IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
NEUTRAL CITATION NUMBER
[2024] EWHC 2036 (Ch)

CR-2024-004486
CR-2024-004487

31 July 2024

BEFORE:
Mr Justice Trower

IN THE MATTER OF OQ CHEMICALS HOLDING DREI GMBH

-and-
IN THE MATTER OF OQ CHEMICALS CORPORATION

-and-
IN THE MATTER OF THE COMPANIES ACT 2006

Tom Smith KC and Rabin Kok (instructed by **Freshfields Brunkaus Deringer LLP** for the **Companies**
Adam Al-Attar KC (instructed by **Akin Gump Strauss Haver & Feld LLP**) for the **AD HOC Group**

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

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MR JUSTICE TROWER:

1. These are applications by a German company, OQ Chemicals Holding Drei GmbH, which I shall call the German borrower, and a Delaware company, OQ Chemicals Corporation which I shall call the US borrower, for orders in each instance to convene a single meeting of each company's Scheme Creditors, to consider and if thought fit, to approve two materially identical and inter-conditional schemes of arrangement, pursuant to part 26 of the Companies Act 2006.

2. The proposed timetable is that notices and the explanatory statement are intended to be sent out no later than 19 August, that the scheme meetings will be held on 10 September and that the sanction hearing will take place, if the schemes are approved at the scheme meetings, on 2 October 2024.

3. Each of the scheme companies is a member of the OQ Chemicals group, a global leader in the production and sale of oxo chemicals. Its headquarters are in Germany and it operates six production sites across Germany, the USA, China and the Netherlands. The ultimate shareholder is an Omani entity owned by the Oman Investment Authority.

4. The principal purpose of each scheme is to enable each company to extend to 31 December 2026 the maturity of two term loans and a revolving loan facility, both of which currently mature on separate dates two days apart, in mid-October 2024.

5. The term debt and the revolving credit facility are governed by the terms of a credit agreement originally dated 11 October 2017 and originally governed by New York law, with an exclusive jurisdiction clause in favour of the New York courts. I shall revert shortly to an issue which arises on the governing law. The term loans comprise a euro tranche with a principal of approximately 510 million euros outstanding and a US dollars tranche with principal of approximately US$435 million outstanding. A sum of approximately 31 million euros is outstanding under the revolving facility. There are currently 337 term lenders and two revolving facility lenders.

6. Both the German borrower and the US borrower are co-obligors under the term loans and both of them, together with several other entities, are guarantors of the credit agreement. The US borrower is a co-obligor of the revolving loans, together with other group entities, not including the German borrower. Both the term loans and the revolving loans are secured and benefit from the same security package, which includes security over the shares in certain group entities incorporated in the United States and Germany. The security interests are governed by German law and the law of various US states.

7. The credit agreement itself is now governed by English law, although the English law and English jurisdiction provisions were only introduced by the contractually required 50 per cent consent threshold on 12 July 2024, for the purpose of facilitating the schemes (when the amendment was approved by c.68.7 per cent by value of lenders under the credit agreement. I understand that, as of 26 July 2024, 91 per cent of lenders by value had signed the relevant amendment.

8. The scheme companies are unaware of any active opposition to their proposals but a number of the variations in creditors' rights sought to be achieved by sanction of the schemes require 100 per cent lender consent and there are a number of lenders who, for various reasons, are unable to vote in favour of the schemes because, principally certain constitutional, governance or legal restrictions to which they are subject.

9. The group as a whole is in some financial difficulties caused in part by the pandemic, rising interest rates, higher raw material prices, cost inflation in the procurement market and what has been called an unforeseeable production outage in Oberhausen. It has been unable to obtain further injections of capital from its shareholders which have also withdrawn its liquidity support. On the withdrawal of that support on 30 March 2024, certain of its term lenders agreed to form an ad hoc group to work on a restructuring solution. They were represented at the hearing before the court today by Mr Al-Attar KC.

10. The ad hoc group is now made up of lenders owed marginally in excess of 75 per cent by value of the aggregated loans which means that its members are in a position to make some but not all of the required amendments to the credit agreement. Among the

amendments which they are not in a position to procure are the debt extension maturities which are the principal subject matter of the schemes.

11. The purpose of the extensions is to give the scheme companies a stable platform from which to pursue an M&A process which they are pursuing in parallel to the schemes. In the absence of the schemes, the German borrower is likely to be forced into a formal insolvency, resulting in a sale of the group's assets. The mechanism by which this is likely to be achieved is considered in a draft report by PwC which shows that, although the businesses themselves would be likely to survive, the recovery for creditors from such an insolvency sale is likely to be worse, as compared to the recovery from the contemplated M&A process without the shadow of a formal insolvency.

12. On 21 June 2024, the members of the ad hoc group and the scheme companies entered into a restructuring support agreement which I shall call the RSA, setting out the agreed commercial terms of an overarching transaction, part of which involved a proposal for the schemes which are the subject matter of the current application. The other elements of the overarching transaction involved the provision of super priority bridge funding to address the scheme companies' immediate liquidity needs and the execution and consummation of the M&A process to which I have already referred. A timetable for the M&A process has been agreed in principle which will start imminently, with the aim of closing a sale on or before 28 February 2025 at the latest.

13. The provisions of the RSA and a related shareholder undertaking obliged the scheme companies, the shareholders and the lenders acceding to the RSA to facilitate the schemes and the overarching transaction. As compensation for the time and administrative costs they have spent considering and responding to the RSA, consenting lenders are entitled to an early bird fee of 0.5 per cent if they signed up on or before 12 July and a consent fee of 0.5 per cent, if they become a consenting lender on or before the business day before the scheme meetings.

14. The ability to accede to the RSA and receive these fees were available to all lenders. As at the date of the application, of this application, 330 of the 337 term lenders with claims approximating to 97 per cent by value of the obligations under the term loans, have acceded to the RSA, as has one of the two revolving lenders holding 66 per cent

of the revolving debt. I was informed at the hearing this morning that it is distinctly possible that the remaining revolving lender may in due course accede to the RSA.

15. On 21 June 2024, some of the ad hoc group lenders entered into a super priority credit agreement in order to provide the group with the super priority bridge funding. Under these arrangements, the participating ad hoc group lenders backstopped and made available a euro and US dollar facility comprising a euro tranche in an aggregate principal amount of 37 million euros and a US dollars tranche of approximately $45 million. A super priority intercreditor agreement was agreed and the super priority indebtedness was secured by additional security provided by the shareholder and some of its subsidiaries, and was drawn down on the day the credit agreement was entered into.

16. Although initially backstopped by the ad hoc group lenders, on 2 July 2024 the opportunity to participate in the super priority bridge funding was then offered to each of the lenders in an amount proportionate to their pre-existing participation in the loan, on terms (a) that they confirmed their intention to participate no later than 12 July and (b) that they acceded to the RSA.

17. The original participants in the super priority credit agreement were entitled to a backstop fee of 3 per cent of the aggregate amount of their commitments. There is evidence that this fee was at a market rate for the provision of the backstopping service. In the events that occurred, two further lenders who were also sub-participants in the revolving loans, subsequently agreed to participate in the super priority bridge funding. They were not entitled to a backstop fee under the terms of the credit agreement itself but members of the ad hoc group have agreed to share their backstop fee with these two acceding lenders, pro rata to their contribution to the super priority funding.

18. The evidence is that, as matters stand, 94.8 per cent of lenders by value have confirmed their participation in the syndication of the super priority bridge funding.

19. In addition to the proposal to extend the maturity dates of the term loans and the revolving loans to 31 December 2026, the schemes make provision for any accrued or unpaid interest currently due to be capitalised, and the same will also apply in relation

to a 2 per cent exit fee. This is already owed to all lenders as a result of an April amendment to the credit agreement, extending the grace period for the making of a deferred interest payment, and is not a term of the schemes themselves.

20. There are also what seemed to me to be three further relevant proposals. The first is the provision to all lenders of an extension fee of 1 per cent of the principal outstanding under the loans, in consideration for the provision of the stable M&A platform.

21. The second is a proposal to introduce a 'snooze' provision into the credit agreement which will have the effect of disregarding the votes of term lenders who do not respond to a request for an amendment, consent or waiver within 10 business days of the request. This will not apply to requests for consent from revolving lenders and has potential class-creating ramifications to which I shall return later in this judgment.

22. The third is a proposal to amend the voting threshold in respect of any proposed amendment to certain term lender rights, in the evidence called 'sacred rights', from 100 per cent to 75 per cent. This too will not apply to revolving lenders. It will last until 31 December 2025 and can only be used for waivers or amendments to the credit agreement required to implement one of two types of transaction. The first of these is a recapitalisation compliant with a German auditor's restructuring opinion, otherwise known as an S6 opinion, which provides for equal treatment of all term lenders in the absence of explicit individual consent. The second of these is an M&A transaction which provides for equal treatment of all term lenders, again in the absence of explicit individual consent, and which has a cash out option for non-consenting lenders or must have been approved by 80 per cent of term lenders. The purpose of the reduction in voting thresholds is to facilitate the pursuit of a consensual restructuring and an M&A solution, without the need for of further scheme, if the current M&A process does not result in a bid acceptable to all term lenders.

23. Against that background, I turn to the matters which are required to be considered at this stage of the proceedings, bearing in mind that the court's jurisdiction to convene scheme meetings is provided for by section 896(1) of the Companies Act 2006 and the matters to be determined at this hearing are prescribed by the practice statement issued by the Chancellor on 26 June 2020.

24. The first question is whether the proposals for the schemes have been sufficiently notified to interested parties to enable them to make submissions on the directions to be given. The scheme companies must give sufficient notice to enable persons affected by the schemes to consider what is proposed, to take appropriate advice and, if so advised, to attend the hearing.

25. A number of cases have considered the appropriate notice period, the time for which will depend on all the circumstances of the case, including such matters as the complexity of the schemes, the degree of consultation which has already occurred, the urgency of the schemes and the sophistication of Scheme Creditors. See for a helpful summary, the judgment of Mr Justice Adam Johnson in *Re Selecta Finance UK Ltd* [2021] BCLC 168.

26. In the present case, the evidence shows that 15 days' notice was given to creditors by the issue of a practice statement letter on 15 July 2024. In my view, the letter covers all the matters required to be considered by Scheme Creditors at that stage and having particular regard to the nature of the creditor constituency and the extent of prior involvement by creditors, and the requirements of paragraphs 6 and 7 of the practice statement as they apply in the particular circumstances of the current case. I am satisfied that sufficient notice has been given.

27. The second question relates to the court's jurisdiction to sanction the schemes. The terms of the practice statement make clear that the court should normally satisfy itself at the convening hearing as to any issues which go to jurisdiction or give directions for their determination, although that is always subject to the provisions of paragraph 10, in cases in which a creditor has good reason for not raising the issue at an earlier stage.

28. The threshold jurisdiction point is whether or not the proposal is a compromise or arrangement between a company and its creditors or a class of them. It is well established that the term arrangement has a very broad meaning and all that is required is some element of give and take. I agree that the provisions for the extension of the maturity dates in exchange for the payment of a fee and the undertaking of fresh obligations, gives rise to a sufficient element of give and take in the current case.

29. The second element which is interrelated with the identity of the applicants as companies, relates to international jurisdiction. I am satisfied that each of the companies is a foreign company liable to be wound up under the Insolvency Act 1986 as an unregistered company and is therefore a company in respect of which a scheme can be sanctioned. However, like Mr Justice Snowden in *Re ColourOz Investment 2* LLC [2020] BCC 926, and indeed many other judges, I do not consider that the question of whether or not each of the scheme companies has a sufficient connection to this jurisdiction to justify the exercise by the court of its power to sanction a scheme is a matter for final determination at this hearing. The court is though required to consider whether there is what has been called a roadblock or some clear and insuperable obstacle to the effectiveness of the schemes. I do not consider that there is.

30. It is well established that, in circumstances in which the indebtedness sought to be compromised or rearranged pursuant to the schemes is governed by English law, that fact alone will normally give rise to a sufficient connection for these purposes; see e.g,, Mr Justice David Richards in *Re Vietnam Shipbuilding Industry Group* [2014] BCC 433 at paragraphs 8 and 9. It is also now established that there is no objection in principle to a change in the governing law of credit agreements in accordance with their terms, for the purpose of facilitating a sufficient connection to this jurisdiction, so long as it can be said that the choice of law is not one which appears entirely alien to the parties' previous arrangements or done for an improper purpose, such as to prejudice a minority; see for a recent explanation of the principles, see the judgment of Mr Justice Hildyard in *Re Tele Columbus AG* [2024] BCLC 428 at paragraph 63.

31. In this case there is no evident roadblock which might be thought to prevent a sufficient connection with England and Wales being established at the sanction hearing. The amendment is to facilitate a restructuring process which has overwhelming support and I have seen nothing to indicate that the proposal to amend the governing law of the credit agreement has anything to do with prejudicing a particular group of creditors or is done otherwise than for a proper purpose..

32. The next issue is whether the schemes are likely to be given effect in the jurisdictions which matter. For these purposes the jurisdiction of incorporation of the German borrower and the US borrower are the important ones. The evidence is that both

scheme companies have instructed experts to give their opinion on whether German law and US law respectively will recognise the relevant scheme if it becomes effective in England, although, as matters stand, no reports have yet been finalised.

33. The reports have not been finalised for this hearing in circumstances in which it has been said on numerous previous occasions, for example in *Re Tele Columbus* at paragraph 68, *Safari Holding Verwaltungs GmbH* [2022] EWHC 781 at paragraph 64 and *Re Swissport Fuelling Ltd* [2021] 1 BCLKC 527 at paragraph 57 that, like the question of whether or not there is a sufficient connection, the international effectiveness of a scheme is principally a matter for the sanction hearing,.

34. I accept that, in relation to jurisdictions in which schemes have previously been sanctioned after consideration of their international effectiveness, there is no absolute need for specific expert evidence to be available at this stage, in any event where there is a sufficient similarity between any issues as to international effectiveness which might arise; see, for example, the discussion of Mr Justice Hildyard in *Re Tele Columbus* at paragraph 73(2) and the approach to evidence of effectiveness under Swiss and Luxembourg law which was adopted by Mr Justice Miles in *Re Swissport Fuelling* at paragraph 48.

35. However, in the normal course it seems to me that it is better if expert evidence is available at this stage, and it is likely to be necessary for it to be available at the convening hearing if the scheme is more controversial than the current ones or if it has been said by some interested party that international effectiveness is in doubt or that there is some other reason for concluding that its effectiveness is in issue. If that is not done in such cases, the court may have difficulty in satisfying itself that there is no roadblock to sanction in due course.

36. However, that is not this case. The absence of opposition and the fact that a significant number of English schemes of German and US companies with similarities to the present case have been recognised in the jurisdictions of their incorporation, supports my view that there is no reason to doubt that the schemes, if approved and sanctioned, will be capable of being made effective in the US and Germany.

37. The next question relates to class composition. The basic principle is whether the scheme companies have established that this is not a case in which the lenders whose rights are to be compromised by each scheme are so dissimilar as to make it impossible for them to consult together with a view to their common interest.

38. There are three important principles which it is worth emphasising. The first is that, in answering that question, the court is required to carry out a comparative exercise. The court must consider and compare the position that creditors will be in if the schemes do not become effective and the position they will be in if they do become effective. For that purpose the proper comparator, akin to the relevant alternative in the context of a part 26A restructuring plan, must be identified.

39. The second is that the court must ask whether there is any difference between the creditors' strict legal rights and, if there is, to consider whether, objectively speaking, there would be more to unite than divide those creditors in the proposed class, ignoring for these purposes any personal or extraneous motivation operating in the case of any particular creditor.

40. The third is that material differences in the rights of creditors do not necessarily fracture the class. A proliferation of classes should be avoided if possible and the court should be careful to ensure that the test is not applied in such a manner that it becomes an instrument of oppression by a minority.

41. Both of the scheme companies propose a single class of all lenders, whether their rights under the credit agreement arise in relation to the term facility or the revolving credit facility. It is submitted that this is appropriate because the essence of the Scheme Creditors' rights, both before and after the schemes become effective, are materially the same.

42. As to the pre-scheme position, the starting position is that the rights both of the term lenders and the revolving lenders arise under the same agreements (the credit agreement and the intercreditor agreement), they have the same security package and they rank pari passu. There are one or two differences which in my judgment do not affect the position as to materiality in any meaningful sense, such as a two day

difference in the maturity date, but the contracts from which their rights derive are the same.

43. It is though necessary to understand what will happen to those rights if the schemes do not become effective. The directors of both scheme companies are of the view that, in the light of the time the matter has taken to come to fruition already and the impending maturities of the term and revolving facility debt, the prospect of agreeing an alternative transaction with different economic terms before the German borrower would be obliged to file for insolvency, is remote. In such a situation the evidence from PwC is that Scheme Creditors will currently be estimated to receive just in excess of 80 per cent of their claims but for present purposes, what matters is that their respective rights in that insolvency will be substantially the same, in that they stand to recover with each other pari passu by reason of the sharing of the same security package.

44. As to the post-scheme position, the essence of the variation is that all lenders will receive substantially similar rights under the schemes. The term loan maturity date and the revolving loan maturity date will both be extended to 31 December 2026, from their present maturity in mid-October 2024, with the same interest rate. So looking at the position broadly, I am satisfied that the differences in rights both pre-and post scheme are in their essence the same..

45. The scheme companies have, however,, given consideration to a number of possible class issues arising out of other, more detailed aspects of the schemes, the first few of which arise out of or in some way relate to the question of fees.

46. The first of these is that there is an existing exit fee and an extension fee which are payable. In my judgment, they plainly do not give rise to class issues as all lenders are treated and affected in the same way.

47. The second fee-related issue is whether a right to participate in the underwriting of a new money advance operates to fracture the class, more especially where a fee is then payable. It is now well established that this is unlikely where those creditors who have not participated in any new facility advanced to the scheme companies in connection

with the scheme proposals, were given a fair and genuine opportunity to do so. If, as occurred in the present case, the non-participating creditors had such an opportunity, it is unlikely that any class issue will arise whether or not they did in fact participate. This is the case even though the participants might thereby have had an additional incentive to vote in favour of the schemes, and even where some creditors are unable or unwilling to participate; the consequence of their inability or unwillingness is likely to have flowed from a difference in interest, not rights.

48. This same principle is applicable whether or not the right to participate in the new money issue carries with it any form of fee and in particular, a backstop or an underwriting fee. In that circumstance, the court will be astute to assess whether on a true analysis, the fee to which the new money lenders are entitled is genuinely a fee for the provision of the service and not a disguised means to treat a particular creditor or group of creditors differently in respect of their existing indebtedness. Thus, so long as the fee is open to all Scheme Creditors who may wish to participate, is properly to be characterised as payable in respect of the service provided and is sufficiently small to have no material effect on how the recipient votes in the schemes in respect of its existing indebtedness, the class is unlikely to be fractured.

49. In the present case, I am satisfied that, applying these principles, there is no class creating difference between position of those lenders who participated in the super priority bridge funding and those who have not. The fact that not all may have done so. With the consequential entitlement to receive fees is not in my judgment sufficient to fracture the class.

50. The third fee-related class issue relates to accession to the RSA carrying with it the right to consent or lock up fees. It is now well established that accession to an RSA of this sort is not of itself class creating, so long as objectively it has no effect on the way a creditor would have voted (see the discussion in *Re Telewest Communications Plc* [2004] BCLC 356 at paragraphs 52 to 54), That is the case, even though a creditor must then be regarded as being pre-bound to vote in favour of the schemes.

51. The real issue in this context relates to fees and, in particular, whether a consent or lock up fee might exert a material influence on the creditor's voting decision. In making

that assessment, the court will have regard to the percentage which the fee bears to the real economic value of the debt, a matter on which Mr Justice Snowden expressed well-reasoned views *Re ColourOz* at paragraph 103.

52. In my judgment, in the present case the fee structure which provided for a 0.5 per cent lock up fee and a 0.5 per cent consent fee, both payable at different times depending on the moment at which the relevant creditor acceded to the RSA, is not class creating. Looked at objectively, it is unlikely to have any material impact on the lender's decision as to whether or not to support the schemes.

53. The next potential class issue to which the company gave consideration is not fee related. It relates to the 'snooze' provision. This disproportionately affects the rights of term lenders because the 'snooze' will not apply to any amendment, consent or waiver which requires the prior written consent of the revolving facility lenders.

54. Mr Smith KC submitted that this difference did not amount to a substantive variation in legal rights as a matter of principle because it does not dilute the term lenders of their ability to exercise the legal rights attaching to their debt. All that it does is affect the way in which that legal right is to be exercised. He said that it is therefore merely an expression of their commercial interests, albeit reflective of a variation in the way in which the legal rights are to be exercised. Mr Al-Attar said much the same thing, albeit with a slightly different emphasis. He accepted that the 'snooze' amendment does manifest a difference in rights which is directly pertinent to the two stage class analysis but said that it is a difference in rights which is not class creating.

55. It seems to me that the bundle of rights currently available to all lenders includes their ability to participate in amendment decisions by choosing whether or not to take the positive step of expressing their consent. An unqualified right to consent or decline to consent to an amendment is not quite the same thing as a time limited right which is lost by the creditor who snoozes. However, it is not a difference in rights which is sufficiently substantial to make it impossible for the term creditors and the revolving lender to consult together with a view to their common interest. The reason for this is that the substantive element of the right is the ability to participate in the process of consenting or refusing consent to an amendment proposal. The 'snooze' provision is

an ancillary and procedural aspect of the bundle of rights which, objectively speaking, does not have a material effect on the substance of the right which the lenders are entitled to exercise.

56. Looking at the package as a whole, it seems to me that it is a sensible, practical and facilitative measure but one which, from the lender's perspective, has no substantial significance. The substantive point is whether their right to participate in giving consent to amendments is being compromised and the ultimate issue for all lenders is more general still, viz. whether or not to extend the maturity date to facilitate the M&A process.

57. The position has some similarity with the next potential class issue which relates to the 'sacred rights' amendment. Mr Smith submitted that the removal of the creditor's blocking position by reducing from 100 per cent to 75 per cent the necessary majority to procure any future amendment to the credit agreement as it relates to the term lenders, will not give rise to a substantive difference in rights as against the revolving lenders in respect of whom the 100 per cent blocking position will be maintained.

58. Initially anyway, he relied on my decision in *Re Swissport Fuelling Limited* [2020] EWHC 3064 (Ch) at paragraph 70 in support of a submission that the harmonisation of voting thresholds to remove the creditor's blocking position does not, in principle, create a class issue. It is ultimately, so he said, more a question of a difference in interests flowing from the extent of the debt than a substantive difference inherent in the nature of the right itself.

59. In his oral submissions, Mr Smith did not put the point in quite those terms and I think that he was correct not to do so. The provision which gave rise to the question in *Swissport Fuelling* was one in which the Scheme Creditors were entitled to an allocation of equity securities in a Topco in consideration for the transfer by them to Topco of the benefit of their existing claims against the group. The terms of the Topco share issue included the right of any group of investors holding at least 65 per cent of the equity to exercise various governance rights. The issue which arose was whether creditors who were also members of any such group were in a different class from the remaining creditors because of any difference in shareholder rights which they had

received as part of the quid pro quo for the compromise of their creditor rights pursuant to the terms of the schemes. In that context, I said that such differences as there may be are derived from the way in which the rights are enjoyed by particular groups of creditors, not the rights themselves.

60. In my view the current case is quite different. It is inherent in the claims of each term lender that, whatever the size of their position, any claim against the scheme companies under the current terms of the credit agreement entitles the relevant creditor to exercise a right of veto in respect of any proposed amendments to the 'sacred rights' under that agreement. This flows from the right itself - it is not the way that the right is enjoyed and it is unaffected by the quantum of the debt that they hold.

61. For that reason, it seems to me that the present case is closer to the situation with which Mr Justice Zacaroli was concerned in *Re Veon Holdings BV* [2022] EWHC 3273 (Ch) than it is to the situation with which I was concerned in *Swissport* and indeed with which Lady Wolfe was concerned in the Scottish case of *Re Premier Oil Plc* [2020] CSOH 39 at paragraph 72.

62. In *Veon*, Mr Justice Zacaroli was dealing with a situation in which there were two series of notes. One, the February notes, required unanimous consent for amendment and the other, the April notes, required a quorum of 75 per cent and a majority of 50 per cent. The proposal was to harmonise the amendment provisions so that both series of notes required a two thirds quorum with a 50 per cent majority for any amendment. A single class was proposed for both series.

63. Mr Justice Zacaroli identified that the real concern related to the removal of the right of veto currently enjoyed by the February notes. He said that, if the harmonisation were to be the only variation proposed by the scheme, it was clear to him that separate classes would be required. I can see why he took that view.

64. However, I agree with the submissions of both Mr Al-Attar and Mr Smith that there are two important distinctions of principle between the current case and *Veon*. The first, and to my mind the most important, is that, unlike in *Veon*, the current proposal is intrinsic to the whole essence of the schemes. It is time-limited and specifically

focused on facilitating the M&A transactions for the benefit of which the maturity dates are being extended. These particular amendments can therefore properly be treated as part of the same package of interrelated changes. That is very different from what occurred in *Veon*, where the amendment to the veto had, and I think this is the way Mr Justice Zacaroli put it “nothing to do with and had no necessary part of the main aspect of the scheme” itself. This difference is important because, unlike in *Veon*, it is appropriate in the present case for the court to step back and ask itself whether the package of changes overall are such that the creditors cannot consult together with a view to their common interest.

65. Carrying out that exercise highlights the second distinction. In *Veon*, the number of holders of the April notes whose rights were impacted in a less significant manner by the harmonisation proposal was such that as a matter of practice, they were in a position to affect the terms of the other notes to which the harmonisation process had more significance, but in which they had no interest. By contrast, in the current case, the unaffected revolving lenders held only a small proportion, I think 3 per cent, of the total scheme claims of which the affected lenders held the vast majority.

66. I am less persuaded by the second distinction as a freestanding point but, looking at matters more generally, I think it remains a relevant factor. Where certain creditors vote on a scheme which varies the rights of another group but not their own, the question of whether that variation is class creating will be informed by the extent to which this provision will or might affect the way in which a creditor might consult with other creditors or exercise their vote. Objectively speaking, I do not think that this would happen in the present case, a conclusion that is illustrated by the existing overwhelming term lender support for the schemes. This is not a case in which the effect of a single class meeting could even conceivably be to force through a change which only adversely affects the term lenders on the back of the votes of the unaffected revolving lenders, the issue with which Mr Justice Zacaroli was most concerned in *Veon*.

67. For these reasons I think that it is appropriate for a single class meeting to be held, notwithstanding the differences which have been identified by the company and I will direct accordingly.

68. I can take the remaining questions more shortly. The court is required at a convening hearing to consider the adequacy of the draft explanatory statement, but its function is not to approve the text. The form of the explanatory statement in the present case will be updated to include some amendments to reflect the status of the M&A process and I am satisfied that the way in which that is to be done is satisfactory. More generally, I am satisfied that, although detailed and complex, the explanatory statement in the present case is in a form that is sufficient for its purpose, having regard to the identity of those to whom it is to be sent and the extent of their previous engagement with the scheme companies.

69. I have also considered the provisions of the draft order with counsel and I am satisfied that the time periods for the summoning of the scheme meetings and submitting the forms of proxy are appropriate.

70. The only remaining matter relates to the directions to be given for the meetings to be held remotely. They are in a form which complies with the guidance I gave in *Re Castle Trust Direct Plc* [2021] 2 BCLC 523. I approve them accordingly.

71. So, in all the circumstances, I am satisfied that this is a case in which I should make a convening order in the form sought by the scheme companies, It only remains to express my gratitude to counsel and those sitting behind them for the assistance they have given in the preparation and presentation of this case.

72. **Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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