



NEWSKIES
SATELLITES

New Skies Satellites N.V.

Rooseveltplantsoen 4
2517 KR The Hague
The Netherlands

P.O. Box 821 97
2508 ED The Hague

tel +31 70 306 41 00

fax +31 70 306 41 01

www.newskies.com

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Commissie Corporate Governance
t.a.v. drs. R. Abma
p/a Postbus 20201
2500 EE Den Haag

Dear Members of the Committee:

We are writing to you on behalf of New Skies Satellites N.V. ("New Skies") concerning the proposed corporate code of conduct (the "Code"). We believe that the Code represents a positive move towards increased disclosure and improved corporate governance in the Netherlands and we support a majority of the Code's provisions. The Code also contains, however, a small number of provisions that would undermine the ability of Dutch companies, such as New Skies, to compete vigorously in today's dynamic marketplace. These provisions, therefore, ultimately would not serve the interests of shareholders and other stakeholders and should not be adopted.

To place our comments in perspective, we believe it is helpful to provide a brief summary of our business and how it shapes our views on the Code's proposals.

Background

New Skies was established in the Netherlands in 1998 as the first and only commercial Dutch satellite operator. We provide satellite communications services to customers throughout the world using our global satellite fleet which is managed from our headquarters in The Hague.

New Skies chose to be headquartered in the Netherlands for many reasons, including the Netherlands' geographic location, its extensive network of tax treaties, its general reputation for welcoming multi-national enterprises, and most of all a stable and predictable legal environment. We have been pleased to find that, on balance, the Netherlands has proven to be a suitable site to establish and conduct our global business, particularly given the multinational character of our staff and our operating scope.

We are a small company relative to our competitors, with a total staff of approximately 250 employees, 60% of which are based at our corporate headquarters in The Hague. In order to compete effectively, we need to recruit and retain the best

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and the brightest individuals in our field. We cannot afford to be placed at a disadvantage *vis-à-vis* our competitors, none of which are based in the Netherlands.

However, due to the fact that the Netherlands does not have an existing workforce with experience in the highly specialized field of satellite communications, we have been compelled to recruit staff, particularly at the management level, from outside the Netherlands. Indeed, approximately 90% of our senior professional staff in The Hague are of non-Dutch origin. In addition, at present no members of our Management Board are Dutch and only one of our nine Supervisory Board members is Dutch.

Although we have been forced to recruit internationally to date, we recognize the importance of making a positive contribution to the Dutch Knowledge Economy (*kenniseconomie*). As such, we are engaged in a number of activities aimed at increasing the local knowledge base to enable us to recruit locally in the future. We have started a program allowing trainees from TU-Delft to obtain hands-on experience in our state-of-the-art Satellite Operations Center and our Chief Technical Officer presently sits on the university's technical advisory board. We are also co-founders of the first Netherlands Association for Satellite Communications Professionals. These efforts notwithstanding, the field of satellite communications requires highly specialized expertise and we will need to rely on – and, hence, will need to have the flexibility to offer competitive packages to – foreign professionals, executives, and Board members for the foreseeable future.

New Skies is a dual-listed company, trading on both the Amsterdam (AEX) and New York (NYSE) stock exchanges. In dealing with securities, disclosure, and corporate governance matters, we therefore must ensure we comply with statutory and regulatory requirements, as well as principles of corporate governance, in both the Netherlands and the United States. While the themes underlying these different legal regimes are largely consistent, the specific rules can vary dramatically, and in some cases may be directly in conflict. When the rules are mandatory in their nature or very detailed in their content, it can create a compliance nightmare for dual-listed companies. We estimate that there are at least twenty (20) Dutch companies who are dual-listed on the AEX and NYSE exchanges alone.

Comments on the Code

New Skies supports the aims and goals underlying the introduction of the Code and complies already with the vast majority of its proposed measures. By and large, for those provisions with which we do not currently comply, we will endeavor to put in place appropriate policies and procedures necessary to bring us into compliance following the passage of the Code. In particular, we agree with the central feature of the Code – the “comply or explain” requirement – because it recognizes that each company is unique and, therefore, allows a company's management to deviate from the nominal standard where they conclude it is

appropriate to do so, as long as they explain their decision and reasoning to shareholders. In the case of New Skies, the flexibility this provision allows may be needed to explain why certain approaches do not or cannot align precisely with the Code in light of other international requirements for dual-listed companies or other reasons.

While we are generally supportive of the Code, we find a number of the provisions (enumerated below) unnecessarily restrictive. And while we do not believe such provisions should form part of the final Code, we would deem it unacceptable if they were passed into law and, therefore, no longer a matter subject to discretionary compliance.

As a general matter we object to those Code provisions which seek to proscribe certain employment conditions and remuneration features which may be associated with a company's Management and Supervisory Boards. Given our compelling need to recruit the best people from abroad in a highly competitive, global environment, we must strongly resist any provisions which artificially constrain our ability to attract and retain highly qualified Management and Supervisory Board members. In addition, we also find inappropriate a handful of provisions which either appear out of step with international practice or are impractical in terms of their administration.

In particular, we disagree with the following proposed provisions:

Provisions Proposed for Incorporation into Dutch Law

- **Provision I.1.1** - limiting the appointment of Management Board members to four year, renewable terms.
- **Provision I.2.10** - limiting the maximum remuneration in case of dismissal of a Management Board member to one year's fixed salary.

International companies who are headquartered or listed in the Netherlands must be able to attract and retain qualified Management Board members if they are to remain competitive. Rules that hamstring these companies' efforts to develop and refine their compensation packages over time would undermine such efforts and, ultimately, reduce their competitiveness in the international marketplace. Such an outcome would not be in the interests of Dutch shareholders or the public.

Codifying these rules would pose particular problems, and likely would cause companies such as New Skies to be in breach of contractual obligations they have undertaken to date. Even where the provisions are not codified or are adopted on a prospective basis, however, New Skies feels that "one-size-fits-all" mandates – however well intentioned, and however reasonable a reaction to past actions by particular Dutch companies – are unlikely to meet the myriad of requirements faced by Dutch companies over time.

Provisions Regarding Remuneration and Employment Terms of the Management and Supervisory Board

- **Provisions I.2.1 and I.2.5** - making stock options granted to Management Board members conditional until such time as certain predetermined criteria have been fulfilled; extending vesting to at least three years after the grant date; and limiting the term of option grants to seven years.
- **Provision I.2.3 and II.7.2** - restricting sales of company shares during the term of employment by Management Board members and Supervisory Board members.
- **Provision I.2.6** - stating that the exercise price for stock options shall not be lower than fair market value.
- **Provisions I.2.8 and II.7.3** - prohibiting direct investment in listed companies by Management Board members and Supervisory Board members.
- **Provision I.2.9** - limiting the Management Board remuneration ratio to 50% of total remuneration.
- **Provision II.2.4** - limiting to five the number of companies on which a Supervisory Board member can serve in that capacity.
- **Provision II.7.1** - prohibiting the grant of stock or stock options to Supervisory Board members.

New Skies does not believe that the Code should dictate the form or content of compensation and remuneration plans. Each company develops these structures in order to provide senior management with near and long term financial incentives that reflect the company's operational and strategic objectives. Different mixes between base salaries and at risk cash, equity, or other variable compensation may be appropriate depending on a company's profile and performance. For example, were the Code to dictate that variable compensation may never exceed 50% of total remuneration (Provision I.2.9), it would constrain companies who wish to target a greater portion of pay to actual performance and, in the end, could force them to overcompensate under-performing executives.

New Skies also believes that the Code should not include rules that micromanage the structure of equity compensation programs. Equity compensation programs are critically important in recruiting and retaining employees, particularly internationally recruited employees and those in the technology sector. If restrictive rules on vesting, term, exercise price, and the like diminish the value of these programs for Dutch employers, these employers will either suffer in their international recruiting efforts or will be forced to increase other elements of executives' pay packages – in particular, to pay out a greater portion of total compensation in cash and, thereby, reduce the extent to which executives reap financial rewards only when their shareholders are also benefiting from strong performance.

Similarly, New Skies objects to rules that will make it materially more difficult or less attractive to serve on a Management or Supervisory Board. As discussed above, for a company to remain competitive in an international environment, it cannot be placed at a disadvantage in recruiting and retaining top executives. Provisions such as I.2.8 and II.7.3 are unnecessary in that insider trading rules already act as a significant curb on an executive trading in listed shares. With regard to the proposed limit on the number of Boards on which an individual may serve, this could have the unintended effect of making it difficult or impossible for a small company such as New Skies to secure the services of highly qualified and experienced individuals.

Provisions Relating to the Role of Shareholders

- **Provision III.1.5** - requiring a company's dividend policy to be dealt with as a separate agenda item at the annual general meeting of shareholders.
- **Provision III.4.1** - forcing companies to allow all shareholders to follow all presentations to investors and institutional investors in real time.
- **Provision III.4.10** - stating that the minutes of the annual general meeting of shareholders would not be adopted until the following year's meeting.

New Skies objects to the above rules that, while perhaps attractive in theory, will be unmanageable in practice. Provision III.1.5 (relating to dividend policies) could tilt the delicate balance of power concerning the company's finances and its use of earnings. Shareholders have the power to place items on an agenda, to voice their opinions on a company's dividend policy, and to vote out any Supervisory Board member (or even an entire Board) if they conclude those opinions are not being given due weight. They should not, however, have the power actually to order the payment of a dividend – which would have serious, and potentially disastrous, consequences for a company's ability to develop and execute a long term business and capital plan.

Similarly, Provision III.4.1's mandate that companies must allow *all* shareholders to follow *all* presentations to investors and institutional investors in real time is not feasible. The proposed mandate is not necessary to preserve fairness, as insider trading, non-disclosure, and general corporate rules already prevent management from sharing any material non-public information with any third party and from treating shareholders in a discriminatory fashion. Finally, Provision III.4.10 (relating to the adoption of AGM minutes) would have the effect of making it difficult for a company to act on decisions made by shareholders at an annual meeting, by delaying for a year the date of the effectiveness of the document that provides evidence to third parties that the matter in question was duly approved by the shareholders.

For the reasons noted above, we believe that all of the foregoing provisions are inadvisable, even on a "comply or explain" basis. However, if certain of these provisions are made mandatory by law (as proposed), they would place New Skies in

contravention of existing, legally binding contracts as well as deprive us of any discretion in fashioning appropriate, internationally competitive employment schemes going forward. In such a case, one of the principal reasons for establishing New Skies in the Netherlands (*i.e.*, the country's established and predictable legal regime) would be undone, prompting us to question our initial determination to establish the company in the Netherlands.

Conclusion

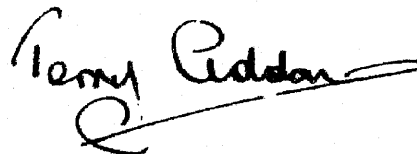
We believe that the Code takes important and necessary steps toward improving corporate governance standards in the Netherlands. Indeed, we are largely compliant with the proposed Code today and intend to bring ourselves into compliance with the majority of the remaining provisions once the Code is final. Although we support the Code's underlying objectives, as well as the "comply or explain" requirement, we urge the members of the Committee to refrain from adopting any provision that would have the effect of placing Dutch companies at a competitive disadvantage in retaining and attracting skilled employees or, worse still, would contravene existing employment arrangements and deny Dutch companies the necessary discretion to secure the world's most talented individuals. This, plainly, would serve no public interest.

We hope you find these comments helpful. Should the members of the Committee have any questions or comments regarding this submission, we would be pleased to discuss these matters further.

Respectfully submitted,



Daniel S. Goldberg
Chief Executive Officer



Terry Seddon
Chairman of the Supervisory Board