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Kirkland Alert

Bondholders Take Control of Lebara Via Enforcement

14 August 2019

Kirkland & Ellis advised the ad hoc group of bondholders of Vieo B.V. (“Vieo”) on a contested, coercive share pledge enforcement. Vieo is the Dutch holding company of Lebara, a telecommunications group that provides services to clients around the world. Lebara provides pay-as-you-go mobile SIM cards; its logo is a common sight in newsagents and other small retail outlets across Western Europe.

The Dutch court approved the enforcement on 30 July 2019. Vieo’s shares were transferred the following day to a Newco entirely controlled by holders of Vieo’s €350 million senior secured notes (the “Bonds”).

The Bonds are governed by Norwegian law, and the relevant share pledge is governed by Dutch law. Kirkland worked closely with NautaDutilh in the Netherlands and BAHN in Norway as legal advisors, and PJT as financial advisor.

Background and preparatory steps for enforcement

Following certain events of default, over two-thirds of bondholders (by value) resolved, by written resolution on 11 June 2019, to accelerate the Bonds. The bondholders simultaneously instructed the bond trustee to apply to the Dutch court to approve an enforcement over the share pledge over Vieo’s shares.

In preparation for the hearing on 16 July 2019, Dutch counsel presented the court with an independent third-party valuation and the results of a market sounding exercise. This evidence demonstrated that the value of the equity was significantly less than the amount outstanding under the Bonds.

Contested enforcement court hearing

The hearing in the Dutch court was ground-breaking and, unusually for a Dutch share pledge enforcement, was contested. The bondholders asked the Dutch court to approve a 'credit bid', in which bondholders agreed to set off €200 million of the outstanding amounts under the Bonds in consideration for the transfer of the shares to the Newco. Post-transfer, approximately €160 million of Bonds remain outstanding (representing €150 million of principal plus other accrued amounts).

Vieo's former shareholder opposed the enforcement. In particular:

- **Abuse of power** – The former shareholder argued that the trustee was abusing its power in seeking to enforce the share pledge. However, the Dutch court concluded that the trustee exercised its rights correctly.
- **Valuation and alternative offers** – The former shareholder presented an alternative valuation that suggested that the value of the equity was in excess of outstanding amounts under the Bonds, arguing that this meant that surplus value could be realised. However, the former shareholder failed to present evidence of alternative offers for Vieo's shares. Whilst the former shareholder notified the Dutch court that some preliminary expressions of interests had been received with respect to the sale of certain parts of the business, the Dutch court held that this was not relevant, as the rights and application to enforce related to Vieo's shares only. The Dutch court concluded that there were no alternative offers or transactions presented that could reasonably be expected to result in higher proceeds than the bondholders' credit bid.

Accordingly, the Dutch court approved the enforcement on 30 July 2019. The shares were transferred the following day to the Newco, a Dutch Stichting.

Kirkland team

The coercive nature of the enforcement required unique solutions to structuring, financing, governance, antitrust and tax issues, which involved teams across multiple practice areas.

The Kirkland team was led by: Kon Asimacopoulos, Matt Czyzyk, Ian Clarke, Gabe Harley and Peter Madden (restructuring); Aprajita Dhundia and James Hunn (corporate); Matthew Merkle, Michael Taufner, Ben Myers and Charles Osborne (debt finance);

Thomas Sebastian Wilson and James Parkinson (antitrust & competition); and David Irvine and Anthony Antioch (tax).

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Practices

- [Restructuring](#)

Suggested Reading

- [27 September 2019 Speaking Engagement Tenth Annual American College of Bankruptcy Seventh Circuit Education Committee Seminar](#)
- [09 August 2019 Award IFLR Asia Best Lawyers 2020](#)
- [07 August 2019 In the News Barneys Moves Forward With New DIP](#)

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