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Federal Trade Commission
Office of the Secretary
Room H-113 (Annex D)
600 Pennsylvania Avenue NW
Washington, DC 20580
USA

Dear Ladies and Gentlemen,

Motorola/Google, File No. 121-0120

The DVB Project is responding to the invitation to submit written comments on the issues presented by the consent order proposed in *In the Matter of Motorola Mobility LLC, a limited liability company, and Google Inc., a corporation* (FTC File No. 121 0120).

DVB's principal comment is that the arbitration provisions in the order should be without prejudice to application of binding dispute resolution rules adopted by a standards body that has developed a standard in which Google or Motorola Mobility has an essential patent. Also the order could suitably include as "qualified arbitration institutions" one or more such institutions outside the United States, such as the WIPO Arbitration and Mediation Center.

The DVB Project is a standards development organisation based in Geneva, Switzerland, that develops specification for digital video broadcasting and related fields. We draw our membership from throughout the world. Our standards have been adopted worldwide, including in the United States. The DVB Project, and its members, are bound by a Memorandum of Understanding that includes, in its article 14, a policy governing intellectual property rights, notably the licensing of patents essential to DVB standards that are owned by DVB members. A description of the DVB Project, and its Memorandum of understanding, can be found at www.dvb.org. Motorola is a member of the DVB Project.

The IPR policy of the DVB Project requires its members to arbitrate IPR licensing disputes. Article 14 contains the agreement of

[e]ach Member . . . , on its behalf and on behalf of its affiliated companies, that . . . all disputes with any other Member of these statutes (MoU) regarding solely the terms and conditions of licences arising in connection with the undertaking in this Article 14 shall be

finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce . . .

Article 14.7 MoU DVB. Article 14.7 also specifies the number of arbitrators, choice of substantive law, venue and language of proceedings. The obligation to arbitrate these disputes falls away in respect of a DVB standard if a patent pool covering that standard has been formed meeting the terms of article 14.9 MoU DVB.

DVB's concern in the proposed consent order relates to the order's arbitration provisions and the perception that these conflict with, or indeed displace, the long-standing arbitration requirement in our Memorandum of Understanding. Our suggestion is that the consent order, in its final form, would indicate that the arbitration provisions in that order are without prejudice to application of binding dispute resolution rules adopted by the standards body that has developed the standard in which Google or Motorola Mobility has an essential patent.

DVB has noted the choice of arbitration institutions qualified under the proposed consent order. Standards are implemented by manufacturers and service providers throughout the world. For this reason, it may be suitable to include one or more arbitration institutions located not within the United States. These include the WIPO Arbitration and Mediation Center, based in a multilateral institution, the World Intellectual Property Organization, whose expertise lies in intellectual property rights.

The presentation of our IPR policy, and its arbitration requirements, is set out above in highly summarized form. DVB would be pleased to provide further information at the request of the Commission.

Sincerely,

Carter Eltzroth
Legal Director DVB