

# Nortel Networks UK Pension Plan

December 2013

Dear Member

## Nortel Pension Update Letter 2013

It is now almost five years since Nortel went into administration and we are disappointed to report that there is still no conclusion to the various global insolvency proceedings. That means that unfortunately we do not know what recoveries might be achieved for our members and cannot give a reliable estimate of when those proceedings will be completed. Our main focus is now the preparation for the US/Canada trial as described below.

For completeness and ease of reference, we have included below some of the information contained in previous update letters as well as describing activities and developments over the past 12 months.

While the insolvency proceedings continue, members' current and future pensions are and will be secured in accordance with the rules of the Pension Protection Fund (PPF) and members will continue to be entitled to applicable PPF level compensation as a minimum.

The principal objective of the Trustee is unchanged and that is to secure improved benefits compared to the minimum level guaranteed by the PPF. However, this is fundamentally dependent on how successful we are in recovering funds from the Nortel insolvency proceedings both in the UK and overseas. If we manage to recover at least an estimated £700 million then we will have the opportunity to try to 'buy' better-than-PPF benefits by purchasing annuities for both pensioner and deferred members from insurance companies. If we are able to purchase these better benefits then they will be secured for members. If this cannot be achieved, then the Plan will become the responsibility of the PPF and members will continue to receive applicable PPF level compensation.

The sale of Nortel assets is now complete and over \$7 billion is held securely pending agreement or court order on how it is to be divided between the various Nortel companies in insolvency proceedings – including the Plan's sponsoring employer, Nortel Networks UK Limited (NNUK).

### PPF Assessment and Plan Administration

Whilst we do not yet know if the Plan will eventually become the responsibility of the PPF, we are obliged to act as if this might happen. Our Plan Administrators, Towers Watson, have continued with a number of tasks over the last year, including:

- Worked in conjunction with HMRC to ensure all of the Plan's membership records reconcile with those held by HMRC. Good progress has been made with over 90% of the Plan's records now verified. This work needs to be undertaken irrespective of whether or not the Plan ultimately becomes the responsibility of the PPF since it will assist in the calculation of accurate Plan liabilities.
- Continued to work in conjunction with a specialist tracing bureau, to ensure up-to-date address details are held for all members in the Plan. This year the Plan also participated in the Audit Commission National Fraud Initiative to ensure that benefits from the Plan are only paid to the correct individuals.
- Members who used Equitable Life for their AVCs may be aware that regulatory administration issues led to the establishment of the Equitable Life Payment Scheme ("ELPS") which makes payments to policyholders who are judged to have suffered a loss. Although we are aware that some members have recently received compensation, we cannot assist members in this process and you will be contacted directly by ELPS in due course. However, further information and contact instructions are available on the ELPS website <http://equitablelifepaymentscheme.independent.gov.uk/index.htm> - the scheme name is 'Nortel Networks UK Pension Trust Limited'.

In a Ministerial statement on June 25 2013, the Minister for Pensions made a written statement concerning proposed changes to the operation of the Compensation Cap under the rules of the PPF. If these changes become law then the Compensation Cap will be increased for members having more than 20 years of service with Nortel. We will provide full details when the necessary legislation has been put in place.

During PPF Assessment, Towers Watson will continue to be responsible for administering the Plan on a day to day basis, settling benefits as they become payable and acting as the first point of contact for any questions you may have.

## **Investments**

Following a periodic investment strategy review we have transferred assets from Western Asset Management Company and UBS Global Asset Management to Legal and General Investment Management (LGIM). We now have just two investment managers, Blackrock and LGIM, which will help to reduce future investment fees. The Plan's Statement of Investment Principles has been updated accordingly and is available on our website.

## **Recovery of funds from insolvency proceedings**

In our last letter we advised members that we would be participating in a mediation session which was held in Toronto, Canada during January 2013 under the guidance of the Chief Justice of Ontario. All the key parties were represented including ourselves/PPF together with our financial and legal advisers. We regret to report that the mediation ended without any agreement being reached.

Following the failure of the mediation, the US and Canadian bankruptcy courts ordered all parties including ourselves/PPF to submit a list of current, outstanding issues. Most responses identified a need to deal with our own claims in the US and Canada (Pension Claims) and also a need to decide how Nortel assets should be divided between the insolvent Nortel companies in Europe, the US and Canada (Allocation).

The US and Canadian courts have now set down a detailed litigation timetable leading up to a trial which will take place through joint hearings between the two courts – now expected to commence on May 12 2014. That trial is likely to last several weeks. We expect the trial will begin with the Allocation issue and then deal with unresolved claims between the various parties – including the Pension Claims.

We appreciate that members may be concerned about the significant costs that we and all other parties will incur as a result of participating in this global litigation. Our objective at the earlier mediations was to achieve a negotiated settlement but, as things stand, there is no alternative to pursuing our claims through the courts if we wish to maximise our prospects of making recoveries and improving the benefits of all our members. The PPF are fully supportive of this approach, and our legal advisers in the UK, Canada and the US consider the pursuit of the claims to be in the best interests of Plan members. We can assure you that the litigation is being pursued as efficiently as possible and the progress of the case is kept under constant review.

More detailed information on the history of court activities/decisions is given in the Appendix to this letter but, in summary, since we last wrote to you:

- There has been no further activity in respect of Financial Support Directions (FSDs) against Nortel European companies.
- The Supreme Court has now ruled that FSD (or Contribution Notice) liabilities should be treated as provable debts in English administrations or liquidations, and hence should be treated in the same manner as other unsecured claims against companies which are in insolvency proceedings in England.
- Formal responses opposing the Pension Claims have been received from both the US and the Canadian Nortel companies and those claims will now be decided during the trial.
- All parties have submitted their position on Allocation, exchange of documents between the parties in the litigation is substantially complete, and the examination of witnesses/preparation of expert reports is underway.

**In summary**, much work needs to be done to prepare for the trial and we will do this in the most cost-effective manner possible. We will continue to update the Q&A and other announcements on our website as and when there are significant developments to report so please take a look from time to time. If any of you would like to see a copy of the Q&A and other announcements but do not have access to the internet then please write to Towers Watson at the above address and they will send a copy to you together with any future updates.

Yours sincerely,

David Davies  
Chairman, Trustee Board  
Nortel Networks UK Pension Plan

## Appendix to Member Letter November 2013

The Plan is a creditor of its former sponsor NNUK and a claim has been lodged with NNUK's administrators for the Plan deficit as at the date of insolvency. Note that information on court activities/decisions set out below does not impact the validity or conduct of this claim in any way.

### Summary of court activities and decisions

*for completeness and ease of reference, we have included much of the information provided in previous letters and announcements*

#### **UK Activities – Financial Support Directions (FSDs)**

- In January 2010 the Pensions Regulator (tPR) issued a Warning Notice against a number of Nortel companies in the US, Canada and Europe which, as the name suggests, warned them that tPR was considering exercising its powers under the Pensions Act 2004 to issue FSDs against them. In June 2010 the Determinations Panel (DP) of tPR determined that FSDs should be issued in respect of a number of Nortel companies (or "Targets") in the US, Canada and Europe. The administrators for the European Targets appealed this determination to the Upper Tribunal. That appeal remains outstanding but has not substantively progressed whilst the US and Canadian litigation is taking place. However, in April 2011 the DP issued FSDs against four North American Nortel companies. Please refer to US Activities and Canadian Activities below for further information.

#### **UK Activities – Ranking of FSDs under UK insolvency law**

- Following the DP determination above, lawyers acting on behalf of the administrators for the European Targets became concerned that UK insolvency law was unclear about how an FSD (or a Contribution Notice (CN), which tPR can issue if an FSD is not complied with) should be treated in terms of its "ranking" in the priority order of creditor claims. Following a hearing in May 2013, the Supreme Court has now finally ruled that FSD (or Contribution Notice) liabilities should be treated as provable debts in administrations or liquidations in England, and hence should be treated in the same manner as other unsecured claims.

#### **US Activities**

- The issuance of a Warning Notice against the US Nortel companies was held to breach US bankruptcy proceedings, and hence tPR's regulatory proceedings in the UK were treated as null and void by the US Bankruptcy Court. This ruling was upheld by the US District Court in March 2011 and subsequently by the US Court of Appeals for the Third Circuit in December 2011. We sought permission to further appeal this ruling but the US Supreme Court decided not to grant this request and hence all avenues of appeal on this matter have been exhausted. However, it should be understood that this matter related **only** to the US Court's decision that actions taken by tPR in England were contrary to what is known as the 'automatic stay' in US bankruptcy proceedings. Put simply, this means that the action tPR took to have FSDs issued occurred after the commencement of the US bankruptcy proceedings and they were not granted the exemption normally accorded to governmental units enforcing a public policy interest. This does not mean that the adjudication of Trustee's/PPF's claims against the relevant US Nortel entities is at an end. The Trustee/PPF remain free to pursue their claims against these entities in the US Bankruptcy Court and hence in July 2012 we were ordered by that Court to submit a more definite statement of our claims. This was duly submitted and formal responses have been received. These claims will now be dealt with during the joint US/Canada trial referred to below.

#### **Canadian Activities**

- The issue of a Warning Notice by tPR against the relevant Canadian Nortel companies was also held to have infringed the equivalent 'automatic stay' imposed in Canadian insolvency processes. tPR appealed this decision to the Canadian Appeal Court and the original judgment was upheld. tPR then sought leave to appeal to the Canadian Supreme Court and this was refused in January 2011. Whilst unwelcome, these decisions again do not prevent the Trustee and PPF from asserting their claims as part of the normal Canadian insolvency procedures (including guarantee claims which were in place prior to commencement of insolvency proceedings). In this respect we revised and updated our Canadian claims in November 2010 and again in 2013 as part of the current litigation process. Responses have been received. These claims will now be dealt with during the joint US/Canada trial referred to below.

### Joint Hearing between US and Canadian Bankruptcy Courts

Following the failure of the mediation session which was held in Toronto, Canada during January 2013, the US and Canadian bankruptcy courts ordered all parties to submit a list of current, outstanding issues. Accordingly, responses by the parties were made to both courts as appropriate and this included a joint Trustee/PPF response. Most responses identified a need to deal with our own claims in US and Canada and

also a need to decide how the monies held from the sale of Nortel assets (over \$7 billion) should be divided between Europe, US and Canada.

Members will appreciate that there are many outstanding claims against Nortel entities in both the US and Canada – these include our own claims in both jurisdictions, and also claims by the Joint Administrators (from Ernst & Young) acting on behalf of NNUK and other Nortel European companies. We refer to our own claims as ‘Pension Claims’ and to the division of Nortel assets between Europe, US and Canada as ‘Allocation’.

There has been considerable court activity since our last announcement and we can now advise members that the US and Canadian courts have set a timetable down to trial, which will take place through joint hearings between the two Courts. The trial is currently expected to commence on May 12 2014 and will last several weeks. During the trial, the US and Canadian Courts are expected to decide whether the Pension Claims should be admitted against the US companies and the Canadian companies respectively. The Courts are also expected to decide on the European companies' claims against the US and Canadian companies, and to reach a decision on Allocation.

Various activities have already taken place in accordance with the litigation timetable and these include:

- All parties have set out their respective positions on Allocation.
- Formal responses in opposition to the Pension Claims have been received in both the US and Canada.
- Exchange of documents relevant to the various claims and the Allocation dispute between all parties is substantially complete.
- The parties have identified various witnesses of fact (for example former employees of different Nortel companies) who may be able to give evidence which is relevant to the various claims and the Allocation dispute – depositions (formal questioning on oath) of those individuals has begun and is taking place from October to December 2013 .

Key future activities

- Preparation of expert reports on issues relevant to the matters in dispute – ongoing, with exchange of experts reports currently scheduled for December 2013.
- Once expert reports have been exchanged, depositions of the experts will take place (currently scheduled for February 2014).
- Pre-trial motions and conferences – February 2014 onwards.
- Trial – May 12 2014.

Various logistics relating to the trial remain to be confirmed but, as things stand, we understand that the trial will begin with the Allocation issue and then continue with Pension Claims and the claims of the Joint Administrators against the US and Canadian Nortel companies.