

**M&A NEWS****SINTEZ Group acquired power station in Macedonia**

SINTEZ Group entered Macedonian power generation market. The company acquired majority stake from Itera in an electricity generation plant construction project.

The acquisition lies in frames of business diversification programme of the company. SINTEZ already develops power project in St. Petersburg with total 540 MWt of electricity and 160 MWt of thermal capacity. The construction phase will last appr. 27 months and cost more than EUR 138 million.

Macedonia annually imports more than 40 per cent of consumed electricity. The project is already gained a strategic status and acquired far and wide support of the local government.

28 March 2007

**Matra Petroleum is to acquire an upstream company in Orenburg region**

Matra Petroleum is a small independent oil and gas company with producing properties in Central Europe. In March 2007, the company entered into an agreement to acquire 100% of the Russian company OOO Arkhangelovskoe holding the exploration license for the oilfield in Orenburg region. According to the deal details Matra paid for the asset appr. GBP 2.7 mln in 55 mln new shares.

The exploration license is valid until August 2009 and requires drilling of 4 wells. Drilling is expected to commence in June 2007.

According to the independent

**M&A in the Russian oil and gas industry**

The following article is an excerpt from the M&A Guide for the Russian oil and gas industry published by ACP and the law firm Nörr Stiefenhofer Lutz in September 2006.

**Legal due diligence****1. Liabilities****Contractual liabilities**

The target company may have various forms of contractual liabilities e.g. from loan agreements, employment agreements or under long-term supply contracts. These liabilities will have to be evaluated.

**Practice note:** It should be noted that many Russian companies have various "off-balance sheet obligations", such as suretyships, guarantees and other contingent liabilities that may not be accounted for in their financial statements.

**Liability for failure to comply with licensing requirements**

Fines and restrictions may be imposed and/or licences under the current Subsoil Law may be suspended, amended or terminated in the following selected cases:

- Immediate danger to health or safety of the local population
- Material violation of licence terms by the licence holder, e.g. failure to make timely payments of levies and taxes for subsoil use
- Failure of licensee to commence operations in accordance with the terms of the licence
- Liquidation of the legal entity holding the licence
- Failure of the licensee to provide required reports (e.g. geological information) to controlling bodies
- Systematic violation of the subsoil use rules by the licence holder

**2. Litigation, liquidation and insolvency**

It has to be checked whether the target company is subject to litigation or whether creditors have the right to initiate insolvency proceedings.

An issue often arising with oil and gas companies at

reserves evaluation, Sokolovskaya prospect which lies within the license territory contains appr. 32 million barrels of prospective recoverable resources under the best estimations and appr. 4-16 million barrels under low estimations.

Shares are becoming efficient mechanism for new acquisitions in Russia. We see the benefit in large upside potential of exploration companies. In our previous issues we mentioned Star Energy's acquisitions in Orenburg region which also used shares as a payment mechanism. Since the acquisition in October 2006, the stock price increased by more than 200 per cent.

Although sellers can gain significant profits from the transaction, one must always keep in mind geological, exploration and exploitation risks which can significantly downgrade the stock price and capitalisation of the company.

30 March 2007

### Eni – first step into Russian upstream market

On 5<sup>th</sup> April Eni announced that EniNeftegaz (60% Eni, 40% Enel S.p.A.) has successfully acquired lot#2 in the auction for YUKOS assets for the total price of RUR 151.536 bn (US\$5.83 bn).

Lot#2 includes:

- 100% of OAO Arctic Gas
- 100% of ZAO Urengoil
- 100% of OAO Neftegaztehnologiya
- 20% of OAO Gazpromneft

Rosneft is the second largest oil

exploration or development stage is that they may have had a negative asset value for a period of several years. If the value of net assets falls below the minimum amount of the charter capital established by law at the end of the second year or any subsequent year a company is obliged to take a decision on voluntary liquidation. If a company fails to take such a decision within a reasonable time, its creditors may request early termination or discharge of the company's obligations and claim damages from the company. However, if the company has rectified the asset position<sup>1</sup> before any claim on its liquidation is brought, it is possible that it may not be liquidated. Please note, however, that in politically sensitive situations the undercapitalization may be considered by competent courts as an incurable violation of Russian corporate law and thus the company may be forced into liquidation (see e.g. the MNVK case).

### 3. Approvals of the acquisition

The acquisition must be made with the necessary corporate and regulatory approvals.

#### Corporate approvals

Under Russian law there are certain requirements for transactions between a company and an **"interested party"** which may include the acquisition of shares in a company by such a person. "Interested persons" include managers, directors and shareholders holding jointly with affiliated persons 20% or more of the voting shares of the company involved, as well as persons entitled to give mandatory instructions to the company. Information on all transactions involving "interested persons" must be submitted to the company's board of directors, the company's audit committee and the company's auditor. Interested-party transactions carried out in violation of these rules may be declared invalid by a competent court.

Special approval of the board of directors or the shareholders (depending on the value of the transaction in relation to the company's assets) may also be required for so-called **"major transactions"**, i.e. transactions the value of which generally exceeds 25% of the book value of the company's assets. Various other company procedures (such as valuation of the subject-matter of the contemplated transaction by the directors) may also be

<sup>1</sup> Possibly by providing additional equity to the company, which is, however, unclear in Russian law and practice.

company in Russia, was among the main rivals in the auction process. But, citing the words of its representative Vladimir Voevoda, "the final price was above company's estimations".

One may believe that Rosneft might have got into informal agreement with Gazprom in order to provide competitive environment during the process and increase the assets value. Gazprom, in turn, can support the company in the auction for East-Siberian assets of YUKOS.

The same day Eni and Enel have offered Gazprom a two-year option to acquire 51% participation interest in aforementioned assets. In case Gazprom exercises its option, the assets will be operated through a joint venture between Eni and Gazprom which will have access to Eni's most advanced technologies.

Current acquisition enables Eni to produce gas from own assets in Russia and, hence, increase the energy security of Italy. Gazprom, in turn, can get access to Italian gas distribution networks, thereby gaining additional profits from delivering gas to the end consumers.

This transaction marks Eni's entrance into the Russian upstream market as a major player and is the third largest foreign acquisition to date in Russia's oil and gas sector.

These agreements are an additional step in implementing the Strategic Partnership between Eni and Gazprom signed in November 2006, under which the two companies established an alliance to develop upstream, midstream and downstream energy projects inside and outside of Russia.

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necessary. If a transaction of a stock company is simultaneously a major and an interested-party transaction, the rules for interested-party transaction approvals apply. For limited liability companies there is no such express rule but the conservative approach is to follow both corporate approval procedures.

**Practice note:** Corporate approvals for state-owned companies may take a certain time due to ministerial approval processes.

### Regulatory approvals

- Central Bank
  - Currency regulations in connection with the purchase of assets or shares must be complied with. In particular, it is necessary to ensure that advance payments in foreign currency are in compliance with currency law
- Federal Anti-Monopoly Service ("FAS") or its relevant territorial division
  - The acquisition of more than 10% of a company's fixed assets (by way of asset deal) may require a prior approval or notification of the FAS, depending on the balance sheet value of the fixed assets of the acquirer and the selling company.
  - If the approval is not obtained
    - the FAS may file a claim with a competent court for invalidation of the transaction;
    - the relevant agreement may be terminated or amended by a competent court
    - an obligation may be imposed on the company to enter into an agreement with another company
    - profits arising from the violation have to be transferred to the federal budget
    - the company may be reorganised by means of a spin-off
    - fines may be imposed; this may result in the imposition of a fine on officers or the company for failure to submit a necessary application or petition to the FAS or for failure to fulfill the FAS' directives,

provided in each case the transaction violates the competition in the relevant market in Russia.

### **New turn in Shtokman project**

Gazprom is currently considering the opportunity to create an operator company for the Shtokman project jointly with ConocoPhillips, Statoil, Total, and Hydro.

Shtokman gas and condensate field is among the largest in the world with total recoverable reserves of 3.7 trillion cubic meters of gas and 31 million tons of gas condensate under C1+C2 classification.

In 2006 Gazprom has been evaluating the opportunity to sell 49 per cent in Shtokman project to aforementioned companies in form of asset swap. But they did not provide Gazprom with comparable assets. Finally, in October 2006, the company announced its decision to develop the project alone. Later on, the monopoly offered the foreign companies to provide the project operatorship services, but it was out of their principal interest.

According to the source in Gazprom, the company intends to create an operatorship company with ConocoPhillips, Statoil, Total, and Hydro which will operate all infrastructure objects including pipelines and LNG plant. Gazprom will have 100 per cent of hydrocarbon reserves of the field. However, all companies are allowed to book reserves in proportion to their stakes in operatorship company and replace significant amount of reserves.

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### **FINANCIAL ADVISORY NEWS**

InterTechElectro – Novaya generatsiya, a project company established by private utility investors, has mandated BNP

## **Documentation of acquisitions and divestitures**

### **1. Pre-transaction documentation**

#### **Confidentiality agreement**

A confidentiality agreement is the basis for any commercial transaction. It shall prevent that commercially sensitive information is disseminated beyond the immediate parties involved in a transaction. The parties will focus in their negotiations on the term of a confidentiality agreement (in most cases a confidentiality period of 3-5 years from the date of signing of the agreement should provide sufficient protection; unlimited confidentiality periods should in principle be avoided). They will also deal in particular with the consequences of a violation of the agreement. It is not atypical for M&A transactions to include a liquidated damages clause in a confidentiality agreement which specifies the amount of damages payable for every violation of the confidentiality obligations.

#### **Letters of intent**

In M&A transactions letters of intent are issued at various stages. Bidders in divestiture processes submit letters of intent to the seller (typically during the first round an initial letter of intent is issued, during the final round the final letter is provided). In addition, banks often provide support letters of intent to bidders in which they indicate their willingness to support a bidder with debt financing. The legal nature of letters of intent is what the name suggests: they are non-binding expressions of interest provided they are not qualified as a pre-contract under the applicable law (e.g. a preliminary agreement under Russian law). However, even if the letter of intent is not a legally binding document in a commercial sense the letter of intent creates expectations for the other party and it is a step on the way of completing an M&A transaction.

#### **Term sheets**

Prior to drafting e.g. comprehensive sale and purchase agreements or financing documentation, the transaction structure and the basic understanding of the parties should be summarised in so-called term sheets. Term sheets can reflect varying degrees of detail; on the one end of the

Paribas to arrange project financing for construction of a new 124 MW gas fired CHP plant in the city of Noyabrsk in the oil and gas rich Yamal-Nenetsk autonomous district. The main power off-taker and gas supplier for the new power plant shall be OAO Sibneft – Noyabrskneftegas, subsidiary of Gazprom Neft, while heat produced by the power plant shall be mostly consumed by residents of Noyabrsk. The total investment volume is around US\$ 230 million, thereof up to US\$ 170 million shall be provided as a debt financing by a syndicate of foreign banks. Maturity is expected at more than 10 years.

The contractual framework includes long term Power Purchase Agreement and Gas Supply Contract. Gas turbines shall be supplied by GE Energy. Other equipment producers are Russian companies including OAO Kaluga Turbine Plant (steam turbines). E.ON, the German power utility, provides technical advice on the project. General contractor of the project is a Russian company.

Start of operation is planned by the end of 2008.

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spectrum they can be mere summaries of the most important terms of a transaction and on the other end they may reflect every single provision (in an abbreviated form). Term sheets are an important tool in the documentation process since they allow adaptations in parallel to the parties' negotiation process.

***In the next issue of the [ACP Monitor](#) more on: documentation of acquisitions and divestitures***

Based on its market knowledge and transactional experience, ACP has developed an M&A Guide for the Russian oil & gas industry in co-operation with the law firm Nörr Stiefenhofer Lutz. RPI, and Statoil ASA and LeBoeuf Lamb were involved in preparing the Guide. The Guide describes in detail legal and tax issues of mergers, divestitures and acquisitions in the Russian oil & gas industry, and shall be of assistance to companies and individual investors interested in acquiring or divesting Russian oil or gas assets with a focus on the upstream sector. The Guide is provided to our clients free of charge upon request.

**Most recent conferences where ACP was invited as a speaker:**

- **3rd International Conference: Trade & project finance in Russia**  
Adam Smith Conferences  
Moscow, 19-22 March 2007  
<http://www.assetcapitalpartners.com/public/conferences.php>
- **1st International Russian Alternative Investment Forum: Examining the rise of private equity, hedge funds & other alternative investment tools**  
Adam Smith Conferences  
London, 21-23 February 2007  
Vladimir Matias: "Financing options for leveraged deals and exit strategies"  
<http://www.assetcapitalpartners.com/public/conferences.php>

**Upcoming conferences to which ACP is invited as a speaker:**

- **6th International Pipeline Forum: Pipeline Transport 2007**  
RPI, Transneft  
Moscow, 17-18 April 2007  
<http://www.rpi-inc.com/PF2007/index.html>
- **The Performance Theatre**  
The Performance Theatre Foundation  
St.Petersburg, 20-21 June 2007  
[www.theperformancetheatre.com](http://www.theperformancetheatre.com)

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