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3<sup>rd</sup> December 2012

Dear Mr Kilowan

The special committee set up by the MTN Board to investigate the grant of the Irancell licence has now completed its gathering of evidence and is about to begin deliberation on its report, which it intends to submit to the Board of MTN by the end of January 2013. It will of course examine very closely your evidence, which we have in the form of your deposition in the US proceedings and your witness statement in the pending arbitration proceedings between Turkcell and the Government of Iran. Before we do so, however, I am writing to you as Chairman to draw your attention to what the committee may regard as inconsistencies between your statements and the contemporary documents, between the witness statement and the deposition, and within the deposition itself. I invite your comments on these inconsistencies because they may be material when it comes to the committee making its findings. I should emphasise that the committee has not yet formed any views or even met for deliberation, but in fairness to you I thought that you should have the opportunity to offer explanations before it does so.

The points on which we invite your comments are set out in the schedule to this letter. You will, I assume, have been provided with copies of the statements of the Iranian witnesses, Ms Charnley and Mr Wheeler in the arbitration proceedings and may wish to comment on them, but you need not trouble simply to repeat your earlier evidence. We shall assume that if you make no comment on a matter on which your evidence is in conflict with that of an Iranian witness, Ms Charnley or Mr Wheeler, you do not accept it. Likewise, although you are free to say whatever you wish, we are not seeking comment on those points on which there is a straightforward conflict between your evidence and that of the MTN (or former

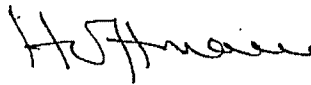
Also at Brick Court Chambers, Brussels

MTN) employees. We shall resolve any such conflicts by reference to the contemporary documents and the inherent probabilities.

I have for convenience enclosed copies of the documents referred to in the Schedule setting out the points on which I invite your comment. I shall refer to these documents as "A" followed by the page number in the bundle. I shall refer to passages in your deposition as "D" followed by the page number and to your witness statement in the BIT arbitration as "S" followed by the paragraph number.

In view of the tight schedule to which we are working, it is essential that we have any comments you may wish to make by 6 January 2013. I am copying this letter to Messrs Patton Boggs.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Hoffman".

## Schedule

### *A. Events between January and August 2004*

1. In your highly confidential "Consolidated Report on Iran Visits" dated 21 July 2004, you say that over the last three months you have been visiting Tehran and have submitted a report after each meeting. There are four such reports. All were confidential to the management of MTN and report (3) was written in Afrikaans on account of the sensitive nature of the matters under discussion:

- (1) 14 May 2004, describing a visit in the company of Mr Wheeler and Mr Cleaver during the previous week [A1];
- (2) 21 May 2004, describing a visit alone in the previous week [A2]
- (3) Undated, but in early June 2004, headed "Verslag" [A3];
- (4) 4 July 2004 describing a visit at the beginning of July [A4]

2. The computer file in which report (2) is recorded has the label 'Report-2ndvisit-Ran.doc', which tends to confirm that the visit described in the report of 14 May was the first.

3. In summary, the reports indicate the following:

- (1) Report (1) indicates that –

- a) The MTN party (including yourself) met MTN's local partners (Mr Sarraf and Mr Aref). Mr Sarraf said he had had a meeting with the Bonyards [sic].

(b) The party met Dr Fardis, the managing director of TCI and “*the previous Iranian ambassador to South Africa*”, unnamed but presumably Mr Ghorbanoghli, to each of whom they gave the message that “*MTN is ready willing and able to step into Turkcell’s place.*” In report (2) you said that on the first trip you had followed your mandate and “*informed everyone I spoke to that MTN will be setting up shop in Iran*”.

(2) Report (2) indicates that –

(a) You met Mr Sarraf (on whose opinions most of the report is based) and Mr Alaghband of the Balli Group, who was keen to become a shareholder in MTN Iran and whom you suggested be invited to South Africa.

(b) You were unclear as to whether Turkcell had “*finalized and initialed the licence agreement*” and said that they had not yet complied with certain of the conditions for the award of the licence.

(3) Report (3) indicates that –

(a) In your view, “*die transaksie met ons opposisie is nog steeds nie bevestig nie*” but “*Die verdedigings maatskappy se politieke base het op die hoogste vlak bo die president gaan hulp soek om die transaksie te red*” and “*Terseldertyd probeer die twee regerings instellings binne ons opposisie alles in hul vermoë om die transaksie te red.*”

(b) You proposed that MTN should “*reel ‘n vergadering met ons opposisie se aandeelhouders wat voorafgegaan word deur ‘n besluit dat ons bereit sal wees om hulle als aandeelhouders in te sluit. Hierdie*

*vergadering kan gereel word deur die Beta groep wat baie nou kontak met die verdedigingsgroep het...*

(4) Report (4) indicates that -

- (a) You (together with Mr Sarraf and Mr Aref) met Mr Mokhber, vice-president of the Bonyads. The Bonyads were putting a lot of effort into ensuring that their consortium did not fail but were willing to talk to MTN if it did;
- (b) MTN was "*chastised for not listening to Mr Aref*";
- (c) You (together with Ambassador Saloojee and Mr Basadien) met Mr Vafaei, Vice-President Business Development of IEL. He was "*not very close*" to the 2<sup>nd</sup> GSM licence process and thought it was proceeding smoothly and nearly completed but were keen to explore other ways in which they and MTN could work together.

4. The committee would be grateful for any comments you may have upon the following apparent discrepancies between your evidence and the above contemporary reports:

- (1) S8, which says that you arrived in Tehran in March 2004 (compare paragraph 2 above).
- (2) S8, which says that your perception was that "*binding contractual commitments had been entered into with the [IranCell] consortium*" (compare 3(2)(b) and 3(3)(a) above).
- (3) S9, which says that Mr Ghorbanoghli "*impressed on [you] the importance of establishing a presence on the ground in Iran*" (compare paragraph 3(1)(b) above

and the absence of any mention of this statement by Mr Ghorbanoghli in any report;

- (4) D 674, in which you say that Mr Ghorbanoghli confirmed what you had been told by Mrs Charnley, that he had suggested that MTN set up office in Iran "*in preparation for the third licence*". (When Mrs Charnley met Mr Ghorbanoghli in January 2004, MTN was still in contention for the second licence).
- (5) S 10, which says that in March 2004 Mr Sarraf introduced you to Mr Mahmoudzadeh and Mr Mokhber, who "*together with Mr Ghorbanoghli, became MTN's principal points of contact in terms of establishing and fostering the right political connections that would help advance MTN's growth ambitions in Iran*". Compare paragraph 3(4)(a) above, which appears to report your first meeting with Mr Mokhber and the absence of any mention of a meeting with Mr Mahmoudzadeh.
- (6) S 11, which says that Mr Mahmoudzadeh referred you to Mr Vafaei, with whom you discussed defence matters (cf. paragraph 3(4)(c) above, which suggests that you saw Mr Vafaei before meeting Mr Mahmoudzadeh, that you saw him in the company of two Embassy officials and which does not mention any discussion of defence matters).
- (7) S 18, which says that the principal persons to whom you conveyed the message reported in your report of 14 May 2004 (see paragraph 3(1)(b) above) were the MCIT and "*the Ministry of Defence (through Dr Mahmoudzadeh)*". There is nothing in that report (or any of the subsequent three reports) to suggest you had met Dr Mahmoudzadeh at this stage.
- (8) S 25, in which you say that after your report of 21 May 2004, you were instructed by Mrs Charnley to "*continue the dialogue on defence co-operation between South Africa and Iran that began in March by engaging on that subject with Dr Mahmoudzadeh and Mr Vafaei*". (cf. paragraph 3(4)(c) above, which suggests that you first met Mr Vafaei in July 2004, did not have any

reportable discussion on defence matters and had not yet met Dr Mahmoudzadeh.)

- (9) D 105, in which you say that first you, and then Mrs Charnley, saw Dr Mahmoudzadeh and told him that Minister Lekota would be coming to Iran. (cf an e-mail from Mrs Charnley to yourself dated 24 August 2004, Minister of Defence Jarahhi, which says "*You should also get hold of a Mr Mahmoudzadeh (sic) but Mr Jarabhi is key*". This suggests that Mrs Charnley had at that time never met Dr Mahmoudzadeh and that she did not think you had either.

B. *Events between August 2004 and June 2005*

5. During this period you submitted the following further reports:

- (a) Status report dated 9 September 2004 [A5].
- (b) Political and Economic Update dated 8 October 2004 [A6], in which you said that "*the process was out of the hands of the government despite all efforts of the government and its bureaucrats to convince Parliament that the transactions are above board*" and recommended that key members of the Majlis be made aware that if they rejected Turkcell they could allow the government to "*enter into an agreement with MTN to take up the second licence*". You advocated discussion with "*our local partners*" to assist in developing strategy.
- (c) Update dated 12 November 2004 [A7] in which you reported on a discussion with Mr Vafaei about MTN's possible participation in the Turkcell consortium and MTN's partnership with an IEI subsidiary in other projects, but said nothing about IEI becoming MTN's partner in the 2<sup>nd</sup> GSM licence
- (d) Quick Update dated 26 January 2005 [A8].

- (e) E-mail dated 2 February 2005 [A9] saying “*a lot of lobbying is being done from the Turkcell and Irancell shareholders (and remember that the Ministry of Defence is a key shareholder) to get the [Turkcell] transaction approved with as few amendments as possible.*”
- (f) Report of 1 March 2005 [A10] saying that “*it is highly unlikely that the Government will turn to MTN in the event that Turkcell walks away from the transaction. Government’s preferred course of action seems to be to go for a fresh tender.*”
- (g) Report of 24 May 2005 [A11] in which you summarized the debate within the Turkcell consortium and advised that “*we should now start the preparations for either a renewed licence process or the third licence process.*”

6. The committee would be grateful to receive your observations on the following apparent discrepancies between the contents of these reports and the following passages in your evidence:

- (a) In D 122, you say that after the visit of Minister Lekota (i.e. in August 2004), Dr Mahmoudzadeh was “*ecstatic*” and said “*this [i.e. MTN] is our new partner.*” There is no such statement in your reports and appears to be inconsistent with your reports about the efforts made by the Ministry of Defence to get the Turkcell licence approved by the Majlis.
- (b) In S 44 you say that in or about December 2004 you code named the collaborative project with Dr Mahmoudzadeh to manoeuvre Turkcell out of the second licence “*Project Snooker*”. Yet, there does not appear to be any document which uses this name until the report written by Mr Wheeler with your assistance on 17 June 2005.

C. *The events of June 2005*



7. It appears that on 15 June 2005 Mr Fardis wrote to Turkcell [A 12] to say that unless the Irancell consortium reached final agreement in accordance with the decision of the Economic Council by 20 June 2005, Turkcell would be “*excluded from negotiations*”. On 20 June 2005 you sent MTN an “Urgent Update” [A13] saying that Turkcell’s position had been found unacceptable and that it had been excluded from the Irancell consortium. Sairan was waiting for a letter from Mr Fardis authorizing them to start negotiations with MTN to step into Turkcell’s shoes. For this purpose, the MTN team should be in Teheran by 25 June at the latest. The necessary MTN Board Resolutions were passed on 22 June and e-mailed to you for transmission to the Iranian authorities at 5:28 pm that day [A14]
8. On 21 June Mr Mokhber’s PA, Mr Hasani, sent an e-mail to you and Mrs Charnley [A15] saying that the Bonyad had obtained permission to negotiate with another foreign party to replace Turkcell in the Irancell consortium. An agreement had to be submitted within 5 days and the immediate presence of the MTN team was required. MTN proposed [A16] a series of negotiating meetings on Friday 24 June and signature of an agreement on the 25<sup>th</sup> June.
9. On 23 June you sent an e-mail to Mr Wheeler [A17] in which you said:

*“I...agree with you that it is critically important that we engage lawyers in Iran. You might have noticed that Turkcell is also making dark statements about protecting their rights and that they have not been informed of the decision taken. We will have to get very strong and solid legal advice on our position in this potential legal mess as we do not want to become the meat in this sandwich.”*
10. These documents seem to suggest that the negotiations in late June 2005 were organized in some haste, starting with 20 June, to comply with the 5 day deadline set by Sairan and the Bonyad.
11. The committee invite your comment on: (1) the apparent contradiction between this timetable shown by the contemporary documents and that in S 57-65 and the corresponding passages in your deposition; and (2) the apparent

inconsistency between the advice you gave in the e-mail [A17] and your evidence that Dr Mahmoudzadeh had assured you that MTN would replace Turkcell in the consortium.

D. *The issue of the licence: November 2005*

12. D291-300 and S 78 contain a detailed account of what happened when you went on 20 November 2005 to collect the licence from Dr Fardis. However –

- (a) No licence could be issued until the €300m licence fee had been paid;
- (b) The due date for payment (and the date upon which payment was in fact made) was 21 November.
- (c) The detailed terms of the licence were still being discussed on 22 November, when you were sent electronic copies of the current draft [A18] and told by Mr Amidi that a couple of your proposed amendments had not been included;
- (d) On 22 November you sent MTN a board presentation [A19] which said that the licence fee had been paid on 21 November and that the “*licence was being edited for correctness and scheduled for signature on 23 November*”.
- (e) The document on your memory stick supplied to MTN’s lawyers under “MTN Iran’ Licence Agreement’ Licence\_MTN.doc” [A20] contains your edit markings dated 23 November.
- (f) The committee has been unable to find any contemporary documents, such as e-mails to MTN, which record the crisis of 20 November which you describe in your deposition.
- (g) Although there was some discussion of nuclear development in Iran at the meeting of the governors of the IAEA in Vienna on 24 November

2005, it was not specifically on the agenda, there was no resolution requiring a vote and there was no vote on which South Africa abstained.

(h) Mr Fardis denies that there was any letter from the Iranian Foreign Office concerning the issue of the licence or that he said there was.

13. The committee invites your comment on the apparent inconsistency between the course of events which appears from the contemporary documents and the events of 20 November as described in your deposition. You might also wish to comment on why, if the delay in the issue of the licence emanated from the Foreign Office, no attempt appears to have been made by MTN to seek the views of Mr Ghorbanoghli.

*E. The alleged payment to Mr Ghorbanoghli*

15. At D357 you say that you were surprised when Ms Charnley offered to pay money to Mr Ghorbanoghli in your house because, among other things, you thought your house might be bugged. However, at D695 you said that Ms Charnley told you in the car, in a conversation in Afrikaans, that she was going to offer money to Mr Ghorbanoghli. These two statements do not appear to be consistent with each other.

16. At D359 you suggested that in October 2006 Mr Ghorbanoghli was seeking money from MTN because he wanted to buy a house for his son in South Africa. At D385 you then say that in November 2007 Mr Ghorbanoghli came to you with a request that MTN buy him a house in South Africa "*because he was told by Ambassador Saloojee that earlier in 2007 MTN had bought him a house in South Africa*". Your witness statement in the BIT arbitration makes no reference to Mr Ghorbanoghli saying he wanted money for the purpose of purchasing a house or that he wanted MTN to purchase a house on his behalf. We would be grateful for your comments on these apparent discrepancies.

*F. UAVs*

17. In D 146-155 you describe how, in the period October to December 2004, at the request of Dr Mahmoudzadeh, you investigated the acquisition of South African UAVs and sent a memorandum on the subject to Ms Charnley (Exhibit 10 to your deposition). However, the metadata of the file containing this memorandum shows that it did not form part of your MTN files but was created on 16 October 2006. This correlates with an internet report dated 13 August 2006 ([http://www.spacewar.com/reports/South African\\_Vulture\\_UAV\\_for\\_Production\\_999.html](http://www.spacewar.com/reports/South_African_Vulture_UAV_for_Production_999.html)) saying that production of the Vulture will soon commence [A21]. The committee would be grateful for your comments.
18. In S 66 you say that you at first found Turkcell's reversion to their Iranian partners in July 2005 "*inexplicable*". In a confidential memorandum to Mr Nhleko in early July [A22] you say that Sairan and the Bonyads had "*used us to place them in a stronger negotiating position versus Turkcell.*" The committee invites your comment on how this could be consistent with a belief on the part of yourself and the MTN management that Sairan and the Bonyads had agreed to oust Turkcell.

G. *Personal business dealings*

19. In D 375-378 you discuss the Confidential Memorandum dated 30 January 2007 [A23] which you sent to Mrs Charnley and its reference to "our other friend in the country" whom you suggested receive a payment although "I know we never even suggested that we would pay our friend some money". In D you say this was a reference to Dr Riahi, but you also say that Mrs Charnley was aware that since April 2006 MTN had been paying Dr Riahi \$10,000 a month. The committee would be grateful for your comments.
20. There are documents which might be regarded as suggesting that while in the full time employment of MTN, you had private business relationships in Iran which could have given rise to conflicts of interest. The committee would invite your comments on the following:

(a) *Mr Shervin Pishevar*

- (i) Mr Pishevar is presently, as the committee understands, a business associate of yours. An e-mail from him to yourself dated 6 March 2005 [A24] says that he has just got back from London and Geneva and “*I am 90% we got Caterpillar*”. The first person plural suggests a business relationship unconnected with MTN.
- (ii) In an e-mail dated 8 April 2005 from you to Mr Pishevar [A25], you say “*I suspect that IC is talking to Motorola and we need to find a player that can give us more leverage than Motorola to get her to move*”. “*We*” suggests that you and Mr Pishevar are considering how you can advance your private interests in relation to MTN.

(b) *Dr Riahi*

Your undated memorandum headed Dr Behyar Riahi [A26] says that at the end of November 2007 you procured the loan of \$150,000 from a friend to Dr Riahi which would be repaid by money which Dr Riahi was to receive from an equipment vendor. This transaction was of course just after you had resigned from MTN but your relationship with Dr Riahi went back to 2006 and the transaction suggests a close relationship. The committee would be grateful if you could inform it of the services for which the equipment vendor was to pay Dr Riahi and the identity of your friend who provided the money.

(c) *Mr Hosseinzadeh*

Mr Ghorbanoghli says in his witness statement in the BIT arbitration that some time after June 2005 he put you in touch with Mr Hosseinzadeh, an old friend of his and a successful businessman, because you had said you wanted to find business opportunities for when you left MTN. The three

of you later met in Dubai and Mr Hosseinzadeh suggested your involvement in a telecommunications project in Assaluyeh.

In D 358 you say that Dr Ghorbanoghli gave you the name of "*Aristo Oil Consultancy, or something in Dubai, which is owned by a friend of his in Dubai*" to insert into his consultancy agreement. However, your computer memory stick contains two draft consultancy agreements created on the 8<sup>th</sup> and 10<sup>th</sup> December 2006 [A27 and A28] in which Aristo Oil International Services Ltd is named as the consultant and which provide for payment of \$5000 a month. These do not appear to have anything to do with the payment to Mr Ghorbanoghli and might suggest a direct relationship between you and Mr Hosseinzadeh.