



December 2011

Dear Member

### **Nortel Pension Update Letter 2011**

A year has passed since we last wrote to members and we are fast approaching the third anniversary of Nortel companies entering into insolvency proceedings in the UK, Europe and North America.

While the insolvency process continues, 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 benefits as a minimum.

It is now clear that Nortel will not be able to continue to trade and its various business lines have been sold to other companies including former competitors. The most significant sale relates to Nortel's intellectual property (e.g. patents) which was sold to a consortium which included Microsoft, Apple and Sony for \$4.5 billion. The total amount realised from all these sales is now \$7.7 billion (about £5 billion at current exchange rates) and this is held securely pending agreement on how it is to be divided between the various Nortel companies and their creditors. These sums are indeed large but the total claims of all creditors are somewhat greater – indeed, our own claim alone is for £2.1 billion, which is the estimated amount needed (as at January 2009) for Nortel pension plan (Plan) benefits for all members to be fully met.

As we said in our last letter, the principal objective of the Trustee 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 UK and overseas. If we manage to recover at least an estimated £700 million then we will have the opportunity to try and '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. Regrettably, we are still not in a position to forecast when the insolvency proceedings, or the pursuit of the Trustee's claims, will be concluded.

As I am sure you will appreciate, the Trustee Board and its advisers have been engaged in almost continuous interaction/discussion with all the main 'Nortel' parties or their representatives over the past year together with the active support of the PPF and the UK Pensions Regulator (tPR). Some of this work has been associated with our obligation to continue with the PPF Assessment process, but the majority has been directed at the recovery proceedings referred to above. Brief details are as follows.

#### **PPF Assessment**

Although we do not yet know if the Plan will eventually become the responsibility of the PPF, we are obliged to have regard to this eventuality and continue to prepare accordingly. In this respect, our Plan administrators Towers Watson have been involved in a number of tasks behind the scenes over the last year including:

- Continuing to work with the Plan's legal advisers to clarify the treatment of different types of benefits under PPF rules and ensuring that any pensions put into payment comply with these rules.

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- Adjusting the pension increase and deferred revaluation routines to reflect the use of Consumer Price Index (CPI) instead of Retail Price Index (RPI).
- Clarifying the treatment of defined benefit (DB) AVC policies, money purchase AVC policies and redundancy sacrifice pensions.
- Clarifying that members continue to have the right to take a pension from the Plan at any time after reaching the age of 50.
- Continuing to work in partnership with Tracesmart, a specialist tracing bureau, to establish and maintain contact with as many Plan members as possible.
- Embarking on a project to reconcile the entire Plan's contracted-out membership records with those held by HM Revenue and Customs (HMRC). This is a requirement for any pension scheme whether or not it becomes the responsibility of the PPF.
- Commencing work on a Benefit Audit to ensure that all benefits have previously been calculated strictly in accordance with Plan rules.

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.

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

As mentioned in our last letter, we have a number of claims in place – against Nortel Networks UK Limited (NNUK) for the statutory debt it owes to the Plan; against Nortel Networks Limited in Canada for pre-existing guarantees; and for further claims against a number of Nortel overseas companies in relation to tPR's powers under the Pensions Act 2004 to issue directions (Financial Support Directions (FSDs)) to target companies requiring them to put financial support in place. In connection with the latter, the Determinations Panel (DP) of tPR issued FSDs against four US and Canadian Nortel companies in April 2011. As yet, those companies have not responded to those directions.

We have spent a considerable amount of time and effort progressing all of these claims, assisted by our legal and financial advisers. We have participated in many meetings and there have been two attempts at mediation in New York (in November 2010 and April 2011), which were attended by all the key parties but regrettably did not result in an agreement. A new mediator (who is the Chief Justice of Ontario, Canada) has now been appointed by the US and Canadian courts and we hope that a further mediation attempt will be more successful.

A negotiated settlement between the parties is much preferred to litigation in terms of both cost and time but members will appreciate that we have been obliged to participate in a number of court activities both in UK and North America to protect our position in the event that mediation fails to produce a result. More information on court activities/decisions is detailed in the Appendix to this letter.

**In summary**, although we are not as close to a conclusion as we had previously anticipated, we have made excellent progress on PPF Assessment activities and have developed a detailed knowledge of the key financial and legal aspects of the various global insolvency processes which will ensure our continued active participation in future recovery activities. We will continue to update the Q&A and other announcements on our website [www.nortelpensions.com](http://www.nortelpensions.com) 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 October 2011

The Plan is a creditor of its former sponsor NNUK and a claim has been lodged with NNUK's administrators for the full £2.1 billion Plan deficit. Note that information on court activities/decisions set out below does not impact the validity of this claim in any way.

### Summary of court activities and decisions:

*for completeness, we have included some of the information provided in our last letter*

#### **UK Activities**

- January 2010 – 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 to issue FSDs against them.
- 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 has not substantively progressed.
- November 2010 – 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. Broadly speaking, the possible options were for an FSD or CN (a) to rank as an expense of the administrations or liquidations of the Target entities and thus enjoy priority over other creditors or (b) to rank as a provable debt in the administrations or liquidations among other unsecured claims or (c) to be a non-provable claim payable (if at all) only out of any surplus that might be available for distribution to shareholders after all creditors had been paid in full. We are pleased to report that the court decided an FSD or CN should be treated as an expense of an administration or liquidation if issued against the relevant companies in such a process. This decision was subsequently appealed by the administrators and the appeal was heard by the Court of Appeal in July 2011. The Court of Appeal handed down judgment on 14 October 2011, and we are delighted to advise that the lower Court's decision was upheld. However, the Court of Appeal has granted the administrators permission to appeal to the Supreme Court, so it is possible the matter will proceed further.
- April 2011 – the DP issued FSDs against four North American Nortel companies. These direct each company, as soon as is practicable, to provide tPR with proposals detailing the financial support they will provide to the Plan. No proposals have yet been received.

#### **US Activities**

- We previously reported that the issuance of a Warning Notice against US companies was held to breach US bankruptcy proceedings and that tPR's regulatory proceedings in the UK were treated as null and void by the US Courts. This ruling was appealed by the Trustee and the PPF to the US District Court in March 2011 and this resulted in the original decision being upheld. A further appeal was made to the US Court of Appeals for the Third Circuit, which appeal was heard in September 2011. Judgments on this type of appeal are normally expected within two to three months of the hearing date.

#### **Canadian Activities**

- We previously reported that the issue of a Warning Notice by tPR against Canadian companies was held to have infringed 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 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) and in this respect we revised and updated our Canadian claims in November 2010.