Neutral Citation Number: [2026] EWHC 1467 (Ch

Case No: CR-2026-001709

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

The Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date: 19 May 2026

Before:
MR JUSTICE HILDYARD

- -

IN THE MATTER OF DEUTSCHE GLASFASER GROUP GMBH

- and -

IN THE MATTER OF THE COMPANIES ACT 2006

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- -

MR TOM SMITH KC, MR HENRY PHILLIPS and MR ANGUS GROOM (instructed by Freshfields LLP) on behalf of the **Company**
MR ADAM AL-ATTAR KC and MR MATTHEW ABRAHAM (instructed by Linklaters LLP) for the **Scheme Creditors**

- -

Approved Judgment

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MR JUSTICE HILDYARD:

1. Deutsche Glasfaser Group GmbH ("the Company") seeks an Order under section 896 of the Companies Act 2006 convening a meeting (the "Scheme Meeting") of a single class of its creditors for the purpose of considering and, if thought fit, approving a scheme of arrangement ("the Scheme") under Part 26 of the Companies Act 2006 which it has proposed with its scheme creditors. The application has been presented by Mr Tom Smith KC, leading Mr Henry Phillips and Mr Angus Groom.

2. I should say immediately that all the scheme creditors are represented by a single law firm, Linklaters LLP, instructing Mr Adam Al-Attar KC and Mr Matthew Abraham, who have appeared before me. It is fair to note that whilst they represent all the scheme creditors, nevertheless not quite all of them have committed to support what is proposed, but the figures in support are very healthy indeed. Presently some 98 per cent by number and 97.6 per cent by value support the Scheme and these percentages may well rise. This obviously affects the various matters which I have to determine, at least as a practical matter.

3. The Company and its parent company, which is called Deutsche Glasfaser Management GmbH ("DGM"), are part of a group of companies (the "Group"). The Group is the second largest independent fibre optic provider in Germany. It has approximately 760,000 active private customers and a further 60,000 wholesale customers and 40,000 business customers. It has around 2.7 million "homes passed", corresponding to around 11 per cent of all rural and suburban households in Germany, meaning that there are approximately 2 million further customers who could eventually be subscribed and connected to the Group's network services.

4. The two principal operating companies in the Group are direct subsidiaries of the Company, namely Deutsche Glasfaser Holding GmbH ("DGH", the company through which the Group operates its fibre-to-the-home business) and Inexio Beteiligungs GmbH ("Inexio", the company through which the Group operates its legacy fibre-to-the-cabinet business).

5. The parent company of the Group, DGM, is itself owned by Speedbreak HoldCo S.a.r.l and its ultimate majority beneficial owners are funds and entities managed and/or advised by the Swedish investment company EQT and the Canadian pension fund OMERS. A useful Group structure chart is appended to this judgment.

6. The Company is the principal borrowing company in the Group. Its borrowing is effectively comprised under (a) its Senior Facilities consisting of what it calls the SFA facilities with borrowing totalling approximately €6.65 billion, made available by SFA lenders under a Senior Facility Agreement ("SFA"); and (b) the EIB facility with borrowing of approximately €285 million representing borrowing from the European Investment Bank ("EIB") under the EIB facility agreement. Those two facilities are together referred to as "the Senior Facilities".

7. All the Senior Facilities are governed by English law and they rank *pari passu* under an English law governed inter-creditor agreement ("the Inter-Creditor Agreement" or the "ICA").

8. The Group's operational performance is strong with revenue and adjusted EBITDA growing at double digit rates annually to approximately €524 million and €272 million respectively in 2025. However, the business of installing and servicing fibre optics and the like is very expensive, with heavy initial capital expenditure required for network expansion. That large scale network expansion is not expected to complete until 2028 with overall capital expenditure of some €1.2 billion in 2024 and some €1.1 billion in 2025, incurred already.

9. The Group has also suffered from rising civil engineering constructing costs which occurred in Germany as well as in this country.

10. The result of these difficulties is, in effect, a cash crunch and the Group does not expect to generate positive free cash flow until the end of the network expansion programme in 2028.

11. The Company (the borrowing company) will be required, on 30 June 2026, to make interest payments of approximately €165 million under its Senior Facilities which, as a Group, it will be unable to meet. It is presently expected there will be, as at that date, a liquidity shortfall of approximately €153 million.

12. In anticipation of this crunch, between 2024 and 2025 the Group commissioned Goldman Sachs to run an equity raise proposition to seek to bridge this funding gap. However, by October 2025, it appeared clear that that was not a route which would yield a result. The management concluded that a successful completion of the equity raise process was no longer likely.

13. In those circumstances the directors had to face that, in the absence of some form of recapitalisation, they would need to file for German insolvency proceedings. That alternative is in effect the comparator by reference to which relevant aspects, including the issue of class composition, must be assessed.

14. It is in these circumstances that the Company has proposed a comprehensive recapitalisation with its creditors and shareholders ("the Recapitalisation") which is to be affected by what is proposed under the Scheme. As I have already indicated and made implicit, the Recapitalisation has been subject to extensive negotiations between the Company and all of its scheme creditors, acting through Linklaters LLP, since October 2025.

15. A lock-up agreement with the sponsor parties and with the then-consenting creditors was made on 28 April 2026 to which creditors continue to subscribe.

16. In very broad outline, the Recapitalisation has three basic features. First, what is called a "bifurcation" of the Senior Facilities into reinstated OpCo debt and HoldCo debt; secondly, provision of €400 million of new money under a new Super Senior Facility (with the introduction of what is referred to as "a Super Senior basket" of some €350 million); and, thirdly, an equity contribution of €845 million from the existing sponsors which will go into a new intermediate holding company and then down into the Company. The latter, the equity contribution, does not take effect under the Scheme, but is nevertheless conditional upon it. The first two features are implemented under the Scheme under the now conventional mechanic of a power of attorney to effect the relevant documents.

17. Dealing with each of those in turn, the bifurcation of the Senior Facilities, amounting to just short of €7 billion, includes the following provisions:

    (1) €5.4 billion will be reinstated as structurally senior OpCo debt with the remainder of approximately €1.7 billion reconstituted as structurally subordinate HoldCo debt, with relevant borrower entities.

    (2) The OpCo debt will have a maturity of 31 December 2035 and bear interest at EURIBOR plus a margin. The HoldCo debt will have a maturity of 31 December 2036 and accrue PIK interest at 2 per cent per annum.

    (3) Undrawn commitments under the old facilities will be cancelled.

18. The allocation of OpCo debt and HoldCo debt among the scheme creditors will be effected on a *pari passu* basis subject to a preferential allocation mechanism linked to participation in the new Super Senior Facility, as I shall come on later to describe.

19. The precise mechanics for effecting this bifurcation will depend on whether what is referred to as "a binding tax ruling" is obtained from the German tax authorities by the long-stop date prescribed. The binding tax ruling, in short, will determine whether there should be a hive up or a hive down, and it does not affect the actual content of the Scheme; it is simply the process for implementing the same Scheme. It cannot be known quite when that binding tax ruling, if any, will be available. This has had a knock-on effect in terms of the circulation of documentation, but otherwise, as I say, it does not affect the content of the Scheme, nor does it affect the matters which are instantly before me, as I shall come on to determine.

20. Secondly, the new Super Senior Facility, which is essential and a cornerstone of the Recapitalisation will rank senior in respect of payment and proceeds of security realisation to the OpCo debt. The facility has a maturity date of 31 December 2035 with interest at EURIBOR plus a margin.

21. All scheme creditors have had the opportunity to participate in the new Super Senior Facility and indeed may elect to do so until one business day after the Scheme Meeting.

22. The benefit to each scheme creditor who participates in the new Super Senior Facility is that they will have €2 of their existing debt reinstated as OpCo debt (before the proportionate allocation between OpCo Debt and HoldCo debt) for each €1 of their commitments under the new Super Senior Facility.

23. In order to ensure that the new Super Senior Facility is fully subscribed, a commercial backstopping arrangement has been put in place. All the scheme creditors have been entitled to backstop the new Super Senior Facility by acceding to a relevant agreement before 5 p.m. on 19 May 2026.

24. Parties to the backstop agreement are entitled to receive a backstop fee equal to 3% of the backstop commitments eventually allocated to them and payable in cash. They will also be entitled to have an additional €1 of their existing debt and interest reinstated as OpCo debt for each €1 of their commitments under the new Super Senior Facility.

25. The third limb of the Recapitalisation is that certain affiliates of the shareholders (the sponsors) have entered into a subscription agreement pursuant to which they have committed to provide an equity contribution of €845 million in the form of new Class A preference shares in a new intermediate holding company. As stated, this is contingent upon the sanctioning of the scheme but is not implemented by it.

26. The equity contribution is intended to support the deleveraging of the Group and provide additional liquidity to fund Capex commitments. The equity contribution will, through these preference shares, rank *pari passu* with the HoldCo debt in economic terms.

27. I should note also that under the subscription agreement, the sponsors have also agreed to make interim funding (under an "Interim Funding Transaction") in case there is any liquidity problem pending a final decision between the various mechanics which are proposed according to the availability and decision in the binding tax ruling.

28. I should note also that there are hedging agreements in place. The hedging counterparties to those agreements are not scheme creditors. However, they have contractually committed to provide the consent necessary to implement the amendments to the Inter-Creditor Agreement which are necessary for the purpose of implementing the Recapitalisation.

29. Certain liabilities, as is also quite usual, are not varied by the Scheme or Recapitalisation. These consist of the intercompany loans, which are entirely subordinated to the liabilities set out; and, secondly, the Group's trade creditors, whose debts are not compromised under the Scheme since their continuing uninterrupted support is critical for the continuity of the Group's business.

30. Before dealing with the actual matters which require a decision, the last thing I should mention is, of course, an integral and vital part of the architecture of the scheme jurisdiction, is what would be the alternative if the Scheme were to fail, or if it had not been proposed. In that regard, a "comparator report" has been prepared by PWC. The long and the short of it is that the comparator is an insolvency process which would yield less by way of return than is likely to be available if the Scheme successfully proceeds. In the comparator, the accelerated sale of the Group's businesses on a distressed basis would be likely to realise some €3 billion and €4 billion, comparing disadvantageously with the €8-10 billion which, it is considered, would be the result of the Scheme if successful.

31. The Recapitalisation surplus is accordingly €840 million at least and it is by reference to that parameter that the issues which are relevant now fall also to be considered.

32. As to those issues, the function of the court is prescribed by the Companies Act 2006, and further adumbrated under the new Practice Statement dated 18 September 2025, which sets out the procedure to be followed. There are the following matters on the agenda for determination. The first is the adequacy of notice given to scheme creditors; the second is the court's jurisdiction to sanction a scheme with which it must be satisfied; the third is whether the Company's proposal for a single meeting of its scheme creditors is appropriate; and, fourthly, practical issues concerning documentation and proposals for the scheme meeting itself.

33. Dealing first with the adequacy of notice, the Practice Statement provides that sufficient notice of convening the meeting must be given to scheme creditors. This is, in other words, an open textured requirement which depends upon the circumstances. As Zacaroli J explained in *Re ED&F Man Treasury Management plc* [2020] EWHC 2290 (Ch) at [8]: "There is no hard and fast rule." Much will depend on the nature of the creditor constituency and on the level of their existing support. In this case where so many have already locked-up, the period which is in fact provided for, some 19 days, seemed to me to be sufficient. I have, however, taken into account the comments of Snowden J in *Re ColourOz Investment 2 LLC* [2020] EWHC 1864 (Ch) at [47] where he made the point, which is clear, that the Court needs to consider the position of those who are not locked up in terms of whether they have adequate notice. It seems to me that the circulation of the Practice Statement letter to scheme creditors on 29 April, 19 clear days prior to the convening hearing, is adequate in the circumstances of this case, bearing particularly in mind the fact that the Recapitalisation has been proposed and worked up between the creditors over an extended period of time. No issue has been raised by anyone as to the adequacy of the notice, and the fact is that the group faces an imminent liquidity shortfall on 30 June.

34. The next matter I must consider is jurisdiction. It is necessary for the court to be satisfied that it has the requisite jurisdiction, or appears to have, in order to allow the process to continue by the convening of a meeting. It is important to reinforce in that regard that this jurisdictional inquiry is limited to whether the company is a company as defined in Part 26 of the Companies Act, whether the scheme proposed is what is called "a compromise or arrangement" within the meaning of section 895(1), and whether there are jurisdictional impediments or roadblocks which it is apparent will prevent the court from exercising its discretion to sanction the scheme.

35. In this case, as will be clear, the Company proposing the Scheme is a German company. It is, nevertheless, a company liable to be wound up under the Insolvency Act 1986, an act that suffices in pointing to jurisdiction, as has been clear since the decision of Lawrence Collins J (as he then was) in *Re Drax Holdings Ltd* [2004] 1 WLR 1049. However, since the Company is not incorporated here but in a foreign jurisdiction, I must also be satisfied that there is a 'sufficient connection' with England and/or Wales for the purposes of the exercise of jurisdiction. I must also later be satisfied that the Scheme would be likely to be effective in the relevant jurisdictions abroad, since the court's settled practice is that it will not assume jurisdiction if to do so would be writ in water in the sense that it would be in vain.

36. Although these questions of sufficient connection and substantial effect ultimately will have to be revisited at the sanction hearing, they are nevertheless matters which the court should look at now from the point of view of identifying any obvious impediment. As it seems to me, in this case, there is no such impediment. The first point is that the SFA, EIB facility agreement and the Intercreditor Agreement are all governed by English law and they are subject to the exclusive jurisdiction of the English Court. At least so far as the English court is concerned, that provides a sufficient connection.

37. As regards what the German, or any other foreign court, would make of this, or in other words the question of international effectiveness, I have been provided with expert evidence on German law from Professor Dr Stephan Madaus, who has concluded that the Scheme is likely to be recognised and given effect to in Germany. As I say, this is not a matter on which a definitive decision today is required of me, but I have read that

report and it seems to me compelling evidence in support of the likely effectiveness of the Scheme.

38. Another aspect of the jurisdiction is that the Court must be satisfied that the Scheme is a "compromise or arrangement". This does not involve the court in any assessment of the adequacy of give and take, only the fact that there is such. The transaction must involve "some element of give and take, rather than merely surrender or forfeiture". The court's openness to finding a submission of give and take is exemplified by its acceptance in the context of transfer schemes that the mere obligation imposed upon a target company to pass or transfer of the shares involved will suffice. In the end, in this case, there is nothing resembling a forfeiture and there is plainly give and take; and I have no difficulty in concluding that that element of jurisdiction is satisfied also.

39. As to 'roadblocks' or impediments, I have seen no sign of either. In this regard, it is obviously a matter to be considered that what is proposed has two structures for and means of its achievement, according to what happens with respect to the tax position. It is true that there are alternative implementation structures, but the vital word, as it seems to me in that context is "implementation". The structure is not fundamentally affected and I see no problem in that regard.

40. In all the circumstances, I am satisfied, at least for present purposes, that the court has jurisdiction to convene a meeting or meetings as is appropriate.

41. That leads me to the matters for which the convening hearing is derived and named, which is the issue of class composition. The basic rule is that the 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. That test was enunciated many years ago in 1892 in *Sovereign Life Assurance v Dodd* [1982] 2 QB 573 in the Court of Appeal. The test has stood the test of time, with occasionally a reversion to a less open-textured test (as in the *Re Hellenic & General Trust Ltd* [1976] 1 WLR 123 case, where the judge, Templeman J (as he then was) appeared to lay down a rather strict jurisdictional straight jacket which the court has gradually stepped away from).

42. Nowadays, these facets are usually relegated to questions of discretion. Nevertheless, it is important to be reasonably clear that the class constitution proposed is sufficient to enable the test which I have described to be met. Again, the court is realistic about this and does not regard small differences either in the rights as they exist or in the rights as they are to be to require separate class meetings without good cause.

43. I can shorten this very long judgment to this extent by saying that the single class meeting which is proposed seems to me prima facie to be entirely correct, subject only to satisfying myself that there are no fracturing elements by reference to particular considerations which I have already described.

44. I confirm that both in terms of 'rights in' and in terms of 'rights out' (that is the rights presently enjoyed and the rights as they will be pursuant to the Scheme) any differences do not amount to material differences which would prevent all the creditors considering the matter together. I accept that some minor differences in terms of the "rights out" (relating to certain representations and undertaking that are required for EIB policy reasons) are not such as to amount to material differences which would prevent the creditors considering the matter together with a view to their common interest.

45. I should say, as I indicated right at the outset, it would be somewhat theoretical for me to suppose otherwise, given that some 98 per cent of the creditors have already concluded that their interests coincide.

46. There are three matters which I should consider in terms of potential fracturing issues: that is to say, which might so divide a class that a separate meeting should be required. The first is participation in the new Super Senior Facility, which is of course important from the point of view of the Scheme. I have already noted that all scheme creditors continue to have the ability to participate in that and will have that ability right up to and beyond the class meeting proposed. I do not see this as a fracturing element.

47. The second is the two consent fees payable under the lock-up agreement. First, an early consent fee which was only available until 29 April and, second, a late consent fee is available for those scheme creditors who choose to join it on the date or by the date of the Scheme Meeting. Each fee is worth 0.25 per cent of the principal amount of a scheme creditor's locked-up debt and is payable in cash.

48. I am satisfied that this is not a fracturing element either. These sorts of fees are very much more usual. Even in combination, the two fees amount to 0.5 per cent, which is relatively small and quite in line with what the courts have been prepared to accept in other schemes. In particular, in the context of the Recapitalisation it will increase recoveries from some 34.2 to 48.8 to 60.8 to 91.8 (in each case, expressing the excepted recoveries as cents recovered by euro of debt) a consent fee of 0.5 per cent is plainly immaterial in terms of whether it would affect persons voting at the Scheme Meeting.

49. The third matter I must consider is the backstop fees. Scheme creditors who elect to backstop the new Super Senior Facility are entitled to recover a fee equal to 3 per cent of the backstop commitments finally allocated to a given backstop provider. This means that up to €12 million will be split between the parties to the backstop agreement depending on the amount that they are each backstopping. Additionally, each backstop provider is entitled to have an additional €1 of its existing Senior Facilities debt reinstated as OpCo debt (before the proportionate allocation between OpCo debt and HoldCo debt) for each €1 of its new money commitments. Backstop fees are also fairly common. The approach of the Court has been to see whether there is some element of bounty, say some advantage to some but not others, or whether the amounts involved would have altered the way that they regard the scheme as a whole. In my judgment, having looked at what is proposed, I am entirely satisfied that the backstop provisions which were available to all, as I understand it, do not represent a fracturing, and I am particularly influenced in that regard by the fact that the backstop providers will see how those recoveries and differential returns will be very small proportionately to what advantages others received by comparison with the comparator.

50. In all the circumstances, I have seen nothing to destabilise my initial view that a single class meeting is appropriate and sufficient. Of course, ordinarily the Court does emphasise that this is not a binding view in terms of whether it binds the judge who may be hearing the ultimate sanction application, if the creditors agree the scheme, but in this case it is vanishingly unlikely in light of the proportions already supporting the proposal.

51. That brings me finally to the practical and procedural matters. Normally these are both adequate and agreed, except one in particular. There has been continuing discussion

between the scheme creditors on the one hand and the Company as to the details of the documentation which sets out provisions regulating their future as the Scheme proposes. There has been an exchange of correspondence in particular on 16 and 18 May where certain differences have been highlighted which are perhaps more extensive than the Company might initially have supposed. Nevertheless, all parties appear to be satisfied that these differences are not such as to present a division that cannot be overcome, and in fact all parties are hopeful that during the course of this week there should be agreement on all the points which have been adumbrated by reference to the term sheet in a letter from Freshfields on 16 May.

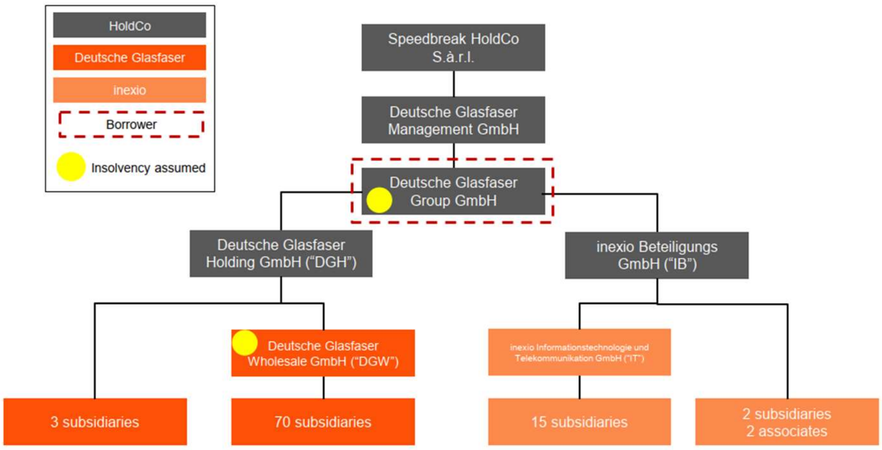
52. Mr Al-Attar has made the point that whilst he represents, in terms of mandate, all the scheme creditors, not all of the scheme creditors have themselves locked-up in support of the Scheme and ultimately there are individuals entitled to go their own way, should they so choose. His preference and what he commends, is that there should be a little leeway in terms of the time available to iron out the remaining differences at the expense of the bank holiday weekend, if it comes to that, he proposes the timetable at close of business on Monday next, 25 May.

53. It is a balance, as he acknowledged, and as Mr Smith emphasised, between on the one hand, allowing time for these matters to be consensually dealt with, and on the other hand, giving adequate time for scheme creditors to have the relevant documentation sent to them in good time before the meeting, which is proposed for 12 June. This is a matter of squaring the circle and is ultimately a matter of judgment, but I think on balance I favour what Mr Al-Attar proposes. It seems to me that the likelihood is that there will be agreement given time, and if there is agreement really the question of notice, although it is important in terms of making provision for it, will be more of a listing matter than anything else.

54. In those circumstances, I shall approve the draft Order subject to some alteration to the terms of the order to make provision in respect of creditors who miss the deadline for attendance, and perhaps also, as I shall discuss with Mr Smith, to enable clearly the parties to come back to court in the unlikely circumstances of a failure to agree within the time needed to enable the court nevertheless, as a matter of urgency, to facilitate the objective, which is that this company should plainly be on the road well in time before 30 June.

Annex 1

Simplified group structure
(pre-Recapitalisation)



Source: 20250915_Structure Chart - Deutsche Glasfaser Group of Companies – Signed