

**M&A NEWS****YUKOS auctions results**

Eight auctions for YUKOS assets took place in mid April resulting in a record sale price of RUR 288.147 billion.

**Lot #4**, auctioned on April 17<sup>th</sup>, included power assets:

- 100% of the shares of ZAO Energoservisnaya,
- 100% of the shares of ZAO Eskom-EnergoTrade\*.

OOO Monte-Valle won the auction paying RUR 3.562 billion, RUR 924 million above the start price.

**Lot #5**, auctioned on April 18<sup>th</sup>, included oilfield service companies:

- 64% of the shares of ZAO Manoil,
- 10% of the shares of OAO Yuganskoil,
- 41% of the shares of ZAO Rosnefttrans,
- 100% of the shares of OOO YuganskNiPiNeft,

OOO Neft-Activ, a Rosneft subsidiary, won the auction and paid RUR 1.032 billion, which is RUR 40 million above the start price.

**Lot #7** was auctioned on April 25<sup>th</sup> and included 7.69% of the shares of VTB Bank.

The winner of the auction, VTB Bank Europe plc, offered RUR 234.134 million for the assets, RUR 2.318 million above the start price.

**Lot #8**, auctioned on April 26<sup>th</sup>, included 1.998% of the shares in OAO Khanti-Mansiysk bank.

OOO JVP Invest won the auction paying RUR 333.378 million, which is RUR 169.9 million above the start price.

**Lot #9** was auctioned on May 3<sup>rd</sup> and included:

- 100% of the shares of OAO

**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.

**Acquisitions and divestitures****1. Acquisition****Sale and purchase agreement**

The sale and purchase agreement will have to deal with the following main points:

- The correct reference to the **parties** of the agreement, i.e. the seller and the buyer, will be the first point to deal with.
- In a **preamble** the parties will typically describe the transaction in general terms (e.g. sale of shares in an upstream company).
- The agreement will then focus on the parties' main obligations.
  - As far as the seller is concerned it will have to **transfer the shares (or assets)** to the buyer; to this end the sale and purchase agreement will have to describe in detail the shares or assets to be transferred and the seller will also make representations and warranties as to the exact status of the sold shares or assets (e.g. the target company's liabilities).
  - As far as the buyer is concerned it will have to pay the **purchase price**, either in one payment or several instalments.<sup>1</sup> The payment obligation may be defined in the form of a so-called earn-out provision. Under such a provision the payment is typically made in instalments. The amount of each instalment is dependent on the financial performance of the target company. Definitions of earn-out provisions vary widely. Often the parties agree on a retention amount and the use of escrow

<sup>1</sup> If the purchase price is payable in several installments it is sometimes useful to request that the payment obligation is underpinned by a letter of credit by a bank.

- Stavropolnefteproduct,
- 26.26% of the shares of OAO Kubanenergo,
- 100% of the shares of OOO Val Shatskogo,
- 49.9% of the shares of OOO Caspian oil company\*

Lukoil's subsidiary, ZAO Promregion Holding, won the auction offering RUR 4.9 billion, RUR 1.188 billion above the start price. However, the Federal Anti-Monopoly Service ("FAS") refused to approve the transaction, and now it may be closed with Rosneft's subsidiary OOO Neft-Activ which was the second bidder and offered RUR 37 million less.

**Lot #11**, auctioned on May 10<sup>th</sup>, included:

- 100% of the shares of OAO Samaraneftegas,
- 100% of the shares of OAO Kuybishev oil refinery\*

The auction was won by OOO Neft-Activ, a subsidiary of Rosneft, that paid RUR 165.53 billion, RUR 11.4 billion above the start price.

**Lot #12** was auctioned on May 10<sup>th</sup>. It included shares of:

- OAO FPK Kedr-M,
- OOO YUKOS-Ladoga\*

OOO Unitex, affiliated with Novatek, won the auction paying RUR 12.463 billion, which is RUR 4.72 billion above the start price.

**Lot #13**, auctioned on May 11<sup>th</sup>, included:

- the Dubininskoye office building,
- 77.4% of OOO Obyedinenny centr issledovaniy i razrabotok,
- 100% in OOO TopMaster-Reality,
- ZAO YUKOS-Moscow,
- OOO Torgoviy dom YUKOS,
- OOO YUKOS Vostok Trade\*

The auction was won by OOO Prana which paid RUR 100.09 billion, RUR

accounts to synchronise the transfer of shares or assets and the payment of the purchase price. Sometimes the purchase price is not paid in cash but (at least partially) in shares e.g. of the purchasing company.

- The **conditions precedent** have to be met for the sale and purchase agreement to become effective. The conditions precedent indicate at least that seller and purchaser shall deliver to each other documents showing that they can validly enter into the agreement, including
  - a notarised copy of the memorandum of incorporation, charter, and/or other constituent documents of the respective companies,
  - notarised copies of all necessary corporate resolutions of the respective companies authorising the execution and performance of their obligations under the agreement,
  - a notarised copy of the powers of attorney and/or certificates of positions held, and other documents confirming the requisite power of the persons signing the agreement on behalf of the respective party,
  - a copy of antimonopoly approvals, if required;
  - waivers of pre-emptive rights or rights of first refusal;
  - production of certain documents.

In addition, the sale and purchase agreement will require that no 'material adverse effect' has occurred between the date of execution of the agreement and it becoming effective.

**Practice note:** It is useful to prepare a so-called completion agenda on the basis of the documents which are often complicated. The completion agenda shall summarise the steps necessary to attain the transaction closing.

- The main focus of the negotiations and the documentation will be on the seller's and the purchaser's **representations, warranties and indemnities** as well as the resulting liability for any misrepresentations with respect to the sold shares or assets. The most usual warranties are
  - Warranties with respect to the legal status of

<sup>2</sup> However, in practice there are such shareholders agreements governed by Russian law.

78.2 billion above the start price. Its final beneficiaries are not disclosed and this may be a reason for the blocking of the transaction by the FAS.

The auction results of YUKOS' assets have already covered the company's liabilities in the amount of RUR 711 billion. Cumulative sales proceeds exceeded RUR 713 billion, and the company plans to realize a further RUR 33 billion during the next auctions. The final lot N16 will be auctioned on June 7<sup>th</sup>.

16 May 2007

#### **ZAAB Energy AG completed private placement and listing on the Frankfurt stock exchange**

ZAAB Energy AG is the first company with upstream assets in Russia having a primary listing on the German Open Market ("Freiverkehr"). This market segment can be compared to the Alternative Investment Market (AIM) in London.

In April 2007 the company successfully secured the financing of its current work programme and now expects to have sufficient financing for coming into production.

ZAAB Energy's Russian subsidiary ZAAB Invest which is headquartered in Moscow holds licenses to five areas located in the Russian Federation between Black and Caspian Sea. The license areas are located in well-established Russian oil provinces and have access to existing infrastructure (such as pipelines, railroads or ports). ZAAB Invest's reserves and resources potential of recoverable oil and gas is currently estimated at several hundred million barrels of oil and oil equivalent. A significant part of the resources has been audited by an

the seller and the purchaser (broadly confirming that the parties are legally able to enter into the agreement, not violating law or provisions from the respective companies' constituent documents)

- Warranties with respect to the assets acquired, including their financial status;
- Warranties with respect to debts owed by the acquired companies towards third parties
- Warranties with respect to the regulatory status of the acquired companies
- Warranties with respect to the legal status of the main assets of the acquired companies (e.g. ownership to the assets)
- Warranties with respect to the status of the material contracts of the acquired companies
- Warranties with respect to litigation and investigations against the acquired companies
- Warranties with respect to insolvency and liquidation of the acquired companies

Often the seller will issue a **disclosure letter** to the purchaser in which he lists the issues of which the purchaser has been made aware. He may also use contractual means for so-called 'vendor protection', e.g. by limiting his liability to a certain amount.

**Practice note:** Often legal and financial due diligence will demonstrate risks which cannot be eliminated until the closing of the acquisition. The parties have then five standard ways of mitigating residual risks: (i) They can include conditions precedent in the sale and purchase agreement which ask the seller to take remedial steps prior to closing of the acquisition. (ii) The parties may also agree that part of the purchase price is retained after closing of the acquisition until remedial steps have been completed. (iii) The parties may agree on a price reduction, either immediately in the sale and purchase agreement or in an amendment to the sale and purchase agreement. This is a common approach in Russia. (iv) Fourthly the purchaser may seek protection in the form of warranties and/or indemnities from the seller. (v) Lastly, the purchaser may take a commercial view on the seriousness of a certain risk and seek to rectify the risk himself after closing of the acquisition.

independent, international reserves auditor.

The company plans to take up production at the end of 2007/beginning of 2008.

16 May 2007

### **MOL acquires hydrocarbon field in Russia**

MOL Group acquired 100% of the shares of OOO Matyushkinskaya Vertikal – a company which holds a license for the Matyushkinskoye oil field in the Tomsk region, Russia.

The license area covers 3,231 square km and contains appr. 6 million bbl of 2P reserves according to a Miller and Lents report. Current production on the field is appr. 550-600 bopd. The purchase price remained confidential. According to a source in the company, "it reflects the fair market value for such kind of assets".

MOL Group is constantly expanding its upstream presence in Russia. The company already operates the West-Malobaliskoye field jointly with Russneft and is developing the Surgutsky-7 block. In the beginning of the year 2007, MOL acquired 100% of the shares of BaiTex LLC, which owns the license for the Baituganskoye oil producing field in the Volga-Ural region.

Shandor Fashimon, managing director of MOL-Russ said: "The purchase of Matyushkinskaya Vertikal excellently fits with MOL Group's upstream strategy in the Russian Federation. Relying on our past experience in handling Russian fields MOL Group's main goal with Matyushkinskaya Vertikal is to maximize its recoverable reserves in order to achieve a balanced, long-term production profile on the field."

2 May 2007

- Furthermore, the seller and the buyer may agree on **additional obligations** (such as a non-compete clause under which the seller is obliged for a certain period not to compete with the target company acquired by the buyer).
- A sale and purchase agreement for international transactions (i.e. an acquisition in which a non-Russian purchaser is involved) will often have a clause under which the agreement is **governed by English law**. It should be noted that English law can only govern the contractual relationship between the parties of the agreement. The transfer of the assets held directly by a Russian company or the shares in a Russian company will inevitably be governed by Russian law since most of the assets will be located in the Russian Federation and a transfer of shares is necessarily governed by the law applicable to the company which will again in many cases be Russian law. However, if the shares of an offshore holding company are acquired, foreign (e.g. English) law may govern any transfers. Please note that mandatory rules of Russian law may apply regardless of the choice of law.
- **Annexes** may in detail describe the sold shares or assets.

### **Farm-in agreement**

A farm-in agreement is a transfer of a part of the shares in an oil or gas company in consideration for an agreement by the transferee to meet certain expenditures that would otherwise have to be undertaken by the subsoil rights user. Hence, a farm-in agreement is a combination of a typical sale and purchase agreement and an additional investment commitment.

### **Escrow account agreement**

There is a natural conflict between seller and buyer: whereas the seller does not want to transfer his shares or assets to the purchaser prior to receiving the purchase price, the purchaser does not want to pay the purchase price prior to receiving the shares or assets. This conflict is typically regulated by involving an independent escrow account agent (often a bank) who opens an account into which the purchase price is transferred and released only once the shares or assets are transferred.

### **Russneft sells an upstream subsidiary**

TNK-BP acquired a 66.16% stake in Severnoyeftegas from Russneft. The company holds two production licenses for the Vostochno-Tarskoye and Maloichskoye oil and gas fields with recoverable oil reserves of appr. 2.3 million tons (appr. 16.8 million bbl) under A+B+C1 classification. In 2006 the company produced 29,000 tons and plans to increase production to 109,000 tons in 2007.

Russneft acquired Severnoyeftegas and some other small assets through the acquisition of OAO Sistema-Neft from AFK Sistema for US\$ 288.5 million in 2004.

Although the acquisition price was not disclosed, analysts believe that the transaction amount could be more than US\$ 180 million.

2 May 2007

### **Schlumberger is to consolidate 100% of Tumenpromgeophysika**

Schlumberger is currently finalizing consolidation of 100% of the shares in the Russian oilfield service company Tumenpromgeophysika. Schlumberger already controls 49% of the company, and the cost of the remaining interest is expected to reach appr. US\$ 50 million.

Tumenpromgeophysika provides a full range of geophysical, geotechnical and other oil field services. The company is presented in all main hydrocarbon provinces in Russia and operates in the Khanti-Mansiyskiy and Yamalo-Nenets autonomous regions as well as in the Tyumen region, East Siberia, the Caspian region and Kazakhstan. Among Tumenpromgeophysika's main clients are Gazprom, Rosneft,

The seller has to execute and deliver to the purchaser a confirmation that a transfer by the escrow agent to the seller shall be deemed by the seller to have been made on behalf of the purchaser and shall therefore satisfy in full the purchaser's obligations to pay the purchase price under the sale and purchase agreement. Escrow agents typically provide clearing services (also called "delivery versus payment"), i.e. they collect the shares from the seller and the purchase price from the purchaser and ensure a simultaneous transfer of shares versus payment of the purchase price. Thus, the reason for using an escrow agent is to synchronise the transfer of shares with the payment of the purchase price.

### **Shareholders agreement**

If several investors make an acquisition or if an investor is joining an existing shareholder the shareholders will want to regulate their relationships in a shareholders agreement. This may deal in particular with the following issues:

**Prior approval rights:** investors may want to secure approval rights at shareholders or management level with respect to important company decisions.

**Reporting rights:** investors may want to receive certain information in the form of regular reports.

Investors may want to secure a right of first refusal against other shareholders (pursuant to which the seller of shares has to offer the shares first to existing shareholders).

If one shareholder sells his shares he may have drag along rights under the shareholders agreement pursuant to which the other shareholders are under an obligation to sell their shares as well.

In the reverse situation a shareholder may have tag or take along rights pursuant to which he has the right to sell his shares also if another shareholder sells his shares.

Shareholders agreements are a complex area and will need to be drafted with a view to the specific requirements of the shareholders involved. It should be noted that the status of shareholders agreements remains extremely unclear under Russian law. It is challenging to have the agreement governed by Russian law; that is why most will be governed by English, New York or another non-Russian law.<sup>2</sup> This is

Slavneft, TNK-BP, Surgutneftegas.

25 April 2007

#### FINANCIAL ADVISORY NEWS

##### **LUKOIL raises US\$ 250 million**

AO LUKOIL successfully raised a syndicated unsecured US\$ 250 million Term Loan Facility. The Facility has been arranged by ABN AMRO and CALYON and is joined by other major international banks.

The Facility pays a margin of 0.40% per annum and has a five-year maturity. It was pre-funded by ABN AMRO and CALYON on April 23<sup>rd</sup> and fully utilized the same day to refinance the remaining part of LUKOIL's US\$ 765 million syndicated pre-export facility arranged in 2003.

The syndication was positively received on the market and closed more than twice oversubscribed. This represents a significant endorsement from the market of the strength of the LUKOIL credit for what is the lowest-priced 5-year unsecured syndicated loan to a Russian corporate to date. AO LUKOIL elected not to increase the Facility amount and instead scaled back the banks' commitments.

Over the last 15 years LUKOIL has continued to retain a relatively high degree of financial flexibility such that it currently enjoys an investment grade rating from two of the major rating agencies, Moody's (Baa2) and Fitch (BBB-). LUKOIL's limited indebtedness is now primarily unsecured and with this facility no more secured debt exists at the Holding Company level.

*Source: LUKOIL Press Release*

25 April 2007

of course possible where the shareholders agreement is entered into between Russian and foreign parties. However, the key issue remains whether the rights provided in the shareholders agreement will ultimately be enforceable in Russia. This issue has not yet been tested in the higher courts (decisions may have been rendered at first instance, but such cases have not been reported). For this reason it is to be expected that non-Russian parties to shareholders agreements will seek to include an arbitration provision in the agreement that provides for arbitration of disputes related to a shareholders agreement in a jurisdiction outside the Russian Federation. There is a possible added protection for foreign investors as a party to a foreign-law shareholders agreement, in terms of enforcement of its terms, if the Russian company partner has assets offshore that can be attached to satisfy a damage award obtained in a foreign arbitration or court setting.

#### ***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, 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>
- **6th International Pipeline Forum: Pipeline Transport 2007**  
RPI, Transneft  
Moscow, 17-18 April 2007  
<http://www.rpi-inc.com/PF2007/index.html>

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

- **The Performance Theatre**  
The Performance Theatre Foundation  
St.Petersburg, 20-21 June 2007  
[www.theperformancetheatre.com](http://www.theperformancetheatre.com)

The Performance Theatre Foundation Partners:

**Recent publications by Asset Capital Partners:**

**Jan-Hendrik Röver, Secured Lending in Eastern Europe. Comparative Law of Secured Transactions and the EBRD Model Law (Oxford 2007)**



This new work is the first comparative study of central and eastern European secured transactions laws to be written in English. It gives a valuable insight into the legal reforms taking place in the transition economies of central and eastern Europe (and elsewhere), by explaining the general mechanics of secured transactions law in a helpful and practical way.

The book explores the characteristics that make security law useful from a practical point of view, the purpose being not merely to describe existing rules on security but to concentrate on the question of how those rules can apply in

practice. The author concentrates on seven central and eastern European secured transactions laws in Bulgaria, the Czech Republic, Hungary, Poland, Romania, the Russian Federation and the Slovak Republic. These laws are contrasted with the EBRD's Model Law on Secured Transactions and the EBRD's Core Principles for a Modern Secured Transactions Law. In addition, English, German and US law (which, among others, influenced the EBRD's work) are used as further reference sources.

The descriptions of eastern European laws were reviewed by Nörr Stiefenhofer Lutz, a leading European law firm, thus ensuring an up-to-date introduction to central and eastern European secured transactions laws.

---

**Asset Capital Partners** is an international investment banking and financial advisory firm based in Munich and Moscow with a special focus on Russia and other CIS countries.

**Asset Capital Partners GmbH**

Prechistensky per. 14/1  
119034 Moscow, Russia  
p: +7 495 981 0791  
f: +7 495 981 0792

[moscow@assetcapitalpartners.com](mailto:moscow@assetcapitalpartners.com)  
[www.assetcapitalpartners.com](http://www.assetcapitalpartners.com)

**Asset Capital Partners GmbH**

Bauerstrasse 20  
80796 Munich, Germany  
p: +49 89 242 246 910  
f: +49 89 242 246 990

[munich@assetcapitalpartners.com](mailto:munich@assetcapitalpartners.com)  
[www.assetcapitalpartners.com](http://www.assetcapitalpartners.com)

**DISCLAIMER**

*ACP Monitor* has been issued by Asset Capital Partners GmbH for information purposes only. This document has no regard for the specific investment objectives, financial situation or needs of any specific entity. The information contained herein is based on materials and sources that we believe to be reliable. However, Asset Capital Partners GmbH makes no representation or warranty, either expressed or implied, in relation to the accuracy, completeness or reliability of the information contained herein. Opinions expressed are our current opinions as of the date appearing of this material only. Any opinions expressed are subject to change without notice and Asset Capital Partners GmbH is under no obligation to update the information contained herein. None of Asset Capital Partners GmbH, its subsidiaries, affiliates or employees shall have any liability whatsoever for any direct, indirect or consequential loss or damage arising from any use of this document.