

COMTEL SA

A LOAN SYNDICATION STRATEGY¹

INTRODUCTION

In April 2004, the credit committee of BigBank SA was reviewing an opportunity to bid to position BigBank as Mandated Lead Arranger (MLA) of the upcoming syndicated credit facility of Comtel S.A. ("Comtel").

Comtel had no track record in the syndicated loans market and invited its core banks to structure its first syndicated credit facility. The borrower had given no indication of the amount, structure and syndication pyramid, nor the desired number of MLA's. Augustin Lecomte, Comtel's CFO, wanted a minimum of €500 Mio, and was looking in total for €1 billion. The loan purpose was to refinance some of the existing debt, for longer maturities. Comtel was at that time working with 15 relationship banks. 5 banks were believed to be invited in order to bid for an MLA position in the upcoming transaction.

Comtel had been a client for many decennia through their Belgian subsidiary, which they bought from Bigtel in 1995. BigBank had currently an outstanding long term bi-lateral loan of €120 Mio, maturing in 2005, paying a margin of 75 bps p.a. over EURIBOR. Winning the mandate would put BigBank in a position of core bank of Comtel, and considering Comtel's future significant development, would give the opportunity to exploit ancillary business opportunities in the next years.

COMTEL

Comtel was a leading manufacturer of telecommunications equipment with its manufacturing and central sales center on the outskirts of Paris. As a result of the high demand for cellular telephones in Europe, the company established regional sales offices in the UK, Germany, Belgium, Italy and Spain. Depending on the success of further sales in Europe, a further manufacturing plant would be established and Comtel had already made a decision that such manufacturing plant would be located within Belgium.

Comtel had a debt rating of BBB+ (S&P) / Baa1(Moody's). Comtel placed a private placement for €50 Mio in 2000 which matured in September 2010. Comtel also had a CP Program for €200 Mio in the past.

Comtel's sales for 2003 amounted to €9.75 billion (2002 - € 8.5 billion) making it one of Europe's top 100 companies based on turnover. Employees currently total in excess of 50.000. Net Worth as at 31 December, 2003 was €3.7 billion equivalent. There was, however, €3.3 billion unamortized goodwill,

¹ This case was written by Yassine Boudghène, Eric De Keuleneer and Christian Van der Stichele (Fortis Bank) for use as a basis for classroom discussion. Names and other details have been changed to protect confidential information without altering the nature of the managerial decisions involved.

resulting from expensive acquisitions during the telecom bubble. EBITDA for 2003 was € 800 Mio (2002 - € 640 Mio). Long term debt was around € 2200 Mio and short term debt around €800 Mio.

SYNDICATED LOANS

A syndicated loan is a loan made by two or more lending institutions on similar terms and conditions, using common documentation arranged and structured by one or several Mandated Lead Arrangers (MLA) and administered by a common Facility Agent. The MLA's then sell off portions of the loan to other lenders. The syndicate members' obligations are separate but the rights and obligations of all the parties are governed by the same agreement: the syndicate loan agreement.

Syndication may be preferred among other debt formats, such as debt private placement, for several reasons, including the ability to spread risk across lenders, speed of execution, flexibility for prepayment and the ability to integrate the borrower's banking relationships. Bank loans are used where a company cannot tap the bond market, or is not prepared to accept its constraints (standardization, publication ...)

We can distinguish two types of syndicates regarding the commitment: best efforts and firm commitment (or underwritten commitment). In best effort syndicates, MLA's market the loan but if the syndication is not fully subscribed, the loan is not made. In a firm commitment syndicate the MLA's agree to make the loan even if they cannot fully syndicate it.

With regard to the instruments, bankers distinguish term loans (amortizing, balloon, bullet) and revolving credit facilities. Term loans can be short-term (up to 1 year) or long-term. Short-term loans are commonly used to finance working capital needs that result from temporary build-ups of inventory and receivables. The repayment comes from the conversion of these current assets to cash. These loans may be either secured or unsecured. Long-term loans have a maturity longer than 1 year. They are typically used for the purchase of fixed assets, the acquisition of another company, the financing of permanent working capital needs or the refinancing of existing debt. The amount and the structure are determined to closely match the transaction being financed. Repayment comes from future operating cash flows. These loans can be secured. At last, revolving credit facilities allow a company to borrow from a bank up to a maximum commitment level at any time over the life of the granted credit as long as it complies with the loan agreement's terms and conditions. Such credit facilities are most of the time used to finance day to day operations, to meet seasonal needs, and give more flexibility regarding the moment at which it is repaid and a potential reborrowing of the prepaid amount, still up to the maximum commitment level.

As stated before, the syndicated loan is granted by more than 1 lender and the issue of optimizing the syndication structures arises very quickly in a bidder's mind. Even if a syndication structure is limited only by the imagination of men, practitioners make generally a distinction between the following:

- Pyramids of Arrangers, Co-Arrangers and participants: Mandated Lead Arranger(s), Arranger(s), Co-Arranger(s), Senior Lead Manager(s), Lead Manager(s), Manager(s)
- Clubs of equal status participants ("small and perfectly formed")
- Arranger groups with equal numbers of participants ("a cubists approach to syndication")
- Arranger groups with few participants

The choice of the structure will depend on the perceived risk profile of the deal, the identified pool of interested banks, the type of commitment, perceived underwriting risk, the bank's internal limit on the amount lent to a single borrower, etc, and this syndication structure will in turn influence the compensation scheme. In addition to the traditional utilisation fee charged for the effective use of the committed funds, bankers also charge front end fees, commitment fees based on the amount of the credit, management fees paid to the syndicate lead arrangers for assembling the syndicate,

participation fees to the syndicate participants based on their commitment, closing fees, and agency fees for the servicing of the loan.

LOAN SYNDICATION STRATEGY

Comtel had been a client for many decennia through their Belgian subsidiary, which they bought from Bigtel in 1995. Before making an offer, Antoine, Head of BigBank's Loan Syndication Group, needed to consult some of his colleagues and obtain the credit approval from the credit committee.

John Dapper, head of corporate banking wanted very much to make a bid. He said: "this would definitely position us as their lead bank in Belgium, and we will then be in first line to finance their new plant in Belgium. The other Belgian banks will be livid when we land that mandate".

Arthur Bullfits, head of international banking was even more sanguine: "We would enter the 3 or 5 of their core banks, can't miss that".

James Septic, head of credits, was much cooler. "Their cash flow is improving, but they need to invest €300 Mio a year in research and new equipment, just to keep abreast of technological developments. They claim their new products and marketing effort will allow them to improve their product mix and increase margins, and aim for an EBITDA of €1 billion. I admit they could reach it, but their debt is almost entirely at variable rates. They are very vulnerable if rates rise. Moreover, if they make some money, they may squander it again in dubious acquisitions. I do not change my exposure limits: 150 million long term and 100 million short term".

Belinda Moneypeny, head of the ALM committee was not enthusiastic: "We never made much money on Comtel. The spread on the bilateral loan has been too low; the side business is dubious. If rating, drops, they become a real drag for us".

Comtel gave no indication of the amount, structure and syndication pyramid, nor the desired number of MLA's. The CFO wanted a minimum of €500 Mio, and was looking in total for €1 billion. The loan purpose was to refinance some of the existing debt, for longer maturities. In response to the points James Septic and Belinda Moneypeny raised, Antoine started to think of the scope of undertakings and covenants he could insert to address some specific points. Undertakings and covenants are a heavily negotiated element. As representations and warranties stated in the loan agreement verify certain statements on which the loan decision has been made, undertakings and covenants' purpose is to set some standards for the future conduct and performances of the borrower by obliging the latter to meet some requirements and specific criteria. Covenants may specify financial commitments. Typically, they may include respecting some specific financial ratios, keeping a certain level of rating, complying with some specific requirements. Undertakings may include a limitation on total level of debt, restrictions on mergers, on sale of assets, on cash payments of dividends, on engaging in other businesses, etc. "If the creditworthiness drops, we can protect your target of 15% pretax return on equity through undertakings and covenants as well, Belinda", Antoine thought. "Moreover, Dapper should ask his dear Lecomte to help by committing the company in some way too".

By the end of the week, Antoine needed to come up with a summary proposal of terms and conditions for a syndicated credit facility, which includes the syndication strategy, the amount and terms of the credit facility, the conditions precedent, the representations and warranties, the covenants, and a definition of events of default.

ASSIGNMENT QUESTIONS

1/ OPPORTUNITY:

- Should Antoine make a bid for a syndicated loan ?
- Which conditions would he envisage?

2/ FACILITY

- Underwritten or best effort? Sole or joint?
- Transaction amount?
- Final Take?
- Transaction structure?
- Maturity?
- Determine pricing grid (Fees?)
- Financial covenants?
- Specific covenants?

3/ SYNDICATION STRATEGY

- Relationship or Investor driven transaction?
- Ancillary business opportunities?
- Determine Syndication pyramid (participation levels? & flat fees?)
- Number of banks to be approached?
- Total yield (after syndication)?
- Role repartition?

SUMMARY PROPOSAL OF TERMS AND CONDITIONS FOR A SYNDICATED CREDIT FACILITY IN FAVOUR OF

COMTEL N.V./S.A.

Summary Terms and Conditions

Borrower	Comtel N.V./S.A. (“Comtel”)
Guarantor	Brilliantco N.V./S.A.
Obligors	Each Borrower and the Guarantor
Material subsidiary	Each subsidiary of the Borrower whose assets or Net Sales represent 5% or more of the assets or Net Sales of the Group.
Facility Amount	EUR 1,000,000,000 credit facility to be drawn in Euro (“EUR”) and any currency (each an “Optional Currency”) which is readily available and freely convertible into EUR in the European interbank market and which has either been approved by all the Lenders or is one of the following currencies: Sterling (“GBP”); US Dollars (“USD”).
Facilities	Tranche A: EUR 500,000,000 term loan facility; Tranche B: EUR 500,000,000 revolving credit facility
Purpose	To refinance existing debt and for general corporate purposes
Mandated Lead Arranger(s)	[...] (“[...]”)
Bookrunner	[...]
Facility Agent	[...]

Lenders	Core relationship banks of the Borrower and to incorporate other banks acceptable to the Mandated Lead Arranger(s) and the Borrower.
Closing Date	To be determined
Availability	<p>Tranche A: Subject to the satisfaction of all Conditions Precedent, and subject to five business days' written notice by the Borrower to the Facility Agent, the Facility will be available for drawdown within 30 days from the signing of the Facility Agreement ("Closing Date") in not more than 5 drawings and in minimum amounts of EUR 20,000,000 and multiples of EUR 10,000,000 or in appropriate equivalent amounts for Optional Currencies.</p> <p>Tranche B: Subject to the satisfaction of all Conditions Precedent, and subject to five business days' written notice by the Borrower to the Facility Agent, the Facility will be available for drawings and in minimum amounts of EUR 20,000,000 and in multiples of EUR 10,000,000 or in appropriate equivalent amounts for Optional Currencies from the signing of the Facility Agreement ("Closing Date") until one month prior to the Final Maturity Date. No more than 10 advances to be outstanding at any time.</p>
Final Maturity Date	<p>Tranche A: 5 years from Closing Date; and</p> <p>Tranche B: 3 years from Closing Date.</p>
Extension Option	Tranche B: The Borrower may ask each of the Lenders not later than 30 days prior to the Final Maturity Date to extend the Facility for another period of 364 days. Those Lenders which decide to accept the Borrower's extension request shall give notice hereof not later than 10 days prior to the Final Maturity Date whereupon the Facility will be extended with respect to the Lenders agreeing to such an extension for a further period of 364 days and in the amount which equals the sum of the commitments of those Lenders. The Borrower will be entitled to exercise this option a maximum of two times.
Repayment	<p>Tranche A: in 10 equal semi-annual instalments.</p> <p>Tranche B: Each Drawing will be repaid at the end of its Interest Period and in any case on or before the Final Maturity Date. Amounts repaid may be redrawn subject to the terms of the Facility Agreement.</p>
Cancellation prepayment	<p>and Tranche A: Upon 5 business days' prior written notice to the Facility Agent, the Borrower may prepay in whole or in part in minimum amounts of EUR 20,000,000 and in multiples of EUR 10,000,000 or in appropriate equivalent amounts for Optional Currencies. Any prepayment will be applied towards the Borrower's repayment obligations in inverse order of maturity.</p> <p>Tranche B: Upon 5 business days' prior written notice to the Facility Agent, the Borrower may cancel without penalty in minimum amounts</p>

of EUR 20,000,000 and in multiples of EUR 10,000,000 or in appropriate equivalent amounts for Optional Currencies until one month prior to the Final Maturity Date.

Amounts prepaid may not be re-borrowed.

Amounts cancelled may not be redrawn.

Mandatory Prepayment

The Borrower will be required to make mandatory prepayments under the Facility in relation to:

- (a) Insurance proceeds, not reinvested within 18 months, subject to a threshold.

Any prepayment will be applied on Tranche A first. Any remaining amounts will then be applied to Tranche B.

Interest Rate

The aggregate of:

- i) EURIBOR (in the case of an advance denominated in euro); or LIBOR (in the case of an advance denominated in a currency
- ii) The applicable Margin; plus
- iii) Mandatory Costs (as defined below).

Interest Periods

1, 2, 3 or 6 months at the option of the Borrower. Other periods will be subject to the agreement of the Lenders. Interest payments to be made at the maturity of each Interest Period but in any event no less frequently than six months from the relevant drawing. No Interest Period shall extend beyond the Final Maturity Date. Interest will be calculated on the basis of actual days elapsed and a 360-day year for EUR and according to market practice for Optional Currencies.

Margin

Tranche A: [...] % per annum; and

Tranche B: [...] % per annum.

The Margin to be adjusted by reference to the ratio of Consolidated Net Debt to Earnings Before Interest, Taxes, Depreciation and Amortisation (“EBITDA”) in accordance with the grid set out below.

The Margin will be adjusted on the basis of the following ratio calculated semi-annually on a rolling 12 months basis.

Tranche A:

Consolidated Net Debt/EBITDA

Margin

≥ 3.0	[...] % per annum
< 3.0 and ≥ 2.75	[...] % per annum
< 2.75 and ≥ 2.5	[...] % per annum
< 2.5	[...] % per annum

Tranche B:

Consolidated Net Debt/EBITDA	Margin
≥ 3.0	[...] % per annum
< 3.0 and ≥ 2.75	[...] % per annum
< 2.75 and ≥ 2.5	[...] % per annum
< 2.5	[...] % per annum

Arranger Fee

[...] % flat calculated on the Facility Amount, including arrangement and participation fees, payable in EUR by the Borrower to the Facility Agent for the benefit of the Mandated Lead Arranger(s) and the Lenders at the earlier of (i) first drawdown or (ii) 5 days after the Signing Date.

The allocation and distribution of the fees by the Mandated Lead Arranger(s) will be determined in accordance with the Mandate Letter.

Commitment Fee

Tranche B: [...] % of the applicable margin on the undrawn portion of the Facility Amount, payable in EUR by the Borrower at the end of each calendar quarter from the Closing Date and on the relevant Final Maturity Date.

Extension Fee

[...] % per cent. flat calculated on the extended Facility Amount payable in EUR by the Borrower to the Facility Agent on the first business day of the extension period for distribution to the Lenders agreeing to such extension period

Documentation

The Facility will be governed by a facility agreement (the "Facility Agreement") customary for facilities of this type, based upon the standard LMA documentation, and in form and substance acceptable to all parties.

Conditions Precedent

Applicable to the Obligors and to be standard for a facility of this type including inter alia:

- (a) Constitutional documents
- (b) Resolution of board of directors
- (c) Borrowing certificate
- (d) Certification of copy documents
- (e) A copy of any other document, authorisation, opinion or assurance specified by the Facility Agent
- (f) Specimen signatures
- (g) Satisfactory legal opinions
- (h) Financial Statements
- (i) Evidence of payment of all fees, costs and expenses then due from the Borrower under the Agreement.
- (j) Cancellation of indebtedness under existing facilities and provision of a funds flow statement to the Facility Agent for the benefit of the Lenders
- (k) No default exists or is likely to occur

Representations and Warranties

To be made on the Closing Date, at any drawing request, by the Borrower on behalf of itself and on behalf of its Material Subsidiaries and to be standard for a facility of this type, inter alia:

- (a) Status
- (b) Binding obligations
- (c) Non conflict with other obligations
- (d) Power and authority
- (e) Taxes
- (f) No default
- (g) Pari passu ranking
- (h) No misleading information
- (i) Financial statements
- (j) No existing encumbrances, save for [Permitted Encumbrances]
- (k) No material proceedings pending or threatened
- (l) Environmental compliance
- (m) Ownership of assets
- (n) Insurance coverage
- (o) Necessary Intellectual Property Rights

Representations, Warranties, Undertakings and Events of Default are, to the extent appropriate, subject to agreed materiality tests and grace periods.

Financial Covenants

Applicable at all times during the life of the facility to the Consolidated Financial Statements of Comtel (Definitions as stated in the consolidated financial statements of Comtel.)

To be tested semi-annually, on a rolling 12 months basis with the first covenant test to be on 31st of December 2004:

(a) Net Financial Debt to EBITDA

(calculated on a rolling/average Net Financial Debt and a rolling EBITDA basis)

Maximum [...]x

(b) Net Financial Debt to Equity (“gearing ratio”)

Maximum [...]%

(c) EBITDA to Net Interest Expense

Minimum of [...]x applicable in 2004, with a Minimum of [...]x applicable thereafter

Undertakings

To be given to the Lenders by the Borrower and the Material Subsidiaries including inter alia:

- (a) Maintenance of authorisations
- (b) Compliance with laws
- (c) Negative pledge
- (d) Pari passu ranking
- (e) Notification of (potential) Events of Default
- (f) No change of business
- (g) Restrictions on mergers / demergers / acquisitions – subject to a threshold amount equivalent to a maximum of [...]% of consolidated turnover as stated in the consolidated financial statements of Comtel as at 31 December 2003 during each financial year.
- (h) Restrictions on disposal of assets – subject to a threshold amount equivalent to a maximum [...]% of total consolidated assets as stated in the consolidated financial statements of Comtel as at 31 December 2003 in aggregate over the life of the Facility.
- (i) Restrictions on additional financial indebtedness subject to a threshold of EUR [...].
- (j) Maintenance of insurance
- (k) Maintenance of all necessary and useful intellectual property rights

- (l) Environmental compliance
- (m) Maintenance of pension plans
- (n) Notification of industrial action
- (o) Delivery of all documents dispatched by the Borrower to its shareholders or creditors generally
- (p) Due payment of taxes and other governmental charges except for those being contested in good faith
- (q) Ensure that total assets and gross profit of the Obligors represent together at least [...] % of total assets and total gross profit of Comtel Group on a consolidated basis

Events of Default

Applicable to the Borrower and the Material Subsidiaries and to be standard for a facility of this type including inter alia to:

- (a) Non payment
- (b) Failure to satisfy any financial covenant
- (c) Failure to comply with any other obligation or undertaking
- (d) Misrepresentations
- (e) Cross default subject to a threshold of EUR [...]
- (f) Insolvency / Insolvency proceedings, readjustment or rescheduling of indebtedness
- (g) Execution or distress levied against property, undertaking or assets
- (h) Unlawfulness or Repudiation
- (i) Change of control
- (j) Material adverse change

Default Interest

For so long as an Event of Default has occurred and is continuing, the Margin will be increased by 1.0% p.a.

Agency Clause

Documentation will include standard provisions governing the relationship between the Borrower and the Facility Agent and between the Lenders and the Facility Agent.

Agency Fee

As defined in the mandate letter.

Amendment and Waivers

Amendments to the Facility Agreement will require the approval of the Borrower and the Majority Lenders (representing 66 2/3% of the Amount), subject for certain customary changes, waivers and amendments that will require the prior written consent of all Lenders.

Assignments and transfers

Any Lender may assign or transfer any or all of its rights and obligations under the Agreement to another Lender with the consent of the Borrower, not to be unreasonably withheld.

Taxation	<p>All amounts payable by the Borrower to the Lenders will be made free and clear of all taxes, deductions or withholdings of any nature whatsoever. Gross up provided.</p> <p>The Lenders shall use reasonable endeavours to ensure all payments can be made free and clear of taxes, deductions or withholdings.</p>
Governing Law	English Law
Jurisdiction	The Borrower submits to the non exclusive jurisdiction of the commercial courts of England.
Miscellaneous Provisions	The Agreement will contain provisions relating to, among other things, default interest, market disruption, breakage costs, ECB costs, tax gross up and indemnities, increased costs, set-off and administration.
Mandatory Costs	The Borrower shall indemnify each Lender lending through an entity incorporated and/or resident in the UK for the fee imposed by the Financial Services Authority of the UK and for the costs caused by the liquidity requirements of the Bank of England and each Lender lending through an entity incorporated and /or resident in the member states of the European Union for the costs caused by the reserve requirements of the European Central Bank if any.
Cost and Expenses	All costs and expenses (including legal fees of external lawyers) reasonably incurred by the Facility Agent and the Mandated Lead Arranger(s) in connection with the preparation, negotiation, printing, execution and syndication of the Agreement and any other document referred to in it shall be paid by the Borrower promptly on demand whether or not the Agreement is signed.

Further conditions:

- a) Adverse Circumstances***
- This offer is conditional upon no material adverse change occurring in:
1. The Obligors' financial condition or business prospects, or
 2. The international or any relevant domestic money and capital markets, or
 3. The country (or the financial markets in the country) in which the Obligors and/or its or their principal assets are located,
- which, in the sole opinion of the Mandated Lead Arranger(s), could adversely affect the syndication of the Facility between the date hereof and the close of syndication of the Facility. The Mandated Lead Arranger(s) shall be entitled, after agreement with the Obligors, to revise the structure, terms or pricing of the Facility to ensure the successful placement of the Facility.

b) Clear Market

Any future offer will be further conditional upon no other borrowing (including the establishment of a series of bilateral arrangements) by way of loan, note or bond issue or otherwise by the Borrower being mandated, syndicated or privately placed in any international money or capital market from the date hereof until the Closing Date without the prior written consent of the Mandated Lead Arranger(s).

c) Information

The Borrower agrees that they will provide all information and personnel reasonably required by the Mandated Lead Arranger(s) to achieve a successful syndication of the Facility.

d) Market Flex

The Mandated Lead Arranger(s) shall be entitled after agreement with the Borrower to change the pricing, terms and/or structure of the Facility if the Mandated Lead Arranger(s) determines that such changes are advisable in order to ensure a successful syndication of the Facility.