issues which impact Verizon employees in Europe.
5. Parties take hereby into account that, in order to meet the constantly increasing demand of Verizon's customers and the global economy, change has become a necessary feature of Verizon's operations and, as a result, constructive dialogue around change is a prerogative. Verizon seeks to achieve the aforementioned goals through:
 - Open and two-way dialogue
 - Employee engagement
 - Spirit of co-operation
 - Effective information and consultation as per EU directives and local laws
 - Professionalization of the EWC
6. The European Works Council shall not replace any rights of local and/or national employee representation bodies but shall be additional. The EWC shall act as a conduit for countries without employee representation bodies. However, this Agreement shall not replace the right of any country to establish its own local and/or national employee representation body in accordance with national law.

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III. Territorial Scope

1. The present Agreement covers all the countries of the European Union (EU), the European Economic Area (EEA) and Switzerland, in which the Verizon group has or will have establishments. All employees of such establishments will be covered by its provision and will be directly represented in the EWC.
2. A company or establishment belongs to the Verizon group if Verizon Inc. directly or indirectly maintains a dominant influence over the company or establishment, Verizon Inc. has a dominant influence over another company if Verizon Inc. directly and/or indirectly:
 - Can appoint more than half of the members of the company's administrative management or supervisory body;
 - Holds the majority of the votes attached to the company's issued share capital or
 - Holds more than 50% of the shares of that company.
3. Employees working in companies in which Verizon is participating through a joint venture are not covered by this Agreement, unless Verizon has a dominant influence over the companies, as defined above.

IV. Composition of the EWC

1. The EWC will consist of Verizon employee representatives, called EWC members. The EWC shall represent collectively the interests of Verizon employees in Europe.
2. Each country covered by this Agreement will have one EWC member.
3. The EWC members will be selected in line with the existing national legislation and practice. If no such legislation exists, the EWC member will be elected through a direct election by the entire work force of the country in which no such legislation exists. The formulation of the list of the candidates may take into account the need for balanced representation of employees with regard to their activities, category and gender.
4. For each EWC member, a substitute member will be selected (same procedure as for effective EWC members). A substitute member will only be invited to attend the physical EWC meetings when the employee representative he/she was selected for as a substitute, is no longer eligible or is unable to attend. The substitute member may serve for up to the remainder of the term of office of the representative he/she replaces. There should always be a primary and a substitute representative for each country covered by this Agreement.
5. EWC members will have at least one (1) year of seniority within the Verizon group and will be able to communicate in English. An employee under notice or working pursuant to a time limited contract cannot be selected as an employee representative or substitute.

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6. The EWC members should fully understand the rights and responsibilities associated with their role. As the duty involves an investment of time and effort, both Central Management and the EWC should be willing to commit to the Agreement in a spirit of cooperation consistent with Verizon's company values of integrity, respect, performance excellence and accountability such time as is reasonable and in accordance with the EWC internal rules.
7. EWC members should serve a four year term, unless binding national legislation dictates otherwise.
8. In case the employment of a EWC member within the Verizon group comes to an end, so will his/her mandate within the EWC.
9. In case national legislation or practice for the selection of EWC members requires the EWC member to be selected or appointed among the existing local employee representatives or substitutes, the fact that the individual employee representative concerned loses his/her capacity as a local employee representative or substitute, will then make an immediate end automatic end to the mandate as an EWC member.
10. In case Verizon expands its business into a country that falls within the territorial scope of this Agreement but has no EWC member yet, all employees in such country will be immediately covered by the present Agreement and the employees in that country will appoint or elect an EWC member as soon as possible. The condition that an EWC member will have at least one (1) of seniority in Verizon (Article IV.5) will not apply.
11. In case Verizon expands into a country for which there is already an EWC member, the employees of the newly acquired company or companies will be represented by the already existing EWC member for that country until the end of the four years' mandate. The EWC member from that country will actively involve the employees or their representatives from the acquired company in the preparation and follow-up of the EWC meetings and in information and Consultation processes.
12. If the expansion of the Verizon group happens through a take-over that leads to a structural change in the company or a takeover of a company or group of companies having its own EWC or procedure for informing and consulting employees, article XIII.4 will apply.

V. Structure and Functions of the EWC

1. The EWC will elect amongst its members a Select Committee which will consist of five (5) EWC members. The Select Committee will consist of a chairperson, a vice-chairperson, a secretary and two (2) general Select Committee members.
2. The Select Committee will be responsible for the operational management of the EWC. This will include liaising with Central Management over the arrangements for EWC



meetings, proposing to Central Management agenda items for EWC plenary meetings, arranging any preparatory meetings and attending monthly calls with the representatives of Central Management.

3. The chairperson of the EWC represents the EWC in law.
4. The European Works Council can, after consultation with management, establish sub-groups to work on specific areas on an ad hoc basis.
5. An EWC member, who represents employees in other sites than his/her own, shall have the right to contact all employees he/she represents in these locations.
6. EWC members and their substitutes shall be protected in accordance with the national laws and/or practice in force in their country of employment and thus not suffer any disadvantages resulting from the activities in the EWC.
7. All reasonable time spent by the EWC member on EWC activities is considered working time. The time spent for the EWC shall not affect leave from work and contingents of time for work as an employee representative provided for under national law.
8. The EWC will develop its own internal rules and regulations for its proper governance, including the appointment procedure, the function and the procedural rules for the Select Committee. Both parties agree that these internal bylaws cannot supersede this Agreement in any way, shape or form and that these internal rules and/or regulations will not bind Central Management in any manner. Before adopting the internal rules and regulations of the EWC, Central Management will be consulted.
9. Central Management may appoint representatives to serve as first point of contact for the EWC and to coordinate activities with the Select Committee. The HR Director will be one of those representatives.
10. The EWC or the Select Committee may be assisted by an internal and external expert of its choice in so far as this is necessary to carry out its tasks.

VI. Information and Consultation

1. The EWC will be informed and consulted on matters related to the structure of Verizon, the strategy of the company, its economic and financial situation, the development of the business and sales, the situation and trend of employment, investments, divestments, changes concerning organization, introduction of new working methods and processes, transfers of activities, outsourcing and insourcing, mergers and acquisitions, out-backs or closures and reduction in force, Human Resource policies, health and safety, sale of the company or a part thereof, social responsibilities and initiatives and diversity; provided that these matters are of a transnational nature and significantly affect the employees interest in all countries covered by this agreement or at least two of them.

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2. The EWC shall be informed on matters that have a significant impact on employees of only one country covered by this Agreement, including all reductions in force for business reasons in cases that involve multiple individuals or a complete business function. Information on one-country matters provided by Central Management will not constitute initiation of a consultation process, unless the decision making level of the issue impedes the national employees' representatives to be engaged in Information and Consultation.
3. Information and Consultation shall take place at a time when the decision on the proposed changes has not been finalized yet and can still potentially be changed, so that the EWC can have an input that brings added value. Verizon will not start implementing a planned decision until the Information and Consultation process with the EWC has been finalized. The consultation process will not affect management's prerogatives and power to take appropriate decisions at the time required by the business.
4. Information and Consultation shall take place at regular EWC meetings and regular EWC conference calls. In exceptional circumstances, affecting employees' interests to a considerable extent; particularly a significant reduction in force (10% or more of total staff population within the impacted countries or as mutually agreed upon between Central Management and Select Committee), sale of the company or a part thereof, or office relocations or closures, the Select Committee shall be informed by Central Management as soon as possible in order to start the Information and Consultation process. The Select Committee shall have the right to meet, at its request, with Central Management or in agreement with Central Management with the appropriate level of management with decision making powers on the matter at stake, to be further informed and consulted about the envisaged measures. Extra ordinary meetings will take place in person or by conference call, as to be agreed by the Select Committee and Central Management. Article VI.5 and VI.7 to VI.10 will apply accordingly.
5. Written and verbal information provided by Central Management to the EWC will be so that the employees' representatives:
 - Are acquainted with the motivation behind the strategies implemented
 - Understand the objectives pursued
 - Can form an opinion on the possible impact on employeesFor this purpose, it shall answer a minimal list of questions under a Business Template as per Appendix 1. This list is not restrictive. If necessary, other questions will be answered by Central Management and/or additional documents will be provided.
6. After the first provision of Information, at the request of the Select Committee, an Information and Consultation meeting can be held to complete the Information and continue with the Consultation process. This meeting can be held in person or by conference call as to be agreed by the Select Committee and Central Management.
7. In the information and Consultation process, the following parties will be involved:

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- The HR Business Partner
 - The Select Committee
 - EWC members of the affected countries covered by this Agreement
 - Business Lead if a Q&A session is requested
- National employees' representatives can also be invited to participate in the Information and Consultation process.
8. When the Select Committee has received adequate information and has had the opportunity to meet management in an Information and Consultation meeting, the EWC can issue an opinion statement on the subject matter within a reasonable timeframe, not exceeding fourteen (14) days. The receipt of the opinion statement and EWC obtaining a response from Central Management close the Information and Consultation process.
 9. Within the definition and spirit of the EU directives, if both parties agree, other ways of alternative consultation can be followed.
 10. The Information and Consultation of the Verizon EWC shall be coordinated with the information and consultation process at national level and linked so as to begin within a reasonable time of each other

VII. Meetings

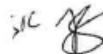
1. Central Management and the EWC shall meet four times a year. Two regular In-person plenary Information and Consultation meetings will occur for Q1 (normally March) and Q3 (normally September), while two additional regular Information and Consultation meetings will take place for Q2 and Q4 per conference call.
2. Central Management who will take part in the meetings will consist of management executives with European responsibilities and any other senior executives or experts invited by Central Management and the Select Committee.
3. The meetings shall be planned and organized as follows:
 - Central Management representatives and the Select Committee will agree on the exact date and location of the meeting.
 - The agenda for the meeting will be arranged between Central Management's representatives and the Select Committee. Central Management shall propose any relevant and current topics for discussion while the Select Committee shall ensure that all the EWC members have the opportunity to bring in agenda points.
 - Requests for information from the EWC will be formalized and forwarded to Central Management at least one month prior to the meeting
 - Central Management's representatives will then agree the agenda and communicate it to the EWC at least two weeks prior to any regularly scheduled meeting.

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- Any presentation decks (both from Central Management and the EWC) will be shared, at least in draft format, one week before the meeting takes place.
4. These regular meetings will be chaired by both the chairperson of the EWC and one of the representatives of Central Management.
 5. Each regular meeting between the EWC and Central Management will last one business day.
 6. The meetings will be conducted in English.
 7. Regular meetings between the EWC and Central Management are to be considered Information and Consultation meetings, meaning that article VI applies and that the EWC can issue an opinion statement on the subjects dealt with at the regular meeting within fourteen (14) days after the meeting.
 8. During the meeting, the minutes of the meetings will be drafted by a representative of Central Management. The minutes of the meeting shall be the detailed exchanges taking place during the meeting. The minutes of the meeting shall be sent to the Select Committee for review within five (5) Business Days after the meeting and then be circulated by the Select Committee to all EWC members. Minutes will then be approved within 2 business days by the EWC, in case of disagreement the EWC and CM will notice the discrepancies and close the minutes.
 9. The employee representatives to the EWC will hold a pre-meeting at the occasion of a regular meeting. After the meeting with management, the EWC will normally hold a post meeting. The meetings will not exceed three (3) days in total.

VIII. Communication

1. As per article 19C of the UK TUCER, the EWC has the obligation to inform its constituency on the outcome of Information and Consultation in the EWC. Following a regular Information and Consultation meeting between the EWC and Central Management, or after an extra ordinary Information and Consultation process, the Select Committee of the EWC will prepare a draft communiqué for approval and sign-off by Central Management prior to the distribution to the employees. This communiqué is the primary mode of communication concerning the Information and Consultation in the EWC and will be communicated to all Verizon employees represented. If necessary, local management will provide for translating the communiqué into the local language.
2. If within a month after the regular Information and Consultation meeting or the finalisation of the Information and Consultation process, the EWC and Central Management could not find an agreeable communiqué to be sent to all EMEA employees via the official channel of communication, and with a view to fulfilling its legal obligation in terms of communication to its constituency, the EWC will be entitled in accordance with current applicable legislation to send its communiqué to local employees' representatives, and not directly to the employees, and also to publish it on its internal web site. In doing so, the EWC will make it very clear that this communiqué has not been agreed with Central Management. In response, Central Management will be entitled to send out its own communiqué to local employees' representatives. Thereafter there will be no further



communicate to local employees' representatives sent by either the EWC or Central Management in respect of the same meeting or process unless it is an agreed communiqué.

3. An Online Portal will be accessible by all EWC members and Management. The EWC Portal will be hosted on Verizon's internal social media platform. The EWC group will be private and the content will, therefore, be visible only to group members.

The EWC Portal will contain, among others, the following features:

- The EWC Agreement
- Updates regarding the annual meetings
- Decks from the meeting presentations
- Post-meeting communiqué
- Requests for specific updates from the EWC
- Training material
- Q&A forum
- Surveys

Both the EWC representatives and the Central Management representatives are able to view, respond to and add new content to the group. To ensure engagement, all users of the EWC portal are encouraged to cooperate and collaborate in an active and continuous manner.

IX. Training

1. It is the intention of Verizon that the employee representatives are correctly trained to take an effective and appropriate part in the EWC. The EWC shall be provided with relevant training without loss of wages or impact on local training rights of employee representatives.
2. For practical reasons, these group training sessions will be combined with the two regular in person plenary meetings, taking place, as far as possible, the day prior to the meeting. Individual training shall take place when it is convenient for the employee as long as they serve EWC purposes.
3. The content of group training courses shall be proposed and agreed by the Select Committee and Central Management. In order to define a tailor-made training path, the EWC members will also have the opportunity to propose specific training needs.
4. The cost of EWC group training and that of its inherent expenses (tuition fees, transportation, meals and accommodation) shall be borne by Central Management.

X. Expenses

1. The reasonable expenses necessary for the functioning of the EWC and the Select Committee will be borne by Verizon. An annual budget will be established for this purpose; with the budget being communicated to the EWC in the first financial quarter of each year.

2. All expenses related to travel and hotel accommodation for the employee representatives need to be in accordance with the applicable travel policies of Verizon and will be reimbursed to the employee representatives via their local entity. These expenses will be charged to a Central Management cost centre.

XI. Confidential Information

1. Verizon may choose to share certain confidential information with the EWC. Central Management shall inform the EWC prior to the matter in question being dealt about on
 - the reasons for such confidentiality;
 - which written or oral information is concerned;
 - the duration of the confidentiality;
 - to the extent such might be the case, the persons or employee representation bodies to whom the information may be disclosed without breach of the imposed confidentiality.

Confidential information must not be used for any purposes other than that contemplated in this Agreement and must not be misused and must not be reported upon.

In order to share such confidential information with their expert, Central Management has to approve this beforehand. In exceptional situations, non-disclosure agreements will be executed for the EWC members or their expert(s).

2. Central Management is not required to disclose any information when its nature is such that, according to objective criteria, the disclosure would seriously harm the functioning of, or would be prejudicial to the company.
3. Any breach of confidentiality obligations by a EWC member and/or participating Manager will be deemed to be a serious disciplinary offence which will lead to legal and/or disciplinary action by the appropriate Verizon entity in accordance with the provisions of the respective national law.

XI. Applicable Law and Dispute Resolution

1. The provisions of the present Agreement are governed by United Kingdom law: Statutory Instrument 1999 No. 3323, the Transnational Information and Consultation Regulations and the amendment by Statutory Instrument 2010 No.88 of the United Kingdom.
2. In case of conflict, the EWC members and Central Management shall attempt to resolve their differences among themselves. In case this works out to be impossible, the parties to the present agreement agree to submit their differences within one week to an arbitration panel composed of three arbitrators. One of the arbitrators is selected by the EWC and another one is selected by Central Management. Together these two arbitrators appoint a third arbitrator. The arbitral panel will decide within a week by



simple majority vote and make a recommendation to the EWC. If those efforts fail, and only then, may a party initiate a court procedure. The parties agree that the recommendation of the arbitration panel should be given substantial consideration. The labour courts of the United Kingdom will be considered as the competent courts.

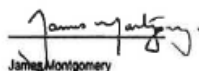
XII. Duration of the Agreement

1. The present Agreement is concluded for a period of time of four years, starting from the date of signature of the Agreement.
2. After 3 years of being in force, Central Management and the European Works Council will evaluate the Agreement. The Agreement will be tacitly prolonged for a similar period of four years if both parties agree upon that on the basis of the evaluation. If one of the parties involved so requests, the EWC Agreement will be renegotiated.
3. The request to renegotiate the EWC Agreement has to be given in writing and has to be addressed to Central Management if given by the EWC or to the Select Committee of the EWC if notice is given by Central Management. In case of renegotiation, the EWC will negotiate the new EWC agreement on behalf of all the employees of the Verizon within the territorial scope of the present Agreement. During the negotiations, the existing Agreement remains valid and in force.
4. Where the structure of Verizon In Europe changes significantly, particularly in the case of a take-over, the European Works Council and Central Management will evaluate the Agreement. If either party so requests, the EWC Agreement will be renegotiated. Article XIII.3 will apply accordingly. In the event of a merger with or acquisition of any business that already has a EWC established, the CM and the Select Committees (SC's) of both bodies will meet to agree an appropriate integration of both EWC's. If no agreement can be reached within 12 months Regulation 18F of the TIGER will apply. During the negotiations the existing EWC's shall function in accordance with the applicable agreements.
5. If Verizon or a significant part of it is taken over by another company or group of companies, the present EWC Agreement will stay in force until the takeover date.

Agreed and executed in Reading, United Kingdom, on 20 October 2016.

On behalf of Central Management

On behalf of the EWC


James Montgomery

Director - Human Resources - EMEA


Jean Philippe Charpentier

Chairman of the EWC



Appendix 1 – Business Template

Project overview

General introduction to the proposed measure

Reason for the proposed measure

Benefits to the company, customers and employees

Differences compared with the current situation, including an organization chart of current and future structures

Alternatives examined

Relationship of the measure to other projects and programs

Countries and sites potentially impacted

Schedules and deadlines regarding further planning, decisions and implementations

Project owner

Financial and economic background

Financial consequences of the measure proposed such as:

Project costs

Pay-back period

Estimated benefits (financial and non-financial)

Cost calculation of possible alternatives (benchmark)

Impact on the organisation

Risk assessment of the project

Plans to retain knowledge and skills

Impact on existing service level

sil JB

Impact on employees

The number of employees potentially impacted (headcount and FTEs; made redundant, retained or reassigned or transferred) per country/site/legal entity and function

Support for remaining employees in their new/changed roles

Support for employees impacted in securing alternative employment within or outside of Verizon

Information on employment-related agreements in case of a transfer

Information and consultation process at national/local level

Dates and timelines for information and consultation at national/local level

Social partners at national/local level

