

23 July 2020

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**BY EMAIL AND COURIER**

Dear Sirs

**Treaty Claims against the Republic of Slovenia by Ascent Resources Plc and Ascent Slovenia Ltd**

- 1.1. We represent the United Kingdom (**UK**) energy company Ascent Resources Plc (**Ascent UK**), as well as its subsidiary, Ascent Slovenia Ltd, a company incorporated in Malta (**Ascent Malta**) (together, the **Investors**). In that capacity, we take this opportunity to write to you in connection with an investment dispute that has arisen between our clients and the Republic of Slovenia (**Slovenia**). Please send any further communications addressed to the Investors and/or any of its representatives relating to the above directly to us at the address appearing at the top of the first page of this letter.
- 1.2. The dispute concerns certain actions by Slovenia in breach of its obligations under the UK – Slovenia bilateral investment treaty (the **BIT**) and the Energy Charter Treaty (the **ECT**), to which the UK, Malta and Slovenia are parties. These actions have caused considerable harm to the Investors' investments in Slovenia.

## 2. Protected investors and investment

- 2.1. Ascent UK is a company incorporated in the UK, where it also has its legal seat. Ascent UK is thus a protected investor pursuant to Article 1(d)(i) of the BIT and Article 1(7)(a)(ii) of the ECT. Ascent Malta is a company incorporated in Malta, where it also has its legal seat. As such, it is also a protected investor under Article 1(7)(a)(ii) of the ECT.
- 2.2. The Investors have made substantial investments in Slovenia in connection with the development of the Petišovci oil and gas field (the **Field**). Overall, they have invested sums in excess of €50 million in Slovenia.
- 2.3. Ascent Malta is a party to a joint venture with Geoenergo, *raziskave in pridobivanje surove nafte in zameljskega plina d.o.o. (Geoenergo)*, a Slovenian company, in relation to the development and operation of the Field. Ascent Malta holds a 75% participating interest in the joint venture, while Geoenergo holds the remaining 25%. The joint venture was first established under a Joint Venture Agreement dated 23 March 2001 and is currently governed by the Restated Joint Operating Agreement between Ascent Malta and Geoenergo dated 30 October 2013 (the **JOA**).
- 2.4. Geoenergo holds a number of licenses in relation to the Field granted by the Government of Slovenia, (the **Licenses**). It is also a party to a Concession Contract with the Government of Slovenia dated 28 November 2002 which grants it a right to exploit the Field (the **Concession**).
- 2.5. Under the JOA, Ascent Malta bears all the costs of the financing of the development and operation of the Field (Clause 8.3) and shall be entitled to 90% of the proceeds from the hydrocarbons produced by the Field until its expenditure is fully recovered (Clause 8.4(a)), after which it shall be entitled to 75% of the proceeds (Clause 8.1).
- 2.6. Ascent Malta's contractual rights under the JOA are therefore a protected investment of the Investors under Article 1(a)(iii) of the BIT and Article 1(6)(c) of the ECT. The Investors' indirect rights to the production of hydrocarbons under the Licenses and the Concession are also a protected investment under Article 1(a)(v) of the BIT and Article 1(6)(f) of the ECT.
- 2.7. Additionally, Ascent UK owns 100% of the shares in two Slovenian companies - Ascent Resources d.o.o. and Trameta d.o.o. (the **Slovenian Subsidiaries**). Ascent Resources d.o.o. performed works in relation to the development of the Field, while Trameta d.o.o. owns a land plot intended for the construction of a gas export pipeline. Ascent UK's shares in the Slovenian Subsidiaries are a protected investment under Article 1(a)(ii) of the BIT and Article 1(6)(b) of the ECT.

## 3. Background

- 3.1. Ascent Malta began making investments in Slovenia in 2001, when, under its previous name Nemmoco Slovenia Corporation, it entered into the 2001 Joint Venture Agreement in relation to the Field.

- 3.2. Ascent UK began making investments in Slovenia in 2007, when it acquired Ascent Malta (then still operating under its previous name).
- 3.3. Prior to the Investors' investment, the Field had been in production since 1943. Since 1956, it had periodically undergone low-volume hydraulic stimulation in order to increase the volume of production. Between 1956 and 1990, low-volume hydraulic stimulation was carried out in the Field more than 30 times.
- 3.4. As you may be aware, low-volume hydraulic stimulation is a process used to increase the production of gas wells, whereby water is injected into the soil substrata in order to stimulate the gas production. Low-volume hydraulic stimulation involves the injection into a well of less than 1,000 m<sup>3</sup> of water per fracturing stage or less than 10,000 m<sup>3</sup> of water during the entire process. It is distinct from high-volume hydraulic simulation, which involves the injection of water above these volumes.
- 3.5. To date, no environmental concerns associated with such low-volume hydraulic stimulation of the Field have been identified. Accordingly, at the time Ascent UK and Ascent Malta made their investments, they legitimately expected that they would also be able to continue carrying out such low-volume hydraulic stimulation. Unfortunately, Slovenia's actions frustrated the Investors' legitimate expectations and prevented them from developing the Field.
- 3.6. In the beginning of 2011, as part of the development of the Field by the Investors, two new wells (well PG-10 and well PG-11A, together, the **Wells**) were drilled. Afterwards, low-volume hydraulic stimulation was performed at the deepest layers of the Wells, and test production of gas commenced thereafter. No preliminary screening assessment or environmental impact assessment (**EIA**) needed to be carried out, as both the amount of gas expected to be produced by the Wells and the area of gas production were significantly below the thresholds stipulated by Slovenian law above which an EIA would be required.
- 3.7. In order to maintain the levels of gas produced, in 2017 it became necessary to carry out another round of low-volume hydraulic stimulation of the Wells. Under Slovenian law, no preliminary screening assessment nor any EIA were required to do so. However, in an abundance of caution on 10 May 2017 Geoenergo made an application for a preliminary screening assessment (the **PS Application**) with the Slovenian Environmental Agency (*Agencija Republike Slovenije za Okolje*, or **ARSO**).

#### 4. The measures

- 4.1. Under Slovenian law, ARSO was required to issue a decision on the application for a screening assessment within two months of the receipt of a complete application, *i.e.* by July 2017. However, ARSO only issued a draft of its decision over a year after the PS Application was made, on 15 June 2018. In the draft decision, ARSO held that an EIA was required. On 8 March 2019, ARSO issued its decision in final form, holding that an EIA was required (the **ARSO Decision**).

- 4.2. The ARSO Decision was at odds with opinions issued by other Slovenian government authorities, including Slovenia's Ministry of Health, Ministry of Infrastructure, the Institute of the Republic of Slovenia for Nature Conservation, the Forestry Institute of the Republic of Slovenia, the Chemical Office of the Republic of Slovenia and the Conservation Institute of the Republic of Slovenia. All of these state bodies concluded that an EIA was not required.
- 4.3. The ARSO Decision was not based on the recommendations of Slovenia's own experts and, furthermore, it contradicted the opinions they gave. It is therefore manifestly arbitrary and unreasonable.
- 4.4. Additionally, while the PS Application was being considered by ARSO, the Minister of the Environment and Spatial Planning repeatedly made public statements portraying the Investors, as well as the Petišovci project, in a negative light, and leaks were made by ARSO to the press. This further demonstrates that ARSO was biased against the Investors and that the ARSO Decision was politically motivated.
- 4.5. Geoenergo filed a complaint against the contested decision with the Ministry of the Environment and Spatial Planning, however, the latter rejected it on 10 June 2019. Geoenergo subsequently challenged the ARSO Decision before Slovenian courts. On 13 May 2020, the Administrative Court of the Republic of Slovenia held that the ARSO Decision did not contradict Slovenian law.
- 4.6. The ARSO Decision, as well as the significant delay in rendering it, adversely affected the investments of the Investors. In particular, it has delayed the low-volume hydraulic stimulation of the Wells by at least five years, significantly setting back the development of the Field. Pending such low-volume hydraulic stimulation, the amount of gas produced by the Field has been very significantly reduced, resulting in a significant loss of the Investors' revenues.

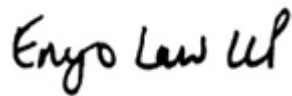
## **5. Slovenia's breaches of the BIT and the ECT**

- 5.1. Slovenia's measures constitute breaches of the protections established by the BIT and the ECT, including, *inter alia*:
  - 5.1.1. Slovenia's guarantee that the investments would be accorded fair and equitable treatment (Article 2(2) of the BIT and Article 10(1) of the ECT); and
  - 5.1.2. Slovenia's guarantee that the management, maintenance, use, enjoyment or disposal of the investments would not be impaired by arbitrary, unreasonable or discriminatory measures (Article 2(2) of the BIT and Article 10(1) of the ECT).

## 6. Next steps

- 6.1. The Investors hereby formally consent to submit their investment dispute with Slovenia to international arbitration under Article 8(2) of the BIT and Article 26(2)(c) and (4) of the ECT, and reserve their right to initiate international arbitral proceedings in accordance with these provisions. This letter shall be considered as a formal notification of the existence of a dispute under Article 8(1) and (2) of the BIT and Article 26(1) and (2) of the ECT.
- 6.2. We sincerely hope that an amicable solution can be found to the present dispute, and will welcome any constructive proposals you may have. To that end, the Investors are ready to engage at a senior level with the Government of Slovenia at the earliest possible opportunity in a process of negotiations focused on resolving amicably the issues in dispute.
- 6.3. The Investors fully reserve all of their rights and remedies arising out of Slovenia's treaty breaches. Nothing in this letter should be considered as a limitation of any kind on the facts, evidence, or legal arguments the Investors may present, or on the legal rights and remedies they may pursue, in support of their claims before an arbitral tribunal or otherwise.

Yours faithfully



**Enyo Law LLP**

Copy to:

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