

EMEA DC Statement 21 January 2019

Issue numbers 2019011001 and 2019010802

The DC met today to continue its discussions regarding whether there is any Successor in respect of Ziggo Bond Finance B.V. (the **Reference Entity**) as a result of certain transfers of its obligations to Ziggo Bond Company B.V. on 8 March 2018 and its merger with VodafoneZiggo Group B.V. on 30 December 2018.

Capitalised terms used but not defined in this statement have the meaning given to them in the 2018 ISDA Credit Derivatives Determinations Committees Rules (September 28, 2018 Version) (including in the Updated 2003 Definitions and the 2014 Definitions, as defined therein).¹

Decision

The EMEA DC decided that: (i) for the purposes of the 2014 Definitions, Ziggo Bond Company B.V. became the Successor to Ziggo Bond Finance B.V. on 8 March 2018; and (ii) for the purposes of the Updated 2003 Definitions, there is no Successor to Ziggo Bond Finance B.V..

Background

- (a) The Reference Entity formed part of an SPV financing group with three subsidiaries (Ziggo Secured Finance B.V., Ziggo Secured Finance II B.V. and Ziggo Secured Finance Partnership). The SPV financing group was established in order to issue notes and incur other indebtedness, and to use the proceeds thereof to fund loans within the VodafoneZiggo group of companies to finance their operations.
- (b) The Reference Entity issued:
- (i) USD 400,000,000 5.875% Senior Notes due 2025 in January 2015;
 - (ii) EUR 400,000,000 4.625% Senior Notes due 2025 in January 2015; and
 - (iii) USD 625,000,000 6.000% Senior Notes due 2027 in September 2016,
- (together, the **Senior Notes**).
- (c) Ziggo Secured Finance B.V. issued:
- (i) EUR 800,000,000 3.75% 2025 Senior Secured Notes in February 2015;
 - (ii) USD 2,000,000,000 5.500% Senior Secured Notes due 2027 in September 2016; and
 - (iii) EUR 775,000,000 4.250% Senior Secured Notes due 2027 in September 2016,
- (together, the **Senior Secured Notes**). According to the Offering Memorandum in respect of the 2016 issuances (the **Offering Memorandum**)², the Senior Secured Notes were secured by, amongst other things, a share pledge in respect of the Reference Entity's 100% shareholding in Ziggo Secured Finance B.V. (the **Share Pledge**).³ The Senior Secured Notes were guaranteed by Ziggo Secured Finance II B.V. and Ziggo Secured Finance Partnership, but not by the Reference Entity.⁴

¹ Available at https://www.cdsdeterminationscommittees.org/wp-content/files_mf/1544459244ISDA_DC_RulesSeptember282018.pdf

² Available at https://www.ise.ie/debt_documents/ListingsParticulars_efe80c8e-ab72-45d4-bc5f-fe4d6d6719cf.PDF

³ Offering Memorandum, p.199

⁴ Offering Memorandum, p.198

- (d) Ziggo Secured Finance B.V. and Ziggo Secured Finance Partnership were also borrowers under a credit agreement. According to the Annual Report of the Reference Entity for the year ended 31 December 2017 (the **Annual Report**), their liabilities under this agreement as at 31 December 2017 were the Facility E loan of USD 2,525,000,000 and the Facility F loan of EUR 2,250,000,000 (the **Credit Facilities**).
- (e) VodafoneZiggo confirmed to the DC that the Reference Entity never had any obligations under the Senior Secured Notes or the Credit Facilities. VodafoneZiggo confirmed that the Credit Facilities were also secured by the Share Pledge but that the Share Pledge was without guarantee.
- (f) On 8 March 2018:
- (i) Ziggo Bond Company B.V. assumed all obligations of the Reference Entity under the Senior Notes in accordance with the relevant indentures;⁵ and
- (ii) Ziggo B.V. assumed all obligations of Ziggo Secured Finance B.V. under the Senior Secured Notes in accordance with the relevant indentures.⁶
- (g) This is confirmed by the notes of subsequent events contained in the Annual Report. VodafoneZiggo also confirmed to the DC that the Credit Facilities were transferred to Ziggo B.V. at the same time and the Share Pledge was thereby released. The Annual Report notes further that the bank and bond debt was brought directly into the VodafoneZiggo group as part of the termination of the VodafoneZiggo SPV structure.
- (h) According to the Offering Memorandum, the note collateral in respect of the Senior Secured Notes (which included the Share Pledge of the Reference Entity) was automatically released on the consummation of the “Ziggo Group Assumption”,⁷ which was a procedure whereby a replacement issuer could assume the relevant note obligations in accordance with the relevant indenture as part of “Ziggo Group Combination”, a planned re-organisation of the VodafoneZiggo group.⁸ The relevant stock exchange announcements confirm that the assumptions of the Senior Notes and the Senior Secured Notes on 8 March 2018 referred to above were indeed pursuant to the “Ziggo Group Combination”. VodafoneZiggo also confirmed to the DC that the Share Pledge was thereby released.
- (i) On 28 December 2018, a deed of merger was executed pursuant to which the Reference Entity acquired Ziggo Secured Finance B.V.. This is evidenced by a filing by the Reference Entity at the Dutch Chamber of Commerce (*Kamer van Koophandel*).
- (j) On 30 December 2018, the Reference Entity was acquired by VodafoneZiggo Group B.V. pursuant to a deed of merger executed on 29 December 2018, and thereby ceased to exist. This is evidenced by the same filing referred to above.

The Successor determination – 2014 Definitions

Section 2.2(c) of the 2014 Definitions provides as follows:

An entity may only be a Successor if:

⁵ See https://www.rns-pdf.londonstockexchange.com/rns/2310H_-2018-3-9.pdf

⁶ See https://www.rns-pdf.londonstockexchange.com/rns/2370H_-2018-3-9.pdf

⁷ Offering Memorandum, p.215

⁸ Offering Memorandum, p.251

- (i) *either (A) the related Succession Date occurs on or after the Successor Backstop Date, or (B) such entity is a Universal Successor in respect of which the Succession Date occurred on or after January 1, 2014;*
- (ii) *the Reference Entity had at least one Relevant Obligation outstanding immediately prior to the Succession Date and such entity succeeds to all or part of at least one Relevant Obligation of the Reference Entity; ...*

It was confirmed to the DC by VodafoneZiggo that the Reference Entity did not incur or have outstanding any debt obligations between the March 2018 transfer and its ceasing to exist on 30 December 2018. In particular, as at the date the Reference Entity acquired Ziggo Secured Finance B.V., VodafoneZiggo confirmed that Ziggo Secured Finance B.V. had already divested itself of all of its debt obligations. There was therefore no possibility of a Succession Date at the time of the Reference Entity's merger with VodafoneZiggo Group B.V. in December 2018.

In relation to the March 2018 transfer of the Reference Entity's debt obligations, it was clear that this had not occurred on or after the Successor Backstop Date, being ninety calendar days prior to the Successor Resolution Request Date (which was 9 January 2019). Accordingly, there would only be a Successor to the Reference Entity if Ziggo Bond Company B.V., the entity that assumed the Senior Notes in March 2018, constituted a Universal Successor.

Universal Successor determination

The concept of universal succession is a recognised one under English law, whereby a succeeding entity assumes all obligations of the original entity and the original entity thereby ceases to exist. However, while this concept was the genesis of the provision included in the 2014 Definitions, the concept was not simply imported, and the DC was of the view that Universal Successor should be interpreted in accordance with the wording of the 2014 Definitions.

Section 2.2(a) of the 2014 Definitions provides as follows:

"Successor" means, subject to Section 2.2(c), the entity or entities, if any, determined as follows: ...

- (vii) *in respect of a Reference Entity which is not a Sovereign, if one entity assumes all of the obligations (including at least one Relevant Obligation) of the Reference Entity, and at the time of the determination either (A) the Reference Entity has ceased to exist, or (B) the Reference Entity is in the process of being dissolved (howsoever described) and the Reference Entity has not issued or incurred any Borrowed Money obligation at any time since the legally effective date of the assumption, such entity (the "Universal Successor") will be the sole Successor for the entire Credit Derivative Transaction.*

A Universal Successor determination therefore requires that:

- (a) one entity has assumed all obligations of the Reference Entity (including at least one Relevant Obligation);
- (b) the Reference Entity has ceased to exist or is in the process of being dissolved; and
- (c) the Reference Entity has not issued or incurred any Borrowed Money obligation at any time since the legally effective date of the assumption.

It was clear that, immediately prior to the March 2018 transfer, the Reference Entity had at least one Relevant Obligation in the form of the Senior Notes. And as stated above, VodafoneZiggo confirmed to the

DC that the Reference Entity had not issued or incurred any Borrowed Money obligation between the March 2018 transfer and its ceasing to exist on 30 December 2018.

It was also clear that, at the time of the DC's determination, the Reference Entity no longer existed. The DC noted that (i) there was a significant length of time between the March 2018 transfer and the Reference Entity's ceasing to exist and (ii) the entity that assumed the obligations of the Reference Entity in March 2018 was not the same entity into which it was absorbed in December 2018. However, the DC noted from the Annual Report that it was contemplated at the time of the March 2018 transfer that the Reference Entity and its group would be "terminated" during the course of 2018, and that it is not a requirement of the drafting of the 2014 Definitions that the universal successor is the absorbing entity.

The key remaining question was therefore whether one entity had in fact assumed all obligations of the Reference Entity. In the DC's view, "all obligations" was not to be interpreted as "all or substantially all obligations", and that the drafting objective of referring to "all obligations" was to avoid uncertainty in determining what amount would constitute "substantially all".

Nevertheless, it was not clear that any obligations were left with the Reference Entity following its transfer of the Senior Notes to Ziggo Bond Company B.V. and, to the extent there were any liabilities left at this point in time, these would have related to any outstanding tax and expenses payables and would have been immaterial (the notes to the Annual Report showed that the amount of the Reference Entity's liabilities other than the Senior Notes as at 31 December 2017 were EUR 283,000, equal to approximately 0.022% of its liabilities in relation to the Senior Notes at such time). VodafoneZiggo confirmed that the only liabilities of the Reference Entity following its transfer of the Senior Notes would have been immaterial tax payables.

Accordingly, the DC determined that, although the requirement was for an assumption of *all* obligations, if the remaining obligations were immaterial or negligible then they should be properly disregarded; the outcome of the Successor determination should not be different merely because of immaterial or negligible obligations. The DC noted that this interpretation was probably different to the English legal meaning of universal succession⁹ but, as stated above, the DC determined that Universal Successor should be interpreted in accordance with the drafting of the 2014 Definitions.

The DC therefore determined that, for the purposes of the 2014 Definitions, Ziggo Bond Company B.V. became the Successor to Ziggo Bond Finance B.V. on 8 March 2018.

The Successor determination – Updated 2003 Definitions

In contrast to the 2014 Definitions, the Updated 2003 Definitions do not contain the concept of a Universal Successor, and require in all cases the legally effective date of the Succession Event to occur on or after the Succession Event Backstop Date (again, ninety calendar days prior to the Successor Resolution Request Date). As described above, the Reference Entity last held its Relevant Obligations in March 2018, and it did not incur or have outstanding any Relevant Obligations between then and its ceasing to exist.

The DC therefore determined that, for the purposes of the Updated 2003 Definitions, there was no Successor to the Reference Entity.

⁹In the same way as the 2014 Definitions expressly contemplate that the Reference Entity may continue to exist for a period of time after the transfer of its obligations.