

Report

on the audit of the domination and
profit and loss transfer agreement
pursuant to § 293b AktG between

**Vantage Towers AG,
Düsseldorf,**

and

**Oak Holdings GmbH,
Düsseldorf**

THIS IS AN ENGLISH TRANSLATION OF THE GERMAN TEXT, WHICH IS THE SOLE
AUTHORITATIVE VERSION. IN CASE OF ANY DISCREPANCY BETWEEN THE
ENGLISH AND GERMAN VERSIONS; THE GERMAN-LANGUAGE ORIGINAL SHALL
PREVAIL.

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Appendix 3 DPLTA between Oak Holdings GmbH and Vantage Towers AG

Appendix 4: General Engagement Terms for German Public Auditors and Public Audit Firms as of 1 January 2017.

LIST OF ABBREVIATIONS

€	Euro
a. M.	am Main
AG	Aktiengesellschaft (Public limited company in Germany)
AGM	Annual General Meeting
AktG	Aktiengesetz (German Stock Corporation Act)
Az.	File reference
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht, Federal Financial Supervisory Authority
BB	Betriebsberater (magazine)
BewG	Bewertungsgesetz (Valuation Act in Germany)
BewP	BewertungsPraktiker (magazine)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGH	Bundesgerichtshof (German federal court)
BTS	Build-to-Suit
BVerfG	Bundesverfassungsgericht (German federal constitutional court)
CAPM	Capital Asset Pricing Model
CAGR	Compound Annual Growth Rate
Cf.	compare
Chap.	Chapter
Cornerstone	Cornerstone Telecommunications Infrastructure Limited
CZK	Czech Koruna
DAS	Distributed Antenna Systems
DCF	Discounted Cash Flow
DPLTA	Domination and profit and loss transfer agreement

EBIT	Earnings Before Interest and Tax
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortisation
EBITDAaL	Earnings Before Interest, Tax, Depreciation and Amortisation and after Leases
e.g.	For example
e.V.	eingetragener Verein (registered association)
et seq.	et sequens (and the following)
etc.	et cetera
FAUB	Fachausschuss für Unternehmensbewertung und Betriebswirtschaft (Expert committee on business valuation and management of the IDW)
FN-IDW	IDW-Fachnachrichten (Professional news of IDW)
GBP	Pound Sterling
GmbH	Gesellschaft mit beschränkter Haftung (Limited liability company in Germany)
Grant Thornton	Grant Thornton AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Düsseldorf
HGB	Handelsgesetzbuch (Commercial Code)
HRB	Handelsregister Abteilung B (Department B of Commercial Register)
HUF	Hungarian Forint
IAS	International Accounting Standards
IDW	Institut der Wirtschaftsprüfer e.V. (Institute of Public Auditors in Germany)
IDW S 1	Standard 1 of IDW as issued in 2008
IFRS	International Financial Reporting Standards
INCA	Inter-company agreement
INWIT	Infrastrutture Wireless Italiane S.p.A.
IPO	Initial Public Offering

ISIN	International Securities Identification Number
KGaA	Kommanditgesellschaft auf Aktien (Partnership limited by shares)
KSt/KStG	Körperschaftsteuern / Körperschaftsteuergesetz (Corporate Income Tax / Corporate Income Tax Act)
LG	Landgericht (Regional Court)
LTA	Long Term Service Agreement
m	Million(s)
MNO	Mobile Network Operator
MSA	Master Service Agreement
No.	Number
Oak	Oak Holdings GmbH, Düsseldorf
OLG	Oberlandesgericht (German State Court of Justice)
p. / pp.	Page
p.a.	per annum
S.A.	Societe Anonyme (French public limited company)
S.L.U.	Sociedad Limitada Unipersonal (Spanish one-person limited liability company)
S.p.A.	Societa per azioni (Italian joint stock company)
S&P Global Market Intelligence	S&P Global Market Intelligence LLC, New York City/USA
SolZ	Solidarity surcharge
Tax-CAPM	Capital Asset Pricing Model (extended to include taxes)
TSA	Transitional Service Agreement
UK	United Kingdom
Valuation Expert	Grant Thornton
Valuation Report	Expert opinion of Grant Thornton on the calculation of the business value of Vantage Towers AG as of 5 May 2023
WACC	Weighted Average Cost of Capital

WPg	Die Wirtschaftsprüfung (magazine)
WpÜG	Wertpapierübernahmegesetz (Securities Acquisition and Takeover Act)
WpÜG-AngVO	Wertpapierübernahmegesetz-Angebotsverordnung (WpÜG offer regulation)
€	Euro

Hint:

For computational reasons, rounding differences may occur in the tables.

A. Mandate and conduct of the mandate

I. Mandate

1. Oak Holdings GmbH, Düsseldorf,¹ as the controlling company and the

Vantage Towers AG, Düsseldorf,²

as the controlled company, intend to conclude a domination and profit and loss transfer agreement pursuant to § 291 para. 1 sentence 1 AktG.³ The contract is subject to the approval of the general meeting of Vantage Towers and the shareholders' meeting of Oak pursuant to § 293 para. 1 AktG. The draft version of the contract shall be submitted to the extraordinary general meeting of Vantage Towers on 5 May 2023 and to the shareholders' meeting of Oak on 4 May 2023 for approval.

2. Pursuant to §§ 304, 305 AktG, the minority shareholders of a controlled stock corporation are to be granted, at their option, an appropriate compensation or settlement payment. The contract is to be audited by one or more expert auditors, in particular with regard to the adequacy of compensation and settlement payment.⁴ Accordingly, the subject of our audit is the contract⁵ and the adequacy of the proposed compensation and settlement payment.⁶
3. Upon the joint proposal of Oak Holdings and Vantage Towers, the District Court of Düsseldorf - 5th Chamber for Commercial Matters - appointed us, I-ADVISE AG Wirtschaftsprüfungsgesellschaft, Düsseldorf, as joint contract auditor for the intended DPLTA by order dated 12 January 2023.⁷ The appointment decision does not contain any requirements for the conduct and reporting of the audit.
4. The determination of the compensation and settlement was based on the expert opinion on the business value of Vantage Towers AG and on the determination of the adequate settlement payment pursuant to § 305 AktG as well as on the appropriate compensation pursuant to § 304 AktG as of 5 May 2023 by Grant Thornton AG Wirtschaftsprüfungsgesellschaft.

¹ Hereinafter "Oak" or "Majority Shareholder".
² Hereinafter "Vantage Towers", "Company" or "Valuation Property".
³ "DPLTA".
⁴ §§ 293b para. 1, 293e para. 1 sentence 2 AktG.
⁵ § 293b para. 1 AktG.
⁶ § 293e para. 1 sentence 2 AktG.
⁷ Cf. Appendix 1.

gesellschaft, Düsseldorf,⁸ mandated by the contracting parties.⁹ The Valuation Expert Report on the value of Vantage Towers dated 22 March 2023 was prepared by Grant Thornton in its function as a neutral Valuation Expert in accordance with IDW Standard 1 "Principles for the Performance of Business Valuations" of the Institute of Public Auditors in Germany (Institut der Wirtschaftsprüfer in Deutschland e. V.) as amended in 2008.¹⁰ The contracting parties have fully adopted the contents of this Valuation Expert Report and the statements contained therein regarding appropriate compensation and settlement payment and have attached them to the Joint Contractual Report as Appendix 7.

II. Conduct of the mandate

5. We conducted our audit - following the preceding verification of our independence and impartiality and the subsequent acknowledgement of our appointment by the court - on 18 January 2023 and conducted it primarily in our offices in Düsseldorf and Frankfurt am Main until 27 March 2023..
6. We held discussions with the responsible persons of the company and the valuation expert, Prof. Dr. Jonas, Mr. Ostwald and Dr. Budzinski, via video or telephone conferences. The named persons provided us with information on the market and competitive environment, the business model and strategy, the historical and current business situation and the budget. We also discussed valuation assumptions with representatives of the Valuation Expert during the audit.

⁸ Hereinafter "Grant Thornton" or "Valuation Expert".

⁹ Hereinafter referred to as "Expert opinion".

¹⁰ Hereinafter "IDW S 1".

7. For the purposes of our audit, the following documents were essentially available to us, which we obtained via the data room set up by the Valuation Expert or directly from the Valuation Expert or the responsible lawyers:
- Individual and consolidated financial statements of Vantage Towers for the financial years 2020/21 and 2021/22;
 - Pro-forma financial information of the financial year 2020/21;
 - Projection of the company for the financial year 2022/23;
 - Corporate planning for the financial years 2023/24 to 2031/32
 - Calculation and presentation of sensitivity analyses with regard to the effects of expected inflation on corporate planning;
 - Information on the effects of the contractually agreed adjustment of the Master Service Agreement with Vodafone Group on the business plan of Vantage Towers;
 - Corporate planning for Cornerstone Telecommunications Infrastructure Ltd. for the years 2023 to 2032;
 - Corporate planning for INWIT for the years 2023 to 2030, derived on the basis of published INWIT data and analysts' forecasts;
 - Business Combination Agreement dated 09.11.2022;
 - Joint report of the management of Oak Holdings GmbH, Düsseldorf, and the management board of Vantage Towers AG, Düsseldorf, on the DPLTA dated 23 March 2023;
 - Agreed draft of the Domination and profit and loss transfer agreement between Oak Holdings GmbH and Vantage Towers AG dated 23 March 2023;
 - Articles of association (version of 19.02.2021) and extract from the commercial register (retrieved on 22.03.2023) of Vantage Towers.
8. In addition, we used publicly available information and capital market data for our work. In determining capital market data, we primarily relied on the data provided by the financial information service provider S&P Global Market Intelligence LLC, New York City/USA.¹¹

¹¹ Hereinafter "S&P Global Market Intelligence".

9. All clarifications and evidence requested by us were provided by the representatives of Vantage Towers and Oak as well as the named respondents. The management board of Vantage Towers has issued a representation letter to us as of today's date stating that all information and documents relevant to our review of the adequacy of the compensation and settlement payment have been fully and accurately provided to us. The management of Oak has additionally declared to us in writing on the same date that it is not aware of any facts or circumstances according to which the Valuation Report and the Audit Report (final draft) contain statements on corporate planning which are incorrect in a material respect.
10. In our audit we followed IDW Standard 1 "Principles for the performance of business valuations" in the version of 2 April 2008 issued by the IDW. In addition, we applied IDW Practice Note 2/2017 "Assessment of a business plan in valuations, restructurings, due diligence and fairness opinion".
11. We started our audit work before the Valuation Expert's work was completed. This procedure is common practice in the context of contract and adequacy audits and is recognised by the highest courts.¹² This is due to the necessity of issuing a final audit opinion shortly after the completion of the valuation process. There were no diverging opinions between the Valuation Expert and us. Audit findings were adopted in the valuation model. Accordingly, our audit is not qualified in any respect and fully confirms the adequacy of the compensation and settlement payment.
12. Responsibility for the proper content of the Contract Report rests with the management of Oak and the management board of Vantage Towers.
13. We expressly point out that we have not carried out an audit of the accounting, the financial statements or the management of the companies involved. Such audits are not part of our audit of the adequacy of compensation and settlement payments. Compliance with the respective legal provisions within the framework of the audited financial statements presented has been confirmed in each case without qualification by the auditor.

¹² Cf. BGH, decision of 18 September 2006, II ZR 225/04, BB 2006, p. 2,543 et seq.

14. Should material changes in the net assets, financial position and results of operations or other bases for determining the business value of Vantage Towers arise in the period between the conclusion of our audit and the date of the resolution of the anticipated extraordinary general meeting of Vantage Towers AG on 5 May 2023 on the conclusion of the contract, these shall be applied in addition when measuring the compensation and settlement payment. For this purpose, we will obtain reporting date declarations on the day of the Annual General Meeting.
15. This report is intended solely for information purposes and as a basis for decision-making for the parties involved in the conclusion of the DPLTA, including their partners/shareholders, and the court appointing us. This also includes the provision of the report in advance of the general meeting of Vantage Towers deciding on the conclusion of the contract and the submission to the respective competent court in any legal proceedings in connection with the conclusion of the DPLTA.
16. Any further disclosure of our audit report may - subject to our express written consent - only be made to third parties in full, including a written statement on the purpose of the underlying engagement as well as the disclosure restrictions and liability conditions associated with the engagement, and only if the respective third party has previously agreed in writing to the General Engagement Terms, supplemented by an individual liability agreement, as well as a binding confidentiality obligation on its part vis-à-vis us.
17. For the performance of the engagement and our responsibility - also in relation to third parties - the General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften (German Public Auditors and Public Audit Firms) as of 1 January 2017 attached as appendix are authoritative. These General Terms of Engagement govern - in addition to the statutory limitation of liability towards the contracting parties and shareholders pursuant to § 293d para. 2 AktG in conjunction with § 323 HGB - our liability also towards third parties. § 323 HGB - our liability towards third parties as well.

B. Subject matter, type and scope of the contract audit

18. The subject matter and scope of the contract audit are derived from § 293b para. 1 and § 293e para. 1 sentence 2 AktG. Pursuant to § 293b para. 1 AktG, the subject of our audit is the corporate contract. Pursuant to § 293e para. 1 sentence 2 AktG, the focus of the audit is the assessment of the adequacy of compensation¹³ and settlement payment.¹⁴ In this context, the audit report pursuant to § 293e para. 1 sentence 3 AktG must state
- the methods used to determine compensation and settlement payments and the reasons why the use of these methods is appropriate
 - what compensation or settlement payment would result from the application of different methods, if more than one has been applied; at the same time, it shall be explained
 - the weight given to the different methodologies in determining the proposed compensation and settlement payment and their underlying values; and
 - what particular difficulties were encountered in the valuation of the contracting company.
19. Accordingly, our audit is divided into a formal and a substantive part. In the formal part of our audit we have examined whether the contract contains the legally required elements completely and correctly and thus complies with the legal requirements. In the substantive part of our audit, we considered whether the proposed compensation and settlement payment should be regarded as adequate, applying the circumstances of Vantage Towers. Any further legal assessment as well as the examination of the appropriateness of the contract and tax implications are not part of our engagement. Accordingly, the completeness and accuracy of the contract report are not subject to audit.
20. The adequacy of compensation and settlement payment can be assessed on the basis of the valuation of the Vantage Towers, which forms the basis for the derivation of the compensation and settlement payment. The auditor has to examine whether the valuation corresponds to recognised methods, the value-relevant parameters have been derived properly and the planned future results appear plausible. If stock market prices can be determined for the valuation, the derivation of the stock market price shall be assessed.

¹³ § 304 AktG.

¹⁴ § 305 AktG.

C. Formal review of the domination and profit and loss transfer agreement

21. The minimum content of a DPLTA required by corporate law is derived from §§ 291 et seq. AktG. The examination of the completeness and correctness of the contract therefore refers to the general information on the contracting parties, the determination of the subject matter of the contract, the beginning and duration of the contract as well as the agreements on compensation and settlement payment.

1. Company name and registered office of the companies involved

22. **The name and registered office of the companies involved** are stated in the contract¹⁵ and correspond to the entries in the commercial registers of Oak and Vantage Towers.

2. Management

23. Vantage Towers submits the management of its company to Oak.¹⁶ Accordingly, Oak is entitled to issue instructions to the Management Board of Vantage Towers with regard to the management of the company. The Management Board of Vantage Towers has to comply with these instructions.¹⁷ This right to issue instructions does not extend to amendments, maintenance or termination of the contract.¹⁸ For reasons of legal certainty, it is contractually stipulated that instructions must be in text form.¹⁹

24. The subordination of the management of the company is constitutive for a domination agreement. The corresponding provisions of the contract comply with the legal requirements.²⁰

¹⁵ Cf. preamble.

¹⁶ Cf. clause 1.1 in connection with clause 6.2 of the contract; as well as § 294 para. 2 AktG.

¹⁷ Cf. clause 1.1 of the contract.

¹⁸ Cf. clause 1.2 of the contract.

¹⁹ Cf. clause 1.4 of the contract.

²⁰ §§ 291 para. 1 sentence 1, 299 and 308 AktG.

3. Profit transfer

25. Vantage Towers is obligated to transfer its entire profit to Oak.²¹ This arrangement is constitutive for a profit transfer agreement.²² The amount to be transferred - conditional on the contractually regulated formation or dissolution of provisions²³ is the maximum amount permissible pursuant to § 301 AktG as amended.²⁴ According to the current legal situation, this is at most the annual net profit arising without the profit transfer, reduced by any loss carried forward from the previous year, the amount to be allocated to the statutory reserves according to § 300 no. 1 AktG and the distribution-restricted amount according to § 268 para. 8 HGB.²⁵ Vantage Towers may, with the consent of Oak in text form pursuant to § 126b BGB, allocate amounts from the net income for the year to other revenue reserves, provided this is permissible under commercial law and economically justified on the basis of a reasonable commercial assessment.²⁶ Reserves formed in this way can be dissolved again and used to offset losses or transferred as profit at Oak's request in text form in accordance with § 126b BGB.²⁷ Other reserves or a profit carried forward from the time before the beginning of the contract may not be used to transfer profits or to compensate losses.²⁸
26. The obligation to transfer profits applies for the first time with the registration of the contract in the commercial register of Vantage Towers and extends to the entire profit of the then current financial year of Vantage Towers. It shall become due at the end of each financial year of Vantage Towers and shall bear interest from that time onwards at the statutory rate (§§ 352, 353 HGB).²⁹
27. The regulations on profit transfer comply with the legal requirements.³⁰ By linking to the respective applicable version of § 301 AktG, it is ensured that the regulations on profit transfer are permissible at all times.

²¹ Cf. clause 2.1 of the contract.

²² § 291 para. 1 sentence 1, 2nd alt. AktG.

²³ Cf. clause 2.2 of the contract.

²⁴ Cf. clause 2.1 of the contract.

²⁵ § 301 sentence 1 AktG.

²⁶ Cf. clause 2.2 of the contract.

²⁷ Cf. clause 2.3 of the contract.

²⁸ Cf. clause 2.3 of the contract.

²⁹ Cf. § 2.4 in connection with. § 6.2 of the contract.

³⁰ § 300 No. 1 in connection with. § 150 para. 2 AktG, § 301 AktG.

4. Assumption of losses

28. Pursuant to the provisions of § 302 AktG, Oak is obliged to assume losses of Vantage Towers.³¹
29. Under the current legal situation, Oak must thus compensate for any net loss for the year that would otherwise arise during the term of the agreement, insofar as this is not compensated for by withdrawing amounts from the other revenue reserves that were transferred to them during the term of the agreement.³²
30. The time as from which Oak is obliged to assume the losses corresponds to the arrangement made for the transfer of profits. The obligation shall fall due at the end of each financial year of Vantage Towers and shall bear interest from that date at the statutory rate.³³
31. Reference to the statutory provisions as amended from time to time ensures that the loss transfer provisions are permissible at all times.

5. Compensation

32. Oak undertakes to pay the minority shareholders of Vantage Towers an appropriate compensation in the form of an annually recurring cash payment for the duration of the agreement from the financial year for which the claim for profit transfer becomes effective.³⁴ The compensation amount for each full financial year of Vantage Towers shall be €1.60 gross for each registered common share of Vantage Towers with a notional interest in the share capital of €1.00 less an amount for KSt and SolZ at the respective tax rate applicable for these taxes for the respective financial year, whereby this deduction shall only be made in the partial amount of €0.68 per Vantage Towers Share which relates to the profits of Vantage Towers charged with German corporation tax.³⁵

³¹ Cf. clause 3.1 of the contract.

³² § 302 para. 1 AktG.

³³ Cf. clause 3.2 in connection with clause 6.2 of the contract. Clause 6.2 of the contract.

³⁴ Cf. clause 4.1 of the contract.

³⁵ Cf. clause 4.2 of the contract.

33. According to the circumstances at the time of the conclusion of the agreement, the deduction for KSt (15.0%) and SolZ (5.5% of KSt) amounts to €0.11 per Vantage Towers share.³⁶ Together with the remaining pro rata gross amount of € 1.60 per Vantage Towers share, which relates to the profits not subject to German corporation tax, this results in a compensation of € 1.49 per Vantage Towers share for a full financial year according to the circumstances at the time of the conclusion of this contract.³⁷
34. To the extent required by law, any withholding taxes (e.g. withholding tax on capital gains plus solidarity surcharge) shall be withheld from the equalisation payments pursuant to Clause 4.2 of the Contract.³⁸
35. The granting of a fixed recurring compensation corresponds to the legal regulation.³⁹
36. The compensation is due on the first banking day after the Annual General Meeting of Vantage Towers for the respective past financial year, but no later than eight months after the end of this financial year.⁴⁰ This regulation is customary and appropriate, as the compensation as a substitute for the previous dividend claim is thus generally due at the same time at which the dividend claim would otherwise also have been due on a regular basis.
37. The compensation shall be granted for the first time for that financial year of Vantage Towers in which the contract is entered in the commercial register and thus becomes effective.⁴¹
38. If the contract is terminated during any financial year of Vantage Towers or Vantage Towers forms a short financial year during the term of this contract, the gross compensation amount for the financial year concerned shall be reduced pro rata temporis.⁴²
39. The rules on how to proceed in the case of capital increases using company funds or through cash or non-cash contributions⁴³ are covered by the prevailing view in legal literature.

³⁶ Cf. clause 4.2 of the contract.

³⁷ Cf. clause 4.2 of the contract.

³⁸ Cf. clause 4.2 of the contract.

³⁹ § 304 para. 1 sentence 1, para. 2 sentence 1 AktG.

⁴⁰ Cf. clause 4.2 of the contract.

⁴¹ Cf. clause 4.3 in connection with clause 6.2 of the contract. Clause 6.2 of the contract.

⁴² Cf. clause 4.3 of the contract.

⁴³ Cf. clause 4.4 of the contract.

40. In the event of a capital increase of Vantage Towers using company funds in exchange for the issue of new shares, the compensation per share shall be reduced to the extent that the total amount of the compensation payments remains unchanged. If the share capital of Vantage Towers is increased by contributions in cash and/or in kind, the rights under this Clause 4 shall also apply to the Vantage Towers shares subscribed for by minority shareholders in the capital increase. The commencement of the entitlement under the new shares pursuant to this Clause 4 shall be determined by the dividend entitlement determined by Vantage Towers at the time of the issue of the new shares.⁴⁴
41. Should the court legally determine a higher compensation in appraisal proceedings, the shareholders already compensated according to clause 5 of the contract may also demand a corresponding supplement to the compensation they have already received. This corresponds to the statutory regulation in § 13 Spruchverfahrensgesetz (German Act on Appraisal Proceedings). A similar claim for supplementary compensation is stipulated in the contract if Oak agrees to pay a higher compensation as a result of a court settlement to end an appraisal case.⁴⁵

6. Settlement payment

42. Oak undertakes to acquire the shares of any minority shareholder of Vantage Towers in exchange for a settlement payment of €27.85 per Vantage Towers share.⁴⁶ As Oak is not a company in the legal form of an AG or KGaA, the settlement payment is to be granted as cash settlement.⁴⁷
43. Oak's obligation to acquire the shares is limited in time. A time limit is also common in practice. The corresponding regulations⁴⁸ are in line with the legal regulations.⁴⁹
44. The regulations on how to proceed in the case of capital increases using company funds or through cash or non-cash contributions⁵⁰ correspond to the prevailing view in legal literature.

⁴⁴ Cf. clause 4.4 of the contract.

⁴⁵ Cf. clause 4.5 of the contract.

⁴⁶ Cf. clause 5.1 of the contract.

⁴⁷ § 305 para. 2 no. 3 AktG.

⁴⁸ Cf. clause 5.2 of the contract.

⁴⁹ § 305 para. 4 AktG.

⁵⁰ Cf. clause 5.3 of the contract.

45. The transfer of shares in exchange for settlement payment is free of charge for the minority shareholders of Vantage Towers.⁵¹ There are no legal requirements in this regard.
46. Should the court legally determine a higher settlement payment in an appraisal case, the shareholders who have already been compensated can also demand a corresponding supplement to the settlement payment. This corresponds to the legal provision in § 13 Spruchverfahrensgesetz. Likewise, all other minority shareholders will be treated equally under the contract if Oak agrees to make a higher settlement payment to any minority shareholder of Vantage Towers as a result of a court settlement to end an appraisal case.⁵²

7. Effective date, duration and termination of the contract

47. In accordance with the statutory provisions⁵³, the contract requires the approval of the general meeting of Vantage Towers as well as the approval of the shareholders' meeting of Oak in order to become effective.⁵⁴
48. In accordance with statutory regulation, it is made in written form.⁵⁵
49. In accordance with the statutory regulation,⁵⁶ the contract shall only become effective when its existence has been entered in the commercial register of the registered office of Vantage Towers. With regard to the obligation to transfer profits and to assume losses, the contract shall apply retroactively from the beginning of the financial year of Vantage Towers in which it became effective.⁵⁷
50. The contract is concluded for an indefinite period and may be terminated in writing with six months' notice to the end of a financial year of Vantage Towers.⁵⁸ Any termination must be in writing.⁵⁹ For tax reasons - based on the current legal situation - a minimum term of five years has been agreed.⁶⁰

⁵¹ Cf. clause 5.4 of the contract.

⁵² Cf. clause 5.5 of the contract.

⁵³ § 293 para. 1 sentence 1 AktG in direct application with regard to the approval of the AGM of Vantage Towers AG and § 293 para. 2 sentence 2 AktG in corresponding application with regard to the approval of the shareholders' meeting of Oak.

⁵⁴ Cf. clause 6.1 of the contract.

⁵⁵ § 293 para. 3 AktG.

⁵⁶ § 294 para. 2 AktG.

⁵⁷ Cf. clause 6.2 of the contract.

⁵⁸ § 297 AktG; clause 6.3 of the contract.

⁵⁹ Cf. clause 6.5 of the contract.

⁶⁰ Cf. clause 6.3 of the contract.

51. In the event of the termination of the Agreement during a financial year of Vantage Towers, Vantage Towers shall be obliged to transfer its profits or Oak Holdings shall be obliged to compensate Vantage Towers for its losses up to the termination date of the Agreement.
52. The legal requirements regarding termination for cause⁶¹ have been considered.⁶²

8. Final provision

53. The final clauses⁶³ correspond to usual contractual technique and are not objectionable.
54. As a result of our audit of the DPLTA, we find that the DPLTA⁶⁴ contains the components prescribed in §§ 291 et seq. AktG completely and correctly and thus complies with the legal requirements.

⁶¹ § 297 para. 1 sentence 1 AktG.
⁶² Cf. clause 6.4 of the contract.
⁶³ Cf. clause 7 of the contract.
⁶⁴ Agreed draft dated 23 March 2023.

D. Material review of the domination and profit and loss transfer agreement

I. Valuation principles and methods being used

1. Methods for determining appropriate compensation and settlement payments

55. There is no explicit legal method for determining the settlement payment. According to the findings of business administration, case law⁶⁵ and valuation practice, the value of the company is the correct basis for determining the settlement payment pursuant to § 305 AktG. Accordingly, the value of the company as a whole is decisive.
56. The shares of Vantage Towers are listed on the stock exchange. Therefore, the stock market price may not be disregarded as a lower limit when determining the settlement payment.⁶⁶ However, it must be examined in each individual case whether the stock market price actually reflects the market value.
57. Pursuant to § 304 para. 1 sentence 1 AktG, a DPLTA must provide for appropriate compensation for the minority shareholders in the form of a cash payment based on the shares in the share capital. Pursuant to § 304, para. 2, sentence 1 AktG, the compensation must be at least the annual payment of the amount which, according to the company's previous earnings situation and its future earnings prospects, taking into account appropriate depreciation and value adjustments, but without the formation of other revenue reserves, could probably be distributed as an average share of profits to the individual share.
58. The wording of the statutory regulation is already based on the future earnings value of the company. Accordingly, in valuation practice the compensation is regularly determined by annuitising the discounted earnings value.⁶⁷ This corresponds to the case law of the German Federal Court (BGH),⁶⁸ according to which the compensation by annuitisation is derived from the objectified business value.
59. Consequently, the basis for the derivation of compensation and settlement is the derivation of the business value of the controlled company.

⁶⁵ Cf. BGH, decision of 12 March 2001, Ref. II ZB 15/00, ZIP 2001, pp. 734-737.

⁶⁶ BVerfG, decision of 27 April 1999 - Ref. 1 BvR 1613/94, NJW 1999, p. 3769 et seq. (DAT/Altana); BGH, decision of 19 July 2010 - Ref. II ZB 18/09, AG 2010, p. 629 et seq. (Stollwerck).

⁶⁷ Cf. also Fleischer/Hüttemann (Editors), *Rechtshandbuch Unternehmensbewertung*, 2nd ed. 2019, Rz. 12.201.

⁶⁸ Cf. BGH Az. II ZB 17/01, ZIP 2003, p. 1,745 ff, "Ytong-Beschluss".

2. Valuation principles

60. The value of the equity of a commercial company is derived from the future uncertain future cash flows that the equity investor can expect. Such a business value can therefore be calculated as the present value of all future income-expenditure surpluses of the company.
61. The basic principles of how such future-related company valuations are to be carried out are presented in the standard IDW S 1. In order to determine the appropriate compensation and settlement payment, the Valuation Expert first carried out an earnings valuation according to IDW S 1. The principles anchored in this standard, in particular the explanation of the discounted earnings method, correspond to the prevailing opinion in the business administration literature and practice of business valuations. The discounted earnings method is also recognised by the courts in Germany.⁶⁹ In this respect, we consider the discounted earnings method applied here to be appropriate. Accordingly, the business value results from the risk-adequate discounting of future expected distributions of the company to its shareholders.
62. As an alternative to the application of the discounted earnings method, valuations can in principle also be carried out according to the discounted cash flow (DCF) method within the framework of IDW S 1. Under the common form of the DCF method (so-called gross, entity, enterprise or WACC approach), first a total capital value for the operating business is determined. The equity value is then derived from the total capital value by deducting the net financial debt. The discounted earnings method and the DCF method are both based on the net present value calculation and thus on the same conceptual foundations. Given the same premises, both methods lead to the same result.
63. The present value of the projected cash flows calculated using the discounted earnings method only includes those value-forming factors that can be accurately reflected in terms of value by current cash flows. Value-forming factors that cannot be represented at all or only very incompletely in this way are to be valued separately and added to the discounted earnings value as special values. In particular, these can be assets that are not necessary for operations or also special tax circumstances.⁷⁰

⁶⁹ Cf. OLG Düsseldorf, decision of 05.09.2019 - 26 W 8/17 (AktE), para. 55 (OpenJur).

⁷⁰ Cf. IDW S 1, para. 59 et seq.

3. Liquidation value and net asset value

64. In both the discounted earnings method and the DCF method, the business value is derived from the discounted expected cash surpluses of the continuing company. In contrast, the liquidation value represents the payment surplus from liquidation. According to IDW S 1, this value can be considered as the lower limit of the business value if the present value of the financial surpluses that would result from liquidation exceeds the discounted earnings value assuming the continuation of the company.
65. Nevertheless, the liquidation value is relevant for the valuation of non-operating assets, because non-operating assets, including the corresponding debts, have to be valued on the basis of their best possible realisation. If the liquidation value of these assets, under consideration of the tax effects of a sale, exceeds the cash value of their financial surpluses when remaining in the company, the liquidation represents the more advantageous realisation rather than the otherwise assumed continuation of the previous use.⁷¹
66. The net asset value comprises the sum of the disbursements that would be necessary to reproduce the company. The valuation of the substance from a procurement point of view leads to the so-called reconstruction value of the enterprise, which is only a partial reconstruction value because of the regular difficulties in determining intangible assets that are not capable of being reported in the balance sheet. The net asset value basically lacks a direct reference to future financial surpluses. Therefore, it has no independent significance in the determination of the business value.

⁷¹ Cf. IDW S 1, para. 60.

4. Comparative valuation

67. For plausibility purposes, it is customary to determine indicative business values or value bandwidths on the basis of a multiple of a profit or stock figure determined by means of a multiplier, which is regarded as customary in the industry. Suitable multiples are derived either from capital market data of listed peer group companies or from comparable transactions. Careful performance of such valuations requires, on the one hand, an analysis of the past and also the expected earnings situation of the valuation object. However, analysts' estimates are usually only available for a limited forecast period. Secondly, the earnings multiples must be derived from an analysis of the valuations of comparable companies. In this context, company-specific earnings and cost structures may not be sufficiently applied. Furthermore, circumstances that need to be taken into account in particular, such as losses carried forwards, may often not be adequately applied in a multiples valuation. Such multiplier valuations therefore only represent simplified, lump-sum valuations. Therefore, a comprehensive analytical valuation according to the discounted earnings method - as carried out here - is preferable.

5. Prior purchases and stock market prices

68. According to IDW S 1 para. 13, prices actually paid for companies and company shares can in principle be used as a point of reference for the economic plausibility of company and share values, but do not replace a company valuation. Furthermore, they are also influenced by the subjective decision values of the acquirer, e.g. by synergies or package premiums or control premiums that can only be achieved by him.
69. For this reason, since the fundamental decision of the Federal Constitutional Court of 27 April 1999, it has been established case law that pre-acquisition prices are irrelevant for the determination of the settlement payment pursuant to § 305 AktG.⁷²

⁷² Valuation Report, p. 24 with further references.

II. Examination of the derivation of the business value

1. Procedure

70. The subject of the audit was first the identification of the valuation object and the approach to the valuation. As a basis for our analyses, we examined the business model and the economic fundamentals of Vantage Towers. With recourse to the business reports, audit reports, internal documents as well as publicly available information and capital market data submitted to us, we next looked at the development of historical results.
71. We carried out the planning plausibility check on the basis of the past figures adjusted for special effects. In doing so, we had the planning process explained to us.
72. As part of our audit, we examined the adequacy of the valuation method and the valuation parameters defined in detail. We traced the implementation in the valuation model of the Valuation Expert and built our own valuation models for the purpose of checking the correct application of the methods, processing the premises and parameters as well as checking the correctness of the calculations.
73. In addition, we have carried out our own analyses and calculations, in particular on the components of the capitalisation rate, the stock market price and the multipliers.
74. Our audit also included the Valuation Expert's comparative market valuation and stock market price research.
75. We have determined the focus of the audit to be:
 - Plausibility of the representation of the expected business development of Vantage Towers by the planning calculation
 - Appropriate transfer of the planning calculation into the valuation model and derivation of the distributable results
 - Derivation of the sustainable result and sustainable retention
 - Adequacy of the derivation of the capitalisation rate
 - Appropriate consideration of items to be valued separately, in particular with regard to the shareholdings in Infrastrutture Wireless Italiane S.P.A. ("INWIT") and Cornerstone Telecommunications Infrastructure Ltd. ("Cornerstone")
 - Principles and methods of the valuation
 - Appropriate derivation of the annuity interest rate for the determination of the compensation.

2. Market and competitive environment

76. The business of tower companies ("TowerCos") comprises the provision of infrastructure for the telecommunications sector. A distinction is made between active infrastructure (transmitters or antennas), which serves the transmission of mobile radio and broadcasting signals and is predominantly operated by the respective provider, such as the network operators (MNOs), and passive infrastructure. The object of TowerCos is the provision of the passive infrastructure on which the active infrastructure is installed. Passive infrastructure is regularly erected in the form of ground-based towers or roof-top towers on leased areas.
77. TowerCos mainly generate revenues from rental income from network operators with whom long-term contracts ("Master Service Agreements", "MSA") are concluded for the provision of the passive infrastructure. This is mainly offset by costs for renting or acquiring the sites on which the towers are built and IT and maintenance expenses. Due to the investments in the construction of the towers and regular maintenance and modernisation measures, the TowerCos business model is very investment-intensive.
78. The main growth drivers of this business model are the constantly growing data volume transported via mobile networks, the EU Commission's action plan for the implementation of the 5G mobile communications standard and the improvement of network coverage in rural areas in the so-called white spots and grey spots driven by the governments of various countries.
79. In recent years, there has been an increasing trend towards outsourcing the tower business of network operators to TowerCos. According to a recent industry analysis by TowerXchange Europe, about 34% of the towers in Europe are currently still held directly by network operators, and another 37% are held by TowerCos or joint ventures that are controlled by network operators. The remaining 29% of towers are held by independent TowerCos.⁷³
80. According to this study, four main providers are active on the German market: Vantage Towers, which resulted from the spin-off of Vodafone's tower business, GD Towers, into which Deutsche Telekom spun off its tower business, American Towers, which is independent of MNOs, and Telefonica, which did not spin off its towers.⁷⁴

⁷³ Cf. TowerXchange's European guide, December 2022, p. 2.

⁷⁴ Cf. TowerXchange's European guide, December 2022, p. 16.

3. Valuation object

a) Legal and economic foundations

aa) Fundamentals of corporate law and tax relations

81. Vantage Towers has its registered office in Düsseldorf and is entered in the Commercial Register of the Düsseldorf Local Court under HRB 92244. Its business address is: Prinzenallee 11-13, 40549 Düsseldorf. The financial year ends on 31 March.
82. The Articles of Association of the Company are valid as amended on 18 February 2021.
83. The share capital of Vantage Towers amounts to € 505,782,265.00 and is divided into a total of 505,782,265 no-par value registered shares with a notional interest in the share capital of € 1.00 per share.
84. Pursuant to Clause 5 (3) of the Articles of Association of Vantage Towers, the Management Board of Vantage Towers is authorised, with the consent of the Supervisory Board, to increase the share capital of Vantage Towers by up to €252,891,132.00 until 15 February 2026 by issuing new no-par value registered shares in exchange for cash or contributions in kind on one or more occasions.
85. Pursuant to Clause 5 para. 4 of the Articles of Association of Vantage Towers, the share capital of Vantage Towers may be conditionally increased by up to € 101,156,453.00 by issuing up to 101,156,453 new no-par value registered shares. The conditional capital serves exclusively to grant new shares to the holders or creditors of conversion or option rights or obligations arising from bonds with warrants or convertible bonds, profit participation rights or profit participating bonds. Corresponding financial instruments containing conversion or option obligations have not yet been issued by Vantage Towers.
86. Vantage Towers shares are admitted to trading on the regulated market of the Frankfurt Stock Exchange (Prime Standard) and are also traded on the over-the-counter markets of the Berlin (including Berlin Second Regulated Market), Hamburg, Düsseldorf, Hanover, Munich and Stuttgart stock exchanges and via Tradegate Exchange. The international securities identification number (ISIN) is DE000A3H3LL2.

87. According to its current announcement dated 1 February 2023 pursuant to § 23 para. 1 sentence 1 no. 3 of the WpÜG, Oak, together with the persons acting jointly with it, holds a total of 451,461,906 (413,347,708 plus the number of shares of 34,114,198 acquired under the Takeover Offer) of the Vantage Towers Shares. This corresponds to a share of voting rights of approximately 89.26%. The remaining shares and voting rights are held by Elliott Investment Management L.P. (including affiliated companies and assets under management) and in free float.⁷⁵
88. According to Vantage Towers, there are no usable tax losses carried forwards as at 31 March 2022.
89. According to statements by the management, the company's tax contribution account pursuant to § 27 KStG as of 31 March 2023 amounts to approximately € 6,790 million.

ab) Business activity

90. Vantage Towers was founded in 2019 and started operations in 2020. Vantage Towers is a leading tower company in Europe in terms of size and geographical diversification, with more than 80,000 sites in ten European countries. Business is conducted by Vantage Towers and its direct and indirect subsidiaries. As of 31 March 2022, the Vantage Towers group employed 533 people.
91. The object of the Company is the acquisition, rental, construction, holding, maintenance, management or marketing, leasing and operation of passive network infrastructure for mobile communications, such as support structures of all kinds that can be used for the installation of active radio and transmission technology (for example antennas, roofs, chimneys or other locations or areas) and all other components of passive network infrastructure, as well as the provision of related services (such as the construction of fibre optic lines, microcells (so-called small cells) and the fibre reinforcement of backhauls). Smart Cells), Special Event Cells and the fibre reinforcement of backhauls).

⁷⁵ Cf. mandatory notification of Vantage Towers (Voting Rights Notification) dated 31 January 2023 as well as 10 March 2023 and 23 March 2023 in relation to the publication pursuant to § 40 para. 1 WpHG.

ac) Net assets, financial position and results of operations

92. The Valuation Expert presents the results of operations of Vantage Towers for the financial years 2019/2020, 2020/21, 2021/22 and 2022/23 (30.09.2022 and 31.03.2023 (plan) based on the pro forma figures 2019/2020 and 2020/21, the IFRS consolidated financial statements 2021/22, the unaudited actual figures as at 30.09.2022 and the internal plan figures as at 31.03.2023. The Valuation Expert presents the asset situation as at 31.03.2021, 31.03.2022 and 30.09.2022.
93. The analysis of the past forms the starting point for forecasting future developments and for plausibility considerations. In order to improve the comparability of the planning periods with the business years of the past under consideration, it is common practice in valuation to analyse the results of the past with regard to unique or non-recurring items as well as extraordinary items or items unrelated to the accounting period. Furthermore, these analyses serve to explain plan overruns or underruns due to special circumstances that could not be planned.
94. As of 25 May 2020, the tower business was spun off from the Vodafone group and subsequently incorporated into Vantage Towers AG. Consequently, the income statement presented in the annual report for 2020/21 does not reflect a full financial year. In order to enable comparability of the results of the 2020/21 financial year with those from 2021/22 as well as the planning, it was necessary to refer to the pro forma figures published by the Vantage Group for the 2020/21 financial year in addition to the 2019/20 financial year.⁷⁶
95. We have verified the presentation of the past results of the Valuation Expert and traced them on the basis of the submitted annual reports, audit reports and supplementary statements.

⁷⁶ Cf. Annual Report 2022, p. 32.

96. Lease-related expenses are of central importance to Vantage Towers' operating business, but since the application of IFRS 16 they have been reported below EBITDA. For this reason, the company also regularly reports the operating result before depreciation and amortisation but after leasing costs ("EBITDAaL") and thus shows a view without applying the regulations of IFRS 16. Leasing costs are defined as the sum of depreciation and amortisation of the right of use and interest expenses for leasing liabilities. In addition to leasing costs, capital expenditure charged on is also deducted from EBITDAaL. The background to this item is investments made by Vantage Towers, for which the company receives a reimbursement from its customers booked in the revenue.
97. In addition to the presentations in the Valuation Expert Report, we show the earnings situation as it results for the financial years 2020/21 to 2022/23 in the following table.⁷⁷

HISTORICAL PROFIT & LOSS STATEMENTS			
EURm	2020/21	2021/22	2022/23 (FC)
Revenue	970	1,023	1,081
Maintenance costs	-37	-46	-42
Staff costs	-40	-45	-60
Other operating expenses	-63	-66	-75
EBITDA	830	865	904
Ground lease costs	-302	-310	-322
Recharged capital expenditure	-4	-12	-21
EBITDAaL	524	543	561
Reversal of management adjustment VT		-2	
Depreciation	-109	-98	-138
Other one-off costs	-43	-5	-7
Recharged capital expenditure	4	12	21
EBIT	376	449	437
Financial result	-6	17	61
EBT	371	466	498
Income tax expense	-98	-109	-112
Net income	273	357	386

Source: Annual reports 2021 (pro forma) and 2022, Forecast 2023

⁷⁷ The P&L is shown without effects coming from IFRS 16, i.e. interest and depreciation related to IFRS 16 is shown as lease costs.

98. The main developments in the results of operations of Vantage Towers can be summarised as follows:

- Most of the revenue is attributable to rental income and related income. The remaining revenue is generated by the service business. 49.2% of the revenue generated in 2021/22 was generated in Germany, followed by Spain and Greece with revenue shares of 16.9% and 13.2%, respectively. The increase in revenue between 2020/21 and 2022/23 (forecast) is due to new rental contracts, inflation-related price adjustments and other services.
- Maintenance expenses increased significantly in 2021/22 compared to the previous year. The increase was mainly due to higher costs for other chargeable services for Mobile Network Operators ("MNOs") as well as one-off costs in connection with neutral hosting projects. For the year 2022/23, maintenance costs are expected to decrease again as a result of the elimination of various one-off items.
- The increase in personnel expenses is due to the hiring of new employees.

99. The financial position of Vantage Towers AG according to the consolidated financial statements as at 31 March 2021 and 31 March 2022 is shown in the following table:

CONSOLIDATED BALANCE SHEETS		
EURm	2020/21	2021/22
Goodwill	3,316	3,320
Intangible Assets	235	269
Property, plant and equipment	825	1,143
Right of use	2,055	2,059
Investments in joint ventures	3,316	3,218
Deferred tax assets	24	30
Trade and other receivables	15	24
Non-current assets	9,786	10,061
Receivables due from related parties	436	512
Trade and other receivables	41	126
Cash and cash equivalents	22	22
Current assets	499	660
Total assets	10,286	10,722
Equity	5,294	5,364
Long-term borrowings	2,187	2,190
Lease liabilities due	1,774	1,759
Provisions	319	457
Post employment benefits	1	0
Deferred tax liabilities	71	129
Trade and other payables	34	89
Non-current liabilities	4,386	4,624
Lease liabilities	242	248
Income tax liabilities	9	12
Provisions	16	9
Payables due to related parties	119	118
Trade and other payables	219	348
Current liabilities	605	734
Total equity and liabilities	10,286	10,722

Source: Annual reports 2021 and 2022, forecast 2023

100. For explanations of the asset situation, we refer to the explanations of the Valuation Expert. We consider the presentation of the Valuation Expert on the historical asset situation to be appropriate.

b) Structure and delimitation of the valuation object

101. The Valuation Expert correctly considers Vantage Towers, including its shareholdings, to be the object of the valuation.
102. Vantage Towers holds significant non-fully consolidated interests in INWIT amounting to 33.2% of the capital and in Cornerstone amounting to 50.0% of the capital.
103. The investments in INWIT and Cornerstone, which are consolidated at equity in the consolidated financial statements of Vantage Towers, were valued separately and applied in the value derivation according to the share held by Vantage Towers. Vantage Towers Erste Verwaltungsgesellschaft mbH and Vantage Towers Zweite Verwaltungsgesellschaft mbH were also valued separately.

4. Valuation date

104. The relevant legal valuation date for the determination of the appropriate settlement payment results directly from the law. Pursuant to § 305 (3) sentence 2 AktG, the circumstances of the dependent or controlled company⁷⁸ at the time of the adoption of the resolution by its general meeting are to be applied.
105. There is no corresponding provision in the law for the determination of the appropriate compensation payment. In the literature, case law and valuation practice, there is, on the one hand, the opinion that the time of the resolution of the general meeting of the dependent company also determines the legal valuation date for the determination of the compensation.⁷⁹ On the other hand, there is the opinion that - against the background of the fact that the guaranteed dividend is a substitute for the dividend - the compensation is to be determined from the income value of the business value at the beginning of the year in which the domination and profit and loss transfer agreement is to become effective.⁸⁰ In the present case, the time of the resolution of the general meeting was taken as a basis. This leads to a higher compensation and thus to no disadvantage for the minority shareholders.

⁷⁸ Vantage Towers AG.

⁷⁹ Cf. Hüttemann/Meyer in Fleischer/Hüttemann (editors), Rechtshandbuch Unternehmensbewertung, 2nd ed. 2019, Rz. 14.33.

⁸⁰ Cf. IDW, WPH Edition, Valuation and Transaction Advice 2018, Chap. C para. 82.

106. The resolution on the DPLTA is scheduled for the extraordinary general meeting of Vantage Towers to be convened on 5 May 2023. The relevant legal valuation date is therefore 5 May 2023. In order to determine the equity value of Vantage Towers, the Valuation Expert discounted the distributions forecast for the perpetuity at the discount rate to the technical valuation date of 31 March 2023 and then appropriately compounded them to 5 May 2023.

5. Valuation method

107. The Valuation Expert determined the business value of Vantage Towers using the discounted earnings method set out in IDW S 1. The future earnings value - and thus also the discounted earnings method as a possible procedure for its determination - is, according to the prevailing opinion in business administration and among German public auditors, the authoritative and recognised method for determining the value of companies for which the going concern value exceeds the liquidation value. The discounted earnings method is also recognised as standard practice in case law. An alternative valuation using the DCF method could therefore be dispensed with. Nevertheless, we also determined the business value in parallel using the DCF method and arrived at the same result.

108. In accordance with the prevailing opinion, the Valuation Expert determined the discounted earnings value as an objectified business value, i.e. from the point of view of a typified shareholder. This is based on the assumption of a domestic natural person with unlimited tax liability who is unable to exert any financial or corporate policy influence due to his small shareholdings.

109. According to the requirements of IDW S 1, an objectified business value must be determined without consideration of synergy effects that could only arise as a result of the DPLTA ("real synergy effects"), while synergy effects that could also be realised without this measure and that are part of the corporate concept documented at the valuation date ("non-real synergy effects") must be applied. We are not aware of any positive synergy potentials achievable without DPLTA from the connection with Oak as majority shareholder or its direct and indirect shareholders.

110. Since the shares of Vantage Towers are listed on the stock exchange, the stock market price may not be disregarded as a possible lower limit of the settlement payment according to the case law of the BVerfG.⁸¹ However, under constitutional law, a settlement payment below the stock market price is sufficient in individual cases if the stock market price does not reflect the market value of the share.⁸² According to the case law of the German Federal Court,⁸³ this can be the if the shares of the company have not been traded for an extended period of time and therefore it may be assumed an illiquidity of the share or a market shortage or if there are indications of a manipulation of the stock market price.
111. In order to check the plausibility of the results of the fundamental analysis based on the discounted earnings method, the valuation expert carried out a comparative market valuation with transaction/stock exchange multiples.⁸⁴ We have reviewed his surveys and calculations and carried out our own analyses of plausibility.
112. The legislator does not require an explicit valuation method, so that in principle there is freedom of method. In the context of structural measures under company law, the discounted earnings method according to IDW S 1 is regularly used - as in the present case. Other valuation methods, such as the multiplier methods, do not cover all expected cash flows or must be adjusted accordingly. Against this background, we consider the Valuation Expert's use of the generally accepted discounted earnings method to be appropriate, taking into account the plausibility analyses carried out.
113. As a result, we consider the application of the discounted earnings method to determine the equity value of Vantage Towers as the basis for deriving compensation and settlement payments to be appropriate.

⁸¹ Cf. BVerfG of 27 April 1999, Ref. 1 BvR 1613/94, BVerfGE 100, 289 et seq..

⁸² Cf. BVerfG, NJW 1991, 3769.

⁸³ Cf. BGH of 12 March 2001, AZ. II ZB 15/00, loc. cit.

⁸⁴ So-called Trading Multiples.

6. Analysis of the past

114. Based on the provided business reports as well as supplementary statements and discussions with the management of Vantage Towers, the Valuation Expert has identified the following facts that should be adjusted within the scope of the historical analysis for reasons of comparability to the planning:

- As a result of a change in the accounting policies from 2021/22 onwards, both revenue and other operating expenses were increased by € 6 million in the 2020/21 financial year.
- In 2021/22, a non-sustainable revenue of € 2 million was adjusted.
- The maintenance costs were corrected for a period shift.
- In 2020/21 and 2021/22, an adjustment was made to staff costs to adjust for both period shifts and a methodological adjustment.
- The other operating expenses of the year 2021/22 were adjusted for one-off costs in the amount of € 2 million.
- Furthermore, non-recurring expenses (restructuring and start-up costs as well as losses from the disposal of property, plant and equipment) were adjusted.

115. In summary, the following adjustments can be derived:

ADJUSTMENTS OF HISTORICAL PROFIT & LOSS STATEMENTS			
EURm	2020/21	2021/22	2022/23 (FC)
Revenue	6	-2	
Maintenance costs	-2	2	
Staff costs	-1	1	
Other operating expenses	-6	2	0
EBITDA	-3	3	0
Ground lease costs			
Recharged capital expenditure			
EBITDAaL	-3	3	0
Management adjustment VT		2	
Depreciation			
Other one-off costs	43	5	7
Recharged capital expenditure			
EBIT	40	10	7

Source: Management information, valuation report from Grant Thornton, own analyses

116. The following adjusted income statement can be derived from this for the years 2020/21 to 2022/23:

ADJUSTED HISTORICAL PROFIT & LOSS STATEMENTS			
EURm	2020/21	2021/22	2022/23 (FC)
Revenue	976	1,021	1,081
Maintenance costs	-39	-44	-42
Staff costs	-41	-45	-60
Other operating expenses	-69	-64	-75
EBITDA	827	868	904
Ground lease costs	-302	-310	-322
Recharged capital expenditure	-4	-12	-21
EBITDAaL	521	545	561
Management adjustment VT			
Depreciation	-109	-98	-138
Other one-off costs	0	0	0
Recharged capital expenditure	4	12	21
EBIT	416	459	444

Source: Management information, valuation report from Grant Thornton, own analyses

117. On the basis of the documents made available to us and discussions with the Valuation Expert, we were able to understand the individual adjustments and consider them to be appropriate.

7. Derivation of the net distributions to be capitalised

a) Planning process

118. The planning process for Vantage Towers usually starts in December and generally includes budget planning for the first planning year as well as five-year long-term planning. Against the background of the possible transaction, this was extended to the year 2031/32.
119. The planning therefore is based on the planning prepared by Vantage Towers at the end of 2022 for the financial years 2023/24 to 2031/32. This includes a planning of the earnings situation and an operating cash flow statement. A separate planning of the balance sheet development is not carried out. The planning is based on the individual plans of the national companies and the holding company, which are then transferred by into a consolidated plan. Vantage also carried out additional sensitivity calculations on the basis of this planning, which reflect the updated expectations with regard to inflation.

120. In spring 2023, the planning was updated and approved by the Management Board of Vantage Towers on March 17, 2023. On March 18, 2023, the Supervisory Board approved the budget planning for financial year 2023/24 and noted with approval the long-term corporate planning up to the year 2031/32.
121. Following his analysis, the Valuation Expert concluded that the individual plans that were not prepared in euros were converted using a closing rate and thus basically do not reflect the market expectations of future value contributions expected in euros. Therefore, forward exchange rates were used to convert the individual plans of non-euro countries, except for Romania. In Romania, the functional currency is the euro and the contracts are concluded in euros, so that there is no significant exchange rate risk and conversion was not necessary.
122. We have understood the approach of the Valuation Expert and consider it appropriate to apply market expectations in the form of forward rates instead of closing rates. Applying the closing rates would lead to a systematically inaccurate presentation of the earnings situation of the individual companies in Hungary and the Czech Republic.
123. We have assessed the plausibility, consistency and arithmetical correctness of the planning, which has been adjusted to apply exchange rates, on the basis of the analysis of the market and competitive situation of Vantage Towers as well as the initiated and planned measures.

b) EBIT planning

124. Compared to the adjusted past results for the 2022/23 financial year, the planning for Vantage Towers in 2022/2023 to 2031/32 on which the valuation is based is as follows:

ADJUSTED HISTORICAL P&L AND BUSINESS PLAN OF VANTAGE TOWERS										
EURm	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
Revenue	1,081	1,148	1,262	1,385	1,477	1,550	1,607	1,636	1,691	1,746
Maintenance costs	-42	-48	-53	-56	-59	-62	-64	-66	-69	-71
Staff costs	-60	-63	-64	-66	-67	-69	-70	-71	-73	-74
Energy costs	-26	-27	-27	-26	-27	-28	-29	-30	-31	-32
TSA/ LTA/ INCA	-11	-13	-13	-13	-14	-14	-15	-15	-16	-16
Other operating expenses	-38	-44	-40	-33	-33	-33	-33	-33	-33	-33
EBITDA	904	954	1,066	1,190	1,277	1,344	1,396	1,420	1,470	1,520
Ground lease costs	-322	-342	-372	-392	-408	-422	-434	-446	-458	-471
Recharged capital expenditure	-21	-20	-23	-27	-28	-30	-30	-4	-4	-4
EBITDAaL	561	592	670	771	841	893	932	971	1,008	1,045
Depreciation	-138	-138	-177	-210	-244	-242	-236	-211	-213	-215
Recharged capital expenditure	21	20	23	27	28	30	30	4	4	4
EBIT	444	473	517	588	625	681	726	764	799	834

Source: Annual reports, business plan, own analyses

The planning is presented in detail in the Valuation Report and will be explained below only with regarding to selected aspects and our opinion.

ba) Revenues

125. Revenue relates to income from the provision of passive telecommunications infrastructure as well as related income from the provision of energy, capital expenditure charged on and other revenue. For corporate planning purposes, the company assumes that initially approximately 50 % of revenues will be generated in Germany and the remaining revenues will be generated in the other European countries. In the medium term, Vantage Towers expects the German share of revenue to increase to approximately 57 %.
126. A large part of the revenue is generated with so-called macro sites, i.e. towers, roof sites and sites built by other tower companies ("resell sites"). Revenues from so-called micro sites, i.e. smaller cells and antenna systems that are primarily used to supplement macro sites, are significantly lower.
127. For revenue, the company is projecting an average annual growth of 5.5% in the period from 2022/23 to 2031/32.
128. The revenue planning was prepared on the basis of the forecast total number of locations, the planned average number of tenants per location and the expected price development.

129. For the planning period, Vantage Towers expects a significant increase in macro sites from 46,327 in 2022/23 to 56,896 in 2031/32. Furthermore, a significant expansion of small cells is expected, which will increase disproportionately, but still accounts for just a minor share of the planned turnover. The planned increase in turnover therefore results from the expansion of the macro-locations. This is mainly due to the BTS programme, in which 6,850 new macro sites are to be built for Vodafone by 2027. According to statements from Vantage Towers, a large portion of the planned revenues until 2027 is contractually fixed.
130. For the macro locations, an increase in the occupancy rate (average number of tenants per location) from 1.55x in 2023/24 to 1.72x in 2031/32 is expected, which is partly due to an agreement with 1&1 to add them as tenants on largely already existing locations ("co-location"). The occupancy rate of the micro-locations is unchanged in the planning period, as these only offer space for one tenant.
131. Corridors for price adjustments depending on inflation have been contractually agreed with Vodafone as the anchor tenant in all countries (so-called "Master Service Agreements"; MSA). Depending on the expected general inflation for each country, the revenue development per location can therefore be forecast with a high degree of reliability. However, contractual price adjustments are capped annually. This means that there are no contractual provision to pass on the entire price adjustment during periods of increased inflation. Rents with third parties were negotiated individually and applied both inflation-linked and fixed price adjustments.
132. In summary, the revenue forecasts and expected growth are based to a significant extent on contracts already concluded and the expected development is related to the general inflation expectations.

bb) Expenses and EBITDA

133. The maintenance costs include in particular the expenses for the technical maintenance of existing infrastructure and were extrapolated taking into account the total number of sites existing in one year as planned, taking into account the expected inflation per site country. Overall, a slight improvement in the maintenance cost ratio is expected.
134. Personnel expenses were planned based on the average number of employees and the costs per employee per country and then aggregated for the planning of the Vantage Towers. After a slight increase in the number of employees in 2021/22 and 2022/23, the number of employees is expected to remain constant from 2023/24.

135. The cost item TSA/LTA/INCA ("Transitional service agreement / Long Term Service Agreement / Inter-Company Agreement") relates to support functions provided by Vodafone to Vantage Towers. The expected slight increase in the planning period is due to volume and price-induced increases.
136. The energy costs of the passive infrastructure are passed on to the customer with a margin and are thus also part of the revenue. The increase in energy costs in the planning period is due to the increase in the number of locations as well as the expected general price developments. On the other hand, an expected reduction in energy costs due to energy-saving measures was applied in the planned profit and loss account.
137. Other operating expenses include general administrative and overhead costs as well as project-specific costs. According to statements, the increase in planned other operating expenses in 2023/24 and 2024/25 compared to 2022/23 and the following years is due to the increased use of external employees as part of the expansion of the site and the agreements with 1&1. Apart from this, according to statements, the development of the cost item is primarily driven by inflationary developments.

bc) EBITDAaL

138. EBITDAaL represents EBITDA after deduction of leasing costs and capital expenditure charged on.
139. The leasing costs consist of the number of locations and the leasing costs per location, which were determined at the level of the individual countries and extrapolated with a specific growth rate.
140. Overall, the extrapolation of the positions results in an increase in EBITDAaL from € 592 million in 2023/24 to € 1,045 million in 2031/32 (CAGR: 7.4 %). The EBITDAaL margin increases from 51.6% to 59.9% in the planning period.
141. Based on the explanations of the Valuation Expert, the information provided to us and our own analyses, we consider the planning calculation to be plausible.
142. Considering the major strengths and weaknesses along with the opportunities and risks of Vantage Towers, we consider the planning to be comprehensible and plausible. In addition to the inflation trend, the expected increases in earnings are dependent on the actual expansion of the locations (especially within the BTS programme) as well as the increase in the occupancy rate.

bd) Modifications of the planning by the Valuation Expert

143. The planning prepared by Vantage Towers basically applies constant exchange rates, with which the earnings expectations from the Czech Republic and Hungary are converted into euros. Against this background, there is an exchange rate risk for the earnings expectations of these countries as well as exchange rate expectations observable on the market. Since the euro is the functional currency for Romania, the underlying contracts are concluded in euros and there is no corresponding exchange rate risk.
144. Therefore, the Valuation Expert made a modification for the exchange rate risk for the planned results from the Czech Republic and Hungary as follows:

FX ADJUSTMENTS OF VALUATION EXPERT									
EUR Mio.	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
EBITDAaL before adjustments	592	670	771	841	893	932	971	1,008	1,045
EBITDAaL Czech Republic in €	25	27	28	29	30	31	32	34	35
FX rate of business plan	26.04	26.04	26.04	26.04	26.04	26.04	26.04	26.04	26.04
Forward rate EUR/CZK	24.66	24.94	25.10	25.30	25.54	25.79	25.94	26.09	26.24
Adjustment factor	1.06	1.04	1.04	1.03	1.02	1.01	1.00	1.00	0.99
EBITDAaL Czech Republic in € (adj.)	27	28	29	30	30	31	33	34	35
FX adjustment Czech Republic	1	1	1	1	1	0	0	0	0
EBITDAaL Hungary in €	19	21	22	24	25	27	28	29	31
FX rate of business plan	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00	410.00
Forward rate EUR/HUF	436.71	460.29	479.98	497.44	515.15	515.15	515.15	515.15	515.15
Adjustment factor	0.94	0.89	0.85	0.82	0.80	0.80	0.80	0.80	0.80
EBITDAaL Hungary in € (adjusted)	18	19	19	20	20	21	22	23	25
FX adjustment Hungary	-1	-2	-3	-4	-5	-5	-6	-6	-6
Sum of adjustments EBITDAaL	0	-1	-2	-3	-5	-5	-6	-6	-7
EBITDAaL after adjustments	592	669	769	838	888	927	965	1,002	1,039

Quelle: Analyse des Bewertungsgutachters

145. We have understood the modification made by the Valuation Expert and consider it to be appropriate.

146. On this basis, the following planning relevant to the assessment results:

ADJUSTED P&L USED FOR VALUATION PURPOSES										
EURm	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
Revenue	1,081	1,148	1,262	1,385	1,477	1,550	1,607	1,636	1,691	1,746
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TSA / LTA / INCA	-11	-13	-13	-13	-14	-14	-15	-15	-16	-16
Other operating expenses	-38	-44	-40	-33	-33	-33	-33	-33	-33	-33
EBITDA	904	954	1,066	1,190	1,277	1,344	1,396	1,420	1,470	1,520
Ground lease costs	-322	-342	-372	-392	-408	-422	-434	-446	-458	-471
Recharged capital expenditure	-21	-20	-23	-27	-28	-30	-30	-4	-4	-4
EBITDAaL (before mod.)	561	592	670	771	841	893	932	971	1,008	1,045
FX adjustment		0	-1	-2	-3	-5	-5	-6	-6	-7
EBITDAaL (after mod.)	561	592	669	769	838	888	927	965	1,002	1,039
Depreciation	-138	-138	-177	-210	-244	-242	-236	-211	-213	-215
Recharged capital expenditure	21	20	23	27	28	30	30	4	4	4
EBIT (after modifications)	444	474	515	586	622	676	721	758	793	828

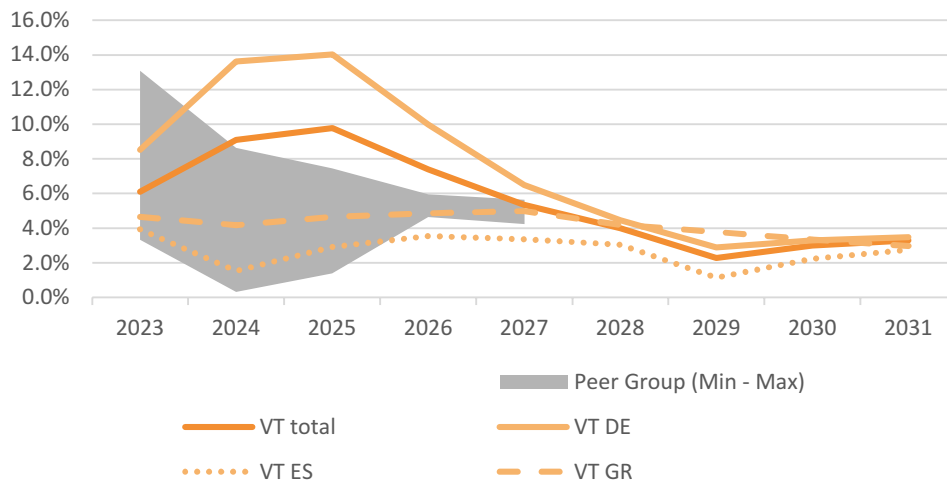
Source: Annual reports, adjustments derived by Grant Thornton, business plan, own analyses

c) Plausibility check of the operational planning with the peer group

147. In order to assess the adequacy of the planning presented to us, we also compared it with the expected development of the results of operations of the group of peer group companies.
148. For this purpose, we used the consensus estimates provided by the capital market information service provider S&P Global Market Intelligence (S&P Capital IQ), which were processed within the scope of the comparative analysis.
149. As part of our analysis, we have compared the expected revenue growth and the expected development of the EBITDAaL margins of the Valuation Expert's peer group with the forecasted development of the corresponding variables of Vantage Towers.

150. The following graph shows the past and expected development of Vantage Towers' revenue growth compared to the corresponding analyst estimates (minimum number of two estimates) of the peer group. The peer group range shown in grey represents the full range of the peer group's revenue expectations:

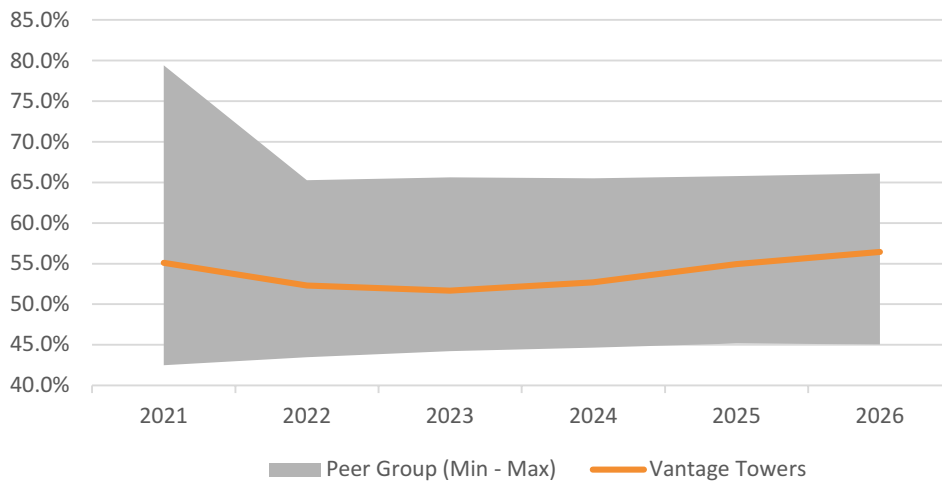
Revenue growth compared to peer group



151. Vantage Towers' revenue growth rates in the years 2024 to 2026, which are above average, are primarily due to the BTS programme and the agreements with 1&1 in Germany. Accordingly, a high expected growth is observed particularly for the German market, while the revenue growth for Spain and Greece is expected to be more in line with the peer group. From 2026 onwards, Vantage Towers' expected revenue growth rate is within the peer group range based on analyst estimates.

152. The following chart shows the past and expected development of the EBITDAaL margin of Vantage Towers compared to the corresponding analyst estimates (minimum number of two estimates) of the peer group. The range of the peer group shown in grey represents the range of EBITDAaL margin expectations of the peer group⁸⁵:

EBITDAaL margin compared to peer group



153. The EBITDAaL margins of Vantage Towers are within the range of the peer group and are therefore comparable to the forecast EBITDAaL margin of the peer group companies.
154. Based on the comparison of the expected revenue and margin development of Vantage Towers with the forecast development of the corresponding variables of the peer group, we consider the planning to be plausible.

⁸⁵ As EBITDAaL estimates are not available at S&P Capital IQ, we extrapolated the last available EBITDAaL with analyst projections of EBITDA growth rates.

d) Sustainable operating result

155. In order to derive the sustainable operating result (EBIT), the Valuation Expert estimated the future earning power of the Vantage Towers assuming an infinite continuation. By proceeding as follows.
156. The results of the last planning year were basically extrapolated by the Valuation Expert with the sustainable growth rate of 1.50 %.
157. In addition, Vantage Towers carried out analyses in particular with regard to the sustainable investment level. These were calculated on the basis of the planned development of tower sites and the corresponding reinvestments that would be required in the future. Required reinvestments were determined on the basis of the expected remaining economic useful life of the tower portfolio.
158. We have understood the calculations and consider the necessary investments determined in the result to be appropriate.
159. In the context of the planning horizon up to the 2031/32 financial year and the associated growth, we also consider the basic extrapolation of the results under consideration of the determined sustainable growth rate to be adequate.

da) Financial result and corporate taxes

160. The Valuation Expert derived the financial result on the basis of an integrated financial plan. The interest expenses for outstanding bonds, for refinancing existing liabilities and for additional funding requirements in the planning period were taken into account. The calculated interest expenses for additional funding requirements are based on yield curves of corporate bonds for the rating classes BBB- to BBB+. Due to the current rise in capital market interest rates, the Valuation Expert carried out a market valuation of outstanding bonds of Vantage Towers and included the lower bond value compared to the nominal value in the valuation.
161. On 23 March, Vantage Towers announced in an ad hoc announcement that it would voluntarily redeem all outstanding bonds prematurely. The redemption of the bonds is expected for the week beginning 22 May 2023. According to the management, the refinancing has been secured. The valuation does not include the announced refinancing, but the previously agreed, lower interest rates until maturity of the bonds. We do not see any positive value effect from the announced refinancing on this valuation.

162. We consider the derivation of the financial result and the procedure to be appropriate. The parameters used correspond to the current and expected financing conditions of the company and are comprehensible. We were able to verify the associated calculations without any objections.
163. The corporate taxes were determined by applying the expected effective average group tax rate of 26.50 %. We have followed the plausibility analyses of the Valuation Expert to verify this Group tax rate on the basis of the expected operating profit contributions of the various national companies and taking into account country-specific corporate tax rates. According to statements, existing losses carried forward - with the exception of losses carried forward of Vantage Towers S.L.U. (Spain) - will be used up by 31 March 2022. The existing losses carried forward in Spain were applied to the valuation, regardless of the information from Vantage Towers that they cannot currently be used.
164. We have comprehended the determination of corporate taxes in terms of content and calculation and consider it to be appropriately derived.

db) Distributions and personal income tax

165. The Valuation Expert took into account that the dividend for the business year 2022/2023 does not lead to an increased business value. In the context of the uncertainty of the dividend amount, the Valuation Expert applied only € 0.04 per share in the sense of a minimum dividend under consideration of § 254 AktG.
166. The valuation is therefore based on the assumption that the distribution for the 2022/23 financial year will still accrue to the minority shareholders of Vantage Towers. This assumes that the minority shareholders do not transfer their shares to Oak until after payment of the dividend for the 2022/23 financial year. We consider this to be a realistic assumption.
167. In principle, when determining the distributions in the planning period, primarily the corporate planning is to be used and only for the perpetuity a distribution behaviour equivalent to the investment in a share portfolio is to be assumed.
168. Vantage Towers' target payout ratio is 60% of the sum of the recurring free cash flow and the dividends received from INWIT and Cornerstone. Applying this target payout ratio, the Valuation Expert determines a planned payout ratio in relation to net income of approximately 80% and applies this for the planning period.

169. A company with unlimited tax liability may return benefits tax-free pursuant to § 27 para. 1 sentence 3 KStG to the extent that they exceed the distributable profit determined at the end of the previous financial year. In the present case, the distributions of Vantage Towers were treated as a tax-free return of capital contributions as of the 2031 financial year, as expected. Therefore, there are no value-reducing tax burdens on these distributions until that time.
170. The Valuation Expert assumed a typical payout ratio of 50% of the distributable income for the terminal value beginning in 2033. This payout ratio is derived from the payout behaviour of comparable listed companies.⁸⁶ According to our analysis, this distribution level is below the distribution levels of the peer group companies, but in a range that can basically be observed on the market.
171. In the terminal value, the Valuation Expert included a release of funds from the growth-related change in the capital structure amounting to approximately € 79 million, which is allocated to the shareholders as additional distribution potential (gross) in the long term. This approach takes into account the fact that besides the high goodwill reported in the balance sheet, which is not subject to sustainable growth, also a sub-proportional growth in fixed assets can be assumed.
172. We received an explanation of the Valuation Expert's approach and were able to understand the calculations in the valuation model and checked their plausibility in our own valuation model. Based on these analysis and plausibility calculations, we have come to the conclusion that the methodology applied does not lead to a disadvantage for the minority shareholders.
173. For the tax treatment at the shareholder level, the Valuation Expert distinguishes between the value contribution from dividend distribution ("distribution") and a value contribution from notional retained earnings ("retention"). In deriving the personal income tax on the value contribution from distribution, the income tax rate on dividends including the solidarity surcharge of 26.38% (final withholding tax) was applied.⁸⁷ Against the background of the assumed largely possible return of capital contributions from the tax deposit account until (pro rata) the financial year 2031, the Valuation Expert did not subject these expected distributions to any tax burden. The approach chosen by the Valuation Expert is therefore not to the disadvantage of the minority shareholders.

⁸⁶ Cf. Valuation Report p. 63.

⁸⁷ Cf. Valuation Report p. 63.

174. With regard to the value contribution from retained earnings, the Valuation Expert has applied the simplified assumption that this accrues directly to the shareholders, taking into account the tax consequences at shareholder level. The value contribution from retained earnings was therefore reduced by half of the final withholding tax rate including solidarity surcharge of 13.18 %. ⁸⁸
175. The assumptions made by the Valuation Expert and the approach chosen to determine the distributions and the consideration of personal taxes are, in our opinion, appropriate in the result.

⁸⁸ Cf. Valuation Report p. 64.

8. Capitalisation rate

176. The discounted earnings value of a company is determined by discounting the planned future financial surpluses to the valuation date. The capitalisation rate represents the return from an alternative investment that is adequate for the investment in the company to be valued. The cash flow of the alternative investment should be comparable in terms of time structure, risk and taxation to the cash flow to which the shareholders of the company to be valued are entitled.
177. In particular, capital market returns for corporate investments can be considered as a starting point for the determination of alternative returns. In principle, these returns can be broken down into a basic interest rate and a risk premium demanded by the shareholders due to the assumption of entrepreneurial risk.⁸⁹ The cost of equity is calculated according to the following formula:

$$r_{EK} = r_f + (r_M \times \beta_{EK})$$

r_{EK} = Cost of equity

r_f = risk-free interest rate (base rate)

r_M = Market risk premium

β_{EK} = Beta factor of equity (taking debt into account)

178. Tax effects must be applied when determining the base interest rate and risk premium. To capture growth effects in the form of steadily increasing financial surpluses after the end of the detailed planning phase, the capitalisation rate is generally reduced by a growth factor (growth rate).

⁸⁹ Cf. IDW S 1, para. 114 et seq. and para. 92.

a) Base rate

179. The base rate represents a risk-free and maturity-adequate alternative investment to the investment in the company being valued.
180. According to prevailing opinion, the base interest rate is calculated on the basis of the expected yields of fixed-interest securities of the public sector.⁹⁰ The interest rate structure data published by the Deutsche Bundesbank can be used as a data basis. These are estimated values according to the Svensson method, which are determined on the basis of observed current yields of coupon bonds (Bundesobligationen, etc.). The interest rate structure curve determined in this way maps maturity-equivalent base interest rates (so-called spot rates). These can be converted into a uniform base interest rate equivalent to the present value using financial mathematics.
181. In order to smooth short-term market fluctuations and possible estimation errors, the German Committee on Business Valuation and Economics (FAUB) recommends not using the zero bond yields estimated on the valuation date, but period-specific average yields from the three months preceding the valuation date.⁹¹ Furthermore, the FAUB recommends that, as a rule, the interest rate determined for a remaining term of 30 years should be used as the sustainable estimated value for the estimation of the zero bond interest rates beyond 30 years and that the uniform base interest rate should be rounded to ¼ percentage point.⁹² This approach is recognised in case law.⁹³ The FAUB's recommended approach of rounding to tenths of a percentage point rather than to quarter of a percentage point in the case of a base interest rate of less than 1.0% derived from the interest rate structure data of the Deutsche Bundesbank, against the background of the low interest rate environment, is not relevant in the present case.⁹⁴

⁹⁰ Cf. IDW S 1, para. 116.

⁹¹ Cf. FN-IDW 2008, p. 491; agreeing on averaging for many e.g. OLG Düsseldorf, decision of 6 June 2016, I-26 W 4/12 [AktE], AG 2017, p. 487 et seq., OLG Frankfurt am Main, decision of 20 July 2016, 21 W 21/14, <https://www.lareda.hessenrecht.hessen.de/bshe/document/LARE190018674> (last accessed, 30 November 2021).

⁹² Cf. FAUB, FN-IDW 2008, p. 490 et seq.

⁹³ E.g. decision of the OLG Saarbrücken of 11 June 2014, 1 W 18/13, ZIP 2014, p. 1784 et seq.

⁹⁴ Cf. IDW Life 2016, p. 1731 et seq.

182. The Valuation Expert based the determination of the base interest rate on the estimates of the daily yield curves published by the Deutsche Bundesbank for a three-month period from 21 January 2023 to 20 March 2023. On this basis, interest rates were estimated for hypothetical zero bonds with remaining terms of up to 30 years. For the estimate beyond 30 years, the average zero bond interest rates determined for a remaining term of 30 years were used as the sustainable forecast value.
183. The Valuation Expert rounded a present value-equivalent, uniform base interest rate before income taxes for all plan years to full 1/4 percentage points and derived it in the amount of 2.25 %. This rounded basic interest rate before income taxes was correctly converted by the Valuation Expert into a rounded after-tax rate of 1.66% using a typified personal income tax burden (final withholding tax including solidarity surcharge) of 26.38 %.⁹⁵
184. We have reconstructed the derivation of the base rate and satisfied ourselves of its arithmetical accuracy.
185. When the settlement payment is reviewed at the time of the Annual General Meeting on 5 May 2023 to confirm that it corresponds at least to the pro rata equity value, it must be kept in mind that the base interest rate would basically have to be re-determined according to the method recommended by the FAUB under consideration of the then past three-month period. This does not necessarily entail a change in the equity value, as effects on the other valuation parameters would have to be reviewed in the same way.
186. The base interest rate of 2.25% before and 1.66% after deduction of the typified income tax burden applied in the valuation of the Vantage Towers was determined correctly.

⁹⁵ Cf. Valuation Report, p. 66.

b) Risk premium

ba) Application of the Tax-CAPM

187. The risk premium serves to compensate for the risk to be accepted when investing in shares of the company to be valued. It is assumed that market participants give greater weight to future risks than to future opportunities (risk aversion).⁹⁶ This risk aversion can be taken into account by a deduction from the expected surpluses (safety equivalency method) or by a risk surcharge on the capitalisation interest rate (risk surcharge method).⁹⁷ Both methods can be converted into each other. In practice, however, risk aversion is almost exclusively applied through a surcharge on the interest rate.⁹⁸
188. Within the framework of objectified valuations, capital market models such as the Capital Asset Pricing Model (CAPM) and the Tax-CAPM based on it are suitable for deriving the risk premium, because these capital market models derive risk premiums indirectly from observable capital market prices.⁹⁹ The prices that form on the capital market are the results of investors' actions. Securities prices also reflect investors' risk preferences insofar as investors consciously and freely decide to buy or sell certain securities. This market valuation of the risks of shares by rational and risk-averse investors is modelled theoretically by the CAPM and the Tax-CAPM. According to the CAPM or Tax-CAPM, the amount of the risk premium is determined as the product of the model parameters market risk premium and beta factor.

⁹⁶ Cf. IDW S 1, para. 88.

⁹⁷ Cf. IDW S 1, para. 89.

⁹⁸ Cf. IDW S 1, para. 90.

⁹⁹ Cf. IDW S 1, para. 92, 118.

189. In its standard form, the CAPM represents a capital market model in which the cost of capital and risk premiums are explained without applying the effects of personal income taxes. However, since share returns and risk premiums are fundamentally influenced by income taxes, a more realistic explanation of the empirically observable share returns is provided by the Tax-CAPM, which extends the CAPM by explicitly applying the effects of personal income taxes.¹⁰⁰ The different tax treatment of interest income, dividends and price gains is directly captured in the valuation equation of the Tax-CAPM by loading the base interest rate and market risk premium with the relevant tax rates in each case. The Tax-CAPM provides a comprehensible, objectifying explanatory context for the quantification of an adequate risk premium. This is one of the reasons why, despite all the criticism, the CAPM continues to be the preferred model in valuation practice for the derivation of the risk premium. This view is shared to a large extent in recent case law.¹⁰¹
190. The application of the Tax-CAPM by the Valuation Expert is therefore appropriate.

bb) Market risk premium

191. The market risk premium is the average excess return demanded by investors on equity investments over the return on risk-free securities. The equity market can be represented by a broad equity index, such as the CDAX or the MSCI World Index. According to the Tax-CAPM, the capitalisation rate consists of the base interest rate reduced by the typified personal income tax and the risk premium after personal income taxes determined on the basis of the Tax-CAPM, which is transformed into an individual company risk premium by means of the company-specific beta factor.¹⁰²
192. The Valuation Expert has set the market risk premium after personal taxes at 5.75% with reference to the current recommendation of the FAUB.¹⁰³

¹⁰⁰ Cf. IDW S 1, para. 119.

¹⁰¹ Cf. OLG Düsseldorf, order of 30 April 2018, ref. 26 W 4/16 [AktE], https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2018/26_W_4_16_AktE_Beschluss_20180430.html (retrieved last, 6 December 2021); OLG Frankfurt of 17 January 2017, 21 W 37/12, AG 2017, 626 et seq. as well as of 5 February 2016, 21 W 69/14, AG 2016, p. 588 et seq.; OLG Karlsruhe of 12 September 2017, 12 W 1/17, para. 76, http://lrwb.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&nr=22730 (last accessed 30 November 2021) and of 23 July 2015, 12a W 4/15, AG 2016, p. 220 et seq.; OLG Düsseldorf of 12. November 2015, I-26 W 9/14, loc. cit.; OLG Munich of 18 February 2014, 31 Wx 211/13, OLG Munich, decision of 18.02.2014 - 31 Wx 211/2013 - openJur (retrieved last, 30 November 2021).

¹⁰² Cf. IDW S 1, para. 120.

¹⁰³ Cf. Valuation Report, p. 67 et seq.

193. The FAUB regularly analyses the factors influencing the capitalisation rate in business valuations for various reasons and makes quantitative recommendations on the measurement of the market risk premium before and after personal taxes. The FAUB follows a pluralistic approach, the elements and calculations of which it has disclosed and explained in detail in a paper.¹⁰⁴
194. At the date of this valuation, the FAUB still considered it appropriate, under consideration of the current market conditions and based on the Tax-CAPM, to apply a market risk premium after personal taxes in the range of 5.0% to 6.5% for valuations in which capital gains taxation is applied.¹⁰⁵ The mean value of this range is 5.75%. The value of the market risk premium determined by the Valuation Expert therefore corresponds to the mean value of this range.
195. Regardless of the considerations and determinations of the FAUB, we have conducted our own studies on the implied market risk premium for various markets.¹⁰⁶ Since the market risk premium should reflect the development of the capital markets appropriately, not only the historical market risk premiums (excess returns) actually achieved over several decades are relevant for capital market participants, but also the expected implicit market risk premiums from current periods. Under consideration of our survey results, we consider the determination of the after-tax market risk premium at 5.75 % in the middle of the range to be adequate for the purpose of measuring the severance payment.

¹⁰⁴ Cf. Castedello/Jonas/Schieszl/Lenckner, WPg 2018, p. 806 et seq.

¹⁰⁵ Cf. IDW (FAUB), Report on the 160th meeting on 9 November 2022.

¹⁰⁶ Cf. Beumer/Jürgens, Implizite Marktrisikoprämien und Markttrenditen von 2008 bis 2018, BewP 2019, p. 71 et seq. and Update Marktrisikoprämien von 2008 bis 2019, BewP 2020, p. 9 et seq.; Beumer/Jürgens, Optimistische Erwartungen – aber steigende Marktrisikoprämien, in M&A Review 7/8 2020, pp. 228-231; Beumer, CF 2015, p. 340, Implizite Marktrisikoprämien – Konsistente Ermittlung und Anwendung.

196. The more recent case law of the higher courts also considers it adequate to follow the recommendations of the FAUB, pointing out that it is an expert body of auditors involved in business valuations. In particular, it was not evident that a deviation from these recommendations would lead to "more correct" business values.¹⁰⁷ According to settled case law, the OLG Düsseldorf considers the pronouncements of the FAUB to be a "recognised expert opinion", which constitutes a source of knowledge for the methodically correct procedure in determining the business value.¹⁰⁸ The LG Munich I and the OLG Munich also follow the recommendations of the FAUB with in-depth considerations of the total return expectation from the base interest rate and market risk premium.¹⁰⁹
197. As a result, the recognition of a market risk premium after personal taxes in the amount of 5.75% is not objectionable in our view.

bc) Beta factors

198. According to the CAPM, the beta factor reflects the extent of the systematic risk of a share that cannot be diversified by capital market transactions. The higher the beta factor, the higher the risk premium demanded by capital market participants. The company-specific beta factor is calculated as the covariance between the historical share returns of the company being valued or comparable companies and the historical return of a share index, divided by the variance of the returns of the share index.¹¹⁰ Technically, a linear regression over the share price and share index returns can also be carried out to determine the beta factor. The beta factor then corresponds to the slope parameter of the regression equation.
199. The shares of Vantage Towers are listed on the stock exchange. Therefore, an own historical beta factor can be determined.

¹⁰⁷ Cf. OLG Frankfurt a.M. of 26 January 2017, 21W75/15, <https://betriebsberater.ruw.de/bilanzrecht/urteile/Beschluss-vom-26.1.2017-21-W-7515-35929> (last accessed, 30 November 2021).

¹⁰⁸ Cf. OLG Düsseldorf, 30 April 2018, 26 W 4/16 [AktE], https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2018/26_W_4_16_AktE_Beschluss_20180430.html (last accessed, 30 November 2021).

¹⁰⁹ Cf. LG München I of 16 April 2021, 5HK O 5711/19 and OLG München of 12 May 2020, 31 Wx 361/18, <https://openjur.de/u/2275119.html> (accessed 12 November 2021).

¹¹⁰ Cf. IDW S 1, para. 121.

200. The determination of a valid beta factor suitable for forecasting requires, among other things, liquid trading in the shares. The requirements for liquidity are considerably more stringent than for the assessment of whether an average share price should be used as the lower limit for the value of the settlement payment.
201. Based on his analyses, the Valuation Expert concludes that the use of Vantage Towers AG's own beta factor should be rejected. Due to the short time span between the IPO of Vantage Towers on 18 March 2021 and the public takeover offer of 9 November 2022, it is not possible to determine a sufficient number of data points for the derivation of a statistically robust beta factor. Since the announcement of the public takeover offer on 9 November 2022, the stock market price of Vantage Towers has decoupled from the original risk of the Vantage Towers business model, so that this period is not suitable for the collection of the company's own beta factor.¹¹¹ We share the Valuation Expert's assessment that the Vantage Towers' own beta factor is not suitable for forecasting purposes.
202. The Valuation Expert therefore carries out extensive analyses on the basis of a group of peer group companies to determine the beta factor. This is in accordance with the requirements of IDW S 1.¹¹²
203. The use of a peer group beta factors has the statistical advantage of a significantly larger number of observations compared to the approach of the beta factor of only one company. By averaging several peer group beta factors, fluctuations and that cannot be explained by the operating business activity and the capital structure are smoothed out, so that the derived peer group beta factor has a high forecasting relevance.

¹¹¹ Cf. Valuation Report p. 71 et seq.

¹¹² Cf. IDW S 1, para. 121 and supplementary Cf. IDW, WPH Edition, Valuation and Transaction Advice 2018, Chap. A para. 402 et seq.

204. In order to determine a beta factor appropriate to Vantage Towers' forecast, Grant Thornton analyses a group of peer group companies that are active in comparable business areas to Vantage Towers, including INWIT, which Vantage Towers AG holds a participation. The peer group applied for the determination of the beta factors includes the following companies:
- Cellnex Telecom, S.A., Spain
 - Infrastrutture Wireless Italiane S.p.A., Italy
 - American Towers Corporation, USA
 - Crown Castle Inc, USA
 - SBA Communications Corporation, USA
205. We have reviewed the content of the Valuation Expert's selection of peer group companies on the basis of information provided to us and our own research. The companies used are active in comparable business areas to Vantage Towers and are therefore fundamentally suitable as peer group companies. ¹¹³
206. We consider it appropriate to include INWIT in the peer group, as INWIT has comparable business activities and would therefore have been used as a peer group company regardless of Vantage's shareholding in INWIT.
207. In order to check the plausibility of the peer group determined by the Valuation Expert, we conducted own research into communications companies with a business focus on "towers and passive infrastructure" as well as real estate companies or real estate investment trusts with a focus on the operation and leasing of passive infrastructure and towers. We did not identify any additional companies that would better reflect the future risk structure of Vantage Towers AG's business. ¹¹⁴
208. The Valuation Expert derives raw betas for the peer group based on the global MSCI All Country World Index as benchmark. The calculation is based on five overlapping, 2-year observation periods with weekly return intervals as at 20.3.2023. The Valuation Expert then used statistical and liquidity criteria to verify the robustness of the beta factors and excluded those beta factors that were not robust from further analysis.

¹¹³ Cf. also the company description of the peer group companies in the appendix.

¹¹⁴ Rai Way S.p.A. operates both the passive and active broadcasting infrastructure of the Italian state broadcaster RAI TV. Less than 30 % of the shares of this company are in free float and, especially since 2021, are only traded with limited liquidity. This assessment is in line with the findings of the Valuation Expert.

209. We have understood the analyses and consider the used criteria to be appropriate for assessing the statistical robustness of the beta factors determined.
210. However, the Valuation Expert does not use the raw beta factors to calculate the unlevered beta factors, but uses the so-called Vasicek adjustment.¹¹⁵ By doing so, the Valuation Expert intends to minimise statistical estimation errors in the determination of the beta factors and thus increase their forecasting ability.¹¹⁶ To achieve this, the raw beta factors directly observable from market data are adjusted in exchange for a reference value. The adjustment is not made against an arbitrarily selected value,¹¹⁷ but against the mean value of the peer group. The weighting between raw beta and reference value is based on the ratio of the respective statistical uncertainty.

$$\beta_{adj}^{VAS} = \beta_i * \left(1 - \frac{\sigma_{\beta_i}^2}{\sigma_{\beta_i}^2 + \sigma_{\beta_m}^2}\right) + \beta_m * \left(\frac{\sigma_{\beta_i}^2}{\sigma_{\beta_i}^2 + \sigma_{\beta_m}^2}\right),$$

211. In our opinion, the Vasicek adjustment is not frequently used in valuation practice. Even though we have followed the procedure in substance, we do not see any superiority of this method over the use of raw beta, which is frequently used in valuation practice. We have therefore analysed whether the application of this adjustment was carried out to the disadvantage of the minority shareholders and were able to convince ourselves that in the present case the beta factor applied in the result for the Vantage Towers - under consideration of the Vasicek adjustment - does not lead to a disadvantage of the minority shareholders.¹¹⁸
212. The adjusted unlevered beta factors are calculated by the valuation expert, taking into account uncertain tax shields and debt capital subject to default risk (the so-called "debt beta").

¹¹⁵ Cf. Vasicek, A Note on using cross-sectional information in Bayesian estimation of security betas, *The Journal of Finance*, 1973, pp. 1233-1239.

¹¹⁶ Cf. Valuation Report, p. 69.

¹¹⁷ In the context of the more widespread BLUME adjustment, for example, a lump-sum adjustment is made in exchange for 1.0.

¹¹⁸ Cf. our supplementary analyses presented below in this regard.

213. In determining the leverage ratios, the net debt positions were adjusted for liabilities for leasing in accordance with IFRS 16 in the years from 2019 or, if the corresponding option was exercised, from 2018. This is based on the fact that a higher leverage ratio is reported when IFRS 16 is applied, which is mandatory for 2019 and was already applied in the form of an option for 2018. The adjustment serves to ensure the consistency of the data basis.¹¹⁹
214. For the valuation of Vantage Towers, the Valuation Expert derives an unlevered beta factor of 0.65, taking into account all factors and analyses.¹²⁰ We have comprehended the calculations of the Valuation Expert methodically and mathematically and apply the mathematical derivation of the beta factor as appropriate, taking into account uncertain tax shields and the debt beta.¹²¹
215. We conducted additional own analyses to derive the beta factor based on the identified peer group by performing regression analyses over an observation period of 5 years with weekly return intervals.
216. The beta factors we determined are shown below:

Peer group beta factors

Reference date	17.03.2023
Analysis Period	5 years
Sampling interval	Weekly
Reference index	MSCI All-Country World Index
Currency	Euro

Peer Group Company	Country	Ø Bid/Ask	Ø value traded	Raw Beta	D/E	Unl. Beta
American Tower Corporation	USA	0.02%	364,899,950	0.81	0.28	0.67
Cellnex Telecom, S.A.	Spanien	0.04%	41,443,780	0.70	0.36	0.61
Crown Castle Inc.	USA	0.01%	270,459,002	0.82	0.29	0.68
Infrastrutture Wireless Italiane S.p.A.	Italien	0.12%	7,466,820	0.52	0.11	0.51
SBA Communications Corporation	USA	0.04%	147,616,700	0.86	0.36	0.73
Mean				0.74		0.64
Median				0.81		0.67
Minimum				0.52		0.51
Maximum				0.86		0.73

217. The unlevered beta factors of the peer group range from 0.51 to 0.73 and average 0.64 (arithmetic mean) and 0.67 (median). On the basis of further analyses, we have verified that even selecting a shorter observation period of 2 years does not result in lower beta factors.

¹¹⁹ Cf. Valuation Report, p. 70.

¹²⁰ Cf. Valuation Report, p. 72.

¹²¹ Cf. IDW, WPH Edition, Valuation and Transaction Advice, Chap A, para. 413.

218. The unlevered beta factor of 0.65 applied by the Valuation Expert is thus between the arithmetic mean and the median of the unlevered beta factors determined by us. We also apply the beta factor of 0.65 as adequate, taking into account the different procedures for calculating the beta factors.
219. We consider the (unlevered) risk premium of 3.74% resulting from the applied value of the market risk premium (5.75%) and the unlevered beta factor 0.65 to be adequate.

c) Growth rate

220. In the business valuation, the growth of the expected future business results must also be applied.¹²² In the detailed planning phase as well as the convergence phase, any growth in the items of the income statement and the individual balance sheet items for the individual periods is applied in the planning calculation.
221. The value contribution of the entrepreneurial payment surpluses, which occur after the detailed planning phase, is recorded as the cash value of a perpetual annuity within the framework of the valuation. The perpetual annuity in the discounted earnings value formula is initially the expected sustainably achievable result. If it can be assumed that the company to be valued is in a position to sustainably increase its results in the period after the detailed planning phase, the corresponding growth in results can be applied financially by means of a discount on the capitalisation interest rate.¹²³ It is important to note that the value contribution from retained earnings, which is added to the result to be capitalised, already applies to the possible growth prospects related to the expansion investments.
222. To determine the growth of the income statement and balance sheet items for the period after the detailed planning phase, an analysis based on growth trends to be forecast in the long term and the application of the associated investment requirements is necessary.¹²⁴
223. The starting point for the Valuation Expert's determination of sustainable growth is the observation that nominal planning figures can be subject to inflation-related and real changes in the long term.

¹²² Cf. IDW S 1, para. 94 et seq.

¹²³ Cf. IDW S 1, para. 98.

¹²⁴ Cf. IDW S 1, para. 97.

224. To estimate inflation-related changes, the Valuation Expert refers to yield differences between nominal fixed-interest and inflation-protected German government bonds and considers a long-term general inflation expectation of 2.0% to be realistic.¹²⁵
225. The expected real growth of the company is based on the demand for towers and the introduction of new mobile communication standards. For the derivation of the perpetual annuity (sustainable year), the Valuation Expert assumes the steady state and thus no further expansion of towers beyond the scope applied in the value contribution from retained earnings.
226. Due to the ability to pass on future cost increases and competitive pressures, and in the context of the regulated and increasingly consolidating market which Vantage Towers operates in, the Valuation Expert has set the expected sustainable revenue and earnings growth after the respective steady state at 1.5%.¹²⁶
227. We have understood the Valuation Expert's statements. We assume that in the steady state it is basically possible to pass on the full cost increases on the supply side and that the profit margins can remain constant. However, the pure price increase in the sense of a general inflation rate cannot be directly transferred to the planning of Vantage Towers. Rather, company-specific cost increases and opportunities for price increases on the sales side must be assessed on a company-specific basis. Given that significant contracts are adjusted in regard to the general inflation and thus have a significant impact on the company's earnings situation, we consider the use of general inflation expectations as a basis for estimating the sustainable growth rate expected in the future to be plausible.
228. However, when looking at the past over a longer period of time, it could generally be observed that the profit growth of German companies regularly lagged behind general inflation. However, it has been observed in the past that the profit growth of German companies stayed below the general inflation in the longer view. Also it has to be taken into account that counteracting effects from efficiency increases and technological progress have to be factored in and that in some cases essential contracts provide for maximum limits or only pro rata increases of future rent increases compared to the development of the general inflation rate.
229. The company-specific growth rate is thus not the expected long-term inflation rate, but rather a lower growth rate.

¹²⁵ Cf. Valuation Report, p. 72.

¹²⁶ Cf. Valuation Report, p. 73.

230. We consider the long-term assumed company-specific growth rate of 1.5% applied in the company valuation is considered adequate - also taking into account the limited pass-through of the general inflation rate – to be adequate.
231. Based on these considerations, we see no evidence to justify a higher growth rate than 1.5% and consider the growth rate applied to Vantage Towers to be appropriate.

d) Period-specific capitalisation rates

232. The following shows the derivation of the capitalisation rates of the Vantage Towers calculated by the Valuation Expert on a period-specific basis:

PERIOD-SPECIFIC COST OF CAPITAL DERIVED BY GRANT THORNTON										
	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	TV
Risk-free rate before personal taxes	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%
Personal taxes	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%
Risk-free rate after personal taxes	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%
Market risk premium after personal taxes	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%
Unlevered beta	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65
Gearing	21.46%	25.60%	30.04%	32.93%	33.67%	33.09%	32.26%	31.38%	30.14%	28.93%
Levered beta	0.84	0.86	0.87	0.85	0.85	0.82	0.81	0.81	0.78	0.78
Risk surcharge	4.82%	4.92%	5.01%	4.86%	4.87%	4.69%	4.66%	4.64%	4.49%	4.46%
TV growth rate										-1.50%
Cost of capital	6.48%	6.58%	6.67%	6.52%	6.53%	6.34%	6.32%	6.30%	6.15%	4.62%

Source: Analysis of Ebner Stolz

233. In conclusion, we find that the respective amount of the underlying period-specific capitalisation rates is appropriate.

9. Special values

234. Vantage Towers has non-fully consolidated investments of 33.17% in INWIT and 50% in Cornerstone. These investments are not reflected in Vantage's discounted earnings value and therefore have to be added to the business value as a special value. The Valuation Expert has also considered the expected changes in the MSA and two management companies as special values.

a) Cornerstone

Legal and economic foundations

235. Cornerstone Telecommunications Infrastructure Ltd ("Cornerstone") has its registered office in Berkshire, United Kingdom. Its business address is 1530 Arlington Business Park, Theale, Reading, Berkshire, RG7 4SA. Cornerstone is a joint venture between Vantage Towers, O2 Cedar Limited (10%) and o2 Networks Limited (40%).
236. The share capital of Cornerstone is GBP 300,020 divided into 300,020 ordinary shares with a notional value of GBP 1.00 per share.
237. Cornerstone was established in 2012 through the consolidation of the network infrastructure of Telefonica U.K. and Vodafone U.K.¹²⁷
238. The object of the company is the ownership and operation of passive mobile telecommunications infrastructures, consisting of towers or other physical structures on which active mobile and/or non-mobile equipment is installed. The Cornerstone currently operates approximately 14,200 macro sites and approximately 1,400 micro sites in the UK.¹²⁸

¹²⁷ Cf. Telefonica UK Annual Report 2022, p. 143.

¹²⁸ Cf. Telefonica UK Annual Report 2022, p. 143.

Planning and planning process

239. In order to determine the special value of the investment, the Valuation Expert makes a simplified determination of the discounted earnings value after personal taxes on the basis of an earnings and cash flow plan provided by the management of Vantage and the balance sheet of Cornerstone as at 31 January 2023, updated to 31 March 2023.
240. The underlying planning dates from September 2022 and covers a planning horizon until 31 March 2032. For the year 2022/23, a projection was made based on the half-year results.¹²⁹
241. The provided planning up to EBIT was supplemented by the Valuation Expert on the basis of an integrated financial requirement planning, an calculative interest result and a tax calculation and converted from GBP to Euro on the basis of forward exchange rates.¹³⁰

Result planning and sustainable result

242. The Valuation Expert presents the results of operations of Cornerstone for the financial years 2022 and 2023 based on company information.
243. Cornerstone's revenues consist primarily of revenues from the anchor tenants Telefonica and Vodafone. In addition, the company generates revenues from leasing locations to third parties and for other services and management fees. While the planned revenues from anchor tenants are based on annual growth of around 1.5% and revenues from third parties on annual growth of 13.8%, other revenues are expected to decline. The Company expects that other service revenues will be completely eliminated from the 2026 financial year onwards, as these largely relate to active infrastructure and will be taken over by the respective MNOs themselves. An annual growth rate of 5.7 % is again assumed for the revenues from management fees. This results in average annual growth of around 2.2% for Cornerstone's total revenue.¹³¹
244. Maintenance expenses will grow at an average rate of 2.6% p.a. in the planning period. In addition to price-related increases, this growth is due in particular to the growing number of locations.

¹²⁹ Cf. Valuation Report, p. 76.

¹³⁰ Cf. Valuation Report, p. 79 et seq.

¹³¹ Cf. Valuation Report, p. 77 et seq.

245. Staff costs increase by around £1m over the planning period to £22m in 2032, based on a slight decrease in staff numbers and expected wage growth of around 1.8% per annum.
246. Cornerstone's rental expenses comprise the actual cash expenses (pre-IFRS 16 reporting). These decrease by an average of 2.7% p.a. during the planning period.¹³²
247. The planned EBITDAaL increases by an average of 4.8 % p.a. in the planning period, the EBITDAaL margin increases from 44.1 % to 55.4 %.

PROFIT AND LOSS ACCOUNT (PLAN)											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
EURm	HIST	HIST	PLAN	PLAN	PLAN	PLAN	PLAN	PLAN	PLAN	PLAN	PLAN
Total revenue incl. Pass-through	433	442	445	462	470	480	489	502	515	520	529
Site Maintenance	-20	-21	-21	-21	-22	-22	-23	-24	-24	-24	-25
Payroll	-21	-23	-21	-21	-21	-21	-22	-22	-22	-23	-23
Other OPEX	-26	-23	-22	-25	-25	-30	-29	-31	-33	-32	-33
Pass-through	-86	0	0	0	0	0	0	0	0	0	0
EBITDA	280	374	381	395	401	406	415	425	436	441	447
Ground Lease Cost	-130	-129	-131	-129	-122	-113	-108	-104	-101	-97	-94
In-Config Upgrade Capex Pass-Through	-1	-93	-97	-105	-112	-117	-124	-129	-134	-136	-138
EBITDAaL	149	152	153	161	167	176	183	192	201	208	216
Depreciation	-88	-85	-89	-90	-91	-93	-79	-55	-55	-55	-51
EBIT	61	67	64	71	76	83	104	137	146	153	165
Interest income	0	0	4	7	10	12	14	15	16	16	17
Interest expenses	0	0	-19	-15	-17	-17	-17	-17	-17	-17	-16
EBT	61	67	48	62	69	78	101	135	145	152	165
Taxes on income and earnings	0	0	0	-9	-17	-19	-25	-34	-36	-38	-41
Net profit/loss for the year	61	67	48	53	52	58	76	101	109	114	124

Source: Management information

¹³² Cf. Valuation Report, p. 78 et seq.

Valuation

248. Vantage's investment in Cornerstone is valued by discounting the net distributions at the relevant period-specific capitalisation rate to the technical valuation date of 31 March 2023 and then compounding to the actual valuation date of 5 May 2023 and multiplying by Vantage's 50% ownership interest.
249. The underlying capitalisation rates of the Cornerstone result from the input parameters of the valuation of the Vantage as well as the period-specific debt ratio of the Cornerstone and are as follows:

PERIOD-SPECIFIC COST OF CAPITAL DERIVED BY GRANT THORNTON										
	2024	2025	2026	2027	2028	2029	2030	2031	2032	TV
Risk-free rate before personal taxes	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%	2.25%
Personal taxes	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%	-0.59%
Risk-free rate after personal taxes	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%	1.66%
Market risk premium after personal taxes	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%
Unlevered beta	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65	0.65
Gearing	16.94%	9.05%	6.94%	4.80%	2.77%	1.41%	0.90%	0.34%	-0.26%	-0.77%
Levered beta	0.72	0.69	0.68	0.67	0.66	0.66	0.65	0.65	0.65	0.65
Risk surcharge	4.15%	3.96%	3.91%	3.86%	3.81%	3.77%	3.76%	3.75%	3.73%	3.72%
TV growth rate										-1.50%
Cost of capital	5.81%	5.62%	5.56%	5.51%	5.46%	5.43%	5.42%	5.40%	5.39%	3.88%

Quelle: Analysis of the Valuation Expert

250. The discounted earnings value of Cornerstone determined by the Valuation Expert amounts to approximately € 2,259 million. Applying Vantage's participation rate of 50.0 %, the value of the participation in Cornerstone amounts to € 1,129 million. We have comprehended the procedure of the Valuation Expert for the derivation of the net distributions as well as the determination of the value mathematically and methodically without objections and have checked the plausibility using our own valuation model. We consider the Valuation Expert's valuation to be adequate.

PRESENT VALUE DERIVATION PROVIDED BY GRANT THORNTON										
EURm	2024	2025	2026	2027	2028	2029	2030	2031	2032	TV
Net income	48	53	52	58	76	101	109	114	124	144
Gross distribution	48	53	52	58	76	101	109	114	124	144
Value proposition from distribution	39	43	42	47	61	81	87	91	99	72
Value proposition from profit accumulation	10	11	10	12	15	20	22	23	25	72
Personal tax on dividends	-10	-11	-11	-12	-16	-21	-23	-24	-26	-19
Personal tax on capital gains	-1	-1	-1	-2	-2	-3	-3	-3	-3	-9
Net distribution	37	41	40	44	58	77	83	87	94	115
Capitalisation rate	5.81%	5.62%	5.56%	5.51%	5.46%	5.43%	5.42%	5.40%	5.39%	3.88%
Discount factor	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	0.95	25.81
Present value (31 March)	2,246	2,340	2,431	2,526	2,621	2,706	2,776	2,843	2,910	2,972
Present value as of 31 March 2023	2,246									
Compounding factor		1.005								
Present value as of 5 May 2023	2,259									

Source: Analysis of the Valuation Expert

b) INWIT

Legal and economic foundations

251. Infrastrutture Wireless Italiane S.p.A. ("INWIT") has its registered office in Milan, Italy. Its business address is via Gaetano Negri 1, 20123 Milan. ¹³³
252. INWIT's share capital amounts to €600,000,000 and is divided into a total of 960,200,000 no-par ordinary shares¹³⁴ INWIT's shares are traded on the regulated market of Euronext Milan (formerly Borsa Italiana) under the International Securities Identification Number (ISIN).¹³⁵ Vantage Towers holds 318,533,335 shares or 33.17% in INWIT.
253. INWIT was founded in 2015 and started its business activities in the same year through the spin-off of Telecom Italia's tower division. The object of the company is the construction and operation of infrastructure, facilities and equipment for the management and trade of electronic communication services, the design, construction and operation of communication networks and the provision of infrastructures for communication companies.
254. INWIT is the largest tower operator in Italy with more than 11,000 sites. In the 2021 financial year, it had an average of 232 employees. ¹³⁶

¹³³ Cf. Annual Report INWIT 2021, p. 53.
¹³⁴ Cf. Annual Report INWIT 2021, p. 65.
¹³⁵ Cf. Annual Report INWIT 2021, p. 65.
¹³⁶ Cf. Annual Report INWIT 2021, p. 115.

Valuation

255. The Valuation Expert derived the pro rata value of Vantage Towers AG's investment in INWIT on the basis of the stock market price or the pro rata market capitalisation. For this purpose, the average price weighted by trading volume for the period from 3 March 2023 to 20 March 2023 was used. The Valuation Expert reasons the choice of this reference period with a sudden increase in the stock market price of INWIT on 3 March 2023 as a result of the publication of the results for the past financial year as well as the strategic outlook and the dividend expectations.
256. In order to check the plausibility of the valuation based on the stock market price, the Valuation Expert carried out a simplified determination of the discounted earnings value after personal taxes on the basis of a business plan provided by Vantage's management. This planning is based on consensus estimates. It is a rough planning of the earnings situation on the basis of the most important data available (sales revenues, EBITDA, EBITDAaL and EBIT) for the planning period. Where necessary, Vantage has extrapolated the data up to 2030 based on available longer-term analyst forecasts. This procedure is necessary because the company does not have access to INWIT's internal planning documents for legal reasons.¹³⁷
257. The Valuation Expert gives the weighted average price of the reference period according to the trading volume as € 11.22. This results in an average market capitalisation of € 10,773 million.¹³⁸ The proportional value of the 318,533,335 shares held by Vantage, or 33.17%, is therefore € 3,574 million.
258. The Valuation Expert correctly states that the value of the shareholding determined on the basis of the stock market price exceeds the result of the income capitalisation calculation.
259. We have verified the simplified determination of the discounted earnings value and the average stock market price on the basis of our own analyses. We consider the procedure of the Valuation Expert to be appropriate due to the limited availability of INWIT's own internal data.

¹³⁷ Cf. Valuation Report Report, p. 75.

¹³⁸ Cf. Valuation Report, p. 75 et seq.

c) MSA - Adaptation

260. Certain MSAs of Vantage Towers are to be adjusted promptly on the basis of previous contractual agreements, in particular with regard to future inflation-related price adjustments. This intended adjustment has not been applied in the previous planning of Vantage Towers.
261. For this reason, the Valuation Expert has included a special value in the amount of the discounted expected cash flows from the adjustments to the contracts.
262. We have understood the determination of the special value and consider it appropriate. Furthermore, we do not see any indications that the assessment and consideration of these facts was made to the disadvantage of the minority shareholders.

d) Management companies

263. The Valuation Expert included the investments in Vantage Towers Erste Verwaltungsgesellschaft mbH and Vantage Towers Zweite Verwaltungsgesellschaft mbH at their equity capital of approximately € 0.025 million each. Since the two companies are not operationally active, we consider this procedure to be appropriate.

10. Business value and value per share

264. The discounted earnings value of the operating business of Vantage Towers is calculated by discounting the sum of the net distributions including the value contributions from retained earnings with the period-specific capitalisation rate plus the special values. The Valuation Expert calculated the discounted earnings value mathematically correctly as at the technical valuation date of 31 March 2023. The equity value and the value per share of Vantage Towers as at the valuation date of 5 May 2023 are as follows:

PRESENT VALUE DERIVATION PROVIDED BY GRANT THORNTON										
EURm	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	TV
Net income	353	374	410	405	438	453	478	501	515	588
Retention of profits for growth	0	0	0	0	0	0	0	0	0	79
Gross distribution	353	374	410	405	438	453	478	501	515	667
Value proposition from distribution	282	299	328	324	351	363	382	401	412	334
Value proposition from profit accumulation	71	75	82	81	88	91	96	100	103	334
Personal tax on dividends	0	0	0	0	0	0	0	-96	-109	-88
Personal tax on capital gains	-9	-10	-11	-11	-12	-12	-13	-13	-14	-44
Net distribution	343	364	399	394	427	441	466	392	393	535
Capitalisation rate	6.48%	6.58%	6.67%	6.52%	6.53%	6.34%	6.32%	6.30%	6.15%	4.62%
Discount factor	0.94	0.94	0.94	0.94	0.94	0.94	0.94	0.94	0.94	21.66
Present value (31 March)	9,267	9,524	9,787	10,040	10,301	10,547	10,775	10,990	11,290	11,591
Present value as of 31 March 2023	9,267									
Compounding factor	1.006									
Present value as of 5 May 2023	9,323									
Special value - INWIT	3,574									
Special value - Cornerstone	1,129									
Special value - Other entities	0									
Special value - MSA	57									
Present value as of 5 May 2023 (incl. special values)	14,084									
# of shares (k)	505,782									
Value per share	27.85									

Source: Analysis of Ebner Stolz

265. To compound the value from the technical valuation date to the valuation date, the Valuation Expert used the specific capitalisation rate for the first plan year. He compounded the sum of the present values as at 31 March 2023 by 35 days to 5 May 2023.
266. We have verified the derivation of the business value and the settlement payment per share mathematically and methodically without any objections.

III. Plausibility check of the equity value

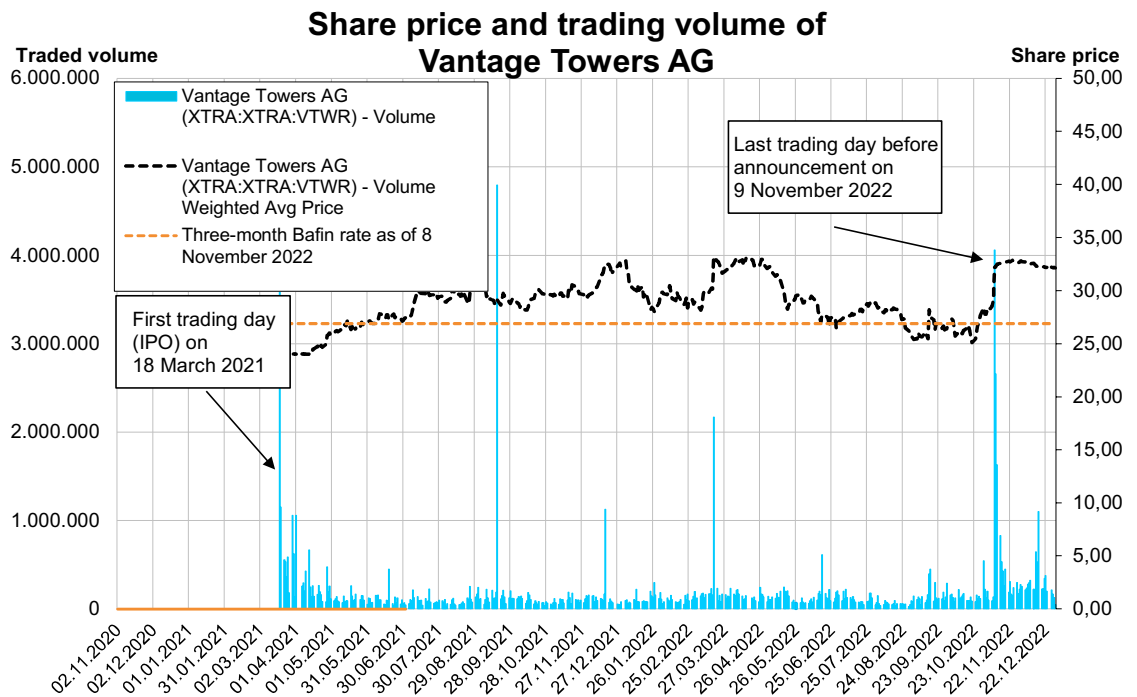
1. Comparative market valuation

267. A comparative market valuation can be carried out by determining value ranges on the basis of a multiplier analysis or industry-specific valuation methods.
268. In the multiplier analysis, the value of the company can be calculated as the product of a reference value of the company (often a turnover or profit figure) and the corresponding multiple of listed peer group companies on the one hand ("trading multiples" or "stock exchange multiples") or derived from comparable transactions on the other ("transaction multiples").
269. Simplified pricing methods, e.g. methods based on earnings or turnover multiples, can be used to check the plausibility of the business value determined by the discounted earnings method.¹³⁹ The use of a multiplier analysis cannot replace a well-grounded business valuation. But it can provide supplementary indications for an expert opinion on the value determined with the discounted earnings method.
270. The Valuation Expert has checked the plausibility of the (fundamental) business value based on the Discounted earnings method, and thus on dedicated internal information and business management principles with the help of EBITDAaL trading multiples of the peer group, which was also used to determine the beta factor.
271. The value of Vantage Towers calculated using the discounted earnings method is at the lower end, but still within the range of values added on the basis of EBITDAaL multiples. Given the high comparability of the peer group, we consider a value within the range of multiples to be appropriate.
272. We have reproduced the derivation of the multipliers and checked their plausibility using our own analyses, which we conducted on the basis of data from the information provider S&P Global Market Intelligence. Based on our analyses, we come to similar conclusions.
273. We have not included EBIT multipliers, as the EBIT are not sufficiently comparable due to, among other things, the different depreciation regulations under IFRS and HGB.

¹³⁹ Cf. IDW S 1, Section 8.3.4.

2. Market capitalisation

274. Since the shares of Vantage Towers are traded on stock exchanges, stock market prices are available that can generally be used to assess the plausibility of the business value determined by fundamental analysis.¹⁴⁰
275. However, the stock market price may be distorted by certain influences that may have affected the stock market pricing and may not reflect the fair value of the Vantage Towers. Therefore, the development has to be analysed over a longer period of time. For this purpose, we have determined the stock market price and trading volume of the Vantage Towers share for the two-year period prior to 9 November 2022:¹⁴¹



Source: S&P Global Market Intelligence, own analyses.

¹⁴⁰ Legally, according to the "Stollwerk" case law of the BGH, only the average price for the three-month period ending before the announcement of the structural measure is relevant.

¹⁴¹ The Vantage Towers IPO of 18 March 2021 falls within this period.

276. It can be clearly seen that the market price of Vantage Towers share has been distorted at least since the announcement of 9 November 2022 and the associated takeover offer of € 32.00 per share and consequently no longer reflects the fair value of Vantage Towers. Therefore, the market capitalisation is only of limited use in determining the plausibility of the business value of Vantage Towers.
277. The minimum price of the shares of Vantage Towers calculated by BaFin amounts to € 26.89 as of 8 November 2022.¹⁴² The resulting market capitalisation of Vantage Towers of approximately € 13,600 million is below the fundamentally determined value of € 14,084 million.

¹⁴² Cf. § 31 para. 7 WpÜG in conjunction with. § 5 para.3 WpÜG-AngVO.

IV. Derivation of appropriate compensation and settlement payment

a) Appropriate settlement payment pursuant to § 305 AktG

278. The equity value of Vantage Towers, which is determined on a pro rata basis, i.e. by dividing by the number of shares,¹⁴³ amounts to € 27.85 per common share.
279. The shares of Vantage Towers are currently traded on stock exchanges.¹⁴⁴ The case law of the Federal Constitutional Court,¹⁴⁵ according to which the stock market price generally is the lower limit for settlement payments to minority shareholders in corporate contracts and incorporations, therefore applies.
280. According to the German Federal Court, the average share price for the three-month period ending before the announcement of the structural measure has to be used.¹⁴⁶ If there is a longer period of time between the announcement of the structural measure and the day of the general meeting and if the development of the stock market prices suggests it is necessary to adjust the stock exchange value, the stock exchange value shall be extrapolated in accordance with the general or industry-typical development of the value under consideration of the development of the stock market price since then.¹⁴⁷ There is no conclusive case law on the question of when there is such a "longer period". At least a period of up to six months is considered uncritical in literature and case law.¹⁴⁸
281. Oak has expressly indicated its intention to enter into a DPLTA with Vantage Towers in the announcement on the decision to launch a public takeover offer dated 9 November 2022. Vantage Towers has expressly noted this intention in its ad hoc announcement of the same date. Thus, there will be approximately six months until the date of the general meeting to be held on 5 May 2023 to pass a resolution. Accordingly, there is no longer period of time within the meaning of the case law of the German Federal Court.

¹⁴³ 505,782,265 no par value registered common shares.

¹⁴⁴ Cf. D.II.3.a).

¹⁴⁵ Cf. decision of the BVerfG, 1 BvR 1613/94 of 27 April 1999, BVerfG 100, 289.

¹⁴⁶ Cf. BGH, decision of 19 July 2010 - Az. II ZB 18/09 AG 2010, p. 629 et seq. (Stollwerck).

¹⁴⁷ Cf. BGH, decision of 19 July 2010 - Ref. II ZB 18/09, AG 2010 p. 629 et seq. (Stollwerck), repeated with decision of 28 June 2011, II ZB 2/00, AG 2011, p. 590 et seq.

¹⁴⁸ Cf. for example Koch in Koch, AktG, 16th ed. 2022, § 305 marginal no. 44 with further references; OLG Stuttgart of 05.06.2013 - 20 W 6/10, para. 250.

282. In determining the reference period, the Valuation Expert referred to a reference period ending at the end of 8 November 2022 and correctly pointed out that, according to case law, with regard to the three-month reference period, it is not necessary that all conditions for the implementation of the announced structural measure have already occurred, but rather that the implementation of the structural measure is probable from the perspective of the capital market at the time of the announcement.¹⁴⁹ In consideration of the additional explanations of the Valuation Expert, it can be assumed that the capital market assumed the implementation of a structural measure. We therefore consider the approach of the Valuation Expert to be adequate.
283. According to the case-law of the Federal Constitutional Court, the stock market price is at least not to be used as a lower value limit if the shares of the company in question are only traded on the stock exchange to a small extent or do not reflect the market value of the shares due to special influences.¹⁵⁰ This is particularly the case if there has been practically no trading in the company's shares over a longer period of time, if the individual minority shareholders are not in a position to sell their shares at the stock market price due to a narrowness of the market, or if the stock market price has been manipulated.¹⁵¹ As a basis for the assessment of whether a narrowness of the market exists, the requirements of § 5 WpÜG-AngVO can be used, according to which a narrowness of the market exists if stock market prices have been determined for the shares of the target company on less than one third of the stock exchange days during the last three months prior to the publication of the structural measure and several successively determined stock market prices deviate from each other by more than 5%.
284. Based on our analyses, we share the Valuation Expert's assessment that there is no narrowness of the market within the meaning of § 5 para. 4 WpÜG-AngVO and that the stock market price should therefore be used as the lower value limit.

¹⁴⁹ Cf. Valuation Report, p. 91.

¹⁵⁰ Cf. BVerfG of 27 April 1999, 1 BvR 1613/94, BVerfG 100, 289.

¹⁵¹ Cf. BGH of 12 March 2001, II ZB 15/00, loc. cit.

285. The Valuation Expert states the average stock price of the reference period for the Common Shares in consideration of the weighted three-month average price of €26.89¹⁵² notified by BaFin up to and including the Reference Date 8 November 2022.¹⁵³ This corresponds to a market capitalisation of Vantage Towers of approximately €13,600 million. We verified this value by insight into the BaFin notification and our own survey of stock market prices.
286. The stock market prices of the shares of Vantage Towers determined in the Valuation Expert's report do not exceed the proportional values per share determined on the basis of the discounted earnings method including the special values. Accordingly, the discounted earnings value including the special values was used to determine the settlement payment to be granted to the departing shareholders of Vantage Towers.
287. During the valuation of the Vantage Towers, particular difficulties arose within the meaning of § 293e para. 1 sentence 3 no. 3 AktG with regard to the availability of information about INWIT.
288. Vantage Towers' investment in INWIT was included as a significant special value in the valuation. Vantage Towers only holds a 33.17% stake in the listed INWIT and, for legal reasons, does not receive any information beyond general capital market information. Therefore, Vantage Towers does not have any internal planning data as well as plan balance sheets, plan profit and loss accounts and plan cash flow statements developed from this.
289. However, INWIT's shares are listed and regularly traded on the Euronext Milan stock exchange (formerly Borsa Italiana), so that the market capitalisation and the value of the shares in INWIT held by Vantage Towers can be derived from the stock market prices of INWIT's shares.
290. The particular difficulty with regard to obtaining information from INWIT was also addressed by the fact that the management of Vantage Towers made a forecast of INWIT's financial surpluses on the basis of publicly available information, in particular consensus analyst estimates, from which the Valuation Expert derived INWIT's discounted earnings value in order to validate the plausibility of the stock market value of Vantage Towers' investment in INWIT.

¹⁵² Cf. Valuation Report, p. 91 et seq.

¹⁵³ Pursuant to § 31 para. 7 WpÜG in conjunction with § 5 para. 3 WpÜG-AngVO.

291. With the market capitalisation of INWIT and the planning prepared by Vantage Towers on the basis of analysts' estimates, we are convinced that there are sufficient valuation bases for INWIT, so that the legally impossible access to INWIT's internal data does not lead to any qualification of our audit opinion.
292. If, in the period between the completion of our audit on 27 March 2023 and the date of the passing of the resolution on the DPLTA at the general meeting of Vantage Towers on 5 May 2023, material changes in the financial position, financial performance or other basis for the determination of the equity value of Vantage Towers occur, these would have to be applied in addition in the assessment of the settlement payment.
293. As a result of our audit, we find that the settlement payment offered is adequate.

b) Appropriate compensation pursuant to § 304 AktG

294. The basis for the determination of the compensation is the business value of Vantage Towers as of 5 May 2023. In order to determine the compensation payment, the Valuation Expert derived from this the equity value of € 1.49 per share of Vantage Towers.¹⁵⁴
295. To calculate the annuity of the business value, the Valuation Expert assumed a risk- and term-equivalent interest rate. He determined this according to the so-called "mean value approach", taking into account the specific risk situation of the minority shareholders resulting from the DPLTA. Accordingly, the Valuation Expert did not use the (full) capitalisation interest rate used to determine the settlement payment, but the base rate plus the mean value of the capitalisation rate for determining the discounted earnings value and the base rate considered to be risk-free.
296. This approach is recognised in case law¹⁵⁵ as well as common in valuation practice for cases where the DPLTA does not contain a clause for the revival of the settlement offer upon termination of the DPLTA.
297. On this basis, the compensation after personal income tax amounts to € 1.10 per share. The compensation before personal income tax accordingly amounts to € 1.49 per share.

¹⁵⁴ Cf. Valuation Report p. 93 et seq.

¹⁵⁵ Cf. also LG München I of 31 July 2015, 5 HKO 16371/13, with reference to further case law, BeckRS 2015, 13240.

298. The gross profit share corresponds to the annuity of the equity value before deduction of corporate income tax and amounts to € 1.60 per common share. To determine the compensation payment, the corporate income tax incl. solidarity surcharge to be paid by Vantage Towers has to be deducted from the gross profit share. The corporate income tax incl. solidarity surcharge amounts to 15.825 % at the valuation date.¹⁵⁶ This results in a corporate income tax deduction of € 0.11 per common share.
299. If any material changes in the net assets, financial position, results of operations or other basis of valuation of Vantage Towers occur between the completion of our audit of the adequacy of the Compensation Payment on 27 March 2023 and the scheduled date of the resolution of the general meeting of Vantage Towers on the conclusion of the DPLTA on 5 May 2023, these would still have to be considered in the assessment of the Compensation Payment.

¹⁵⁶ In the event of a change in the KSt/SolZ tax rates, the compensation according to KSt/SolZ shall change accordingly in accordance with 4.2 of the DPLTA.

E. Final declaration

300. Following the final result of our mandatory audit pursuant to §§ 293b para. 1, 293e para. 1 sentence 2 AktG on the basis of the documents, books and writings submitted to us as well as the information and evidence provided to us, we declare the following.
301. The domination and profit transfer agreement between Oak and Vantage Towers complies with the legal requirements.
302. The settlement payment of € 27.85 per share is appropriate.
303. The compensation was derived by dividing it into a component that is charged with corporation tax and a component that is not charged with corporation tax.
304. The appropriate compensation according to § 304 AktG amounts to € 1.60 per share (gross profit share) less an amount to be paid by Vantage Towers for corporate income tax plus solidarity surcharge. This is to be determined under consideration of the corporate income tax rate applicable for the respective financial year. At the corporate income tax rate applicable at the time of the conclusion of the agreement (15 % KSt plus 5.5 % SolZ),¹⁵⁷ this results in a deduction amount of € 0.11 per share. The fixed compensation thus amounts to € 1.49 per share of Vantage Towers.
305. The business value of Vantage Towers determined on a pro rata basis, i.e. by dividing it by the number of common shares,¹⁵⁸ amounts to € 27.85 per share. Since the shares of the company are traded on the stock exchange, the average stock market price of the shares of Vantage Towers in the reference period in the amount of € 26.89 was to be taken into account as a lower limit in the assessment of the settlement payment. The average stock market price of the reference period is lower than the determined discounted earnings value per share of Vantage Towers. Therefore, the settlement payment corresponds to the discounted earnings value per share in the amount of € 27.85.
306. The calculation of the compensation and settlement per share by the Valuation Expert Grant Thornton AG Wirtschaftsprüfungsgesellschaft, Düsseldorf, has been carried out appropriately.

¹⁵⁷ In the event of a change in the KSt/SolZ tax rates, the compensation according to Kst/SolZ shall change accordingly in accordance with 4.2 of the DPLTA.

¹⁵⁸ 505,782,265 no-par value registered common shares.

307. We therefore issue the concluding declaration pursuant to § 293e AktG as follows:

"In our opinion, the settlement payment of € 27.85 per share is adequate for the reasons set out above. Likewise, the compensation pursuant to § 304 AktG in the amount of € 1.60 per share less an amount to be paid by Vantage Towers for corporate income tax plus solidarity surcharge is adequate. With the corporation tax burden of 15.0 % KSt plus 5.5 % SolZ applicable at the time of the conclusion of the agreement, this results in a deduction amount of € 0.11 per share. The stipulated compensation thus amounts to € 1.49 per share of Vantage Towers AG and is appropriate."

Düsseldorf, 27 March 2023

I-ADVISE AG
Wirtschaftsprüfungsgesellschaft

Dr. Jochen Beumer
German Public Auditor

Frank Sichau
German Public Auditor

APPENDICES

Appendix 1: Brief description of the peer group

Cellnex Telecom, S.A. is a Spanish-based operator of telecommunications and broadcasting infrastructure. The company's largest segment is telecommunications infrastructure, which accounts for 87% of sales. In 2021, Cellnex generated revenues of €2.4 billion.

Infrastrutture Wireless Italiane S.p.A. ("INWIT") is an Italian company operating in the electronic communications infrastructure sector. The company's main activity is the construction and operation of passive infrastructure of communication sites, consisting of structures (such as towers, pylons and masts) and technical systems. The company's total turnover in 2021 was €785 million.

American Tower Corporation owns and operates a portfolio of approximately 219,000 passive infrastructure sites. The US company operates globally, with a geographic focus on the US and Canada. In 2021, American Tower generated revenues of €8.2 billion.

Crown Castle Inc. is a provider of telecommunications infrastructure in the USA. With a revenue share of 72%, the wireless segment was the company's largest segment in 2022, with the remaining revenue generated by the "fibre" segment. In 2022, Crown Castle generated revenues of €6.5 billion.

SBA Communications Corporation is an owner and operator of wireless communications infrastructure, including free-standing towers, rooftop sites, DAS and small cell sites. The company operates in North, Central and South America, Africa and the Philippines, with revenues of €2.0 billion in 2021.

Beglaubigte Abschrift

35 O 10/23 [AktE]



Landgericht Düsseldorf

Beschluss

In dem Verfahren nach dem AktG
Vantage Towers AG u.a.

zur Prüfung des Beherrschungs- und Gewinnabführungsvertrages zwischen der
Vantage Towers AG und der Oak Holdings GmbH

an dem beteiligt sind:

Vantage Towers AG, vertreten durch ihren Vorstand, Prinzenallee 11-13, 40549
Düsseldorf,

Oak Holdings GmbH, vertreten durch ihren Geschäftsführer, Ferdinand-Braun-Platz
1, 40459 Düsseldorf,

Antragstellerinnen,

hat die 5. Kammer für Handelssachen des Landgerichts Düsseldorf
am 12. Januar 2023

durch den Vorsitzenden Richter am Landgericht Dr. Vomhof

beschlossen:

Für die Prüfung des beabsichtigten Beherrschungs- und
Gewinnabführungsvertrages zwischen der Vantage Towers AG als
beherrschtem Unternehmen und der Oak Holdings GmbH als
herrschenden Unternehmen wird

**I-ADVISE AG (Wirtschaftsprüfungsgesellschaft),
Klaus-Bungert-Straße 5a, 40468 Düsseldorf**

als Vertragsprüfer bestellt, § 293c AktG.

Die Kosten des Verfahrens tragen die Antragstellerinnen.

Der Geschäftswert wird auf **50.000,00 €** festgesetzt; § 36 GNotKG.

Gründe:

Der bestellte Vertragsprüfer erfüllt nach der dem Gericht gegenüber abgegebenen Erklärung vom 12. Dezember 2022 die Bedingungen der einschlägigen Vorschriften des AktG und seiner Bestellung stehen insbesondere keine Hinderungsgründe nach §§ 293d Abs. 1 Satz 1 und 2 AktG in Verbindung mit §§ 319 Abs. 2 bis 4, 319b Abs. 1 HGB und Art. 5 Abs. 1 der Verordnung (EU) Nr. 537/ 2014, §§ 43 ff. WPO entgegen.

Rechtsbehelfsbelehrung:

Gegen die Entscheidung besteht die Möglichkeit der Beschwerde. Die Beschwerde kann nur durch Einreichung einer von einem Rechtsanwalt unterzeichneten Beschwerdeschrift eingelegt werden. Die Beschwerde ist binnen einer Frist von einem Monat bei dem Landgericht Düsseldorf (Werdener Straße 1, 40227 Düsseldorf oder Postfach 103461, 40025 Düsseldorf) einzulegen. Die Frist beginnt jeweils mit der schriftlichen Bekanntgabe des Beschlusses an die Beteiligten. Kann die schriftliche Bekanntgabe an einen Beteiligten nicht bewirkt werden, beginnt die Frist spätestens mit Ablauf von fünf Monaten nach Erlass des Beschlusses. Die Beschwerde ist bei dem Gericht einzulegen, dessen Beschluss angefochten wird. Die Beschwerde muss die Bezeichnung des angefochtenen Beschlusses sowie die Erklärung enthalten, dass Beschwerde gegen diesen Beschluss eingelegt wird und soll begründet werden.

Der Vorsitzende

Dr. Vomhof
Vorsitzender Richter am
Landgericht

Beglaubigt
Urku ndsbeamter/in der Geschäftsstelle
Landgericht Düsseldorf



Beherrschungs- und Gewinnabführungsvertrag

zwischen

OAK HOLDINGS GMBH

Ferdinand-Braun-Platz 1, 40549 Düsseldorf,

eingetragen im Handelsregister des Amtsgerichts Düsseldorf (HRB 98923)

und

VANTAGE TOWERS AG

Prinzenallee 11-13, 40549 Düsseldorf,

eingetragen im Handelsregister des Amtsgerichts Düsseldorf (HRB 92244)

Beherrschungs- und Gewinnabführungsvertrag **(„Vertrag“)**

zwischen der

- (1) **Oak Holdings GmbH**, mit Sitz in Düsseldorf, Deutschland und der Geschäftsanschrift Ferdinand-Braun-Platz 1, 40549 Düsseldorf, eingetragen im Handelsregister beim Amtsgericht Düsseldorf unter HRB 98923,

- nachstehend „**Oak Holdings**“ genannt -

und der

- (2) **Vantage Towers AG** mit Sitz in Düsseldorf, Deutschland und der Geschäftsanschrift Prinzenallee 11-13, 40549 Düsseldorf, eingetragen im Handelsregister beim Amtsgericht Düsseldorf unter HRB 92244,

- nachstehend „**Vantage Towers**“ genannt -

1 Leitung und Weisungen

- 1.1** Vantage Towers unterstellt die Leitung ihrer Gesellschaft der Oak Holdings. Oak Holdings ist demgemäß berechtigt, dem Vorstand der Vantage Towers hinsichtlich der Leitung der Gesellschaft Weisungen zu erteilen. Der Vorstand der Vantage Towers ist gemäß § 308 AktG verpflichtet, den Weisungen der Oak Holdings Folge zu leisten.
- 1.2** Oak Holdings ist aufgrund des Weisungsrechts der vorstehenden Ziffer 1.1 nicht berechtigt, dem Vorstand der Vantage Towers die Weisung zu erteilen, diesen Vertrag zu ändern, aufrechtzuerhalten oder zu beenden.
- 1.3** Unbeschadet des Weisungsrechts der Oak Holdings obliegen die Geschäftsführung und die Vertretung der Vantage Towers weiterhin dem Vorstand.
- 1.4** Weisungen bedürfen der Textform, oder sind, falls die Weisungen mündlich erteilt werden, unverzüglich in Textform zu bestätigen.

2 Gewinnabführung

- 2.1** Vantage Towers verpflichtet sich, ihren gesamten Gewinn an Oak Holdings abzuführen. Abzuführen ist, vorbehaltlich einer Bildung oder Auflösung von Rücklagen gemäß nachstehenden Ziffern 2.2 und 2.3, der sich gemäß den Bestimmungen des § 301 Aktiengesetz („**AktG**“) in seiner jeweils gültigen Fassung ergebende Höchstbetrag der Gewinnabführung.
- 2.2** Vantage Towers kann mit schriftlicher Zustimmung der Oak Holdings Beträge aus dem Jahresüberschuss in andere Gewinnrücklagen (§ 272 Abs. 3 Handelsgesetzbuch („**HGB**“)) einstellen, sofern dies handelsrechtlich zulässig und bei vernünftiger kaufmännischer Beurteilung wirtschaftlich begründet ist.
- 2.3** Vorbehaltlich der Bestimmungen des § 301 AktG in seiner jeweils gültigen Fassung sind während der Dauer dieses Vertrags gebildete andere Gewinnrücklagen gemäß § 272 Abs. 3 HGB auf entsprechendes schriftliches Verlangen der Oak Holdings aufzulösen und zum Ausgleich eines Jahresfehlbetrages, der ohne die Verlustübernahmeverpflichtung nach

Ziffer 3 dieses Vertrags entstehen würde, zu verwenden oder als Gewinn abzuführen. Sonstige Rücklagen und ein Gewinnvortrag, der aus der Zeit vor Wirksamkeit dieses Vertrags stammt, dürfen weder als Gewinn an Oak Holdings abgeführt noch zum Ausgleich eines Jahresfehlbetrages verwendet werden.

- 2.4** Die Verpflichtung zur Gewinnabführung besteht erstmals für das gesamte Geschäftsjahr von Vantage Towers, in dem dieser Vertrag nach Ziffer 6.2 wirksam wird. Die Verpflichtung nach Ziffer 2.1 Satz 1 wird jeweils am Ende eines Geschäftsjahrs von Vantage Towers fällig und ist ab diesem Zeitpunkt mit dem gesetzlich vorgesehenen Zinssatz (§§ 352, 353 HGB) zu verzinsen.

3 Verlustübernahme

- 3.1** Oak Holdings ist gemäß den Bestimmungen des § 302 AktG in seiner jeweils gültigen Fassung verpflichtet, jeden während der Vertragsdauer sonst entstehenden Jahresfehlbetrag der Vantage Towers auszugleichen.
- 3.2** Die Verpflichtung zum Verlustausgleich besteht erstmals für das gesamte Geschäftsjahr von Vantage Towers, in dem dieser Vertrag nach Ziffer 6.2 wirksam wird. Ziffer 2.4 Satz 2 gilt für die Verpflichtung zum Verlustausgleich entsprechend.

4 Ausgleichszahlung

- 4.1** Oak Holdings verpflichtet sich, den außenstehenden Aktionären der Vantage Towers ab dem Geschäftsjahr der Vantage Towers, für das erstmals der Anspruch der Oak Holdings auf Gewinnabführung gemäß Ziffer 2 besteht, für die Dauer dieses Vertrags eine wiederkehrende Geldleistung („**Ausgleichszahlung**“) zu zahlen.
- 4.2** Die Ausgleichszahlung beträgt für jedes volle Geschäftsjahr der Vantage Towers für jede auf den Namen lautende Stückaktie der Vantage Towers mit einem rechnerischen Anteil am Grundkapital von EUR 1,00 (jede einzelne eine „**Vantage Towers-Aktie**“ und zusammen die „**Vantage Towers-Aktien**“) brutto EUR 1,60 abzüglich eines Betrages für die Körperschaftsteuer sowie den Solidaritätszuschlag nach dem jeweils für diese Steuern für das jeweilige Geschäftsjahr geltenden Steuersatz, wobei dieser Abzug nur auf den in dem Bruttobetrag enthaltenden Teilbetrag von EUR 0,68 je Vantage Towers-Aktie vorzunehmen ist, der sich auf die mit deutscher Körperschaftsteuer belasteten Gewinne von Vantage Towers bezieht. Nach den Verhältnissen zum Zeitpunkt des Abschlusses dieses Vertrags gelangen auf den anteiligen Bruttobetrag von EUR 0,68 je Vantage Towers-Aktie, der sich auf die mit deutscher Körperschaftsteuer belasteten Gewinne der Vantage Towers bezieht, 15 % Körperschaftsteuer zzgl. 5,5 % Solidaritätszuschlag, d.h. EUR 0,11, zum Abzug. Zusammen mit dem übrigen anteiligen Bruttobetrag von EUR 0,92 je Vantage Towers-Aktie, der sich auf die nicht mit deutscher Körperschaftsteuer belasteten Gewinne bezieht, ergibt sich daraus nach den Verhältnissen zum Zeitpunkt des Abschlusses dieses Vertrags eine Ausgleichszahlung in Höhe von EUR 1,49 je Vantage Towers-Aktie für ein volles Geschäftsjahr. Klarstellend wird vereinbart, dass, soweit gesetzlich vorgeschrieben, anfallende Quellensteuern (etwa Kapitalertragsteuer zuzüglich Solidaritätszuschlag) von der Ausgleichszahlung einbehalten werden. Die Ausgleichszahlung ist am ersten Bankarbeitstag nach der ordentlichen Hauptversammlung der Vantage Towers für das abgelaufene Geschäftsjahr, jedoch spätestens acht Monate nach Ablauf dieses Geschäftsjahrs fällig.
- 4.3** Die Ausgleichszahlung wird erstmals für das gesamte Geschäftsjahr von Vantage Towers gewährt, für das der Anspruch auf Gewinnabführung der Oak Holdings gemäß Ziffer 2

wirksam wird. Sofern der Vertrag während eines Geschäftsjahrs der Vantage Towers endet oder Vantage Towers während des Zeitraums, für den die Verpflichtung zur Gewinnabführung gemäß Ziffer 2 gilt, ein Rumpfgeschäftsjahr bildet, vermindert sich die Ausgleichszahlung zeitanteilig.

- 4.4** Im Falle einer Erhöhung des Grundkapitals der Vantage Towers aus Gesellschaftsmitteln gegen Ausgabe neuer Aktien vermindert sich die Ausgleichszahlung je Vantage Towers-Aktie in dem Maße, dass der Gesamtbetrag der Ausgleichszahlung unverändert bleibt. Wird das Grundkapital der Vantage Towers durch Bar- und/oder Sacheinlagen erhöht, gelten die Rechte aus dieser Ziffer 4 auch für die von außenstehenden Aktionären bezogenen Aktien aus der Kapitalerhöhung. Der Beginn der Berechtigung aus den neuen Aktien gemäß dieser Ziffer 4 ergibt sich aus der von Vantage Towers bei Ausgabe der neuen Aktien festgesetzten Gewinnanteilsberechtigung.
- 4.5** Falls ein Spruchverfahren nach dem Spruchverfahrensgesetz eingeleitet wird und das Gericht rechtskräftig eine höhere Ausgleichszahlung festsetzt, können auch die bereits nach Maßgabe der Ziffer 5 abgefundenen Aktionäre eine entsprechende Ergänzung der von ihnen bereits erhaltenen Ausgleichszahlungen verlangen. Ebenso werden alle übrigen außenstehenden Aktionäre gleichgestellt, wenn sich Oak Holdings gegenüber einem außenstehenden Aktionär von Vantage Towers in einem gerichtlichen Vergleich zur Abwendung oder Beendigung eines Spruchverfahrens zu einer höheren Ausgleichszahlung verpflichtet.

5 Abfindung

- 5.1** Oak Holdings verpflichtet sich, auf Verlangen eines jeden außenstehenden Aktionärs der Vantage Towers dessen Vantage Towers-Aktie gegen eine Barabfindung („**Abfindung**“) in Höhe von EUR 27,85 je Vantage Towers-Aktie zu erwerben.
- 5.2** Die Verpflichtung der Oak Holdings zum Erwerb der Vantage Towers-Aktien ist befristet. Die Frist endet zwei Monate nach dem Tag, an dem die Eintragung des Bestehens dieses Vertrags im Handelsregister des Sitzes der Vantage Towers nach § 10 HGB bekannt gemacht worden ist. Eine Verlängerung der Frist nach § 305 Abs. 4 Satz 3 AktG wegen eines Antrags auf Bestimmung des Ausgleichs oder der Abfindung durch das in § 2 Spruchverfahrensgesetz („**SpruchG**“) bestimmte Gericht bleibt unberührt. In diesem Fall endet die Frist zwei Monate nach dem Tag, an dem die Entscheidung über den zuletzt beschiedenen Antrag im Bundesanzeiger bekannt gemacht worden ist.
- 5.3** Falls bis zum Ablauf der in Ziffer 5.2 genannten Frist das Grundkapital der Vantage Towers aus Gesellschaftsmitteln gegen Ausgabe neuer Aktien erhöht wird, vermindert sich die Abfindung je Aktie in dem Maße, dass der Gesamtbetrag der Abfindung unverändert bleibt. Wird das Grundkapital der Vantage Towers bis zum Ablauf der in Ziffer 5.2 genannten Frist durch Bar- und/oder Sacheinlagen erhöht, gelten die Rechte aus dieser Ziffer 5 auch für die von außenstehenden Aktionären bezogenen Aktien aus der Kapitalerhöhung.
- 5.4** Die Übertragung der Vantage Towers-Aktie gegen Abfindung ist für die außenstehenden Aktionäre der Vantage Towers kostenfrei.
- 5.5** Falls ein Spruchverfahren nach dem Spruchverfahrensgesetz eingeleitet wird und das Gericht rechtskräftig eine höhere Abfindung festsetzt, können auch die bereits abgefundenen Aktionäre eine entsprechende Ergänzung der Abfindung verlangen. Ebenso werden alle übrigen außenstehenden Aktionäre gleichgestellt, wenn sich Oak Holdings gegenüber einem außenstehenden Aktionär der Vantage Towers in einem gerichtlichen Vergleich zur Abwendung oder Beendigung eines Spruchverfahrens zu einer höheren Abfindung verpflichtet.

6 Wirksamwerden, Dauer und Kündigung dieses Vertrags

- 6.1** Dieser Vertrag bedarf zu seiner Wirksamkeit jeweils der Zustimmung der Gesellschafterversammlung der Oak Holdings und der Hauptversammlung der Vantage Towers.
- 6.2** Dieser Vertrag wird mit seiner Eintragung im Handelsregister des Sitzes der Vantage Towers wirksam und gilt – mit Ausnahme des Weisungsrechts gemäß vorstehender Ziffer 1 – rückwirkend ab Beginn des Geschäftsjahrs der Vantage Towers, in dem die Eintragung des Vertrags im Handelsregister der Vantage Towers erfolgt.
- 6.3** Der Vertrag wird auf unbestimmte Zeit geschlossen. Er kann mit einer Frist von sechs Monaten zum Ablauf eines Geschäftsjahrs der Vantage Towers gekündigt werden. Der Vertrag kann erstmals zum Ende des Geschäftsjahrs gekündigt werden, das mindestens fünf Zeitjahre (60 Monate) nach dem Beginn des Geschäftsjahrs der Vantage Towers endet, (i) von dessen Beginn an die finanzielle Eingliederung im Sinne des § 14 Abs. 1 Satz 1 Nr. 1 Körperschaftsteuergesetz („KStG“) erstmals vorliegt, und (ii) in dem dieser Vertrag wirksam ist.
- 6.4** Jede Partei kann diesen Vertrag aus wichtigem Grund ohne Einhaltung einer Kündigungsfrist kündigen. Ein wichtiger Grund liegt insbesondere vor, wenn ein wichtiger Grund im steuerlichen Sinne für die Beendigung dieses Vertrags einschließlich solcher nach R 14.5 (6) KStR (oder einer entsprechenden Nachfolgevorschrift) gegeben ist.
- 6.5** Jede Kündigung bedarf der Schriftform.
- 6.6** Im Falle der Vertragsbeendigung während eines Geschäftsjahrs der Vantage Towers ist Vantage Towers zur Abführung ihres Gewinns gemäß vorstehender Ziffer 2 oder Oak Holdings zum Ausgleich der Verluste der Vantage Towers gemäß vorstehender Ziffer 3 bis zum Zeitpunkt der Vertragsbeendigung verpflichtet.

7 Schlussbestimmungen

- 7.1** Änderungen und Ergänzungen dieses Vertrags einschließlich dieser Ziffer 7.1 bedürfen der Schriftform.
- 7.2** Soweit eine Bestimmung dieses Vertrags ganz oder teilweise unwirksam oder undurchführbar ist oder wird, oder im Vertrag sich eine Lücke befindet, wird dadurch die Gültigkeit der übrigen Bestimmungen nicht berührt. Anstelle der unwirksamen oder unanwendbaren Bestimmungen oder zur Ausfüllung der Lücke soll eine angemessene Regelung gelten, die im Rahmen des rechtlich Zulässigen dem am nächsten kommt, was die Vertragsparteien gewollt haben oder nach dem Sinn und Zweck dieses Vertrags gewollt hätten, sofern sie den Punkt bedacht hätten.

*(*** Unterschriftenseite folgt ***)*

Düsseldorf, [Datum]

Oak Holdings GmbH

Geschäftsführer

Geschäftsführer

Düsseldorf, [Datum]

Vantage Towers AG

Mitglied des Vorstands

Mitglied des Vorstands

CONVENIENCE TRANSLATION

Domination and Profit and Loss Transfer Agreement

between

OAK HOLDINGS GMBH

Ferdinand-Braun-Platz 1, 40549 Düsseldorf,

registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) Düsseldorf
(HRB 98923)

and

VANTAGE TOWERS AG

Prinzenallee 11-13, 40549 Düsseldorf,

registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) Düsseldorf
(HRB 92244)

Domination and Profit and Loss Transfer Agreement ("Agreement")

between

- (1) **Oak Holdings GmbH**, having its seat in Düsseldorf, Germany, with business address at Ferdinand-Braun-Platz 1, 40549 Düsseldorf, Germany, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) of Düsseldorf under HRB 98923,

- hereinafter referred to as "**Oak Holdings**" -

and

- (2) **Vantage Towers AG**, having its seat in Düsseldorf, Germany, with business address at Prinzenallee 11-13, 40549 Düsseldorf, Germany, registered in the commercial register (*Handelsregister*) at the Local Court (*Amtsgericht*) of Düsseldorf under HRB 92244,

- hereinafter referred to as "**Vantage Towers**" -.

1 Management Control

- 1.1 Vantage Towers submits the management control (*Leitung*) of its company to Oak Holdings. Oak Holdings is accordingly entitled to issue instructions (*Weisungen*) to the management board of Vantage Towers with regard to the management control of the company. The management board of Vantage Towers is according to Section 308 German Stock Corporation Act (*Aktiengesetz* – "**AktG**") obliged to comply with the instructions of Oak Holdings.
- 1.2 The aforementioned right of Oak Holdings to issue instructions (Clause 1.1) shall not entitle Oak Holdings to issue the instruction to the management board of Vantage Towers to amend, maintain or terminate this Agreement.
- 1.3 Without prejudice to the authority of Oak Holdings to issue instructions, the management board of Vantage Towers continues to be responsible for the management and representation of Vantage Towers.
- 1.4 Any instructions require text form (*Textform*) or, if the instructions are issued orally, they shall be confirmed in text form without undue delay.

2 Transfer of Profit

- 2.1 Vantage Towers undertakes to transfer its entire annual profit (*Gewinnabführung*) to Oak Holdings. Subject to establishing or dissolving reserves in accordance with Clause 2.2 and Clause 2.3 of this Agreement below, the maximum amount of profit as established according to the provisions of Section 301 AktG in its respective applicable version shall be transferred to Oak Holdings.
- 2.2 Vantage Towers may, with the written consent of Oak Holdings, allocate parts of its annual profit to other profit reserves (Section 272 para.3 German Commercial Code, (*Handelsgesetzbuch* – "**HGB**")) if and to the extent permissible under commercial law and as economically justified by reasonable commercial judgement.

- 2.3** Subject to the provisions of Section 301 AktG in its respective applicable version, Vantage Towers shall, upon the written request of Oak Holdings, dissolve other profit reserves pursuant to Section 272 para. 3 HGB established during the course of this Agreement and use the proceeds to compensate for any annual loss which would occur without the obligation to assume losses pursuant to Clause 3 of this Agreement or transfer the proceeds as profit. Other reserves or profits carried forward from the period prior to the effectiveness of this Agreement may neither be transferred as profit nor be used to compensate for any annual loss.
- 2.4** The obligation to transfer the annual profit applies for the first time to the entire fiscal year of Vantage Towers in which this Agreement becomes effective according to Clause 6.2 of this Agreement. The obligation according to Clause 2.1 sentence 1 becomes due upon the end of the fiscal year of Vantage Towers and shall bear interest from this point on at the interest rate stipulated by law (Sections 352, 353 HGB).

3 Assumption of Losses

- 3.1** According to the provisions of Section 302 AktG in its respective applicable version, Oak Holdings is obliged to compensate any annual loss of Vantage Towers occurring during the term of this Agreement.
- 3.2** The obligation to assume any losses applies for the first time to the entire fiscal year of Vantage Towers in which this Agreement becomes effective according to Clause 6.2 of this Agreement. Clause 2.4 sentence 2 applies accordingly to the obligation to assume any losses.

4 Recurring Compensation Payment

- 4.1** Oak Holdings undertakes to pay to the outside shareholders of Vantage Towers a recurring annual cash compensation ("**Recurring Compensation Payment**") (*Ausgleichszahlung*) from and including the fiscal year of Vantage Towers in relation to which the claim of Oak Holdings for the transfer of the annual profit under Clause 2 takes effect, and for the further duration of this Agreement.
- 4.2** The Recurring Compensation Payment amounts for each full fiscal year of Vantage Towers for each no-par value registered shares (*nennwertlose Namensaktien*) in Vantage Towers, representing a mathematical portion of EUR 1.00 in the share capital (each "**Vantage Towers Share**" and all "**Vantage Towers Shares**") to a gross sum (*Bruttobetrag*) of EUR 1.60 minus the amount of any corporate income tax and the solidarity surcharge in accordance with the respective tax rate applicable for these taxes for the relevant fiscal year, whereby this deduction is to be calculated only on the basis of the pro rata gross sum of EUR 0.68 per Vantage Towers Share resulting from profits which are subject to German corporate income tax. Based on the situation at the time of conclusion of this Agreement, the pro rata gross sum of EUR 0.68 for each Vantage Towers share, which relates to profits made by Vantage Towers being subject to the German corporate income tax, is subject to a deduction of 15% corporate income tax plus 5.5% solidarity surcharge, that is EUR 0.11. Together with the remaining pro rata gross sum of EUR 0.92 for each Vantage Towers Share, relating to profits not being subject to the German corporate income tax, the Recurring Compensation Payment amounts to EUR 1.49 for each Vantage Towers Share for each full fiscal year, based on the situation at the time of conclusion of this Agreement. For the avoidance of doubt, it is agreed that any withholding tax (such as capital gains tax plus solidarity surcharge thereon) shall be withheld from the Recurring Compensation Payment

to the extent required by statutory law. The Recurring Compensation Payment is due on the first banking day following the ordinary general shareholders' meeting of Vantage Towers for any respective preceding fiscal year but in any event within eight months following expiration of the relevant fiscal year.

- 4.3** The Recurring Compensation Payment is granted for the first time for the full fiscal year of Vantage Towers for which the claim of Oak Holdings to transfer of profit under Clause 2 becomes effective. If this Agreement ends during a fiscal year of Vantage Towers or if Vantage Towers establishes an abbreviated fiscal year (*Rumpfgeschäftsjahr*) while the obligation according to Clause 2 is existing, the Recurring Compensation Payment is reduced *pro rata temporis*.
- 4.4** If the share capital of Vantage Towers is increased from the reserves in exchange for the issuance of new shares, the Recurring Compensation Payment for each Vantage Towers Share is reduced to such an extent that the total amount of the Recurring Compensation Payment remains unchanged. If the share capital of Vantage Towers is increased by cash contributions and/or contributions in kind, the rights under this Clause 4 also apply for the shares subscribed to by outside shareholders in such capital increase. The beginning of each entitlement of the new shares pursuant to this Clause 4 corresponds to the dividend entitlement set by Vantage Towers when issuing the new shares.
- 4.5** If an appraisal proceeding (*Spruchverfahren*) according to the German Act on Appraisal Proceedings (*Spruchverfahrensgesetz*) is initiated and the court adjudicates a legally binding higher Recurring Compensation Payment, the outside shareholders, even if they have already been compensated according to Clause 5, are entitled to demand a corresponding additional payment to the Recurring Compensation Payment. Likewise all other outside shareholders will be treated in the same way if Oak Holdings undertakes to pay a higher Recurring Compensation Payment to an outside shareholder of Vantage Towers in a court settlement (*gerichtlicher Vergleich*) for the purpose of avoiding or settling judicial appraisal proceedings (*Spruchverfahren*).

5 Compensation

- 5.1** Oak Holdings undertakes upon demand of each outside shareholder of Vantage Towers to purchase such shareholder's Vantage Towers Shares in exchange for a cash compensation ("**Compensation**") (*Abfindung*) in the amount of EUR 27.85 for each Vantage Towers Share.
- 5.2** The obligation of Oak Holdings to purchase Vantage Towers Shares is for a limited period of time. The time limitation period ends two months after the date on which the registration of this Agreement in the commercial register at the registered seat of Vantage Towers has been announced pursuant to Section 10 HGB. An extension of the time limitation period pursuant to Section 305 para. 4 sentence 3 AktG as a result of a motion for determining the Recurring Compensation Payment or Compensation by the court determined according to Section 2 of the German Act on Appraisal Proceedings remains unaffected. In this case, the time limitation period ends two months after the date on which the decision on the last motion ruled on has been announced in the Federal Gazette (*Bundesanzeiger*).
- 5.3** If the share capital of Vantage Towers is increased using corporate funds in exchange for the issuance of new shares prior to the expiration of the time limitation period set forth in Clause 5.2, the Compensation for each share is reduced to such an extent that the total amount of the Compensation remains unchanged. If the share capital of Vantage Towers is increased prior to the expiration of the time limitation period set forth in Clause 5.2 by means

of cash contributions and/or contributions in kind, the rights under this Clause 5 also apply for the shares subscribed to by the outside shareholders in such capital increase.

- 5.4** The transfer of the Vantage Towers Shares for Compensation is free of costs for the outside shareholders of Vantage Towers.
- 5.5** If an appraisal proceeding (*Spruchverfahren*) pursuant to the German Act on Appraisal Proceedings is initiated and the court adjudicates a legally binding higher compensation, the outside shareholders, even if they have already been compensated, are entitled to demand a corresponding additional payment to the Compensation. Likewise all other outside shareholders will be treated in the same way if Oak Holdings undertakes in a court settlement (*gerichtlicher Vergleich*) to pay a higher compensation to an outside shareholder of Vantage Towers for the purpose of avoiding or settling judicial appraisal proceedings (*Spruchverfahren*).

6 Effectiveness, Term and Termination of this Agreement

- 6.1** This Agreement requires for its effectiveness each the consent shareholders' meeting of Oak Holdings as well as the consent of the general shareholders' meeting of Vantage Towers.
- 6.2** This Agreement becomes effective upon registration of its existence in the commercial register at the registered seat of Vantage Towers and applies – except for the right to give instructions pursuant to Clause 1 **Fehler! Verweisquelle konnte nicht gefunden werden.**above – retroactively since the beginning of the financial year of Vantage Towers in which this Agreement is registered in the commercial register of Vantage Towers.
- 6.3** This Agreement is concluded for an indefinite period of time. It can be terminated with a notice period of six months to the end of the fiscal year of Vantage Towers. This Agreement can be terminated for the first time as of the end of the fiscal year that ends at least five years (*Zeitjahre*) (60 months) after the beginning of the fiscal year of Vantage Towers, (i) from the beginning of which the financial integration (*finanzielle Eingliederung*) within the meaning of Section 14 para 1 sentence 1 no. 1 Corporate Income Tax Act (*Körperschaftsteuergesetz*) exists for the first time and (ii) in which this Agreement is effective.
- 6.4** Each party can terminate this Agreement for good cause (*wichtiger Grund*) without compliance with any notice period. Good cause exists in particular if good cause for purposes of German tax law for the termination of this Agreement exists including those pursuant to R 14.5 (6) Corporation Tax Guidelines (*Körperschaftsteuer-Richtlinien – KStR*) (or a corresponding successor provision).
- 6.5** Any notice of termination must be in writing.
- 6.6** In the event of a termination of the Agreement in the course of a financial year of Vantage Towers, Vantage Towers shall transfer its profit according to Clause 2 or Oak Holdings shall compensate any losses of Vantage Towers according to Clause 3 until the termination of the Agreement.

7 Miscellaneous

- 7.1** Changes and amendments to this Agreement shall be valid only if made in writing. This shall also apply to amendments of this Clause 7.1.
- 7.2** To the extent a provision of this Agreement is or becomes invalid or impracticable in full or in part, or if this Agreement does not contain a necessary provision, the validity of the

remaining provisions of this Agreement shall not be affected. In place of the invalid or impracticable provision, or in order to remedy an omission in this Agreement, an appropriate provision shall apply which corresponds as far as legally permissible to what the parties of this Agreement intended or would have intended in accordance with the intent and purpose of this Agreement if they had been aware of the provision.

*(*** Signature page follows ***)*

Düsseldorf, [date]

Oak Holdings GmbH

Managing director

Managing director

Düsseldorf, [date]

Vantage Towers AG

Member of the Management Board

Member of the Management Board

General Engagement Terms

for
Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
[German Public Auditors and Public Audit Firms]
as of January 1, 2017

1. Scope of application

(1) These engagement terms apply to contracts between German Public Auditors (*Wirtschaftsprüfer*) or German Public Audit Firms (*Wirtschaftsprüfungsgesellschaften*) – hereinafter collectively referred to as “German Public Auditors” – and their engaging parties for assurance services, tax advisory services, advice on business matters and other engagements except as otherwise agreed in writing or prescribed by a mandatory rule.

(2) Third parties may derive claims from contracts between German Public Auditors and engaging parties only when this is expressly agreed or results from mandatory rules prescribed by law. In relation to such claims, these engagement terms also apply to these third parties.

2. Scope and execution of the engagement

(1) Object of the engagement is the agreed service – not a particular economic result. The engagement will be performed in accordance with the German Principles of Proper Professional Conduct (*Grundsätze ordnungsmäßiger Berufsausübung*). The German Public Auditor does not assume any management functions in connection with his services. The German Public Auditor is not responsible for the use or implementation of the results of his services. The German Public Auditor is entitled to make use of competent persons to conduct the engagement.

(2) Except for assurance engagements (*betriebswirtschaftliche Prüfungen*), the consideration of foreign law requires an express written agreement.

(3) If circumstances or the legal situation change subsequent to the release of the final professional statement, the German Public Auditor is not obligated to refer the engaging party to changes or any consequences resulting therefrom.

3. The obligations of the engaging party to cooperate

(1) The engaging party shall ensure that all documents and further information necessary for the performance of the engagement are provided to the German Public Auditor on a timely basis, and that he is informed of all events and circumstances that may be of significance to the performance of the engagement. This also applies to those documents and further information, events and circumstances that first become known during the German Public Auditor's work. The engaging party will also designate suitable persons to provide information.

(2) Upon the request of the German Public Auditor, the engaging party shall confirm the completeness of the documents and further information provided as well as the explanations and statements, in a written statement drafted by the German Public Auditor.

4. Ensuring independence

(1) The engaging party shall refrain from anything that endangers the independence of the German Public Auditor's staff. This applies throughout the term of the engagement, and in particular to offers of employment or to assume an executive or non-executive role, and to offers to accept engagements on their own behalf.

(2) Were the performance of the engagement to impair the independence of the German Public Auditor, of related firms, firms within his network, or such firms associated with him, to which the independence requirements apply in the same way as to the German Public Auditor in other engagement relationships, the German Public Auditor is entitled to terminate the engagement for good cause.

5. Reporting and oral information

To the extent that the German Public Auditor is required to present results in writing as part of the work in executing the engagement, only that written work is authoritative. Drafts are non-binding. Except as otherwise agreed, oral statements and explanations by the German Public Auditor are binding only when they are confirmed in writing. Statements and information of the German Public Auditor outside of the engagement are always non-binding.

6. Distribution of a German Public Auditor's professional statement

(1) The distribution to a third party of professional statements of the German Public Auditor (results of work or extracts of the results of work whether in draft or in a final version) or information about the German Public Auditor acting for the engaging party requires the German Public Auditor's written consent, unless the engaging party is obligated to distribute or inform due to law or a regulatory requirement.

(2) The use by the engaging party for promotional purposes of the German Public Auditor's professional statements and of information about the German Public Auditor acting for the engaging party is prohibited.

7. Deficiency rectification

(1) In case there are any deficiencies, the engaging party is entitled to specific subsequent performance by the German Public Auditor. The engaging party may reduce the fees or cancel the contract for failure of such subsequent performance, for subsequent non-performance or unjustified refusal to perform subsequently, or for unconscionability or impossibility of subsequent performance. If the engagement was not commissioned by a consumer, the engaging party may only cancel the contract due to a deficiency if the service rendered is not relevant to him due to failure of subsequent performance, to subsequent non-performance, to unconscionability or impossibility of subsequent performance. No. 9 applies to the extent that further claims for damages exist.

(2) The engaging party must assert a claim for the rectification of deficiencies in writing (*Textform*) [Translator's Note: *The German term "Textform" means in written form, but without requiring a signature*] without delay. Claims pursuant to paragraph 1 not arising from an intentional act expire after one year subsequent to the commencement of the time limit under the statute of limitations.

(3) Apparent deficiencies, such as clerical errors, arithmetical errors and deficiencies associated with technicalities contained in a German Public Auditor's professional statement (long-form reports, expert opinions etc.) may be corrected – also versus third parties – by the German Public Auditor at any time. Misstatements which may call into question the results contained in a German Public Auditor's professional statement entitle the German Public Auditor to withdraw such statement – also versus third parties. In such cases the German Public Auditor should first hear the engaging party, if practicable.

8. Confidentiality towards third parties, and data protection

(1) Pursuant to the law (§ [Article] 323 Abs 1 [paragraph 1] HGB [German Commercial Code: *Handelsgesetzbuch*], § 43 WPO [German Law regulating the Profession of *Wirtschaftsprüfer: Wirtschaftsprüferordnung*], § 203 StGB [German Criminal Code: *Strafgesetzbuch*]) the German Public Auditor is obligated to maintain confidentiality regarding facts and circumstances confided to him or of which he becomes aware in the course of his professional work, unless the engaging party releases him from this confidentiality obligation.

(2) When processing personal data, the German Public Auditor will observe national and European legal provisions on data protection.

9. Liability

(1) For legally required services by German Public Auditors, in particular audits, the respective legal limitations of liability, in particular the limitation of liability pursuant to § 323 Abs. 2 HGB, apply.

(2) Insofar neither a statutory limitation of liability is applicable, nor an individual contractual limitation of liability exists, the liability of the German Public Auditor for claims for damages of any other kind, except for damages resulting from injury to life, body or health as well as for damages that constitute a duty of replacement by a producer pursuant to § 1 ProdHaftG [German Product Liability Act: *Produkthaftungsgesetz*], for an individual case of damages caused by negligence is limited to € 4 million pursuant to § 54 a Abs. 1 Nr. 2 WPO.

(3) The German Public Auditor is entitled to invoke demurs and defenses based on the contractual relationship with the engaging party also towards third parties.

(4) When multiple claimants assert a claim for damages arising from an existing contractual relationship with the German Public Auditor due to the German Public Auditor's negligent breach of duty, the maximum amount stipulated in paragraph 2 applies to the respective claims of all claimants collectively.

(5) An individual case of damages within the meaning of paragraph 2 also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty regardless of whether the damages occurred in one year or in a number of successive years. In this case, multiple acts or omissions based on the same source of error or on a source of error of an equivalent nature are deemed to be a single breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the German Public Auditor is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(6) A claim for damages expires if a suit is not filed within six months subsequent to the written refusal of acceptance of the indemnity and the engaging party has been informed of this consequence. This does not apply to claims for damages resulting from scienter, a culpable injury to life, body or health as well as for damages that constitute a liability for replacement by a producer pursuant to § 1 ProdHaftG. The right to invoke a plea of the statute of limitations remains unaffected.

10. Supplementary provisions for audit engagements

(1) If the engaging party subsequently amends the financial statements or management report audited by a German Public Auditor and accompanied by an auditor's report, he may no longer use this auditor's report.

If the German Public Auditor has not issued an auditor's report, a reference to the audit conducted by the German Public Auditor in the management report or any other public reference is permitted only with the German Public Auditor's written consent and with a wording authorized by him.

(2) If the German Public Auditor revokes the auditor's report, it may no longer be used. If the engaging party has already made use of the auditor's report, then upon the request of the German Public Auditor he must give notification of the revocation.

(3) The engaging party has a right to five official copies of the report. Additional official copies will be charged separately.

11. Supplementary provisions for assistance in tax matters

(1) When advising on an individual tax issue as well as when providing ongoing tax advice, the German Public Auditor is entitled to use as a correct and complete basis the facts provided by the engaging party – especially numerical disclosures; this also applies to bookkeeping engagements. Nevertheless, he is obligated to indicate to the engaging party any errors he has identified.

(2) The tax advisory engagement does not encompass procedures required to observe deadlines, unless the German Public Auditor has explicitly accepted a corresponding engagement. In this case the engaging party must provide the German Public Auditor with all documents required to observe deadlines – in particular tax assessments – on such a timely basis that the German Public Auditor has an appropriate lead time.

(3) Except as agreed otherwise in writing, ongoing tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporate tax and business tax, as well as wealth tax returns, namely on the basis of the annual financial statements, and on other schedules and evidence documents required for the taxation, to be provided by the engaging party
- b) examination of tax assessments in relation to the taxes referred to in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) support in tax audits and evaluation of the results of tax audits with respect to the taxes referred to in (a)
- e) participation in petition or protest and appeal procedures with respect to the taxes mentioned in (a).

In the aforementioned tasks the German Public Auditor takes into account material published legal decisions and administrative interpretations.

(4) If the German Public auditor receives a fixed fee for ongoing tax advice, the work mentioned under paragraph 3 (d) and (e) is to be remunerated separately, except as agreed otherwise in writing.

(5) Insofar the German Public Auditor is also a German Tax Advisor and the German Tax Advice Remuneration Regulation (*Steuerberatungsvergütungsverordnung*) is to be applied to calculate the remuneration, a greater or lesser remuneration than the legal default remuneration can be agreed in writing (*Textform*).

(6) Work relating to special individual issues for income tax, corporate tax, business tax, valuation assessments for property units, wealth tax, as well as all issues in relation to sales tax, payroll tax, other taxes and dues requires a separate engagement. This also applies to:

- a) work on non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, and real estate sales tax;
- b) support and representation in proceedings before tax and administrative courts and in criminal tax matters;
- c) advisory work and work related to expert opinions in connection with changes in legal form and other re-organizations, capital increases and reductions, insolvency related business reorganizations, admission and retirement of owners, sale of a business, liquidations and the like, and
- d) support in complying with disclosure and documentation obligations.

(7) To the extent that the preparation of the annual sales tax return is undertaken as additional work, this includes neither the review of any special accounting prerequisites nor the issue as to whether all potential sales tax allowances have been identified. No guarantee is given for the complete compilation of documents to claim the input tax credit.

12. Electronic communication

Communication between the German Public Auditor and the engaging party may be via e-mail. In the event that the engaging party does not wish to communicate via e-mail or sets special security requirements, such as the encryption of e-mails, the engaging party will inform the German Public Auditor in writing (*Textform*) accordingly.

13. Remuneration

(1) In addition to his claims for fees, the German Public Auditor is entitled to claim reimbursement of his expenses; sales tax will be billed additionally. He may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of his services dependent upon the complete satisfaction of his claims. Multiple engaging parties are jointly and severally liable.

(2) If the engaging party is not a consumer, then a set-off against the German Public Auditor's claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.

14. Dispute Settlement

The German Public Auditor is not prepared to participate in dispute settlement procedures before a consumer arbitration board (*Verbraucherschlichtungsstelle*) within the meaning of § 2 of the German Act on Consumer Dispute Settlements (*Verbraucherstreitbeilegungsgesetz*).

15. Applicable law

The contract, the performance of the services and all claims resulting therefrom are exclusively governed by German law.