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By courier and email

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Claim form

Petitioner

The Republic of Kazakhstan
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The matter:	Action for invalidity and challenge pursuant to the Swedish Arbitration Act (1999:116) (" AA ") of arbitration award issued on 19 December 2013 in case no. V (116/2010) before the Arbitration Institute of the Stockholm Chamber of Commerce (" SCC ")

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As counsel for the Republic of Kazakhstan ("RoK"), we hereby file this claim form against Anatolie Stati, Gabriel Stati, the Ascom Group SA and Terra Raf Trading Ltd. (jointly "Stati") as follows.

1 RELIEF SOUGHT

- (1) RoK requests that the Court of Appeal, in accordance with § 33 of the Arbitration Act, first paragraph, item 2 (LSF), declare the arbitral award rendered on 19 December 2013 in the SCC's case no. V (116/2010), Exhibit 1, wholly or partly invalid.
- (2) RoK further requests that Stati, jointly and severally, be ordered to pay RoK for its litigation costs in an amount to be specified later.

2 SUMMARY OF ROK'S GROUNDS

- (3) The arbitral award between the RoK and Stati issued on Dec. 19, 2013 in SCC Case No. V (116/2010)¹ ("**Arbitration Award**") is wholly or partly invalid because the way in which the arbitral award has been rendered is manifestly incompatible with the fundamental principles of the Swedish legal system.

3 INTRODUCTION AND SUMMARY

- (4) The invalidity action concerns an arbitration award in arbitration proceedings under the Energy Charter Treaty ("**ECT**") administered by the SCC with the proceedings in Stockholm (the "**ECT case**"). Stati requested arbitration against RoK on 26 July 2010. The arbitral tribunal issued its arbitral award on 19 December 2013 which was corrected on 17 January 2014, in which Stati was awarded damages on the basis of a violation of the ECT in the amount of approximately USD 500 million. Of this amount, USD 199 million related to damages concerning an LPG² plant located in Borankol (the "**LPG plant**"). the LPG plant was conceived as a joint project between Stati and a company within the Vitol Group³ ("**Vitol**") which was governed by a *Joint Operating Agreement* ("**JOA**") dated 27 June 2006 (the "**JOA Agreement**"), Appendix 1.
- (5) The Award is subject to an action to set it aside and declare it invalid now pending in the Svea Court of Appeal in case no. T 2675-14, which was commenced on 19 March 2014. However, it should be noted that the circumstances presented in this claim form are not directly covered by the parallel challenge case, although there are clear points of contact. In the following, new facts, of which RoK previously was unaware, will be presented.

¹ The Arbitral Award, which is approximately 450 pages in length, has been submitted to the Svea Court of Appeal in case number T 2675-14, to which reference is made.

² LPG = Liquid Petroleum Gas.

³ Vitol is a Dutch – Swiss energy trading group.

- (6) During the spring of 2015, it came to RoK's attention that Stati, or Stati controlled companies, have been parties to no less than three other arbitrations, running more or less parallel with the ECT case. However, Stati failed to mention anything about the existence of these parallel cases, despite the fact that Stati and the Stati controlled companies were represented by the same law firm, Kings & Spalding, the same lead counsels, Ken Fleuriet and Reginald Smith, and despite the fact that the main witnesses in all cases were Anatolie Stati and Artur Lungu.⁴ All the cases were centered on the LPG plant (which was much discussed in the ECT case) and the issues were often identical in the parallel proceedings. In this respect, the most relevant parallel proceeding was the one between Ascom and Vitol which concerned the JOA-agreement (the "**JOA case**"). The JOA case was commenced on 6 November 2012 and a partial award was issued on 27 May 2015 in that case. The JOA case is still pending. It is highly remarkable that the JOA case was not mentioned in the ECT case since Vitol's half share in the LPG plant project, and how it influenced Stati's claim for damages, was a much discussed issue in the ECT case.⁵
- (7) Stati's counsel and witnesses who took part in both the ECT case as well as the JOA case were the same. In addition, the issue of the LPG plant was relevant in both cases. However, Stati engaged different experts in the parallel proceedings. In the ECT case, Stati engaged FTI Consulting ("**FTI**"), and their experts Howard Rosen and Laura Hardin submitted their expert reports on 17 May 2011 and 28 May 2012 respectively (the "**FTI Reports**"), [Appendix 2](#). In the JOA case, Stati engaged instead Charles River Associates ("**Charles River**") and submitted the expert reports of Maja Glowka on 11 October 2013 and 28 February 2014 ("**Charles River Reports**"), [Appendix 3](#). Vitol on the other hand submitted expert reports by David Stern ("**David Stern Reports**"), [Appendix 4](#), to counter the Charles River Reports.
- (8) RoK's expert (regarding the valuation of the LPG plant) in the ECT case was Thomas Gruhn from Deloitte & Touche GmbH ("**Deloitte**") who submitted his expert reports on 30 November 2012 and 6 April 2013 ("**Deloitte ECT Reports**"). Thomas Gruhn and Deloitte have now once again been retained by RoK to analyze the Discovery Documents (see below for a definition) and to submit another expert report on 1 October 2015 in this case ("**Deloitte Report**"), [Appendix 5](#).
- (9) In search of clarity with regards to Stati's actions in the parallel proceedings, RoK was forced to apply for a discovery order in New York against Vitol ("**Discovery Procedure**").⁶ In spite of extensive objections by Stati which intervened in the case, the court in New York issued a discovery order on 22 June 2015 giving RoK access to a large amount of documents from Vitol regarding issues which had been adjudicated

⁴ Artur Lungu was *Executive Vice President* and *Chief Financial Officer* at Tristan Oil and *Chief Financial Officer* at Ascom.

⁵ Arbitral Award, paragraphs 1702, 73, 1738, 1739, 1740 and 1741.

⁶ Southern District Court of New York, case no. 1:15-NC-00081-P1, [Appendix 6](#).

in the ECT case (“**Discovery Documents**”). The Discovery Documents were received by RoK in late June and late July 2015.

- (10) The Discovery Documents disclosed a large amount of new facts which led to further investigations by RoK. These investigations are still ongoing. This action is based on the information available and RoK’s understanding of the above-stated information.
- (11) As will be described below (see especially section 6), the Discovery Documents that RoK has received show that Stati’s claim in the ECT case regarding the extent of the investments and the valuation of the LPG plant is contradicted by the facts presented by the Stati companies concerned in the other arbitration proceedings. In conclusion, it is clear that Stati knowingly withheld decisive information, knowingly gave false and misleading information, introduced false and misleading evidence and thereby misled RoK, the SCC, and the arbitrators in the ECT case. It should be noted that the extent of Stati’s actions is still under investigation by RoK and that it should not be ruled out that further information might be revealed from these investigations.
- (12) RoK will further describe the background of this case and the relevant circumstances for this action. It should be noted already at this point that a decisive reason for the arbitrators’ decision to ascribe the LPG plant any value at all and to value it at USD 199 million (the amount later awarded as damages for the LPG plant) was based on directly false and misleading information provided by Stati.
- (13) The arbitrators based their decision regarding the LPG plant on the fact that a number of potential buyers provided indicative offers on the LPG plant and particularly on the fact that the Kazakhi state-owned oil company KazMunaiGas National Company (“**KMG**”) provided an indicative, non-binding, offer (Appendix 7) of USD 199 million (“**Indicative Offer**”). However, all these offers were based on an *Information Memorandum* (Appendix 8) prepared by the Russian investment bank Renaissance Capital (“**Information Memorandum**”) and a financial *due diligence*-report (Appendix 9) prepared by KPMG in Kazakhstan (“**KPMG**”). Both the Information Memorandum and KPMG’s *due diligence* report were based on the annual accounts and reports of the relevant Stati-companies and information provided by Stati itself. As is apparent from this claim form and as will be proven later on in the proceedings, this information was gravely misleading and directly false in essential parts.
- (14) This false and misleading information has meant that the Arbitration Award regarding the LPG plant (which constituted almost half of the amount RoK was ordered to pay to Stati) is based on false circumstances.⁷ The fact that Stati (i) presented misleading evidence; (ii) provided misleading and false information in both written and oral witness statements; (iii) failed to disclose relationships regarding ownership and

⁷ It should be noted in this context that Stati, due to the parallel proceedings, sought to be compensated twice for the value of the LPG plant: from Vitol regarding half of the investment in the LPG plant and from RoK regarding the entire investment. This would not have been possible if the tribunal in the ECT case had known about the parallel proceedings.

liability in a complete and correct way; and (iv) failed to disclose the fact that several parallel proceedings regarding more or less the same issues were pending at the same time as the ECT case, has had a decisive influence on the ECT case and the basis on which the arbitrators based their Arbitration Award, not only regarding the LPG plant but regarding the entire case.

- (15) Stati's claim in the ECT case concerned, in all material respects, they claim that RoK carried out a series of harassment measures, which also was accepted by the tribunal.⁸ However, as the Discovery Documents now show, it is clear that Stati engaged in systematic and improper schemes with the sole purposes being to exploit RoK's natural resources, to drain Stati's Kazakhstan companies, and to move large sums of money out of Kazakhstan. Had these circumstances been known to RoK and the tribunal during the ECT proceedings, it would have shed another light on RoK's actions and increased its understanding and appreciation of the measures taken by RoK against Stati.
- (16) The most relevant parts of the new documentation concern a company named Perkwood Investment Limited ("**Perkwood**") and an agreement (Appendix 10) between Perkwood and Tolkyneftegaz LLP ("TNG")⁹ ("**Perkwood Agreement**"). The Perkwood Agreement was entered in February 2006 and was subsequently amended through additional agreements until May 2009. The Perkwood Agreement and its amendments have not been introduced into evidence or even known during the ECT case. Due to what is known now through the Discovery Documents, it is however clear that Perkwood and the Perkwood Agreement were the hub around which Stati's handling of the LPG plant revolved. (see also particularly sections 5.2.4 and 7.2 below)
- (17) In the JOA case, Stati claimed based on the Perkwood Agreement that Perkwood was the main supplier of building material and equipment to the LPG plant and that the contract value amounted to USD 191 million. However, it is now clear from the Discovery Documents that Perkwood acted as project manager for the construction of the LPG plant and that Perkwood was paid a *Management Fee* for this service amounting to USD 44 million (see section 7.3 below).
- (18) One further investigation it has been discovered that Perkwood was merely a letter-box-company registered in the United Kingdom with representatives registered as representatives for thousands of other companies, in other words as sham directors. Perkwood was also a dormant company, without any ongoing business, and could not possibly carry out any of its obligations under the Perkwood Agreement. In May 2011, Perkwood was deleted from the English company registry. In the JOA case, Stati's

⁸ See the Arbitration Award, *para* 1095 – "[...] the Tribunal concludes that Respondent's measures [...] constituted a string of measures of coordinated harassment by various institutions of Respondent." (our emphasis)

⁹ TNG – Tolkyneftegaz LLP, a Kazakhi limited liability partnership – was the entity which owned the mining rights to the Tolkyne natural gas field and the LPG plant. TNG was a wholly-owned subsidiary of Terra Raf (see further below in sections 4.1 and 5.2.1.).

expert Charles River confirmed that Perkwood received approximately USD 138 million for services never performed (see section 5.2.4 below).

- (19) In connection with a sequestration order against Stati obtained by Vitol in the *English High Court of Justice*, the English judge Justice Cooke stated the following.

"The financial records of the following companies are inaccurate and misleading: (i) Although Perkwood was said to have charged a management [fee] of over \$43 million, it filed dormant company accounts throughout the relevant period. [...] (iii) TNG's audited accounts for the years 2007-2009 do not disclose the fact that Perkwood was a related party. (iv) No mention of the Perkwood management fee is to be found in the ECT Award [...]"¹⁰

- (20) The actual main supplier of building material and equipment to the LPG plant was TGE Gas Engineering GmbH ("TGE", previously Tractebel GmbH), a company which had never heard of Perkwood. TGE had supplied most of the building material and equipment to two other Stati companies (Ascom and Azalia) in accordance with the TGE agreement (see below for a definition) at the price of approximately USD 34.5 million. The responsible engineer at TGE, Franjo Zaja, confirmed in a recent witness statement (27 August 2015) in the enforcement procedure before the English court initiated by Stati¹¹ that the building materials and equipment stated in amendments 2, 14 and 16 of the Perkwood Agreement are identical to the components supplied by TGE. The total value of these amendments to the Perkwood Agreements is approximately USD 124 million, whereas the value under the TGE agreement is only USD 34.5 million.

- (21) Stati's misleading scheme is summarized in the Deloitte report as follows:

"Under the assumption that the New Information (which we were not in a position to verify) is correct, it can be concluded that a significant portion of the expenses Claimants allegedly made for the purpose of the construction of the LPG plant appear to lack a real basis and to have been made without recognizable cause or justification.

In accounting terms, it can be concluded that the reported construction costs of the LPG plant of approx. USD 245 million as at 31 December 2009 according to the combined financial statements of KPM, TNG and Tristan Oil or approx. USD 248 million according to the individual financial statements of TNG, respectively, were significantly overstated."¹²

- (22) In this claim form, we will report in detail how Perkwood was used to increase the alleged investment cost for the LPG plant through fictitious services and deliveries of

¹⁰ Mr. Justice Cooke, in the High Court of Justice, Queens Bench Division Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, Case No 2014 FOLIO 506 (Freezing Order), dated 29 August 2014, ¶ 39, [Appendix 11](#).

¹¹ Franjo Zaja's first witness statement dated 27 August 2015, paragraph 10, [Appendix 12](#).

¹² The Deloitte report, paragraph 11, [Appendix 5](#).

building material and equipment. Through this scheme, Stati gave the impression that large sums had been invested in the LPG plant. However, in reality these fictitious sums, to the extent they were actually paid, were being drained from TNG to be transferred out of Kazakhstan while Stati at the same time was able to report a higher investment cost *vis-à-vis* Vitol and eventually *vis-à-vis* RoK.

- (23) Stati then used the results of this misleading scheme to support its claim for damages in the ECT case. The consequence of Stati's actions is that the integrity of the entire ECT case has been fundamentally shaken and that the Arbitration Award must be considered to have been issued contrary to the legal principles in Sweden. In light of this, the Arbitration Award must be declared invalid in its entirety. In any event, that part of the Arbitration Award relating to the LPG plant must be declared invalid.

4 BACKGROUND

4.1 The Parties

- (24) The Republic of Kazakhstan has been an independent state since 1991. RoK signed the ECT on 17 December 1994 and ratified the treaty on 18 October 1995. The ECT entered into force in RoK on 16 April 1998. RoK is represented in this case by its Ministry of Justice.
- (25) Anatolie Stati holds a Moldovan and a Romanian passport.
- (26) Gabriel Stati holds a Moldovan and a Romanian passport.
- (27) Ascom is a limited company registered in Moldova, and incorporated under Moldovan law. Ascom is claimed to be wholly-owned by Anatolie Stati.
- (28) Terra Raf is a limited company registered in Gibraltar and incorporated under Gibraltar law. Terra Raf is claimed to be 50 percent owned by Anatolie Stati and 50 percent owned by Gabriel Stati.

4.2 Background to the underlying arbitration

- (29) RoK's main natural resource is hydrocarbons in the form of oil and natural gas. Ever since RoK became an independent nation in the early 1990s, it has attracted foreign investors to assist the country in extracting natural resources in order to develop the country's economy.
- (30) RoK has extensive regulations regarding mining rights. Furthermore, since the extraction of RoK's natural resources has great significance for the country's economic stability, it is of great importance that any companies active in RoK strictly comply with these regulations.

- (31) In 1999, Stati began to explore the possibility of investing in the extraction of RoK's natural resources. Controlling stakes in two Kazakh companies, Kazpolmunay ("KPM") and TNG were initially acquired.¹³ On 9 December 1999, Ascom acquired 62 percent of the shares in KPM, which owned the extraction rights to the Borankol oil field. On 17 May 2000, Stati acquired a 75 percent stake in TNG, which owned the extraction rights to the Tolkyln natural gas field and exploration rights to the Agreement 302 area (also called the Tabyl area).
- (32) Through a series of transactions, KPM became a wholly-owned subsidiary of Ascom and TNG became a wholly-owned subsidiary of Terra Raf. The transactions were not transparent and the purpose of the complex company structure, which included a number of intermediaries, was unclear (RoK has questioned the validity of some of these transactions).
- (33) KPM and TNG conducted geological surveys and developed oil and gas fields near Opornaya in Mangystau region. KPM concentrated the operations in Borankol and commenced mining there. Borankol is primarily an oil field. Similarly, TNG conducted its operations in Tolkyln, which is primarily a natural gas field. TNG also conducted geological investigations in the so-called Agreements 302 Area where it hoped to find additional oil and natural gas resources.¹⁴ The most promising exploration areas were called Munaibay Main (also Munaibay East), Munaibay North, Bahyt, Tabyl and Interoil Reef.¹⁵ In 2006, TNG also began construction of a facility for Liquefied Petroleum Gas ("LPG")¹⁶, the purpose of which is to filter hydrocarbons (e.g. propane and butane) from natural gas.
- (34) Stati's activities in RoK became the subject of a number of investigations and allegations concerning a number of irregularities. Several contentious issues were dealt with during the Arbitration Proceedings, including Terra Raf's acquisition of the shares in TNG from Gheso SA (and in particular the question of whether RoK's statutory right of first refusal for the shares of companies holding mining rights was applicable to this transaction) and the financing of Stati's operations in RoK (especially regarding Stati's refinancing of previous loans by bonds issued by another Stati company, Tristan Oil Ltd. ("Tristan Oil")). In addition, there were suspicions that Stati used the returns from RoK's natural resources for investment in areas subject to UN sanctions (especially in Southern Sudan¹⁷). Anatolie Stati was accused of withholding assets offshore, and that he had bribed officials in Moldova.¹⁸

¹³ The Arbitration Award para 221 *et. seq.*

¹⁴ TNG's activity in the Agreement 302 area did not lead however to any extraction.

¹⁵ The Arbitration Award paras 1633, 1637, 1649.

¹⁶ The Arbitration Award para 250.

¹⁷ The Arbitration Award, para 291.

¹⁸ It should be noted that it was the President of Moldavia who informally informed Nursultan Nazarbayev, the President of RoK, about Stati's unlawful activities.

- (35) In October and November of 2008, KPM and TNG were scrutinized by several Kazakh authorities. In the first phase of this review, RoK's tax and customs authority conducted several tax and customs audits. In connection with these tax audits, several irregularities in KPM's and TNG's activities were revealed. Among other things, KPM was suspected of operating so-called trunk pipelines without proper authorization. Furthermore, it was discovered that KPM and TNG in their tax returns had applied an incorrect depreciation on expenditures for the exploration. Finally, irregularities were revealed in the transfer of shares in TNG from Gheso SA to Terra Raf.
- (36) Due to the suspicions surrounding KPM's operation of a trunk pipeline without permission, a preliminary investigation was commenced against the people involved. Within the scope of the investigation, searches were conducted at KPM and TNG¹⁹. The preliminary investigation led to the prosecution and sentencing to prison of the CEO of KPM, Sergey Cornegruta. The case against Sergey Cornegruta also decided a restitution claim against KPM regarding the company's illegal gains.
- (37) In February 2009, the Kazakh tax authorities imposed residual tax on KPM and TNG in the amount of USD 62 million for the companies' false tax returns. The companies appealed the decision but it was ultimately upheld by the RoK Supreme Court²⁰.
- (38) In addition, the question of RoK's right of first refusal in connection with the transfer of the shares in TNG from Gheso SA to Terra Raf was re-examined. The review took place in December 2008 under the leadership of RoK's Ministry of Energy and Mineral Resources ("**MEMR**"). The review found that the transfer took place in 2005, at which time RoK's right of first refusal under Kazakh law was in force. Consequently, TNG was encouraged by MEMR to submit a new application for the transfer²¹.
- (39) In 2008 and 2009 KPM and TNG suffered greatly from the global financial crisis. Prices for oil and gas as well as the demand for these products dropped dramatically during this period, which increased the financial pressure on the companies. At the same time, the companies were forced to run a successful business in order to pay the interest on the bonds issued by Tristan. The companies therefore had to cut back on spending for the development of the fields in Borankol and Tolky. The expansion of the planned LPG plant was also stopped²².
- (40) In June and July 2010, RoK's state prosecutor commenced an examination of KPM and TNG based on allegations that the companies had violated the rights of employees and a number of contractual and legal obligations. The reason for this was a number of complaints to the state prosecutor by residents of the Beyneu district and Mangystau Province, where Borankol's and Tolky's oil depots as well as KPM's and

¹⁹ The Arbitration Award, paragraph 1049.

²⁰ The Arbitration Award, paragraph 1018.

²¹ The Arbitration Award, paragraph 993.

²² Cf. Stati's own admissions in the Arbitration Award, paragraphs 653 and 1436, and the conclusion by the arbitral tribunal, paragraph 251.

TNG's infrastructure for oil extraction were located. As a result of these notifications, the state prosecutor instructed a number of authorities to conduct investigations of KPM and TNG, which resulted in an overall audit of the companies' operations. These investigations revealed a number of violations committed by KPM and TNG, particularly as regards illegal discharges in the air and water, non-fulfillment of previous decisions concerning infringements, non-fulfillment of measures for environmental monitoring, lack of documentation of waste management, failure to meet drilling objectives, non-fulfillment of the exploration work, failure to document the measurements of gas emissions, failure to satisfy the demand for housing and education for Kazakh workers, breach of the obligation to provide staff training regarding security issues, late payments of wages, etc. The obligation to pay contributions to the decommissioning funds and reimbursement of past expenses had also not been met.

- (41) Based on these breaches, the Kazakh Ministry of Oil and Gas, "MOG", which replaced the MEMR, decided on 21 July 2010 to terminate KPM's and TNG's agreements on mining rights²³. Both the oil and gas fields as well as the appurtenant facilities were placed initially under the management of KMG²⁴ and then under the management of its subsidiary, KazMunaiTeniz ("KMT")²⁵. This management entailed that the operations would not be conducted for profit but rather in order to maintain and preserve the fields. The incomplete LPG plant is not covered by this management but has been mothballed.

4.3 Overview of the underlying arbitration

- (42) On 26 July 2010, only five days after the agreements on mining rights were terminated, Stati requested arbitration against RoK before the SCC. Stati based its action on the assertion that RoK had violated its obligations under the ECT.
- (43) Stati claimed in the arbitration proceedings that RoK had engaged in a campaign of harassment against KPM and TNG. Stati claimed that RoK had violated virtually every substantive provision of investment protection in the ECT.
- (44) During the arbitration, Stati's claims were significantly altered²⁶. Ultimately, Stati's claim was set at USD 478,927,000 for the Tolkyln field, USD 197,013,000 for the Borankol field, USD 96,808,000 for Munaibay Oil, USD 329,077,000 for the LPG plant and USD 1,626,155,000 for the Agreement 302 area, totaling USD 2,727,980,000, plus interest. In addition, Stati presented a claim for moral damages equivalent to 10 percent of the total compensation awarded to Stati²⁷.

²³ The Arbitration Award, paragraph 611.

²⁴ *Ibid.*

²⁵ The Arbitration Award, paragraph 1534.

²⁶ The Arbitration Award, paragraph 1834.

²⁷ The Arbitration Award, paragraph 199.

- (45) The award in the arbitration proceedings was issued on 19 December 2013²⁸. The Arbitration Award ordered RoK to pay damages in the amount of USD 497,685,101, and compensation for Stati's costs amounting to USD 8,975,494.40. The arbitration costs were divided between the parties so that RoK had to bear 3/4 and Stati 1/4. Interest on the damages was also awarded as of 30 April 2009 at a rate equal to the average interest rate on six-month US Treasury bills, calculated semi-annually. Stati's other claims were dismissed²⁹.
- (46) The Arbitral Tribunal based the award on RoK having violated its obligations under the provision of Article 10 (1) ECT, dealing with fair and equitable treatment³⁰. The tribunal also found that the measures taken by RoK's agencies had caused damage and that there were no circumstances releasing RoK from liability³¹. The Arbitral Tribunal concluded that the damages attributable to Borankol and Tolkyn fields amounted to USD 277.8 million, the damages attributable to the LPG plant as USD 199 million, and the damages attributable to the Agreement 302 Area as USD 31,330,000. From these amounts, the tribunal subtracted USD 10,444,899 relating to debts for which it considered Stati no longer liable following RoK's alleged infringements³².
- (47) Professor Lebedev dissented regarding the Arbitral Tribunal's jurisdiction while arbitrator Haigh dissented in terms of the quantum of damages. None of these differences of opinion were expounded upon with reasons.

4.4 **Brief comments regarding RoK's challenge of the award before the Svea Court of Appeal in case no. T 2675-14**

- (48) On 19 March 2014, RoK filed an action in the Svea Court of Appeal regarding invalidity and a challenge of the Arbitration Award in the ECT case. A summons was issued in case T 2675-14. In that case, RoK has moved that the Arbitration Award be declared invalid or in the alternative be set aside, in whole or in part.
- (49) As is apparent, the instant case and case T 2675-14 in the Svea Court of Appeal have certain points in common, but only regarding some of the facts. What is disputed in the present case is not dealt with in the earlier case. Furthermore, it should be noted that the information presented below is essentially entirely new and the circumstances on

²⁸ On 17 January 2014, the arbitral tribunal issued a correction of the Arbitration Award in accordance with section 41 of the SCC rules and section 32 of the Arbitration Act. The correction stated that the arbitral tribunal, following the issuance of the Arbitration Award, had discovered that the Arbitration Award did not specify the costs for the arbitration proceedings in the manner required under the Arbitration Act. Consequently, the Arbitration Award was amended in section N through an addition to items 4.01 and 4.02, which governed the costs incurred by the arbitral tribunal and for the SCC's administration of the case. The Arbitration Award was otherwise left unchanged.

²⁹ The Arbitration Award, paragraph 414.

³⁰ The Arbitration Award, paragraphs 941, *et. seq.*

³¹ The Arbitration Award, paragraphs 1325, *et. seq.*

³² The Arbitration Award, paragraph 1538 and page 414 (liability under the Reachcom Facility Agreement, Limozen Facility Agreement and the Reachcom Receivables Purchase Agreement).

which RoK's invalidity claim is based are different than those invoked in the previous case.

4.5 **The new information was not subject to adjudication in the ECT case**

- (50) Stati initiated an enforcement proceeding in the English High Court of Justice in London on 24 February 2014. Once again, Stati was represented by King & Spalding and Stati's barrister was also from King & Spalding. In the enforcement action, Stati offered witness statements, not from Ken Fluriet and Reginald Smith, but from Sarah Yasmin Walker who did not participate in the ECT case.
- (51) In the English court, Stati claimed through the witness statements from King & Spalding that it had offered all relevant documentation related to the LPG plant during the discovery phase of the ECT case.

*"Subsequently, the Claimants disclosed in the ECT Arbitration various documents relating to the LPG Plant to the extent that such documents were in their possession custody or control. For example, the Claimants disclosed the Joint Operating Agreement dated 27 June 2006 entered into between Vitol FSU, Ascom S.A., TNG and the Fourth Claimant (the "JOA") (SYW-3/22-47), as well as the Business Plan for the LPG Plant (SYW-3/14-21)."*³³

- (52) However, Stati and King & Spalding were well aware that the Perkwood agreement was not included in the documentation in the ECT case, either during the discovery phase or later. This agreement was not discovered until after the Arbitral Tribunal had issued the Arbitration Award in the ECT case, through the Discovery Documents.
- (53) During the oral hearing in London before Justice Popplewell on 1 September 2015, Stati claimed through King & Spalding that the accusations regarding the misleading Perkwood structure had already been adjudicated by the Arbitral Tribunal in the ECT case and that they had been decided through the Arbitration Award.

*"[...] that this notion of inflated costs and Management Fees and so and so forth was an issue that was already before the Tribunal and that the claimants pressed hard."*³⁴

*"[...] But the point there is these were all things that were before the Tribunal [...]."*³⁵

³³ Sarah Walker's fourth witness statement of 13 August 2015 in the English enforcement action, paragraph 18, [Appendix 13](#). It should be noted in this context that Sarah Walker refers to the JOA, but fails to state that the JOA which was submitted in the ECT case has been replaced by the *Novation Agreement* through which Terra Raf has been replaced by Montvale, a BVI company.

³⁴ Transcript from the English enforcement proceedings, day 1, 1 September 2015, page 106, paragraphs 21-24, [Appendix 14](#).

(54) These claims were erroneous as is apparent from a review of the Arbitration Award and the transcripts from the ECT case. King & Spalding, in its capacity as counsel for Stati in the ECT case, and the JOA case and in numerous proceedings before the English High Court of Justice, must be aware that allegations were not correct.

5 OVERVIEW OF THE LPG PLANT AND THE PROJECT

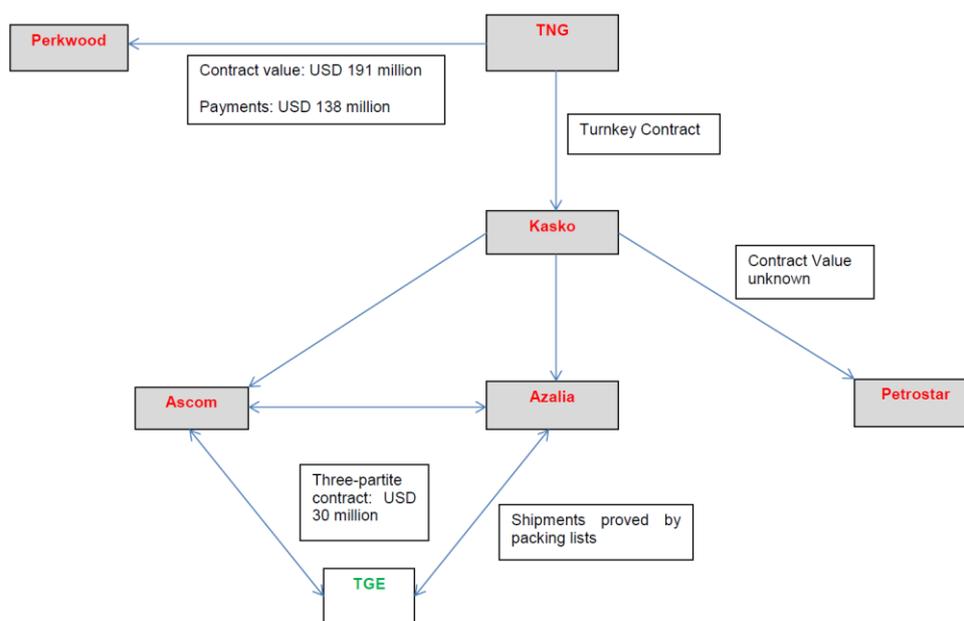
5.1 Introduction

(55) The LPG plant and its value are of particular interest in this case. The incomplete LPG plant was one of the four assets for which the tribunal awarded Stati damages.

(56) In order to increase the value of gas recovered at the Tolkyn and Borankol fields and to expand alternative distribution channels for these products Stati began, through TNG, the construction of the LPG plant in 2006, which was to be used to process natural gas (i.e. Filter hydrocarbons such as propane and butane from natural gas). The LPG plant was built through a joint venture with a third-party (Vitol). The LPG plant is located on the Borankol field, next to plants for gas and condensate processing.

5.2 Relevant contractual relationships

(57) The following is an overview of the main companies involved in the construction of the LPG Plant.



³⁵ Transcript from the English enforcement proceedings, day 1, 1 September 2015, page 107, paragraphs 13-25, Appendix 14.

5.2.1 TNG

- (58) TNG was the owner of the LPG plant and therefore the principal of the construction project. TNG was wholly-owned by Terra Raf, i.e. Anatolie and Gabriel Stati's jointly owned company [see footnote 9 above].

5.2.2 KASKO

- (59) In 2006, TNG entered into an EPC³⁶ Contract with Kaspay Asia Service Company Limited ("**KASKO**") for the engineering, procurement, and construction of the LPG Plant. KASKO, as EPC contractor, entered into various subcontracts with entities including Petrostar SA, Ascom Group SA ("**Ascom**"), and Azalia Limited ("**Azalia**").
- (60) In this context, the ownership and control of KASKO are of some interest. This question highlights the extent of conflicting witness statements which Stati gave in the ECT case. Remarkably, Stati's counsel even tried to repair the damage of these conflicting testimonies by presenting their own interpretation of these statements. During the ECT case, Stati could not reconcile the various testimonies with respect to the ownership and control of KASKO. While the general counsel of Ascom, Mr. Pisica, in his witness statement asserted that KASKO was sold by Stati in 2002³⁷, Mr. Artur Lungu³⁸ testified to the fact that KASKO was still owned and controlled by Anatolie Stati³⁹. Squeezed between these contradictory statements, Anatolie Stati testified that

³⁶ EPC = Engineering, Procurement and Construction

³⁷ Grigore Pisica's first witness statement dated 17 May 2011, ECT case, ¶ 6, Appendix 15:

"As of July 2000, Ascom became the operator for both the Borankol and the Tolkyn fields. One of the main issues faced by TNG and KPM at that time was that the oil field services provided by the local companies were uncompetitive. So, in May 2000, Ascom created a separate, locally incorporated oil and gas service company, Caspian Asia Service Company ("CASCo"). After CASCo became a reputable service company, in 2002, Ascom sold its interest in CASCo to S.A. "GALONICO." The latter subsequently sold CASCo to EAST-WEST INTERNATIONAL S.A, which, to the best of my knowledge, continues to be the sole owner of CASCo. Despite the fact that Ascom is no longer the owner of CASCo, the business relations between CASCo, KPM, and TNG remained very close until July 2010."

³⁸ Artur Lungu was Executive Vice President and Chief Financial Officer of Tristan Oil and Chief Financial Officer of Ascom.

³⁹ Artur Lungu claimed this in testimony during the hearing on quantum, day 1, 28 January 2013 in the ECT case, page 212, paragraphs 5-11, Appendix 16. He repeated this in cross-examination the same day, page 191, paragraph 2-11,

*“[E]ven if I were the owner, all the transactions were made on the tender basis, on the basis of tenders, according to the law.”*⁴⁰ KPMG’s report showed a different result however. Even Stati’s own counsel tried to repair the damage of these conflicting testimonies by presenting his own interpretation of these, namely that, even after the sale, Stati was the beneficial owner of KASKO].⁴¹

5.2.3 TGE

- (61) Ascom and Azalia purchased, in turn, most of the building material and equipment for the LPG Plant from TGE pursuant to a contract dated 31 January 2006 (“**TGE Contract**”).⁴²

“The scope of the equipment that was to be delivered under the LPG Contract) is set out in the Preamble and in Item 3 of the LPG Plant Contract. The Scope of Delivery includes:

- (1) one gas de-carbonisation and de-sulphurisation unit;*
- (2) one LPG recovery unit; and*

Appendix 16. This was confirmed by C. Broscaru, who was responsible for the construction of the LPG plant on behalf of TNG, during the hearing on quantum, day 2, 29 January 2013, page 39, paragraphs 6-15, Appendix 17.

⁴⁰ Anatoli Stati, hearing on quantum, day 2, 29 January 2013, JOA case, pages 120-121, paragraph 16-20, Appendix 17.

⁴¹ Mr. Smith, hearing on quantum, day 4, 31 January 2013, pages 194-196, paragraphs 5-13, appendix 18:

“MR SMITH: Mr Chairman, I apologise for interrupting, but before we get started on this discussion I wanted to make one clarification on the record, because we are concerned that there may have been amisunderstanding based upon a response to Mr Haigh's question on [Tuesday] to Mr Stati regarding ownership of CASCo Kazakhstan.

Mr Lungu testified on Monday, which is accurate, that Mr Stati is the beneficial owner, or was during the relevant time period the beneficial owner of CASCo Kazakhstan. He testified to that twice. I think that's entirely consistent with the evidence in the case that we put in prior to this hearing.

In response to Mr Haigh's question, there was an answer given by Mr Stati that may have led to a misleading impression that Mr Stati did not retain a beneficial interest in CASCo. He testified absolutely correctly that he was no longer a shareholder in CASCo. CASCo was sold to a company called East-West International. East-West International is owned by another company, and Mr Stati is the majority shareholder of that company.

Therefore, consistent with Mr Lungu's testimony, consistent with the fact that in the Cliffson transaction CASCo Kazakhstan was being offered as an asset in connection that transaction, Mr Stati during the relevant time period was a beneficial owner through several corporate entities of CASCo Kazakhstan. That entity, East-West International, has since been sold, subsequent to the events in this case.

But I wanted to make that clarification because I didn't want there to be any misleading impression left on the record that was inconsistent with Mr Lungu's testimony or the prior evidence in the case, and obviously I wanted to make it at a time when Mr Stati and Mr Lungu are here in the room. If there are any questions that the Tribunal might have about that, obviously they are available to answer them. But I just wanted to make that clarification.”

⁴² Extracts from the TGE LPG Contract dated 31 January 2006, Appendix 19.

(3) one sales as compression unit (together, "the TGE Scope of Delivery).

*TGE was the main supplier of equipment for the LPG Plant, and the components delivered by TGE constitute the core and most cost-intensive components of the LPG Plant."*⁴³

- (62) The contract price under the TGE LPG Contract, which covered most of the building material and equipment for the LPG plant as well as the provision of associated services, was EUR 28.38 million (approximately USD 34.5 million). This contract price was never amended.

*"The total contract price for the LPG Plant Contract, including tire TGE Scope of Delivery and the associated services, was EUR 28.38 million (approximately USD 34.4 million). This contract price was never amended."*⁴⁴

- (63) TGE completed the deliveries to the LPG Plant in the middle of 2007, and the incorporation of the delivered material into the LPG Plant itself was complete by the end of 2008.

*"As of October 2008, the TGE Scope of Delivery had been fully completed by TGE, and the components delivered by TGE incorporated into the LEG Plant. As stated in the letter from Ascom to TGE dated 12 March 2009, construction of the LPG Plant was eventually stopped. At that time, the main equipment had been delivered and incorporated. The LPG Plant was approximately 80-90% complete."*⁴⁵

- (64) The TGE LPG Contract was a legitimate, arms-length contract with an independent third party.

5.2.4 Perkwood

- (65) Perkwood was incorporated as a private limited company in England and Wales on 14 September 2005, with corporate no. 5563754. Perkwood's representatives and CEO are stated to be Edward Petre-Mears and Sarah Petre-Mears. The Company's sole shareholder is Sarah Petre-Mears who owns two shares at GBP 1 each.

- (66) Perkwood's financial statements for each of the fiscal years 2007, 2008 and 2009 (with the balance sheet date of 30 September) show that the company was dormant. The company was liquidated and removed from the Companies Register on 3 May

⁴³ First Witness Statement of Franjo Zaja dated 27 August 2015, at paragraphs. 4 - 5, appendix 12.

⁴⁴ *Ibid.* paragraph 6.

⁴⁵ First Witness Statement of Franjo Zaja dated 27 August 2015, at paragraph. 7, appendix 12.

2011. Nothing in Perkwood's documents shows a link between the company and Stati and the company's accounting does not include any transaction between Perkwood and TNG.

- (67) As regards Edward and Sarah Petre-Mears, Vitol's expert, David Stern, noted the following in the JOA case (see section 6 below):

"However, to note, from a cursory internet search, that Mr and Mrs Petre-Mears are each alleged to be either a director or company secretary of more than 1,000 companies with one UK national newspaper's website referring to them as "Sham Directors."⁴⁶

- (68) Perkwood was thus purely letter-box company, without business and with sham directors as representatives. Perkwood was controlled by Stati.

- (69) Notwithstanding that Perkwood was a dormant letter-box company, Perkwood (as seller) and TNG (as buyer) entered into a separate agreement dated 17 February 2006, appendix 10 under which Perkwood was to sell, and TNG to buy, the building material and equipment relating to the construction of the LPG Plant. The initial contract price under the Perkwood Agreement was USD 115 million. It was subsequently increased through a number of amendments – first to USD 155 million⁴⁷ and then to USD 191 million.⁴⁸

- (70) According to an expert report from Charles River which was offered by Stati in the JOA case (see section 6.4.4 below), Perkwood received total payments in the amount of approximately USD 138 million based on the Perkwood Agreement despite the fact that, as a dormant letterbox company, Perkwood could not contribute anything for the construction of the LPG plant.

- (71) According to Stati's own statement, Perkwood is an affiliate of Stati which was to have acted as a project manager at the request of the TNG. Vitol's expert in the JOA case (see section 8 below), David Stern, pointed out in this context that;

"Despite the lack of an explicit connection, Perkwood is identified as 'an Ascom affiliate' by Mr. Lungu who, as discussed in paragraph 4.31 above, states 'TNG engaged an Ascom affiliate, Perkwood investments, to manage the acquisition of most of the equipment and services for the LPG Plant project'.⁴⁹

⁴⁶ David Stern's expert report dated 23 January 2015, JOA case, paragraph 6.11, appendix 4.

⁴⁷ Perkwood Agreement dated 17 February, Annex 2 to the Perkwood Agreement dated 27 July 2007, appendix 10.

⁴⁸ Annex 6 to the Perkwood Agreement dated 1 December 2008, appendix 10.

⁴⁹ David Stern's expert report dated 23 January 2015, JOA case, paragraph 6.11, appendix 4.

- (72) However, TGE, the main supplier of building material and equipment for the LPG Plant, never heard of Perkwood as is confirmed by Mr. Zaja's⁵⁰ witness statement⁵¹:

*"TGE, in its capacity as the supplier of the core components of the LPG Plant, interacted with all other major suppliers of the LPG Plant at an operational level. In performing my responsibilities, I have never encountered a company named Perkwood Investment Limited (Perkwood)."*⁵²

- (73) it should also be noted that the business plan for the LPG plant, which was offered into evidence in both the ECT case and the enforcement proceedings in London⁵³, specifically stated the company's which were involved in the construction of the LPG plant, i.e. KASKO and the subcontractors Petrostar, Tractebel and ECT⁵⁴. Perkwood was not included in the business plan.

- (74) As will be accounted in section 7.2 below, Perkwood was actually of vital importance for Stati's scheme using fictitious investment costs and payments which would be moved out of Kazakhstan and to contribute to running up the investment cost for the LPG plant *vis-à-vis* Vitol and eventually RoK.

5.3 The LPG plant has been placed in moth balls

- (75) Stati discontinued the work on the LPG plant and abandoned the plant in March 2009 which at that time was almost completed. Since then, the LPG plant has been in moth balls and no further measures have been taken regarding its completion. RoK's activities have been limited to guarding the site. This is confirmed by Taras Khalelov, RoK's witness in the ECT case, who at this time was responsible for the LPG plant.⁵⁵

⁵⁰ Franjo Zaja was an engineer at TGE and personally responsible for the construction of the LGE Plant.

⁵¹ First Witness Statement of Franjo Zaja dated 27 August 2015, appendix 12.

⁵² First Witness Statement of Franjo Zaja dated 27 August 2015, para. 9, appendix 12. (Submitted in the English enforcement procedure)

⁵³ Appendix designated SYW-3 which refers to Sarah Walker's fourth witness statement dated 13 August 2015, pages 14-21, appendix 20.

⁵⁴ Appendix SYW-3, pages 16-17, appendix 20.

⁵⁵ In his witness statement, Khalelov states the following, Appendix 21: "However, as it has been abandoned by the owners, we protect the premises and equipment by employing guards. Ever since the unfinished LPG plant was abandoned, no further work has been conducted on the plant." Khalelov also testified as a witness in the case. His testimony was entirely ignored, however, by the arbitral tribunal despite the fact that the information contained in the testimony was crucial for the arbitral tribunal's adjudication. This issue is the subject of adjudication in the pending challenge case before the Svea Court of Appeal.

6 STATI'S' PARALLEL PROCEEDINGS

6.1 Introduction

(76) In the spring of 2015, it came to RoK's attention that Stati or Stati controlled companies were parties to no less than three different arbitration proceedings involving the LPG plant. Although parts of these proceedings concerned identical issues, and despite the fact that Stati was represented in two out of three of these arbitration proceedings (where Stati was represented at all) by the same counsel, Ken Fleuriet and Reginald Smith at the law firm King & Spalding, and that the main witnesses in all arbitrations were Anatolie Stati and Artur Lungu⁵⁶, Stati withheld information on these three parallel arbitrations from RoK, the SCC, and the Arbitral Tribunal.

(77) As soon RoK became aware of this fact, RoK requested to obtain information and documents from these three arbitrations. However, Stati opposed the disclosure of such information or documents. In order to get access to the material in the other three arbitration cases, RoK had to turn to the courts in New York, where RoK launched a discovery process in February 2015 against Vitol, in which Stati intervened. Following stubbornly resistance from Stati, it was not until 25 June 2015 and 24 July 2015 before RoK, through a court decision on 22 June 2015, gained access to the very extensive Discovery Documentation via Vitol's English lawyers Clyde & Co.

6.2 Stati was involved in three arbitrations in parallel with the ECT case

(78) The three above-mentioned arbitration proceedings that were conducted wholly or partly in parallel with the ECT case concerned the following parties and dealt with the following questions.

(i) Vitol SA v. Montvale Invest Ltd (the "**Montvale-case**") in which Vitol SA and Arkham SA ("**Arkham**") brought an action on 6 October 2010 against Montvale, a company controlled by Stati, to recover sums Montvale had advanced within the scope of a contract called Crude Oil Marketing Services Agreement ("**COMSA**"). The tribunal upheld the Vitol's and Arkham's claim and ordered Montvale to pay USD 45,896,577.69 plus interest and costs in an arbitration award issued on 16 April 2012.

(ii) Vitol companies v. Tolkynneftegaz LLP (the "**TNG-case**") where Vitol brought suit on 15 November 2010 against TNG, which had guaranteed the sums Montvale was obligated to pay under COMSA. According to the arbitration award on 10 May 2012, the tribunal found that TNG was obligated to pay to Arkham USD 45,896,577.99 plus interest and costs.

⁵⁶ Artur Lunu was Executive Vice President and Chief Financial Officer at Tristan Oil and Chief Financial Officer at Ascom.

(iii) Ascom Group SA v. Vitol FSU BV (the "**JOA case**") which was commenced on 6 November 2012, in which Ascom claimed that Vitol FSU BV had violated its obligations under a cooperation agreement (Joint Operating Agreement - "**JOA**") entered into on 27 June 2006. The arbitral tribunal dismissed Ascom's claims in a partial arbitration award dated 22 April 2015 (corrected 27 May 2015). As far as RoK is aware, the JOA case is still pending.

(79) It is also apparent from the documents from these cases, that on June 30, 2007 two agreements were executed called the *Novation Agreements* pursuant to which contractual rights and obligations under COMSA and JOA were transferred to Montvale, which is a company registered in the British Virgin Islands ("**BVI**"). Vitol approved this transfer and released Terra Raf, one of the parties in the ECT case, from further liability under these agreements.

(80) King & Spalding represented the Stati companies in these proceedings, i.e. the Montvale-case and the JOA case. TNG did not participate in the TNG-case, either itself or through a representative.

(81) The Discovery Documents which have now become available to RoK indicate that Stati withheld crucial information and that Stati's various positions are clearly contradictory. The claims presented in the Montvale case and the JOA case can therefore be compared with the claims Stati presented in the ECT case where the arbitration tribunal awarded Stati compensation totaling USDM 199 for the LPG plant⁵⁷.

6.3 **Stati retained the services of different experts in the parallel arbitration proceedings**

(82) As reported in section 3 above, Stati retained the services of different valuation experts in the parallel arbitration proceedings despite the fact that both the ECT case as well as the JOA case involved, among other things, the valuation of the LPG plant.

(83) In the ECT case, Stati and King & Spalding failed to notify ROK or the arbitral tribunal of the existence of the parallel JOA case, and the fact that Stati had retained different experts in the respective proceedings in order to provide opinions regarding at least partially the same issues related to the LPG plant. This was true despite the fact that the ECT case was still pending at the time that Stati retained Charles River in the JOA case.

(84) It can be mentioned that Laura Hardin, who was a co-author of the FTI reports in the ECT case, was not available for cross examination in conjunction with the quantum hearing in the ECT case which took place on 28-31 January 2013, Appendices 16-18. It was not until later that RoK learned that she had left FTI in 2012 in order instead to work for Charles River, information which however was not produced in the ECT case.

⁵⁷ The Arbitration Award, paragraph 1856.

(85) Most of the new information on which this claim form is based is derived from the Charles River reports. It is of particular interest to compare this information with statements made by FTI and Deloitte in the ECT case. As RoK's expert, Deloitte, now confirms, the new information which was produced through the Discovery Documents entails that the conclusions which were previously drawn in the ECT case regarding the value of the LPG plant fall in an entirely different light. It is namely clear that very large parts of the investment costs in the LPG plant alleged by Stati are in reality fictitious and the result of misleading schemes, based on the fictitious Perkwood agreement (see section 7.2.1 below).

6.4 **Stati's' contradictory and irreconcilable positions in the various arbitrations**

(86) The contentious issues in the ECT case regarding the LPG plant related primarily to the investment cost alleged by Stati. In this respect, the degree of completion is also of interest.

6.4.1 The discontinuation of the LPG plant construction project

(87) As will be discussed below, the reported investment cost (CAPEX)⁵⁸ increased the same month as Stati discontinued the construction of the LPG plant. It appears to be uncontested that the work on the LPG plant was discontinued in March of 2009.⁵⁹ Stati has not been able to provide a satisfactory explanation as to why the work was discontinued.

(88) The termination of the construction of the LPG plant was a unilateral measure adopted by Stati. The discontinuation was not discussed in advance with Vitol (the alleged 50% owner of the LPG plant), let alone was Vitol's consent to such a measure obtained.⁶⁰ Throughout the entire ECT case, Stati maintained that the reason for the discontinuation was a liquidity crisis resulting from RoK's alleged harassment campaign.⁶¹ This contention was accepted by the Arbitral Tribunal in the ECT case.⁶²

(89) This is in contrast with information provided by Stati to its auditors during a site visit of the LPG Plant on 25 February 2009, i.e. one month before construction was halted.⁶³ TNG's senior management answered KPMG's inquiries during the site-visit as follows:

⁵⁸ CAPEX - *Capital Expenditures* can most probably be translated by *investeringar / anläggningstillgångar*.

⁵⁹ First Witness Statement of Arthur Lungu dated 7 May 2011, ECT arbitration, para. 27: "Construction on the Plant was forced to a halt in May 2009, however, due to cash constraints and operational difficulties caused by Kazakhstan's increasing harassment of KPM and TNG."

⁶⁰ Witness Statement of Ian Taylor dated 22 January 2014, JOA Arbitration, para. 44, Appendix 23.

⁶¹ First Witness Statement of Arthur Lungu dated 7 May 2011, ECT arbitration, para. 27; Witness Statement of Catalin Broscaru dated 11 April 2011, para. 27, Appendix 24.

⁶² The Arbitration Award, para. 1743.

⁶³ Record from KPMG's on-site visit at the LPG plant dated 25 February 2009, Appendix 25.

“When do you propose it to put it in operation? In September 2009. President of RK will come to official presentation commencement of LPG.

Have all documents for commencement been prepared? Did you receive acknowledgment documents from government authorities? (TNG) No, not yet.

What are the reasons for possible delays of commencement? (TNG) No, I don't see any significant threats. Moreover, I consider that there will be support from state bodies as LPG has substantial value for the region [...]

How are you going to manage joint use? Currently we consider certain variants. One of the most possible is that TNG – will be operator of the LPG and KPM will be the partner...”⁶⁴ [emphasis added]

- (90) The inconsistencies were also addressed by the English court, High Court of Justice, Queen's Bench Division Commercial Court, in conjunction with Ascom's attempt to have a seizure decision quashed which was issued upon application by Vitol. The case was decided by Justice Cooke who, in a decision dated 29 August 2014, found the following:⁶⁵

“The inconsistency in the position advanced is remarkable. It is noteworthy also that, in the context of the decision to stop building the LPG Plant, different explanations have been given. The first was that TNG faced financial difficulties; the second that it was intended to sell the plant; the third was that it was feared that the Kazakh state might seize it.”⁶⁶

6.4.2 The degree of completion

- (91) The erection of the LPG plant was discontinued in March 2009. The LPG plant was at that time according to Stati essentially completed; according to Stati's own information the LPG plant was completed to about 90 percent (see ¶ 97 below). The question of the degree of completion, however, was an almost academic issue because the LPG plant according to RoK was financially a failed project due to, among other things, the shortage of available gas, which meant that the LPG plant could only be operated (without any real profit) for another four years. It was therefore not commercially justified to complete the construction and the plant should therefore only be ascribed a scrap value. The rate of completion was, however, essential for Stati, since the rate was decisive for their claim for full compensation for the LPG plant.

⁶⁴ Record from KPMG's on-site visit at the LPG plant dated 25 February 2009, paragraphs 8-11, Appendix 25.

⁶⁵ Royal Court of Justice Strand, case number 2014 Folio 506, Appendix 1.

⁶⁶ *Ibid.* paragraph 41, Appendix 11.

6.4.3 The investment cost alleged in the ECT case

- (92) Stati claimed in the ECT case that RoK's actions had forced it to indefinitely suspend the completion of the almost completed LPG plant. Stati's action in the ECT case is summarized in section 64 of their Statement of Claim of 18 May 2011:

"Claimants invested more than USD 245 million in development and construction of the LPG Plant. Claimants were forced to halt construction of the LPG Plant in May 2009 due to cash constraints and operational difficulties caused by the State's increasing harassment measures. When the State directly expropriated Claimants' investments in July 2010, the LPG plant was over 90% complete, with the requisite materials to finish construction already on site, and Claimants had also completed the associated power and water supply systems, sewage system, reservoirs, pumping units, and intermediate and final storage facilities."

- (93) On several occasions, Stati stated that it had invested over USD 245 million to develop and build the LPG plant. Stati invoked in this respect an expert report from FTI from which appears that the: *"[t]otal Investment that the Claimants have invested in the LPG plant is USD 245 million."*⁶⁷
- (94) This assessment was based in turn on Stati's accounts and the annual report from Tristan Oil for the business year ended 31 December 2009 which was incorporated in the annual report⁶⁸. This annual report states that *"[a]s of December 31, 2009, the TNG had invested approximately USD 245.0 million in the LPG plant."*⁶⁹
- (95) In the notes to the financial statements for TNG for the income year ending 31 December 2009, the book value of the LPG plant is 248,084,113 USD.
- (96) Despite the book value, Stati used this adjusted value of 245 million USD as their alleged investment cost to formulate their claim for the LPG plant in the ECT case.

*"In the event the Tribunal chooses not to award the prospective value of the LPG Plant, Claimants request an award of the investment value of the LPG Plant, as adjusted by FTI to account for the approximately US \$37 million in additional expenditures by Claimants through May, 2009, in the sum of US \$245 million."*⁷⁰

⁶⁷ FTI's *Supplemental Report* dated 28 May 2012, para. 2.40, Appendix 2.

⁶⁸ Tristan Oil was a company registered in the British Virgin Islands where, among others, Anatolie and Artur Lungu were active and which took strategic decisions regarding KPM's and TNG's business operations.

⁶⁹ Combined accounts for Tristan Oil, TPM and TNG for the financial year ending 31 December 2009, Appendix 26.

⁷⁰ Reply Memorial on Quantum, fn. 199, Appendix 27.

(97) The same assertions were also made by Stati's witness, Artur Lungu in his written witness statements in the ECT case⁷¹. Stati also maintained in the continued proceedings that they had invested USD 245 million in the LPG plant.⁷²

6.4.4 The alleged investment cost in the JOA case

(98) The documents from the other parallel cases show, however, that the investment costs for LPG installation were in fact considerably lower.

(99) When the Ascom and Vitol commenced construction of the LPG plant in early 2006, the estimated investment cost was USD 105 million (CAPEX estimate)⁷³. This amount had been approved by Invescom, Vitol's internal audit body monitoring Vitol's investments⁷⁴. Since the start of the project Vitol's top management stressed the importance of the project staying within the approved budget.⁷⁵

(100) In November 2006, however, the estimated investment cost (CAPEX estimate) had increased to USD 127 million⁷⁶. The reason for this increase was partly a local import tax, which amounted to USD 13 million. In October 2007, the estimated investment cost had again increased to USD 139.5 million⁷⁷.

(101) In February 2008, a revised budget for the LPG facility was presented amounting to USD 174 million⁷⁸. Ian Taylor, CEO of Vitol testified in the JOA case where he stated:

⁷¹ First Witness Statement of Arthur Lungu, para. 27 Appendix 22; *Transcript Hearing on Quantum*, day 1, Appendix 16, pages 209-210, 213, paragraphs 9-11; page 248, paragraphs 13-20.

⁷² *Transcript Hearing on Quantum*, day 1, Appendix 16, p. 121, ¶¶ 4-5: "The LPG plant cost is a cost as of May 2009 of \$245 million. That's the investment cost in that facility."; Stati's *First Post-Hearing Brief*, Appendix 28, ¶ 580; Stati's *Second Post-Hearing Brief*, Appendix 29, ¶¶ 354, 386.

⁷³ *Ascom LPG Plant – Business Plan*, Appendix 30, s. 3.

⁷⁴ Witness Statement of Ian Taylor dated 22 January 2014, JOA Arbitration, Appendix 23, para. 31.

⁷⁵ Witness Statement of Raymond Martin dated 21 January 2014, JOA Arbitration, Appendix 31, para. 23.

"Also I was present at a dinner attended by Ian Taylor and Anatoli Stati (together with one of Mr Stati's contacts in relation to L&P business opportunities in Suufh Sudan) in London in October 2005 at which Jan stressed to Mr Stati that, if he was to get Invescom approval for investment in the project, it was important that project CAPEX does not exceed US\$105 million."

⁷⁶ Protocol of *Joint Management Committee* meeting dated 29 November 2006, Exhibit C-94 till Ascom's *Memorial* dated 11 October 2013, JOA-case, Appendix 32, p. 2: "The updated capex statement and draft operating budget statement were presented and reviewed. The major elements of the increase in the Capex to \$127 million were detailed by Ascom."

⁷⁷ Protocol of *Joint Management Committee* meeting dated 2 October 2007, Exhibit C-99 till Ascom's *Memorial* dated 11 October 2013, JOA-case, Appendix 33: "The updated Capex statement was presented and reviewed. The latest Capex is \$139.5 million, including fixes and VAT."

⁷⁸ Protocol of *Joint Management Committee* meeting dated 5 February 2008, Exhibit C-29 till Ascom's *Memorial* dated 11 October 2013, JOA-case, Appendix 34, pages 1-2.

"Prior to the meeting Ascom had provided a revised budget of \$174 million, which represents a \$34 million increase over the \$140 million presented at the previous JMG meeting in Moscow in October last year.[...]"

“After the JOA was signed in June 2006, I had no real involvement with the LPG Plant Project until early 2008 when I learned that Ascorm that the CAPEX budget for the project had suddenly increased to US \$174 million. [...] This latest rise, however, combined with delays in completion of the project, was matter of real concern for me. I found it difficult to understand how there could be such a large and sudden jump in CAPEX at this stage of the project.”⁷⁹

- (102) The last increase in the estimated investment cost (CAPEX estimate) took place in March 2009. This time the amount was USD 198 million⁸⁰. With reference to the discussions held at a meeting with Stati in Crete in September 2009, Ian Taylor, CEO of the Vitol Group, stated the following in his testimony in the JOA case:

“A further point that was discussed in Crete was a request by Mr Stati for yet more funding from Vitol. He said that the LPG plant CAPEX could well rise to US\$200 million and wanted Vitol to commit to US\$25million of additional funding. I expressed my concern that there should be yet another increase in CAPEX and said that I would need assurances that any additional money that was provided would, indeed, be spent on the LPG project [...]”⁸¹

- (103) It should be noted here that the cost for construction of the LPG plant (i.e. invested funds) was estimated in March 2009 (i.e., when the construction of LPG plant ceased) to amount to USD 198 million and that the cost *might* rise to USD 200 million. As shown above, this amount was far from the investment of USD 245 million alleged in the ECT case. Moreover, as stated below in section 7, it also appears that the lower figure of USD 198 million consists to a large degree of fictional costs.

6.4.5 The alleged investment cost in the Montvale-case

- (104) The documentation pertaining to Montvale-case shows that the investments Stati made in the LPG plant are completely different from what Stati stated in the ECT case. It is particularly noteworthy that in the Montvale-case Stati's total investment (along with Vitol SA) allegedly amounted to USD 200 million. It was therefore not claimed in that case that Stati alone had invested USD 245 million, or even USD 200 million, but that the costs had been shared with Vitol.

During the discussion it was found that the Customs duty on some equipment was at a lower rate and this resulted in a reduction of \$10 million for this element of the budget (inclusive of the related change in Import VAT). A revised budget of \$164 million has been presented since the meeting. [...]”

⁷⁹ Witness Statement of Ian Taylor dated 22 January 2014, JOA Arbitration, paras. 33-34, Appendix 23.

⁸⁰ Protocol of *Joint Management Committee* meeting dated March 2009, Exhibit C-118 till Ascorm's *Memorial* dated 11 October 2013, JOA-case, Appendix 35, page 1: “[...] *Current budget is \$198M (\$93M more than the approval level),*”

⁸¹ Witness Statement of Ian Taylor dated 22 January 2014, JOA Arbitration, Appendix 23, para. 40.

- (105) In the Montvale-case, Montvale stated the following in the Statement of Defence and Counter-claim of 22 July 2011 (Appendix 36) under section 21:

“Due to cash constraints and the harassment campaign conducted by Kazakhstan, Ascom, in agreement with Vitol, decided to halt the construction of the LPG Plant in April 2009. At that time, Ascom and Vitol had already invested approximately US\$200 million in the LPG Plant, which was almost completed. Vitol’s 50% investment share amounted to US\$100 million, US\$20 million in equity and US\$80 million in debt. The outstanding prepayments under the COMSA constituted Vitol’s debt share of the investment costs in the LPG Plant and amounted to approximately US\$80 million.” (our emphasis)

- (106) Artur Lungu’s second written testimony of 22 July 2011 in Montvale-case (Appendix 38) states:

“Due to cash constraints and the harassment campaign conducted by Kazakhstan, Ascom decided to halt the construction of the LPG plant in April 2009. At that time, Ascom and Vitol had already invested approximately USD 200 million in the LPG plant, which was almost completed. Therefore, Vitol’s 50% investment share amounted to USD 100 million, USD 20 million in equity and USD 80 million in debt. The so-called outstanding prepayments under the COMSA constituted Vitol’s debt share of the investment costs in the LPG plant and amounted to approximately USD 80 million.” (our emphasis)

- (107) Montvale’s *Post Hearing Brief* of 2 December 2011 states (Appendix 39):

“7.6 The LPG Plant was expropriated by the Kazakh Government prior to its completion, with the parties having jointly funded approximately US\$200 million in construction costs through the combination of equity and debt contributions discussed above.” (our emphasis)

- (108) As to the shared investment with Vitol, it should be noted in this context that Stati stated on the contrary in the ECT case that "*Vitol never owned an equitable interest in the LPG plant but rather promised to provide (but never provided) half of the financing for the construction of the LPG Plant [...]*", which statement thus runs contrary to what Stati stated in the Montvale case. The most noteworthy with this is that, by letting Montvale contest Vitol’s demands for re-payment of the part of the construction costs that had been paid in advance to the LPG plant while at the same time claiming full compensation for this construction cost in the ECT case, Stati would have been compensated twice for half of the alleged investment cost in the event of success in both cases.

- (109) In addition, Stati completely failed to report in the ECT case that Terra Raf transferred all rights and obligations under the JOA agreements to Montvale, something that was

a central issue in the Montvale case. This information would reasonably have had an impact on the issue of Terra Raf's role as investors under the ECT, especially in the light of the fact that Montvale was a BVI company which did not enjoy the protection of the ECT.

6.4.6 Summary of contradictory statements regarding the investment costs

- (110) Stati's claims regarding the value of the LPG Plant are thus contradictory. During the ECT case, Stati's valuation expert (FTI) came to the conclusion that the "[v]alue of Claimants' total investment to the current date for the LPG Plant is \$245.0 million".⁸² These experts were retained by Stati's counsel King & Spalding which presumably provided all of the information for the valuation.⁸³ Only a few months later, the very same counsel, *i.e.* Mr. Kenneth Fleuriet and Reginald Smith, instructed different experts to value the same LPG Plant in the JOA Arbitration.⁸⁴ This time as well, the experts were presumably provided with all of the information by Stati's counsel, but this time the result was that the investment costs amounted to USD 200 million.⁸⁵
- (111) In summary, it can therefore be concluded that the USD 245 million which Stati claimed in the ECT case that it alone had invested in the LPG plant amounted to less than USD 200 million in both the JOA case and the Montvale case. It has also turned out that the alleged investment cost in large parts consists of feigned costs (see further under section 7 below). In the Montvale case Stati also confirmed that the investment in the LPG plant was a cost shared with Vitol, which had previously been denied by Stati in the ECT case.⁸⁶ These completely contradictory statements were submitted by largely the same persons in all of the above-mentioned cases.

7 **STATI'S SCHEME WITH FICTITIOUS INVESTMENT COSTS AND PAYMENTS WHICH WERE TO BE TRANSFERED OUT OF KAZAKHSTAN**

7.1 **Introduction**

- (112) Trying to sort out Stati's dealings after the fact as proved to be a tricky task. Very large sums have been raised in different contexts and formed the basis for various claims by Stati. The diverse and conflicting information Stati provided in the parallel arbitration procedures described in section 6 above does not make the task easier.

⁸² Expert Supplemental Report of Howard Rosen and Laura R. Hardin (FTI) *Expert Supplemental Report*, 28 May 2012, Appendix 2, para. 9.3 (ii).

⁸³ *Ibid.* paragraphs 1.1 and 1.14.

⁸⁴ Expert Report of Charles River Associates dated 11 October 2013, Appendix 3, para. 1.4.1.

⁸⁵ The Charles Rivers Report states as follows in para 3.7.3: "*Copies of the 46 contracts, together with a summary of the key details and terms and conditions of each contract prepared by King & Spalding [...]*" [emphasis added]

⁸⁶ Due to the manner in which Stati presented its claim in the parallel arbitration proceedings there was a possibility for Stati to be compensated twice for the investment costs regarding the LPG plant.

The application of simple mathematics to arrive at exactly how Stati calculated the amount of USD 245 million which was alleged in the ECT case to constitute the investment cost for the LPG plant is not possible. RoK will report below, however, that very large amounts that formed the basis for this valuation were completely fictitious and based on fictitious contractual obligations.

- (113) In the ECT case, Stati provided no specification or breakdown of the USD 245 million which was claimed to be the amount Stati had invested in the LPG plant. RoK became suspicious about these costs after having been given access to the Discovery Documents. An expert report of 11 October 2013 which Stati offered in the JOA case, by the expert Maja Glowka from Charles River Associates, shed some light on the investment. However, her conclusions are not compatible with Stati's claims in the ECT case.
- (114) According to Charles Rivers' report, of the total investment amount for the LPG plant, which is estimated at USD 248,084,112 as of 31 December 2009, USD 72,003,345 related to purchased and delivered building material and equipment not yet installed in the plant. In addition, USD 52,987,273 related to building material and equipment that had not yet been delivered to the facility and USD 43,852,108 related to a management fee charged by Perkwood which supposedly had acted as Project Manager on behalf of TNG (but which in fact was a letter-box entity controlled by Anotolie Stati himself. In addition, Perkwood received payment in the amount of approximately USD 93 million for building material and equipment which was identical to the components which had already been delivered by TGE for approximately USD 34.5 million.
- (115) Stati's information in the ECT case that the LPG plant was almost completed and that it had resulted in investment costs of USD 245 million was therefore grossly misleading since large parts of this cost related to, among other things, construction material and equipment which (i) was identical to the equipment and materials which had already been delivered by third parties; (ii) had not been installed; or (iii) was claimed to have been purchased but which had not even been delivered. In addition, nearly USD 44 million was a *Management Fee* to a letterbox company, Perkwood (see section 7.2 below).
- (116) Stati's system with a non-transparent corporate structure and arbitrary transfers of assets had previously been scrutinized by the English court in connection with Ascom's effort to revoke an attachment order issued on an application by Vitol. The case was decided by the High Court of Justice, Queen's Bench Division, Commercial Court, in its judgment delivered by Justice Cooke on 29 August, 2014⁸⁷. According to that judgment, Justice Cooke, stated the following:

"The Group's combined financial statements for 2009 indicate that payment terms between members of the group can be amended at will by Mr Stati."

⁸⁷ Royal Court of Justice Strand, case no. 2014 Folio 506, Appendix 11.

Note 30 to those statement also illustrates how assets and liabilities are moved around the Group.”⁸⁸ (our emphasis)

- (117) RoK will explain below how Stati systematically organized its operation in order to inflate the investment costs for the LPG plant for the purpose of channeling funds out of Kazakhstan. The scheme also resulted in inflating Stati’s claims in the various arbitrations Stati has initiated against Vitol and RoK, thereby seeking to be awarded larger amounts than Stati was entitled to.
- (118) In the process of analyzing the extensive documentation RoK retained Deloitte which recently issued an expert report (the "**Deloitte report**")⁸⁹. Deloitte's findings are summarized in the report as follows:

"Under the assumption that the above new documents are accurate (which we have not been in a position to verify), it can be concluded that a significant portion of the expenses claimants allegedly made for the purpose of the construction of the LPG plant appear to lack a real basis and have been made without recognizable cause or justification.

In accounting terms, it can be concluded that the reported construction costs of the LPG plant (approx. USD 245 as at 31 December 2009 according to the combined financial statements of Tristan, KPM and TNG or Tristan Oil or approx. USD 248 million of according to the individual financial statements of TNG, respectively) were significantly overstated."⁹⁰ (emphasis added)

7.2 **Perkwood played a key-role in Stati’s scheme**

- (119) As will be shown below, Perkwood acted neither as project manager nor as a supplier of goods in activities related to the LPG plant project. Instead, Perkwood played a key role in Stati’s misleading activities to inflate the alleged investment costs.

7.2.1 Perkwood's agreement with TNG

- (120) Among the documents obtained by RoK through the Discovery Documents was a Perkwood contract which is a sales contract (Sale and Purchase Agreement) entered into between Perkwood and TNG on 17 February 2006. Section 1.1 of Perkwood Agreement reads as follows:

"1. SUBJECT AND TOTAL VALUE OF THE AGREEMENT

1.1. The Seller sells and the Buyer buys the technological machine complex

⁸⁸ *Ibid.* paragraph 38.

⁸⁹ Appendix 5.

⁹⁰ See the Deloitte report, Appendix 5, paragraph 11.

*"Liquefied petroleum gas unit" hereafter referred to as the "Goods", in sets according to the Annexes hereto ("Annexes").[...] 1.4. The total value hereof consists of the cost of the supplied Goods referred to in the Annexes hereto and makes approximately 115 000 000.00 (one hundred and fifteen million) U.S. dollars."*⁹¹

- (121) However, the original contract value of USD 115 million increased through several amendments to the Perkwood Agreement.
- (122) On 27 July 2007, the contract value was increased to USDM 155 through Supplementary Agreement 2 (*Annex 2*), Appendix 10, relating to goods delivered. Less than six months later, on 1 December 2008, the contract value increased to USD 185 million through Supplementary Agreement 6 (*Annex 6*), Appendix 10, in respect of goods supplied.
- (123) There are specifications and pricing for supplies in sixteen annexes to the Perkwood Agreement, Appendix 10. The total amount indicated in these appendices is USD 191 million.
- (124) The sixteen annexes, Appendix 10, show that most of the contract value, approximately USD 119 million, relates to 2006. Large orders with a value of over USD 46 million are also alleged to have been made shortly before the construction of the LPG plant was discontinued in March 2009, i.e. at a point in time at which the LPG plant was largely completed; see table below.

Appendix	Date	Amount (USD)
1	17 February 2006	14 476 272
2	27 March 2006	93 095 908
3	4 September 2006	11 262 570 00
4	1 September 2007	695 391
5	14 September 2007	9 000
6	1 October 2007	8 550 920
7	15 October 2007	6 226 166
8	30 November 2007	5 807 556
9	21 February 2008	1 953 302
10	11 April 2008	818 404
11	2 June 2008	1 675 585

⁹¹ The Perkwood agreement dated 17 February 2006, Appendix 10.

12	12 August 2008	866 385
13	17 November 2008	3 322 655
14	2 December 2008	30 899 952
15	12 January 2009	15 103 148
16	18 May 2009	288 792

(125) According to the expert report from Charles River, Appendix 3 (prepared by Maja Glowska), which Stati offered into evidence in the JOA case, Perkwood received compensation from TNG based on the Perkwood agreement totaling approximately USD 138 million.

(126) According to the annual report for Tristan Oil for the 2009 fiscal year, Appendix 40, Perkwood received advance prepayments from TNG amounting to USD 36,800,212. However, the delivery related to the advance payments was canceled due to the discontinuation of the construction of the LPG plant, whereby Perkwood agreed to repay the advance payment (the repayment claim was subsequently transferred to Tristan Oil).

(127) Moreover, there is correspondence between Artur Lungu, acting on behalf of Tristan Oil, and the CEO of TNG, Mr. Calencea, concerning the repayment of TNG's advanced payments to Perkwood of approximately USD 37 million.

7.2.2 Perkwood played a key-role in the JOA case but the company was hidden in the ECT case.

(128) Perkwood played a central in the JOA case, where it was described as either the main supplier of building material and equipment to the LPG plant or as a project manager for the entire project. None of these roles, however, were real. As a non-operational (and dormant) letter-box-company, Perkwood had nothing to contribute to the LPG plant project. Notwithstanding this, Perkwood received the equivalent of approximately USD 138 million from TNG under the pretense that the payment was in exchange for services and supplies in connection with the construction of the LPG plant.

(129) Perkwood's role as project manager and main supplier in the LPG plant project is demonstrated, among other things, by Artur Lungu's first witness statement dated October 11, 2013, paragraph 60.

"First, TNG engaged an Ascom affiliate, Perkwood Investments, to manage the acquisition of most of the equipment and services for the LPG Plant Project."⁹²

(130) In her report, Maja Glowska, Ascom's expert at Charles River, added the following:

"I understand that Perkwood Investment Limited ("Perkwood") acted as project manager on behalf of TNG and in that capacity entered into contracts with third parties to supply certain key pieces of technological equipment for the LPG plant project."⁹³

(131) However, this claim has no support in the Perkwood agreement but rather is Stati's own claim.

(132) In the ECT case, Perkwood appears only in one instance; in Tristan Oil's annual report for 2009. Even in Tristan Oil's annual report, Perkwood is erroneously stated as a third-party instead of a related party (see also section 8 above). Stati otherwise remained silent during the entire ECT case regarding Perkwood's existence and its central role in the LPG plant project. Consequently, neither RoK nor the arbitral tribunal had any knowledge of this.

(133) It is apparent from the above that a dormant letterbox company with professional sham directors, who were described in the JOA case as both project manager and main supplier and the recipient of huge sums, was not even mentioned in the ECT case. Despite the fact that the construction of the LPG plant, invested funds, and the parties involved were thoroughly addressed in the ECT case, Stati failed to mention the central role Perkwood was claimed to have played. This means that the Arbitration Award in the ECT case is based on fundamental errors and defects which Stati knowingly caused.

7.3 Large parts of the alleged investment costs in the ECT case are fictitious

(134) The Discovery Documents, particularly the Perkwood Agreement with its supplemental agreements and annexes, caused RoK to continue its review of Stati's allegations in the ECT case. Among other things, a comparison was made between the Perkwood Agreement and TGE agreement.⁹⁴ RoK will report below the alleged investment costs based upon the documentation obtained through the Discovery Documents.

⁹² Second Witness Statement of Arthur Lungu, dated 11 October 2013, JOA case, Appendix 37, paragraph 60.

⁹³ Expert Report of Charles River Associates dated 11 October 2013, Appendix 3, para. 3.5.1.

⁹⁴ The TGE agreement was initially entered into between Ascom and another company, on the one part, and Tractebel Gas Engineering GmbH ("**Tractebel**"), on the other part, on 31 January 2006. Through a novation, TGE subsequently took over the agreement from Tractebel.

- (135) As stated above, in the ECT case documents were offered into evidence which specify the company's which were involved in the construction of the LPG plant. Alongside TGE, all of these companies were owned and/or controlled by Stati.
- (136) TGE was the actual main the supplier of the construction material and equipment to the LPG plant. TGE also delivered construction material and equipment two other Stati companies (Ascom and Azalia) according to the TGE agreement at a price of USD 34.5 million.
- (137) According to the Perkwood agreement, as the main supplier, Perkwood was also to deliver construction material and equipment to the LPG plant. The responsible engineer at TGE, Franjo Zaja, confirms however in his witness statement dated 27 August 2015 that the components set forth in Annexes 2, 14 and 16 to the Perkwood agreement are identical components already delivered by TGE.⁹⁵ The total value of these annexes to the Perkwood agreement is approximately USD 124 million, while the value of identical construction material and equipment according to the TGE agreement was approximately USD 34.5 million.
- (138) Perkwood was used in order to increase the value of the investment in the LPG plant through fictitious services and fictitious instruction material and equipment. In this way, Stati came to create an impression that large amounts had been invested or would be invested in the construction of the LPG plant while at the same time these sums were being used to drain funds from TNG in order to be moved out of Kazakhstan.
- (139) The misleading scheme began as early as February 2006 and continued in various stages until May 2009. The Perkwood scheme covered the following parts:
- (i) Fictitious purchasing costs – Annexes 2, 14, 16 to the Perkwood agreement correspond to the scope of the TGE agreement. The components which are set forth in these supplemental agreements had already been delivered by TGE at a price of approximately USD 34.5 million, while the price for the same components in the supplemental agreements amounted to approximately USD 124 million.
 - (ii) Fictitious component costs – the fictitious component costs (for construction material and equipment) were the result of the fact that Stati reported costs in an amount of approximately USD 72 million regarding construction material and equipment which, in reality, did not exist. Despite the fact that these components did not exist, Stati added these fictitious expenses to the investment costs for which Stati claimed compensation.
 - (iii) Fictitious interest costs – the fictitious interest costs are the natural consequence of Stati's actions. Stati claims to have paid approximately USD 60 million in interest costs for the financing of the LPG plant. Just as the costs

⁹⁵ First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 10.

for the construction material and equipment for the LPG plant were inflated through Stati's fictitious scheme, the interest costs were also inflated and lacked any basis.

- (iv) Fictitious management fee – this part is related to Perkwood. During the ECT case, Stati failed to disclose that its alleged investment costs in the LPG plant included a Management Fee which amounted to approximately USD 44 million, which had been paid to Perkwood without any contractual grounds and entirely without any corresponding value in the form of services provided.

The same conclusion was drawn by the English court, the High Court of Justice, in conjunction with the attachment proceedings in which Justice Cook pointed out the lack of any grounds whatsoever for such payment.⁹⁶

- (v) Advance on non-delivered components – Stati's scheme is also apparent through orders for construction material and equipment in the amount of approximately USD 53 million at a point in time at which the LPG plant was largely completed. On the basis of these orders, Perkwood received advanced payments in the amount of approximately USD 37 million which have never been repaid despite the fact that the cancellations were made as early as February 2010.

- (140) The investment costs incurred by TNG as a consequence of the LPG plant project were thus largely fictitious. Stati's misleading scheme was then taken to the next level in the ECT case where Stati sought damages for the abandoned LPG plant based mostly, among other things, on fictitious investment costs.

7.3.1 Fictitious purchasing costs

- (141) The fictitious purchasing costs must be understood against the background of the contractual arrangements concerning the construction of the LPG Plant (compare section 5.2 above). RoK has only been able to uncover this background through co-operation from TGE, the supplier of the core construction material and equipment for the LPG Plant. Franjo Zaja, who was TGE's engineer in charge of the project, states the following in his witness statement of 27 August 2015 submitted to the English court which was addressing Stati's application for enforcement of the arbitration award in the ECT case:

"I was personally involved in the performance of the LPG Plant Contract, in my capacity as senior site electrical and instrumentation engineer."⁹⁷

⁹⁶ See section 3 above. Justice Cooke's decision of 29 August 2014 (see footnote 10 above) and the testimony under oath of Artur Lungu and the Charles River report confirm that this Management Fee was entirely fictitious.

⁹⁷ First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 3.

(142) The scheme with the fictitious purchasing costs was simple. TNG paid large sums of money to Perkwood, purportedly for the purchase of construction material and equipment under the Perkwood Agreement. However, this construction material and equipment had in fact already been purchased on behalf of TNG (by Ascom and Azalia) from TGE, under the TGE contract. The result was that TNG was alleged to have paid vast sums to Perkwood on a wholly fictitious basis or rather a sham agreement.

(143) This scheme is apparent through a review of the following documents:

- (i) Through Annex 2 to the Perkwood Agreement dated 27 March 2006, TNG agreed to purchase construction material and equipment from Perkwood for approximately USD 93 million. However, it is clear that the construction material and equipment is identical to the construction material and equipment which had already been supplied by TGE under the TGE Contract (and, in TGE's case, at the much lower price of USD 34.5 million).

"Annex 2, dated 27 March 2006, is identical to the TGE Scope of Delivery. The components it lists were fully delivered by TGE at a price of EUR 28,380,000.00 (USD 34,447,644.00). I cannot explain the price of USD 93,095,908.99 indicated in Annex 2 of the Perkwood Agreement."⁹⁸

Through this scheme, Stati created the misleading impression that approximately USD 127 million had been invested in components which had already been built into, or which would be built into, the LPG plant. In fact, this sum was only about USD 34 million. The amount paid which exceeds the actual investment cost was fictitious.

- (ii) Through Annex 14 of the Perkwood Agreement dated 2 December 2008, TNG agreed to purchase further materials from Perkwood for USD 31 million. However, as Franjo Zaja explains, Annex 14 is quite simply a redrafting of Annex 2 and that it covers exactly the same construction material and equipment which had been previously supplied by TGE for USD 34.5 million.

"Annex 14, dated 2 December 2008, also refers to components included within the TGE Scope of Delivery and which had been delivered by TGE by October 2008 at a price of USD 34,447,644.00. The goods named under No. 1 to 3 (heat exchangers of stainless steel cold area, as turbo compressors Solar and turboexpander Mafi-Trench) of Annex 14 are parts/components of the goods named in Annex 2 under No. 2 (LPG recovery unit) and 3 (Sales gas compression unit). No. 1 and 3 of Annex 14 are components within No. 2 of Annex 2. No. 2 of Annex 14 is a component within No. 3 of Annex 2. I

⁹⁸ First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 10.

cannot explain the price of this Annex, or why such an order should have been placed in December 2008."⁹⁹

Annex 14 therefore also relates to the same construction material and equipment that had not only already been supplied by TGE under the TGE Contract, but which had also been purportedly supplied by Perkwood under Annex 2 to the Perkwood Agreement. That fact that both Annex 2 and Annex 14 contain construction material and equipment which is identical to the construction material and equipment already supplied by TGE is proven by the lists of lading, packing lists and invoices from TGE and its subcontractors relating to the specified items in Annexes 2 and 14.

Furthermore, Annex 14 triggered substantial advance payments in the amount of close to USD 37 million. This amount was paid by TNG to Perkwood for deliveries which were never received or even needed for the LPG plant.

(iii) Through Annex 16 to the Perkwood Agreement dated 18 May 2009, TNG again appears to have agreed to purchase construction material and equipment from Perkwood which is identical to the TGE's earlier deliveries. Annex 16 indicates a price of USD 288,792.00. Most of the construction material and equipment had been fully delivered and installed by TGE in December 2008. This is proven by TGE's invoice and its packing list both dated 5 December 2008 which referred to construction material and equipment as specified in Annex 16. There is no explanation either for the price or why such order was placed in May 2009 (at a time at which the work on the LPG plant had been discontinued).

(144) At the time of the conclusion of both Annex 14 and Annex 16, the LPG plant was thus largely completed, and the building material and equipment covered by these annexes was already built into the facility.

"As of October 2008 the TGE Scope of delivery had been fully completed by the TGE and the components were built in. As informed by the letter from Ascom to TGE dated 12 March 2009 (Attachment 2), the construction was stopped. At that time, the main equipment had been delivered and built in. The LPG Plant was Approximately 80-90% complete."¹⁰⁰ (emphasis added)

(145) The conclusion is thus that the TNG, according to the scheme involving the fictitious purchasing costs, seems to have paid about USD 125 million to Perkwood based on fictitious, or in any case entirely superfluous, purchases of construction materials and equipment which TNG (through Ascom and Azalia) had already purchased from TGE at the price of only approximately USD 34.5 million. The misleading and erroneous payments to Perkwood are even more remarkable given the fact that Perkwood was a

⁹⁹ First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 10.

¹⁰⁰ TGE's written confirmation dated 21 August 2015, appendix 41.

dormant letterbox company that had no possibility of delivering the purchased building materials and equipment. Annexes 2, 14 and 16 to Perkwood Agreement must therefore be regarded as purely sham documents.

- (146) Scheme involving fictitious costs was established from the very beginning of construction of the LPG Plant. The actual TGE Contract was signed on 31 January 2006, while the sham agreement with Perkwood was signed on 17 February 2006 and Annex 2 of the Perkwood Agreement as early as 27 March 2006. Consequently, it is clear that, from the very beginning, Stati intended to use the LPG Plant as a vehicle for generating payments which could then be transferred out of Kazakhstan under the pretense of payments made for the construction of the LPG plant.

7.3.2 The fictitious components costs

- (147) In addition to the fictitious purchasing costs, Stati deliberately misled the arbitral tribunal as well as the RoK in the ECT case regarding Stati's actual expenses for construction material and equipment for construction of the LPG plant. This scheme involving the misleading costs was revealed through the Charles River expert report in a cost-breakdown¹⁰¹. Through this, RoK learned that the figure of USD 248 million¹⁰² encompassed an amount in excess of USD 72 million for construction material and equipment was claimed to have been delivered, but not built into the LPG plant. The fraudulent scheme worked as follows:
- (148) The Charles River Expert Report explains that there were two accounts used in the financial accounts, one for construction material and equipment delivered but not yet built into the plant and one for construction material and equipment which had been built into the plant:

"all transactions in relation to the LPG Plant are recorded under two general ledger asset account codes as follows:

- (a) '2931 Construction in progress' and
(b) '2932 Equipment for construction'*

[...]

*The majority of transactions relating to the LPG Plant involving purchases of equipment (including associated customs charges and transport costs) were initially posted to the '2932 Equipment for construction' account, and subsequently transferred to the '2931 Construction in progress account when incorporated into the plant.'*¹⁰³

¹⁰¹

¹⁰² Tristan Oil Financial Report for the Year Ended 31 December 2009, page F-154.

¹⁰³ Expert Report of Charles Rivers Associated, dated 11 October 2013, JOA case, Appendix 3, paragraph 3.3.5.

- (149) In the JOA case, Stati's reports showed that, as at 31 December 2009, under the '2932 *Equipment for construction*' account Stati had reported USD 72,003,345 (i.e. delivered construction material and equipment which had not been installed into the plant). Under the '2931 *Construction in progress*' account, Stati had reported USD 118,881,394 (excluding interest).
- (150) The construction material and equipment at a value of USD 72 million corresponds to a large portion of the investment costs for the LPG plant. In addition, this amount is twice as large as TGE's corresponding delivery undertaking (*Scope of delivery*). Given that TGE had fully delivered most of the construction material and equipment for the plant, there is no reasonable explanation as to why construction material and equipment at this value would have been lacking at the plant. Furthermore, such an explanation is incompatible with Stati's approach that the LPG plant was almost completed in the beginning of 2009. This allegation cannot be true for the following reasons:
- (151) Firstly, according to Stati's submissions in the ECT case, the LPG Plant was near completion in early 2009. This is also confirmed by Franjo Zaja.¹⁰⁴ It is thus not likely that construction material and equipment for USD 72 million would have been needed to finalize the LPG Plant.
- (152) Secondly, the sum of approximately USD 72 million must be put in perspective. TGE delivered the LPG Plant's main construction material and equipment for approximately USD 34 million. Stati's accounts suggest therefore that TNG, at a very late stage in the project, had underutilized goods in stock for construction material and equipment in an amount which was twice as large as the amount for construction material and equipment which had already been installed into the LPG plant.
- (153) Thirdly, USD 72 million worth of construction material and equipment would need to be stored somewhere. It is difficult to imagine that such a large amount of construction material and equipment could have been stored without very large warehouses on site. No such warehouse existed at the construction site as confirmed by Franjo Zaja:

"In February 2010 I made a site visit to the LPG Plant and prepared a report, in which I noted that no major equipment was stored on site; that the LPG Plant was mostly completed; and that no major components were missing."¹⁰⁵

- (154) The only conclusion that can be drawn from this is that this construction material and equipment was never ordered and/or delivered to the site. This would mean that TNG's financial statements on 31 December 2008 contain materially inaccurate and misleading information.

¹⁰⁴ First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 7.

¹⁰⁵ First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 8.

7.3.3 The fictitious interest expenses

- (155) TNG's annual report¹⁰⁶ shows that the TNG had booked interest expenses based on loans raised to finance expenses for construction materials and equipment as well as services related to the LPG plant.
- (156) The Discovery Documents show the breakdown of these expenses. According to the Charles River expert report, TNG's investment costs for the LPG-facility on December 31, 2009 amounted to approximately USD 248 million¹⁰⁷. The Discovery Documents show that the total investment cost includes alleged interest expenses on the order of USD 60 million.
- (157) The scheme involving the fictitious interest expenses is the natural consequence of Stati's actions. Just as the construction cost of the LPG plant was inflated through Stati's fictitious scheme, the interest expenses were also inflated and lack any basis.
- (158) In this case, Stati claims to have had costs amounting to approximately USD 188 million for construction materials and equipment and services related to the LPG plant. In addition to this, Stati claims to have paid approximately USD 60 million in interest expenses. According to Stati, this resulted in a total investment cost of approximately USD 248 million. Put another way, the interest expenses amount to 32 percent of the cost of the construction materials and equipment ($60/188 = 32\%$) or 24 percent of the total investment cost ($60/248 = 24\%$)¹⁰⁸.

7.3.4 The fictitious Management Fee Fraud

- (159) The fictitious Management Fee scheme was even more flagrant than the scheme involving the fictitious purchasing costs. A sum of USD 44 million was paid by TNG to Perkwood as a so-called "*Management Fee*". The source of this information was once again the testimony of Ascom's CFO Artur Lungu in the JOA case:

"Perkwood charged TNG for the equipment and services under an agreement that included Perkwood's management fee. [...]"

*Those fees [...] must be deducted from TNG's total capital expenses reflected in its financial systems and statements, total USD 43,852,108."*¹⁰⁹

- (160) Artur Lungu claimed that "*the Perkwood Management Fees were included as mark-ups on equipment delivered to TNG*"¹¹⁰, that is a markup on construction material and

¹⁰⁶ Annual report for TNG for the operating year ending 31 December 2009, Appendix 42, footnote 3 (k), page F-144.

¹⁰⁷ Expert Report of Charles River Associates, Appendix 3, para. 3.5.12, page 11; table 4, page 10.

¹⁰⁸ The Deloitte report, Appendix 5, paragraphs 52-56.

¹⁰⁹ Witness Statement of Artur Lungu dated 11 October 2013, JOA case, Appendix 22, para. 61.

¹¹⁰ *Ibid*, para. 62.

equipment and the equipment which was alleged to have been delivered by Perkwood to TNG.

- (161) This claimed *Management Fee* of some USD 44 million is wholly devoid of any corroborating evidence or explanation. It does not have any basis in the Perkwood Agreement. Instead, the agreement claims to be a pure sale and purchase agreement. The recitals in the Perkwood agreement (section 1.1) state that "[T]he seller [Perkwood] sells and the buyer [TNG] buys the technological machine complex "liquefied petroleum gas unit" hereafter referred to as the "Goods", in sets according to the Annexes hereto".¹¹¹ As David Stern, Vitol's expert in the JOA case, explains, there is no documentary evidence or legitimate basis for the demand for a *Management Fee*:

*"Aside from Mr Lungu's representation that this fee amounts to US\$43,852,108, there appears to be no documentary evidence to support the value of such costs incurred by TNG. [...] In the case of both figures, Ms Glowka appears to have relied wholly upon the representations made by Mr Lungu, since no documentary evidence has been provided in support of these values."*¹¹²

- (162) Furthermore, Franjo Zaja, TGE's engineer in charge on the project, states that he has never encountered nor ever heard of any company by the name of Perkwood.

*"TGE, in its capacity as the supplier of the core components of the LPG Plant, interacted with all other major suppliers of the LPG Plant at an operational level. In performing my responsibilities, I have never encountered a company named Perkwood Investment Limited (Perkwood)."*¹¹³

- (163) The mere fact of TGE's ignorance of Perkwood shows that Perkwood did not perform any services as project manager and there was therefore no factual or legal basis for the payment of a corresponding *Management Fee*.

- (164) The simple truth is that the so-called "*Management Fee*" paid discretionarily to Perkwood led to the alleged investment cost for TNG regarding the LPG plant drastically and artificially increasing. It is obvious that this *Management Fee* consisted of a markup on construction material and equipment (which had already been delivered by another company) for services from a dormant company without any business activity which was operated by sham directors and which had never been performed. In addition, this *Management Fee* was paid entirely without any contractual basis.

¹¹¹ The Perkwood agreement dated 17 February 2006, appendix 10.

¹¹² Expert Report of David Stern dated 23 January 2014, JOA case, Appendix 4, para. 4.52.

¹¹³ First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 9.

(165) This was also the conclusion reached by Mr Justice Cooke in the English court:

*“Ascom has asserted that it paid a management fee of over \$33 million to an English company called Perkwood. An agreement has been disclosed which makes no mention of any management fee nor of any formula for calculating it. It appears from other evidence that there was a mark up on prices for equipment supplied to the LPG Plant. It appears therefore that this “fee” was simply paid at will.”*¹¹⁴

(166) Justice Cooke summarised his conclusions in relation to the “Management Fee” in the following terms:

“The financial records of the following companies are inaccurate and misleading:

Although Perkwood was said to have charged a management [fee] of over \$43 million, it filed dormant company accounts throughout the relevant period. ...

TNG’s audited accounts for the years 2007-2009 do not disclose the fact that Perkwood was a related party.

- (i) *No mention of the Perkwood management fee is to be found in the ECT Award [i.e. the Award].*¹¹⁵
- (ii)

7.3.5 Advance on non-delivered components

(167) Stati's misleading scheme is further revealed in the fact that TNG ordered construction material and equipment valued at approximately USD 53 million which was never delivered.

(168) As is apparent from the Charles River expert report, the total value of the Perkwood agreement was USD 191,018,100.¹¹⁶ TNG is claimed to have received construction material and equipment from Perkwood for only USD 129,871,904.¹¹⁷ In addition to this, there are deliveries in the amount of USD 7,004,529 which were booked on account "1311 Inventory account"¹¹⁸ which resulted in fees amounting to a total of USD 138,030,827.¹¹⁹ in this context, Charles River notes the following:

¹¹⁴ Mr. Justice Cooke, in the High Court of Justice, Queens Bench Division Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, Case No 2014 FOLIO 506 (Freezing Order), dated 29 August 2014, Appendix 11, para. 39.

¹¹⁵ *Ibid*, para. 42.

¹¹⁶ Expert Report of Charles River Associates dated 11 October 2013, Appendix 3, para. 3.5.2.

¹¹⁷ Expert Report of Charles River Associates dated 11 October 2013, Appendix 3, para. 3.5.2.

¹¹⁸ Expert Report of Charles River Associates dated 11 October 2013, Appendix 3, para. 3.5.4.

¹¹⁹ Expert Report of Charles River Associates dated 11 October 2013, Appendix 3, para. 3.5.4.

"I understand that the shortfall of USD 52,987,273 between the contract value of USD 191,018,100 and the total cost of items delivered [...] relates to items specified in the contract or supplementary agreements which were not delivered."¹²⁰

(169) David Stern's expert report casts more light on these transactions:

"Ms Glowka [Charles Rivers] explains that based upon her review of the available documents, the costs that were recorded in the 1C accounting software database in favour of Perkwood fall short of the agreed total contract value of approximately US\$191 million, by approximately US\$53 million. She further notes that she understands that the shortfall relates to items specified in the contract or supplementary agreements which were not delivered.

This suggestion appears to be consistent with certain agreements and correspondence that I observed within the documents pertaining to Perkwood that were provided as Exhibit 3.9.27 to the Glowka report."¹²¹

(170) Firstly, the orders are odd in light of the fact that TGE had already delivered construction materials and equipment to the LPG plant for approximately USD 34.5 million. These components had been built into the plant as early as October 2008.¹²² In addition, it is apparent from the documents to which David Stern's expert report refers that Perkwood received large advance payments for these orders. Despite the fact that the underlying orders were canceled, Perkwood never repaid these advances which amounted to approximately USD 37 million.

(171) On 1 February 2010, Perkwood and TNG agreed to cancel the orders in exchange for repayment of the advances. This is apparent from Annex 11 to the Perkwood agreement which reads as follows:

"As the Buyer made prepayments presently, but the Seller had not supplied Goods under Agreement totaling 36 800 211. 56 (thirty-six million eight hundred thousand two hundred and eleven. 56) US dollars,

[...]

2. The Seller agrees with the Buyer's [sic] refuse to deliver Goods and is obliged, within 30 calendar days upon signature hereof, to repay advance payments made by the Buyer amounting to 36 800 211. 56

¹²⁰ Expert Report of Charles River Associates dated 11 October 2013, Appendix 3, para. 3.5.4.

¹²¹ David Stern's expert report, appendix 4, paragraph 4.29.

¹²² First Witness Statement of Franjo Zaja dated 27 August 2015, Appendix 12, para. 7.

*(thirty-six million eight hundred thousand two hundred and eleven. 56)
US dollars.*¹²³

- (172) On 9 February 2010, TNG and Tristan Oil entered into an agreement pursuant to which TNG's outstanding claims against Perkwood regarding advance payments were assigned to Tristan Oil.¹²⁴ TNG duly notified Perkwood regarding the assignment of the claim to Tristan Oil.¹²⁵
- (173) however, it is apparent from KPMG's work product that Perkwood never repaid the advanced sums to Tristan Oil. The following is stated in KPMG's notes from a telephone conference held on 13 May 2010 with Stati:

*“Advances paid to Perwood [sic] were transferred to Tristan. Per transfer agreement with Perwood [sic] the reason is the delay in delivery by Perwood [sic]. During 2009 audit we received different representation – initiative by management to postpone the delivery. Has anything been changed since that time? Additionally Perwood [sic] should have returned the amount (USD 36 million) to Tristan within 30 days however at 31 March 2010 the amount is still outstanding. Any issue with impairment, if not, then why?”*¹²⁶

- (174) Since the LPG plant was largely completed and the construction material and equipment was, in principle, already installed in the plant, there was no reason to order further components.¹²⁷

7.4 **Summary and Conclusions**

- (175) The deliberate misrepresentation Stati created through the scheme using fictitious purchasing costs, fictitious component costs, fictitious interest costs, a fictitious *Management Fee*, and advances on non-delivered components resulted in alleged actual investment costs incurred by TNG for the LPG facility amounting to extremely large amounts which represent a significant portion of the total investment costs.
- (176) In conjunction with the attachment decision against Stati which was obtained by Vitol in the English High Court of Justice, Justice Cooke noted the hardly flattering picture of Stati's scheme and also criticized the manner in which Stati and its counsel testified in courts of law and before arbitral tribunals:

“I am satisfied on the basis of all the material put before me that Mr Stati [i.e. Anatolie Stati] not only has a propensity to move assets around his group

¹²³ Annex 11 dated 1 February 2010, Appendix 10.

¹²⁴ *Agreement on assignment of claim* dated 9 February 2010, Appendix 10.

¹²⁵ Perkwood's confirmation letter to TNG dated 15 February 2010, Appendix 10.

¹²⁶ KPMG, Minutes of Conference Call, 13 May 2010, Appendix 43, page 2.

¹²⁷ The Deloitte report, Appendix 5, paragraph 66-68.

companies as he thinks fit but he and Ascom has a propensity to give information to the tribunal or the court about its assets according to what he or it thinks suits its interests at the time. Mr Fleuriet [of King & Spalding] is a lawyer who has sworn affidavits on the basis of instructions given to him. His evidence is most unsatisfactory, particularly where it contradicts that given by Mr Lungu or Mr Stati who could be taken to have firsthand knowledge of the group assets position and the way in which the group operated. Mr Stati's own evidence is also unsatisfactory. He exhibited Ascom's unaudited accounts for the past 3 years and stated that it did not prepare management accounts at all...

In these circumstances, Vitol's fears about Ascom's financial position, as expressed in its application for security for costs and its fears of dissipation in the context of the current application are well founded. Exactly what Ascom's asset position is remains unclear but the inconsistent information that has been given, when combined with the way in which Mr Stati conducts his business through his companies establishes, in my judgment, a real risk that an award against Ascom could go unsatisfied by reason of unjustifiable disposals of assets or that assets could be dealt with in such a way as to make enforcement more difficult. I cannot accept Mr Fleuriet's assertions that nothing has been done by Ascom save in the ordinary course of business. In Ascom's Reply Submissions in the Fourth Reference, in response to a complaint that sums paid under the TNG COMSA were not used for the construction of the LPG Plant, Ascom said that 'dollars within the Ascom group were fungible' which is merely another way of saying that assets are moved around the group as Mr Stati saw fit. Given his approach to Montvale's liabilities in the First Reference, the risk of movement of assets rendering an award against Ascom unenforceable is all too clear."¹²⁸ (emphasis added)

- (177) Justice Cooke's statements identify the actual basis in Stati's misleading scheme which largely involved the arbitrary moving of assets and capital between various Stati companies as well as increasing the investment costs through fictitious cost items which would be charged in the future to the LPG plant. This scheme, which was launched as early as 2006 and which was then applied in various stages until May 2009, was then maintained in the ECT case and continued to be operated as far as the proceedings now pending.
- (178) If TNG's actual investment costs for the LPG plant had been reflected in the annual accounts and in the *Information Memorandum*, it is obvious that KPMG's valuation of

¹²⁸ Mr Justice Cooke, in the High Court of Justice, Queens Bench Division Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, Case No 2014 FOLIO 506 (Freezing Order), dated 29 August 2014, Appendix 11, paras. 43-44.

the plant (at the time at which the Indicative Offer was provided) would have been significantly lower, which would have had a direct impact on the Arbitration Award. Or, in light of the fact that the investment cost of USD 245 million alleged by Stati was fictitious, the arbitral tribunal would not have awarded Stati any damages at all due to the scope of Stati's misleading scheme.

- (179) Consequently, the Arbitration Award, in any event with respect to the LPG plant, was based on erroneous and misleading information which led to an erroneous result.

8 PERKWOOD WAS NOT DISCLOSED AS A RELATED PARTY

8.1 Introduction

- (180) While Perkwood was not even mentioned in the ECT case, the company's role became central in the JOA case in connection with the construction of an LPG plant.

"First, TNG engaged an Ascom affiliate, Perkwood Investments, to manage the acquisition of most of the equipment and Services for the LPG Plant Project. Perkwood charged TNG for the equipment and services under an agreement that included Perkwood's management fee."¹²⁹

- (181) Perkwood's role is surprising since it was not mentioned in the parallel arbitration proceedings with Stati companies, legal counsel King & Spalding, and the witnesses Artur Lungu and Anatolie Stati. It is also noteworthy that Stati had not informed their accountants that Perkwood was a related party. This has led to serious shortcomings in all the financial statements which were prepared in accordance with International Financial Reporting Standards ("**IFRS**") and in turn the documents based on these financial statements.

8.2 The importance of reporting related parties

- (182) Where related companies are involved the concealment of related party entails an undue impact on the reported values. Vitol's expert in the JOA case, David Stern, describes this in his expert report as follows.

"Within IFRS, the relevant standard which addresses the reporting requirements associated with related party transactions is International Accounting Standard 24 ("IAS24"). This accounting standard requires each reporting entity to disclose transactions with its related parties, on the basis that a "related party relationship could have an effect on the profit or loss and financial position of an entity [where, by way of example] transactions

¹²⁹ Witness Statement of Artur Lungu dated 11 October 2013, JOA case, Appendix 37, paragraph 61.

between related parties may not be made at the same amounts as between unrelated parties."¹³⁰

- (183) When the applicable legal framework for accounting imposes such conditions in accordance with ISA 550 "RELATED PARTIES", the auditor has a duty, among other things, to conduct an audit to identify, assess and respond to the risk of serious misrepresentation arising from a company's failure to adequately explain or account relationships to related parties, transactions, or balances in accordance with the requirements imposed by the regulations.

8.3 **Stati failed to inform KPMG of Perkwood's status as a related company**

- (184) Stati provided KPMG with organizational charts containing related parties. Perkwood was not included in these charts. Based on Perkwood's central role in the construction of LPG plant, there is no reasonable explanation for not providing such important information to KPMG. In fact, the importance and the large number of cases, as described above, where the transactions were not concluded on an arm's length basis and based on valid contracts, would have been discovered by KPMG if they had been fully informed. That Perkwood was merely a letter box company is particularly important in this context.

- (185) This assumption is supported by David Stern's expert report where he states the following.

*"By way of observation, it seems unlikely, in my experience that such a disclosure requirement would be inadvertently omitted within audited financial statements for three consecutive years (especially given the magnitude of the transactions between TNG and Perkwood) and it is possible that the nature of the relationship was, for whatever reason, not disclosed to KPMG, the auditors."*¹³¹

- (186) The JOA Agreement also contains a provision on transactions between related companies.¹³²

- (187) It is particularly important in this context that the *Information Memorandum* provides for specific requirements;

¹³⁰ Expert Report of David Stern dated 23 January 2014, JOA case, Appendix 4, p. 49.

¹³¹ David Stern Expert Report dated 23 January 2014, JOA Arbitration, para. 6.17.

¹³² *Joint Operation Agreement* (JOA) dated 7 June 2006, Exhibit C-15 in the JOA case, Appendix 1, p. 2:

"CLAUSE 1 - DEFINITIONS AND INTERPRETATION [...] "Affiliates" means any subsidiary or group company of a Party and any other company which such Party is able to influence in material degree financial and operating or business decision making through investment, personnel, finance, technology, trading or other relationship. For the avoidance of doubt, ASCOM, TNG, KPM and TERRA are Affiliates."

“If Tristan Oil, KPM or TNG enter into any transaction with affiliates, they are required:

– If aggregate consideration is in excess of US\$1.0 million, the transaction must be on an arm’s length basis; and

– If aggregate consideration is in excess of US\$3.0 million, to obtain a resolution of the Board certified by a majority of the disinterested members and at least one Independent Director; and

*– If aggregate consideration is in excess of US\$10.0 million, to provide an independent fairness opinion”.*¹³³ (our emphasis)

(188) No independent fairness opinion was submitted in this case.

(189) Stati did not report that Perkwood was a related company, either in TNG's quarterly and annual reports for 2007, 2008 and 2009, or in KPMG's due diligence report, or in the Information Memorandum. The lack of such information is evidence against Stati's claim that all financial statements were prepared in accordance with the accounting standards defined in IFRS.¹³⁴

(190) The lack of reference to the fact that a related company was the alleged main supplier of construction materials and equipment to the LPG plant affects the soundness of the sums alleged to have been invested in the plant and which were reproduced in the statements. David Stern's expert report explains this as follows.

“In circumstances such as these, where related parties have assumed the role of key suppliers to TNG in the construction of the LPG plant, it is all the more important that the costs recorded within TNG's accounting system database are:

a. Verified to underlying third-party source documents (in order to confirm the accuracy and validity of the costs said to have been incurred); and

*b. Checked to ensure that they have been adequately settled, either by TNG¹³⁵ or another member of the network of Ascom affiliated companies (in order to confirm that the costs have been validly incurred).”*¹³⁶

¹³³ Information Memorandum regarding Project Zenith dated August 2008, SCC case Appendix 8, p. 66.

¹³⁴ Information Memorandum regarding Project Zenith dated August 2008, SCC case Appendix 8, p.15: *“The Companies have financial statements prepared per IFRS on a combined basis (including KPM, TNG and Tristan Oil).”*

¹³⁵ The company that owned the LPG Plant.

¹³⁶ Export Report of David Stern dated 23 January 2014, JOA Arbitration, Appendix 4, para. 4.36, p. 26.

- (191) It is thus clear that Stati, by not reporting Perkwood's close relationship with Stati, intentionally produced manipulated financial statements. Ultimately, this affected all of the values of the investments that were based on those statements.
- (192) Justice Cooke¹³⁷ also noted these deficiencies as serious and fatal to the reliability of the accounts:

"The financial records of the following companies are inaccurate and misleading:

iii) TNG's audited accounts for the years 2007-2009 do not disclose the fact that Perkwood was a related party." (vår understrykning)

9 THE AWARD WAS BASED ON INTENTIONALLY ERRONEOUS AND MISLEADING INFORMATION

9.1 Introduction

- (193) In light of the foregoing, and as described more below, the Arbitration Award in the ECT case is based on knowingly false and misleading information provided by Stati. This had a direct impact on the arbitral tribunal's assessment of the value of the LPG plant and consequently the damages attributable to this which were awarded to Stati. What is worse, however, is that Stati's actions have deprived RoK of the possibility of defending itself against Stati's action in an adequate way and has meant that the integrity of the arbitration proceedings has been fundamentally undermined (see also section 9.6 below).
- (194) The chain of causation can be summarized as follows:
- (i) Stati claim that the investment costs in the LPG plant amounted to USD 245 million;
 - (ii) RoK claim FEL PG plant was a failed project which should be ascribed scrap value;
 - (iii) the Arbitral Tribunal did not accept either of the parties' valuations, instead calculating the damages for the LPG plant with reference to the Indicative Offer provided by KMG on 25 September 2008 (see section 9.3 below);

¹³⁷ See paragraph (116) above.

- (iv) the terms of the Indicative Offer (appendix 7) were expressly based on the terms of the Information Memorandum prepared by Renaissance Capital in August 2008 (see section 9.4 below);
- (v) the Information Memorandum, appendix A, in turn was expressly based on information including (audited and unaudited) balance sheets and financial statements for KPM and TNG (“**Financial Statements**”) and KPMG’s due diligence report; and
- (vi) the Financial Statements now prove to have been based on deliberately false and misleading information provided by Stati to its auditors for, among others, KPM and TNG.

9.2 The Arbitration Award

- (195) Stati’s claim in the ECT case was based on RoK’s having committed a “[...] *string of measures of coordinated harassment by various institutions*”. The tribunal accepted this.¹³⁸ However, if the information reported in this claim form had been known to RoK and the arbitral tribunal during the ECT case, this would have cast a different light on RoK’s actions and increased the arbitral tribunal’s understanding for RoK’s actions against Stati.
- (196) The parties presented different valuations regarding the value of the LPG plant.
- (197) RoK’s experts ascribed the LPG plant a negative value, based in part on the assumption that the LPG plant, even it were to be completed, could only be operated for another four years before it would have to be shut down due to a lack of safe access to gas for the coming years. RoK also argued that the LPG plant was a failed project the costs of which far exceeded the planned budget. In particular, it was emphasized that the LPG plant, at the time of the valuation (i.e. in 2012), had been mothballed for three years. Given that the LPG facility had been abandoned for several years in the middle of the Kazakhstan steppes and given the almost non-existent supply of natural resources in the area, RoK did not believe it was commercially justified to complete the LPG plant. According to RoK, the plant should only be ascribed scrap value.¹³⁹ It should also be borne in mind that this evaluation was made in 2012, which should be compared with KMG’s indicative offer of USD 199 million, which was submitted in 2008, i.e. four years earlier when the plant was still under construction.
- (198) For its part, Stati argued that the LPG plant should be completed and valued as a going concern. Stati ultimately sought compensation for alleged investment costs of

¹³⁸ The Arbitration Award, paragraph 1095.

¹³⁹ RoK’s Statement of Defence, Appendix 44, *para* 53.1 ff.; In part RoK’s *Rejoinder on Quantum*, Appendix 45, *para* 139 ff.; RoK’s first *Post-Hearing Brief*, Appendix 46, *para* 814 ff.; RoK’s second *Post-Hearing Brief*, Appendix 47, *para* 652 ff.

USD 245 million and part of the so-called prospective value of 329 million USD¹⁴⁰, provided that sufficient gas would be available, and specifically the gas from the Contract 302 area.¹⁴¹

- (199) The Arbitral Tribunal in the ECT case awarded Stati 199 million dollars in damages for the LPG plant. The tribunal stated its reasons for its decision regarding the value of the LPG plant on one single page of the Arbitral Award¹⁴². The tribunal thus completely ignored the parties' extensive arguments, submissions, and expert opinions and referred instead to the Stati's attempt in 2008 to sell its assets and KMG's non-binding Indicative Offer (see section 9.3 below). The tribunal emphasized the following.

“On the other hand, the Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by state-owned KMG at that time for USD 199 million. The Tribunal considers that to be the relatively best source of information for the valuation of the LPG Plant among the various sources of information submitted by the Parties regarding the valuation for the LPG Plant during the relevant period of the valuation date accepted by the Tribunal.

*Therefore, this is the amount of damages the Tribunal accepts in this context.”*¹⁴³

- (200) It can thus be concluded already in that regard that (i) the Information Memorandum and KPMG's due diligence report, which were based on information from Stati, constituted the basis of KMG's Indicative Bid for the LPG plant; and (ii) KMG's Indicative Offer was the only basis for the tribunal ascribing the LPG plant a particular value and also the amount. However, as shown below, it turned out that the information Stati provided contained significant errors and deficiencies.

9.3 The Indicative Offer

- (201) The Indicative Offer originated from Stati's attempts to sell KPM and TNG in the summer of 2008. This project, entitled “Project Zenith”, was organised on Stati's behalf by Renaissance Capital, which contacted 129 potential buyers and received eight responses. The companies that responded (including KMG) were provided with

¹⁴⁰ These claims varied significantly in different phases of the arbitration proceedings; the investment value was first estimated at USD 208.5 million, the assumed value was later estimated at USD 408 million but recalculated subsequently to USD 329 million.

¹⁴¹ The Agreement 302 area is described in section 3.2 above. The likelihood of significant amounts of gases in this area was contested, but even Stati realized that the likelihood was less than 10%, without even having taken into consideration whether it was economically feasible to extract any gas.

¹⁴² The Arbitration Award, page 381, *et seq.*

¹⁴³ The Arbitration Award, paragraphs 1747 *et seq.*

certain information to enable them to price their offers. This information included the Information Memorandum (see section 9.4 below).

(202) It is apparent from the discovery documents that the indicative offer was based on knowingly erroneous and misleading financial information which significantly affected the offer. The indicative offer was, among other things, based on the investment costs which Stati argued in the ECT case and which now, through the discovery documents, proved to be a part of a misleading scheme and largely fictitious.

(203) The indicative offer was based on the following:

(i) The Information Memorandum¹⁴⁴ which contained important information regarding the LPG plant and which set forth the sums which Stati claim to have invested in the plant;

“The LPG Plant is expected to be commissioned in the second quarter of 2009 with total CAPEX requirement of US\$ 233 million. As of 1 July 2008, TNG had spent approximately US\$ 193 million on the LPG plant.”¹⁴⁵

(ii) Historical design costs which Stati had provided.¹⁴⁶

(204) As stated by the Tribunal, KMG's Indicative Offer (which was preliminary) stated that it estimated “the value of the LPG Plant at USD 199 million”.¹⁴⁷ KMG confirmed that, in making this estimate, it had relied on the contents of the Information Memorandum:

“In formulating our Indicative Offer, we have relied upon the information contained in the Information Memorandum and certain other publicly available information. Our valuation depends upon this information and assumptions being substantiated in the next round through due diligence materials and meetings.”¹⁴⁸ (emphasis added)

(205) Additionally, in explaining its methodology for valuing the LPG Plant in particular, KMG also took into consideration historical costs of construction:

“The value of the LPG plant was calculated as an arithmetical average between the matrix of the comparative methods value and cost method value. EV/EBITDA multiple of 5.5x was used as a base for comparative

¹⁴⁴ This is expressly apparent from KMG's Indicative Offer, Appendix 7, page 3.

¹⁴⁵ Information Memorandum, Appendix 8, page 54.

¹⁴⁶ This is expressly apparent from KMG's Indicative Offer, Appendix 7, page 3.

¹⁴⁷ Indicative Offer dated 26 September 2008, Appendix 7, p.3.

¹⁴⁸ *Ibid.*

method valuation. Historical costs of US \$ 193 million were used as a base for cost method valuation.¹⁴⁹ (emphasis added)

- (206) It is thus clear that KMG's indicative non-binding offer, which formed the basis for the Arbitral Award, was based on the false and misleading information provided by Stati regarding the investment costs of the LPG plant.

9.4 The Information Memorandum

- (207) The Information Memorandum contained important information about the LPG Plant, and explained all of the amounts said to have been invested by Stati in the LPG Plant.

*"The LPG Plant is expected to be commissioned in the second quarter of 2009 with total CAPEX requirement of US\$233 million. As of 1 July 2008, TNG had spent approximately US\$193 million on the LPG plant."*¹⁵⁰

- (208) The Information Memorandum confirmed that the financial information it contained was derived from the Financial Statements:

*"The financial information presented in this Information Memorandum is derived from the unaudited interim combined balance sheets and statements of income, cash flows and changes in shareholders' equity of KPM, TNG and Tristan Oil, as of and for the six months ended 30 June 2007 and 2008, and the audited combined balance sheets and statements of income, cash flows and changes in shareholders' equity of KPM, TNG and, with effect from its incorporation on 24 October 2006 and Tristan Oil, as of 31 December 2005, 2006 and 2007. In addition, financial information presented in this Information Memorandum is derived from the individual interim unaudited balance sheets and statements of income, cash flows and changes in shareholders' equity of KPM, TNG and, Tristan Oil, as of and for the six months ended 30 June 2007 and 2008, and the audited individual balance sheets and statements of income, cash flows and changes in shareholders' equity of KPM [and] TNG..."*¹⁵¹ (emphasis added)

- (209) The Information Memorandum also confirmed that the Financial Statements prepared by management could be relied upon because they had been audited or reviewed by reputable auditors applying IFRS.

"The Companies' and Tristan Oil's financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS")."

¹⁴⁹ *Ibid.*

¹⁵⁰ Information Memorandum dated August 2008, Appendix 8, p.54.

¹⁵¹ *Ibid.*, p.4.

*Prior to 01 January 2007, the combined and individual financial statements of Tristan Oil, KPM and TNG were audited by Deloitte. Following the best practice to change auditors periodically, the Companies and Tristan Oil changed to KPMG as auditor for the year ended 31 December 2007 and thereafter.*¹⁵²

- (210) Finally, the Information Memorandum provided details of the companies involved in and responsible for the construction of the LPG Plant:

*“The project’s design engineer is Petrostrar (Romania); the key supplier of equipment is Tractebel Gas Engineering (Germany). The design is being adapted to local Kazakh requirements by KASKo Petrostar, a related party of the Companies.”*¹⁵³

- (211) It should be noted in this context that Perkwood was not mentioned in the Information Memorandum even though, according to Stati in the JOA case, this company was the main supplier of material to the LPG Plant and also the project manager for the entire project.

9.5 **The Financial Statements**

- (212) KPMG was Stati's and its companies' auditors. Their audit and review of the Stati companies' annual accounts were held up by Stati as a stamp of quality for the correctness and reliability of the accounts. This was far from the truth since even KPMG appears to have been misled by Stati.

- (213) The Financial Statements themselves were based on information provided directly to the auditors by Stati. This is apparent from TNG’s audited Financial Statements for the operating year ending 31 December 2007 which was audited by KPMG.¹⁵⁴ KPMG's independent auditor's report stated:

“We have audited the accompanying financial statements of Tolkyneftegaz LLC (the ‘Company’), which comprise the balance sheet as at 31 December 2007, and the income statement, statement of changes in equity and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes...

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards. This responsibility includes: designing, implementing and

¹⁵² *Ibid*, p.59.

¹⁵³ Information Memorandum dated August 2008, Appendix 8, p.55.

¹⁵⁴ Annual report for TNG for the operating year ending 31 December 2007, Appendix 48.

*maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatements, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.*¹⁵⁵ (emphasis added)

(214) The TNG 2007 Audited Statements contained the following statements:

- (1) At Note 16, the costs incurred in respect of “*Liquid Petroleum Gas plant (under construction)*” as at 31 December 2007 are recorded as USD 142,530,039.¹⁵⁶
- (2) At Note 28, the related parties (defined as being “*entities with common direct or indirect shareholders, director or management*”) with whom TNG is stated as having entered into transactions are identified as (i) Ascom SA; (ii) Arpega Trading SRL; (iii) General Affinity Ltd; (iv) Kasko LLP; (v) KASKo-Petrostar; (vi) Kazpolmunay LLP; and (vii) Tristan Oil Ltd. Importantly, no mention is made of Perkwood in this context .¹⁵⁷

(215) Corresponding statements (i.e. in relation to the construction costs incurred by TNG in relation to the LPG Plant, and in relation to the identification of TNG’s related parties) are found throughout the other Financial Statements. For example:

- (1) TNG’s Unaudited Interim Financial Statements for the three and nine-month periods ending 30 September 2008, which were also reviewed by KPMG, stated at Note 15 that construction costs incurred by TNG in relation to the LPG Plant had risen to USD 208,488,576 as at 30 September 2008, and failed at Note 27 to identify Perkwood as a related party.¹⁵⁸
- (2) After the Indicative Offer had been given, TNG’s audited Financial Statements for the year ending 31 December 2008, audited by KPMG, stated at Note 15 that the costs incurred by TNG in relation to the LPG Plant had risen to USD 223,165,685 as at 31 December 2008. Once again, it failed at Note 29 to identify Perkwood as a related party.¹⁵⁹

(216) It is not only remarkable that the price in the Perkwood Agreement was three times as high as in the TGE contract for the same supply commitment. Perkwood was also a company that had never been active, and thus had never been able to supply any

¹⁵⁵ *Ibid*, p. F-107.

¹⁵⁶ Annual report for TNG for the operating year ending 31 December 2007, Appendix 48, p. F-134.

¹⁵⁷ *Ibid*, p. F-147.

¹⁵⁸ TNG’s *Unaudited Interim Financial Statements for the Three and Nine months ended September 30, 2008*, Appendix 49, pp. F-126-127 and F-138-139

¹⁵⁹ Annual report for TNG for the operating year ending 31 December 2008, Appendix 50, pp. F-126-127 and F-137-138

equipment to the project. In other words, TNG was alleged to have paid USD 93 million to Perkwood for deliveries that were never made by Perkwood. The only deliveries which were actually made came from TGE at a third of Perkwood's alleged price.

- (217) Stati also failed to inform KPMG that Perkwood was a related company and thereby impeded a closer review of the transactions relating to the construction of the LPG plant, and whether these transactions can be considered to be at arm's length (see section 8 above). This is confirmed in the audited accounts on which Stati relied in the ECT case.
- (218) The investigations which were initiated as a consequence of the Discovery Documents led to additional discoveries.
- (219) On 25 February 2009, i.e. 15 days prior to the discontinuation of the construction of the LPG plant, the auditors at KPMG carried out an on-site visit together with Alexander Cojin, General Director of TNG.
- (220) Cojin is the same person who signed the Perkwood agreement and who also testified in the ECT case. During the on-site visit, Cojin stated expressly in response to a specific question posed by KPMG that there were no problems and that the LPG plant would be placed into operation as planned in six months:

"[Answer:] "We were not being able to conduct some works during the winter period due to its seasonal character so, they are still outstanding. We are still receiving some component parts to be installed on LPG"

[Question KPMG:] "When do you propose it to put it in operation?"

[Answer:] In September 2009. President of RK will come to official presentation commencement of LPG. [...]

[Question KPMG:] What are the reasons for possible delays of commencement?"

*[Answer] No, I don't see any significant threats. Moreover, I consider that there will be support from state bodies as LPG [...]*¹⁶⁰

- (221) As if it is not enough that the construction of the LPG plant was discontinued only 15 days after Cojin had assured KPMG that the project was proceeding as planned, Cojin also claimed that deliveries of components were still taking place in February 2009. This claim suited the Perkwood scheme but it contradicts reality since the most important components had been delivered and installed far earlier.

¹⁶⁰ Protocol from KPMG's inspection of the LPG plant dated 25 February 2009, Appendix 25, paragraph 7-10.

- (222) In addition, the information which Cojin provided to KPMG strongly contrasts with his testimony in the ECT case where he testified that the business operations conducted by KPMG and TNG beginning in the autumn of 2008 were disrupted by measures taken by RoK to an extent which made normal business operations impossible.

“Generally speaking, from the time of that report forward, I have witnessed KPM and TNG transformed from working, fully operative and functional oil and gas production companies to two bodies that exist to answer requests from various Government officials and write reports. This process began around November 2008 and continued for nearly two years. While the Government eventually took physical control of our offices and physical assets in July 3 of 2010, they had already been interfering with and severely impeding our ability to operate, manage, and sell our businesses since late 2008.”¹⁶¹

9.6 Summary

- (223) The annual accounts *per se* were based on information provided directly by Stati to KPMG. It was not until the Discovery Documents that it was disclosed that Perkwood was a Stati company. Stati failed to inform KPMG of this¹⁶², which if it had done so would probably have affected KPMG's opinion (see section 8 above).
- (224) Through the misleading Perkwood scheme, very large sums are claimed to have been paid out to Perkwood under the pretense that they dealt with the LPG plant. In reality, these sums were fictitious and based on fictitious agreements. The result was that the alleged investment costs were significantly and erroneously exaggerated. In light of

¹⁶¹ See Cojin's First Written Witness Statement dated 12 May 2011, Appendix 51, paragraph 4; see also Cojin's Second Written Witness Statement dated 24 April 2012, Appendix 51, paragraphs 11-12, in which he states the following:

“In my capacity as General Director of TNG and Deputy Director of KPM, I witnessed the numerous inspections that the Financial Police conducted at the request of President Nazarbayev in late 2008 and early 2009. I was also personally involved in ensuring that KPM's and TNG's personnel cooperated with the officials conducting those inspections. I understand that Kazakhstan argues that its inspections of KPM and TNG were not out of the ordinary and did not cause any real disruption or harm to KPM's and TNG's business activities. That is not true. The inspections that the Financial Police ordered in the fall of 2008 were like nothing our companies had experienced before.[...]. Instead, for these inspections, the Financial Police essentially “moved in” to the offices and operations of KPM and TNG. Approximately two to four Financial Police officers worked at our companies so frequently from October 2008 to February 2009, and they requested so much information from KPM and TNG, that they required their own office space at the companies' corporate offices during that time.”

¹⁶² David Stern's expert report dated 23 January 2015, JOA case, Appendix 4, paragraph 6.17:

“By way of observation, it seems unlikely in my experience that such a disclosure requirement would be inadvertently omitted within audited financial statements for three consecutive years (especially given the magnitude of transactions between TNG and Perkwood) and it is possible that the nature of the relationship was, for whatever reason, not disclosed to KPMG, the auditors.”

this, the financial statements and other financial information was not reliable since these had not been audited or reviewed based upon actual circumstances.

- (225) In light of the above-stated, the decision by the arbitral tribunal to rely on the Indicative Offer in its determination of the quantum of damages regarding the LPG plant was a fateful one. Since the Indicative Offer was based on significantly erroneous and misleading information contained in the Information Memorandum and in the financial statements, which was knowingly provided and maintained by Stati, there is a lack of a valid ground in the Arbitration Award, in any event with respect to the LPG plant.

10 THE WAY IN WHICH THE AWARD WAS RENDERED IS CONTRARY TO SWEDISH PUBLIC POLICY

10.1 Invalidity according to the LSF

- (226) If the conditions on which an arbitration rests, are such that it must be considered that the way in which the arbitral award was rendered is manifestly incompatible with the public policy of Sweden, the arbitration award must be declared invalid in accordance with 33 § LSF. In this context, consideration should particularly be given to the fact that one party has relied on false or otherwise misleading evidence¹⁶³.

- (227) Prior to the introduction of the LSF, proposals were put forward to introduce a provision entailing that an arbitration would be suspended on application by a party if a document relied on as evidence had been forged or falsified or if someone other than a party or a representative of a party has made a deliberately false statement. However, the legislature took the view that no specific rule addressing the above-mentioned situation need be introduced, but such conduct was already covered by the public policy rule in § 33 of the LSF; "*According to the committee, however, these situations should be included in the public policy concepts which the Model Law and also the New York Convention use.*"¹⁶⁴ The view that the submission of false evidence or otherwise misleading evidence is of such importance that it be considered contrary to *ordre public* (or public policy) is also confirmed by the UNCITRAL Model Law.

"The travaux préparatoire of the Model Law make it clear that the public policy provision is intended inter alia to cover the possibility of setting aside an award if the arbitral tribunal has been corrupted in some way, or if it has been misled by corrupt evidence"¹⁶⁵ (our emphasis)

- (228) Even if the Model Law provides that an award may be set aside, an arbitration award that is not in accordance with the public policy under Swedish law should be declared invalid under Article 33 of the LSF. It should be added that in such a situation no

¹⁶³ Stefan Lindskog, *Skiljeförfarande – en kommentar*, 2 edition, 2012, p. 850.

¹⁶⁴ See Government Bill 1998/99:35, page 150.

¹⁶⁵ Alan Redfern; Martin Hunter, *Law and Practice of International Commercial Arbitration*, 3 edition, 1999, ¶ 9-19.

requirements are imposed to the effect that the defect must have had an impact on the outcome of the case. On the contrary, the conduct of this a kind is a very serious matter and should under no circumstances be accepted by the legal system.¹⁶⁶

10.2 Stati's knowingly false and misleading information has fundamentally undermine the integrity of the arbitration and therefore the arbitration award must be declared invalid in its entirety

- (229) Firstly, it should again be emphasized that Stati did not at any time inform either the Arbitral Tribunal, the SCC, or RoK that not less than three arbitration proceedings were pending in parallel with the ECT case with respect to substantially the same facts. This fact alone is of essential importance. In the ECT case, issues such as *lis pendens* and even questions with respect to the information found in the parallel arbitration proceedings would probably have been relevant if the above-stated circumstances had been known. If it had also emerged that, despite the fact that the same people and counsel were involved in the parallel arbitration proceedings, Stati had provided entirely different and sometimes conflicting information regarding, *inter alia*, the ownership and responsibility of the Stati companies and the circumstances surrounding the investment in the LPG facility, this would probably have affected the arbitral tribunal's conclusion. RoK would also have been afforded an opportunity to adequately rebut and shed light on Stati's accusations.
- (230) Stati's action in the ECT case was essentially that RoK had committed "*a string of measures of coordinated harassment by various institutions*".¹⁶⁷ Had all of the information which has now been disclosed been available to the arbitral tribunal, this would have shed a different light on RoK's actions and increased its understanding for the measures taken by RoK against Stati.
- (231) The above-stated is of fundamental significance for the ECT case, and not least for the Arbitration Award. By stating incorrect ownership and accountability structures, Stati made it impossible for RoK to scrutinize Stati's arguments and the evidence submitted by Stati. For this reason alone, it is clear that the Arbitration Award is based entirely on incorrect assumptions and the way it came about is not compatible with the basic principles of the Swedish legal system.
- (232) In addition, the ECT should be interpreted in accordance with the purpose of maintaining respect for the rule of law. The preamble to the ECT emphasizes that: '*[t]he fundamental aim of the Energy Charter Treaty is to Strengthen the rule of law on energy issues [...]*'. In other words, the ECT does not protect investments that involve illegal actions.

¹⁶⁶ Stefan Lindskog, *Skiljeförfarande – en kommentar*, 2 u, 2012, p. 850. Cf. also Lars Heuman, *Skiljemannarätt*, 1999, p. 600; "The goal of harmonizing Swedish law with foreign precedent favors the argument that an arbitration award is a nullity if false written evidence or erroneous witness statements have affected the outcome" (our emphasis).

¹⁶⁷ The Arbitration Award, paragraph 1095.

- (233) This also follows from, *inter alia*, the ICSID case *Plama Consortium Ltd v. Republic of Bulgaria*,¹⁶⁸ which considered alleged violations of the ECT. In this case, the tribunal held that the actions of the party requesting arbitration had violated both all Gary as well as international law. The arbitral tribunal found in this context that granting protection under the ECT to the party requesting arbitration would be in violation of the civil law maxim *nemo auditur propriam turpitudinem allegans*, which means that a party should not be able to benefit from its own wrongful conduct¹⁶⁹. The basic principle established by the tribunal in *Plama Consortium Ltd v. Republic of Bulgaria* was that the investments must be in accordance with the host State's laws and good faith. Otherwise, the investment cannot enjoy protection under the ECT.
- (234) The main purpose of Stati's scheme appears to have been to exploit RoK's natural resources, drain its own local companies of money and funnel these funds out of the country. Stati's actions thus appears to have been the opposite of a good faith investment. The basic condition for investments in a host State is to operate in accordance with the host state laws and also that the investor, for example, will pay taxes and create jobs in exchange for the use of the host state's natural resources. Without any such re-investment, the host country risks, as in the present case, companies only exploiting the host country's natural resources without any added value for the host country.
- (235) In conclusion, due to Stati's misleading and inaccurate information, the entire Arbitration Award is erroneous and the integrity of the arbitration proceedings has been fundamentally undermined. The way in which the arbitration award arose is not in accordance with the fundamental principles of the Swedish legal system. There is no cause for a Swedish court of law to uphold an arbitration award which is so encumbered by misleading information and fictitious information. The arbitration award must therefore be declared invalid in its entirety.

10.3 **Stati knowingly invoked false evidence and provided false information regarding the LPG plant and therefore the arbitration award must, in any event, be declared invalid in this respect**

- (236) In the alternative, the Arbitration Award must be declared invalid with regards to the damages paid for the LPG Plant, namely USD 199 million. Stati stated repeatedly that the alleged cost of investment in the LPG plant amounted to more than USD 245 million which was based on annual reports and reports by experts who audited these. In the JOA case, which was commenced in November 2012 (and which thus ran parallel to the ECT case), Stati stated, however, that there was a risk that the investment costs in March 2009, when the construction of an LPG plant was discontinued, could rise to USD 200 million. Moreover, in the Montvale case (which

¹⁶⁸ See, *inter alia*, ICSID Case No ARB/03/24 *Plama Consortium Limited v Republic of Bulgaria*.

¹⁶⁹ See also ICSID Case No ARB/03/26 *Inceysa Vallisoletana S.L. v Republic of El Salvador*, Award of 2 August 2006, where the same principle was argued.

was commenced in October 2010) Montvale stated that at the time the construction of the LPG plant was discontinued, Stati (through Ascom) had invested about USD 200 million, *together* with Vitol.

- (237) In this respect alone, it is clear that Stati lied in the ECT case. Moreover, according to Stati in the parallel arbitration proceedings, nearly half of the remaining alleged costs of the LPG plant were Vitol's share of the investment, to which Stati had no rights. In the ECT case, however, Stati saucerful compensation for the ECT plant.
- (238) Furthermore, it has emerged that the actual investment costs were much lower than Stati represented and that several of the alleged investment costs were fictitious (see section 7 above). In brief, Stati's scheme included, among other things, the following:
- (i) ordering the same materials twice (from TGE and Perkwood) and increasing the purchase price for these unnecessarily and/or fictitious materials (Perkwood) in the amount of approximately USD 93 million, i.e. almost 3 times the amount paid to TGE;
 - (ii) purchasing materials that would be installed in the LPG plant (approximately USD 72 million);
 - (iii) adding interest costs on the unnecessary and/or fictitious materials which were purchased at an amount of approximately USD 60 million;
 - (iv) paying a fictitious Management Fee of approximately USD 44 million to a dormant letterbox company that conducted no business activities (Perkwood) and without any management functions being performed; and
 - (v) ordering additional construction materials and equipment which were not necessary to complete the LPG plant thereby triggering an advance payment of approximately USD 37 million.
- (239) Altogether, Stati caused the LPG plant to incur very large costs which have either been purely fictional or costs that were unnecessary and which did not provide the LPG plant with any equivalent value.
- (240) Furthermore, it can be noted that the accounts and financial statements of the relevant Stati companies contained directly erroneous and misleading information; these documents were the basis for both the Information Memorandum as well as KPMG's due diligence report, and for the different values of Tol kyn- and Borankol fields which were prepared by both parties in the ECT case. Stati thus deliberately misled auditors and experts by providing them with incorrect information in order to drive up the valuations of the assets concerned. In this regard, stated Justice Cooke¹⁷⁰ following.

¹⁷⁰ See footnote 10 above.

"The financial records of the following companies are inaccurate and misleading:

i) Although Perkwood was said to have charged a management of over \$43 million, it filed dormant company accounts throughout the relevant period.

ii) Although Stadoil and Genera] Affinity received substantial payments from Montvale as set out earlier, their financial statements are inconsistent with this. They are presented as "small companies" with a turnover below £6.5 million.

iii) TNG's audited accounts for the years 2007-2009 do not disclose the fact that Perkwood was a related party.

iv) No mention of the Perkwood management fee is to be found in the ECT Award"

(241) Regarding more specifically the damages awarded in the amount of USD 199 million for the LPG plant, the following can be stated.

(242) As support for the notion that the LPG facility had a significantly higher value than its scrap value, the tribunal stated in its reasoning as follows.

*"In the view of the Tribunal, the relatively best source for the valuation in the period of the valuation date accepted by the Tribunal are the contemporaneous bids that were made for the LPG Plant by third parties after Claimants' efforts to sell the LPG Plant, both before and after October 14, 2008. Prospective purchasers bid on the Plant, not as scrap but obviously as prospectively operational. This is reflected in the undisputed indicative offers made by interested buyers in 2008, which valued the LPG Plant at USD 150 million on average. [...]"*¹⁷¹ (our emphasis)

(243) It is therefore clear that the arbitral tribunal's decision to disregard the parties' expert opinions¹⁷² and also the arbitration tribunal's decision to value the LPG plant at more than scrap value was based on allegations about the investments that were made in the LPG plant. Furthermore, the arbitration tribunal's decision was based on the fact that several potential buyers submitted indicative bids for the LPG plant in 2008.

(244) The tribunal stated that the best basis for assessing the value of the LPG plant was the state-owned company KMG's Indicative Offer of USD 199 million, which value the tribunal also ascribed to the LPG plant (and later awarded to Stati).

¹⁷¹ The Arbitration Award, paragraph 1746.

¹⁷² Cf. the Arbitration Award, paragraph 1746; "However, the Tribunal considers that it does not have to evaluate these reports and the very different results they reach."

- (245) As shown above, however, at least KMG's Indicative Offer was based on the Information Memorandum and KPMG's due diligence report which the potential purchasers were given before the bidding. In reality, it was therefore this Information Memorandum, drafted by Renaissance Capital, and the due diligence report prepared by KPMG, which formed the basis for the arbitration tribunal's decision to ascribe the LPG plant any value at all and also to ascribe to it a value of USD 199 million. These documents were based, however, on erroneous and misleading information that had been provided by Stati and the Stati companies' financial statements and annual reports.
- (246) As explained above, it has now been shown that this Information Memorandum is highly misleading since it contains erroneous information. The Information Memorandum, which played a crucial role in the arbitration proceedings has proven to be almost a sham document. In light of this, it can be stated that the arbitration award regarding mainly the LPG plant and its value (but also the valuation of the Tolkyn and Borankol fields) is based on fictitious information provided by Stati.
- (247) In conclusion, it is clear that Stati knowingly submitted false and misleading information and/or omitted pertinent information during the arbitration proceedings. The award rests in turn on those falsehoods. This is clearly contrary to public policy, as regards both Swedish and international law. In light of this, the arbitration award must in any event be declared invalid in respect of the compensation awarded for the LPG plant, namely USD 199 million.

11 THE CONTINUED HANDLING OF THE CASE

- (248) It is clear from the above-stated that that which is reported in this claim form has clear points of connections to Case No. T 2675-14 before the Svea Court of Appeal, which concerns RoK's claim to set aside or invalidate all or part of the arbitration award in the ECT case. Both this lawsuit and the one in the parallel case addresses the issue of the valuation of the LPG plant.
- (249) For reasons of economy and in order for the Court of Appeal to have the opportunity to form a coherent picture of the arbitration proceedings, it would be beneficial for this case to be consolidated with the parallel case, T 2676-14. RoK recognizes, however, the difficulty of reconciling this with the timing of the trial. RoK therefore leaves the question of consolidation to the Court of Appeal.

12 PRELIMINARY STATEMENT OF EVIDENCE

- (250) RoK requests leave to submit statements of evidence after Stati has submitted its statement of defense or a later time as determined by the Court of Appeal.
- (251) The documents filed in connection with this brief are currently offered into evidence.

As above,

Hans Bagner

Pontus Ewerlöf

- Appearance form is filed in the Svea Court of Appeal's case number T 2675-14
- The claim form fee has been paid to the Svea Court of Appeal's account PG 761115-5 (reference: Svea Court of Appeal – Republic of Kazakhstan)

SCHEDULE OF APPENDICES

- Appendix 1 JOA (Joint Operating Agreement Dated 27 June 2006)
- Appendix 2 FTI reports (Expert Supplemental Report of Howard Rosen and Laura R. Hardin FTI Consulting, Inc. Dated May 28, 2012), (Expert Report of Howard Rosen and Laura Hardin Dated 17 May 2011)
- Appendix 3 Charles River reports (Expert Report of Charles River Associates dated 11 October 2013), (Supplemental Expert Report of Charles River Associates dated 28 February 2014)
- Appendix 4 David Stern reports (Expert Report of David Stern dated 23 January 2014), (Supplemental Report of David Stern dated 4 September 2014)
- Appendix 5 Deloitte report (Expert Report dated 1 October 2015)
- Appendix 6 Southern District Court of New York in case no. 1:15-mc-00081-P1 (Southern District Court of New York, Case 1:15-mc-00081-P1 dated 22 June 2015)
- Appendix 7 The Indicative Offer (KazMunaiGas Exploration production JSC's preliminary non-binding offer)
- Appendix 8 Information Memorandum (Project Zenith, Confidential Information Memorandum August 2008)
- Appendix 9 KPMG's due diligence-rapport (Project Zenith Vendor Due Diligence 29 August 2008)
- Appendix 10 Perkwood agreement (Sale and purchase Agreement No. 01/01_TNG_PRK dated February 17, 2006)
- Appendix 11 Justice Cooke in the High Court of Justice, Queens Bench Division Commercial Court, Royal Court of Justice Strand, London, WC2A 2LL, case no. 2014 FOLIO 506 (Freezing Order), dated den 29 August 2014
- Appendix 12 Franjo Zaja's first witness statement dated 27 August 2015 (Franjo Zaja, First Witness Statement On behalf of Defendant Dated 27 August 2015)
- Appendix 13 Sara Walker's forth witness statement dated 13 August 2015 in the English enforcement proceedings (Fourth Witness Statement of Sarah Yasmin Walker Dated 13 August 2015)
- Appendix 14 Transcript from the English enforcement proceedings, day 1, 1 September 2015 (Transcript Hearing Day 1, 1 September 2015 ((1) Anatolie Stati (2) Gabriel Stati (3) Ascom Group S.A. (4) Terra Raf Trans Trading LTD. –and- The Republic of Kazakhstan, Day 1 – Redacted, September 1, 2015) 70
- Appendix 15 Grigore Pisica's first witness statement dated 17 May 2011, ECT case (Witness Statement of Grigore Pisica Dated 17 May 2011)
- Appendix 16 *Hearing on Quantum of Damages*, day 1, 28 January 2013 in the ECT case, SCC Arbitration V (116/2010)
- Appendix 17 *Hearing on Quantum of Damages*, day 2 29 January 2013 in the ECT case
- Appendix 18 Mr. Smith, *Hearing on Quantum of Damages*, day 4, 31 January 2013

- Appendix 19 Utdrag från TGE-avtalet daterat den 31 januari 2006 (Tractebel Gas Engineering, Contract NO. 1960/06)
- Appendix 20 Appendix marked SYW-3 (Exhibit "SYW-3" referred to in the Fourth Witness Statement of Sarah Yasmin Walker dated 13 August 2015.)
- Appendix 21 Witness Statement of Taras Barievitch Khalelov
- Appendix 22 Witness Statement of Artur Lungu dated 11 October 2013
- Appendix 23 Witness Statement of Ian Roper Taylor Dated 22 January 2014, in the JOA case
- Appendix 24 Witness Statement of Catalin Broscaru dated 11 April 2011
- Appendix 25 Management inquiries 25 February 2009, 16:00-17:00, On-site visit
- Appendix 26 Kazpolmunay LLP, Tolkynneftegaz LLP and Tristan Oil Ltd. Combined Financial Statements for the year ended December 31, 2009
- Appendix 27 Reply Memorial on Quantum (Claimants' Reply memorial on Quantum May 28, 2012)
- Appendix 28 Stati's First Post-Hearing Brief (Claimants' First Post Hearing Brief April 8, 2013)
- Appendix 29 Stati's Second Post-Hearing Brief (Claimants' Second Post Hearing Brief June 3, 2013)
- Appendix 30 Ascom LPG Plant – Business Plan 71
- Appendix 31 Witness Statement of Raymond Leslie Martin Dated 21 January 2014 in the JOA case
- Appendix 32 Minutes of *Joint Management Committee* Meeting Chisinau 29th November 2006 29 November 2006, Exhibit C-94 till Ascom's *Memorial* dated 11 October 2013, JOA case
- Appendix 33 Minutes of *Joint Management Committee* meeting dated 2 October 2007, Exhibit C-99 till Ascom's *Memorial* dated 11 October 2013, in the JOA case (Minutes of JMC Meeting Moscow 2nd October 2007)
- Appendix 34 Minutes of *Joint Management Committee* meeting dated 5 February 2008, Exhibit C-29 till Ascom's *Memorial* dated 11 October 2013, in the JOA case (Minutes of JMC Meeting London 5th February 2008)
- Appendix 35 Minutes of *Joint Management Committee* meeting dated March 2009, Exhibit C-118 till Ascom's *Memorial* dated 11 October 2013, in the JOA case (Investcom Update-ASCOM LPG Mar 09)
- Appendix 36 Montvale's Statement of Defence and Counterclaim dated 22 July 2011
- Appendix 37 Second Witness Statement of Artur Lungu Dated 11 October 2013 in the JOA case
- Appendix 38 Second Witness Statement of Artur Lungu dated 22 July 2011 in the Montvale case

- Appendix 39 Montvale's *Post Hearing Brief* of 2 December 2011
- Appendix 40 Tristan Oil LTD. Annual Report for the Year Ended December 31, 2009
- Appendix 41 Written confirmation from TGE dated 21 August 2015
- Appendix 42 TNG Financial Statements for the year ended December 31, 2009
- Appendix 43 KPMG, Minutes of Conference Call Dated 13 May 2010
- Appendix 44 RoK's Statement of Defense, 21 November 2011 SCC Arbitration V (116/2010))
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- Appendix 45 RoK's Rejoinder Memorial on Quantum dated den 1 December 2012 (SCC
Arbitration V (116/2010))
- Appendix 46 RoK's First Post-Hearing Brief dated den 8 April 2013
- Appendix 47 RoK's Second Post-Hearing Brief dated den 3 June 2013
- Appendix 48 Tolkyneftegaz LLP Audited Financial Statements for the year ended December
31, 2007
- Appendix 49 Tolkyneftegaz LLP Unaudited Interim financial Statements for the three and
nine months ended September 30, 2008
- Appendix 50 Tristan Oil LTD. Annual Report for the Year Ended December 31, 2008
- Appendix 51 Cojin's first witness statement dated 12 May 2011 (Excerpts of the Witness
Statements of Alexandru Cojin regarding harassment campaign, construction
stop, costs etc.)