

SELECTA: UPTIERING LAWSUIT RAISES ANTITRUST ARGUMENTS AGAINST COOPERATION AGREEMENT AND AGGRESSIVE LMT

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The Bottom Line™:

- Earlier this year, Selecta executed a bold liability management transaction that first primed minority holders of its first lien notes, then left them with an unappealing choice between remaining subordinated or losing “sacred rights” protections for 12 months.
- Aggrieved holders have recently filed a complaint in New York, raising the novel argument that the ad hoc group of creditors – by way of a notably aggressive cooperation agreement – and the company violated federal and state antitrust laws.
- We discuss the key arguments raised in the New York complaint.

Overview

Swiss vending machine company Selecta undertook a particularly aggressive liability management transaction earlier this year, and aggrieved minority holders are not taking it lying down. In addition to a pending appeal of a Dutch court decision to approve the share enforcement that was central to the restructuring process, they recently filed a complaint in New York.

Most notably, the plaintiffs raised novel antitrust claims, alleging that the ad hoc group of creditors and the company violated federal and state antitrust laws. The litigation places cooperation and framework agreements in the spotlight, and a decision in the case could have a significant impact on how these agreements are drafted and used in future liability management transactions.

Below, we discuss the key arguments raised in the New York complaint.

Background: Selecta's LMT

The multi-step restructuring deal was implemented using the [distressed disposal](#) mechanics under the group's intercreditor agreement, including the sale of shares in Selecta Group B.V. (“**Selecta**”) to Seagull Bidco Limited (“**Bidco**”), a company incorporated by an ad hoc group of the company's bondholders.

In connection with the distressed disposal, Selecta's First Lien Notes due 2026 (the “**Old 1L Notes**”) were marked down, and holders received new third-out notes issued by Bidco (the “**3O Notes**”) at 85% of par, plus 15.3% of Class B non-voting shares in Bidco's indirect parent Seagull Topco Limited (“**Topco**”). Selecta's Second Lien Notes due 2026 (the “**Old 2L Notes**”) were also marked down, with holders receiving 1% of Topco's Class B shares.

Two private transactions followed.

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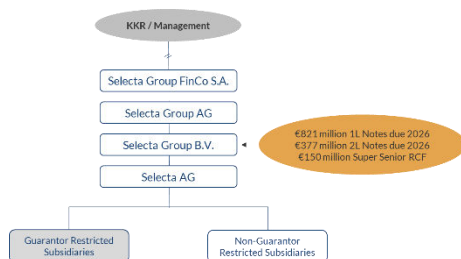
Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

- Ad hoc group members who were former holders of the Old 1L Notes were offered the opportunity to exchange their 3O Notes and Topco equity for first-out notes issued by Bidco (the “**1O Notes**”) at par – recouping the 15% haircut – in a private exchange offer.
- Additionally, ad hoc group members who were former holders of the Old 2L Notes agreed to purchase €156.4 million of second-out notes issued by Bidco (the “**2O Notes**”) plus a pro rata share of 62.7% of Class A1 voting shares in Topco. They also agreed to backstop additional 2O Notes, receiving 20% of Class A2 voting shares in Topco in exchange for this commitment.

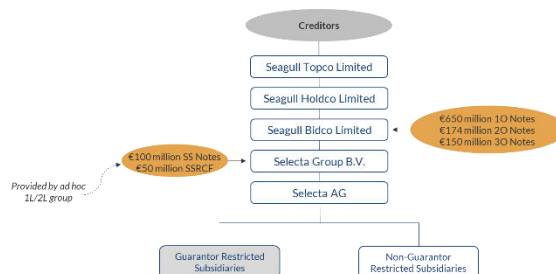
Bidco then launched a public exchange offer for the remaining former holders of the Old 1L Notes. On paper, the minority holders of the Old 1L Notes were offered the same deal as the ad hoc group: swap their 3O Notes and Topco equity for new 1O Notes at par. But the fine print revealed a sword of Damocles, as the new 3O Notes had no sacred rights protection or Payments for Consent covenant for the first 12 months, leaving minority holders completely at the mercy of the ad hoc group (who controlled not only the terms of the 1O Notes but the voting shares of Topco by way of the 2O Notes private placement and backstop).

Remaining holders of the Old 2L Notes, meanwhile, were offered the chance to purchase up to €17.5 million of additional 2O Notes and receive a pro rata share of 62.7% of Class A1 voting shares in Topco.

Simplified Pre-Transaction Structure



Simplified Post-Transaction Structure



The New York Complaint

Detroit, Algebris, CQS, and Faros Point – all former minority holders of the Old 1L Notes – filed a [complaint](#) with the US District Court for the Southern District of New York on October 28, 2025 (the “**Complaint**”). Selecta, the Selecta group entities who guaranteed the Old 1L Notes and Old 2L Notes, and certain directors are named as defendants, along with bondholders Invesco, Man Group, Strategic Value Partners, and Diameter.

In a noteworthy first for LMT litigation, the Complaint frames the restructuring as “a concerted, anticompetitive, and clandestine scheme” carried out by Selecta and certain holders of the Old 1L Notes, Old 2L Notes, and preference shares issued by a Selecta holdco (whom they define as “**Favored Holders**”) that violated federal and state antitrust laws. It also alleges breaches of the indenture governing

Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

the Old 1L Notes and breach of the duty of good faith and fair dealing, along with an interesting claim under English law concerning majority oppression of the minority.¹ We outline the key arguments below.

Unlawful Restraint of Trade

The Complaint includes multiple counts of unlawful restraint of trade by the Favored Holders and Selecta.

Unlawful Contract

First, plaintiffs claim that the agreements among the Favored Holders, as well as agreements among the Favored Holders and Selecta, are unlawful contracts under U.S. federal and New York state antitrust laws.

The plaintiffs characterize holders of the Old 1L Notes as “competitors for the marketing, trading and sale of the debt at issue, with each of the [holders] individually interested in maximizing its respective returns on its investments in Selecta Group B.V.” and allege that the defendants’ “anticompetitive conduct exclusively targeted the market for Selecta Group B.V.’s first lien debt.”² In particular, the Complaint describes the April 9, 2025 [cooperation agreement](#) among the Favored Holders as “a classic example of an anticompetitive and collusive agreement between competitors ... to control the price for Selecta Group B.V.’s first lien debt and to exclude Plaintiffs from the market for anticompetitive purposes.”³

In support of this argument, the plaintiffs point to a provision in the cooperation agreement that required the Favored Holders to support transactions that did not adversely affect the ad hoc group’s interests, “including by way of offering any advantageous treatment to any 1O Notes that are not [held by the parties to the cooperation agreement].”⁴ Plaintiffs present the language as an outright attempt to disadvantage the minority; the ad hoc group, however, might argue that it merely prevents parties from supporting transactions that give non-parties a better deal than the coop parties get.

Plaintiffs also note that the agreement prohibited parties from selling their 1O Notes to third parties unless the purchase agreed to the cooperation agreement’s terms.⁵

The plaintiffs also complain that they and other minority holders of the Old 1L Notes were not permitted to join the cooperation agreement or participate in restructuring negotiations that led up to an April 30, 2025 framework agreement among Selecta and the Favored Holders, under which the parties allegedly agreed to the multi-step restructuring process described above. As the plaintiffs see it, “exclusivity was an integral part of the Defendants’ Restructuring scheme. Only by depriving the Excluded Holders of their rights to share proportionately in the proceeds of the Share Pledge could the Favored Holders improve their own economic position.”⁶

¹ In addition to the claims addressed in this report, the Complaint also alleged a breach of fiduciary duty against the Selecta directors under Dutch law and tortious interference with contract by the Favored Holders under New York law.

² Complaint, paragraph 84.

³ Complaint, paragraph 12.

⁴ Cooperation agreement, paragraph 10(A).

⁵ Complaint, paragraph 78-79.

⁶ Complaint, paragraph 83.

Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

Price Fixing and Group Boycott

The plaintiffs also claim that the Favored Holders and Selecta set out to artificially suppress the value of the plaintiffs' (and other holders') holdings of Selecta debt in an unlawful price fixing conspiracy, and they accuse the Favored Holders of engaging in an unlawful group boycott by (1) agreeing to collectively vote against the interests of other holders, and (2) colluding to artificially devalue other holders' interests and capture returns for themselves that would otherwise have been shared by all holders.⁷

As back-up, the plaintiffs provide some remarkable trading prices for both the 1O Notes and the 3O Notes. According to the plaintiffs, as of October 7, 2025, 1O Notes held by the Favored Holders traded at a bid / ask of 73.25 cents / 75.75 cents, while 1O Notes held by other holders had a bid/ask of 10 cents / 30 cents, and the 3O Notes with the same bid/ask price of 10 cents / 30 cents.⁸ Plaintiffs assert that the different trading prices "results from the fact that the securities issued to the Favored Holders and the [other holders] effectively have different rights and are, in essence, different securities."⁹ They also point to a credit analyst's view that the 3O Notes are out of the money and argue that they are "likely never to be repaid."¹⁰

The plaintiffs also maintain they could not "safely" trade their 3O Notes for 1O Notes in the exchange offer due to the 12-month suspension of sacred rights protection and the Payments for Consent covenant, which gave the Favored Holders the "power to destroy the value" of 1O Notes held by the minority.¹¹ They also highlight that in order to participate in the public exchange offer and accept 1O Notes, holders were required to release any claims they might have had in connection with the restructuring transactions – *i.e.*, waive any right to sue Selecta in connection with the LMT.¹²

Plaintiffs assert that these conditions in the exchange offer, as well as the timing of the private exchange offer, were deliberately intended to discourage the minority from trading their "worthless" 3O Notes into more valuable 1O Notes, ensuring the Favored Holders no longer had to share their first lien rights with the excluded holders.¹³

Unlawful Collusion in Relation to the Share Enforcement

The plaintiffs also allege that the Favored Holders and Selecta unlawfully colluded with each other in directing the security agent to enforce the Selecta share pledge based on misleading information and material omissions.¹⁴ They claim that this alleged collusion led to the transfer of all Selecta shares to a company controlled by the Favored Holders, which consolidated the total value of the credit support for the Old 1L Notes with the Favored Holders to the exclusion of the minority.

According to the Complaint, the Favored Holders instructed the security agent to enforce the share pledge on April 30, 2025, and the security agent started proceedings to sanction the enforcement in the

⁷ Complaint, paragraphs 139-140.

⁸ Complaint, paragraph 125.

⁹ Complaint, paragraph 126.

¹⁰ Complaint, paragraph 132.

¹¹ Complaint, paragraph 132.

¹² Complaint, paragraphs 107-119.

¹³ Complaint, paragraph 6.

¹⁴ Complaint, paragraph 148.

Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

Netherlands Commercial Court on the same day.¹⁵ The plaintiffs say that a notice issued by the security agent failed to disclose that the bonds would be replaced with subordinated, out of the money 3O Notes and that minority holders would be able to exchange those 3O Notes for higher-ranking debt only if they gave up sacred rights and waived their right to challenge the restructuring. They also claim the notice failed to inform holders they could participate in the Dutch proceeding.¹⁶

In an incendiary allegation, plaintiffs also assert that Selecta and Bidco “intentionally concealed” from the Dutch court that holders would receive subordinated securities (*i.e.*, the 3O Notes). They call attention to the Dutch court’s statement that no other funding options were available to Selecta, attributing the comment to “misrepresentations by Defendants made (through [the trustee and security agent]) to the Dutch court.”¹⁷

A watershed moment for cooperation agreements?

The antitrust claims in this LMT litigation have commanded considerable market interest as a potential watershed moment for cooperation agreements. As our colleagues at LFI have noted, cooperation agreements have seen a steady [evolution](#) away from the traditional “united front” variety towards more of a “winner takes all” approach, and the Selecta cooperation agreement arguably pushed the envelope even further with its ban on support for deals that offer “advantageous treatment” to bonds that are not held by parties to the agreement. The plaintiffs portray the agreement as an attempt by the ad hoc group to exclude and disadvantage the minority, deliberately depressing the value of the minority holders’ debt and keeping any economic upside for themselves.

Whether the court will find that the agreement and related activities go far enough to breach federal and state antitrust laws of course remains to be seen, but a decision seems likely to influence the structure and content of cooperation agreements going forward.¹⁸

Breach of the Old 1L Notes Indenture

The plaintiffs also claim several breaches of the indenture governing the Old 1L Notes (the “**1L Indenture**”).

First, the Complaint points to provisions in the 1L Indenture requiring Selecta to pay interest in cash on specified dates¹⁹ and notes that Selecta missed an interest payment on January 1, 2025. Plaintiffs complain that Selecta never obtained supermajority consent (*i.e.*, consent from holders of 90% or more of the Old 1L Notes) in relation to the missed payment, “so no waiver or amendment ever obviated this breach.”²⁰ The plaintiffs also refer to Section 6.02 of the 1L Indenture, which specifies that principal, premium, and accrued and unpaid interest become immediately due if the Old 1L Notes are accelerated.

¹⁵ Complaint, paragraphs 90-92.

¹⁶ Complaint, paragraphs 87-94.

¹⁷ Complaint, paragraph 99.

¹⁸ It could also influence the use of ICA drags, as the distressed disposal is also attacked on antitrust grounds as a collusive act of the company and the ad hoc group intended to deprive the minority of their collateral value and other credit support.

¹⁹ 1L Indenture s. 4.01.

²⁰ Complaint, paragraph 182.

Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

According to the plaintiffs, Selecta breached these provisions by failing to pay the principal and interest in cash and instead making payment in new 3O Notes, without getting a related consent or waiver²¹

The plaintiffs' assertion regarding failure to obtain supermajority consent for the missed interest payment may be wide of the mark. It's true that consent from holders of at least 90% of the Old 1L Notes would have been required to "extend the stated time for payment of interest." However, as is common in European high yield, the 1L Indenture did not require supermajority consent to change the length of the grace period that applies before a missed interest payment becomes an Event of Default – making extension of the grace period possible with simple majority consent, which Selecta [reportedly](#) obtained.

As for the claim that the accelerated principal and interest was paid in 3O Notes rather than cash (again, without 90% consent), it seems to be a "form versus substance" argument. The Old 1L Notes were sold in connection with the distressed disposal, with 3O Notes and equity sent as consideration to all former holders, and the liabilities under the Old 1L Notes were extinguished – in other words, there was no principal and interest left to pay, as a technical matter. Noting that the distressed disposal is itself a bone of contention, the plaintiffs are pitching the transaction as the functional equivalent of a payment of principal and interest in a form other than cash without the requisite consent. This kind of "had the effect of" argument, however, was firmly rejected in the [Mitel ruling](#), where the judge noted that if parties "wanted an effective or functional amendment to be covered, they could have used language to that effect."

The plaintiffs also complain that Selecta violated Section 6.10 of the 1L Indenture, which says that if the trustee or security agent collects money from the enforcement of collateral, it has to pay out money to holders "ratably, without preference or priority of any kind."²² They argue that minority holders got a decidedly non pro rata payout, as "the distributions made to the Favored Holders comprised a substantially different package of rights, interests, and securities—with a substantially higher value" than the consideration plaintiffs and other holders received.²³ They also point to the fact that only the Favored Holders could "safely" exchange their subordinated, out of the money 3O Notes for 1O Notes, due to the 12-month suspension of sacred rights protection.²⁴

As a threshold matter, it's not clear why this is characterized as Selecta's breach, given that Section 6.10 sets out an obligation for the trustee / security agent. Leaving that technicality aside, the argument raises several interesting aspects bearing on the issue of (un)equal treatment. At least initially, all holders of Old 1L Notes received the same 3O Notes and equity as proceeds of the distressed disposal. Defendants might also point to fact that the plaintiffs were ultimately offered the same deal in the public exchange offer (*i.e.*, they could exchange their 3O Notes and equity into 1O Notes on the same economic terms that the majority holders received) and note that the sacred rights suspension applied to all 1O Notes. Would a court think that's enough to satisfy the ratable distribution requirement, or (as invited) look through to ultimate results of the LMT as a series of interconnected transactions that treated the Favored Holders and minority holders differently due to the disparate impact of the sacred rights suspension?

²¹ Complaint, paragraphs 178-179, 183-184.

²² Complaint, paragraph 180.

²³ Complaint, paragraph 186.

²⁴ Complaint, paragraph 187.

Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

The Complaint also claims that Selecta violated Section 10.06(a) of the 1L Indenture, which says that the collateral securing the Old 1L Notes and related security documents “will be administered by the Security Agent, in each case pursuant to the Intercreditor Agreement for the benefit of all holders of secured obligations.” The plaintiffs argue that the Security Agent acted “primarily for the benefit of the Favored Holders,” rather than “all” holders as required under the 1L Indenture. It’s apparent this also raises the issue whether all holders “really” got the same thing upon enforcement, and likewise whether this could be a breach by Selecta given that it is an obligation of the security agent.

The plaintiffs also argue that the intercreditor agreement could not override the 1L Indenture provisions they claim were breached by Selecta, based on a clause in the Construction section of the intercreditor agreement specifying that the terms of the intercreditor agreement prevails in the event of a conflict with the 1L Indenture or other relevant debt documents “save the extent that to do so would ... present a material risk of liability for any member of the Group and/or its directors or officers, or give rise to a material risk of breach of fiduciary or statutory duties.”²⁵ According to the Complaint, the distressed disposal presented these material risks, and therefore the intercreditor agreement’s terms could not prevail over conflicting terms under the 1L Indenture (including the 90% consent requirement for changes to payment terms versus the simple majority threshold for the Instructing Group under the intercreditor agreement and the indenture requirements for payment in cash rather than in new debt securities).

Plaintiffs also note that the intercreditor agreement requires proceeds of a distressed disposal to be paid ratably to the relevant creditors²⁶ and in accordance with the terms of the indenture (including the requirement that payments be made “ratably, without preference of any kind”) – an argument that again will turn on whether the court looks to the initial distribution of 3O Notes as evidence of ratable treatment, or to the ultimate conclusion of the series of connected liability management transactions that left the majority in a better place.

Breach of Minority Protection Principle under English Law

Noteworthy for the European market, plaintiffs claim a breach of the “English law minority protection principle” – a reference to common law rules applying to the exercise of majority powers to bind a minority in the same class. Broadly speaking, these rules require the majority power to be exercised in good faith to benefit the class as a whole, and not in a manner that is oppressive or unfair to the minority. This principle underpins the leading English case, *Assenagon v. Irish Bank*, which has contributed to making exit consents (and, more broadly, minority oppression) almost unheard of in English-law debt.²⁷ Plaintiffs assert that the LMT was clearly oppressive and unfair, given the different economic outcomes for the Favored Holders versus the other holders, lack of sacred rights protection in the 1O Notes, and exclusion of the minority from the restructuring negotiation cooperation agreement.

Why an English law claim in this New York case, you ask? As is common for European high yield bonds, Selecta’s bonds are governed by New York law, but the intercreditor agreement is governed by English law

²⁵ Intercreditor Agreement, section. 1.2(z).

²⁶ Intercreditor Agreement, s. 15.1.

²⁷ For background, see [The European Sponsor Playbook: Exit Consents under English Law Financings](#).

Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

– thus an English law claim in relation to the distressed disposal under the intercreditor agreement.²⁸ The intercreditor agreement's jurisdiction clause also permits the secured parties to bring proceedings in any jurisdiction (other than France, for certain proceedings).

In general, a New York court will respect the choice of foreign law to govern an agreement (subject to certain conditions, including the relevance of the law to the parties / dispute and the lack of conflict with public policy), and it's possible for a New York court to consider foreign law matters. In doing so, a court might rely on one or more outside sources, such as expert testimony, evidence from lawyers familiar with the relevant law, foreign judicial decisions, treatises, and other sources.

Interestingly, the Selecta plaintiffs are mirroring arguments raised in a recent English high court action by the dissenting minority opposing the [Hunkemöller LMT](#), as [reported here](#).²⁹ In that case, plaintiffs assert an enforcement and distressed disposal was invalid because the majority exercised its powers under the intercreditor agreement in bad faith and did not act in the best interest of the class as a whole. With English law intercreditor agreements so common in Europe capital structures, a decision on this point in either or both of these cases could have far-reaching impacts on European LMTs.

Breach of the Duty of Good Faith and Fair Dealing

Plaintiffs point to New York's implied covenant of good faith and fair dealing in contract, which requires parties to refrain from actions that would deprive the other party of the benefit of their bargain. They allege Selecta breached the covenant, depriving plaintiffs of their rights and the benefit of their bargain under the 1L Indenture. They sum up the LMT as a series of actions to strip plaintiffs of their rights and protections in bad faith.³⁰

While other liability management litigations have raised similar claims for breach of the New York implied covenant, the results have been highly uneven in prominent cases like *Serta*, *Mitel* and *Trimark*. Arguably these claims invite an emotive response (that's not fair!) instead of looking objectively to the words of the contract to define the parties' respective obligations and correspondingly the fruits of the contract. So far at least in US LMT litigation, judges have been reluctant to look to the implied covenant as a remedial measure for aggressive transactions. If the Selecta plaintiffs do get traction on this aspect, a successful implied covenant claim could curtail future LMTs that involve "creditor-on-creditor" violence.

Conclusion

The plaintiffs in the Selecta Complaint – who bemoan the "stark divide between the fortunes of the Favored Holders and Excluded Holders" – are hardly the first to lament their lack of pro rata treatment in an LMT. They are the first, however, to bring antitrust claims into LMT litigation alongside other allegations.

If the case proceeds to a decision, it could have considerable impact on the use of cooperation agreements

²⁸ The governing law provision also specifies that non-contractual obligations arising out of or in connection with it are governed by English law – which could be relevant given obligations arising at common law such as any duty not to oppress the minority would be non-contractual in nature.

²⁹ The Hunkemöller LMT also involves an uptiering transaction for New York law governed bonds, and an enforcement and distressed disposal under an English-law intercreditor agreement.

³⁰ Complaint, paragraphs 197-204.

Selecta: Uptiering Lawsuit Raises Antitrust Arguments Against Cooperation Agreement and Aggressive LMT

in LMTs, as well as the use of distressed disposals under an intercreditor agreement to do an end run around supermajority consent requirements in the underlying debt documents. We'll also be watching with interest to see what comes from the claim of breach of minority protection principles under the English law-governed intercreditor agreement.

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