Case No: CR-2022-004748

Neutral Citation No: [2022] EWHC 3473 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice
7 Rolls Buildings
Fetter Lane
London,
EC4A 1NL

Date: Wednesday 21st December 2022
Start Time: 11.19 Finish Time: 12.14

Before:

THE HONOURABLE MR JUSTICE ZACAROLI

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In the matter of:

VEON HOLDINGS BV

Applicant

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- -

MR D ALLISON KC and **MR RYAN PERKINS** for the **Applicant Scheme Company**
MR D BAYFIELD KC and **MR A AL-ATTAR** for the **Opposing Creditors**

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APPROVED JUDGMENT

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MR JUSTICE ZACAROLI:

1. This is an application by VEON Holdings BV (the "Company") for an order convening a single meeting of some of its creditors to consider a Scheme of arrangement under part 26 of the Companies Act 2006. The Company is incorporated in the Netherlands as an intermediate holding Company within the VEON group of companies, a leading provider of telecommunications and internet services in numerous countries, including Russia, Ukraine, Pakistan, Kazakhstan, Bangladesh and others.

2. The Russian business is conducted through a Russian subsidiary called PJSC VimpelCom ("VimpelCom"). The Company acts as the treasurer vehicle for the group and has raised the external finance for the group. It has raised finance through a number of series of Notes issues. The Scheme relates to just two series of unsecured Notes. First, a US$1 billion 5.95% series of Notes due 13 February 2023 ("the February 2023 Notes"). Of those, just over $529 million remains outstanding. The second series is a US$700 million 7.25% series of Notes due 20 April 2023 ("the April 2023 Notes"). Those remain outstanding in their entirety.

3. The application is opposed by two holders of these Notes. They hold just over 6% of the February 2023 Notes and just under 10% of the April 2023 Notes. The remaining series of Notes mature on dates between 2024 and 2027. The total amount outstanding under those is approximately US$3.5 billion. There is also around a US$1 billion revolving credit facility that falls due in March 2024 and March 2025. The 2023 Notes between them are constituted by separate trust deeds each governed by English law. There are no guarantors for any of the Notes.

4. The Scheme is relatively straightforward. It first imposes a standstill to enable approvals, from various authorities in jurisdictions that have imposed sanctions, to amendments sought to be made to the Notes. Its principal purpose is then to amend the Notes by extending the existing maturity dates of the 2023 Notes by eight months, that is from February to October 2023 and from April to December 2023 respectively.

5. In return, the 2023 Noteholders will receive an amendment fee of 2% of outstanding principal payable on maturity and they will be given a put option to sell at least a portion of their Notes to the Company at a price of 101% of the par value of the Notes subject to the Company passing certain financial tests. This is subject, however, to an aggregate limit of US$600 million of all the Notes to be distributed amongst those Noteholders who take this option on a pro rata basis. The put option may be exercised from 2 May 2023 assuming approval to the amendments are obtained by then. In addition, the Scheme is proposed to make certain amendments to other terms of the 2023 Notes, which I will come back to.

6. The impetus for this Scheme arises from events in Russia and Ukraine. Up to 60% of the 2023 Notes by value are believed to be held through the National Settlement Depository of the Russian Federation ("the NSD"). Following the war in Ukraine, the NSD is a sanctioned entity. Some but not all of the NSD account holders are themselves also sanctioned entities. Clearing Systems are currently unable to remit any payments through the NSD. If the Company was required to pay the Notes on maturity, then up to 60% of the repaid cash risks being trapped in the Clearing Systems. The Company has sought to engage with the Clearing Systems to overcome this problem but they will not assist because of sanctions. In addition, as a result of Presidential Decree No. 430

in Russia, VimpelCom may be required to fulfil obligations owed to Russian holders of bonds issued by the Company. In a letter from the Russian Ministry of Finance, VimpelCom was informed that the Ministry believes it is appropriate for VimpelCom to ensure the performance of obligations under all series of Notes issued by the Company.

7. In its letter of response, VimpelCom disagreed that it should do so and indicated that it aimed to reach a managed solution, and was in the process of developing a potential solution to the problem. If VimpelCom is required to make payment in discharge of the Notes, there is no certainty that any such payment would, in fact, discharge the obligations under the Notes or be recognised by the Clearing Systems as having done so. This leads to a risk of double payment from entities within the group to the relevant bond holders. If in the meantime the Notes have been redeemed, there is uncertainty as to what would happen to the cash which would then become trapped in the Clearing System.

8. The Company faces the additional problem that, because of its ownership of VimpelCom, it is effectively unable to raise debt or equity on the international capital markets. That puts at risk, if it continues, its ability to repay the longer dated Notes. To alleviate those problems, the Company has entered into an agreement to sell the share capital of VimpelCom. That is expected to complete in the second quarter of 2023.

9. While there are contractual mechanisms for amending the terms of the Notes, these cannot practically be operated because it is not possible to obtain a quorum whilst such a large proportion of Noteholders are sanctioned persons. That is because sanctioned persons are not able to vote. Any non-sanctioned persons who hold their debt through the NSD could vote provided that they do not submit their votes via the NSD and the Clearing Systems. The immediate effect of the Scheme will be to impose a moratorium on any enforcement action by the 2023 Noteholders. This is necessary to enable the Company to obtain regulatory approvals for making amendments to the Notes. The standstill will remain in place until the earlier of the date when the amendments become effective or the longstop date of 30 October 2023.

10. The regulatory authorities in the UK, Netherlands, US and Bermuda may well take the view that the Company is required to apply for a licence under the applicable sanctions legislation before it can lawfully make the amendments. It might be that one or more of those authorities provide guidance that no such licence is required, but that is uncertain. The sanctions imposed in the US are particularly stringent and regulatory approval will be required in addition in order to allow US persons to vote on the Scheme. It is anticipated and hoped that such approval for it will be received in time for the Scheme meeting towards the end of January. In light of the impending maturity of the 2023 Notes, the standstill will provide a stable platform for the Company to obtain regulatory approvals required to make the amendments.

11. As I have also mentioned, the main proposed amendment of the Scheme is an eight month maturity extension in respect of the 2023 Notes. The primary purpose of this extension is to allow time for the completion of the VimpelCom disposal so that it occurs before the maturity of the Notes. The disposal is due to complete by 1 June next year. It is anticipated to have important consequences.

12. First, and importantly, it will remove the problem of double payment from entities within the group. If the maturity date on the Notes is not extended while VimpelCom is still in the group, then the double payment issue is unavoidable because the Company would be required to pay the whole sum due on maturity into the Clearing System, where its fate would be uncertain. Even if VimpelCom is still required to pay under Decree 430 once it has been sold, the problem of double payment from within the group will have been solved. Second, it is hoped that it will reopen access to the capital markets, thus improving the Company's long-term financial position. It will also give the Company time to progress and implement the sales of infrastructure assets in other jurisdictions and to take other actions with a view to improving the Company's holding in cash and liquid assets.

13. I turn to consider the matters that need to be addressed at this convening hearing. The practice statement of 26 June 2020 requires sufficient notice of this hearing to be given to enable those affected by the Scheme to consider what is proposed, to take appropriate advice and, if so advised, to attend a convening hearing. What is adequate notice will depend on all the circumstances.

14. In the present case, the practice statement letter (or "PSL") was issued on 24 November 2022. It was circulated according to standard methods in cases such as this to the Scheme Creditors through the Clearing Systems. Such Scheme Creditors, therefore, have had about 26 days' notice of the convening hearing. Because of the NSD's sanctioned status, however, notice will not get to those Noteholders who hold through the Clearing Systems in this way. In addition, therefore, on 24 November 2022, an announcement was posted on the group's website and on the Irish Stock Exchange and on the Euro MFT market, being the trading venues for the Notes, stating that the Company had issued the PSL and explaining how the Scheme Creditors could request a copy.

15. Further, additional steps have also been taken, including making the PSL available on the group's and VimpelCom's website, and direct contact by email with known Noteholders - although it is fair to say there are only 41 of these and there is no way of knowing what proportion that is of the total holding whether by number or by value. Articles have appeared in an advertisement placed in newspapers in Russia. I am satisfied that this is, in the context of the regulatory environment and the sanctioned status of the NSD, the best that can be done and constitutes sufficient notice of this hearing.

16. I bear in mind also that limited time is needed by creditors to consider what is a relatively simple Scheme and that the case is inherently urgent given the impending maturity of the 2023 Notes. Some amendments to the commercial terms of the Scheme prompted a second PSL to be sent on 9 December 2023. These include the amendment fee being raised from 0.75% to 2% and the put option being offered. Although significantly less notice of this second PSL has been given, in circumstances where the new commercial terms do not affect class composition, I do not think this is a reason to delay the hearing.

17. The second matter to consider is jurisdiction. There is no doubt that the Scheme Company is a Company within the definition of the Companies Act, it being a foreign Company liable to be wound up under part V of the Insolvency Act 1986. Whether the court would exercise its discretion to do so is a matter to be considered at the sanction

hearing. I merely note that since all the Scheme debt is governed by English law, there is good reason to suppose that there is sufficient connection with this jurisdiction for that purpose. There is also evidence of the likely international effectiveness of the Scheme.

18. The other jurisdictional matter is whether the Scheme is a compromise or arrangement. The extension of maturity in return for a fee and new put option is sufficient give and take. That is so even though there is no certainty that either benefit will actually be obtained because, if amendment approval is not obtained, then all that will happen is a standstill until the backstop in October. The possibility of such benefits is sufficient to overcome the low hurdle for a compromise or arrangement.

19. The next and most important matter to consider is class composition. The principles are well-known. The basic rule is that a class must be confined to those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their common interest - see *Sovereign Life Assurance v Dodd* [1892] 2 QB 573 at page 583 per Bowen LJ.

20. As I summarised in *Re Gategroup Guarantee Limited* [2021] BCC 549, first, the creditors' rights that fall to be considered are both their existing rights against the Company and the rights conferred by the Scheme. Second, the existing rights must be assessed in the context of the relevant comparator described by Hildyard J in *Re Apcoa Parking UK Limited* [2014] EWHC 997 (Ch) as: what would be the alternative if the Scheme does not proceed? Third, it is rights, not interests, that need to be taken into account for the purposes of class composition. Differences in interests may be relevant to the discretion to sanction the scheme.

21. Fourthly, even if there are differences in rights as between the groups of creditors, that is not necessarily fatal to them being placed in the same class. It is still necessary to consider whether the differences are such that it is impossible for them to consult together with a view to their common interest. That has been expressed, for example, by David Richards J in the *Re Telewest Communications Plc* [2004] EWHC 924 (Ch) as whether there is more to unite than to divide the relevant creditors. Mr Allison KC, who appears for the Scheme Company, reminded me that the court should be careful to avoid unnecessary proliferation of classes so as to provide minorities with a blocking path - see, for example, *Re Noble Group* [2019] BCC 349 at paragraphs 87 to 88 per Snowden J, as he then was.

22. The first question then is what is the appropriate comparator i.e. what would Scheme Creditors' rights be in the most likely alternative if the Scheme is not approved. I am satisfied on the evidence that the most likely alternative is that the Company would repay the 2023 Notes in full on their respective maturity dates. That is not a certainty because, in view of the broader issues facing the long-term prospects for the group, the Company may, with a view to protecting the interests of all creditors including the longer dated Notes, take some other action or suffer a payment default. But it is, on the evidence, by far the most likely outcome. The Company has cash resources of more than twice the amount needed to satisfy all interest and payment obligations under all series of Notes between now and the end of April 2023. That is including repayment in full of all 2023 Notes.

23. There are undoubtedly some matters that point in favour of convening a single meeting in this case. The Scheme Creditors have materially the same existing rights, leaving aside maturity dates. They are all unsecured creditors of the Company. In the likely comparator, they would all be paid in full. For the purposes of voting on the Scheme, therefore, all Scheme Creditors face the same basic question: should we agree to an eight month maturity extension in return for the amendment fee and the put right, or should we stick with our existing rights where we would very likely be paid in full?

24. Mr Bayfield KC, who appears for the opposing creditors, identified three matters which he said split the class. He reminded me that the class test is designed to ensure that the power of a majority to bind the minority is exercised only when it is fair in all the circumstances to do so. For it to be fair and appropriate, those voting together must be in materially the same position. I agree that the application of the well-known test must always be done with this purpose in mind, but that does not avoid the need to apply the test itself which contains within it a reference to materiality - driven by its purpose - carefully to the facts of each case.

25. The first matter raised is that there are material differences in rights between the April and February 2023 Noteholders because of their different maturity dates. Second, he submitted that there are material differences because of the provisions in the Scheme for amending the provisions in the Notes as to the majorities required for quorum consent to amend reserved matters. He said that either alone or cumulatively these rights are so different as to make it impossible for the creditors to consult together with a view to their common interest. The third matter is that there are material differences between holders of the Notes via the NSD ("NSD holders") and those who hold their Notes otherwise ("non-NSD holders").

26. Before I deal with the first of these issues, I note in passing that Mr Allison also referred to the difference in interest rates as between the two series of Notes. The February 2023 Notes have a coupon of 5.95% and the April Notes have a coupon of 7.25%. While that is a difference in existing rights, the Scheme leaves the respective rates unaffected. Where the comparator is payment in full, I do not think that this difference in existing rights is such as to split the class. Mr Bayfield did not suggest it was.

27. Dealing first then with the difference in maturity dates, in cases where the comparator is an inevitable and imminent insolvency proceeding, the starting point is usually that the equalisation of interest rates and maturities is likely to lead to a single class. That is because it reflects their rights upon insolvency. Whereas here the Company is most likely to remain solvent absent the Scheme, Mr Allison submitted that the natural starting position is that a single class will be constituted where differences in maturity dates and interest rates are <u>preserved</u> in order to reflect the substance of the existing rights of the Scheme Creditors. This may well be a relevant factor but it is not more than that.

28. In every case what matters is whether the difference in existing maturity dates means that the creditors cannot consult together in relation to the specific terms of the Scheme. That requires an examination of the terms of the Scheme and the way in which they impact on creditors with different existing rights. Mr Bayfield suggested that, in a case of a solvent comparator, debts of differing maturity can be placed within the same class only if the Scheme brings about no change to the maturity dates. He cited in support *Re Castle Trust Direct Plc* [2021] 2 BCLC 523 as an example, but that case is not

authority for that proposition. It is true that it is a case of a solvent comparator and also true that the Scheme did not change the existing maturity dates which were different for different creditors. Nowhere in his judgment, however, did Trower J suggest that the reason that creditors could be placed in the same class was because the maturity dates were not being changed. The critical question is, instead, whether the changes that were made by the Scheme impacted on the holders of long and short maturing bonds in different ways such that they could not consult together - see his judgment at paragraphs 17 to 19.

29. Mr Bayfield said that the extension of the maturity dates, albeit by the same eight months in each case, was undoubtedly sufficient to fracture the class. He graphically illustrated the differences overall in this case by reference to two hypothetical creditors: A, who held February 2023 Notes through a UK account holder, and B who held April 2023 Notes through NSD. He then explained, by reference to differences in maturity dates, amendment rights and NSD or non-NSD holding, how very different the outcome for each of them was.

30. While I accept his overall point that it is necessary to stand back and assess the question whether creditors can consult together by reference to the Scheme overall, I do not find it helpful to start with a comparison of two notional creditors at extreme ends of the spectrum. This example requires consideration to be given to, first, differences in rights that might be excluded as being problematic in themselves; second, matters that may not constitute differences in rights at all; and, third, matters which are no more than commercial reasons why Noteholders in either series may be motivated to vote against the Scheme. Standing back and considering the impact as a whole is undoubtedly an important exercise, but best done as a check after first considering the various contentious elements.

31. So far as the difference in maturity dates alone is concerned, Mr Bayfield's overall point was that, at the time of the Scheme meeting, the February 2023 Noteholders would at best be a couple of weeks away from being paid in full. He said that that clearly meant they had a different incentive, when voting, to the April holders who would have to wait another two and a half months. He highlighted the lack of incentives of the February Noteholders, including that the promised benefits under the Scheme (the amendment fee and the put option) depended on approvals from regulatory authorities which may never come, and the fact that they would be indifferent to the benefits which the Company hoped to gain from the Scheme, in terms of buying time to implement the sale of VimpelCom and to find a solution to the problem of double payment of NSD holders.

32. These are, however, exactly the same commercial considerations that affect the April holders. The only difference between them is that one group can say, absent the Scheme, they will be paid in full in a couple of weeks whereas the others would have to wait another two and a half months. Mr Bayfield accepted there is no bright line test here. The greater the difference between maturity dates and the further away from the first maturity date the Scheme meeting is being held, then the more likely it is that the creditors can readily consult together. He submitted, however, that where the first maturity date is as close as two weeks away, or possibly less, a differential between maturity dates of two and a half months is undoubtedly material. I do not think it is as simple as that and there is more to it than comparing the time of maturity as at the meeting date for one series as a proportion of time to maturity of the other.

33. The essential question, in my judgment, is whether the differential in maturity dates is likely to have any material impact on the likelihood of the Noteholders being paid in full. It is also important to remember that all Noteholders are entitled to interest so that a Noteholder with a later maturity date will, by definition, be entitled to a greater payment in respect of interest for the period to maturity than a Noteholder with an earlier maturity date. In other words, an extension of the maturity date, particularly in relation to Notes with relatively high yields, cannot be assumed to be a one way disadvantage.

34. What is of most importance is the credit risk to which the Noteholders are being exposed by extending maturity. It might be said, for example, that any extension of maturity carries greater risk for the creditor who would otherwise be paid within two weeks. That depends, however, on the financial state of the Company. As I have noted already, the Company currently has more than sufficient cash reserves to repay all the 2023 Notes and interest accruing on all other Notes. Moreover, the directors will not repay the February Notes unless they are satisfied at that date that they can repay the April Notes.

35. Conversely, it might be said that to extend each series by the same amount adds an additional period of credit risk at the end to the April Notes which is not being assumed by the February Notes. However, there is no reason, sitting here today, to believe that the nature of the credit risk being assumed in the additional two months from October to December of 2023 is materially different from the credit risk assumed in the existing two months from February to April. Again, the series due for payment in October would not be paid unless the directors were satisfied that the Company was then in the position to pay those maturing in December, so the risk of one series of Notes but not the other being paid because of the extension of maturity effected by the Scheme is low.

36. On the basis of the evidence presented, I consider the differential in the maturity dates constitutes an insufficiently materially different risk in the likelihood of recovery in full, whether in the comparator or in the event that the maturity dates were extended under the Scheme, as between the February and April Notes, to mean that the 2023 Noteholders cannot consult together with a view to their common interest. Mr Bayfield also submitted that the fallback option of the standstill continuing until October with no amendment to the Notes operated differently as regards the two series of Notes. That was because it would result in the maturity dates *de facto* being extended to the same date with the consequence that the February Noteholders would face a longer maturity extension than the April Noteholders. Since, as I have already noted, the longer a note is outstanding the more interest is payable for the Noteholders, this is again not a one-way disadvantage.

37. In all the circumstances, while this would constitute an additional difference in rights, since it is only a possibility in the event that the Scheme fails, and the difference in extension of two and a half months is relatively shortly, I do not think that the fact that this possibility exists would prevent the Noteholders under both series consulting together with a view to their common interest.

38. Finally, on this point, he submitted that the put option is a right that is more attractive to the April 2023 Noteholders because, depending on the Company passing the relevant financial tests, it could come into effect merely days after the original maturity dates of their Notes.

39. I do not accept that this is something which could fracture the class. It is clearly a right given in the same terms to all 2023 Noteholders. It is only given within the context of the extension of the maturity having been granted. The fact that it may be exercisable within a shorter period after the original maturity of the April Notes, as compared to the February Notes, if there had been no extension, does not seem to me to assist. More relevant is the fact that it enables the Noteholders whose Notes mature, as amended, in December to redeem their Notes at a relatively earlier date compared to their maturity date than those whose Notes will now mature in October.

40. That, however, is not a sufficiently material difference for reasons similar to those I have given. The put right essentially enables each Noteholder to trade their right to continue to receive interest on maturity in return for recovering the principal amount of their Notes earlier than waiting for maturity. The question facing each holder in the two series can be characterised as follows:

    (a) do I give up the right to interest payable through to October 2023 in return for accelerating the effective maturity from that date?

    (b) do I have the right to (a greater amount of) interest payable for December in return for accelerating the effective maturity from that later date?

    I do not consider that to be a materially different question and not sufficiently material to fracture the class. For these reasons, I do not think that the difference in maturity rates is a difference in rights which would fracture the class in this case.

41. The second potentially material difference between the February and April Notes relates to the right conferred by the Scheme in relation to amendment of voting rights under the Notes. There are two aspects to these amendments. The first, which is not said to be relevant to classes, is an amendment to work around the problem that, as a result of sanctions, a proportion of Noteholders cannot lawfully exercise any contractual voting rights, so the Company cannot satisfy the quorum requirements laid down by the 2023 trust deeds.

42. This is to be addressed by an amendment to both series of Notes that states that, to the extent that any 2023 Noteholders are prohibited by any applicable law or regulation in exercising voting rights in relation to the Notes - for example, if they are sanctioned persons - the amendments will provide that the 2023 Notes held by such persons shall be excluded when calculating the principal amount of the 2023 Notes for the purpose of determining quorum and other requirements in connection with meetings. That may give rise to fairness concerns to be considered at the sanction stage but does not give rise to a class issue.

43. The second aspect arises from the following circumstances. The terms of the February Notes require the unanimous consent of Noteholders in relation to a proposed amendment of reserved matters. Each Noteholder, therefore, has a right of veto. Under the April 2023 Notes, the quorum requirement for amendments to reserved matters is three-quarters of the April 2023 Notes by value and there is a requirement that the resolution be approved by a majority of those attending. The proposed amendment rights will be the same across both series. For an amendment of reserved matters, the required quorum will be two-thirds of the February 2023 Notes by value and the resolution must be passed by a bare majority. The same is true for the April Notes.

44. Mr Allison submitted that such a change did not fracture the class. He cited *Re Premier Oil Plc* [2020] CSOH 39 in support. In that case, as Lady Wolffe explained at paragraph 11, there was a complex network of veto rights and voting thresholds. Under the Scheme, the consent thresholds were simplified and harmonised such that a dissenting creditor, ARCM, lost its de facto blocking position. At paragraph 72, Lady Wolffe held that this did not fracture class, saying:

> "Creditors with different levels of voting power may be able to achieve different results by exercising their rights as a consequence of the amount of the debt which they hold, but that is irrelevant to class composition. The legal rights attached to the debt are the same".

45. I was also referred to the decision of Trower J in *Re Swissport Fuelling Limited* [2020] EWHC 3064 (Ch), where he held that consent thresholds can be fixed at a level which affects voting power of certain creditors or members without fracturing class. At paragraph 70, he said:

> "…any group of investors which holds at least 65% of the equity in Topco at any given time will be entitled to exercise various governance rights. Furthermore, the prior approval of what is called the super-investor majority, 65% or 75% if acting in concert, is capable of causing a sale process or an IPO to be initiated. For the reasons given by Warren J in *Re Hibu Group Ltd* [2016] EWHC 1921 (Ch) at [56], I do not consider that these arrangements give rise to a class issue. As Miles J explained in *Re New Look Financing plc* [2020] EWHC 2793 (Ch) at [40], these are a function of the number of shares held, not any difference in rights as between the same class of shareholders. Such differences as there may be are derived from the way in which the rights are enjoyed by particular creditors or groups of creditors, not from the rights themselves"

46. I agree that the nature of the proposed amendments would not fracture the class, if they were being imposed within each series of Notes by the votes of that series of Noteholders. This case, however, gives rise to a different problem, most starkly presented by the amendment to the February Notes. That is that each February 2023 Noteholder's current right of veto to an amendment to reserved matters is to be removed by a Scheme meeting in which all of the April 2023 Noteholders may vote, when those Noteholders have no interest in and are strangers to the terms of the February 2023 Notes.

47. The same point can be made the other way round, albeit with less force because the amendment to the April 2023 Notes is relatively minor and substantially less of a derogation from their existing rights than in relation to the February 2023 Notes. If the sole purpose of the Scheme was to effect these amendments, I have no doubt that the April 2023 Noteholders could not vote together with the February 2023 Noteholders. Their respective rights are undoubtedly different. I do not see how the mere fact that the April 2023 Noteholders are also suffering an amendment to their own contractual terms would warrant them being able to consult together with the February 2023

Noteholders over a term removing the latter's right of veto when the April 2023 Noteholders have no right or interest at all in that question.

48. Mr Allison, nevertheless, submitted that this change must be seen in the context of the Scheme as a whole and that, in that wider context, this is a relatively minor change to contractual rights being introduced for a sound commercial purpose to avoid the problems created by ongoing sanctions. Overall, he said, it does not prevent all 2023 Noteholders consulting on the key issue raised by the Scheme: amending maturity dates in return for certain benefits. I accept that it is necessary to stand back and ask whether the differences in rights, by reference to the package of changes affected by the Scheme, are overall such that the creditors cannot consult together with a view to their common interest. But that is where there is truly a package of interrelated changes.

49. Every case is fact sensitive and I am not attempting to provide any precise delineation between those cases where parts of a Scheme should be regarded as incidental to, and part of, an overall package with the rest of the Scheme and those where it should not. Given the speed with which this judgment has had to be prepared in view of the urgency of the case, there has not been the time for reflection necessary to consider the issue more broadly. But, on the facts of this case, I regard the amendment of the veto right within the February Notes as a separate matter, not an incidental part of the package of rights necessary in order to achieve the remainder of the Scheme.

50. The main purpose of the Scheme is to amend the Notes by extending their maturity date in return for certain benefits. While it can be said that the commercial rationale for changing the veto right is based in the same underlying problem which has provided the impetus for the Scheme, namely sanctions imposed as a result of the war in Ukraine, the change to the voting rights within the February Notes has nothing to do with and is no necessary part of the main aspect of the Scheme. The changes are intended to address the possible need for some amendment to the terms of the Notes being necessary in the future (I should note, the relatively near future, to the extended maturity date of October next year). While I can see that it makes sense to try to do that in the context of the existing Scheme, given the cost savings in avoiding having to effect any later amendments through another Scheme, that is insufficient reason in my view for regarding the removal of the veto right as an incidental part of the Scheme.

51. I floated the idea during the hearing of pursuing this change but on the basis of this aspect being treated as a separate scheme with two classes. While that is a theoretically feasible option, given the time pressure and the risk of confusion to the creditors if the change is effected in a hurry, the Company has sensibly taken the view that this would not be appropriate here. Instead, it is content, if I take the view that this is an aspect of the Scheme which would require separate classes, for it to be excised from the Scheme. That is, indeed, the view I take for the reasons I have given. To be clear, while the provisions of the Scheme amending the quorum and consent requirements in both series of Notes will be excised, the provision relating to leaving out of account sanctioned Noteholders in calculating the quorum may remain.

52. The third matter relates to the difference between the position of NSD holders and non-NSD holders. As I have noted, NSD holders are currently unable to receive payment because payment made through the Clearing Systems would not be passed on to NSD for transmission to them. It is common ground that this fact alone does not reveal a difference in their rights against the Company or in the rights conferred by the Scheme.

All creditors have, against the Company, the same entitlement. The difference is the extent to which the creditors can, for external reasons, enjoy those rights. I am satisfied that such differences in themselves do not fracture class.

53. A similar issue arose in *Re Nostrum Oil & Gas Plc* [2022] EWHC 1646 (Ch). Meade J said at paragraphs 40 and following:

> "As pointed out by Marcus Smith J in *Re Haya Holdco 2 plc* [2022] EWHC 1079 (Ch), there is a fundamental distinction between a scheme conferring different rights on different groups of creditors [and] a scheme conferring the same rights on all creditors … but some creditors are unable to enjoy those rights by virtue of some personal characteristic that they possess. The latter situation should not fracture the class, as it involves a difference in interests rather than rights."

Mr Bayfield, however, makes a different point. He contends that, by reference to wider arrangements to which regard must be had along with the Scheme itself, there is indeed a difference in rights which makes it impossible for the NSD holders to consult together with the non-NSD holders.

54. In *Re Baltic Exchange* [2016] EWHC 3391 (Ch), some of the members forming a single class for the purpose of a takeover Scheme had contractual benefits as panellists who produced or contributed to indices. While this had previously been done voluntarily, the bidding Company had entered into contracts with the panellists which provided certain benefits to them. At paragraph 15 Snowden J said, having noted that the contractual arrangements were conditional on the Scheme coming into effect:

> "These new contractual arrangements, which are conditional upon the sanction and effectiveness of the Scheme are matters, which should be looked at by a court in considering the class and jurisdictional questions. I say that because in a number of cases the court has made it clear that it is not confined to looking at the Scheme document in the narrow sense. Where a scheme is part of, or accompanied by, other arrangements that confer rights or benefits upon some or all of the members or creditors who are to be bound by the scheme, the class question must be answered by reference to all those arrangements taken as a whole"

At paragraph 18, he continued:

> "I have to ask the question, as a matter of judgment, whether the ability of the panellists to obtain contractual rights giving them free membership of the Baltic Exchange for the duration of the panellist agreement and continued free access to the certain data distribution is such as to require them to be put into a separate class from other members of the Company."

55. As Mr Allison pointed out, the key part of Snowden J's analysis was that the arrangements which would benefit the panellists were conditional upon the sanction of the Scheme. In the result, those arrangements were not held to be such as to fracture

the class. In this case, Mr Bayfield does not point to any particular benefit accruing to NSD holders as a result of or conditional on the Scheme. He says, however, that is because the Company has failed to provide sufficient disclosure of the arrangements that are or may be made with the NSD holders.

56. The evidence on this point principally consists of the following. Firstly, there is the evidence of Mr Postma on behalf of the Company. At paragraph 28 of his witness statement he explained the objectives of the Scheme:

> "28. The primary objectives of the amendments and, therefore, the Scheme are to provide additional time to:
>
> (a) complete the sale of PJSC VimpelCom which was announced on 24 November 2022;
>
> (b) avoid the inefficient use of the Company's cash through payments on the 2023 Notes held through the NSD being trapped in the Clearing Systems which may result in the principal amount of the 2023 Notes held through Russian depositaries being repaid by both the Company and PJSC VimpelCom;
>
> (c) allow additional time for the impact of the application of Decree 430 (as defined below) to PJSC VimpelCom (and the group) as set out in the MinFin letter and described at paragraphs 38 to 44 below to become clearer and, where possible, mitigated;
>
> (d) implement the asset monetization strategy underpinning the group's objectives to further reduce leverage and maximise its stakeholders' returns; and
>
> (e) use the excess liquidity provided by the sale of PJSC VimpelCom to redeem financial liabilities to deleverage and reduce its interest obligations".

57. Mr Postma at paragraph 42 also explains that, as a result of sanctions, the Company cannot be involved in any action in relation to Notes held by sanctioned persons. He noted, however, that VimpelCom, acting independently in accordance with the advice from its Russian advisers, may consider it is required as matter of Russian law to take action either to acquire existing Notes held through the NSD or make payments on those Notes, in each case on a unilateral basis without reference to the Company. He notes that it is this which gives rise to the risk of double payment within the group.

58. Other evidence on the matter includes the Explanatory Statement at paragraphs 5.1 to 5.7:

> " 5.1 On 2 November 2022, the Parent announced that it was conducting a competitive sales process in relation to VimpelCom.
>
> 5.2 On 24 November 2022, the Group announced that following a competitive process, it had entered into an agreement to sell its

interests in VimpelCom to certain senior members of the VimpelCom management team, led by VimpelCom's current CEO Aleksander Torbakhov (the "VimpelCom Disposal").

5.3 The consideration payable will be a combination of cash and assumption of liabilities. Under the VimpelCom Disposal, the Group would receive total consideration of RUB 130 billion (approximately USD 2.1 billion7).

5.4 In view of Decree 430, the Russian MinFin Letter and the recent clarifications issued by the Russian Central Bank, VimpelCom may consider taking on and discharging certain of the Existing Notes. The Company is not, and will not be, involved in any such transactions. The Company understands that there is no existing contractual right for any Existing Noteholders (including any 2023 Noteholders) to sell their Existing Notes to VimpelCom.

5.5 If the Company repays the 2023 Notes on their Original Maturity Dates by paying the required amounts to the Principal Paying Agent, it will no longer be possible for VimpelCom to take on and discharge 2023 Notes as they will have been fully discharged under the terms of the 2023 Notes Trust Deeds (even if cash remains trapped in the Clearing Systems). In addition, repayment of the 2023 Notes on their Original Maturity Dates may precipitate further actions by Russian holders against VimpelCom based on Decree 430 and the recent clarifications issued by the Russian Central Bank on 23 November 2022, if those repayments do not reach the Russian holders. Both of these consequences may in turn negatively impact the implementation and viability of the VimpelCom Disposal. The Company therefore considers that the extension of the Original Maturity Dates on the 2023 Notes is critical to completing the VimpelCom Disposal by allowing for additional time for the Company to determine whether an orderly settlement of the Existing Notes held through the NSD and other Russian depositories following Decree 430, the Russian MinFin Letter and the recent clarifications issued by the Russian Central Bank will materialise, thereby reducing the risk of litigation against VimpelCom in Russia.

5.6 The VimpelCom Disposal is subject to customary closing conditions, including receipt of requisite regulatory approvals, licences from the relevant government authorities and any required consent from the Group's creditors.

5.7 The target completion date for the VimpelCom Disposal is on or before 1 June 2023, with options on both sides for extensions in case any required regulatory license has not yet been received."

59. There is also the exchange of letters between the Russian Ministry Of finance and VimpelCom to which I have already referred which includes VimpelCom's assurance that it is developing a potential solution to the situation in which NSD holders find themselves. Mr Bayfield submitted it is to be inferred that the Scheme is intended to give VimpelCom a period of six months, i.e. prior to the targeted date for completion of the sale, to hoover up, as he put it, Notes of NSD holders prior to the extended maturity date so as to facilitate the sale of VimpelCom. I do not accept this.

60. There are a number of points to make in response:

i) The possibility of VimpelCom either paying NSD holders or purchasing their Notes arises solely because of the pressure placed on it within Russia by the Russian Ministry of Finance. It has nothing to do with the Scheme. This is reinforced by the fact of the potential advantage, if that is how it is to be analysed, of earlier de facto redemption by NSD holders will occur, if it is to occur, irrespective of the Scheme.

ii) It is the clear evidence of the Company that it will not, because as a result of sanctions it cannot, be involved in any way with the transactions that VimpelCom may enter into with a view to paying NSD holders.

iii) There is at least some connection between the Scheme, the sale of VimpelCom and the actions which VimpelCom may have to take in Russia, but it is not one which I think favours Mr Bayfield's analysis. That link is that the sale of VimpelCom is intended to address the problem of double payment from within the group. Whether VimpelCom is thereafter still obliged under Russian law to discharge the Company's obligations to the Noteholders is a matter for it. If it does so, it is clearly not as a result of the Scheme. If it does not, then Noteholders will not get the early redemption which Mr Bayfield and the opposing creditors suspect they will.

iv) I do not think there is any sufficient basis to infer that the purpose of the Scheme is to buy time for VimpelCom to hoover up the Notes of NSD holders. The most that can be said is that a purpose of the Scheme is to buy time to try to address the problem which will arise for the Company on the maturity date of both sets of 2023 Notes if it is required to make payment into the Clearing System in circumstances where that money will be trapped and at the same time subsidiary is required to make payment in some way to the NSD holders.

61. Accordingly, I do not think that there is any sufficient connection between the Scheme, the sale of VimpelCom and the repayment of NSD holders in Russia that can be properly analysed as part of a wider arrangement conditional upon the Scheme. That means that, even if the NSD holders are to be regarded as requiring any right to early payment by whatever steps VimpelCom may take in Russia, that is not to be regarded as a right for the purposes of class analysis. Nor do I accept that there has been a lack of explanation by the Company of the problems created by Decree 430 or the possible solutions to it. Again, I refer to the fact that the Company itself is not and cannot be involved in whatever solution is to be adopted within Russia by VimpelCom according to its own Russian advice.

62. For those reasons, I am not satisfied it is necessary to convene separate meetings of the NSD holders and the non-NSD holders. As I have already said, it is important to stand back and have regard to the differences in rights overall, to consider whether all creditors can realistically consult together with a view to their common interest.

63. In doing so, however, and harking back to the extreme example given by Mr Bayfield, I will ignore both the difference in rights so far as the amendments to voting rights are concerned (because those will be excised from the Scheme) and also any differences in the position of NSD holders arising from the fact they may receive an earlier payment from VimpelCom (because I do not consider those to give rise to any right which needs to be taken account of at the class stage). In fact, that leaves the difference in maturity dates. Therefore, the exercise of standing back is not materially different than that I have already undertaken when looking separately at the difference in maturity dates.

64. In essence, I do not think the fact that the February Noteholders would in the comparator be paid within a couple of weeks, whereas the April holders would need to wait a further two and a half months, gives rise to a sufficiently material difference in rights to mean they cannot consult together - that is, consult where the question is: should I accept a deferral of my right to redemption, hopefully for eight months but possibly across the board until October 2023, in return for continued payment of interest during that extended period and the possibility of an amendment fee of 2% and a put option?

65. It is true that this is not the normal case where Scheme Creditors might be expected to vote in favour, because it is in their interests to avoid a problem caused by the Company's financial difficulties. There may also be good commercial reasons why any Noteholder may feel unprepared to give up their existing rights so as, in essence, to enable the Company to solve a problem of its own which does not affect the Noteholders directly. But it is not a jurisdictional requirement that a Scheme must be addressing a problem in the sense of an adverse situation affecting both the Company and its creditors - see in this respect *Scottish Lion Insurance Company Limited v Goodrich Corporation* [2010] BCC 650 at paragraph 44, a decision of the Scottish court of session.

66. I turn then to deal with certain other matters. The Scheme Creditors hold the beneficial interest in the Notes held through the Clearing Systems. As has been well-established in other cases, this constitutes them as contingent creditors with an entitlement to vote. Other parallel claims, for example the trustee under the trust deeds, will not vote so there is no double counting problem.

67. As to the proposed timetable for the Scheme meeting, it is undoubtedly tight but Scheme Creditors will have over a month to consider the Explanatory Statement prior to the date of the Scheme meeting.

68. In my judgment, for similar reasons I have already given in relation to the timing of the PSL, that is sufficient in all the circumstances taking into account the urgency of the case and the relevant simplicity of the Scheme itself and thus the decision to be made by creditors. Whilst sanctioned persons cannot lawfully vote at the Scheme meeting, there is nothing that the Company can do to overcome that problem. NSD holders who are not themselves sanctioned persons can vote. It is imperative in such circumstances, where notice to the Clearing Systems will not reach them, that the Company takes all steps reasonably open to it to ensure that notice is given to those Noteholders and that

they can vote without having to go through the Clearing Systems - see in this respect *Re E-House (China) Enterprise Holdings Limited* on 9 November 2022, a decision of Justice Segal sitting in the Grand Court of Cayman Islands.

69. I am satisfied, again for reasons already given, that the Company has already done so (for the PSL) and intends to do so (for the notices in respect of the Scheme meeting) in this case.

70. Mr Bayfield submitted it would be important at the sanction hearing to know to what extent creditors who voted held cross-holdings in other series of Notes. To the extent that they held Notes in both series of 2023 Notes, that would inevitably be revealed by their voting forms. To the extent that they hold any Notes in the later maturing series or under the RCM, then, as Mr Allison pointed out, it is difficult to see how they could be made to reveal that information. It would be wrong, in my view, to limit their ability to vote by making it conditional on them revealing it and so, accordingly, I will make no direction in that regard.

71. Finally, one of the functions of the court at the convening stage is to consider the adequacy of the Explanatory Statement. I have already addressed the extent to which actual or potential arrangements within Russia relating to VimpelCom have been revealed. So far as the remainder of the statement is concerned, I merely say I am satisfied it sufficiently explains the nature of the Scheme and its terms to enable voters to make an informed decision.

72. In all the circumstances, I am satisfied it is appropriate for a single meeting of the Scheme Creditors to be convened, albeit with the aspects relating to amendments of voting rights I have already referred to being excised.

This Judgment has been approved by Zacaroli J.