

IN THE MATTER OF AN LCIA ARBITRATION

BETWEEN:-

(1) LITTOP ENTERPRISES LIMITED

(2) BRIDGEMONT VENTURES LIMITED

(3) BORDO MANAGEMENT LIMITED

Claimants

- and -

(1) NJSC NAFTOGAZ UKRAINY

(2) PJSC UKRNAFTA

Respondents

REQUEST FOR ARBITRATION

A. DETAILS OF PARTIES TO THE ARBITRATION AND THEIR LEGAL REPRESENTATIVES

1. The Claimants are companies incorporated and registered in the Republic of Cyprus.
2. The Claimants are investors in the natural gas sector of Ukraine. The heart of those investments was a significant minority shareholding in the Second Respondent, PJSC Ukrnafta ("**Ukrnafta**"). Ukrnafta was established in 1994 and is one of the largest producers of oil and natural gas in Ukraine. Together the Claimants hold 40.1009% of the shares in Ukrnafta.
3. The First Respondent, NJSC Naftogaz Ukrainy ("**Naftogaz**"), is a company incorporated in Ukraine. It is wholly owned by the Ukrainian State and is the majority shareholder in Ukrnafta, with a 50% plus one shareholding.
4. The Claimants seek injunctive, declaratory and pecuniary relief in respect of breaches by Naftogaz of their rights pursuant to a written shareholders' agreement dated 25 January 2010 ("**the SHA**") between the Claimants, Naftogaz, Ukrnafta and another company, Ballioti Enterprises Limited ("**Ballioti**"), which is no longer a shareholder in Ukrnafta. Ukrnafta is joined to these proceedings in order to maximise the efficacy of the relief sought. The SHA is written in the Ukrainian language. Exhibited to this Request are copies of the original Ukrainian text and English translation.¹
5. The contact details of the parties are as follows:

¹ Ukrainian text (**Exhibit C-1**); English translation (**Exhibit C-1A**) All translations exhibited have been prepared by the Claimants.

(a) The Claimants:

Littop Enterprises Limited

Pente Pigadion, 2, Mesa Geitonia, 4002
Limassol
Cyprus

Bridgemont Ventures Limited

Agamemnonos, 7, Ypsonas, 4180
Limassol
Cyprus

Bordo Management Limited

Petrou Tsirou, 71 Swepeco Court 8,
Flat/Office M2 NAAFI, P.C.3076
Limassol
Cyprus

(b) The First Respondent:

NJSC NAFTOGAZ UKRAINY

6 Khmelnytskogo Str.,
Kyiv, Ukraine 01001

(c) The Second Respondent:

PJSC UKRNAFTA

3-5 Nestorivskyi Prov.,
Kyiv, 04053, Ukraine

6. The Claimants are represented by:

Mr Simon Moore (Simon.Moore@fieldfisher.com)

Mr Arik Aslanyan (Arik.Aslanyan@fieldfisher.com)

Mr Toby Redgrave (Toby.Redgrave@fieldfisher.com)

Mr Mikhail Basisty (Mikhail.Basisty@fieldfisher.com)

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United Kingdom

7. It is not known whether the Respondents are legally represented.

B. THE ARBITRATION AGREEMENT AND APPOINTMENT OF THE TRIBUNAL

8. Article 17 of the SHA contains an arbitration agreement in the following terms (the "**Arbitration Agreement**"):

"Any dispute, disagreement or claim whatsoever arising from or in connection with this Agreement (including a dispute concerning the existence, validity or termination of this Agreement or the consequences of its invalidity and including any dispute whatsoever relating to the validity or possibility of its execution) shall be referred and subsequently settled exclusively by the London Court of International Arbitration or any successor to it in accordance with the Arbitration Rules (the LCIA Rules). The Arbitration Tribunal shall consist of three Arbitrators, two of whom shall be appointed by the respective Parties, while the third shall be agreed between these two Arbitrators, and in the absence of such agreement shall be appointed by the President of the London Court of International Arbitration. The place of arbitration shall be London, England, and the language of the arbitration proceedings shall be English. The law governing legal relations between the Parties to this Agreement is exclusively the law of England."

9. There are five parties to the arbitration. Having regard to Article 8.1 of the LCIA Rules, the parties "*have not all agreed in writing that the disputant parties represent collectively two separate 'sides' for the formation of the Arbitral Tribunal (as Claimants on one side and Respondents on the other side, each nominating a single arbitrator)*". In those circumstances, Article 8.1 provides that the Court "*shall appoint the Arbitral Tribunal without regard to any party's entitlement or nomination*", while Article 8.2 provides that "*In such circumstances, the Arbitration Agreement shall be treated for all purposes as a written agreement by the parties for the nomination and appointment of the Arbitral Tribunal by the LCIA Court alone*". The LCIA Court is accordingly requested to nominate and appoint all three members of the Arbitral Tribunal.
10. In relation to the matters which the LCIA Court is to take into account pursuant to Article 5.9 of the LCIA Rules in appointing the arbitrators, the Claimants note that the SHA is governed by English law and that the value of the rights which the Claimants are seeking to enforce is very substantial.

C. BRIEF DESCRIPTION OF THE NATURE OF THE DISPUTE

11. The nature and circumstances of the parties' dispute and the claims advanced by the Claimants under the SHA will be set out fully in the Statement of Claim in due course. A brief summary is provided below.
12. The Claimants will rely on the terms of the SHA for their full force and effect. For the purposes of this Request, they note the following:
- (a) The Recitals record that the purposes of the SHA are (*inter alia*) to ensure the rights of the majority and minority shareholders to participate in the governance of Ukrnafta, to

ensure a balancing of their interests, to avoid circumstances leading to corporate conflicts between shareholders and to ensure a fair and transparent approach to business.

- (b) Pursuant to Article 1, the parties agreed to act so as to ensure the development of Ukrnafta and its attractiveness as an investment.
- (c) Pursuant to Article 2, each party agreed to act in such a way that its execution of corporate rights does no harm and creates no threat of harm to the rights of the other parties, to act according to the principles of good faith, reasonableness, fairness and equity, not to abuse its rights, and not to create any obstacles to the execution and protection by the other parties of their corporate rights.
- (d) Pursuant to Article 3, the parties agreed not to take any direct or indirect measures that were aimed at having priority in the exercise of their corporate rights over the rights of the other parties.
- (e) Pursuant to Article 6, the parties undertook, at the first General Meeting following the execution of the SHA, to approve Articles of Association of Ukrnafta that were consistent with the SHA.
- (f) Pursuant to Article 9, in order to balance the interests of all shareholders and to ensure their rights to take part in the management of Ukrnafta, the parties reached agreement concerning the constitution of Ukrnafta's corporate bodies and rights to elect or appoint the members thereof. At all material times, the corporate governance of Ukrnafta has been principally performed by three bodies, namely (i) its general meeting of shareholders ("**the General Meeting**"), which is the highest body; (ii) its supervisory council or board ("**the Supervisory Board**"); and (iii) its management board or executive body ("**the Executive Board**"). On a proper interpretation of Article 9 of the SHA, the parties agreed that:
 - (i) The election and removal of the members of the Supervisory Board and its Chair, and the election and removal of the Chair of the Executive Board, would be within the exclusive competence of the General Meeting.
 - (ii) 6 of the 11 members of the Supervisory Board, including its Chair, would be elected by the General Meeting from among the candidates proposed by Naftogaz.
 - (iii) The remaining 5 members of the Supervisory Board would be elected by the General Meeting from among the candidates proposed by the minority shareholders (including, but not limited to, the Claimants and Balliotti).
 - (iv) The Chair of the Executive Board would also be elected by the General Meeting from among the candidates proposed by the minority shareholders (including, but not limited to, the Claimants and Balliotti).
 - (v) The remaining members of the Executive Board would be proposed by the Chair of the Executive Board and approved by the Supervisory Board.
 - (vi) The number of members of the Supervisory Board (which was 11) and the Executive Board (which was 7) would be maintained.

- (vii) The "*procedure for taking decisions*" and the "*criteria for setting a quorum*" in relation to General Meetings and meetings of the Supervisory Board and the Executive Board would also be maintained.
 - (viii) If the parties decided to make amendments to Ukrnafta's Articles of Association in relation to the number of members of the company's governance bodies, or the procedure for the taking of decisions by those bodies, they would "*maintain the proportions of membership of their representatives and the scope of their powers provided by*" Article 9.
 - (g) Finally, pursuant to Article 12, the parties agreed to act in good faith, fairly and reasonably.
13. As contemplated by Article 6 of the SHA, at a General Meeting on 26 January 2010 the shareholders of Ukrnafta approved amendments to the Articles of Association of Ukrnafta which embodied most of the provisions of SHA Article 9.² Subsequently, at a General Meeting on 22 March 2011 they approved a new set of Articles of Association ("**the 2011 Articles**").³ In relation to the matters addressed in Article 9 of the SHA, the 2011 Articles provide that:
- (a) The election and removal of the members of the Supervisory Board and its Chair, and the election and removal of the Chair of the Executive Board, is within the exclusive competence of the General Meeting (Article 9.1.6(16)-(19)).
 - (b) General Meetings are quorate as long as "*shareholders having in aggregate not less than 60% of the votes register to participate in it*" (Article 9.1.7).
 - (c) The Supervisory Board is to consist of 11 members (Article 9.2.2).
 - (d) If a shareholder owns more than 50% of the shares, 6 members of the Supervisory Board (including its Chair) are to be elected by the General Meeting from among the candidates proposed by that shareholder, and the other 5 members of the Supervisory Board are to be elected by the General Meeting from among candidates proposed by the remaining shareholders (Article 9.2.2).
 - (e) A meeting of the Supervisory Board is "*deemed competent*" (i.e. quorate) "*if there are at least 8 members of the active Supervisory Board present*" (Article 9.2.9).
 - (f) The Executive Board is to consist of 7 members (Article 9.3.2).
 - (g) If a shareholder owns more than 50% of the shares, the Chair of the Executive Board is to be elected by the General Meeting from candidates proposed by the remaining shareholders (Article 9.3.2).
 - (h) The other members of the Executive Board are to be proposed by the Chair of the Executive Board and elected by the Supervisory Board (Articles 9.2.3(8) and 9.3.2).
 - (i) The 2011 Articles can only be amended by a vote of more than 75% of shareholders registered to participate in the General Meeting (Article 9.1.10).

² Ukrainian text (**Exhibit C-2**); English translation (**Exhibit C-2A**)

³ Ukrainian text (**Exhibit C-3**); English translation (**Exhibit C-3A**)

14. Accordingly, pursuant to the SHA and 2011 Articles, the minority shareholders (including the Claimants) have the exclusive right to nominate 5 of the 11 members of the Supervisory Board and the Chair of the Executive Board; the other members of the Executive Board are to be appointed on the proposal of the Chair of the Executive Board; a General Meeting cannot be quorate without the participation of the Claimants; and a meeting of the Supervisory Board cannot be quorate without the participation of those members appointed on the Claimants' nomination.
15. The relevant provisions of the SHA and the 2011 Articles were in accordance with the Ukrainian companies legislation which was then in force ("**the Existing Companies Law**").
16. For a number of years, Ukrnafta on the one hand, and Naftogaz and the Ukrainian energy sector regulators ("**NERC/NESR**") on the other hand, have been involved in a succession of disputes concerning the pricing, sale and misappropriation of Ukrnafta's gas. In particular:
 - (a) Naftogaz and NERC/NESR have sought, contrary to Ukrainian law, to fix the price at which Ukrnafta sells gas to Naftogaz at a level which is below Ukrnafta's cost of production.
 - (b) Naftogaz and NERC/NESR have unlawfully prevented Ukrnafta from selling its natural gas on the open market and/or at unregulated prices.
 - (c) Naftogaz and Ukrtransgaz, a company which was at all material times a wholly-owned subsidiary of Naftogaz and which is responsible for storing gas in Ukraine's Single Gas Transportation System ("**SGTS**"), have refused to release from the SGTS gas which belonged to Ukrnafta and which Ukrnafta wished to sell on the open market and/or at unregulated prices. They have thereby prevented the sale of the gas and appropriated it, unlawfully and without payment.
17. These disputes have given rise to numerous actions in the Ukrainian Courts in which Ukrnafta has obtained numerous judgments in its favour. However, Naftogaz, Ukrtransgaz and NERC/NESR have generally refused to comply with those judgments.
18. Against that background, since January 2015 Ukraine and Naftogaz have pursued a strategy of seeking to take control of the management of Ukrnafta in a manner that is inconsistent with the Claimants' rights under Article 9 of the SHA (as well as Articles 1, 2, 3 and 12).
19. The first step in this strategy involved the amendment of the Existing Companies Law. This was eventually achieved when the Verkhovna Rada (the unicameral parliament of Ukraine) passed amending legislation on 19 March 2015. This legislation was published on 26 March 2015 as Law No. 272-VIII ("**the New Law**"). In relation to the changes effected by the New Law and the purpose of those changes:
 - (a) Right to propose candidates for appointment to corporate bodies.
 - (i) Article 38(1) of the Existing Companies Law provided that every shareholder "*may submit proposals ... regarding new candidates for membership in the company's bodies*".
 - (ii) Clause 2 of Section I of the New Law provides that this right cannot be altered by a company's Articles of Association. The purpose of this amendment is to deprive the Claimants of their rights under Article 9 of the SHA and the 2011 Articles concerning the appointment of members of the Supervisory Board, the

Chair of the Executive Board and the remaining members of the Executive Board.

(b) Quorum requirement for General Meeting.

- (i) The effect of Articles 41(1) and (2) of the Existing Companies Law was that a General Meeting would only “*have a quorum*” in the event that shareholders owning “*at least 60 percent of the voting shares*” were registered to participate.
- (ii) As mentioned above, the Claimants own 40.1009% of the shares in Ukrnafta, and the 2011 Articles established a 60% quorum requirement. It follows that a General Meeting could not be quorate without the participation of the Claimants.
- (iii) Clause 3(1) of Section I of the New Law alters this quorum requirement to “*more than 50*” percent. The purpose of this amendment is to enable Naftogaz to supply a quorum without the attendance of the Claimants.

(c) Quorum requirement for meeting of the Supervisory Board.

- (i) The first sentence of Article 55(2) of the Existing Companies Law provided that “*A Supervisory Board meeting shall be deemed quorate if more than half of its members take part in it*”, but the second sentence provided that “*A company’s Articles of Association may provide for a higher number of Supervisory Board members required for its meetings to be deemed quorate*”.
- (ii) As mentioned above, the Supervisory Board of Ukrnafta consists of 11 members, and Article 9.2.9 of the 2011 Articles requires the attendance of 8 of the 11 members of the Supervisory Board. It follows that a meeting could not be quorate without the participation of at least two of the members appointed by the Claimants.
- (iii) Clause 4(1) of Section I of the New Law deletes the second sentence of Article 55(2) of the Existing Companies Law. The purpose of this amendment is to enable Naftogaz to supply a quorum without the attendance of any of the members appointed on the Claimants’ nomination.

- (d) The effect of Clause 3 of Part II of the New Law is that, until a company’s Articles of Association are brought into compliance with the New Law, only those parts of the Articles of Association which do not contradict the New Law are applicable.

20. It was clear from the public pronouncements of the Ukrainian Prime Minister and Naftogaz (among others) that the amendments to the Existing Companies Law were targeted at Ukrnafta, and in particular at the Claimants as shareholders in Ukrnafta, and that the intention was that Ukraine and Naftogaz should take control of the management of Ukrnafta in a manner that is inconsistent with the Claimants’ rights under the SHA. These pronouncements will be set out in full in the Statement of Claim. For present purposes, it is noted that, for example:

- (a) In the course of a speech to the Ukrainian Parliament on 16 January 2015, Prime Minister Yatsenyuk instructed the Minister of Energy of Ukraine (who formally controls Naftogaz) to convene a General Meeting of the shareholders of Ukrnafta and to include on the agenda the “*changes in the management bodies of the company*”, once legislation amending the Existing Companies Law was passed. The Prime Minister

repeated that instruction during a speech to the Cabinet of Ministers on 21 January 2015.

- (b) On 2 March 2015 Mr Andrey Pasishnik (an executive director and the acting Deputy Chairman of the Board of Naftogaz) posted a link on his Facebook page to an article in the Ukrainian press entitled *"It is proposed to the Parliament to take the control over Ukrnafta already this year"*.
 - (c) On 24 March 2015 Mr Pasishnik posted on his Facebook page a statement that, once the New Law had been signed by the President, *"we will announce an open competition for management position of Ukrnafta and will conduct a final decision in the presence of journalists and people's deputies"*.
21. In accordance with the Prime Minister's instructions to the Minister, Naftogaz procured the publication of a notice on 18 June 2015 convening a General Meeting of Ukrnafta's shareholders to be held on 22 July 2015 and setting out an agenda for that meeting.
22. The agenda includes the adoption of a new set of Articles of Association (item 11). The amendments which the proposed new Articles of Association will effect in relation to the 2011 Articles include the following:
- (a) The quorum requirement for a General Meeting will be reduced from not less than 60% to over 50% (by proposed revised Article 9.1.7).
 - (b) The quorum requirement for a meeting of the Supervisory Board will be reduced from 8 to a majority, i.e. 6 (by proposed revised Article 9.2.9).
 - (c) The exclusive right of the minority shareholders (including the Claimants) to nominate 5 members of the Supervisory Board will be deleted (by proposed revised Article 9.2.2).
 - (d) The exclusive right of the minority shareholders (including the Claimants) to nominate the Chair of the Executive Board will be deleted (by proposed revised Article 9.3.2).
 - (e) The election and termination of the powers of the Chair of the Executive Board will be removed from the exclusive competence of the General Meeting and added to the exclusive competence of the Supervisory Board (by proposed revised Articles 9.1.6, deleting Article 9.1.6 (18) and (19) and proposed revised Article 9.2.3).
 - (f) The right of the Chair of the Executive Board to propose the other members of the Executive Board for approval by the Supervisory Board will be deleted. Those members will simply be appointed by the Supervisory Board (by proposed revised Articles 9.2.3(8) and 9.3.2).
23. Each of those proposed amendments to the Articles of Association is inconsistent with the Claimants' rights pursuant to Article 9 of the SHA (as well as Articles 1, 2, 3 and 12).
24. The agenda for the General Meeting also includes the following items:
- (a) Termination of the powers of the current Chair of the Executive Board (item 12).
 - (b) Election of a new Chair of the Executive Board (item 13).
 - (c) Termination of the powers of a member of the Executive Board (item 15).

- (d) Election of a member of the Executive Board (deputy CEO and Finance Director) (item 16).
 - (e) Termination of the powers of the Chair and members of the Supervisory Board (item 17).
 - (f) Election of new members of the Supervisory Board (item 18).
 - (g) Election of a new Chair of the Supervisory Board (item 19).
25. Accordingly, in breach of the Claimants' rights under the SHA, Naftogaz intends to appoint members of the Supervisory Board, the Chair of the Executive Board and another member of the Executive Board.
26. On 20 June 2015, Naftogaz procured the placing of an advertisement in the Oreanda News which invited candidates to apply for the position of Chair of the Executive Board. The advertisement stated that applications would be accepted until 2 July 2015 and were to be made in accordance with a procedure which was set out in the "Career" section of the Naftogaz website. A notice posted on that section of the Naftogaz website stated that Naftogaz "*announces a public competitive selection of candidates for the position of*" Chair of the Executive Board.
27. On 7 July 2015, a representative of Naftogaz was reported to have stated that the Selection Committee had selected a shortlist of six candidates from among a total of 68 applicants. On 9 July Naftogaz was reported to have stated that two of the six had been put forward for consideration by a Committee of Ukrainian government ministers. On 10 July it was reported that one of the two, Mr Mark Rollins, was the successful candidate.
28. If (contrary to the Claimants' wishes) the Chair and other members of the Executive Board are to be dismissed, the Claimants wish to exercise their rights under Article 9 of the SHA to nominate the new Chair of the Executive Board, and for the new Chair to nominate the other members of the Executive Board for approval by the Supervisory Board.
29. The Claimants' case is that:
- (a) by proposing to amend the 2011 Articles in the manner described above, and by announcing and proceeding with the process of selecting a new Chair of the Executive Board in the manner described above, Naftogaz has evinced an intention not to respect the Claimants' rights under Article 9 of the SHA (as well as Articles 1, 2, 3 and 12) and has thereby breached the SHA; and
 - (b) the Claimants have suffered and continue to suffer very substantial loss and damage.

D. PRELIMINARY STATEMENT OF RELIEF SOUGHT

30. The nature of the relief that the Claimants will seek in these proceedings will be set out in full in the Statement of Claim, but will include:
- (a) a final injunction restraining Naftogaz from breaching its obligations pursuant to the SHA (and, if necessary, a final mandatory injunction);
 - (b) declarations as to the rights of the Claimants and/or the obligations of Naftogaz under the SHA;

- (c) damages;
- (d) interest;
- (e) costs; and
- (f) such further or other relief as the Tribunal may consider appropriate.

31. The Claimants also reserve their right to apply to the Tribunal for urgent interim injunctive relief.

E. LCIA FEES

32. The registration fee has been sent to the LCIA's bank account by bank transfer.

F. SERVICE OF THE REQUEST FOR ARBITRATION

33. The Claimants confirm that copies of the Request together with all accompanying documentation have been despatched to the Respondents by courier to the business addresses given in section A above.

Signed: 

Fieldfisher, Solicitors for the Claimants

Dated: 16 JULY 2015