

**UNDER THE 1976 ARBITRATION RULES OF THE UNITED NATIONS  
COMMISSION ON INTERNATIONAL TRADE LAW**

**NJSC NAFTOGAZ OF UKRAINE  
PJSC STATE JOINT STOCK COMPANY CHORNOMORNAFTOGAZ  
PJSC UKRTRANSGAZ  
SUBSIDIARY COMPANY LIKVO  
PJSC UKRGASVYDOBUVANNYA  
PJSC UKRTRANSNAFTA  
SUBSIDIARY COMPANY GAZ UKRAIINY**

***Claimants***

**v.**

**THE RUSSIAN FEDERATION**

***Respondent***

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**NOTICE OF ARBITRATION**

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14 October 2016

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## I. DEMAND FOR ARBITRATION

1. In accordance with Article 9 of the Agreement Between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments, dated 27 November 1998 (the “*Russia-Ukraine BIT*” or “*Treaty*”), and Article 3 of the 1976 Arbitration Rules of the United Nations Commission on International Trade Law (the “*UNCITRAL Rules*”), NJSC Naftogaz of Ukraine, together with its subsidiaries PJSC State Joint Stock Company Chornomornaftogaz, PJSC Ukrtransgaz, Subsidiary Company Likvo, PJSC Ukrgasvydobuvannya, PJSC Ukrtransnafta, and Subsidiary Company Gaz Ukrainy (together, “*Naftogaz*” or “*Claimants*”) submit this Notice of Arbitration (the “*Notice*”) and hereby demand arbitration of their dispute with the Russian Federation.

## II. INTRODUCTION

2. In February 2014, the Russian Federation invaded and occupied the Crimean Peninsula (including the city of Sevastopol, “*Crimea*”), and thus assumed effective control and jurisdiction over the region. The Russian Federation’s conduct, including its unlawful use of force, violated international law and was roundly condemned by the international community.

3. Upon assuming effective control and jurisdiction over Crimea, the Russian Federation engaged in a widespread and well-orchestrated scheme to deprive Ukrainian investors in Crimea of their property, without payment of compensation. Ukraine’s state-owned oil and gas group, Naftogaz, owned some of the most valuable energy assets in Crimea and was among the Russian Federation’s chief targets.

4. The Russian Federation’s expropriatory scheme involved, among other actions: passing legislation that nationalized Ukrainian property and that specifically targeted Naftogaz’s oil and gas assets; forcibly seizing certain of Naftogaz’s assets in Crimea, including by sending armed men to commandeer drilling platforms; forcibly preventing Naftogaz from removing

certain of its other assets from Crimea, including cranes, excavators, and trucks; and ultimately transferring almost all of Naftogaz’s Crimea-based assets to a Russian state-owned company.

5. The Russian Federation’s discriminatory conduct and its expropriation of Naftogaz’s investments, among other actions, violated the Russia-Ukraine BIT. Accordingly, Naftogaz commences this arbitration to obtain redress for the Russian Federation’s violations of the Treaty.

### III. THE PARTIES

#### A. Claimants

6. Claimants are companies organized under the laws of Ukraine. Claimants’ registered addresses are set forth in Annex A to this Notice.

7. Naftogaz is a Ukrainian state-owned group of companies engaged in the exploration, development, production, transportation, processing, and marketing of oil and gas. Claimant NJSC Naftogaz of Ukraine (“**NJSC Naftogaz**”), the corporate group’s parent, is the national oil and gas company of Ukraine.

8. Naftogaz maintained substantial investments in Crimea, including through six wholly owned subsidiaries—Claimants PJSC State Joint Stock Company Chornomornaftogaz (“**Chornomornaftogaz**”), PJSC Ukrtransgaz (“**Ukrtransgaz**”), Subsidiary Company Likvo (“**Likvo**”), PJSC Ukrigasvydobuvannya (“**Ukrigasvydobuvannya**”), PJSC Ukrtransnafta (“**Ukrtransnafta**”), and Subsidiary Company Gaz Ukrainy (“**Gaz Ukrainy**”).

9. Claimants are represented by:

David Z. Pinsky  
Erin Thomas  
Covington & Burling LLP  
The New York Times Building  
620 8th Avenue  
New York, New York 10018  
dpinsky@cov.com  
ethomas@cov.com  
+1 212 841 1000

Marney L. Cheek  
William Lowery  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street NW  
Washington, DC 20001  
mcheek@cov.com  
wlowery@cov.com  
+1 202 662 6000

Jeremy X. Wilson  
Covington & Burling LLP  
265 Strand  
London WC2R 1BH  
jwilson@cov.com  
+44 20 7067 2000

10. All correspondence addressed to Claimants should be sent to their counsel at the addresses set forth above.

**B. Respondent**

11. The Respondent is the Russian Federation. This Notice is being served on representatives of the Russian Federation as set forth in Annex B to this Notice.

**IV. THE ARBITRATION AGREEMENT**

12. The Russian Federation has made a standing offer under Article 9 of the Russia-Ukraine BIT to arbitrate certain disputes with Ukrainian investors:

1. Any dispute between one Contracting Party and an investor of the other Contracting Party arising in connection with investments, including disputes concerning the amount, terms, and payment procedures of the compensation provided for by Article 5 hereof, or the payment transfer procedures provided for by Article 7 hereof, shall be subject to a written notice, accompanied by detailed comments, which the investor shall send to the Contracting Party involved in the dispute. The parties to the dispute shall endeavor to settle the dispute through negotiations if possible.

2. If the dispute cannot be resolved in this manner within six months from the date of the written notice mentioned in paragraph 1 of this article, it shall be referred to: a) a competent court or arbitration court of the Contracting Party in the territory of which the investments were made; b) the Arbitration Institute of the Stockholm Chamber of Commerce; c) an “ad hoc” arbitration tribunal, in accordance with the Arbitration Rules of

the United Nations Commission for International Trade Law (UNCITRAL).

C-2, Agreement Between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments (the “*Treaty*”), Art. 9, 27 November 1998.

13. Naftogaz accepts the Russian Federation’s standing offer to arbitrate, and chooses to submit this dispute to ad hoc arbitration under the UNCITRAL Rules. *Id.*, Art. 9(2).<sup>1</sup>

## V. FACTUAL BACKGROUND

### A. The Russian Federation Assumed Effective Control and Jurisdiction Over Crimea and Later Purported to Annex the Region.

14. In February 2014, the Russian Federation unlawfully invaded and occupied Crimea, thus assuming effective control and jurisdiction over the region. The Russian invasion began on 20 February 2014, when Russian military forces crossed from the Russian Federation into Crimea. The Russian Defense Ministry later issued a medal commemorating this date.

15. Despite his initial denials of Russian military involvement in Crimea, Russian President Vladimir V. Putin has since admitted that he instructed Russian special services and the Russian Defense Ministry to seize Crimea for the Russian Federation. In line with President Putin’s instruction, on 27 February 2014, armed men took over the building of the Crimean Parliament and other government offices in Simferopol, the regional capital, and hoisted the Russian flag over the buildings.

16. Also on 27 February 2014, pro-Russian politician Sergey Aksyonov was installed as the Prime Minister of the Autonomous Republic of Crimea, a constituent unit within the internationally recognized borders of Ukraine, in a closed-door vote overseen by armed men.<sup>2</sup>

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<sup>1</sup> Because the Russian Federation’s offer to arbitrate was made before the effective date of the 2010 UNCITRAL Rules, the 1976 UNCITRAL Rules apply to this arbitration, unless the parties agree otherwise.

<sup>2</sup> C-3, Verkhovna Rada of the Autonomous Republic of Crimea, Resolution No. 1656-6/14, 27 February 2014.

That night, Russian troops took over the civilian airport at Simferopol, and seized the military airport at Sevastopol, a strategically important city near Crimea's southern tip.

17. On 28 February 2014, thousands of additional Russian troops arrived in Crimea, and checkpoints were set up on the roads leading into Crimea from continental Ukraine.

18. Having assumed effective control and jurisdiction over Crimea, the Russian Federation next took steps to purportedly annex the region. On 6 March 2014, under the control of the Russian Federation, the Parliament of the Autonomous Republic of Crimea (the "***Crimean Parliament***") purported to vote in favor of the Autonomous Republic of Crimea becoming part of the Russian Federation, and ordered that a referendum take place on 16 March 2014 on the "reunification" of Crimea with the Russian Federation.<sup>3</sup>

19. Despite opposition both by Ukraine and by the international community, the Russian-controlled authorities in Crimea went forward with the referendum on 16 March 2014. In a vote that was rife with voter intimidation and other irregularities, and that was widely denounced as illegitimate and unlawful,<sup>4</sup> 96 percent of those casting ballots purportedly voted for Crimea to become a part of the Russian Federation.

20. On 17 March 2014, under the control of the Russian Federation, the Crimean Parliament purported to pass a resolution declaring the so-called Republic of Crimea an independent sovereign state in which Sevastopol had a special status.<sup>5</sup> The Republic of Crimea was not recognized by the international community.

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<sup>3</sup> C-4, Verkhovna Rada of the Autonomous Republic of Crimea, Resolution No. 1702-6/14, Arts. 1-2, 6 March 2014. On the same day, the City Council of Sevastopol (the "***Sevastopol City Council***"), by Decision No. 7151, also purported to vote in favor of Sevastopol becoming part of the Russian Federation, and declared its support for the referendum approved by the Crimean Parliament. C-5, Sevastopol City Council, Decision No. 7151, Arts. 1-2, 6 March 2014.

<sup>4</sup> See C-14, Territorial Integrity of Ukraine, G.A. Res. 68/262, U.N. Doc. A/RES/68/262 (Mar. 27, 2014).

<sup>5</sup> C-7, Verkhovna Rada of the Autonomous Republic of Crimea, Resolution No. 1745-6/14, 17 March 2014. On the same day, under the control of the Russian Federation, the Sevastopol City Council purported to pass Decision No. 7156 on the Status of the Hero City of Sevastopol, which (continued...)



21. On 18 March 2014, the Russian Federation and the Russian-controlled Crimean authorities purported to execute a treaty on the admission of the Republic of Crimea into the Russian Federation (the “**Annexation Treaty**”).<sup>6</sup> The Annexation Treaty asserted that the Republic of Crimea and the Federal City of Sevastopol were deemed to have been admitted into the Russian Federation as of 18 March 2014.<sup>7</sup> The State Duma of the Russian Federation ratified the Annexation Treaty on 20 March 2014, and the Federation Council of the Russian Federation ratified it on 21 March 2014.<sup>8</sup>

22. On 21 March 2014, the Russian Federation adopted a federal constitutional law purporting to admit the Republic of Crimea and the Federal City of Sevastopol into the Russian Federation, effective from the date of signing of the Annexation Treaty, 18 March 2014.<sup>9</sup>

23. Both the Russian Federation’s occupation and its purported annexation of Crimea are illegal under Ukrainian and international law. Nonetheless, and as described in Part VII below, upon occupying Crimea, the Russian Federation became bound to uphold its obligations under the Russia-Ukraine BIT as to Naftogaz’s investments in Crimea.

**B. Naftogaz Maintained Substantial Investments in Crimea.**

24. In February 2014, when the Russian Federation assumed effective control and jurisdiction over Crimea, NJSC Naftogaz and its wholly owned subsidiaries Chornomornaftogaz, Ukrtransgaz, Likvo, Ukrgasvydobuvannya, Ukrtransnafta, and Gaz Ukrainy owned extensive assets in Crimea, as described below.

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supported the Crimean Parliament’s declaration of the Republic of Crimea to be an independent state in which Sevastopol had a special status. C-9, Sevastopol City Council, Decision No. 7156, 17 March 2014.

<sup>6</sup> C-10, Treaty Between the Russian Federation and the Republic of Crimea on the Admission to the Russian Federation of the Republic of Crimea and the Formation of New Constituent Entities Within the Russian Federation (“**Annexation Treaty**”), 18 March 2014.

<sup>7</sup> *Id.*, Arts. 1.1, 2.

<sup>8</sup> C-12, Russian Federation, Federal Law No. 36-FZ, 21 March 2014.

<sup>9</sup> C-13, Russian Federation, Federal Constitutional Law No. 6-FKZ, Arts. 1.1, 1.3, 2.1, 21 March 2014.

25. *NJSC Naftogaz.* NJSC Naftogaz's primary business in Crimea involved purchasing gas from its wholly owned subsidiary, Chornomornaftogaz, and selling that gas to customers in Crimea. NJSC Naftogaz's primary assets in Crimea included, by way of example, and without limitation, special permits for offshore exploration, stored gas, and several local gas distribution pipeline systems (including pipeline systems under construction). In addition to its stake in its six wholly owned subsidiaries with assets in Crimea, NJSC Naftogaz was a minority shareholder in several other companies operating in Crimea.

26. *Chornomornaftogaz.* Chornomornaftogaz was a vertically integrated oil and gas company operating in Crimea. Chornomornaftogaz was registered in Crimea and maintained its headquarters in Simferopol, the capital of the Autonomous Republic of Crimea. Chornomornaftogaz also maintained a representative office in Kyiv, in continental Ukraine. Chornomornaftogaz's primary assets in Crimea included, by way of example, and without limitation, special permits for subsoil use that allowed it to conduct oil and gas exploration and production activities in Crimea. Chornomornaftogaz also owned and operated onshore and offshore exploration and production equipment, including production platforms and drilling rigs. Chornomornaftogaz was set to increase the output of certain fields, and in February 2014 was in the midst of completing these further investments. Chornomornaftogaz also operated extensive offshore and onshore pipeline infrastructure, as well as Crimea's sole gas storage facility.

27. *Ukrtransgaz.* Ukrtransgaz operated a pipeline transportation system in Crimea, which tied into the major gas transportation system that Ukrtransgaz operates in continental Ukraine. The company was in the midst of expanding its transportation capacity in Crimea in February 2014. Ukrtransgaz is registered in Kyiv, but maintained a branch office in Feodosia, in Crimea.

28. *Likvo.* Likvo provides emergency services, including fire-fighting, for oil and gas operations. Likvo is registered in Kharkiv, in continental Ukraine, and maintained a branch

office in Chornomorsk, in Crimea. Likvo's assets in Crimea included, by way of example, and without limitation, equipment used to provide emergency services for oil and gas operations.

29. *Ukrigasvydobuvannya*. Ukrigasvydobuvannya, the largest producer of gas, and one of the largest producers of oil, in Ukraine, is registered in Kyiv. Ukrigasvydobuvannya maintained a joint activity agreement with Chornomornaftogaz to develop certain Crimean offshore natural gas fields. Ukrigasvydobuvannya provided financing for the joint operations. Ukrigasvydobuvannya also maintained a resort complex in Crimea for its employees' use.

30. *Ukrtransnafta*. Ukrtransnafta, an oil storage and transportation company, is registered in Kyiv. Ukrtransnafta owned an unfinished resort complex in Crimea.

31. *Gaz Ukrainy*. Gaz Ukrainy is a natural gas distributor registered in Kyiv. Gaz Ukrainy's assets in Crimea included, by way of example, and without limitation, vehicles, machinery, and office equipment, as well as capital investments in boiler facilities for local schools.

**C. The Russian Federation Unlawfully Expropriated and Interfered with Naftogaz's Investments in Crimea.**

32. Through a combination of legislative acts and physical interference, the Russian Federation unlawfully seized control of Naftogaz's investments in Crimea. By way of representative example only, the Russian Federation and/or agents under its direction and control took the following actions.

1. The Russian Federation Unlawfully Ousted Chornomornaftogaz's Management and Physically Interfered with and Seized Chornomornaftogaz's Investments in Crimea.

33. On 3 March 2014, Crimean Prime Minister Aksyonov, whom the Russian Federation had unlawfully installed on 27 February 2014, interfered with the management of Chornomornaftogaz. Specifically, Aksyonov issued an order ousting Chornomornaftogaz's duly appointed Chairman, Sergei Holovin, and replacing him with a pro-Russian chairman, Andrei Ilyin.

34. As early as the following day, 4 March 2014, Chornomornaftogaz personnel witnessed armed men interfering with its operations in Crimea, including by entering gas pipeline security zones. Between 13 and 18 March 2014, additional armed men seized multiple Chornomornaftogaz facilities, including offshore drilling platforms, and later in March 2014, still other armed men, including men wearing Russian military uniforms, began appearing at Chornomornaftogaz's headquarters in Simferopol.

35. As these above events unfolded, on 13 March 2014, Prime Minister Aksyonov issued another order, now temporarily installing a new pro-Russian Chairman of Chornomornaftogaz, Nikolay Kharitonov.<sup>10</sup> Sometime after Kharitonov's installation, Chornomornaftogaz's Crimean headquarters ceased communications with its representative office in Kyiv, and severed the Kyiv office's connection to Chornomornaftogaz's server. The Kyiv office thus lost the ability to communicate with, and access documents and correspondence located at, Chornomornaftogaz's headquarters in Crimea.

36. Having taken control of Chornomornaftogaz, the Russian Federation in March and April 2014 dispatched representatives of its state-owned natural gas monopoly, Public Joint Stock Company Gazprom ("**Gazprom**"), to Crimea to gather data about Chornomornaftogaz's operations. Acknowledging Gazprom's new project, on 1 April 2014, the Minister of Energy of the Russian Federation, Aleksandr Novak, said in an interview that "Gazprom is currently exploring the potential of deposits being developed by Chornomornaftogaz."<sup>11</sup>

2. The Russian Federation Issued Resolutions and Orders Nationalizing Naftogaz's Investments in Crimea.

37. In addition to these physical seizures and interference, the Russian-controlled Crimean legislative and administrative authorities issued resolutions and orders nationalizing

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<sup>10</sup> C-6, Chairman of the Council of Ministers of the Autonomous Republic of Crimea, Order No. 110-rp, 13 March 2014.

<sup>11</sup> C-15, "*There has been contact between us*" – Minister of Energy Aleksandr Novak on Crimea's energy supply, Kommersant (1 April 2014).

Ukrainian investments in Crimea—and specifically targeting Naftogaz’s investments. Among its first steps, on 17 March 2014, the Crimean Parliament issued a resolution declaring the state property of Ukraine located on the territory of the Republic of Crimea to be the property of the Republic of Crimea.<sup>12</sup>

38. Next, turning specifically to Naftogaz’s assets, and also on 17 March 2014, the State Council of the Republic of Crimea (the “**State Council**”) passed a resolution nationalizing all of Chornomornaftogaz’s and Ukrtransgaz’s property in Crimea, without payment of compensation.<sup>13</sup> The resolution also authorized the Council of Ministers of the Republic of Crimea to form a new Republic of Crimea-owned enterprise, called Chernomorнеftegaz (which is the Russian-language equivalent of the Ukrainian-language “Chornomornaftogaz”) (the “**Russian Chernomorнеftegaz**”), to which the nationalized assets would be transferred.<sup>14</sup>

39. On 20 March 2014, in accordance with a directive of the Council of Ministers of the Republic of Crimea, the Ministry of Fuel and Energy of the Republic of Crimea assigned Chornomornaftogaz’s and Ukrtransgaz’s nationalized property to the Russian Chernomorнеftegaz.<sup>15</sup>

40. Further, between approximately late March and early April 2014, Crimea-based employees of Chornomornaftogaz and Ukrtransgaz were told that, in order to retain their jobs,

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<sup>12</sup> C-7, Verkhovna Rada of the Autonomous Republic of Crimea, Resolution No. 1745-6/14, Art. 6, 17 March 2014. Similarly, and also on that date, the Sevastopol City Council, in Decision No. 7156, declared the state property of Ukraine located in Sevastopol to be the property of Sevastopol. C-9, Sevastopol City Council, Decision No. 7156, 17 March 2014.

<sup>13</sup> C-8, State Council of the Republic of Crimea, Resolution No. 1758-6/14, Art. 1, 17 March 2014.

<sup>14</sup> *Id.*, Art. 4.

<sup>15</sup> C-11, Ministry of Fuel and Energy of the Republic of Crimea, Order No. 3, Art. 1, 20 March 2014. On 29 November 2014, the Russian Chernomorнеftegaz was formally re-registered in the Russian Federation as a state-owned enterprise—namely, as State Unitary Enterprise of the Republic of Crimea Chernomorнеftegaz. C-23, Federal Tax Service of the Russian Federation, Certificate Nos. 000002543-44, 29 November 2014.

they must resign from the Ukrainian companies for which they worked and become re-employed by the new, Russian Chernomorneftegaz.

3. The Russian Federation Blocked Naftogaz's Attempts to Safeguard Its Investments in Crimea.

41. In the face of the Russian Federation's nationalization of Ukrtransgaz's assets in Crimea, on or around 20 March 2014, the Director of Ukrtransgaz's Kharkiv branch instructed Ukrtransgaz employees to attempt to transfer certain of Ukrtransgaz's movable property, including cranes, excavators, and trucks, out of Crimea and into continental Ukraine by convoy for safekeeping. Before reaching continental Ukraine, however, the convoy was stopped by armed men, impounded, and eventually taken to Ukrtransgaz's Feodosia branch office, in Russian-controlled Crimea. Further, on 2 April 2014, Ukrtransgaz lost its ability to operate its Crimean pipelines when the Russian Chernomorneftegaz systematically cut all communications between Ukrtransgaz in Crimea and Ukrtransgaz in continental Ukraine, including communications relating to Ukrtransgaz's automatic gas metering system and to its gas distribution stations.

42. In late March or early April 2014, a representative of Likvo in continental Ukraine requested that its Crimean office return the Likvo equipment located in Crimea. Likvo's Crimean manager refused the request on the grounds that the Russian Chernomorneftegaz's management, which had taken control of Likvo's Crimea-based assets, would not allow it. In October 2014, the Russian Chernomorneftegaz confirmed by letter that all of Likvo's property in Crimea had been declared the property of the Republic of Crimea, and had been transferred to the Russian Chernomorneftegaz.

4. The Russian Federation Issued Resolutions and Orders Nationalizing Additional Naftogaz Investments in Crimea.

43. In April and May 2014, the Russian-controlled Crimean authorities continued to issue resolutions and orders targeting Ukrainian investments in Crimea, including Naftogaz's investments.

44. On 11 April 2014, the State Council of the Republic of Crimea passed three resolutions nationalizing additional Naftogaz investments.

45. *First*, the State Council passed a resolution nationalizing facilities of the Crimean gas supply system constructed with NJSC Naftogaz's financial participation, as well as gas pipeline agreements between NJSC Naftogaz and another Ukrainian company, PJSC Krymgaz, in which NJSC Naftogaz held a minority stake.<sup>16</sup>

46. *Second*, the State Council passed a resolution that amended the resolution of 17 March 2014 that nationalized Chornomornaftogaz's and Ukrtransgaz's property in Crimea, to also nationalize investments belonging to NJSC Naftogaz, the corporate group's parent. Specifically, the new resolution declared that the installations of the gas pipeline system in Crimea, which the government of Ukraine previously transferred to NJSC Naftogaz for its use, were the property of the Republic of Crimea.<sup>17</sup>

47. *Third*, the State Council passed a resolution nationalizing a resort complex maintained in Crimea by Ukrgasvydobuvannya.<sup>18</sup> This property was then transferred to a Russian state-owned enterprise.<sup>19</sup>

48. On 22 April 2014, the Ministry of Fuel and Energy of the Republic of Crimea issued an order allocating the pipeline installations used by NJSC Naftogaz, and which were nationalized on 11 April 2014, to the Russian Chernomorneftegaz.<sup>20</sup>

49. On 30 April 2014, the State Council of the Republic of Crimea passed a resolution declaring that all Ukrainian state-owned property and so-called abandoned property located on

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<sup>16</sup> C-16, State Council of the Republic of Crimea, Resolution No. 2032-6/14, Art. 1, 11 April 2014.

<sup>17</sup> C-17, State Council of the Republic of Crimea, Resolution No. 2033-6/14, Art. 1, 11 April 2014.

<sup>18</sup> C-18, State Council of the Republic of Crimea, Resolution No. 2045-6/14, Row 409-08, 11 April 2014.

<sup>19</sup> C-22, Council of Ministers of the Republic of Crimea, Decree No. 547-r, Annex 1 ¶ 45, 18 June 2014.

<sup>20</sup> C-19, Ministry of Fuel and Energy of the Republic of Crimea, Order No. 8, Art. 1, 22 April 2014.

the territory of the Republic of Crimea would be considered the property of the Republic of Crimea.<sup>21</sup> Further, on 21 May 2014, the State Council of the Republic of Crimea nationalized gas that NJSC Naftogaz had stored in an underground gas storage facility in Crimea, as well as the natural gas produced by Chornomornaftogaz in the fields that were nationalized on 17 March 2014.<sup>22</sup>

50. Accordingly, the Russian Federation has seized, and Naftogaz has lost control of and access to, Naftogaz’s investments in Crimea, and compensation is due to Naftogaz for this adverse conduct.

## **VI. JURISDICTION**

51. Under Article 9 of the Russia-Ukraine BIT, the Russian Federation agreed to arbitrate “[a]ny dispute between one Contracting Party and an investor of the other Contracting Party” that “aris[es] in connection with investments,” provided that the investor has sent the Contracting Party a written notice of the dispute at least six months before the date of the demand for arbitration. C-2, Treaty, Art. 9(1).

52. This dispute falls squarely within the scope of the Russian Federation’s agreement to arbitrate.

53. *First*, this dispute is between a “Contracting Party”—i.e., the Russian Federation—and an investor of the other Contracting Party. The definition of “investor of a Contracting Party” in Article 1(2) of the Russia-Ukraine BIT includes “any legal entity constituted in accordance with the legislation in force in the territory of that Contracting Party, provided that the said legal entity is competent in accordance with legislation of that Contracting Party to make investments in the territory of the other Contracting Party.” C-2, Treaty, Art. 1(2)(b). Each of NJSC Naftogaz, Chornomornaftogaz, Ukrtransgaz, Likvo,

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<sup>21</sup> C-20, State Council of the Republic of Crimea, Resolution No. 2085-6/14, Art. 1, 30 April 2014.

<sup>22</sup> C-21, State Council of the Republic of Crimea, Resolution No. 2141-6/14, Art. 6, 21 May 2014.



Ukrghasvydobuvannya, Ukrtransnafta, and Gaz Ukrainy is a company organized under the laws of Ukraine. Each Claimant's investments in Crimea were lawful under the laws of Ukraine when such investments were made. Each Claimant is thus an "investor" for the purposes of Article 1(2)(b) of the Russia-Ukraine BIT.

54. *Second*, the dispute arose in connection with Naftogaz's investments, which were in the territory of the Russian Federation for the purposes of the Treaty. Article 1(1) of the Russia-Ukraine BIT defines "investments" as "any kind of tangible and intangible assets which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation." C-2, Treaty, Art. 1(1). This includes, but is not expressly limited to:

a) movable and immovable property, as well as any other related property rights; b) monetary funds, as well as securities, commitments, stock and other forms of participation; c) intellectual property rights, including copyrights and related rights, trademarks, rights to inventions, industrial designs, models, as well as technical processes and know-how; d) rights to engage in commercial activity, including rights to the exploration, development and exploitation of natural resources.

*Id.*

55. Naftogaz's assets in Crimea as of February 2014, when the Russian Federation assumed effective control and jurisdiction over Crimea, are described in Part V.B above. These assets fall squarely within the definition of "investments" set forth in Article 1(1) of the Russia-Ukraine BIT.

56. In addition, Naftogaz's investments were "in the territory" of the Russian Federation for the purposes of the Russia-Ukraine BIT. The Russian Federation's occupation of Crimea is illegal under Ukrainian and international law. Notwithstanding this, the meaning of the word "territory" under the Russia-Ukraine BIT is broad, encompassing *all* territory under the effective control and jurisdiction of the Russian Federation, regardless of whether such territory is the sovereign territory of the Russian Federation. As Claimants will establish in this

arbitration, Naftogaz's investments in Crimea are "in the territory" of the Russian Federation for the purposes of Article 1(1) of the Treaty. The Russian Federation is therefore bound to uphold its obligations under the Russia-Ukraine BIT with respect to Naftogaz and its investments in Crimea.

57. *Third*, Naftogaz provided the Russian Federation with written notice of this dispute. On 15 February 2016, Naftogaz, through its counsel, sent a letter formally notifying representatives of the Russian Federation of an investment dispute under Article 9(1) of the Russia-Ukraine BIT (the "**Notice of Dispute**"). C-24, Notice of Dispute, 15 February 2016. The Notice of Dispute contained a detailed description of the dispute between Naftogaz and the Russian Federation, including, *inter alia*, a description of Naftogaz's operations and investments in Crimea, the Russian Federation's effective control and jurisdiction over Crimea and subsequent taking of Naftogaz's assets, and the provisions of the Treaty that the Russian Federation has violated. In the Notice of Dispute, Naftogaz also requested consultations with the Russian Federation for the purposes of reaching an amicable resolution of the dispute, and proposed a date for such consultations. *Id.*

58. More than six months have elapsed since Naftogaz provided the Notice of Dispute to the Russian Federation. During this time, the Russian Federation has not responded to the Notice of Dispute, nor has it endeavored to settle this investment dispute through negotiations, as required by Article 9(1) of the Treaty. C-2, Treaty, Art. 9(1).

## **VII. THE RUSSIAN FEDERATION BREACHED ITS OBLIGATIONS UNDER THE TREATY.**

59. The Russian Federation is bound to honor its obligations under the Russia-Ukraine BIT with respect to Ukrainian investments in Crimea. Its scheme to seize control, and interfere with the operation, of Naftogaz's investments in Crimea violated numerous provisions of the Treaty, as set forth below.

**A. The Russian Federation Unlawfully Expropriated Naftogaz’s Investments.**

60. Article 5(1) of the Treaty bars expropriation and equivalent measures except when those measures “are taken in the public interest under due process of law, are not discriminatory and are accompanied by prompt, adequate and effective compensation.” C-2, Treaty, Art. 5(1).

61. The Russian Federation expropriated Naftogaz’s assets through the legislative measures and physical interference described above. Throughout this process, the actions of the Russian Federation were not taken in the public interest, did not respect due process, and were discriminatory in nature. Further, the Russian Federation has not provided any compensation to Naftogaz for the expropriation of its assets, much less the “prompt, adequate and effective compensation” required by the Russia-Ukraine BIT. C-2, Treaty, Art. 5(1).

**B. The Russian Federation’s Adverse Conduct Was Discriminatory in Nature.**

62. Article 3(1) of the Treaty requires the Russian Federation to provide Ukrainian investors in Russian territory, and activities in connection with such investments, “treatment no less favorable than that which it accords to its own investors or to investors of any third state, which precludes the use of measures discriminatory in nature that could interfere with the management and disposal of the investments.” C-2, Treaty, Art. 3(1). In addition, Article 3(1) requires the Russian Federation to provide Ukrainian investors with the same protections provided to investors of other nations, including, without limitation, providing Naftogaz and its investments with fair and equitable treatment and full protection and security, as well as protecting Naftogaz and its investments’ business activities from unreasonable impairment.<sup>23</sup>

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<sup>23</sup> See, e.g., C-1, Agreement Between the Government of Japan and the Government of the Russian Federation Concerning the Promotion and Protection of Investments (the “**Japan-Russia BIT**”), Art. 3(3) (“Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall receive the most constant protection and security within the territory of the other Contracting Party. Neither Contracting (continued...)”).

63. The Russian Federation breached these obligations. By way of example, after assuming effective control and jurisdiction over Crimea, the Russian Federation targeted Naftogaz's investments in Crimea and denied Naftogaz due process under the law. The Russian Federation also provided a legal path for the continued operation of foreign and Russian-owned investments in Crimea, yet denied Naftogaz the same opportunity.

**C. The Russian Federation Failed to Provide Naftogaz's Investments with Full and Unconditional Protection.**

64. Article 2(2) of the Treaty requires that the Russian Federation "guarantee[], in accordance with its legislation, the full and unconditional legal protection of investments" by Ukrainian investors. C-2, Treaty, Art. 2(2). The Russian Federation breached these obligations. Rather than protect Naftogaz's investments after assuming effective control and jurisdiction over Crimea, the Russian Federation specifically targeted Naftogaz's assets and operations in Crimea, including by overseeing and directing the physical invasion of Naftogaz's operations in Crimea.

**D. The Russian Federation's Conduct in Connection with the Invasion of Crimea Discriminated Against Naftogaz.**

65. Article 6 of the Treaty requires that the Russian Federation provide Ukrainian investors whose "investments suffered damage[] in the territory of the [Russian Federation] as a result of war, civil unrest or other similar circumstances" with "treatment no less favorable than that which the [Russian Federation] accords to investors of any third state in relation to any measures which it adopts in connection with such damages." C-2, Treaty, Art. 6. In addition, by virtue of Article 3(1) of the Treaty, Ukrainian investments in the territory of the Russian

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Party shall, within its territory, in any way impair by unreasonable or discriminatory measures the business activities in connection with the investments of investors of the other Contracting Party."), 13 November 1998. Naftogaz reserves the right to rely on any more favorable treatment that the Russian Federation provides to its own investors or to investors of any third state.

Federation are also entitled to treatment no less favorable than that provided to Russian investors in response to similar circumstances of unrest.<sup>24</sup>

66. The Russian Federation breached these obligations. By way of example only, after assuming effective control and jurisdiction over Crimea, the Russian Federation implemented legislation that provided for the continued operation of foreign and Russian-owned investments in Crimea, but denied that same opportunity to Naftogaz.

**E. The Russian Federation Prevented Naftogaz from Freely Transferring Payments Abroad.**

67. Article 7(1) of the Treaty requires the Russian Federation to guarantee to Ukrainian investors “after they have performed all of their respective tax obligations in conformity with legislation of [the Russian Federation], unimpeded transfer abroad of payments associated with the investments.” C-2, Treaty, Art. 7(1). The Russian Federation’s expropriation of Naftogaz’s investments prevented Naftogaz from freely transferring payments associated with its investments out of Crimea.

**VIII. RELIEF SOUGHT**

68. The Russian Federation has seized and destroyed the value of Naftogaz’s investments in Crimea, violating its obligations under the Russia-Ukraine BIT. The Russian Federation furthermore has not provided any compensation to Naftogaz.

69. Naftogaz requests that the Tribunal grant it relief for these breaches, including, *inter alia*:

69.1 an award declaring that the Russian Federation has breached the Treaty;

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<sup>24</sup> See, e.g., C-1, Japan-Russia BIT, Art. 6 (“Investors of either Contracting Party who suffer within the territory of the other Contracting Party damage in relation to their investments, returns or business activities in connection with the investments, owing to the outbreak of hostilities or a state of national emergency such as revolution, revolt, insurrection or riot, shall be accorded treatment no less favourable than that accorded to investors of such other Contracting Party or to investors of any third country, as regards any measure to be taken by the other Contracting Party including restitution, compensation or other valuable consideration.”).

- 69.2 an award of monetary damages, which Naftogaz preliminarily estimates to be \$2.6 billion, sufficient to compensate Naftogaz for the consequences of the Russian Federation's illegal acts and place Naftogaz in the position that would have existed had the Russian Federation not committed such illegal acts;
- 69.3 an award of all costs and legal fees incurred by Naftogaz in connection with this arbitration, in accordance with Article 40 of the UNCITRAL Rules; and
- 69.4 any other relief deemed appropriate by the Tribunal.

## **IX. PROCEDURAL ISSUES**

70. In accordance with Article 3.3(g) of the UNCITRAL Rules, the Tribunal will consist of three arbitrators, one appointed by Naftogaz, one appointed by the Russian Federation, and the presiding arbitrator appointed by the two party-appointed arbitrators. In accordance with Article 3.4(b) of the UNCITRAL Rules, Naftogaz hereby appoints Dr. Charles Poncet to serve as its party-appointed arbitrator.

71. In accordance with Article 16 of the UNCITRAL Rules, Naftogaz proposes that the place of the arbitration be The Hague. Naftogaz further proposes that the Permanent Court of Arbitration administer and serve as the registry for this dispute.

72. In accordance with Article 17 of the UNCITRAL Rules, Naftogaz proposes that the language of the arbitration be English.

## **X. RESERVATION OF RIGHTS**

73. Naftogaz reserves the right to advance further arguments and produce additional evidence, both factual and legal, as may be necessary to complete or supplement the presentation of its claims or to respond to the arguments and allegations put forward by the Russian Federation.

14 October 2016

COVINGTON & BURLING LLP

By:         D Z T        

David Z. Pinsky  
Erin Thomas  
Covington & Burling LLP  
The New York Times Building  
620 8th Avenue  
New York, New York 10018  
United States  
dpinsky@cov.com  
ethomas@cov.com  
+1 212 841 1000

Marney L. Cheek  
William Lowery  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001  
United States  
mcheek@cov.com  
wlowery@cov.com  
+1 202 662 6000

Jeremy X. Wilson  
Covington & Burling LLP  
265 Strand  
London WC2R 1BH  
United Kingdom  
jwilson@cov.com  
+44 20 7067 2000

## Annex A

Claimant	Registered Address
NJSC Naftogaz of Ukraine	6, B. Khmel'nitskogo Str., Kyiv, Ukraine, 01601
PJSC State Joint Stock Company Chornomornaftogaz	26, B. Khmel'nitskogo Str., office 505 Kyiv, Ukraine, 01030
PJSC Ukrtransgaz	9/1, Klovskiy Uzviz, Kyiv, Ukraine, 01021
Subsidiary Company Likvo	32, Sinna Str. Kharkiv, Ukraine, 61109
PJSC Ukrigasvydobuvannya	26/28, Kudriavska Str., Kyiv, Ukraine, 04053
PJSC Ukrtransnafta	18/7, Kutuzova Str., Kyiv, Ukraine, 01133
Subsidiary Company Gaz Ukrainy	1, Sholudenka Str. Kyiv, Ukraine, 04116



Annex B

This Notice is being sent to the following representatives of the Russian Federation:

His Excellency Sergei V. Lavrov  
Minister of Foreign Affairs  
Ministry of Foreign Affairs of the Russian Federation  
32/34 Smolenskaya-Sennaya Pl.  
119200, Moscow G-200  
Russian Federation

His Excellency Vladimir V. Putin  
President of the Russian Federation  
23 Ilyinka Ulitsa  
103132, Moscow  
Russian Federation

The Rt. Honorable Dmitry A. Medvedev  
Prime Minister of the Russian Federation  
Government of the Russian Federation Building  
2 Krasnopresnenskaya Naberezhnaya  
103274, Moscow  
Russian Federation

Honorable Anton G. Siluanov  
Minister of Finance of the Russian Federation  
Ministry of Finance  
9 Ilyinka Ulitsa  
109097, Moscow  
Russian Federation

Honorable Alexander V. Kononov  
Minister of Justice of the Russian Federation  
Ministry of Justice  
Ulitsa Zhitnaya, Dom 14  
119049, Moscow  
Russian Federation