

From: Kevin Gilliland [GRO]
Sent: Sat 17/01/2015 2:24:00 PM (UTC)
To: Nick Beal [GRO]
Cc: Neil Hayward [GRO]; Mark R Davies [GRO];
Martin George [GRO]; Ian Kennedy [GRO];
Mike Granville [GRO]; Gavin [GRO];
Lambert [GRO]; Tanya Dunbar [GRO];
Jessica Madron [GRO]; Alasdair EC
Mcgregor [GRO]; Neil Ennis [GRO]
Subject: Re: NFSP update

Hi nick,

Thanks this is a good update - and not unexpected. It is important (if we've not already done so) to game how this plays out; the choices options and risks we face and our plan without their support.

Regards,

K

Kevin Gilliland
Network & Sales Director
Postline 5 [GRO]

GRO

On 17 Jan 2015, at 13:35, Nick Beal [GRO] wrote:

Following further discussions with NFSP this week relating to the Grant Agreement (GA)/MOU), I can advise that NFSP have chosen to cease discussions on the basis that we have reached a stalemate whereby we are not able to agree a mutually acceptable position on the termination aspects of the GA.

This is on the basis that the NFSP will not accept the principle of the inclusion of a Break Clause related to a termination payment and therefore see no value in continuing the discussions. They have therefore also refused to continue any discussions related to detail of the cliff and Network Extension.

This is not an unexpected outcome.

For info, we have had 2 meetings with them this week. Thursday's discussions affirmed our position on the Break Clause and they agreed to consider their position overnight. Friday's meeting essentially confirmed their position and was therefore cut short at their request as they were not prepared to discuss any further aspects in light of our position.

Next Steps

I would anticipate the possibility of George contacting individuals in POL and BIS in the next few days to re-iterate his position – that the Grant Agreement was a part of NT2 and promised, that POL are defaulting on this aspect of the agreement and that with no agreement they will withdraw their support for NT etc. This briefing note (or a verbal form in terms of BIS) is intended to support any responses to

this – primary response being “these discussions and issues are to be channelled through the existing business relationship point i.e. People & Engagement via Nick Beal/Neil Hayward).

I will be calling George on Monday to discuss his participation in the BIS Select Committee hearing related to Horizon mediation scheduled for Feb 3rd. NFSP have been called to the hearing and yesterday George agreed that a pre-meet would be welcome, bearing in mind his position that Horizon is fit for purpose and he will be supporting this line, assuming he is sufficiently confident from us that this is the position we will maintain also. There is obviously a possibility that he may use this as an opportunity to leverage the Grant Agreement deal by threatening not to support us. The risk of this is low, but not zero given the wider environment. However the timescale to the select committee is, in my view, helpful for us as for George to change his position while there is still the potential of the Grant Agreement would be a big risk to him.

During the course of this conversation on Monday, I would anticipate we discuss the wider environment. I recommend the position to him is that:

1. We want to see an agreement reached.
2. We understand that NFSP have a requirement to ensure their future is protected in the event of the agreement being terminated.
3. We are not entering the agreement with the intention of terminating but do need to balance our own risks and see the Break Clause as a means to do this.
4. The next meeting could include Neil’s participation if NFSP felt this would be productive.
5. We would like to discuss the detail of a Break Clause and include aspects to give them comfort – that could include assuring that this is not a cost cutting attempt by POL (i.e. we are committed to the £1.5m pa annual grant from when we reach agreement – the existing assumed cost to POL) and that detail of any break clause could include, for instance, a mediated review of the how the agreement has worked in the years up to the break clause (suggested around 2 to 3 years), albeit entering into his review would not assume a binding outcome would be achieved.

(Note that points 1 to 3 have already been made, points 4 and 5 have not yet been discussed).

In the event of this being insufficient for NFSP to engage in further talks, bearing in mind their aspiration (but not yet made public) to hold a special conference on March 19th with papers issued on Feb 5th, their options as I see it are as follows:

1. Put back the proposed date of their SC in order for talks etc. to continue
2. Go into the SC without an agreement with PO but seek a mandate from their SC as to getting an agreement with certain terms with CWU/NFRN/Do Nothing as an alternative if these terms are not met.
3. Go into the SC without an agreement with PO and present the CWU/NFRN/Do Nothing as the only options, including withdrawal of support for NT compulsion etc.
4. Compromise on the Break Clause aspect in order to reach agreement with us before the SC.
5. Withdraw their demand for a Termination Payment and take a risk that we would not be able to terminate the agreement. (Note – in this scenario we could either fall back to the previous drafting of the agreement whereby, if required, we would seek to terminate on the basis of the previously agreed Events of Termination or insist that, as NFSP have now opened up the possibility of a Termination Payment/Break Clause, we are now insisting on a Break Clause. The latter would be our preferred outcome but, recognising the original position we took in the MOU/drafting, we could assume our red line as the former).

Our options will be driven by the Negotiating Mandate, an updated version of which is attached.

I will of course update as the situation develops.

Rgds

GRO

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<NFSP Negotiating Mandate Jan 15 v2 16-1-15.xlsx>