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Case No: CR-2026-001709

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

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

Date: 24/06/2026

Before :

MR JUSTICE ADAM JOHNSON

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IN THE MATTER OF DEUTSCHE GLASFASER GROUP GMBH

AND IN THE MATTER OF THE COMPANIES ACT 2006

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Tom Smith KC, Henry Phillips and Angus Groom (instructed by **Freshfields LLP**) for the **Scheme Company**
Adam Al-Attar KC and Matthew Abraham (instructed by **Linklaters LLP**) for the **Scheme Creditors**

Hearing date: 19 June 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on Wednesday 24 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Adam Johnson:

Introduction

1. This is an application to sanction a creditor scheme of arrangement ("*the Scheme*"). The applicant company ("*the Company*") is Deutsche Glasfaser Group GmbH. It is a German company and part of a wider Group doing business in Germany, but it has borrowing under two sets of loan facilities referred to as "*the Senior Facilities*" which are governed by English law. Adopting the definitions used in the Scheme documents, these are the "*SFA Facilities*" and the "*EIB Facility*", the former being an arrangement with commercial lenders and the latter an arrangement with the European Investment Bank. The Senior Facilities rank *pari passu* under an English law intercreditor agreement. The creditors under the Senior Facilities are the "*Scheme Creditors*".

Background

2. The Company's business is the provision of fibre optic infrastructure. This is capital intensive. The Company has been involved in a heavy build-out phase which has involved considerable expenditure. It is not currently generating positive free cash flow and will not do so for some time. The immediate pressure arises because on 30 June 2026 it will be required to make interest payments of EUR 162m under the Senior Facilities, which at present it cannot meet.

3. In light of that, the Company has proposed a comprehensive "*Recapitalisation*" with its creditors and shareholders. The present Scheme forms part of that wider Recapitalisation. There was early engagement with the Scheme Creditors, who are strongly supportive. By the time of the convening hearing before Hildyard J on 19 May 2026 some 95% by number and 97% by value had acceded to a "*Lock-Up Agreement*", entitling them to payment of consent fees.

The Scheme and the Recapitalisation

4. As to what is proposed, the main features of the Scheme involve a bifurcation of the Company's existing debt into structurally senior and structurally subordinated debt, together with provision of a new EUR 400m super senior facility ("*the New Super Senior Facility*"). There will also be amendments to the current hedging arrangements. As to the wider picture, outside the Scheme but conditional on it, there is proposed to be a new equity contribution of EUR 845m made by affiliates of existing shareholders in the Group, referred to as "*the Sponsors*".

The Implementation Structures

5. The precise mechanism by which the bifurcation of the Company's debt will take place is yet to be resolved. Two options are in play. Under both, there will be a split between structurally senior "*OpCo Debt*", and structurally subordinate "*HoldCo Debt*". Under the first option, the Opco Debt will remain with the Company, with the HoldCo debt being hived-up to a new, intermediate parent company. Under the second option, the HoldCo Debt will remain with the Company, but the OpCo debt will be hived-down to a new subsidiary.

6. Final election between the two options is dependent on whether a "*Binding Tax Ruling*" is received from the German tax authorities in relation to the tax consequences of the Recapitalisation. There is a long-stop date for provision of the Binding Tax Ruling of 24 August 2026, subject to extension by the Sponsors. If it is provided before 24 August, then the Recapitalisation will be by way of the first option. If it is not, then the Recapitalisation will be by way of the second option.

New Super Senior Facility

7. As to the New Super Senior Facility, participation has been open to all Scheme Creditors. Additionally, in order to ensure it was fully subscribed, a commercial backstop agreement was put in place ("*the Backstop Agreement*"), again open to all Scheme Creditors, and entitling participants to payment of a backstop fee.

The new equity and the Interim Funding Transaction

8. As to the proposed new equity to be provided by the Sponsors, this is intended to support the deleveraging of the Group and to provide additional liquidity.

9. I should mention one additional feature of the Sponsors' involvement. Given the uncertainty arising from the need for the Binding Tax Ruling, they have also agreed, if necessary, to make interim funding available under an "*Interim Funding Transaction*". The original logic behind this was that efforts would be made to obtain the Binding Tax Ruling, if possible, by 18 June 2026. That date was defined in the Lock-Up Agreement as the "*Initial Binding Tax Ruling Long-Stop Date*", subject to a power exercisable by the parties to the Lock-Up Agreement to nominate a different date. The idea was that if a Binding Tax Ruling was obtained by 18 June, then there would be no need for interim funding: it would be possible between then and the end of June to implement the Recapitalisation by way of the first of the Implementation structures, in time to meet the interest payment date. But if no Binding Tax Ruling were to be available by 18 June, then the Sponsors agreed to make available interim funding to keep the Company operational, if necessary, in the period up to and including the final long-stop date of 24 August. I will need to come back to this point below, in light of recent events.

The Comparator

10. In terms of what is likely to happen if the Scheme is not sanctioned, the Company has obtained an expert report from PwC analysing what is referred to as "*the Comparator*". This shows a much stronger outcome for creditors under the Scheme than in the Comparator. The Comparator scenario is likely to involve an accelerated sale of the Group's businesses on a distressed basis. Looking at the position of Scheme Creditors who elect not to participate in the New Super Senior Facility (since they are likely to receive the lowest recovery under the Recapitalisation), PwC estimate recoveries of between 34.2c/EURO and 48.8c/EURO. Under the Scheme, PwC estimates recoveries for such parties in an overall range between 60.8c/EURO and 91.8c/EURO.

Convening Order

11. Hildyard J made a convening order on 19 May 2026. He accepted that there should be a single class of Scheme Creditors. That is obviously correct, given that the Senior Facilities rank *pari passu* under the English law intercreditor agreement, and given that

all creditors have been given the same opportunity to earn consent fees by acceding to the Lock-Up Agreement, to participate in the New Super Senior Facility, and to earn additional fees by subscribing to the Backstop Agreement.

The Scheme Documents

12. The documents relevant to the Scheme were distributed to the Scheme Creditors in three tranches between 19 May 2026 and 8 June 2026, in accordance with the directions given by Hildyard J. In each case, however, the documents were then subject to further changes, which were notified to Scheme Creditors in further versions, the last of which was circulated on 11 June 2026, the day before the scheduled Scheme meeting on 12 June 2026. In light of that, and in accordance with the powers conferred on her by Hildyard J's order, the Chair adjourned the meeting until 15 June.

The Scheme Meeting

13. The turnout at the meeting was strong. Some 98 out of 100 Scheme Creditors were present and voting (including by proxy). All 98 present voted in favour of the Scheme, representing 100% by number and 100% by value of those present and voting. So the statutory majorities were comfortably passed. There has been no objection from the remaining two creditors.

Events post the Scheme Meeting

14. I must come back briefly to the Interim Funding transaction mentioned above. On 16 June 2026, the Company received a tax ruling from the German tax authorities, but at present there is some ambiguity as to whether it qualifies as a "*Binding Tax Ruling*" in the required sense or not. The debate is still ongoing. This has created a problem. If later analysis results in the conclusion that it *is* a Binding Tax Ruling, then it will have been one all along, and moreover will have been received before 18 June 2026, i.e., before the "*Initial Binding Tax Ruling Long-Stop Date*" as originally stated under the Lock-Up Agreement. In theory, that would relieve the Sponsors of any obligation to make available the interim funding, even though the ongoing uncertainty means it is desperately needed. The practical answer to this conundrum has been for the parties to the Lock-Up Agreement to agree, as permitted under that Agreement, to vary the "*Initial Binding Tax Ruling Long-Stop Date*" so that it is now stated as 15 rather than 18 June, i.e. the day before the tax ruling was actually received.

Should the Scheme be sanctioned?

15. The issue now is whether the Court should sanction the Scheme. I consider that it should. I set out my reasons below, following the factors identified in Re Noble Group Ltd [2019] B.C.C 349 at [17], and referenced by the Court of Appeal in Re AGPS BondCo PLC [2024] EWCA Civ. 24, [2024] Bus LR 745 at [116]-[117].

Provisions of the Statute and Formalities

16. To begin with, I am satisfied that the provisions of the statute have been complied with and the relevant formalities properly attended to. Three points may be mentioned.

17. First, in terms of international jurisdiction, I am satisfied that there is a sufficient connection with England & Wales to justify exercising the power conferred by s.899 CA 2006. The sufficient connection arises from the fact that the Senior Facilities are governed by English law: see Re Vietnam Shipbuilding Industry Group [2013] EWHC 2476 (Ch) at [9].

18. The second point is the fact that the timetable for circulation of documents in the order by Hildyard J was not strictly complied with, because updated versions had to be circulated. However, I am satisfied that none of the revisions were material, in the sense that they were likely to affect the decision of any creditor as to how to cast their vote – the amendments were points of drafting and mechanics only. In any event, the particular pressure point which arose from the circulation of documents on 11 June 2026 was alleviated by the entirely proper decision of the Chair to adjourn until 15 June 2026. The Scheme Creditors have in any event had the benefit of experienced legal advisers throughout.

19. The third point to mention is the fact that implementation of the Interim Funding mechanism under the Lock-Up Agreement has involved designation of a new "*Initial Binding Tax Ruling Long-Stop Date*", which occurred only after the date of the Scheme meeting, in light of receipt of the ruling from the German tax authorities on 16 June 2026.

20. As to this, however, I think Mr Smith KC was correct in his submission that this has not involved any amendment to the Scheme as such. The Lock-Up Agreement is not itself a "*Scheme Transaction Document*", although it is referred to in certain other documents which are. There has thus not been any amendment or change to any Scheme Transaction Document. All that has happened is that the mechanism under the Lock-Up Agreement, entitling the parties to that agreement to designate a different "*Initial Binding Tax Ruling Long-Stop Date*", has been activated in an entirely proper manner. That seems to me entirely unobjectionable, not only because it has been done for sound reasons consistent with the purpose of the Scheme, but also because it was implicit in the structure to begin with that it might occur, given the ambulatory nature of the definition. So neither does this point present any impediment to sanction.

Representation at the Scheme Meeting

21. The next main point to consider is whether there was fair representation at the Scheme meeting. I consider that there was. Given the very high turnout, there is no doubt that the overall class was fairly represented. There is no evidence of a majority coercing a minority in order to promote any interest adverse to the class. It is difficult to see how that could happen, given that the interests of the class members are effectively identical.

Fairness

22. I also need to consider whether the Scheme is a fair one which a creditor might reasonably approve. It seems to me it is. It is relevant that so many have approved it, and that none has objected. In any event the Scheme is obviously rational commercially, because it seeks to promote a much-improved economic outcome for all those affected by it.

Is there any "blot"?

23. The final matter for consideration is whether there is any blot affecting the Scheme. I think not. The one wrinkle is the fact that the mechanism by which the bifurcation of the Company's debt will take place is yet to be determined. I do not see that as a blot, however. There would be if there was real uncertainty about implementation, but it seems to me there is no real uncertainty in a case where two alternatives are proposed, the final election between the two being contingent on whether a specified event occurs or does not occur by a designated long-stop date. On this point, I respectfully agree with the analysis of Trower J, dealing with a very similar issue, in Re All Scheme [2022] BCC 1068, at [72]-[75]). I reach my conclusion despite the present ambiguity as to the precise status of the document received form the German tax authorities on 16 June 2026. It was implicit in the submissions of counsel both for the Company and the Scheme Creditors that one way or another, that ambiguity will be resolved before the August long-stop date.

24. I should also say that I am satisfied as to the international effectiveness of the Scheme. The idea that it will be effective in Germany is supported by the expert evidence of Prof Stephan Madaus, relied on by the Company. Quite aside from other matters, it is entirely conventional as a matter of the conflict of laws to think that a variation of contractual rights concluded under the governing law of a contract – here the law of England – will be respected by other systems of law.

Conclusion

25. In light of those observations, I will sanction the Scheme and propose to make the Order sought by the Company.