

Budapest, 12<sup>th</sup> January 2017

### **Further disclosure about the international arbitration award**

MOL Plc., on December 27, 2016, made an extraordinary announcement informing capital markets of an arbitration award:

“In this Arbitration between the Claimant, the Republic of Croatia, and the Respondent, MOL Hungarian Oil and Gas PLC., for the reasons appearing above and rejecting all submissions and contentions to the contrary, the Arbitral Tribunal FINDS, DECLARES, RULES, ORDERS and AWARDS that Croatia’s claims based on bribery, corporate governance and MOL’s alleged breaches of the 2003 Shareholders Agreement are all dismissed.”

With regards to bribery the Tribunal found that:

“Having considered most carefully all of Croatia’s evidence and submissions on the bribery issue, which has been presented in a most painstaking and comprehensive way, the Tribunal has come to the confident conclusion that Croatia has failed to establish that MOL did in fact bribe Dr Sanader. Accordingly, Croatia’s case that the FASHA and GMA be rendered null and void due to the alleged bribery fails.”

After this announcement, which was mandatory under Hungarian law, the Hungarian National Bank, as regulator, in its legal notice urged MOL for further publication. Besides, investors, analysts, as well as Hungarian and international media have been regularly requesting MOL to reveal further and more detailed information about all aspects of this award.

Due to confidentiality rules of the arbitration for the time being the full award may not be published, however, MOL has to comply with the respective rules of the Hungarian capital market as well as the legal notice of the Hungarian regulator. Bearing in mind all these requirements and upon careful consideration MOL decided to make publicly available some further parts of the award relevant for capital markets.

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## Parties

1. The Claimant in this arbitration is the Republic of Croatia (the “**Claimant**” or “**Croatia**” or “**GoC**”), acting for present purposes through the Ministry of Economy, Ulica grada Vukovara 78, 10000 Zagreb, Croatia.
3. The Respondent is MOL Hungarian Oil and Gas Company Plc (the “**Respondent**” or “**MOL**”), a company incorporated in Hungary and located at H-1117 Budapest, Október huszonharmadika u. 18, Hungary. It is the largest oil and gas company in Hungary.

## General observations

17. This Tribunal will have to decide whether, applying Croatian law, it is persuaded that the bribe was offered and accepted as alleged. If it finds the bribe took place, it will have to decide whether the amendment agreements should be set aside and then, if so satisfied, embark on the damages phase of this arbitration to assess Croatia’s true loss. As stated above, Croatia relies on alleged breaches of Croatian Corporate Law as an additional ground to set aside the amendment agreements. Croatia also claims damages for MOL’s alleged breaches of the SHA and the Cooperation Agreement.
76. At the outset, the Tribunal observes with satisfaction that this case has been excellently and fully presented by both sides. The Tribunal appreciates the courtesy afforded to the Tribunal by both sides’ Counsel and most of the witnesses. The record is substantial. The numerous submissions are extremely detailed. Many points were put and recorded in the 15 days of oral testimony and oral submissions, but even so in many respects they were but the tip of the iceberg of the thorough and clearly organized written record.

## Bribery

325. As a preliminary point, the Tribunal wishes to emphasise that it appreciates the importance of this case to the Parties. It also appreciates that this case and all its component issues have engendered considerable publicity in Croatia. Both sides hold impassioned views as to what happened and why.
333. Having considered most carefully all of Croatia’s evidence and submissions on the bribery issue, which has been presented in a most painstaking and comprehensive way, the Tribunal has come to the confident conclusion that Croatia has failed to establish that MOL did in fact bribe Dr Sanader. Accordingly, Croatia’s case that the FASHA and GMA be rendered null and void due to the alleged bribery fails.

## Corporate governance

334. Croatia contends, in the alternative, that if the Tribunal were not to find the FASHA to be null by virtue of the bribery, it should nevertheless be declared null and void as a matter of Croatian corporate law.
340. Croatia’s position is that the FASHA is “*null ab initio because clause 7.5 provides for impermissible performance*” under articles 270, 271 and 322 Croatian Obligations Act (“COA”).<sup>179</sup> The nullity of article 7.5 allegedly infects the entire agreement because it sets out the “*decisive motive for MOL to enter into the First Amendment*”.<sup>180</sup>

376. The Tribunal concludes [from the above] that the Executive Board's Rules of Procedure fully complied with the mandatory provisions of the CCA.
380. The [above] supports the position that, according to INA's by-laws, INA's Management Board, as a collective body, appears to have enjoyed the right and the power to manage INA in compliance with Croatian law. In any case, had the Management Board's members considered that they were unduly deprived of their right to manage INA, they could have submitted their claim to the Commercial Court in Zagreb, but none of them did.
409. The provisions of Article 7.5 of the FASHA are not contrary to Croatian corporate law. Pursuant to the CCA, the Parties were allowed to include a provision in the FASHA regarding the creation of the Executive Board as a working group, so long as it was understood that this body was not a third corporate organ.
410. The Tribunal notes that the Executive Directors are indeed in charge of the day-to-day business. However, after analysis of INA's relevant bylaws, the Tribunal does not consider that the Management Board yielded its responsibilities to the Executive Board. To the contrary, the Management Board was entitled to – and expected to – control the work of the Executive Board.

#### **Contractual claims**

412. At the outset, it has to be noted that whereas this Tribunal is competent to decide whether MOL is in breach of certain provisions of the SHA, it is not for this Tribunal to comment generally on how MOL, as INA's controlling shareholder, has conducted INA's business in general. Thus it is important for the Tribunal to concentrate on the specific breaches alleged and to note that the 'best effort obligation' is not an obligation to achieve a specific result.
413. Croatia contends that MOL is in breach of some provisions of the 2003 Shareholders Agreement. Croatia's case is summarized as follows:
- "As Croatia's strategic partner and shareholder of INA, MOL was entrusted in assisting with the development and expansion of INA's business, including its crucial E&P segment, refining operations and retail strategy by favouring its own interests over its duties to INA, MOL failed to meet its contractual obligations under the SHA and the Cooperation Agreement."*
454. However, Croatia did not support its position with actual evidence. To the contrary, the Tribunal is of the view that MOL did make its best efforts to modernise INA's refineries as agreed in the SHA and in the Cooperation Agreement.
457. Croatia further contends that MOL has failed in its obligations to expand exploration in the Region on behalf of INA and that INA failed to meet the Strategic Objective laid out in the Cooperation Agreement regarding exploration and production.
461. Based on what is presented by Croatia the Tribunal is not able to say that MOL failed in its best efforts obligations to expand exploration in the Region on behalf of INA.
466. Based on what has been presented by Croatia the Tribunal is not able to say that MOL failed in its best efforts obligations to assist INA in maintaining its market share in Croatia as well as expanding its network into adjacent SEE markets.

467. In relation to both the corporate governance claims and the breach of the SHA, Croatia's claims fail. The Tribunal is bound to say that it doubts very much whether Croatia would have launched either of these claims as freestanding and independent claims. In effect, they were no more than makeweight claims instituted on the back of the bribery allegation.

#### **Costs**

475. There can be no doubt that MOL is the successful party. Accordingly in the exercise of the Tribunal's discretion, in accordance with generally held principle as well as the terms of article 40 of the Rules, not to mention the Parties' submissions consistent therewith, costs should follow the event.

#### **Dispositive**

490. In this Arbitration between the Claimant, the Republic of Croatia, and the Respondent, MOL Hungarian Oil and Gas PLC., for the reasons appearing above and rejecting all submissions and contentions to the contrary, the Arbitral Tribunal FINDS, DECLARES, RULES, ORDERS and AWARDS that:

1) Croatia's claims based on bribery, corporate governance and MOL's alleged breaches of the 2003 Shareholders Agreement are all dismissed.

***The words and expressions with initial capital letters shall have the following meanings:***

**SHA:** MOL Plc. and the Government of Croatia entered into a **Shareholders' Agreement** on 17 July 2003 to memorialize their respective shareholders' rights in INA d.d.

**Co-operation Agreement:** MOL Plc. and INA d.d. entered into this agreement on 17 July 2003 to set out certain matters relating to the achievement of INA's strategic objectives.

**FASHA:** MOL Plc. and the Government of Croatia entered into the **First Amendment to the Shareholders Agreement** on 30 January 2009. The FASHA allowed MOL, as controlling shareholder, to include INA among the companies consolidated under the MOL Group's balance sheet.

**GMA:** MOL Plc. and the Government of Croatia entered into the **Gas Master Agreement** on 30 January 2009 pursuant to which INA's gas storage and trading businesses were to be spun off into separate subsidiaries and transferred to the Government.

**Management Board:** INA's corporate body appointed by the Supervisory Board that manages the businesses and represents the company.

**Executive Board** (today called Council of Directors): INA's corporate body composed of Executive Directors (second level managers) who are all appointed and controlled by the Management Board.

**CCA:** Croatian Corporate Act

**SEE (Region):** Southeast Europe (in the SHA it refers to Bosnia and Herzegovina, Montenegro, Kosovo, Albania and Serbia)