

Communication pertaining to the majority shareholder notification of NAMSEN LIMITED

On 28 January 2025, NAMSEN LIMITED, a company incorporated under the laws of Cyprus ("**NAMSEN**") notified to the CSSF a majority shareholder notification in relation to KERNEL HOLDING S.A., a company incorporated under the laws of the Grand Duchy of Luxembourg ("**KERNEL**"), pursuant to Article 3 (1) of the law of 21 July 2012 on mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to trading on a regulated market or having been offered to the public and amending the Law of 23 December 1998 establishing a financial sector supervisory commission (the "**2012 Law**").

On 3 February 2025, the CSSF requested from NAMSEN a legal opinion from an independent Luxembourg law firm with a proven track record in complex matters of Luxembourg corporate and capital market laws as regards the possible outcomes of the litigation involving eight minority shareholders of KERNEL, their likelihoods of success and expected date of completion, as well as the effect of those outcomes on potential squeeze-out or sell-out proceedings in relation with the shares of KERNEL, and the qualification of NAMSEN as the majority shareholder of KERNEL.

Indeed, between February 2024 and April 2024, eight minority shareholders of KERNEL (the "**Claimants**") initiated legal proceedings (summary and on the merits) in Luxembourg, pertaining namely to resolutions taken by the board of directors of KERNEL and to the capital increase of the latter which led NAMSEN to become a majority shareholder within the meaning of Article 1 (1) of the 2012 Law.

Following consultation with the CSSF, the aforementioned legal opinion requested by the CSSF is published in the present summary and anonymous form prepared by its authors.

I. THE RELEVANT FACTS OF THE SHAREHOLDER LITIGATION PROCEEDINGS

Since 24 February 2022, the date on which the Russian Federation invaded Ukraine, KERNEL, a Ukrainian company, allegedly faced operational and financial difficulties that led to a high volatility of its financial results. Thus, in order to improve KERNEL's financial stability, an extraordinary general meeting was held on 23 September 2022, with roughly 70% of the shareholders of KERNEL voting in favour of the delegation to the board of directors of KERNEL of powers to proceed with a capital increase, which was conducted, on 21st August 2023 (the "**Capital Increase**").

The Claimants allege, amongst other things, that NAMSEN purportedly set up the Capital Increase to dilute the Claimants' shareholding in KERNEL and squeeze them out of KERNEL, in accordance with the 2012 Law.

II. THE PENDING PROCEEDINGS IN LUXEMBOURG

There are currently five pending litigations involving KERNEL and its shareholders before the Luxembourg courts: the merits proceedings initiated on 13 October 2023, the merits proceedings and the summary proceedings initiated on 21st February 2024, the summary proceedings initiated on 3 April 2024, and the merits proceedings initiated on 26 April 2024.

In the merits proceedings initiated on 21st February 2024, the Claimants are seeking the nullity of the resolutions taken by the board of directors of KERNEL on 21st August 2023 to proceed with the Capital Increase, of the resolution of 1st September 2023 which announced the results of the Capital Increase, and of the notarial deed of acknowledgement relating to the Capital Increase. Alternatively, in these merits proceedings, the Claimants are also seeking damages from NAMSEN.

Consequently, the merits proceedings initiated on 21st February 2024 will have a bearing on NAMSEN's status as a majority shareholder of KERNEL within the meaning of the 2012 Law, and by extension on NAMSEN's right to initiate squeeze-out proceedings.

III. THE CLAIMANTS' POSITION AT LAW IN THE MERITS PROCEEDINGS

In the merits proceedings initiated on 21st February 2024, the Claimants argue that the decisions of the board of directors of KERNEL taken on 21st August 2023 and published on 1st September 2023, which led to the Capital Increase, should be annulled as (i) they were allegedly taken without any valid delegation of powers, (ii) if the delegation of powers was valid, they were allegedly taken in excess of the powers conferred to the board of directors of KERNEL, (iii) they allegedly constitute in any case an abuse of majority and (iv) they allegedly violate the rules on conflicts of interests.

IV. THE POSSIBLE OUTCOMES OF THE PENDING MERITS PROCEEDINGS OF 21st FEBRUARY 2024 AND THEIR CONSEQUENCES

The following points, amongst others, must be noted regarding the aforementioned Claimants' position at law:

- (i) It seems that the Capital Increase would have been conducted in accordance with Luxembourg law requirements;
- (ii) The regularity of the extraordinary general meeting held on 23 September 2022 can no longer be disputed as an action in nullity of the decisions taken during said extraordinary general meeting is time-barred;
- (iii) NAMSEN was not the only shareholder at the extraordinary general meeting of 23 September 2022 in favour of a future capital increase;
- (iv) The urgent need for liquidities/cash preceding the Capital Increase was seemingly characterised;
- (v) It is not obvious that NAMSEN would have committed an abuse of majority rights in conducting the Capital Increase as the Capital Increase seems to have been performed in accordance with the corporate interest of KERNEL; and
- (vi) The Capital Increase is not likely to have materially impacted subsequent resolutions/decisions taken by KERNEL's shareholders requiring a majority vote, as the outcome of these resolutions/decisions has not been affected by the shares acquired by NAMSEN in the Capital Increase.

Based on the points noted above, it is more likely than not that the Capital Increase would be upheld by the Luxembourg courts. Accordingly, the qualification of NAMSEN as the majority shareholder of KERNEL within the meaning of the 2012 Law would likely also be confirmed.

V. THE ANTICIPATED DURATION OF THE PENDING PROCEEDINGS

It is understood that given the complexity of the shareholder disputes, the cases on the merits may take several years before a final decision is rendered.

VI. THE QUALIFICATION OF NAMSEN AS THE MAJORITY SHAREHOLDER OF KERNEL AND THE POTENTIAL SQUEEZE-OUT / SELL-OUT PROCEEDINGS

Article 1 (1) of the 2012 Law defines "majority shareholder" as "*any natural or legal person, holding alone or with persons acting in concert with it, directly or indirectly, at least 95 percent of a company's capital carrying voting rights and 95 percent of a company's voting rights*".

As of today, NAMSEN holds more than 95% of KERNEL's shares. Consequently, NAMSEN is the majority shareholder of KERNEL within the meaning of the 2012 Law.