

EMEA DC Statement 15 February 2018

The EMEA Determinations Committee (the **DC**) has determined that:

- (a) for the purposes of the 2014 Definitions, there is no Successor in respect of the Reference Entity as a result of the Demerger (as defined below) that took effect on 12 July 2017 and CECONOMY AG (formerly known as Metro AG) remains the Reference Entity; and
- (b) for the purposes of the Updated 2003 Definitions, a Succession Event did not occur with respect to the Reference Entity as a result of the Demerger that took effect on 12 July 2017 and CECONOMY AG (formerly known as Metro AG) remains the Reference Entity.

Capitalised terms used but undefined in this statement have the meaning given to them in the Credit Derivatives Determinations Committees Rules (January 20, 2016 Version) (including in the Updated 2003 Definitions and the 2014 Definitions, as defined therein).

Background

- (A) Pursuant to a demerger agreement dated 13 December 2016, Metro AG (renamed CECONOMY AG on 11 August 2017) (the **Reference Entity** or **Old Metro AG**) agreed with its subsidiary Metro Wholesale & Food Specialist AG (renamed Metro AG on 18 August 2017) (**New Metro AG**) to demerge the wholesale and food retail business (**MWFS Business**) from the consumer electronics business of the Metro Group by transferring the MWFS Business to New Metro AG (the **Demerger**).
- (B) The Demerger took the form of a hive-down and spin-off pursuant to the German Transformation Act (the **GTA**) and took effect on 12 July 2017 (the **Demerger Effective Date**).

Analysis

The DC understands that pursuant to Section 133 of the GTA, in respect of any Relevant Obligations that were transferred from Old Metro AG to New Metro AG as part of the Demerger, Old Metro AG remains liable for such obligations as joint debtor for a period of five years from the Demerger Effective Date (the **Section 133 Liability**).

Although Old Metro AG's Section 133 Liability is not described as a guarantee in the GTA itself, the DC was of the view that it should be characterised as such for the purposes of both the 2014 Definitions and the Updated 2003 Definitions. This is because: (i) the Section 133 Liability falls away after a fixed period of time; (ii) although the legal entities involved in the demerger are described in the legislation as joint and several debtors, one of the debtors is identified as the main debtor (in this case New Metro AG) and the other debtor (in this case Old Metro AG) is identified as a secondary/joint debtor; and (iii) the main debtor (New Metro AG) is required to indemnify the joint debtor (Old Metro AG) for any payment made by the joint debtor. The DC was of the view that all of these features makes the nature of Old Metro AG's Section 133 joint debtor liability more consistent with guarantee instruments. As such, the DC analysed Old Metro AG's joint debtor liability as a guarantee for purposes of both the 2014 Definitions and the Updated 2003 Definitions.

2014 Definitions

- In relation to any Relevant Obligations that were transferred from Old Metro AG to New Metro AG as part of the Demerger, the DC was of the view that Old Metro AG's Section 133 Liability constituted a Qualifying Guarantee in respect of those Relevant Obligations which have a scheduled maturity of not more than five years as at the Demerger Effective Date. Old Metro AG's Section 133 Liability in respect of all other Relevant Obligations transferred to New Metro AG did not constitute a Qualifying

Guarantee on the basis that its principal payment obligations thereunder would be released at the five year mark other than by way of payment.¹

- Accordingly, New Metro AG only 'succeeded'² to those Relevant Obligations maturing after 12 July 2022, which in this case represented less than 25% of all Relevant Obligations of Old Metro AG³. In accordance with Section 2.2(a)(v) of the 2014 Definitions, New Metro AG is not a Successor as a result of the Demerger and Old Metro AG remains as the Reference Entity.

Updated 2003 Definitions

- In relation to any Relevant Obligations that were transferred from Old Metro AG to New Metro AG as part of the Demerger, Old Metro AG remains liable in respect of those Relevant Obligations pursuant to its Section 133 Liability and therefore New Metro AG does not 'succeed'⁴ to any of these obligations. The DC notes that, in contrast to the 2014 Definitions, the definition of "succeed" in the Updated 2003 Definitions provides that New Metro AG will not succeed to any Relevant Obligations if Old Metro AG continues to be liable under those Relevant Obligations pursuant to any guarantee (i.e. there is no requirement that Old Metro AG's Section 133 Liability must be a Qualifying Guarantee as is the case under the corresponding definition in the 2014 Definitions).
- There has been no Succession Event (on account of the fact that Old Metro AG's Section 133 Liability extends to its obligations more generally immediately prior to the Demerger Effective Date that were transferred to New Metro AG)⁵, New Metro AG is not a Successor and Old Metro AG remains as the Reference Entity (which is consistent with the conclusion reached by the DC in WestLB AG where joint debtor liability under Section 133 of the GTA was also considered⁶).
- Although not relevant to the Successor analysis under the Updated 2003 Definitions, the DC was of the view that, for purposes of determining Deliverable Obligations in respect of Updated 2003 Transactions referencing Old Metro AG, Old Metro AG's Section 133 Liability would constitute a Qualifying Guarantee in respect of those Relevant Obligations transferred to New Metro AG as part of the Demerger and which have a scheduled maturity of not more than five years as at the Demerger Effective Date.

¹ See Section 3.21(b) of the 2014 Definitions.

² See Section 2.2(d) of the 2014 Definitions.

³ Based primarily on the 26 June 2017 prospectus for the admission to trading of New Metro AG and the Combined Quarterly Statement 9M/Q3 2016/17 and the interpretation thereof confirmed by Investor Relations at New Metro AG.

⁴ See Section 2.2(c) of the Updated 2003 Definitions.

⁵ See Section 2.2(b) of the Updated 2003 Definitions.

⁶ [DC Issue Number 2012090301](#).