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Frankfurt am Main, 30 September 2014

C16

Statement of Claims

in the UNCITRAL Arbitral Proceedings

En+ Group Limited
Whiteley Chambers, Don Street, St. Helier
Jersey, JE4 9WG

and

CEAC Holdings Limited
Dimosthenous, 4, P.C. 1101, Nicosia
Cyprus

- "Claimant" -

v.

State of Montenegro
General Secretary of the Government of Montenegro
Attention to: Zarko Sturanovic
Jovana Tomasevica bb,
81000 Podgorica,
Montenegro

- Respondent 1 -

Fund for Development of Montenegro
Fond za razvoj Crne Gore
Attention to: Dr. Dragan Lajovic
11 Bulevar Revolucije,
81000 Podgorica,
Montenegro

- Respondent 2 -

Republic Fund for Pension and Disability Insurance
Republički fond za penzijsko i invalidsko osiguranje
Attention to: Dušan Perović
64 Bulevar Ivana Crnojevića,
81000 Podgorica,
Montenegro

- Respondent 3 -

Bureau for Employment of Montenegro
Zavod za zapošljavanje Crne Gore
Attention to: Vukica Jelić
5 Bulevar Revolucije,
81000 Podgorica,
Montenegro

- Respondent 4 -

Kombinat Aluminijuma Podgorica A.D.
Attention to: Veselin Perisic
Dajbabe bb,
81000 Podgorica,
Montenegro

- Respondent 5 -

-Respondents 1-5 hereinafter collectively "Respondents" -

and

Rudnici Boksita Niksic A.D.
Attention to: Zdravko Cicmil
13th of July Str., No. 30,
81400 Niksic
Montenegro,

Table of Content

A. Introduction

1 Herewith, the Claimant, CEAC Holdings Limited, submits the Statement of Claims against the Respondent 1, Respondent 2, Respondent 3, Respondent 4 and Respondent 5. The Respondents 1 to 4 are liable for breaches of contractual obligations and acted in a tortious way when they entered into the Settlement Agreement and the KAP Shareholders' Agreement with the Claimant without a serious intent to act accordingly. The Respondents 1 to 4 willfully frustrated substantial investments of Claimant in the Montenegrin economy. Respondent 5, after Respondent 1's filing for insolvency, colluded with the other Respondents' illegal actions. Claimant requests due compensation for the damages caused.

2 It is expressly noted, that this Statement of Claims is not submitted on behalf of En+ Group Limited who does not submit and will not submit such statement in these arbitral proceedings.

3 Also, this Statement of Claims is not submitted towards Rudnici Boksita Niksic A.D. against which Claimant will not pursue any claims in these arbitral proceedings.

4 Claimant suggests that the Tribunal issues an order for the termination of the arbitral proceedings with regard to EN+ Group Limited and Rudnici Boksita Niksic A.D., so that the Parties to these proceedings are from now on merely the Claimant and the Respondents 1-5.

5 In this Statement of Claims, in order not to overburden the procedure at this point, Claimant submits the facts and documentation of the dispute that fully support the motions brought forward below. Claimant reserves the right - depending on the extent the Respondents think it necessary to deny the facts presented herein in the Statement of Defence - to add additional facts and documentation in the response to the Statement of Defence.

B. Facts

1. Privatization of KAP and RBN

6 As part of an effort to privatize the state owned alumina industry, in 2004 the State of Montenegro (Respondent 1 or "**SoM**") initiated a tender offer with the aim to sell a majority shareholding in the aluminium smelter company Kombinat Aluminijuma Podgorica A.D., Montenegro (Respondent 5 or "**KAP**") and shares in the bauxite mines company Rudnici Boksita A.D. Niksic, Montenegro ("**RBN**").

Exhibit Doc. C1: SoM's Privatization Strategy of June 2004

7 Still at the time of Yugoslavia, KAP's was set up as state-owned company and commenced operations in the 1970s. The plant increased its capacity throughout the 1980s. By the early 2000s, KAP faced serious financial difficulties and needed major investments to update its obsolete facilities and to improve the plant's environmental standards. The SoM viewed foreign capital and know-how as the only means to improve the competitiveness of the failing state-run and unsuccessful company and to turn the operations of KAP into a viable going concern. The Privatization Strategy (Exhibit Doc C 1, page 7) points out that

> "*the target of the privatization of KAP for the Government of Montenegro is to ensure survival and long-term development of the Company*"
>
> and that
>
> *"[foreign investment] will secure the position of KAP on international markets, improve its competitiveness and allow rehabilitation of production tool by introduction of new technologies and international standards of business and management*".

8 After going through the tender process, in 2005 CEAC Holdings Limited (Claimant or "**CEAC**") acquired from three Montenegrin state entities (Respondents 2, 3 and 4 or collectively "**Sellers**") 65.4394% of the shares in KAP and 32.0455% of the shares in RBN. On 20 November 2005 CEAC acquired additional shares in RBN representing 31.5836% of the outstanding capital on the stock exchange in total. Af-

ter the emission of new shares in KAP in 2008, CEAC's shareholding in KAP amounted to 58.72%.

9 The "Agreement for the Sale and Purchase of the Funds' Shares in Kombinat Aluminiuma Podgorica A.D." ("**SPA-KAP**") was signed on 27 July 2005 and – after amending the SPA-KAP twice - closed on 30 November 2005.

> SPA-KAP including its Annexes is enclosed as **Exhibit Doc. C 2**, the Amendment of October 24, 2005 is enclosed as **Exhibit Doc. C 3**, the Closing Documents are enclosed as **Exhibit Doc. C 4** and the Appendix to Annex 10 is enclosed as **Exhibit Doc. C 5**

10 The "Agreement for the Sale and Purchase of the Shares of the Company Rudnici Boksita AD Niksic" ("**SPA-RBN**") was signed on 17 October 2005 and closing occurred on 30 November 2005 (SPA-KAP and SPA-RBN together referred to as "**SPAs**").

> SPA-RBN including its Annexes is enclosed as **Exhibit Doc. C6**, the Closing Documents are enclosed as **Exhibit Doc C 7** and the Supplement to the SPA-RBN is enclosed as **Exhibit Doc C 8**.

11 The SoM was also a party to the SPAs, *inter alia*, as co-debtor for certain obligations, in particular under sections 5.3.4, of the SPAs.

12 The shareholder of CEAC, the En+ Group Limited ("**En+**") aimed to build KAP to be a leading aluminium producer in Central Europe with one of the most modern smelters in Europe. CEAC's strategy was based on the growing aluminium demand in Europe and the shutdown of a number of smelters in the region. KAP's geographical location was also of interest when CEAC made its decision to invest in KAP. KAP has easy access to an Adriatic port and RBN's bauxite mines are located nearby.

2. Failed Privatization of Electricity Supply

13 However, at the time and until today, the crucial issue of a successful restructuring of KAP was the electricity supply. Aluminium smelters require enormous amounts of electricity. For the profitability of production of aluminium it is necessary to have long-term reliable electricity available at reasonable prices. The SoM and the Sellers were well aware of this fact when KAP was initially put on the tender process, as

the necessity for a new basis for the electricity supply was mentioned explicitly in the Privatization Strategy (see Exhibit 1, page 13). Consequently, already during the tender process the Sellers and the SoM assured CEAC that electrical power assets in Montenegro were also going to be privatized immediately following the privatization of KAP and RBN.

14 And indeed, in 2006 the SoM announced a tender for a state-owed coal power plant in the city of Plyevlja ("**TEP**"). En+, the owner of CEAC, made a bid proposing an investment strategy which included the modernization of the existing power plant of TEP and the acquisition of a 31% stake in the adjacent state-owned coal mine Rudnik Uglia. The tender included the construction of a second block at TEP in order to overcome the drastic electricity shortage Montenegro faced at the time. En+ was willing to pay € 45 million for the power plant and commit to further investments of € 195.4 in the plant. It was further willing to build an additional 225 MW unit for a further estimated € 179.97 by 2011. Finally it offered € 5 million for the coal mine of Rudnik Uglia and was willing to commit to an investment in the mine of further € 78.74 million.

15 All these investments were aimed at securing a reasonably priced electricity supply to KAP. The implementation of En+'s investment proposal would have settled the electricity supply demands for KAP. En+ won the tender, but despite KAP's needs for electricity supply and the SoM's knowledge of this key issue, the SoM terminated the tender due to political disputes in the Montenegrin Parliament. Officially, it was argued that the power industry should remain under state control and not be privatized. As a result of SoM's decision, KAP's long-term electricity supply demand for reasonable prices is still unsettled.

3. The First Arbitration

16 Soon after the Closing, CEAC discovered that numerous representations and warranties made by the Sellers and the SoM in the SPAs were wrong or had been breached and contractual covenants and obligations arising from the SPAs were not duly fulfilled by the Sellers and the SoM.

17 As per the provisions of the SPAs, a Notice of Breach was served upon the Sellers and the SoM on 26 May 2006 in which CEAC specified the factual basis of the breaches of representations and warranties. Follow-

ing the service of the Notice of Breach, CEAC made several attempts to initiate negotiations with the Sellers and the SoM to settle mutually the dispute, but Sellers refused to find an amicable settlement. This principle unwillingness to enter into serious and respectful negotiations with CEAC as the key investor in Montenegro's economy is one of the characteristics of the SoM. This lack of readiness to communicate and the unwillingness to adhere to its contractual obligations are the root causes for the continued legal disputes Montenegro is facing, not only with CEAC, but with a number of foreign investors in the county.

18 On 27 November 2007 CEAC initiated UNCITRAL arbitral proceedings in Frankfurt am Main, Germany, in accordance with the SPAs and brought forward claims in the total amount of more than € 375 million ("**First Arbitration**"). CEAC claimed compensation to be paid to itself in the total amount of € 205.9 million and to be paid to KAP and RBN in the amount of € 141.4 million and US$ 2.1 million. For details of the subject matters and amounts claimed in the First Arbitration see E. below. Further claims were brought forward regarding SoM's obligations to waive certain receivables, to indemnify KAP and RBN for certain potential liabilities, to assume certain debts and for a declarative statement that certain liabilities of KAP were not due. Many of these claims are not only based on breach of contractual obligations were for damages caused deliberately by Respondents 1-4.

4. Development after 2006

19 In the following years KAP and RBN had liquidity and structural problems.

20 The financial difficulties, which in particular KAP suffered, arose, *inter alia*, from the lack of security to be supplied with electricity at a reasonable price. KAP's electricity purchase price increased dramatically from 2005 to 2008. This made it impossible for KAP to profitably produce aluminium. KAP was making losses on every ton of aluminium it produced. In order to meet the electricity supply demand of KAP, CEAC considered to acquire power assets or to build new power capacities in the region including in Serbia and Bosnia, but CEAC's efforts failed. All alternative sources in the countries surrounding Montenegro would not provide enough capacity that CEAC could spend on KAP as they were predominantly required for local consumers. As a matter of fact, at the time all of the western Balkans suffered, and is still suffering

today, from a dramatic shortage of electricity supply. All the years, the key to this problem would have been to allow a substantial private investment into the electricity infrastructure. Though such investments in electricity supplies were the basis of the Privatization Strategy, the SoM continuously boycotted even talking about seriously.

21 In 2009 the SoM announced a tender to purchase a 18.3% stake in the state-controlled power company Elektroprivreda Crne Gore AD Nikšić ("**EPCG**") which is the electricity supplier of KAP and all of Montenegro. However, due to the fact that only a minority stake was tendered that would not have allowed the minority investor to influence the decision-making process or investment plans of EPCG, CEAC did not submit a bid. In fact, this tender would not have been a real solution of the problem with the electricity supply of KAP, as EPCG would still have been under SoM's exclusive control.

22 While the First Arbitration was still pending, it became obvious for the SoM's decision makers that the SoM had initiated a flawed privatization process in the course of which CEAC had invested a substantial three digit million amount invested into the Montenegrin economy.

23 Only in 2009 SoM finally agreed to enter into negotiations to find an amicable solution. CEAC proceeded with these talks relying on the expressed will of the SoM to finally, after years of legal battle and economic struggle of KAP, provide to KAP a viable basis for its business, restructure the electricity supply, reduce the workforce to sustainable levels, clean up the environmental problems KAP's historic production had caused and to fulfill SoM's and the Sellers' various unfulfilled obligations from the SPAs. Both Parties were aware that the restructuring process was not over with the Settlement, but the Settlement Agreement and the KAP Shareholders' Agreement were supposed to be the starting point for a productive cooperation between the Parties. The SoM made CEAC believe that by giving up the claims under the First Arbitration, the SoM would – as a new major shareholder - in return start working on a realistic and economically sound basis for the aluminium production in the country. This proved to be a vain expectation of CEAC.

5. Agreements of 2009/2010

a) Settlement Agreement

24 After lengthy discussions, the parties agreed upon a Settlement Agreement which was signed on 16 November 2009 ("**Settlement Agreement**").

Exhibit Doc. C 9: Settlement Agreement without appendices

25 Except for the closing and miscellaneous provisions in the Settlement Agreement, which were already effective upon signing of the Settlement Agreement, the Settlement Agreement only came into effect when closing took place by signing the closing certificates on 26 October 2010.

Exhibit Doc. C 10: Closing Certificate

26 The Settlement Agreement was entered into between CEAC and En+, KAP, RBN, the SoM and the Sellers in order to strengthen KAP's and RBN's financial status and to jointly take care of the companies' "survival". In particular, the SoM confirmed that its "*primary goal is to support the financial recovery of the companies*" (Recital D. of the Settlement Agreement).

27 *Inter alia*, the parties agreed as follows:

28 Pursuant to clauses 4 et seqq. of the Settlement Agreement and clause 5 of the Closing Certificate the SoM assumed the commitment towards KAP to issue five state guarantees of € 131.68 million in total for existing and new debts owed by KAP ("**State Guarantees**"). It was agreed that the State Guarantees should be used to raise funds for the refinancing of debts of KAP and for raising the companies' working capital.

29 A further obligation of the SoM towards KAP was that one of the State Guarantees should be used to obtain the financing facility for KAP in order to run a redundancy programme concerning approximately 2,400 employees of KAP and RBN. The Settlement Agreement included a social program whereby KAP was authorized by the SoM to reduce its workforce to 1,300 employees.

30 Pursuant to clause 10.1 of the Settlement Agreement it was the obligation of KAP and RBN to indemnify the SoM from and against any pay-

ments of the SoM under the State Guarantees. Pursuant to Clause 28.1 lit. g) of the Settlement Agreement, the enforcement of the State Guarantees against the SoM should only be deemed as an event of failure of restructuring if the payments made by the SoM under the guarantees exceed the amount of € 40 million. Therefore, SoM made a commitment to KAP and RBN that clearly implied the possibility (and obligation to accept) that there will – to a certain extent - be an exposure under the State Guarantees.

31 Clause 11 of the Settlement Agreement provided for a new price formula for electricity supply to KAP by the state-controlled electricity provider Elektroprivreda Crne Gore AD Niksic ("**EPCG**") to be applied in the time period from 1 January 2009 to 31 December 2012. The electricity price formula was linked to the average primary aluminium price at London Metal Exchange ("**LME**").

32 Pursuant to clause 11.3 of the Settlement Agreement, as a further obligation to KAP, the SoM undertook to pay to EPCG until the end of 2012 the difference between the electricity price calculated in accordance with the formula agreed upon in the Settlement Agreement and the electricity price as regulated by the Energy Regulatory Agency of Montenegro. SoM's subsidies were limited to the total net amount of € 60 million.

33 In view of the crucial importance of the electricity supply to KAP the SoM agreed towards KAP to use their *"best endeavors … for the purpose of achieving the maximum production quantities and optimal price"* (cf. clause 11.5 of the Settlement Agreement).

34 Pursuant to clause 23.5 and 23.6 of the Settlement Agreement, the SoM should have paid to KAP the "Drawn Amounts" totaling € 7,808,132.70.

35 The Montenegrin Commission for the Control of State Support and Assistance rendered a decision dated 24 November 2009 in which compliance of the measures set forth in the Settlement Agreement with the Montenegrin Law on Control of State Support and Assistance was confirmed.

Exhibit Doc C. 11: Decision of the Montenegrin Commission for the Control of State Support and Assistance of 24 November 2009

36 In the interest of finding a solution for KAP and RBN and on the basis of the SoM's statement that its „*primary goal is to support the financial recovery of the companies*" (cf. Recitals D. of the Settlement Agreement), CEAC agreed to waive its claims against the SoM and the Sellers it had brought forward in the First Arbitration in the total amount of more than € 375 million, cf. clause 27.1 of the Settlement Agreement. In accordance with the obligations of the parties under clause 26 of the Settlement Agreement, a joint letter of CEAC, the SoM and the Sellers was sent to the arbitral tribunal requesting the termination of the arbitral proceedings. On 16 November 2010 the arbitral tribunal rendered a decision on the termination of the First Arbitration.

37 Additionally, each of CEAC and En+ undertook to waive all its claims against KAP and RBN that CEAC and En+, respectively, had on 2 June 2009 (cf. clause 13.3 of the Settlement Agreement). Pursuant to clause 13.5 of the settlement Agreement CEAC waived claims against KAP in the amount of € 40,406,434 effective upon Closing, which took place on 26 October 2010. Further, CEAC agreed to waive claims against KAP in the amount of USD 27,790,234 at a later stage but before December 31, 2018, cf. clause 13.6 and 13.3 of the Settlement Agreement.

38 The choice of law clause in section 34.1 of Settlement Agreement reads as follows:

> „*(a) This Agreement, including the arbitration clause, is governed by the laws of Montenegro, excluding international private law and the CISG, except as provided in the next provision of this clause.*
>
> *(b) The provision of this Agreement on the termination of the SPAs (clause 17), on the termination of the Arbitration Proceedings (clause 26) and on the waiver of claims in the Arbitration Proceedings(clause 27) shall be governed by the laws of the Federal Republic of Germany, excluding international private law and the CISG.*"

b) KAP Shareholders' Agreement

39 As provided in clause 1 of the Settlement Agreement, on 26 October 2010 CEAC and the SoM entered into a separate shareholders' agreement in respect of KAP to be attached to the Settlement Agreement as

Appendix 3 ("**KAP Shareholders' Agreement**"). As set forth at the end of the recitals of that agreement it was made "*in order to ensure the harmonious and successful management and control of*" KAP.

Exhibit Doc. C 12: KAP Shareholders' Agreement

40 Pursuant to clause 2 of the KAP Shareholders' Agreement CEAC transferred 50% of its shares in KAP, i.e., 3,117,536 shares in KAP, and RBN to the SoM so that CEAC and SoM hold the same quantity of shares in KAP and RBN.

41 As provided in clause 2.2 of the KAP Shareholders' Agreement the purchase price to be paid by the SoM to CEAC amounted to € 1.00. The nominal value of each share in KAP was € 5.0510, cf clause 2.2 lit. b) of the settlement Agreement. Thus, the total nominal value of the transferred shares was € 15,746,674.34.

42 Within the concept of equal co-shareholding of CEAC and the SoM both parties agreed upon mutual rights and obligations to ensure a successful management of KAP. In clause 3.1 of the KAP Shareholders' Agreement it was agreed that the KAP Board of Directors shall consist of five directors, of which CEAC was allowed to nominate two members and the SoM had the right to nominate one member. Under clause 3.2 o the KAP Shareholders' Agreement, CEAC was entitled to nominate the Chairman of Board of Directors and the Executive Director of KAP. CEAC maintained its operational and management role at KAP. But the SoM's nominee to the Board of Directors had a veto right relating to numerous matters set forth in clause 5.1 of the KAP Shareholders' Agreement.

43 Further, a pooling agreement was made in clause 4 of the KAP Shareholders' Agreement. In particular, pursuant to its clause 4.1 lit. c), last half sentence, no voting rights or other powers of control should be exercised to pass a decision on KAP's bankruptcy.

44 The choice of law clause in clause 15 of the KAP Shareholders' Agreements' reads as follows:

> "*This Shareholders' Agreement and the rights of the Parties hereto shall be governed by and construed in accordance with the laws of Montenegro.*"

45 Both the Settlement Agreement (clause 34.3) and the KAP Shareholders' Agreement (clause 16.2) refer any dispute to arbitral proceedings under UNCITRAL Arbitration Rules "*as at present in force*".

46 Pursuant to clause 34.4 of the Settlement Agreement the Sellers and the SoM "*shall not claim and hereby irrevocably waive any immunity in respect of the obligations under this Agreement from suit, judgement, execution, enforcement, attachment or other legal process.*" Clause 18.3 of the KAP Shareholders' Agreement contains a corresponding waiver of immunity.

6. CEAC's fulfilment of the Settlement Agreement

47 CEAC and En+ fulfilled all of their obligations under the Settlement Agreement and under the agreements referred in or attached to the Settlement Agreement. In particular, CEAC also fulfilled all of its obligations under the KAP Shareholders' Agreement.

48 Furthermore, in reliance of the SoM's compliance with the KAP Shareholders' Agreement and the Settlement Agreement, CEAC and En+ provided further financial assistance to KAP. Under the long term loan facility, which provides for 7% interest on any outstanding amount, since the signing of the Settlement Agreement, CEAC paid to KAP the following loan amounts:

Date	Loan Amount paid to KAP	Total Open Amount	Days	Interest
31.12.2009	2.202.500,00	2.202.500,00		
30.06.2010	1.600.000,00	3.802.500,00	181	7.6245,01
17.08.2010	2.500.000,00	6.302.500,00	48	34.908,20
30.09.2010	1.000.000,00	7.302.500,00	44	53.037,43
26.10.2010	1.650.000,00	8.952.500,00	26	76.245,01
30.11.2010	2.000.000,00	10.952.500,00	35	59.927,94
24.12.2010	1.250.000,00	12.202.500,00	24	50.273,77
31.12.2010	2.000.000,00	14.202.500,00	7	16.336,68
14.04.2011	1.543.857,60	15.746.357,60	104	282.497,81
30.06.2011	800.000,00	16.546.357,60	77	231.893,08
13.10.2011	500.000,00	17.046.357,60	105	332.283,41
24.11.2011	500.000,00	17.546.357,60	42	136.929,76
28.11.2011	2.000.000,00	19.546.357,60	4	13.423,44
30.11.2011	2.000.000,00	21.546.357,60	2	7.476,75

31.12.2011	1.359.406,49	22.905.764,09	31	127.747,53
Total	22.905.764,09			1.499.225,83

49 Therefore, after signing of the Settlement Agreement CEAC granted additional loans to KAP in the aggregate amount of 22.905.764,09 and was entitled to interest payments in the amount of Euro 1.499.225,83 until end of 2011 plus further interest of Euro 4,380,88 per day since January 1, 2012.

50 Further, on 14 January 2010, after signing of the Settlement Agreement, En+ made a payment of USD 41,440,075.22 to KAP's lenders under the "KAP Facility Agreement" KAP had entered into with various lenders on 11 April 2007. Consequently, En+ thereby became lender to KAP in the same amount and the parties formalized this loan relationship in an Agreement of 18 June 2010.

Exhibit Doc. C 13: Loan Agreement En+ to KAP of 18 June 2010

51 The interest on this loan from En+ to KAP was agreed to be 8.25% above LIBOR and was capitalized monthly in accordance with the loan agreement. The outstanding amount including interest per 8 July 2013 is USD 55.752.030,64.

Exhibit Doc. C 14: Excel Sheet calculation

7. The SoM's Plan to expel KAP

52 Following a clear plan, at the latest starting in the end of 2010, the SoM did everything possible to assume full control over KAP and to *de facto* invalidate CEAC's shareholding.

53 This plan was made explicit by the Parliament of the SoM in its resolutions of 29 February 2012 in which the key request was to instruct "*the Government of Montenegro, pursuant to the law or the agreement, to terminate cooperation with CEAC in the most efficient manner possible, and take control at KAP.*"

Exhibit Doc. C 15: Resolution of the Parliament of the SoM of 29 February 2012

54 The following, even more radical resolution of 8 June 2012 reads as follows:

55 *"1. The Parliament of Montenegro insists on the consistent implementation of the conclusions adopted on 29 February 2012.*

56 *2. The Parliament of Montenegro calls on the Government of Montenegro to, as soon as possible, continue with activities in order to realize the key request by the Parliament of Monetnegro concerning termination of cooperation with CEAC, in the manner deemed most efficient by the Government (...)".*

Exhibit Doc. C 16: Resolution of the Parliament of the SoM of 8 June 2012

57 This means nothing less than pushing CEAC, who invested a three digit million amount into the Montenegrin economy, out of the country, by whatever legal or illegal means available. The arguments for such actions were false and manufactured and largely motivated by nationalistic bias. But despite the obvious inaccuracy of the Parliament's arguments, indeed, the SoM worked persistently on putting the consummation of this resolution into practice, a request which is in clear contradiction to SoM's obligations under the Settlement Agreement and the KAP Shareholders' Agreement.

58 The way how this plan to expel CEAC was put in place was to deliberately push KAP into an insolvency proceeding and then taking over the control of KAP through a selected insolvency administrator and a fully state-owned company which was installed as managing entity for KAP.

59 First, the SoM in the years 2011 to 2013 undermined all of CEAC's efforts to reach a long term restructuring of KAP. SoM did neither pay all the subsidies for electricity it promised in the Settlement Agreement nor did provide the required assistance for resolving the long term problem of proper electricity supply at reasonable prices but deliberately placed KAP in a situation in which the crucial electricity supply was completely unsecured. Further, the SoM obstructed the board of KAP by vetoing resolutions on the adoption of a business plan and the financial statements that led to an event of default under the loan facility with Deutsche Bank.

60 On 14 June 2013, the SoM filed a "*Petition for Commencing of Bankruptcy Proceedings*" against KAP. The filing by SoM was based solely on its alleged claims against KAP resulting from SoM's payment to-

wards a State Guarantee provided to Deutsche Bank for its loan to KAP of € 22 million.

Exhibit Doc. C 17: The SoM's Bankruptcy Petition

61 The SoM had purposefully caused the acceleration of this loan and, thereby caused the pretext for its own petition for insolvency of KAP. By these illegal and ruthless actions (described in more detail in section B.8 below), the SoM not only deliberately breached its contractual obligations, but willfully devalued CEAC's economic interest in KAP.

8. Specific Breaches prior to Insolvency Petition

62 The SoM breached core obligations under the Settlement Agreement and the KAP Shareholders' Agreement, including its obligations vis-á-vis its co-shareholder CEAC.

a) Restructuring of KAP thwarted by the SoM

63 Despite of its obligations towards CEAC under the Settlement Agreement and the KAP Shareholders' Agreement the SoM repeatedly obstructed the restructuring plans which were developed by CEAC in order to ensure KAP's viability and to enable the transformation of KAP to a profitable entity. Had the SoM duly cooperated in these efforts and accepted one of the several well prepared plans for a restructuring, KAP would by now be a financially well positioned profitable and thereby valuable company.

(1) 2011

64 After conclusion of the Settlement Agreement the decrease of global aluminum prices had continued and at the beginning of 2011 the financial situation of KAP was very difficult. Further, it became foreseeable that after the expiration of the subsidies agreed upon in clause 11.3 of the Settlement Agreement in 2012 KAP would be confronted with considerably higher electricity prices than in the past due to the difficult power supply situation in the whole region. These issues came on top of the already existing necessity to take actions in order to secure the viability of KAP.

65 CEAC recognized the urgent need for the development of appropriate restructuring measures. At the beginning of 2011, the management of KAP engaged the international investment bank Houlihan Lokey which

is specialized in advising on restructuring. With significant support by Houlihan Lokey the management of KAP developed a detailed restructuring plan. Houlihan Lokey staff members communicated directly with representatives of the SoM and participated in meetings with the management of KAP and representatives of the SoM.

66 On 14 April 2011, the CEO of KAP invited the Montenegrin Minister of Economy, Mr. Vladimir Kavaric, and the Director of the Departement for Industry and Entrepreneurship of the Ministry of Economy, Mr. Kujovic, to a KAP stakeholders' meeting in Podgorica on 20 April 2011 which was scheduled to *"provide an update on (KAP's) operational and financial status – aimed at engaging its stakeholders in productive discussions around solutions to the company's long-term sustainability"***.**

Exhibit Doc. C 18: KAP letter of 14 April 2011, invitation to KAP stakeholders' meeting

67 In the meeting of 20 April 2011, Houlihan Lokey and the management of KAP delivered their presentation "Kombinat Aluminijuma Podgorica - Path to Stability and Long-term Sustainability" ("**Presentation April 2011**").

Exhibit Doc. C 19: Presentation April 2011

68 A more detailed description of the different restructuring scenarios was set out in the presentation "Review of Financial Restructuring Scenarios" ("**Presentation June 2011**") which Houlihan Lokey and the management of KAP delivered in a further meeting which took place on 9 June 2011

Exhibit Doc. C 20: Presentation June 2011

69 As set out in the Presentation April 2011, the management of KAP had to deal with KAP's legacy of having been "*ranked bottom of the fourth cash-cost quartile*" and having been "*the world's most inefficient aluminum producer*" (p. 3). However, the management of KAP had already started "*the process of developing a plan to dramatically improve KAP's cost structure, make the company competitive and generate positive cash flows*" (p. 2). But as of April 2011 the diagnosis was that the *"KAP plant is currently uncompetitive"* (p. 7).

70 One of the main challenges with regard to KAP's cost structure was that the "*head count remains above industry norm*" (Presentation April 2011, p. 7). The "*high head count and labour costs*" required the "*complete implementation of redundancy program*" (Presentation April 2011, p. 4).

71 But first and above all, the "*operational challenge (which) must be addressed to assure long-term financial viability"* was the *"electricity costs (being) above* aluminum *market average"*. Based upon the analysis of Houlihan Lokey a solution to *"secure competitive long-term electricity supply"* was required (Presentation April 2011, p. 7).

72 But it was made clear that a reduction of the electricity price alone would not be sufficient. Even in Scenario A of the Presentation June 2010 which was based on the assumption that electricity price for KAP would be reduced to € 26/ MWh the conclusion was that substantial contributions from its major shareholders (CEAC and SoM) were required. Otherwise KAP would "*remain highly leveraged and unable to repay any meaningful portion of its € 123.7 million in financial debt falling due after 2015*" (Presentation June 2011, p. 5). In 2011, KAP was *"faced with unsustainable debt levels"*. Therefore, *"stakeholders need to restructure/reschedule existing obligations to ensure long-term liability of the business."* In particular, CEAC and the SoM had *"to consider debt for equity swaps"*. (Presentation April 2011, p. 8.)

73 In scenarios B to E of the Presentation June 2010 different alternatives for the shareholders' contributions were presented. The result was that contributions by En+ and CEAC in the total amount of approx. € 100 million (claim cancellation and debt assumption) and contribution by the SoM in the total amount of approx. € 81 million (debt assumption and subsidies/credits) were required in order to establish the company *"with a sustainable debt profile"* (Presentation June 2011, p. 9, see also p. 4 *et seqq*.).

74 With regard to the liquidity situation the Presentation June 2011 stated explicitly: *"KAP is faced with rapidly approaching July cash gap, threatening to irreversibly compromise the company's operations"* (p. 2). Further, it was made clear, that *"unless the company's financial debt is restructured, an unaltered repayment profile results in a 2011 cash gap of € 36.6 million"* (p. 10). *"The imminent challenges faced by KAP require its two major shareholders to agree terms of a financial*

restructuring proposal (...) as a matter of urgency, incorporating the following key features: (...) Breaching of 2011 cash gab" (p. 2).

75 CEAC and En+ were absolutely prepared to implement the restructuring measures developed by Houlihan Lokey, including providing the full contributions required to reach a sustainable debt profile of and including a debt to equity swap.

76 Initially, also the representative of the SoM showed a positive reaction. E.g., they started to talk with KAP and CEAC about further options in order to meet with the requirements as set out in the presentations prepared by Houlihan Lokey and the management of KAP.

77 CEAC and the SoM were also fully aware of the necessity of bridging the 2011 liquidity gap as long as the restructuring of KAP's debts was not achieved. There was consensus that insofar the priority was to secure the operational process of KAP as well as to avoid events of default under the loan agreements with several banks which were secured by the State Guarantees. At this point of time it was of utmost interest to the SoM that the State Guarantees would not be enforced. Therefore, it was accepted that to the extent to which liquidity was not sufficient for all due liabilities the payments to the state controlled power company EPCG should be delayed.

78 This also became apparent in the Memorandum of Understanding signed by the State of Montenegro and the En+ Group on 10 June 2011 pursuant to which KAP should *"use all reasonable efforts to secure a standstill agreement until 31 October 2011 in respect of (...) KAP's overdue 2011 payables for electricity consumption"*.

> **Exhibit Doc. C 21:** Memorandum of Understanding of 10 June 2011.

79 As set forth in the Memorandum of Understanding the parties could reach some consensus regarding the liquidity issues. However, in spite of SoM's initial apparent willingness to support the restructuring efforts, very soon CEAC and the management of KAP had to realize that the SoM was not prepared at all to implement the measures required. As of late summer 2011 the SoM did just not react anymore to requests to continue the negotiation. For example, Mr. Dimitry Potrubach, the CFO of KAP at the time, tried persistently to get in contact with the representatives of the SoM, however, without success. Mr. Potrubach

had the impression that the representatives of the SoM were actually hiding from him.

80 The SoM did also not support KAP in its efforts to reach a standstill agreement with EPCG even though it had been agreed that for the time being it is inevitable that payments to EPCG must be delayed – not only in order to secure the operational process of KAP, but also in order to protect the SoM itself against enforcement of its State Guarantees. This was another proof of the obstruction policy of the SoM. Due to its majority shareholding in EPCG, the SoM could have easily controlled the position of EPCG as it did it in many other occasions.

81 The refusal of the SoM to give any assistance to KAP with regard to the massive electricity price problem was also a breach of the Memorandum of Understanding of 10 June 2010. In its clause 6 also the SoM had promised *"to use (its) best efforts to ensure KAP's long-term operational viability and financial solvency by agreeing terms no later than 31 October 2011 on (...) an introduction of measures to reduce the company's expenditures for electricity consumption until at least 31 December 2015"* (Exhibit Doc. C 21). However, the SoM did support KAP neither with regard to the standstill agreement nor with regard to a reduction of the future electricity expenditures.

82 Eventually, the SoM's negative stance towards any restructuring became apparent when at beginning of November 2011, the SoM (unsuccessfully) tried to make groundless allegations against CEAC that it supposedly was in breach with its obligations. Also, by unilaterally negotiating with one of the lenders, Deutsche Bank, without involvement of CEAC or KAP, it clearly abandoned the route to restructure KAP and frustrated all efforts on the side of CEAC. SoM, still being one of the two major shareholders of KAP together with CEAC, started to work on destroying the going concern of KAP.

83 Had the restructuring been put in place, with contributions of all sides, the final demise of KAP could have been prevented. The company would have been relieved of its unsustainable, historic debt level and with a serious effort also the cost problem of the ongoing operations could have been solved. KAP would have been a valuable and successful enterprise.

(2) 2012

84 CEAC continued its efforts to reach the urgently needed restructuring of KAP. In March 2012, CEAC made yet another attempt to reach a solution with the SoM.

85 On 15 March 2012 CEAC sent a Term Sheet to the SoM dated February 2012 in which CEAC had summarized its new proposal for the restructuring ("**Term Sheet 2-12**").

Exhibit Doc. C 22: Term Sheet 2-12.

86 CEAC proposed to resolve the financial crisis of KAP by way of a debt to equity swap in the total amount of € 212,190,891 and USD 80,595,330 as set forth in particular in clause 1 and 4 of the Term Sheet 2-14 (Exhibit Doc. C 22) and its Schedule 1:

87 Certain debts towards Deutsche Bank, OTP Bank and VTB Bank which were secured by the State Guarantees should be assumed by the SoM and this debt of KAP should be converted into shares in KAP to be held by SoM:

Loans which shall be converted into equity/ shares of KAP by Montenegro:				
Creditor	Document	Currency	Outstanding debt	Total incl. interest
VTB Bank (Austria) AG	MTFFA (amended and restated) Facility A Loan	EUR	60,000,000	61,497,223
OPT Bank Plc.	Refinancing Facility Agreement, Facility A/B	EUR	18,668,889	18,838,292
OPT Bank Plc.	Montenegrobonus Agreement	EUR	2,583,333	2,606,775
OPT Bank Plc.	Restructuring Agreement	EUR	20,945,603	21,064,883
Deutsche Bank A.G.	EUR 22,000,000 Facility Agreement dd 25/06/2010.	EUR	22,000,000	22,149,153
				126,156,326

88 CEAC would secure that VTB Bank Austria accepts to convert further claims against KAP into equity:

Loan which shall be converted into equity/ shares of KAP by VTB Bank AG Austria				
Creditor	Document	Currency	Outstanding debt	Total incl. interest
VTB Bank (Austria) AG	MTFFA (amended and restated) Facility B Loan	EUR	32,608,358	32,723,156

89 Further, CEAC would assume the claims of En+ against KAP and, thereafter, the assumed and the existing claims of CEAC against KAP would be converted into new shares in KAP for CEAC:

Loan which shall be converted into equity/ shares of KAP by CEAC Holdings Ltd				
Creditor	Document	Currency	Outstanding debt	Total incl. interest
CEAC Holdings Ltd	Loan Agreement	USD	25,592,000	30,989,265
CEAC Holdings Ltd	Loan Agreement	EUR	23,905,764	24,335,113
En+	Agreement no.5710	USD	49,606,065	49,606,065
				EUR 4,335,113 And USD 80,595,330

90 CEAC proposed that, in addition, the claims of EPCG against KAP should be converted into new shares in KAP for EPCG:

Loan which shall be converted into equity/ shares of KAP by EPCG				
Creditor	Document	Currency	Outstanding debt	Total
EPCG		EUR	28,976,296	28,976,296

91 In order to secure a long-term electricity supply, CEAC proposed an extension of the existing LME linked supply agreement between EPCG and KAP on a long-term basis (cf. clauses 2.1, 3.3 and 7 and Schedule 2).

92 In order to convince the SoM not to continue its obstruction policy, CEAC was even prepared to dramatically change the internal structure of KAP: CEAC proposed that after the debt to equity swap the board of directors of KAP should consist of 7 members, of which the SoM should be allowed to nominate 2 members, EPCG 1 member, CEAC 2 members and VTB 1 member. The 7th member of the board of directors should be an independent person with neither material interest in KAP nor relationship with the SoM or the En+ Group and should be selected from the panel of International Association of Independent Directors in London (cf. clause 5.6).

93 Further, CEAC proposed some minority protection provisions in favor of CEAC and the SoM and specific veto rights for both sides (cf. clause 5 and 6.1.b).

94 Finally, CEAC proposed to agree upon an exit strategy: Pursuant to clause 8.1 of the Term Sheet 15-3-12, the SoM and CEAC should *"agree to co-operate to create the conditions necessary for a successful sale of majority shareholding in KAP within 2 years as of completion of the restructuring."*

95 The initial reaction of the SoM was positive insofar as it showed willingness to enter into negotiation on CEAC's proposal – cf. email from Ms. Biserka Dragićević, advisor to the Montenegrin Minister of Economy, of 2 April 2012.

Exhibit Doc. C 23: Email of Ms. Dragićević of 2 April 2012

96 Attached to the aforementioned email CEAC received from the SoM a black-lined version of the Term Sheet ("**Mark-up Term Sheet**") with numerous requests for amendments.

Exhibit Doc. C 24: Mark-up Term Sheet

97 At the beginning, the negotiations between CEAC and the SoM developed in a rather normal course of events:

98 On 9 April 2012, the law firm Harrisons **("Harrisons")**, representing CEAC, sent a revised version of the Term Sheet to the SoM in response to the mark up Term Sheet.

Exhibit Doc. C 25: Email of Harrisons of 9 April 2012.

99 On 11 April 2012, Ms. Dragićević confirmed that the representatives of the SoM are available for a meeting on 17 April 2012.

Exhibit Doc. C 26: Email from Ms. Dragićević of 11 April 2012.

100 By several further emails of 11 and 12 April 2012 the parties agreed on time and place of the meeting.

Exhibits Doc. C 27: Emails of the parties' representatives of 11 and 12 April 2012.

101 In the meeting on 17 April 2012, the negotiating teams of both sides reached to a provisional agreement on the Term Sheet. On the same day, CEAC sent the text of the revised Term Sheet as negotiated in the meeting to the representatives of the SoM.

Exhibit Doc. C 28: Email of Harrisons of 17 April 2012.

102 On 18 April 2012, Ms. Besarević from the law firm Schoenherr ("**Schoenherr**") answered on behalf of the SoM that they have only *"certain minor, mostly typography, amendments"* and enclosed a black-lined version of the Term Sheet. Schoenherr mentioned the following: *"As stated at the meeting, the current draft of the Term Sheet [as a result of yesterday's negotiations] is subject to the approval by the SoM's competent authorities, in particular the matter of exit options, the power agreement and the BoD's structure."*

Exhibit Doc. C 29: Email of Schoenherr of 18 April 2012.

103 On 21 April 2012, Schoenherr on behalf of the SoM informed CEAC that the SoM requires another amendment to the negotiated version of the Term Sheet. In the interest of finding a solution for KAP, CEAC was prepared to find a compromise on that issue and made a corresponding proposal on 23 April 2012 which was agreed between both sides by emails of 25 April 2012.

Exhibit Doc. C 30: Email of Schoenherr of 21 April 2012.
Exhibit Doc. C 31: Email of Harrisons of 23 April 2012.
Exhibit Doc. C 32: Email of Schoenherr of 25 April 2012
Exhibit Doc. C 33: Email of Harrisons of 25 April 2012.

104 In the following time until May 2012, the representatives of the SoM started several times to re-negotiate the agreed upon Term Sheet. CEAC begun to understand that, again, the SoM had not seriously negotiated on the restructuring. Nevertheless, in order not to miss the slightest chance to find a solution for KAP, CEAC continued to be prepared to compromise on the issues raised by the SoM.

105 However, on 31 May 2012 Schoenherr on behalf of the SoM sent an email to CEAC which reads as follows: *"Please be informed that, following extensive discussions, the Government of Montenegro ("GoM") failed to reach a positive resolution on the terms and conditions set out under the last version of the draft Term Sheet pertaining to the Restructuring."*

Exhibit Doc. C 34: Email of Schoenherr of 1 June 2012.

106 In other words: For several weeks the SoM had let its negotiating team talk with the co-shareholder CEAC and after both negotiating teams had reached a compromise on all issues, the SoM just rejected the terms and conditions agreed upon.

107 In his email of 1 June 2012 Mr. Alexey Kuznetsov to Montenegro's then Prime Minister Igor Lukšić stated the following: *"While we appreciate the efforts of the team, led by minister Kavaric, we are highly disappointed that the Government of Montenegro failed to agree on the Term Sheet. The text of this Term Sheet was agreed back in April 2012 with the Ministry of Economy. Both us and the Ministry of Economy negotiated in good faith having in mind that KAP requires immediate actions in order not to be forced into bankruptcy."*

Exhibit Doc. C 35: Email of Alexey Kuznetsov of 1 June 2012.

108 However, with Schoenherr's email of 31 May 2012 (Doc C 34) it became apparent that the Government of Montenegro in its entirety had not been acting in good faith but had dispatched its negotiating team just to pretend to be willing to support the urgently needed restructuring.

109 In its email of 1 June 2012, CEAC made clear that it *"still hopes* that *(the) situation may be resolved in a way that would be acceptable to all the parties and"* urged *"to have a meeting/ call as soon as possible in order to find a mutually acceptable solutions."* In view of the recent manoeuver of the SoM, it would be necessary that the SoM introduces *"to the negotiations someone/ group of representatives who would be able to negotiate and speak on behalf of the Government and agree the terms that would later on be acceptable to the Government of Montenegro and the Parliament. Otherwise, our mutual efforts will be pointless"* (Exhibit Doc C 35).

110 However, the SoM had already decided not to meet its shareholder obligation to support KAP's restructuring but to terminate the cooperation with CEAC by any means, i. e., to push KAP into insolvency in order to take over the control of the company. Again, also the restructuring contemplated in the Term Sheet would – had it been consummated – led to highly valuable KAP, jointly owned by the Parties. As SoM was in breach with its obligations when boycotting these efforts to restructure, SoM is liable for the complete devaluation of the Claimants' interest in the companies.

(3) December 2012 – June 2013

111 In a meeting between CEAC and minister Vladimir Kavaric on 10 December 2012 both sides agreed to restart the negotiations in relation to a restructuring of KAP and, in particular, to agree on the financial model of KAP. Further, there was a meeting between the CFO of KAP,

Mr. Dimitri Potrubach, and the SoM's representative Mr. Kujovic during which Mr. Potrubach provided several possible scenarios for restructuring KAP and further financial data. A presentation setting out the proposed scenarios in detail ("**Presentation Further Scenarios**") was sent to Minister Vladimir Kavaric with CEAC's letter of 21 December 2012.

Exhibit Doc. C 36: CEAC's letter of 21 December 2012.
Exhibit Doc. C 37: Presentation Further Scenarios November 2012.

112 In the Presentation Further Scenarios, *inter alia*, Option 1 for the restructuring was set out in detail which was based upon the assumption of an increase in production volume up to a maximum capacity of 120,000 tons of aluminum/ year and a 6 years electricity supply contract with EPCG at the following formula for the electricity price: € 20/ MWh up to a consumption of 84 MWh/ h and € 30/ MWh for above electricity consumption, leading to an average electricity price of € 25/ MWh (p. 3).

113 In this Option 1, the alumina production should not be restarted and the head count would have been reduced to 923 (p. 4 and 7).

114 The existing debts of KAP towards the SoM, CEAC, En+ and EPCG (except for the debts of € 102 million secured by the State Guarantees) would be converted to new shares in KAP. This would result in a new ownership structure for KAP (p. 4).

115 In this Option 1, the total contributions by En+ and CEAC would have amounted to € 148 million (debt cancelations, debt assumptions, financing 50 % of a new social program) and the contributions by the SoM to € 137 million (debt cancelations, electricity debt, cancelation financing 50 % of new social program) (p. 7).

116 The remaining debts of KAP under the State Guarantees in the amount of € 102 million would have been covered from KAP's own funds (p. 4). The Presentation Further Scenarios included a detailed calculation showing that in Option 1 the EBITDA would increase step by step from € 10.8 million at the end of 2013 to € 72.5 million by the end of 2018. Further the calculation shows a liquidity balance which would have allowed KAP to repay the entire outstanding debt of € 102 million until 2018 (p. 4 and 9).

117 In conversations beginning of 2013, representatives of the SoM said that they are considering these scenarios and that they wish to return to discussing the Term Sheet on which the negotiating teams agreed in April 2012.

118 In a meeting on 5 February 2013 between the representatives of KAP, SoM and CEAC the different scenarios were discussed in more detail. The representatives of the SoM proposed to proceed with an additional scenario which was based on specific assumptions. In accordance with these assumptions of the SoM, CEAC prepared another presentation ("**Presentation 5-2-13**").

Exhibit Doc. C 38: Presentation 5-2-13.

119 The assumptions were as follows:

120 - *"Signing with EPCG 6 years electricity supply contract, starting with 1st Jan 2013 at the price of € 27.5/ MWh and continuation of production in KAP"* (p. 2).

121 - *"From 1st May 2013 keeping 500 working places from the total of 1230 (social program to be financed by SoM)"* (p. 2).

122 - *"Debt to equity conversion of existing KAP debts towards En+, SoM, EPCG and of debt under SoM Guarantee (less € 40 million of unguaranteed debt towards VTB/ En+)"* (p. 2).

123 - *"Transfer of existing CEAC's shares in KAP to SoM"*. Including the effects of the debt to equity swap the new ownership structure of KAP would be: CEAC: 25.27 %, SoM/ EPCG: 73.92 % (p. 2 and 3).

124 - The Presentation 5-2-13 included a detailed calculation of the financials for restructuring, showing an increase of the EBITDA from € 7.1 million at the end of 2013 to € 22.0 million at the end of 2018 and a positive cash balance development (p. 5). One of the results was that the remaining € 40 million debts of KAP towards VTB would be covered from KAP's own funds during the next 5 years - *"The repayment should be ensured by SoM"* (p. 2).

125 Even though the assumption proposed by the SoM deviated considerably from the suggestions made by CEAC, CEAC was prepared to discuss the SoM's proposal. CEAC continuingly urged the SoM to enter into new negotiations regarding this restructuring option. Initially, the SoM

showed some interest in this solution, however, no detailed negotiations were started and the SoM refused to even implement the restructuring plan as per the Presentation 5-2-13 which was based on the very own proposals of the SoM.

126 In her email to Minister Vladimir Kavaric of 6 June 2013, Ms. Elena Mironova on behalf of CEAC set out the following: *"Once again, I would like to remind you that haven we proceeded with the restructuring as it was agreed, there would be no problem with EPCG now and KAP would be in the position to pay out its debts. I highly encourage you to resume negotiations regarding restructuring of KAP asset. Please review the model that we sent to you earlier. We are open for negotiations and ready to move quickly."*

Exhibit Doc. C 39: Email from Elena Mironova of 6 June 2013.

127 In his email of 7 June 2013, Minister Vladimir Kavaric answered as follows: *"About model we will review it and get back to you (...). As you know we are always trying to save KAP, but it is not easy to bridge the gap among all stakeholders (GoM, CEAC, EPCG, Unions, Parliament etc.)."*

Exhibit Doc. C 40: Email of Vladimir Kavaric of 7 June 2013.

128 Only seven days later, namely on 14 June 2013, the SoM, acting through the Ministry of Finance, filed its petition for commencing bankruptcy proceedings against KAP (Exhibit Doc C 17). This filing was based solely on the alleged claims of the SoM itself against KAP. Obviously, there was no problem with regard to "bridging the gap among all stakeholders" but it was the Government itself who did not want "to save KAP" – contrary to Minister Kavaric's statements in his email of 7 June 2013.

129 The SoM had no real intention to find a solution. It became apparent that on the side of the SoM the negotiations were not for real, but designed to only conceal the SoM's plan. The SoM prevented KAP to become a valuable asset for their shareholders.

b) Deutsche Bank Loan and Obstruction by SoM

130 Further critical steps of the SoM to achieve its goal to usurp the assets and control over KAP were:

131 Deutsche Bank AG, London Branch, as lender, Deutsche Bank Luxembourg S.A. as agent ("**Agent**") and KAP as borrower entered into a facility agreement dated 25 June 2010 ("Facility Agreement"). According to the Facility Agreement Deutsche Bank made available to KAP a loan facility of € 22 million which should be repaid in equal semi-annual instalments of € 3,142,857.14. The Facility Agreement was secured by a State Guarantee granted by the SoM in accordance with its obligations under the Settlement Agreement (see clause 8 of the Settlement Agreement).

Exhibit Doc. C 41: Facility Agreement Deutsche Bank /KAP

Exhibit Doc. C 42: State Guarantee of SoM

132 Pursuant to the Facility Agreement KAP undertook to supply to the Agent certain information, in particular

133 a compliance certificate to be delivered with each set of financial statements (section 18.2) which were to be supplied (i) in case of the financial statements of KAP for the financial year within 180 days after the end of each financial year (section 18.1 (a)) and (ii) in case of financial statements of KAP for the financial half year within 60 days after the end of each half year (section 18.1 (b)) and

134 a business plan for the following year within 90 days of 15 January in each calendar year (section 18.4).

135 Any failure to comply with these undertakings shall be an event of default (section 21.3) which entitles the Agent to accelerate the loan and ask for immediate repayment of any amounts accrued or outstanding under the Facility Agreement (section 21.20). Non-payment of debts by KAP when they were due (section 21.5 lit. (a)) and commencement of negotiations with one or more of KAP's creditors with a view to readjusting or rescheduling any of KAP's indebtedness (section 21.6 lit. (a)) were also events of default under the Facility Agreement according to which the Agent may declare the loan immediately due and payable.

136 KAP failed to supply to Deutsche Bank AG the KAP business plan for 2011 until 15 April 2011. The failure was caused by the SoM. SoM's representative on the KAP board of directors, both in the meeting of KAP's board of directors on December 23, 2010 and February 25, 2011, with-

out any plausible reasons, refused to agree upon the adoption of the business plan, so it had to be taken off the agenda. As SoM's representative on the Board had a veto right, KAP could not meet its obligation to deliver to the Agent the business plan for 2012. With letter of 12 May 2011, KAP was compelled under the Facility Agreement to notify Deutsche Bank of such failure, which was exclusively caused by the SoM.

> **Exhibit Doc. C 43**: Minutes of the board of directors of KAP of 23 December 2010
>
> **Exhibit Doc. C 44:** Minutes of the board of directors of KAP 25 February 2011
>
> **Exhibit Doc. C 45:** KAP's letter to Deutsche Bank of 12 May 2011

137 The financial statements at KAP were usually only adopted in KAP's shareholders meeting in fall of the following year for the previous business year. On 30 November 2010, again for no understandable reason, in the shareholders meeting, under the agenda item No. 2., the SoM blocked the adoption of the 2009 financial statements with its veto. These financial statements could consequently not be provided to Deutsche Bank as well. Again, SoM took action to deliberately put KAP into default under the Facility Agreement.

> **Exhibit Doc. C 46**: Minutes of the shareholders' meeting of KAP of 30 November 2010

138 As a consequence of these obstructions by the SoM to adopt the business plan 2011 and the financial statements for 2009, KAP also failed to deliver to the Agent a compliance certificate as per 30 June 2011. The compliance certificate, in which the board should have confirmed that no event of default existed, would have been incorrect, as the omission to submit the business plan and the financial statements was indeed an event of default. A compliance certificate confirming that no event of default is continuing could therefore not be issued as long as the SoM obstructed the adoption of the necessary business plan and financial statement.

139 On November 20, 2009 OTP Bank Plc ("**OTP**") - another lender – entered into three facility agreements with KAP. These loans were to be repaid in instalments. On 7 February 2011 repayment instalments of

€ 83,333.33 and € 602,222.22 and on 28 February 2011 an instalment of € 675,664.61 became due, but KAP failed to pay in due time. KAP informed the Agent in its letter of 1 March 2011 that it failed to make payments to OTP when due.

Exhibit Doc. C 47: KAP letter to Deutsche Bank 1 March 2011

140 However, the non-payment was caused by a short term liquidity problem that was cured within days. The full amount owed to OTP was paid in March 2011.

Exhibit Doc. C 48: OTP letter to the MoF of 11 March 2011

141 The SoM, having guaranteed the repayment of the loan in accordance with the Settlement Agreement, was discussing ways to restructure this facility with Deutsche Bank. SoM failed to duly involve KAP or CEAC in these discussions, in itself a breach of the duty to cooperate with CEAC under the KAP Shareholders' Agreement and the Settlement Agreement. Part of these discussions with Deutsche Bank turned out to be that SoM shall become the new borrower under the Facility Agreement and thereby replacing KAP. KAP was then supposed to enter into a new loan agreement with the SoM. In view of these discussions, Deutsche Bank in 2011 did not accelerate the loan during that period, but reserved the right to do so later.

142 On 22 December 2011, the Agent on behalf of Deutsche Bank agreed to waive the identified breaches subject to the conditions that the SoM would become a primary obligor under the Facility Agreement by accession and pays all fees and associated costs in relation to the amendment of the Facility Agreement no later than 20 February 2012.

Exhibit Doc. C 49: Letter of Deutsche Bank to KAP of 22 December 2011

143 However, the plan worked out by Deutsche Bank and the SoM, without due participation of KAP or CEAC, was that the SoM became a new borrower under the Facility Agreement and enters into a new loan facility with KAP. A voluminous "*Restatement and Amendment Agreement*" was prepared under which SoM was supposed to become borrower of Deutsche Bank. SoM, so its plan, would consequently lend the amount onwards to KAP under a new loan facility also prepared by KAP's lawyers without any involvement of neither KAP nor CEAC. Only

on 25 January 2012, SoM supplied a draft facility agreement to KAP to which KAP replied by Email of January 31 with a markup draft of the facility agreement.

Exhibit Doc. C 50: Email communication SoM/KAP end of January 2012

Exhibit Doc. C 51: Mark up of KAP of draft loan facility SoM/KAP

144 The markups of KAP in the draft of the facility agreement of Deutsche Bank (Exhibit Doc C 51) show the issues of the overall restructuring concept of the Deutsche Bank loan that were simply unacceptable for KAP and its management. First of all, this new loan facility was in essence an adaptation of the facility with Deutsche Bank, granting SoM far reaching rights against KAP, including the factual right to accelerate the loan at any time. The events of defaults brought forward by Deutsche Bank and caused by SoM, would have existed on the day this new loan facility would have been entered into. In no way did the draft take into account that a restructuring, that means a reduction and rescheduling of KAP's overall debts must be reached. This facility would have put the SoM into a dominating position, overwriting the differentiated provisions of the Settlement and KAP Shareholders' Agreements. That would not only have infringed with the Settlement Agreement, but it would also be illegal towards third party shareholders still invested in KAP. In particular on the background of the pending overall negotiations of a meaningful restructuring of KAP, such unilateral move by SoM could neither be accepted by CEAC nor by KAP. The CEO of KAP informed all parties involved of these far reaching concerns on 10 February 2012

Exhibit Doc C 52: email of KAP to SoM and DB 23.3. 2012

145 Most importantly, this plan if executed would have instantly let to an event of default under other KAP financing facilities with VTB Bank and OTP, as the entering into a new loan facility (with SoM) clearly required the consent of the other lenders. Given that fact that SoM's receivables would only have been a loan by a shareholder, why would VTB Bank and OTP agree to a privileged position of SoM as a new lender of KAP? Again, on 23 March 2012, both SoM and Deutsche Bank were informed of this obstacle.

Exhibit Doc C 53: CEAC's letter to SoM's Ministry of Finance and Deutsche Bank 23 March 2012

146 In other words, a new loan facility entered into without all the creditors' consent and an overall restructuring of KAP's financial position would also have led to a bankruptcy and posed the clear threat of a personal liability of the management. The realty was that the SoM had started its negotiations with DB without notifying KAP and KAP's management was confronted with non-executable scheme designed by SoM and DB. The obvious reason not to coordinate a restructuring with KAP and CEAC was that the SoM never really had a restructuring in mind. The only purpose was to obtain a claim against KAP in order to deliberately put KAP into insolvency and push CEAC out of control and the country.

147 Still trying to find a constructive solution beginning with the letter of 23 March 2012 (C53), KAP and CEAC suggested alternatives. The much more appropriate alternative structure for Deutsche Bank loan receivable would have been for the SoM to acquire the receivable against KAP from Deutsche Bank, so without the necessity for KAP to enter into a new loan agreement. This suggestion was rejected by the SoM for no apparent reason.

148 Also, due to severe compliance concerns, the management of KAP and CEAC were simply not able to sign of the deal with Deutsche Bank that SoM had discussed in a clandestine way with Deutsche Bank. Beginning of 2012, the Ministry of Finance suddenly asked KAP to pay € 1 million as a "restructuring fee" to Deutsche Bank. KAP on several occasions uttered serious doubts whether such a "restructuring fee" would be compatible with compliance requirements and refused payment. There was no contractual or other basis for KAP to make or commit to such payment to Deutsche Bank.

149 In retrospect, it becomes apparent that SoM paid € 1 million in order to prevent Deutsche Bank to agree to a restructuring and to ensure that the loan will be accelerated. The "restructuring fee" was rather a mark up to Deutsche Bank to induce it to accelerate, so that KAP could be put into insolvency. In the petition for commencement of bankruptcy proceedings dated 14 June 2013 (Exhibit Doc C 17 on page 2, 1st paragraph) SoM explicitly makes a reference to the payment of the "*Restructuring fee as of 25 November 2011 and 22 December 2011*".

150 This clearly means that the SoM had already paid this lump sum of Euro one million, before a restructuring of the Deutsche Bank facility was reached or even a first draft of it was submitted. Such payment without legal grounds to KAP's lender must have had a reason. SoM, by that time, had obviously already abandoned the idea to put KAP on a sound economic basis as it had committed to in the Settlement Agreement. At this point, SoM had decided to put KAP into insolvency at any cost in order to fully take over control and push CEAC to the sidelines. The reason for the payment of € 1 million to the Agent therefore must have been to "convince" the Agent and its Belgrade based decision makers, to put KAP into insolvency. It remains unclear until today, despite repeated questions from CEAC, where this amount of Euro one million went and for what purpose it had been paid by the SoM.

151 The fact that SoM has been claiming the "restructuring fee" amount to be refunded to it by KAP and is now registering it as an insolvency claim is the height of impudence. SoM claims from KAP reimbursement of a fee it paid to convince Deutsche Bank to illegally accelerate the Facility Agreement.

152 And indeed, the "restructuring fee" paid by the SoM to Deutsche Bank Belgrade did the trick. On 23 March 2012 Deutsche Bank provided a notice of acceleration and requested KAP to repay the loan of € 22 million and associated costs of € 1,264,428.71, i.e. € 23,264,428.71 in total, plus legal expenses immediately. Astonishingly, Deutsche Bank in this notice of acceleration still made reference to the alleged overdue payment to OTP as in its letter of exactly one year before. These amounts to OTP were not outstanding any longer as they had been repaid in full in March 2011, so more than a year ago, already. At the time of the notice of acceleration, there were no amounts overdue to any lender of KAP and in particular not towards OTP.

153 A further "Event of Default" that Deutsche Bank claims in the acceleration notice is the lack of due presentation of a business plan for 2012 and (consequently) of the compliance certificate for the June 30 financial statements of KAP. Both Events of Default – as minor and – at the time of the notice of acceleration – outdated these two omissions were, both were deliberately caused by SoM. What would have been the purpose for Deutsche Bank to receive a business plan for 2011 in March 2012? What purpose would have served the production of financial statements for 2009 when Deutsche Bank already received the duly adopted financial statements for 2010, which it did? Both omissions,

though, were deliberately caused by the SoM by preventing the board of KAP and its shareholder meeting to duly adopt these documents.

154 Finally, Deutsche Bank claims that an Event of Default was the fact that negotiations with the lenders of KAP were ongoing at the time. This statement was incorrect. At the time of the notice of acceleration, except for the discussions with the SoM and Deutsche Bank itself, no negations were pending that would have justified an acceleration.

155 By preventing KAP from duly performing its obligations to produce documents under the Facility Agreement, SoM therefore knowingly directed KAP into insolvency. It is even questionable whether the acceleration notice by Deutsche Bank, referring to partly incorrect and in part outdated facts was legally valid at all. For a shareholder acting in good faith, it would have been SoM's obligation to fight back together with CEAC against Deutsche Bank for such ruthless behavior as a lender. Instead of siding with CEAC and KAP, the SoM encouraged the Deutsche Bank to this illegal behavior by paying one million in "restructuring fee".

156 Obviously, KAP was not able to immediately pay back its debts to Deutsche Bank.

157 Consequently, on 2 April 2012 Deutsche Bank AG enforced the State Guarantee securing the loan repayment under the Facility Agreement and the SoM paid KAP's debts towards Deutsche Bank AG on 5 April 2012. The speed of these payments by SoM within no more than three days, despite the fact that the acceleration notice was highly dubious shows that this was a coordinated effort, orchestrated by SoM, to put KAP into insolvency. The payments made by the SoM under the state guarantee amounted to € 22 million plus € 1,427,740.18 associated costs. Having settled KAP's outstanding debts towards Deutsche Bank AG, the loan receivable against KAP was transferred to the SoM.

158 The SoM - to which KAP now owed € 23,427,740.18 - asked KAP to settle its debts towards the SoM. In addition to the payments made on 5 April 2012, the SoM had paid the "restructuring fee" of € 1 million to the lender on 23 December 2011 and requested KAP to fully reimburse also this additional amount. These requests were provided in letters to KAP dated 18 May 2012, 13 November 2012 and 5 June 2013.

159 Claimants at the time were astonished to become knowledgeable that the SoM had not only paid € 23,427,740.18 to the lender under the

state guarantee, but also the "*Restructuring fee*" "*in order to reschedule KAP payment obligation to DB*".

> **Exhibit Doc. C 54**: SoM's Minister of Finance dated 13 November 2012

160 KAP's liabilities towards Deutsche Bank AG were neither rescheduled nor restructured. The "restructuring fee" might have rather been an illegal "incentive", not a fee.

161 On the basis of facts set out above, it is obvious that the SoM had purposefully caused the acceleration of the loan, if not even paid for such action by Deutsche Bank, thereby being in clear, deliberate breach of its contractual obligations. SoM caused the lender to call on the loan and to enforce the state guarantee in order to create a pretext to file the petition for insolvency of KAP and to take over control of KAP.

c) SoM's Boycott of reasonably priced Electricity Supply

(1) Agreed upon Electricity Subsidies not paid in full

162 Pursuant to clause 11.3 of the Settlement Agreement, up to the total net amount of € 60 million the SoM had to "*pay to EPCG the difference between the electricity price calculated in accordance with the formula given in clause 11.2 of this Agreement and the electricity price as regulated by the Energy Regulatory Agency of Montenegro*".

163 The difference towards which the SoM had to pay up to an aggregate amount of € 60 million related to the net amounts, i.e., the prices excluding VAT, and, therefore, had to pay € 60 million plus VAT. However, the SoM took up the position that the € 60 million should include VAT and paid € 8.72 million less than agreed upon in clause 11.3 of the Settlement Agreement.

164 The price as per the formula under section 11.2 of the Settlement Agreement ("**Formula Price**") does not include the 17% Montenegrin VAT. Accordingly, in the framework agreement on KAP energy supply from 1 January 2009 until 31 December 2012 ("**EPCG Framework Agreement**") which was entered into as provided in clause 11.1 of the Settlement Agreement the prices were established in net amount (without VAT).

> **Exhibit Doc. C 55:** EPCG Framework Agreement

165 Also the electricity price as regulated by the Energy Regulatory Agency of Montenegro ("**Tariff Price**") was determined in net amounts excluding VAT.

Exhibit Doc C. 56: Decisions of the Energy Regulatory Agency of Montenegro setting forth the prices for the "direct consumer KAP" for 2010, 2011, 2012 and 2013

166 EPCG attached a "tariff-based calculation" to its invoices to KAP. Also in these calculations, the difference to be paid by the SoM was calculated on both the Formula Price and the Tariff Price excluding VAT.

Exhibit Doc C. 57: Letter of KAP to the Ministry of Economy of 12 January 2012

167 Notwithstanding the subsidies in the amount of € 60 million referring to the difference between the Formula Price and the Tariff Price, EPCG in its invoices to KAP had to add VAT to the Formula Price and in its invoices to the SoM had to add VAT to the difference between the Formula Price and the Tariff Price. Thus, the total amount to be paid by the SoM under clause 11.3 of the Settlement Agreement amounted to € 60 million plus VAT.

168 However, in 2012 the SoM stated that the amount of subsidies of € 60 million include VAT and that, therefore, the difference between the Formula Price and the Tariff Price could only be invoiced to the SoM up to an amount of € 60 million including VAT. Upon instructions of the SoM, EPCG followed the SoM's position. In its cover letter to the invoice for the electricity supplies in March 2012, EPCG stated that as of 1 March 2012, the SoM had paid out of these € 60 million already the amount of € 59,329,536. Therefore, in its invoice to KAP for March 2012 (invoice no. 50-00-2151 dated 2 April 2012) EPCG was only willing to take into consideration the small amount which according to the position of the SoM and EPCG remained out of the € 60 million. However, as of 1 March 2012, the net volume (excluding VAT) of the payments of the SoM as subsidies pursuant to clause 11.3 of the Settlement Agreement amounted only to € 50,709,005. Therefore, the assumption of EPCG that the subsidies of € 60 million had nearly been used up was not correct and, therefore, KAP did not accept the calculation of EPCG (and the SoM) applied for the invoice dated 2 April 2012.

Exhibit Doc. C 58: Letter of KAP of 6 April 2012 to EPCG, cc to the Minister of Finance

169 KAP tried to solve this issue in a meeting with the management of EPCG on 26 April 2012, however, without being able to convince the management of the state controlled EPCG that the position of the SoM is not correct. In its letter to the Minister of Economy of 27 April 2012 KAP stated that *"due to the current financial situation, KAP is unable to pay € 5.1 million for the electricity supplied in March."* KAP asked "*the Government of Montenegro to pay the amount of subsidies withheld without merit, for VAT bill to EPCG as soon as possible, or to adopt a new electricity price reduction programme for KAP, which will allow for resolution of the electricity payment issue for March and April 2012, at a price not higher than the one defined under the Settlement Agreement.*"

Exhibit Doc. C 59: Letter of KAP to the Ministry of Economy of 27 April 2012.

170 With letter of 8 May 2012 to the Minister of Economy, KAP, again, asked *"the Government of Montenegro to as soon as possible pay EPCG the amount of the subsidies being retained without merit for the VAT bill".*

Exhibit Doc. C 60: Letter of KAP to the Minister of Economy of 8 May 2012.

171 However, the State of Montenegro was not willing to agree to its obligations under clause 11.3 of the Settlement Agreement.

172 In total, the SoM paid only a net subsidy amount of € 51.28 million. The remaining amount of € 8.72 million was paid for VAT, i.e., to the SoM itself.

173 The SoM's refusal to fulfill its obligations under the Settlement Agreement dramatically deteriorated the financial situation of KAP.

(2) No Safeguarding of Electricity Supply

174 In its letter of 8 May 2012, KAP informed the Ministry of Economy that EPCG had requested *"that it be furnished with an electricity consumption reduction plan by KAP, commencing on 14 May 2012 by at least 20 % from current level, as 50 % of current level by the end of May. Furthermore they inform us that failure to submit the planning question will result in EPCG independently reducing supplies of electricity to KAP."* KAP stated to the Ministry of Economy that if neither the full

amount of subsidies is paid by the SoM nor a new electricity price reduction programme is established for KAP, the *"management at KAP will be forced in the near future to adopt and implement a shut down plan for all KAP units, considering that the production of aluminum in conditions were electricity supplies is reduced by 50 % of current levels would lead to a colossal loss in the operating costs account."*

Exhibit Doc. C 61: Letter of KAP of 8 May 2012

175 As of February 2012, the electricity supply by EPCG to KAP was reduced by 20%.

176 In meetings with KAP and CEAC, representatives of the SoM promised to find a solution.

177 However, the SoM did not support KAP. In August 2012, EPCG unilaterally reduced the electricity supply to KAP to 120 MWh/h and as of September 2012 to 86 MWh/h. This was an approximate 50% reduction of the electricity supply, resulting in the reduction of production volumes by 50%, reducing KAP's revenues substantially and leading to a substantial loss in the operating costs account. The reduction of the electricity supply was at least implicitly approved by the SoM which had and still has control over EPCG.

178 One month later, EPCG unilaterally terminated the electricity supply agreement with KAP. CEAC and KAP objected to the termination by arguing that a court order was required for such termination and achieved that EPCG agreed to supply electricity to KAP until end of 2012. The SoM failed – again – to provide any assistance at all and obviously, did not use its "*best endeavors*".

179 KAP was deliberately placed in a critical situation by the SoM through the state-controlled EPCG. From beginning of 2013 onwards, KAP would be without electricity supply. Being aware of the lack of electricity supply, CEAC had no choice but to propose the orderly shutdown of KAP's plant which is mandatory in aluminum production in order to avoid the destruction of the production facility.

180 In her email to Minister Vladimir Kavaric of 14 December 2012, Ms. Elena Mironova on behalf of CEAC stated the following: *"Sorry for short notice, but we will need some sort of reasonable response from you in relation to supply of electricity (i. e. that will not be stopped without a due notice from EPCG) either today or in the morning on*

Monday. Otherwise, unfortunately, on Monday the management will call a board meeting in a relation to stopping the production at KAP."

Exhibit Doc. C 62: Email of Ms. Elena Mironova of 14 December 2012

181 In addition, on 14 December 2012 CEAC wrote to Minister Vladimir Kavaric as follows: *"Further to the meeting of 10 December 2012, we would like to ask you to provide to us a written confirmation that electricity supply to KAP will not be stopped on 1 January 2013 or the respective notice will be sent to KAP at least 15 days prior to the stoppage of supply. Without such confirmation, we, unfortunately, will be forced to conduct a board meeting of KAP with an issue of stopping the production and close in the plan. We would greatly appreciate if you could provide the confirmation by noon, 14 December 2012."*

Exhibit Doc. C 63: Letter of CEAC of 14 December 2012

182 The SoM did not react. On 21 December 2012, CEAC reminded Minister Vladimir Kavaric *„to provide to us a confirmation that the electricity supply to KAP will not be stopped on or after 1 January 2013 without a 15-days notice. Considering that the board meeting on approval on stopping electrolytic furnace is scheduled for 24 December 2012, we would greatly appreciate that you would provide the confirmation by no later than end of business on 24 December 2012"* (Exhibit Doc. C 36).

183 However, the requested confirmation was not provided by the SoM. Instead, at the end of December 2012, SoM representatives on the KAP board of directors made use of its veto right provided under the KAP Shareholders' Agreement and refused to agree to the orderly shutdown of KAP's production.

184 The result was a highly ambiguous situation: As of January 2013 KAP was without a formal electricity supply agreement, but electricity continued to be supplied to the plant. KAP requested the relevant Montenegrin authorities to clarify who supplies KAP with electricity but did not receive any response from the authorities. Due to the lack of an electricity supply agreement, KAP was unable to make payments for electricity.

185 In February 2013, CEAC proposed in the board of directors of KAP to enter into a formal electricity supply agreement or, in case KAP could

not conclude such an agreement, to orderly shutdown the KAP aluminium operations. Again, the SoM's representative on the KAP board of directors objected to CEAC's proposal by making use of its veto right.

186 KAP continued to operate until June 2013 without having knowledge who supplied electricity to KAP. KAP received invoices from CGES, the state-owned electricity system operator in Montenegro, but Montenegro Bonus D.O.O. Cetinje ("**Montenegro Bonus**"), a fully state-owned oil trading company, was claiming to supply electricity to KAP.

187 In the course of the year 2013, the European Energy Commission discovered unauthorized Montenegrin energy consumption drawn from interconnectors in Serbia, Bosnia and Croatia by the state-owned CGES. Upon this discovery, CGES asked KAP for immediate payment of its electricity consumption, but did neither specify to whom and in which amount payment should be made nor substantiated that the unauthorized electricity consumption has been made by KAP. Actually, KAP did not have a direct connection to the regional interconnector and obviously could not have consumed electricity without authorization from the state-owned CGES and key officials of the Montenegrin Government.

188 For the time period since September 2012 the SoM's boycotting of KAP's electricity supply resulted in the reduction of production volumes by 50 % leading to a substantial loss in the operating costs account.

189 By mid-2013, the SoM – through the state-controlled Montenegrin electricity entities and through the lack of any assistance for KAP - deliberately placed KAP in a situation in which the crucial electricity supply was completely unsecured.

(3) No solution in 2013

190 Even in the first half of 2013 it would have been possible to find a sustainable solution for the electricity issue at reasonable prices: According to the very own proposals of the SoM of 5 February 2013, EPCG and KAP should sign a 6 years electricity supply contract, at the price of € 27.5/ MWh (see Presentation 5-2-13, Exhibit Doc. C 38, p. 2, and section B.8.a)(3) above).

191 This would have brought the electricity price of KAP close to the standards of the international aluminium market which – as stated already

in 2011 by Houlihan Lokey – was one of the "*challenge (which) must be addressed to assure long-term financial viability*" (see Presentation April 2011, Exhibit Doc. C 20, p. 7, and section B.8.a)(1) above).

192 An analysis of the common praxis in other countries show that it is standard that aluminium producers do not pay more than between 33 % and 50 % of the full tariff for electricity. For example in 2011, the full tariff in Montenegro was approx. € 60/MWh. Thus, the price for the aluminium plant of KAP should not have been higher than between € 20 and € 30/ MWh – being € 25/ MWh on average.

193 The price of € 27.5/ MWh as proposed by the SoM itself in February 2013 would have been in this range and – together with the other proposed restructuring measures – would have been a sound basis for the restructuring of KAP. However, the SoM impeded the restructuring.

9. The SoM's Filing for Insolvency

194 On 14 June 2013, the SoM filed its petition for commencing bankruptcy proceedings against KAP with the Commercial Court in Podgorica (Exhibit Doc. C 17). By decision of this court of 8 July 2013 the bankruptcy proceedings against KAP commenced.

195 At this time, the management of KAP – with support by CEAC – had taken actions aimed at making efficiency gains and reducing production costs and had achieved substantial improvements of KAP's cost structure. Under the management of CEAC the costs of aluminium production at KAP was reduced from US$ 3,500 in 2008 to US$ 2,100 in 2012.

196 As made clear by CEAC in the course of its continued restructuring efforts, the main challenges continued to be the electricity costs, being above aluminium market standards, and the unsustainable debt levels which required a debt to equity swap (see section B.8.a) above).

197 However, these issues were by far no insurmountable obstacles, but could have been resolved in accordance with CEAC's restructuring plans.

198 Even on the basis of the proposals of the SoM itself in the meeting on 5 February 2013 (including a reduction of the electricity price at € 27.5/ MWh and a debt to equity conversion of most of the existing debts of

KAP) KAP would have been transformed into a valuable and successful enterprise (see section B.8.a)(iii) above).

199 However, the SoM had no real intention to find a solution.

200 At no point in time did SoM mention that it is intending to file a petition for commencing bankruptcy proceedings against KAP. The SoM has given neither its co-shareholder CEAC nor the management of KAP the opportunity to discuss this step.

201 Quite the contrary, the SoM pretended to be willing to implement the restructuring measures. Only seven days prior to the petition for bankruptcy, on 7 June 2013, Minister Vladimir Kavaric assured CEAC that the SoM is "*always trying to save KAP"* (Exhibit Doc. C 40).

202 From the retrospective it is clear that from the side of the SoM the negotiations were not for real, but designed to only conceal SoM's real plan - to deliberately put KAP into bankruptcy and blatantly infringe its obligations under the Settlement Agreement and under the KAP Shareholders' Agreement.

10. The SoM's Taking over Control of KAP

a) "Cooperation Agreement" with Montenegro Bonus

203 On 9 July 2013, just one day after opening of the KAP insolvency proceedings, KAP, now represented by Mr. Veselin Perisic as the bankruptcy administrator ("**Administrator**"), entered with Montenegro Bonus into the "Agreement on Business and Technical Cooperation" ("**MB Cooperation Agreement**").

Exhibit Doc. C 64: MB Cooperation Agreement

204 Through the MB Cooperation Agreement the SoM took over the control of KAP and, at the same time, impeded any possibility of control by CEAC and other insolvency creditors.

(1) Montenegro Bonus - Vehicle for SoM's control

205 Pursuant to the MB Cooperation Agreement, Montenegro Bonus – an oil trading company with no experience in the aluminium business – "*under its name and for its account undertakes management of KAP business during bankruptcy*" including the management of "*all mova-*

ble and real estate of KAP during the term of this Agreement excluding financial assets (…)" (Article 2).

206 The strong position of Montenegro Bonus under this agreement is also shown, e.g., by its Article 5 pursuant to which the insolvency administrator had to hire "*employees required for maintenance of production process in KAP in compliance with lists submitted by Montenegro Bonus*" and "*employees that are hired for the needs of production process by the Trustee in bankruptcy must act in compliance with the instructions from Montenegro Bonus.*"

207 Montenegro Bonus was just a vehicle for the SoM:

208 - Montenegro Bonus is fully owned by the SoM.

209 - The former SoM representative in KAP's board of directors became an employee of Montenegro Bonus and was appointed by Montenegro Bonus as the new responsible manager of KAP – the same person who in December 2012 vetoed the orderly shutdown of KAP's production – in spite of KAP being without electricity supply agreement as of January 2013 (see section B.8.c)(2).

210 - Pursuant to its Article 11, the MB Cooperation Agreement came "*into force by the day it is confirmed by Government of Montenegro*".

211 Thus, through the MB Cooperation Agreement, the SoM achieved to take over control of KAP.

(2) Massive Disadvantage for CEAC and other Creditors

212 The MB Cooperation Agreement was entered into by the Administrator, without prior conducting any procurement procedure or even testing the prospective interests for such business arrangement of local and international companies, experienced in the aluminium industry. The decision of the Administrator to entrust the full business operation of KAP to Montenegro Bonus was rather made upon instruction of the SoM. This consent with the SoM was introduced by the Administrator as a legal ground for entering into the MB Cooperation Agreement.

213 The appointment of the state-owned company Montenegro Bonus favored the SoM as one of the creditors and breached the *principle of equal treatment of creditors*, prescribed by Article 4 of the Montenegrin Bankruptcy Law. Further, the SoM's active interfering in the ongo-

ing judicial procedure was the violation of one of the main constitutional principles - *principle of separation of powers*, prescribed by Article 11 of the Constitution of Montenegro.

214 On the other side, before concluding the agreement with Montenegro Bonus, the Administrator did not inform the other insolvency creditors, nor asked for their opinion about such decisive arrangement. Therefore, the Administrator also breached Article 35, para. 1 of the Montenegrin Bankruptcy Law pursuant to which the Administrator may not undertake any measures with significant impact on the insolvency estate without prior consent of the Board of Creditors.

215 The MB Cooperation Agreement and the way it was handled by state-owned Montenegro Bonus gave CEAC cause to "*inform the Supreme State Prosecution Service of Podgorica that there are indications of criminal act which is to be prosecuted ex officio (...) and to suggest (...) to investigate if there are elements of a certain criminal act*" by letter of 12 March 2014 ("**Letter to State Prosecution Service**").

Exhibit Doc C. 65: Letter to State Prosecution Service

216 In this letter, CEAC stated that, in its opinion, it was unlawful that, under the MB Cooperation Agreement, "*the KAP property was (...) directly transferred under control of company Montenegro Bonus, which is allowed to use the same and acquire income from the same, while it is obligated, at the end of the bankruptcy proceedings, to return only the property that it took over and is allowed to keep all possible benefits generated based on KAP property"* (p. 4).

217 Further, in the letter to the State Prosecution Service, it was pointed out that, by concluding the MB Cooperation Agreement and by disposing of property as described in the Letter to State Prosecution Service, "*both KAP and the Liquidator are left without the possibility to control KAP property movement and KAP business operations. Therefore, creditors of bankruptcy and/or the Board of Creditors are not able to control the state of bankruptcy estate (...). In addition, by concluding this Contract (...), KAP property is reduced and creditors are brought to worse position in respect to possibility of settling their claims, when compared to the period before bankruptcy proceedings initiation. It is reasonable to pose the question in respect to whereabouts of the money which Montenegro Bonus generates by unlawful sale of aluminium owned by the debtor in bankruptcy.*" (p.5).

218 Specifically the following was brought to the attention of the Supreme State Prosecution Service of Podgorica: "*From the above stated facts, it can be concluded that (...) approximately about 5,000,000.00 EUR (...) should have been obtained from the sale of aluminium supplies which were on stock on the date of bankruptcy proceedings initiation. However (...) KAP presented that it had acquired only the amount of 2,208,568.25 EUR from aluminium supplies sale, which had been done in July 2013. This is leading us to suspect that the remaining difference was not used for the purpose of KAP business operation maintenance.*"

b) Bankruptcy Proceedings under the SoM's Control

219 Further, the SoM strengthened its control of KAP by numerous other irregularities which are accompanying the bankruptcy proceedings over KAP from its beginning. There are good reasons for coming to the conclusion that the SoM, the Administrator and the Bankruptcy Judge are synchronizing their actions in order to conduct the bankruptcy proceedings in a manner suiting SoM's interest and to marginalize the role of the other creditors, in particular CEAC:

220 KAP's Board of Creditors was not established properly. Article 44 of the Montenegrin Bankruptcy Law prescribes that the Board of Creditors consists either of three or of five members. Basically, the membership of the Board of Creditors should depend on the consent of the largest creditors. Therefore, if numerous creditors intend to become a board member, the Board of Creditors should have the maximum allowed number of members in order to achieve the maximum representation of creditors in the proceedings. However, in the first creditors meeting the Administrator managed to establish a Board of Creditors with only three members, namely the SoM, EPCG and CEAC – with the effect that the SoM together with the state-controlled EPCG gained majority control in the Board of Creditors. Thereby, the right of En+ and VTB Bank Austria to become members of the Board of Creditors was ignored. The objections of En+ and VTB against this maneuver were rejected by SoM's courts.

221 The Administrator continued to breach his obligations. For example, the Administrator failed to report to the Board of Creditors on the status of the insolvency estate in a manner as prescribed in Article 36 para. 1 of the Montenegrin Bankruptcy Law, thereby leaving CEAC with-

out any substantial information as the status of KAP whereas the SoM had (and has) full control and access to any kind of information regarding KAP.

222 According to the Insolvency Law, the Bankruptcy Judge should be a supervising authority, controlling the legality of the insolvency proceedings conducted by the Administrator. However, in the case of KAP, it does not appear that the Bankruptcy Judge exercises any control whatsoever.

223 Finally, the dominant position of the SoM in the bankruptcy proceedings becomes apparent from the fact that the representative of SoM in the Board of Creditors Board has never objected to any of the decisions and actions of the Administrator nor even has ever asked the Administrator for any information, clarification or report, neither urged for any of the missing actions of the Administrator, notwithstanding the liability of the members of the Board of Creditors towards the other creditors. Apparently the SoM did not need to be active in the Board of Creditors because it was cooperating with the Administrator (through Montenegro Bonus or by other means) actively behind the scene in order to run the bankruptcy proceedings in a manner suiting SoM's interests.

224 In the meantime SoM tried to sell KAP's assets and entered into a purchase agreement at a price of € 28 million. Even this small amount has not been collected, *inter alia* because the purchaser apparently is not able to finance the purchase price.

11. A History of Illegality

225 At this point, only briefly an overview shall be made of the history of illegal behavior of the SoM towards foreign investors. SoM does consistently not refrain from using methods clearly outside modern legal systems to pursue its interests. These are very unusual methods for a country that wishes to enter the EU.

a) SoM's Pattern

226 In 2008, Netherland-based MNSS B.V. ("**MNSS**") had acquired a controlling shareholding in Montenegro's steel company Željezara Nikšić a.d. Nikšić ("**Zeljezara**"). As a result of the SoM's misconduct, MNSS

lost its entire investment in Zeljezara. Similar to CEAC's case the initiation of bankruptcy proceedings in 2011 had been an integral part of the Som's plan to remove MNSS.

227 Mr. Veselin Perisic who actively supported (and still supports) the SoM's control of KAP through the bankruptcy proceedings had also been the bankruptcy administrator over Zeljezara. In May 2012 the company was sold for € 15 million to the Turkey-based Toscelik Profil ve Sac Endustrisi AS.

228 In end-2012 MNSS and an affiliate, as Claimants, have filed an ICSID claim seeking €72 million for breaches by the SoM in particular of the Netherlands-Montenegro bilateral investment treaty (MNSS B.V. and Recupero Credito Acciaio N.V. v. Montenegro - ICSID Case No. ARB(AF)/12/8).

229 Nevertheless, in mid-2013 the SoM apparently believed that it could use a similar pattern for usurping CEAC's interest in KAP.

b) Shortcomings of Legal System

230 In the course of the year 2013, the European Energy Commission discovered unauthorized Montenegrin energy consumption drawn from interconnectors in Serbia, Bosnia and Croatia by the state-owned CGES. KAP did not have a direct connection to the regional interconnector and obviously could not have consumed electricity without authorization from the state-owned CGES and key officials of the Montenegrin Government.

231 This fundamental logic did not prevent the SoM – after having submitted the petition for an insolvency procedure – to incarcerate the CFO of KAP, Mr. Potrubach, delegated from the shareholder CEAC to the board of KAP, for an alleged "stealing" electrical energy. At this point, the SoM became fundamentally ruthless and irrational in the perusal of its aim to illegally invalidate CEAC's interest in KAP.

232 Only the very end of January 2014, Mr Potrubach was finally released by the Montenegrin government. The government had come under increasing pressure from international parties to insure the operation of the rule of law within Montenegro, particularly in view its status as candidate for EU membership, and Potrubach's release came just days before the European Parliament voted a report asking Montenegro, to

"*develop a solid track record in the field of rule of law*" and which expressed "*serious concerns*" about Montenegrin "*financial corruption and organized crime, including in institutions*"

Exhibit Doc. C 66: Resolution European Parliament

233 Already in December 2013, the European Counsel conclusions on "Enlargement and Stabilization and Association Process" stated clearly respect of the rule of law "*key for economic development and creating a favorable business environment and investment climate*". It continued: "*Montenegro needs now to further intensify its reform process in order to address the shortcomings identified in the Commission's Report of 16 October 2013. 'Particular attention should be paid to further developing a solid track record in the area of rule of law and with respect to the fight against organized crime and corruption, including at high level. (…) further efforts are also needed to implement (…) the public administration reform strategy including to insure Montenegro has the capacity to apply acquis, tackle politicization and increase transparency, and improve the business environment*".

Exhibit Doc. C 67: Conclusions of European Council

234 When entering into the Settlement Agreement and the KAP Shareholders' Agreement, CEAC had had the expectation that the SoM – having become a candidate country for EU membership – would comply with European standard, and, therefore, be a reliable partner for the restructuring of KAP. As shown above, these expectations were frustrated.

C. Damage Claims

235 SoM continuously infringed with its obligations under the Settlement Agreement and the KAP Shareholders' Agreement. Therefore, SoM is liable to pay damages to CEAC.

1. Breaches of Contractual Obligations

236 Based upon the Settlement Agreement and the KAP Shareholders' Agreement, CEAC and the SoM became co-shareholders holding the same quantity of shares in KAP. In both agreements, CEAC and the SoM agreed upon mutual rights and obligations.

237 Under Montenegrin law, the agreements are to be interpreted taking into account certain principles set forth in the Montenegrin Law on Contracts and Torts ("LCT"), in particular as follows:

238 - Good Faith and Honesty: In establishing contractual obligations as well as in exercising contractual rights and fulfilling contractual duties, the parties of the agreement shall adhere to the principles of good faith and honesty (Article 4 LCT).

239 – Prohibition of Misuse of Rights: Contractual rights must not be exercised in a way contrary to the purpose of the contractual relationship (Article 6 LCT).

240 - Prohibition of Causing Damage: Each contractual party must refrain from any act causing damage to the contractual partner (Article 9 LCT).

241 - Fair Trade Custom and Usage: In establishing contractual relations and in exercising contractual rights as well as in fulfilling contractual duties each party must act in accordance with fair trade custom and mutually developed usage (Article 14 LCT).

242 Therefore, the interpretation of the agreements between CEAC and the SoM must be based upon the principle of loyalty by which each shareholder is not only bound vis á vis the company but also vis à vis its co-shareholder

243 The SoM breached its contractual obligations vis à vis CEAC by numerous actions – even if one does not take into consideration that already since end-2010 the SoM followed the plan to push out its co-shareholder CEAC.

a) Frustration of Implementing Restructuring Plans

244 The agreements between CEAC and the SoM contained in the Settlement Agreement and as set forth in the KAP Shareholders' Agreement were entered into in order to strengthen KAP's financial status and jointly ensure KAP's survival. In view of the principles of Montenegrin law set out above in section C.1, for the interpretation of such shareholders' agreement the duty of loyalty is to be taken into account. This includes the obligation of each shareholder to support a restructuring plan designated to safeguard the company's long-term sustainability in the event that such a company is threatened with insolvency each shareholder has. It also includes the obligation to take part in debt to

equity swaps, in particular in the event that in the absence of the restructuring measures, the company becomes insolvent, causing the claims of the shareholder to become worthless.

245 Therefore, the SoM was under the obligation to support CEAC's restructuring efforts.

246 This duty also arises from some the specific provisions of the Settlement Agreement and the KAP Shareholders' Agreement: In particular, the SoM undertook "*to support the financial recovery of the companies*" (cf. Recital D of the Settlement Agreement) and had become a major shareholder of KAP, specifically "*in order to ensure the harmonious and successful management*" of KAP (cf. p. 3 of the KAP Shareholders' Agreement).

247 However, as set out in detail in section B.8.a) above, the SoM prevented the implementation of all restructuring measures proposed by CEAC and, thereby, thwarted CEAC's efforts to resolve the financial crisis of KAP. This conduct was a material breach of the SoM's obligations towards CEAC.

248 In particular, the SoM's rejection of the restructuring plan based on the own proposals of the SoM (see section B.8.a)(iii)) was a breach of its duties of loyalty.

b) Purposefully causing Acceleration of the Deutsch Bank Loan

249 Taking into consideration the principals of Montenegrin law as set out in section C.1 above, the Settlement Agreement and the KAP Shareholders' Agreement are to be interpreted to the effect that the SoM was clearly under the obligation to support KAP in order to avoid any termination or acceleration of a loan granted to KAP by third parties and to refrain from any action which could lead to such termination or acceleration. Again, these duties of the SoM are included in its undertaking to "*support the financial recovery of the company*" (cf. Recital D of the Settlement Agreement) and its duties in view of the mutual purpose to "*ensure the harmonious and successful management*" of KAP (cf. p. 3 of the KAP Shareholders' Agreement).

250 However, as set out in section B.8.b) above, the SoM, without any plausible reasons, refused to agree upon the adoption of the 2011 business plan of KAP and, again for no apparent reason, blocked the adoption of the 2009 financial statements with its veto, caused KAP to breach its

obligations under the loan agreement with Deutsche Bank and, thereby, caused the acceleration of that loan. This breach was not cured by the SoM because it rejected the proposal for a constructive solution provided by KAP and CEAC.

251 As further set out in section B.8. b) above, the SoM's breach resulted in its payment for the State Guarantee provided to Deutsche Bank and, in June 2013, the SoM used its alleged claims resulting from that payment to Deutsche Bank as a pretext to file the petition for insolvency of KAP.

252 By SoM's obstruction regarding the Deutsche Bank loan it breached its obligations – irrespective of the fact that the SoM's payment of € 1 million to the Deutsche Bank agent must have been a payment for Deutsche Bank accelerating the loan to KAP.

c) Shortfall of Electricity Subsidies

253 As set out in section B.8.c)(1) above, the SoM did not pay in full the electricity subsidies agreed upon in the Settlement Agreement. This was a clear breach of clause 11.3 of the Settlement Agreement – and at the same time a breach of the SoM's obligation vis à vis CEAC because under the agreements between the two major shareholders the SoM had the duty to fulfill its agreement with KAP as set forth in clause 11.3 of the Settlement Agreement.

254 As set out in section B.8c)(1) above, the Formula Price and the Tariff Price were established in net amounts (excluding VAT) and, therefore, clause 11.3 of the Settlement Agreement can only be interpreted to the effect that the difference between Formula Price and Tariff Price was to be calculated on the basis of the net amounts (up to € 60 million).

255 The amounts set out in clause 11.2 of the Settlement Agreement for the calculation of the Formula Price are net amounts excluding VAT. This becomes apparent when looking at the definition of "BK" which defines an amount to be added in case the LME price exceeds USD 1,700. Here, no VAT is added to the amount but this factor is directly taken as published by the LME. If BK is, therefore, a net amount without VAT, all other amounts (to which the BK might be added) must necessarily be net amounts.

256 But also good common sense tells us that the actual subsidy set out in section 11 of the Settlement Agreement shall clearly be Euro 60 million

and not Euro 60 million minus the applicable VAT, which the SoM basically pays to itself.

d) No Safeguarding of Electricity Supply

257 As set out in section B.8c)(2) above, the SoM did not support KAP in order to safeguard a long-term electricity supply at reasonable cost but instead frustrated KAP's and CEAC's efforts to find a solution. The consequences were, *inter alia*, that KAP paid electricity prices substantially above market average and, as of September 2012, the electricity supplies were reduced by approx. 50 % of the previous levels, causing a colossal loss in the operating cost account.

258 The SoM's behavior was in clear breach of its undertaking under clause 11.5 of the Settlement Agreement pursuant to which "*for the purpose of achieving the maximum production quantities and optimal price*," the SoM promised to use its "*best endeavors to enable supplying of the electricity to KAP*."

259 The SoM knew from the beginning that the crucial issue of a successful restructuring of KAP was the electricity supply in sufficient quantity and at reasonable costs. Therefore, the importance of clause 11.5 of the Settlement Agreement cannot be overstated.

260 Taking into account the duty of loyalty as interpretation criterion for agreements between shareholders, the SoM's boycotting of a long term electricity supply at reasonable costs was also a major breach of its obligation *vis à vis* CEAC.

e) Filing for Insolvency

261 By the SoM's own petition of 14 June 2013 for commencing bankruptcy proceedings against KAP, it blatantly infringed its obligations under the Settlement Agreement and under the KAP Shareholders' Agreement.

262 As set out above in section C.1, based upon the principles set forth in the LCT, the SoM had to obey its duties of loyalty *vis à vis* KAP and *vis à vis* CEAC. Therefore, the SoM's right to file a petition for insolvency against KAP was in anyway strictly limited.

263 Moreover, taking into consideration that (i) the SoM became a shareholder of KAP in order to strengthen its financial status and "*in order to ensure the harmonious and successful management and control of*"

KAP (p. 3 of KAP Shareholders' Agreement) and that (ii) the SoM had confirmed that its "*primary goal is to support the financial recovery of the companies*" (Recital D of the Settlement Agreement), the agreements between the SoM and CEAC must be interpreted to the effect that the SoM was not allowed to use any claims under the State Guarantees for initiating KAP's insolvency.

264 Even more, the SoM was not allowed to use its alleged claims under the State Guarantee for insolvency because the SoM itself had deliberately caused the acceleration of the loan secured by the State Guarantee and, from 2011 through June 2013, had permanently thwarted the restructuring measures developed by CEAC to ensure KAP's viability and to enable the transformation of KAP to a profitable entity.

265 The specific provisions of the KAP Shareholders' Agreement further confirm it becomes apparent that the SoM's petition for insolvency constituted a breach of its obligations:

266 In particular, Clause 4.1 lit. c) of the KAP Shareholders' Agreement provides that the SoM "*shall at all times exercise all their voting rights (…) and all other powers of control so as to procure that the Company (…), shall not, unless both Parties have agreed in writing, (…) suffer to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsory), unless the Company must be wound up pursuant to compulsory provisions of Montenegrin law (…)*".

267 CEAC had neither agreed to the SoM's petition for insolvency nor had it even been informed in advance about this step of the SoM. There was also no need under any "*compulsory provisions of Montenegrin law*" to wind up KAP. Nevertheless, the SoM directly caused "*that the company shall suffer to be done an act whereby the company was wound up*". This was a direct infringement of clause 4.1 lit. c) of the KAP Shareholders' Agreement.

268 The SoM's filing for insolvency also breached specific provisions of the Settlement Agreement:

269 Clause 28.1 provides a list of events which shall be deemed as "*Failure Events*" which shall entitle the SoM to proceed as set forth in section 28.4 – 28.6 of the Settlement Agreement. One of the Failure Events is if "*the amount paid by the SoM under any or all of the State Guarantees exceeds the amount of EUR 40,000,000*" (clause 28.1 lit. (g)).

270 Therefore, as long as payments of the SoM under the State Guarantees were below this threshold, the SoM was under the obligation to meet its "*primary goal (…) to support the financial recovery of the companies*" (cf. Recital D of the Settlement Agreement).

271 The identical number of Euro 40 million of debt outstanding towards the SoM under the State Guarantees is set forth in clause 10 of the Settlement Agreement, which, subject to further restrictions, might then allow the SoM to call the transfer of certain shares pledged to the SoM. This Euro 40 million threshold was, therefore, meant by the Parties to be the amount of debts under the State Guarantees which needed to be exceeded before the SoM was allowed to take any measures.

272 As set out in section B.8.b) above, Deutsche Bank requested from the SoM under the State Guarantee payment in the amount of € 23.4 million. Further State Guarantees were not enforced at that time. Therefore, SoM's payment under the State Guarantees did not exceed € 40 million and neither the requirement of clause 28.1 lit. (g) nor of clause 10 of the Settlement Agreement had been met. The filing for insolvency was thus in clear breach of SoM's obligations.

273 But even if the total amount of payments under the state guarantees had exceeded € 40 million, the SoM nevertheless would have been in breach of the Settlement Agreement by filing the insolvency petition. Pursuant to clause 28.6 of the Settlement Agreement, in case of an event of failure of restructuring, the SoM was only allowed to proceed as set out in clause 28.4.7 of the Settlement Agreement – which does not include the filing for insolvency.

f) Taking over Control of KAP

274 As set out in section B.10 above, the SoM had filed for insolvency of KAP in order to take over control of KAP. Just one day after the opening of the KAP insolvency proceedings the SoM had brought the state-controlled Montenegro Bonus into the position of the dominant managing entity of KAP. Through further breaches of the Montenegrin Bankruptcy Law the SoM ensured that the bankruptcy proceedings are conducted in a manner suiting the SoM's interest.

275 These actions violated the KAP Shareholders' Agreement. Pursuant to clause 3.2 of that agreement, candidates nominated by CEAC were to be elected as the chairman of KAP's Board of directors and as KAP's ex-

ecutive director. In conjunction with its other provision, the agreements between CEAC and the SoM must be interpreted to the effect that CEAC was entitled to maintain its operational and management role at KAP.

2. Consequences of Breaches

a) CEAC entitled to full Compensation of Damages

276 CEAC repeatedly requested the SoM to comply with its obligations and duties. However, the SoM was neither willing to fulfill its undertakings nor to cure any of its breaches.

277 Under the LCT, CEAC is entitled to a full compensation of the damages caused by the SoM's breach of contract (see, inter alia, Articles 148 et seqq. LCT and Articles 192 et seqq.).

278 In addition, CEAC's claims for damages with regard to the SoM's filing for insolvency and taking over control of KAP are based upon clause 13.1 of the KAP Shareholders' Agreement. Pursuant to this provision, "*in the event a Party breaches any of its undertakings contained in clauses 3 to 7 of the KAP Shareholders' Agreement such Party shall compensate to the other Party damages in the amount determined by a relevant arbitration decision.*" As set out in section C.1 above, the SoM's filing for insolvency was in breach of clause 4.1 lit. c) of the KAP Shareholders' Agreement and the SoM's actions in order to take control over KAP were in breach of clause 3.2 of the KAP Shareholders' Agreement.

279 While the SoM is contractually required to compensate CEAC for breaches of obligations contained in the Settlement Agreement, the SoM's liability is not limited by clause 28.5 of the Settlement Agreement. This provision refers only to a "Failure of Agreement" as dealt with in clause 28, but does not apply to CEAC's claims for the breaches set out in section C.1 above. Further, the SoM did not just negligently breach the agreements but deliberately; all actions of the SoM in breach of the agreements were made by intention. Under the LCT, the liability for deliberate action cannot be limited (cf. Article 272 LCT).

b) Amount of Damages

280 The compensation to be paid by the SoM to CEAC amounts, at a minimum, to the losses incurred by CEAC in order to enter into the agreements which were breached by the SoM, including frustrated expenditures.

281 Therefore, CEAC is entitled to damages as follows:

(1) Waiver of CEAC's Claims in the First Arbitration

282 Pursuant to clause 27.1 of the Settlement Agreement, CEAC agreed to waive its claims it had brought forward against the SoM and the Sellers in the First Arbitration in motions 1 – 9 (see section D.1.a) below). This waiver was a loss incurred by CEAC in the interest of finding a solution for KAP and was made by CEAC on the basis of the SoM's undertakings, in particular to support the financial recovery of the companies. As set out in section D below, these claims were well founded in fact and law. CEAC is to be compensated for the waiver of these claims.

Waiver of Claims for Payment to CEAC:

283 CEAC waived its claims against the SoM and the Sellers, being liable jointly and severally, for payment to CEAC in the amount of € 205,910,367 (motions 1.a) and 1.c) in the First Arbitration).

284 CEAC is entitled to a compensation payment in this amount.

Waiver of Claims for Payment to KAP and RBN in the First Arbitration:

285 CEAC waived its claims against the SoM and the Sellers, being liable jointly and severally, for payment to KAP in the amount of € 101,200,000 and USD 2,057,987.44 and for payment to RBN in the amount of € 40,183,000 (motions 2.a), 4 and 5 in the First Arbitration).

286 As compensation, CEAC is entitled to request these payments made to KAP and RBN, respectively.

Waiver of Claims for Interest:

287 CEAC waived its claim for interest on any payable amounts as per the motions 1, 2, 4 and 5 in the amount of 8 percentage points above the

Base Rate (§ 247 German Civil Code, *Bürgerliches Gesetzbuch* – "**BGB**") thereof from 26 May 2006 (motion 8 in the First Arbitration).

288 As further compensation, CEAC is entitled to request this interest being paid on the abovementioned amounts to be paid to CEAC, KAP and RBN, respectively.

Waiver of Claims regarding Costs:

289 CEAC waived its claim for its cost in the First Arbitration (motion 9) and, pursuant to clauses 26.2 and 26.3 of the Settlement Agreement, had to pay 50 % of the fees and expenses of the arbitral tribunal.

290 CEAC is entitled to be compensated in the amount of these fees and expenses, totaling to € 543,930.73.

Waiver of further Claims:

291 Finally, CEAC waived its claims for indemnification of KAP, RBN and CEAC against certain liabilities, for declaring waivers of receivables against KAP and RBN, for assumption of certain debts of KAP, for declaring that certain receivables against KAP are not due (motions 2.c), 3.a), 3.b),3d), 3.e), 3.f), 5.c), 6 in the First Arbitration) as well as certain subsidiary motions (motions 1.b), 1.d), 2b), 5.b) in the First Arbitration).

292 As compensation, CEAC shall be entitled to bring forward the claims as aforesaid.

(2) Transfer of 32.7 % in KAP to SoM for € 1

293 Pursuant to clause 2.2 of the KAP Shareholders' Agreement, CEAC transferred 3,117,536 shares in KAP to the SoM against payment of € 1.

294 CEAC is entitled to a compensation in the amount of the difference between, at a minimum, the nominal value of these shares of € 15,746,674.34 and € 1, i.e., in the amount of € 15,746,673.34.

(3) Waiver of CEAC's Claims against KAP

295 Pursuant to clauses 13.3 and 13.6 of the Settlement Agreement, CEAC waived claims against KAP in the amount of € 40,406,434 and undertook to further waive claims against KAP in the amount of USD 27,790,234.

296 CEAC is entitled to compensation in the amounts as aforesaid.

(4) Further Loans to KAP

297 In reliance of SoM's compliance with its undertakings, CEAC paid to KAP loans amounting to € 22,905,764.09. Insofar CEAC's claim against KAP including interest until 31 December 2011 amounts to € 24,404,989.92 plus further interest of € 4,380.88 per day since 1 January 2012 (see section B.6 above).

298 Respondent 5 is liable for the repayment of these loans under the loan agreement. As a compensation for the breaches of contractual obligations the Respondents 1-4 must be jointly and severally liable for repayment together with KAP.

(5) Summary of CEAC's Claim for Compensation:

299

Payment to CEAC	
Waiver of Payment Claims in the First Arbitration	€ 205,910,367
Fees as expenses in the First Arbitration	€ 543,930.73
Compensation re. shares transferred to SoM	€ 15,746,673.34
Waiver of CEAC's claims against KAP	€ 40,406,434 + USD 27,790,234
Further Loans to KAP	€ 24,404,989.92
Subtotal	**€ 287,012,394.99 + USD 27,790,234 Plus further interest**
Payment to KAP and RBN	€ 141,383,000 + USD 2,057,987.44
Further Claims in the First Arbitration	

c) Alternative Calculation of Damages

300 CEAC reserves the right to calculate its damages on the basis of a different approach, in particular on the basis of the value its interest in

KAP would have had if the SoM had fulfilled its obligations. Such value at least equals the aggregated sum of the Subtotal plus the subsidiary claims.

3. Claims based on Tort

301 In view of the collusive unwillingness of SoM and all entities controlled by SoM (in particular EPCG and Montenegro Bonus) to actually restructure KAP and provide it with the necessary environment for a successful aluminum smelter as provided for in the Settlement agreement, it becomes apparent that the illegal actions of SoM add up to a deliberate and tortious behavior. The entering into the Settlement Agreement and KAP Shareholders' Agreement merely had the aim to get relieve the SoM of the claim brought forward in the First Arbitration. The SoM never had the honest intention to live up to its contractual obligations.

302 Under Montenegrin Law (Art. 154 et seqq. LCT), a person causing a loss of another in a culpable way is liable for damages. The tort damage exists if it is caused by deliberate action or negligence. Consequence of a tortious behavior is the obligation to put the damaged party in a position as if such action did not occur.

303 The tortious behavior here is that the SoM, without the actual intention to ever comply with its obligations, induced CEAC to enter into the Settlement Agreement and the KAP Shareholders' Agreement in order to bring CEAC to waive its well-founded claims brought forward in the First Arbitration. Therefore, also the claim for tort leads to a right of CEAC to be compensated as set out in C.2. b) above, at a minimum.

304 The claims for damages under tort may even be higher: Had CEAC not entered into the Settlement Agreement and the KAP Shareholders' Agreement and had SoM in a timely manner fulfilled its obligations brought forward in the First Arbitration, KAP would have been successfully restructured by CEAC. This would have been in line with the plans of CEAC at the time to become CEAC the leading South-East European aluminum producer. Environmental problems would have been solved, because the SoM would have – as requested in the First Arbitration and in fulfillment of its obligations under the SPAs -paid all sums necessary to clean up the disastrous environmental mess the historic production at KAP's site caused. The workforce would have been restructured and a reliable source of electricity at competitive prices would have been found.

4. Claim for Protection from the Violation of Rights of Shareholders

305 The unlawful violation of CEAC's rights as a shareholder leads to claim for tort under Montenegrin Law on Companies ("**MLC**"). Pursuant to Art. 30 para 5 item 3 MLC, any shareholder of a company shall have a right to submit a complaint to a commercial court where shareholders individual rights have been harmed or where persons who control the company, commit a fraud on the minority shareholders.

306 The SoM factually, by masterminding the insolvency of KAP, took control over KAP. It controlled the only electricity producer and other vital suppliers of KAP. It acted unilaterally in negotiating a flawed deal with Deutsche Bank, without any substantial participation of KAP or CEAC, which directly was used in order to file for insolvency of KAP. In such vital issue as the adoption of a business plan and the financial statements, the SoM blocked the operations of the company against any common sense. In other words, the SoM illegally assumed full control of KAP, an asset that, despite all talk of privatization, the SoM apparently still considered the government's property. By assuming this controlling role and pushing CEAC out of the company, the SoM became liable for the breach of CEAC's shareholder rights. The SoM is, again, therefore liable for the damaged caused by such action.

D. Claims under the First Arbitration

1. Introduction

a) Claims and Motions in the First Arbitration

307 In the First Arbitration CEAC had, *inter alia*, payment brought forward claims against Sellers and the SoM to be paid directly to the CEAC amounting to Euro 205,910,762.66 in total and to be paid to KAP and RBN amounting to Euro 141,383,000.00 and USD 2,057,987.44. In addition, CEAC was entitled to request the SoM to waive certain receivables, to indemnify KAP and RBN for certain potential liabilities, to assume certain debts and to ask for a declarative statement that certain liabilities of KAP were not due.

308 In detail, CEAC applied for the following motions (all references to Ex-

hibits in these motions refer to the numbering in the First Arbitration):

1.

a) The Tribunal shall order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay to CEAC the amount of Euro 188,652,365.00.

b) In the event Motion 1.a) is not or not fully granted, as a subsidiary motion (*Hilfsantrag*), the Tribunal shall order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay to the KAP and to CEAC the portion of the amount set forth in Motion 1.a) as deemed appropriate by the Tribunal.

c) The Tribunal shall further order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay to CEAC the amount of Euro 17,258,002.66.

d) In the event Motion 1.c) is not or not fully granted, as a subsidiary motion (*Hilfsantrag*), the Tribunal shall order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay to the RBN and to CEAC the portion of the amount set forth in Motion 1.c) as deemed appropriate by the Tribunal.

2.

a) The Tribunal shall further order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay to KAP the amount of Euro 101,200,000.00;

b) In the event Motion 2.a) is not or not fully granted, as a subsidiary motion (*Hilfsantrag*), the Sellers and the SoM shall immediately and without any further delay see to it that at Sellers' and SoM's costs the following measures – in close coordination with KAP and respecting the needs of KAP's ongoing operations - are being implemented at the site of KAP:

(i) Removal of all hazardous waste from the site, in particular from the concrete storage area on KAP's site and the removal of any contamination caused thereby;

(ii) Removal of all solid wastes of whatever form (including cathode, anode, waste oil, refractory material, salt cake, waste contaminated with phenols, cyanides, PAH) from the

site of KAP in particular from the approx. 10 ha area used for disposal of various historical solid wastes from KAP;

(iii) Determination and removal of all other contamination of the soil on the site of KAP;

(iv) Construction of a water control system, both for the red mud ponds A and B and for all other parts of the site of KAP, in order to prevent any further pollution of groundwater from the red mud ponds and the remaining contamination of the soil.

(v) Close the existing red mud ponds from the open air and have appropriate measures realized in order to control seepage from the dam walls.

c) The Tribunal shall further assert (*feststellen*) that the Sellers and the SoM are jointly and severally liable for and shall at all times hold KAP and CEAC indemnified from any and all claims of whatever nature of third parties brought against KAP or CEAC based, *inter alia*, on the existence of any contamination or pollution of air, soil or water caused by KAP prior to November 30, 2005, irrespective of whether the damage or claim of the third party arose prior or after November 30, 2005.

3.

a) The Tribunal shall further order the SoM to duly declare in a written document to KAP a waiver of the receivables against KAP which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in the column "RoM budget" in the amount of Euro 20,686,141.61 plus any interest due on this amount.

b) The Tribunal shall further order the SoM to duly declare in a written document to KAP that they assume as their own debt the following payables of KAP towards third parties, plus any interest due on the following amounts:

(i) an amount of Euro 4,696,904.25 of the payables of KAP towards the company Elektroprivreda EPCG A.D. Niksic, Montenegro, which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in

the column “Elektroprivreda”;

(ii) an amount of Euro 1,563,106.88 of the payables of KAP towards the RBN, which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in the column “RBN”;

(iii) an amount of Euro 74,909.34 of the payables of KAP towards the company Luka Bar A.D., Montenegro, which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in the column “Luka Bar” ;

(iv) an amount of Euro 872,129.31 of the payables of KAP towards the Respondent 1, which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in the column “Fond za Razvoj”;

(v) an amount of Euro 2,213,510.88 of the payables of KAP towards the Montenegro Bank, Podgorica, Montenegro, which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in the column “MN Banka”.

c) The Tribunal shall further order the SoM to cause the creditors set forth in Motion 3.b) lit. (i) through (v) to approve the assumption of the respective payables set forth in Motion 3.b) lit. (i) through (v).

d) The Tribunal shall further assert (*feststellen*) towards the SoM that the receivables against KAP which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in the column “RoM budget” in the total amount of Euro 71,777,035.44 are not due for repayment at present.

e) The Tribunal shall further assert (*feststellen*) towards Respondent 1 that the receivables against KAP which are set forth in the enclosed Exhibit C 114 to the extent as summarized in the enclosed Exhibit C 116 in the column “Fond za Razvoj” in the total amount of Euro 3,026,125.28 are not due for repayment at present.

f) The Tribunal shall further assert (*feststellen*) towards the SoM

that the SoM shall indemnify and hold harmless KAP from any claims or costs should any of the creditors mentioned under Motion 3.b) lit. (i) through (v) claim payment of their receivables against KAP as set forth in Exhibit C 114 and summarized in the enclosed Exhibit C 116.

g) The Tribunal shall further order the Respondent 1 to immediately discontinue the court procedure in front of the Commercial Court in Podgorica under the docket number P.br. 624/07 that Respondent 1 initiated with its complaint issued on November 2, 2007, and to bear all costs and expenses arising from this court procedure.

4.

The Tribunal shall further order the SoM to pay to KAP an amount of USD 2,057,987.44.

5.

a) The Tribunal shall further order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay to RBN the amount of EUR 40,183,000.00.

b) In the event Motion 5.a) is not or not fully granted, as a subsidiary motion (*Hilfsantrag*), the Sellers and the SoM shall immediately and without any further delay – in the case of the Motion 5.b) lit. (iii) upon the end of the exploitation of each of the referenced mines - see to it that at Sellers' and SoM's costs the following measures – in close coordination with RBN and respecting the needs of RBN's ongoing operations - are being implemented at the sites of RBN:

(i) Design and installation of protected waste storage areas for all mines of RBN and removal of all dumped waste around the RBN's mines and removal of any soil contamination, in particular caused by dumping of waste and hydraulic oils and oil containing automotive parts on all sites of RBN;

(ii) Assume any liability, cost of operation and monitoring of the water supply system to communities presently operated by RBN;

(iii) Immediate closure of the inoperative mines Borova Brda, Djurakov Do 1, Borovnik and any other inoperative mines of RBN, in particular the inoperative mines Crvena Kita, Bajov Do, Lokve, Kutsko Brdo, Podplaninik, Kamenica, Liverovici, Bunici, Gornje Polje, Stitovo 1, Velimlje and Kosjeric, in accordance with the laws, including the refilling of the mine, re-profiling of the landscape, re-habilitation and re-vegetation, and closure of any other mine of RBN in accordance with the laws that will become inoperative in the future, including the mines Djurakov Do 2, Zagrad, Stitovo 2 and Biocki Stan, upon the cessation of the mining activities, including the refilling of the mine, re-profiling of the landscape, re-habilitation and re-vegetation. All costs involved therewith shall be borne by the Sellers and the SoM;

c) The Tribunal shall further assert (*feststellen*) that the Sellers and the SoM are (i) jointly and severally liable (*gesamtschuldnerisch*) for and shall at all times hold RBN and CEAC indemnified from any and all claims of whatever nature of third parties brought against RBN or CEAC based, *inter alia*, on the existence of any contamination or pollution of air, soil or water caused by RBN prior to November 30, 2005, irrespective of whether the damage or claim of the third party arose prior or after November 30, 2005, and (ii) jointly and severally liable (*gesamtschuldnerisch*) for bearing the costs required for the closure of the inoperative mines Borova Brda, Djurnkov Do 1, Borovnik, Crvena Kita, Bajov Do, Lokve, Kutsko Brdo, Podplaninik, Kamenica, Liverovici, Bunici, Gornje Polje, Stitovo 1, Velimlje, and Kosjeric, including the refilling of the mines, re-profiling of the landscape, re-habilitation and re-vegetation.

6.

The Tribunal shall further order the SoM to duly declare in a written document to RBN a waiver of the receivables against RBN which are set forth in Annex 8 to the Agreement for the Sale and Purchase of the Shares of the company Rudnici Boksita AD Niksic (Exhibit 81) in the amount of Euro 7,745,396.11 plus any interest due on this amount.

7.

The Tribunal shall further assert (*feststellen*) that the Sellers and the SoM are jointly and severally liable for, shall at all times hold CEAC and RBN indemnified from any liability and shall compensate any loss or damage arising from the fact that the auditor of RBN's financial statements of the year 2004 issued a disclaimed opinion confirming that these financial statements were not prepared in accordance with Montenegrin Accounting Rules.

8.

The Tribunal shall further order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay interest on any payable amounts as per the Motions 1. through 5., above in the amount of 8 percentage points above the Base Rate (§ 247 German Civil Code, *Bürgerliches Gesetzbuch*, BGB) thereof from May 26, 2006;

9.

The Tribunal shall order the Sellers and the SoM to jointly and severally (*gesamtschuldnerisch*) pay the costs of this procedure.

309 The claims brought forward in the First Arbitration were valid and well founded.

b) General Information

310 The factual basis of most of these breaches had been specified on behalf of CEAC in a notice of breach of May 24, 2006 (hereinafter referred to as "**the Notice of Breach**"). A copy of the body of the Notice of Breach is enclosed to this Statement of Claim as **Exhibit Doc. C 68**. Attached to the Notice of Breach were several further documents. Copies of these Exhibits 0 through B.II.3.e)/3 to the Notice of Breach are enclosed to this Statement of Claim as **Exhibits Doc. C 69 through Doc C 142.**

311 As per the corporate documents enclosed as **Exhibit Doc. C 143**, in the time period between the provision of the Notice of Breach and the submission of the Statement of Claim in the First Arbitration CEAC changed its corporate name from Salamon Enterprises Limited to CEAC Holdings Limited in the year 2007.

312 Parties to the SPAs were the Sellers and the SoM, the latter *inter alia,* as a co-debtor for the obligations under Sections 5.3.4 SPAs and to assume certain additional rights against and obligations towards the acquired undertakings and CEAC.

313 The wording of the SPA-KAP and the SPA-RBN refers to the Government of Montenegro as being a party to the agreement. In clause 27.2 of the Settlement Agreement the Parties clarified that "*references to the Government of Montenegro and the terms "GoM" in the SPAs refer to the SoM.*"

314 Under a general legal understanding, a government as such cannot be a party to an agreement or be the holder to a right, title or property. Rather, a government is the acting executive body of a territorial entity (*Gebietskörperschaft*). The actual holder of rights, title and obligations is the territorial entity as such. Consequently, when entering into the SPA, the Government of Montenegro acted not in its own name but in the name of the territorial entity it actually represents, which is the SoM.

c) Notices

315 Soon after the Closing on November 30, 2005, CEAC had to discover that several representations and warranties made by the Sellers and the SoM in the SPAs were materially wrong and had been breached. Also further contractual covenants and obligations arising from the SPAs were not duly fulfilled by the SoM and the Sellers. CEAC appointed the audit firm Deloitte in Belgrade, Serbia (hereinafter referred to as "**Deloitte**"), to support CEAC to identify these items and to evaluate the influence they may have on the annual accounts of the companies.

316 CEAC further entrusted the renowned appraisal firm American Appraisal (UK) Limited (hereinafter referred to as "**AA**") with an audit on the correct evaluation of the fixed assets in the accounts of KAP and RBN over the last years. AA issued a report on its findings in May 2006.

317 On behalf of CEAC, a notice within the meaning of Sections 5.4.2 SPAs, i.e., the Notice of Breach (**Exhibit Doc. C 68**) specifying the factual basis of the breaches of representations and warranties was served upon the Sellers and the SoM on May 26, 2006.

318 Following the service of the Notice of Breach, CEAC made several attempts to initiate substantive negotiations with the Sellers and the SoM with the aim to bring about a mutually acceptable settlement. In the context of these efforts, representatives of the group of companies CEAC belongs to issued a letter of August 31, 2006. This letter is enclosed as **Exhibit Doc. C 151**. Much to the regret of CEAC, the Sellers and the SoM proved unable to agree to start substantive settlement negotiations. The Sellers and the SoM were not even willing to agree to a temporary waiver of the statute of limitation to give the talks more time.

319 Therefore, on October 5, 2007, CEAC served a first "Notice of Dispute" upon the Sellers and the SoM in accordance with Sections 10.3.1 SPA, which is enclosed as **Exhibit Doc. C 152**. As the parties did not, within the 14 day period set forth in Sections 10.3.1 SPA, find an amicable solution, the matter had to be referred to arbitration. With the second "Notice of Dispute" of November 27, 2007 CEAC therefore initiated this arbitration procedure (enclosed as **Exhibit Doc. C 153**).

d) General Legal Issues

i) Choice of Law Clause

320 Sections 10.1 SPAs set forth that "(...) *the law governing the rights and obligations of the Parties arising out of this agreement shall be that of the Federal Republic of Germany*."

321 Nevertheless, Montenegrin law is relevant for some aspects of the case at hand. Sections 10.1, second sentence, SPAs provide that the laws of Montenegro shall be applied to *"(...) all laws and regulations related to the existence and operation of the Company*". Under German international private law, the parties to an agreement may agree on different issues related to the agreement being subject to different legal systems. Even though not stipulated explicitly in Sections 10.1 SPA, in particular the accounting principles belong to the "*laws and regulations related to the operation of the Company*".

ii) Waiver of Immunity

322 A state accepting an arbitration clause is deemed to have waived its immunity from private law litigation. Consequentially, in Sections 9.12 SPA, the Sellers and the SoM explicitly waived their immunity.

e) Legal Issues regarding Breaches of Representations and Warranties

i) Representations and Warranties

323 Most of the claims brought forward in the First Arbitration are based on Sections 5.1.1 through 5.1.42 SPAs setting forth the representations and warranties of the Sellers. With regard to CEAC's claims for breaches of these representations and warranties, in Sections 5.3.4 SPAs the Parties agreed that "*if the Buyer sustains any loss or damage in relation to the breach or violation of a representation or warranty under Clause 5.1 (…), including any loss suffered by the Company, the Sellers and GoM shall compensate the Buyer or, as appropriate, the Company, in an amount equal to such loss or damage (…).*"

324 Any breach of one of the representations and warranties as such constitutes a cause of action for a compensation claim, irrespective of the Sellers' and the SoM's responsibility for the fact that the representation or warranty was incorrect.

ii) Amount of compensation

325 Pursuant to Sections 5.3.4 SPA, CEAC is entitled to compensation in the amount of any loss or damage sustained in relation to any breach or violation of the representations and warranties set forth in Sections 5.1 SPA. This compensation is to be calculated on the basis of the reduced value that each breach caused to the companies. The reduced value equals to the expenses necessary in order to put the target company in a condition that corresponds to the condition which was promised to the Buyer in the representations or warranties breached. If, therefore, the net equity as per the accounts, the accuracy of which has been warranted, must be adjusted by a certain amount, this amount would have to be injected as additional capital into the company by the Buyer. Therefore, in the case of balance sheets warranties, the damage at least equals to the amount necessary to "refill" the promised net equity position.

iii) Entitled Entity

326 Pursuant to Sections 5.3.4 SPAs, the compensation for losses or damages in relation to the breach of representations or warranties shall be paid to the Buyer (CEAC) or "*as appropriate*" to the Company. Therefore, CEAC is entitled to claim the compensation to be payable to itself. Only in the alternative and only insofar "*as appropriate*" compensation shall be paid to KAP or RBN, respectively.

327 For the following reasons it is "*appropriate*" that the full amount of the compensation under Section 5.3.4 SPAs is to be paid to CEAC:

328 CEAC did not only pay the purchase prices of Euro 48,500,000.00 and Euro 6,000,000.00, but assumed certain obligations (i) regarding investment programs for KAP and RBN (Euro 55,000,000.00 and Euro 4,000,000.00 - Section 7.1.1 SPA), (ii) regarding an environmental program for KAP (Euro 20,000,000.00 - Section 7.1.3 SPA-KAP), (iii) regarding the payment of the initial concession fee for RBN (Euro 6,000,000.00 - Section 7.1.2 SPA-RBN), (iv) regarding the payment to the SoM pursuant to Section 7.1.8 SPA-KAP as amended by Item 1 of the Amendment dated November 30, 2005 (Euro 28,011,094.00) and (v) regarding the payment of debts to certain foreign creditors of KAP (USD 10,600,000.00 - Section 7.1.9 SPA-KAP). Insofar the total amount of CEAC's engagement is Euro 176,570,894.00.

329 In addition to the obligations mentioned in the preceding paragraph CEAC is subject to further undertakings set forth in Section 7.1 and 7.2 SPA, inter alia, regarding the "Social Program" (Section 7.1.2 SPA-KAP and Section 7.1.3 SPA-RBN) and regarding the DRA (Section 7.1.4 SPA-KAP). Therefore, the total volume of CEAC's engagement exceeds the amount which CEAC is entitled to claim as compensation under Section 5.3.4 SPA.

330 To the extent the Tribunal of the First Arbitration would have taken the view that it would be "*appropriate*" that the compensation for certain of the items brought forward hereinafter should be paid to KAP or RBN, respectively, CEAC asked in the Subsidiary Motions ("*Hilfsanträge*") No. b) and d) for such compensation to be paid to each of the respective companies and CEAC as deemed appropriate by the Tribunal.

331 With regard to the claims relating to the environmental condition, in Motions Nos. 2.a) and 5.a) CEAC requested payment to the company concerned.

iv) Additional Contractual Remedies

332 The SPAs do not provide for any limitation or exclusion of the statutory remedies of a buyer under a purchase contract as referred to in § 437 German Civil Code (*Bürgerliches Gesetzbuch,* hereinafter referred to as "**BGB**"), except for the right to rescind the SPA. Any additional claims, in particular for reduction of the purchase price or claims for damages and any claims based on a breach of a pre-contractual duties of care

(*culpa in contrahendo*) are not excluded and are not subject to the limitations as set forth in Sections 5.4 SPA.

v) Limitations of Liability

333 The liability for breaches of warranties and other obligations under the SPAs of the SoM is unlimited. Sections 5.4.4. SPAs clearly only limit the liability of the Sellers. The liability of the SoM that arises from Sections 5.3.4 SPA, is not limited by Sections 5.4.4 SPA.

334 But also with regard to the Sellers, their liability under the SPAs is not effectively limited. The wording of Sections 5.4.4. SPA suggest that the aggregate liability for any breach of a representation or warranty shall not exceed the purchase price, i.e., the amount of Euro 48,500,000.00 in the case of KAP and the amount of Euro 6,000,000.00 in the case of RBN (each of these amounts hereinafter referred to as the "**Cap**").

335 The Cap and all other limitations of liabilities set forth in Sections 5.4 SPAs are void in accordance with the BGB. Pursuant to § 444 BGB a Seller is not entitled to refer to a cap limiting the purchasers` rights as far as the seller assumed a warranty ("*Garantie*"), i.e., a liability not dependent on fault or negligence, with regard to the quality of the purchased asset.

336 The Sellers and the SoM represented and warranted to CEAC the facts as set forth in Sections 5.1 SPA and therefore assumed a "*Garantie*" within the meaning of § 444 BGB. Following the explicit wording of § 444 BGB, the assumption of a warranty excludes the limitation of a seller's compensation claim. In addition, § 444 BGB constitutes a prohibition of controversial conduct. By means of the warranties assumed by the Sellers and the SoM in the SPAs, the Sellers and the SoM are, thus, precluded to invoke on the limitation of the compensation claims (see *Hermanns*, ZIP 2002, 696; *v. Westphalen*, ZIP 2001, 2107; *Westermann*, NJW 2002, 241, 247; *Wolf/Kaiser*, DB 2002, 411, 419; *Gaul*, ZHR 2002, 35, 63; *Jaques*, BB 2002, 417, 418; Picot-*Picot*, Unternehmenskauf und Restrukturierung, 2004, page 148; Hettler/Stratz/Hörtnagel-*Lips/Stratz/Rudo*, Unternehmenskauf, 2004, § 4, note 100 et seq.).

337 Moreover, after the German legislator implemented § 444 BGB in 2002, discussions were held on the scope of § 444 BGB. It was criticized that §°444 BGB excludes the application of a maximum liability cap if the seller assumed a warranty on the object of purchase. In the

event of a purchase of shares of a company, it was argued that the assumption of warranties is common practice and that such a provision in any event leads to the voidance of the seller's liability limitation. In view of these concerns, on December 8, 2004 an amendment of § 444 BGB came into force. The legislator substituted the term "*wenn / if*" by "*soweit / as far as*". The unambiguous reasoning was to deny the seller's reference to exclusion or limitation of its liability as far as the seller assumed a guarantee on the quality of the purchased asset. Restrictions and limitations of the "*Garantie*" are only allowed as far as such restrictions and limitations are reflected in the wording of the "*Garantie*" itself while restrictions are not admissible if they are solely contained in provisions on the legal consequences. Sections 5.1 SPAs expressly refer to the limitations contained in Section 5.2., but do not contain a reference to further limitations such as in Sections 5.4.4 SPA.

338 Although the wording of § 444 BGB was stringently criticized, the legislator confirmed his clear intent to deny the seller's reference to exclusion or limitation of its liability as far as seller assumed a warranty on the quality on the purchased asset. The wording and the legislative history of § 444 BGB, therefore, are unambiguously in relation to the exclusion of such a liability limitation.

339 However, according to a minority opinion § 444 BGB should not be applicable as far as a seller assumed an independent warranty ("*selbständige Garantie*") within the meaning of § 311 para. 1 BGB, because such an independent warranty would not be a purchase law "*Garantie*" within the meaning of § 444 BGB (see *Müller*, NJW 2002, 1026, 1027). Even if this minority opinion should be followed, although it is in contraction to the clear wording of § 444 BGB, the Sellers and the SoM would still not be entitled to refer to the limitation of liability pursuant to Sections 5.4 SPA. The representations and warranties assumed by the Sellers and the SoM pursuant to Sections 5 SPA are not "*selbständige Garantien*" in accordance with § 311 para. 1 BGB. Pursuant to the common definition the classification of representations and warranties as "*selbständige Garantie*" requires that the seller does not only assume a warranty on the condition of the target but also on the economic success which does not only depend upon whether the target is free of any defect. Further, the qualification as "*selbständige Garantien*" requires that the agreement establishes a new independent system of warranties which is aimed to completely substitute the statutory system of representations and warranties (Staudinger-*Matuschke-Beckmann*,

BGB, § 443, note 12; Bamberger/Roth, BeckOK BGB, § 634, note 15; § 443, note 11; Eckert/ Maifeld/ Matthiessen, Handbuch des Kaufrechts, 2007, note 1360; Palandt-*Weidenkaff*, § 443, note. 4).

340 The warranties and representations according to the SPA, however, cannot be classified as a warranty on economic success which exceeds the warranted quality of the target. Further, Sections 5 SPAs do not create a warranty regime sui generis because they do not exclusively specify the requirements and legal consequences of a breach of warranty. For example, Sections 5 SPA do not contain any provision on the statute of limitation. Recourse to the provisions on statute of limitation according to the BGB is thus necessary. If the parties had aimed to establish a sole and closed system of reps and warranties, it would have been essential to explicitly waive the application of the statutory provisions. This is not the case in the SPA because Sections 5 SPA do neither explicitly nor implicitly exclude the purchase warranty provisions pursuant to the BGB (§§ 437 et seq. BGB). Further, the SPA do not provide for a declaration that the provisions agreed upon shall neither be exclusions or limitations within the meaning of § 444 BGB nor include warranties with regard to the quality of an asset in accordance with § 444 BGB.

341 In accordance with § 444 BGB the Sellers' and the SoM`s limitation of liability is, thus, void. The Sellers and the SoM warranted in Sections 5.1 SPA the 2004 Accounts of KAP and RBN to be correct and the respective Working Capital to be existent as described in the Annexes. Following the explicit wording and intent of the legislator by means of these warranties the Sellers and the SoM cannot validly refer to the limitations of liability pursuant to Sections 5.4 SPA.

342 In addition, as any claims based on a breach of pre-contractual duties of care and those mentioned in § 437 BGB (except for the recession of the SPAs) are not excluded in the SPAs, any such claims will be brought forward hereunder without any limitation. Therefore, any defect of the sold companies, which would make their use as contractually envisaged difficult or impossible, leads to a claim of CEAC in accordance with § 437 BGB. CEAC, in the Notice of Breach, set a deadline to cure the various defects determined by CEAC. As the Sellers and the SoM did not cure these defects, CEAC is entitled to a damage claim in accordance with §§ 437, 440, 280 BGB. These damage claims are not limited by Sections 5.4 SPA, because these provisions only relate to causes of action based on the representations and warranties. Therefore, in any

case the contractual shortcomings set forth in no. 2. hereunder constitute a defect within the meaning of § 434 BGB, the damage claim of CEAC is not limited by Sections 5.4 SPA.). In particular, the following claims in the total amount of Euro 78,865,000.00 are also based on both a violation of the Sellers' and the SoM's pre-contractual duties of care and defectiveness within the meaning of §§ 437, 440, 280 BGB: Investments in Subsidiaries (No. 2.a)i)(6)), Placements to / Receivables against Subsidiaries (No. 2.a)i)(7)) and Employment related Adjustments (No. 2.a)i)(13)).

343 Sections 5.2, first paragraph, lit. (iv) SPA set forth that Buyer in the event of a breach of the representations and warranties "*only relies on the remedies available in Clause 5.3*". Again, this is not a general exclusion of other potential claims for defects, but only a limitation relating to remedies based on a breach of the representations and warranties. Claims for breaches in the course of the negotiations, for example, where Buyer could have expected to be duly informed of facts and circumstances, and claims for defects within the meaning of §§ 434 and 435 BGB are clearly not limited by this clause either.

344 Sections 5.1 SPA set forth that except for the representations and warranties, the Buyer acquires the company on an "as seen" basis. This clause needs to be construed on the basis of the applicable law, which is German law. The literal translation into German is "*gekauft wie besichtigt*". This clause is generally construed to exclude obvious, easy to see defects, but does not exclude hidden defects. Thus, Sections 5.1 SPA show that the parties were in an agreement that CEAC shall not be hindered to rely upon the remedies set forth in § 437 BGB.

345 In any event, the peremptory provisions of German law have priority over the contractual provisions. In particular, § 276 para. 3 BGB provides that the liability for a deliberate infringement of obligations shall neither be excluded nor limited. Claims for compensation beyond the limits set forth in Sections 5.4 SPA may therefore be brought forward if CEAC is able to establish a deliberate act on the part of the Sellers and the SoM. In no. 2 below, at least in the cases in which CEAC established deliberate misrepresentation on the side of the Sellers and the SoM, the Cap and other limitations of liability do not apply. In particular, CEAC's claims relating to Investments in Subsidiaries (No. 2a)i)(6)), Placements to/Receivables against Subsidiaries (No. 2.a)i)(7)), Hardship Contributions (No. 2a)i)(13)(a)), Deferred Personal Income Tax (No. 2.a)iii)(1)(a)), and Mining Facility (pit) in Djurakov Do (No.

2.b)i)(1)) amounting to Euro 78,930,018.00 in total are not limited by the Cap because of deliberate infringement of obligations – regardless whether Sections 5.4.4 SPA are valid or not.

346 Further, some of the claims set forth in detail in no. 2 are not claims for compensation under the representations and warranties, but result from additional obligations explicitly assumed by the Sellers and the SoM in the SPA. As Sections 5.4. SPA clearly only apply to claims based on breaches of the representations and warranties, these additional claims do not count against the Cap and are not limited by the other provisions set forth in Sections 5.4 SPA.

347 Finally, with regard to some of CEAC's claims it would be contrary to § 242 BGB if the Sellers and the SoM were allowed to invoke on the Cap. This applies, in particular, to CEAC's claims relating to KAP`s and RBN`s tax and contributions liabilities (see claims under "Employment related Adjustments", No. 2.a)i)(13) and No. 2.b)i)(8)., and "Taxes and Contributions" amounting to Euro 28,829,996.00 in total.

f) Overview of Breaches

348 Under no.2 hereunder, the specific breaches of the SPA are set forth in detail.

349 Under No. 2.a)i), breaches of the representations and warranties mostly relating to the balance sheet warranty with regard to KAP and breaches of the Sellers' and the SoM' environmental liabilities are set forth in detail and summarized in No. 2.a)ii).

350 Under No. 2.a)iii), breaches of the representations and warranties relating to the warranted working capital of KAP as per the Closing are set forth in detail and summarized in No. 2.a)iv).

351 In No. 2.a)v), various additional items are included that relate to breaches by the Sellers and the SoM of other provisions of the SPA-KAP. In No. 2.a)vi) additional claims relating to KAP are brought forward that were not yet mentioned in the Notice of Breach. No. 2.a)v) and .a)vi) are summarized in No. 2.a)vii).

352 Under No. 2.b)i), breaches of the representations and warranties mostly relating to the balance sheet warranty with regard to RBN and breaches of the Sellers' and the SoM's environmental obligations are set forth in detail and summarized in No. 2.b)ii).

353 Under No. 2.b)iii), breaches of the representations and warranties relating to the warranted Working Fund as per the Closing with regard to RBN are set forth in detail. Additional items, partly not included in the Notice of Breach, are set forth in No. 2.b)iv) and are summarized in No. 2.b)v).

2. Specific Breaches

a) Breaches with regard to KAP

i) Breaches of Representations and Warranties regarding 2004 Accounts

354 Before Section 5.1.28 SPA-KAP the term "Accounts" is defined as being the "*audited accounts of (KAP) and each of the Subsidiaries for the financial year ending on December 31, 2004*". CEAC encloses English translations of the Accounts of KAP and the three Subsidiaries as **Exhibit Doc. C 70**. Section 5.1.28 SPA-KAP states that "*the Accounts have been prepared in accordance with the accounting standards, principles and practices generally accepted in the Republic of Montenegro and in accordance with the law of that jurisdiction.*" Further representations and warranties regarding the Accounts and the financial records of KAP are contained in Sections 5.1.29 through 5.1.39 SPA-KAP. Therefore, any inaccuracy of the 2004 Accounts of KAP (hereinafter referred to as "**KAP 2004 Accounts**") or the financial records constitutes a breach.

355 Because of the explicit reference to the Montenegrin accounting laws (and pursuant to Section 10.1, second sentence, SPA-KAP) the question whether the Accounts are accurate is to be determined on the basis of the Montenegrin accounting laws pursuant to which the International Accounting Standards (hereinafter referred to as "**IAS**") and the International Financial Reporting Standards (hereinafter referred to as "**IFRS**") apply. The aggregate of all accounting standards, principles and practices generally accepted in the Republic of Montenegro and in accordance with the laws of that jurisdiction are hereinafter collectively referred to the "**Montenegrin Accounting Rules**".

356 Section 5.1.30 SPA-KAP specifically sets forth that proper reserves and provisions have been booked, that the fixed assets are not overvalued and that no liability is understated.

357 CEAC determined that the KAP 2004 Accounts and the financial records of KAP were inaccurate in many material aspects. Any of these findings constitutes the factual basis for a compensation claim insofar as the necessary adjustments to the KAP 2004 Accounts lead to an impaired overall value of KAP as per December 31, 2004 and compared to the value CEAC was entitled to expect when entering into the SPA.

Therefore, each inaccuracy of the KAP 2004 Accounts (or the Subsidiaries' 2004 Accounts) and the related bookings in the financial records of KAP (or those of the Subsidiary, respectively) constitutes a breach under Sections 5.1.28 through 5.1.39 SPA-KAP and causes a loss and damage on the side of CEAC and/or KAP. This loss and damage shall be compensated by the Sellers and the SoM in accordance with Section 5.3.4 SPA-KAP.

358 Some of these findings also lead to an incorrectness of the warranted Working Capital as per the Closing Date November 30, 2005, which form the basis for a compensation claim as well. These compensation claims will be explained in detail in No. 2.a)iii) below.

359 The basis of the claims in relation to the inaccuracy of the KAP 2004 Accounts is:

(1) Construction in Progress

360 Certain investments in fixed assets and buildings which allegedly commenced as early as 2001 were stated in the KAP 2004 Accounts in the amount of Euro 1,183,000.00. **Exhibit Doc. C 154** shows the booked construction in progress as of December 31, 2004 (see Note 10. on page 15 of the KAP 2004 Accounts).

361 Pursuant to IAS 16.7 items of property, plant and equipment, including construction in progress, may only be recognized and recorded as assets "*if, and only if it is probable that future economic benefits associated with the item will flow to the entity*". In accordance with IAS 16.7 KAP was obliged to set forth the probability of a future accrual of benefits in order to be entitled to activate the investments.

362 Upon Closing and until today, for some of these investments there are neither any supporting documentation of the alleged investments nor did the Sellers and the SoM provide any documents in order to substantiate KAP`s accrual of benefits relating to the investments. Due to the lack of any substantiating documentation, CEAC disputes that any of these investments have actually been made and that there is any probability of future accrual of benefits.

363 Therefore, those investments in accordance with the Montenegrin Accounting Rules should not have been recorded in the KAP 2004 Accounts. Of the items set forth in **Exhibit Doc. C 154**, the following bookings need to be written off due to lack of documentation:

Department	Description	Current status	General ledger
Aluminum Plant	Investments in equipment	Documentation not provided	19
Alumina Production Plant	Investments in building	Documentation not provided	396
Plant for production of castings	Rehabilitation of roof	Not capitalized due to lack of documentation	70
Maintenance Department	Building of rectifier station	Not transferred to equipment due to lack of documentation	56
General Department	Investments in building	Documentation not provided	73
Plant for production of profiles Spuz	Rehabilitation of factory of bricks	Documentation not provided	9
Maintenance Department	Investments relating to rectifier construction	Not transferred to equipment due to lack of documentation	89
Transport Department	Overhaul of silo for alumina in Bar	Completed, not transferred to equipment due to lack of documentation	31
Plant for production of profiles Spuz	Investments in equipment	Documentation not provided	15
Total			**758**

364 The lack of documentation for both the alleged investments and the accrual of benefits to KAP indicates that these investments need to be written off in accordance with the Montenegrin Accounting Rules for

the simple fact of lack of any documentation, in particular of the future accrual of benefits to KAP. By writing off of these unsubstantiated bookings, the net equity in the KAP 2004 Accounts is reduced by the amount of **Euro 758,000.00**, and CEAC thus has a compensation claim against the Sellers and the SoM in the same amount.

(2) Warehouse for Military Equipment Storage

365 In the KAP 2004 Accounts under the line item fixed assets, account No. 14320, a warehouse for military equipment storage is booked in the amount of Euro 1,309,000.00. This warehouse is located within the premises of KAP near the head office.

366 Pursuant to IAS 36.9 upon preparation of a balance sheet it has to be reviewed whether there are any indication that booked assets may be impaired (impairment test). It has to be taken into consideration whether "*significant changes with adverse effect on the entity have taken place during the period, or are expected to take place in the near future, in the extent to which, or manner in which, an asset is used or is expected to be used.*"

367 For the recognition of impairment loss of non-operating assets the recoverable amount needs to be compared to the carrying amount in order to determine the use value. Accordingly, it has to be determined whether the warehouse is sale- or leasable or not (see IAS 36.59 and 36.33 ff.). Should the non-operating asset neither be saleable nor leasable the booked value of the asset needs to be adjusted to nil in accordance with IAS 36.59 in conjunction with IAS 36.62.

368 The aforementioned warehouse in itself is not usable for the business purposes of KAP. Historically, its existence goes back to the times of the Republic of Yugoslavia where all major industrial facilities had their storage for military equipment. Further, the warehouse is in a deplorable state of maintenance and was so already at the end of 2004. The building, given its former purpose and present condition, can neither be used in any way for the purposes of KAP nor can it be sold or leased in any way. Thus, the warehouse does not provide any economic benefits and, therefore, the value of the building in accordance with the Montenegrin Accounting Rules should have been written off to nil in the KAP 2004 Accounts, bringing down the net equity of KAP by **Euro 1,309,000.00**. CEAC, thus, has a compensation claim against the Sellers and the SoM in the same amount.

(3) Military Equipment

369 In the KAP 2004 Accounts military equipment stored in the warehouse mentioned in No. 2.a)i)(2) above is booked in the amount of Euro 134,000.00. It consists of old military material as summarized in the following table:

Item	Quantity
Tent	12
Stretcher	5
Mask	50
Cot	27
Bag	25
Bandage	312
Moved pharmacy	4
Belt	10
Sleeping bag	75
Eating utensils	34
Boot	15
Officer's bag	10
Gun	12

370 This table shows the military equipment items as per the inventory list as of December 31, 2004. CEAC encloses a copy of the stock taking sheets as **Exhibit Doc. C 155**.

371 This equipment is in itself not usable for the business purposes of KAP. Further, it is not saleable and was so already at the end of 2004 because of its age and former purpose and, thus, does not provide any economic benefit. Therefore, as no use value of the military equipment can be determined the value of these assets in accordance with the Montenegrin Accounting Rules, in particular IAS 36 as explained in No. 2.a)i)(2) above, should have been written off to nil in the KAP 2004 Accounts, bringing down the net equity of KAP by **Euro 134,000.00**. CEAC, thus, has a compensation claim against the Sellers and the SoM in the same amount.

(4) Business Premises

372 In the KAP 2004 Accounts under the line item fixed assets, account No. 14318 (business premises cost) and account No. 15318 (accumulated

depreciation) Business premises are activated in the KAP 2004 Accounts, in the total booked amount of Euro 1,068,000, representing 33 premises. According to the cadastral books one of these premises, located in Drpe Mandica Street, Podgorica, was sold to the company Gorica Impex by a public procurement carried out in April 1999.

Exhibit Doc. C 156: Excerpt of cadastral books.

373 This premise was booked at a value of **Euro 41,000.00** in the KAP 2004 Accounts and should thus be booked out, reducing the net equity accordingly. CEAC, therefore, has a compensation claim against the Sellers and the SoM in the same amount.

(5) Evaluation of Certain Fixed Assets

374 CEAC learnt that some of the values of property, plant and equipment in KAP´s books per November 30, 2005 and December 31, 2004, which were based on an appraisal performed as of December 31, 2002, do not represent the fair values and estimated useful lives of the assets as it is required by Montenegrin Accounting Rules, namely IAS 16. In order to determine correct values a new appraisal was performed in order to bring KAP´s financial statements in compliance with the Montenegrin Accounting Rules.

375 CEAC entrusted the appraiser firm AA with the task to evaluate those fixed assets as per December 31, 2004 where an overvaluation in the KAP 2004 Accounts was expected. CEAC encloses the report of AA as **Exhibit Doc. C 71** and refers to this report in all details set forth therein.

376 The appraisers have applied a cost approach in order to determine the fixed assets` fair value. The cost approach estimates the value of assets based on the cost of reproducing or replacing assets, less depreciation arising from physical deterioration, functional and/or economic obsolescence that might exist. The cost of reproducing is the cost of producing or constructing the asset like kind at current prices as at the date of valuation. AA developed Current Replacement Cost from discussions with KAP engineers and from their own in-house information. It became apparent from a study of the records that many of the original costs simply could not be correct or shown in the correct currency.

377 From April 10 to 20, 2006 and during a follow up visit from June 12 to 16, 2006, AA carried out an inspection and on-site verification of the fixed assets which enabled them to form an opinion of the general condition of the verified assets and to identify any element of functional obsolescence which was present at the date of the inspection. Pursuant to this approach AA determined the cost of reproducing KAP`s fixed assets as per 2006. Having established the cost of reproducing of each asset as per 2006 AA applied the appropriate variable rates of depreciation relating to the time period the asset is already being in use from the time of acquisition until December 31, 2004 in order to calculate the fair market value of the assets as per December 31, 2004.

378 In applying the cost approach, AA also took into account the time that elapsed between December 31, 2004 and the date of valuation of the assets in April 2006. AA additionally considered the rate of inflation during the time period of approximately 16 months, i.e., AA deducted from the cost of reproduction not only the appropriate depreciation rates but also the applicable inflation rate.

(a) Buildings KAP

379 The buildings in the KAP 2004 Accounts were booked at an aggregate value of Euro 98,917,000.00 (see Note 10 page 15 of the KAP 2004 Accounts, **Exhibit Doc. C 70**). The appraisers come to the conclusion that the value of the buildings was overstated in the KAP 2004 Accounts by an amount of Euro 44,162,000.00 because required adjustments to the value of their remaining useful live were not adequately made. The correct fair market value of the buildings, thus, would have been Euro 54,755,000.00. Details of the assessment of the values, including a detailed list of all reviewed buildings are included in the AA's report, pages 21 and 33 et seq., enclosed as **Exhibit Doc. C 71**.

(b) Electrolysis Facility KAP

380 Further the Electrolysis facility of KAP was booked at an aggregate value of Euro 41,702,000.00 in the KAP 2004 Accounts. AA comes to the conclusion that in view of the age of the facility and the state the equipment is in, this value needs to be adjusted by an amount of Euro 26,136,000.00 as per December 31, 2004, bringing down the fair market value at that date to Euro 15,499,000.00. For further details CEAC refers to the report in **Exhibit Doc. C 71**, pages 21 and 40 et seq. As

explained above the cost approach has been applied in order to estimate the fair value of the Electrolysis Facility of KAP.

(c) Summary

381 As the KAP 2004 Accounts, therefore, were overstated with regard to these fixed assets stated above, the net equity of KAP as per December 31, 2004 was overstated by a total amount of up to Euro 70,298,000.00.

382 However, in the 2005 Accounts, KAP's management with the approval of the auditors of KAP had to attribute a slightly higher value to the buildings and the Electrolysis Plant than AA. In the 2005 financial statements, these two groups of assets were booked in the aggregate amount of Euro 76,085,000.00, i.e. a downward adjustment of only of Euro 64,534,000.00 as compared to the 2004 figurers was made. CEAC limits its claim in this regard to this smaller amount of adjustments.

383 The Sellers and the SoM shall therefore compensate for the overstatement of the fixed assets in the KAP 2004 Accounts in an amount of **Euro 64,534,000.00** based on Sections 5.1.28 through 5.1.39, in particular Sections 5.1.30.2 and 5.3.4 SPA-KAP.

(6) Investments in Subsidiaries

384 KAP fully owned three Subsidiaries, namely

Fabrika za preradu aluminijuma, Podgorica – FPA d.o.o. (hereinafter referred to as "**Prerada**"),

Fabrika za kovanje alumnijuma, Podgorica – Kovacnica d.o.o. (hereinafter referred to as "**Kovacnica**")

and

Fabrika za proizvodnju alu-celicnih uzadi, Kolasin- FAK d.o.o. (hereinafter referred to as "**Kolasin**")

(collectively hereinafter referred to as the "**Subsidiaries**").

(a) Held for Sale

385 These Subsidiaries were held by KAP aiming to sell them. In the KAP 2004 Accounts, under Note 1.5, page 8 (**Exhibit Doc. C 70**), it is clearly stated that the Subsidiaries – for accounting purposes - were held by KAP aiming to sell them.

386 Albeit, on December 31, 2004 and until today, no market for undertakings of the sort of the Subsidiaries exists in the Republic of Montenegro. KAP, before 2004, made several attempts to sell the Subsidiaries by way of a public tender without any success. The table below summarizes the tenders that have been unsuccessfully organized in the prior years with intention to sell the Subsidiaries:

July 2000	International public tender for privatization of all three Subsidiaries, published in newspaper Ekonomist, Pobjeda, Vijesti and on the web. Tender terminated without agreement.
January 2001	Public tender for Kovacnica. Negotiation started with Slovenian company GAMA but terminated without agreement.
April 2002	Public tender for privatization of all Subsidiaries. Investors had a choice between the following options: purchase of one or more above Subsidiaries, lease of one or more Subsidiaries or management agreement for one or more Subsidiaries. No offer.
March 2003	Public tender for privatization of all Subsidiaries. Investors had a choice between the following options: purchase of one or more Subsidiaries, lease of one or more Subsidiaries or management agreement for one or more Subsidiaries. No offer.
October 2003	Public tender for privatization of all Subsidiaries. Investors had a choice between the following options: purchase of one or more Subsidiaries, lease of one or more Subsidiaries or management agreement for one or more Subsidiaries. No offers received and tender was terminated.

387 Pursuant to IFRS 5, assets held for sale shall be booked at the lower amount of either its carrying amount or the fair value less costs to sell. The fair value of the Subsidiaries was nil as per end of 2004, because

no market existed nor was any buyer available willing to pay any sum for the Subsidiaries.

388 Accordingly, the accounting policy in the KAP 2004 Accounts with regard to the long-term investments in the three Subsidiaries was in breach with the Montenegrin Accounting Rules. The accounting method for the value of these entities, as explained in more detail in note 3 (i) /ii/ of the KAP 2004 Accounts, page 11 (**Exhibit Doc. C 70**), is not in accordance with the Montenegrin Accounting Rules, in particular with IFRS 5. As explained above the fair market value of the Subsidiaries was nil and there was no market to sell the Subsidiaries. Therefore, their value recorded in the KAP 2004 Accounts should have been adjusted accordingly.

(b) Evaluation

389 Furthermore, the actual financial situation of the Subsidiaries as per December 31, 2004 shows that no value may be attributed to the Subsidiaries. In **Exhibit Doc. C 70** the financial statements of the Subsidiaries per December 31, 2004 are enclosed, which also include the numbers for the year ending December 31, 2003. The working capital of the Subsidiaries and the cash flow were negative. Further, all three Subsidiaries were making substantial losses in the last three years prior to the sale of KAP. The losses of the Subsidiaries amounted to:

In EUR 000	Loss 2003	Loss 2004	Loss 2005	Total
FPA d.o.o., Podgorica	(7.580)	(7.208)	(7.120)	(21.908)
Kovacnica d.o.o., Podgorica	(3.492)	(2.496)	(2.384)	(8.372)
FAK, d.o.o., Kolasin	(1.396)	(1.329)	(1.021)	(3.746)
Total	**(12.468)**	**(11.033)**	**(10.525)**	**(34.026)**

390 In no event was there any prospect that both the net equity and the cash flow situation would improve shortly. Therefore, all three Subsidiaries were insolvent (not able to pay due liabilities) as per end of 2004 and could only stay in business by substantial cash injections from KAP.

391 Any evaluation of undertakings as a going concern is nowadays based on profit/cash flow dependent models. Based on the generally accepted evaluation methods, a projection of the likely future profits of the company is made and the likely cash flow to the shareholder may derive

from it. This cash flow is discounted at an adequate interest rate for investments with a similar investment risk as the equity of the company.

392 The actual financial situation of the Subsidiaries shows that for the foreseeable future no profits or positive cash flow could have reasonably been included in such financial forecast. The Subsidiaries did not have the most limited chance of making any profits – let alone make any dividend distribution to its shareholder - in the near and longer term future. Therefore, based on any profit dependent evaluation models, the fair value of the Subsidiaries was nil.

393 But even if not a profit dependent, but a model for evaluation is used that partly or completely refers to the asset value (*Substanzwert*) of the Subsidiaries' assets, no attributable value may be assumed. The Subsidiaries' assets in case of a liquidation and sell off would have been not marketable. It mainly consisted of old machinery and unusable buildings, which could not have been marketed at any substantial value.

(c) Amount

394 Merely in view of the fact that the Subsidiaries were held for sale while no sale was possible, a substantial downward adjustment of the activated values would have been legally required. Also based on commonly accepted criteria and methods for evaluation of companies, it can be easily seen that the Subsidiaries had no market value at all or at least a market value dramatically lower as those booked in the KAP 2004 Accounts.

395 The value booked for the Subsidiaries in the KAP 2004 Accounts, note 11, page 15 (**Exhibit Doc. C 70**), were (in thousand Euros):

Prerada	38,015
Kovacnica	17,596
Kolasin	4,898
Total	60,509

396 Based on the breach of the balance sheet warranty with regard to the activated value of the Subsidiaries, a compensation claim of up to this full value attributed to the Subsidiaries is given.

397 In the audited financial statements of KAP as per end of 2005, investments in the Subsidiaries Prerada and Kovacnica were reduced to a total amount of Euro 8,437,000.00 (Euro 7,235,000.00 for Prerada and Euro 1,202,000.00 for Kovacnica). The value of investments in Kolasin was adjusted to nil.

398 If consequently only a residual value of Euro 8,437,000.00 may be attributed to the Subsidiaries, a downward adjustment of the values in the KAP 2004 Accounts in the line item "Long term financial investments" of **Euro 52,072,000.00** was imperative. As the net equity of KAP per end of 2004, based on the above findings, was overstated by at least Euro 52,072,000.00, CEAC has a claim for compensation against the Sellers and the SoM in the same amount.

(d) Cap not Applicable

399 The Sellers and the SoM acted deliberately when they entered into the SPA and warranted the KAP 2004 Accounts to be correct with regard to the booked amount of the value of the Subsidiaries. The Sellers and the SoM positively knew that the value booked for the Subsidiaries in the KAP 2004 Accounts was not in accordance with their market value and the Montenegrin Accounting Rules. The Sellers and the SoM, in particular the SoM, obviously were aware of the Montenegrin Laws. In addition, as can be seen from the failed sale by way of public tender and the adverse financial situation, the Sellers and the SoM knew that no or at least a substantially lower company value should have been attributed to the Subsidiaries.

400 Any limitations of the Sellers' and the SoM's liability rising from the breach of the KAP 2004 Accounts warranty in this regard are, therefore, void in accordance with § 276 para. 3 BGB.

401 Further, the factual insolvency of the Subsidiaries at the time of the sale of KAP should have been actively disclosed by the Sellers and the SoM. Not doing so constituted a gross violation of the Sellers' and the SoM's pre contractual duties of care. At the same time the factual and legal inoperability (without constant cash injections from KAP) of the Subsidiaries constitutes a defect within the meaning of §§ 437, 440, 280 BGB, so that CEAC has a damage claim in the amount of the overvaluation on the KAP 2004 Accounts that is not subject to the Cap.

(7) Placements to / Receivables against Subsidiaries

402 Similarly to the dramatic overvaluation of the values of the Subsidiaries, also the values of the placements to and the receivables against the Subsidiaries were grossly overstated in the KAP 2004 Accounts.

403 The Montenegrin Accounting Rules, in particular IAS 39 and IAS 32 (impairment of financial assets due to a "loss event") require that an entity has to assess at each balance sheet date whether there is objective evidence that a financial asset is impaired. This is the case, if a loss event has an impact on the estimated future cash flow of the financial asset.

404 Receivables and financial placements from KAP to the Subsidiaries as of November 30, 2005 and December 31, 2004 and 2003 were as follows (aggregate numbers for all the Subsidiaries in thousands Euro, see KAP 2004 Accounts Note 13, page 16 and Note 14, page 17 - **Exhibit Doc. C 70**):

Subsidiary	**November 30, 2005**	**December 31, 2004**	**December 31, 2003**
Financial placements	10,349	8,442	6,686
Receivables	12,534	11,058	8,330
Total:	22,883	19,500	15,016

405 The numbers for each Subsidiary individually (in thousands Euro) are:

FPA Prerada	**November 30, 2005**	**December 31, 2004**	**December 31, 2003**
Financial placements	6.960	5.456	4.313
Receivables	6.846	6.196	4.290
Total	**13.806**	**11.652**	**8.603**

FAK Kolasin	November 30, 2005	December 31, 2004	December 31, 2003
Financial placements	2,923	2,520	1,907
Receivables	92	92	97
Total	**3,015**	**2,612**	**2,004**

Kovacnica	November 30, 2005	December 31, 2004	December 31, 2003
Financial placements	466	466	466
Receivables	5.596	4.770	3.943
Total	**6.062**	**5.236**	**4.409**

(a) Placements

406 CEAC has reviewed the placements to the Subsidiaries by examining disbursements for the last three years, with the purpose of matching them with the appropriate written approvals of authorized persons at KAP to disburse funds. As a result, CEAC identified that the disbursements have been made without any written approval. Consequently, the purpose of the placements and conditions applied are questionable and there is no legal basis to include these amounts as collectable placements in accordance with the Montenegrin Accounting Rules simply for the lack of any supporting accounting documentation.

407 In addition, the collectability of these placements had been tested by examining bank statements and relating documentation in order to assess whether impairment should have been recorded relating to them. The catastrophic financial position of the Subsidiaries showed that these placements were extremely unlikely ever to be collected. As explicitly set forth in Note 14 on page 17 of the KAP 2004 Accounts (**Exhibit Doc. C 70**), the placements were made in order to allow the Subsidiaries to pay the salaries to their employees. The Subsidiaries

were in such dismal financial state that they could not even pay the salaries of their employees.

408 As summarized above in No. 2.a)i)(6), the Subsidiaries incurred operating losses for years, without any capital injections from KAP they would have been insolvent, and, there was no market in the Republic of Montenegro to sell the Subsidiaries.

409 Thus, these placements had to be considered largely impaired in KAP's books in the total amount of Euro 8,442,000.00 as of December 31, 2004. In accordance with these indicators a complete write off of such placements is required.

410 Therefore, the net equity of KAP in its 2004 Accounts was overstated by the booked placements to the Subsidiaries. CEAC, thus, has a compensation claim against the Sellers and the SoM in the amount of **Euro 8,442,000.00**.

(b) Receivables

411 KAP's receivables against the Subsidiaries as per December 31, 2004 were booked as follows in the KAP 2004 Accounts, Note 13, page 16 (**Exhibit Doc. C 70**), including age analysis:

	less than one year	older than 1 years	EUR 000 Total
FPA d.o.o., Podgorica	3,907	2,289	6,196
Kovacnica d.o.o., Podgorica	4,770	-	4,770
FAK d.o.o., Kolasin	27	65	92
	8,704	**2,354**	**11,058**
Collectibles during 2005	(5,413)		(5,413)
Bad debt provisions	3,291	2,354	5,645

412 Therefore, as per December 31, 2004, an amount of Euro 2,354,000.00 of receivables against the Subsidiaries were older than one year.

413 The age analysis was done by the auditors of KAP end of 2005, and it was determined that out of the Euro 8,704,000.00 of receivables that emerged in 2004 only an amount of Euro 5,413,000.00 was collected by KAP in 2005. Therefore, a bad debt provision in the amount of at least Euro 3,291,000.00 from these receivables younger than one year

(as per the balance sheet date December 31, 2004) should have been put up.

414 In total, including the long overdue receivables, an amount of Euro 5,645,000.00 of bad debt provisions should have been booked in the KAP 2004 Accounts based on the assumption of lack of collectability in accordance with the Montenegrin Accounting Rules, in particular IAS 39.

415 This rule is also set forth in the KAP 2004 Accounts explicitly (see KAP 2004 Accounts lit (k) on page 12 of **Exhibit Doc. C 70**). The respective reduction of the actual net equity of KAP as per December 31, 2004 needs to be compensated by the Sellers and the SoM.

416 It has to be pointed out that the above age analysis takes into account that a certain portion of the receivables was being repaid to KAP. Such repayment, though, only occurred through production (barter) in 2005. However, at the same time the Subsidiaries were drawing even more funds from KAP for operating expenses that they could not pay for themselves. Additionally, in the three business years before Closing, the Subsidiaries were recurring substantial losses and were not able to stay in business without any subsidy of KAP. The conclusion is that the Subsidiaries did provide some service to KAP and generated value, however, that value was much less than the value of the operative expenses KAP had to make in order to keep the Subsidiaries in business and to prevent them from going into insolvency. This has been the case at least since the year 2003 and, therefore, one might even argue that as per end of 2004 all, also the more recent receivables from 2004, should have been considered impaired.

417 However, based on the subsequent collections and age analysis of the receivables against the Subsidiaries at least the impairment was determined to be **Euro 5,645,000.00**. This amount shall be compensated by the Sellers and the SoM to CEAC.

(c) Cap not Applicable

418 When the Sellers and the SoM entered into the SPA-KAP and warranted the KAP 2004 Accounts to be correct, they positively knew the Profit and Loss Statements of the Subsidiaries and that the Subsidiaries had neither means of current asset nor any revenues sufficient to cover only part of the liabilities towards KAP. The Sellers and the SoM, thus, knew the need to write down placements and receivables based on the as-

sumption of lack of collectability in accordance with the Montenegrin Accounting Rules, in particular IAS 39. Therefore, the Sellers and the SoM acted deliberately and cannot refer to the maximum liability cap pursuant to Sec. 5.4.4 SPA-KAP.

419 Again, the factual insolvency and, thus, the Subsidiaries' inability to repay any liabilities to KAP at the time of the sale of KAP should have been actively disclosed by the Sellers and the SoM. Not doing so constituted a gross violation of the Sellers' and the SoM's pre contractual duties of care. At the same time the factual and legal insolvency (without constant cash injections from KAP) of the Subsidiaries constitutes a defect within the meaning of §§ 437, 440, 280 BGB, so that CEAC has a damage claim in the amount of the overvaluation on the KAP 2004 Accounts that is not subject to the Cap.

(8) Prerada 2004 Accounts

420 The definition of the term "Accounts" before Section 5.1.28 SPA-KAP explicitly includes the accounts for the year ending 2004 "*of each of (the) Subsidiaries*". Therefore, any inaccuracy in the Prerada 2004 Accounts constitutes a breach of 5.1.28 through 5.1.39 SPA-KAP.

421 The inaccuracies of the Prerada 2004 Accounts relate to the dramatic overstatement of the value of the Prerada Extrusion Facility.

422 The value of the Extrusions facility of Prerada, booked in the Prerada 2004 Accounts in an amount of Euro 12,068,000.00, needs to be adjusted to its actual fair market value as per December 31, 2004 of Euro 3,993,000.00. Regarding this necessary adjustment of Euro 8,075,000.00, CEAC refers to the appraisal report of AA in **Exhibit Doc. C 71**, pages 21 and 52 et seq. Again, based on the methodology applied for the appraisal of KAP's fixed assets, as explained in detail under No. 2.a)i)(5) above, the actual fair market value as per December 31, 2004 was determined by AA.

423 The net equity of Prerada as per December 31, 2004 was, thus, overstated by an amount of Euro 8,075,000.

424 Under No. 2.a)i)(6) above, the necessity to a write-down of the value of the Subsidiaries is explained in detail. In the event the Tribunal agrees to the requirement with regard to the overstated value of Prerada on the KAP 2004 Accounts to reduce the value from Euro 38,015,000.00 to Euro 7,235,000.00, and consequently to a compensation claim of

CEAC in the amount of this write-down, then CEAC is not claiming the overstatement of the value of the Prerada Extrusion Facility in addition.

425 The compensation claim in relation to the Prerada 2004 Accounts is, thus, only brought forward **alternatively** in the event that the Tribunal should not follow the necessity of writing off of the investments in Prerada in the KAP 2004 Accounts or not assume a corresponding compensation claim of CEAC. In this event, in view of the overstatement of the value of the Extrusion Facility, CEAC demands compensation on the basis of Section 5.1.30.2 and Section 5.3.4 SPA-KAP in the amount of **Euro 8,075,000.00**.

(9) Montenegro Banka, Hipotekarna Banka, other Long Term Investments

426 The Montenegrin Accounting Rules, in particular the IFRS requirements, require that securities classified as "*securities available for sale*" are to be recorded at the fair value as of the reporting date as defined in IAS 39, in particular in IAS 39.46 and IAS 39.55.

427 As of December 31, 2004, KAP recorded the value of their shareholding in Montenegro Banka as Euro 1,003,000.00 (see KAP 2004 Accounts, note 11, page 15 of **Exhibit Doc. C 70**). It is unknown to CEAC, and could not be clarified by the books of KAP, where this number originates. CEAC discovered that the market value as per December 31, 2004 was indeed Euro 5.56 per share. KAP was holding 3,395 shares of this bank, thus, the fair value of KAP's stake was indeed only Euro 18,876.00. To substantiate this, as **Exhibit Doc. C 157** the official listing of the Montenegrin Stock Exchange of Montenegro Banka's shares is enclosed.

428 This share price, because of the inactive securities market in the Republic of Montenegro remained more or less unchanged throughout 2004 and 2005. Only a few trades were made, all realized at this value.

429 The adjustment, necessary to bring the KAP 2004 Accounts into compliance with the Montenegro Accounting Rules (IAS 39) is therefore a write off of **Euro 984,124.00** on the recorded book value of the shares in Montenegro Banka. Such amount shall be compensated by the Sellers and the SoM.

430 The same applies to 126 shares KAP held in Hipotekarna Banka, Podgorica, for which the share price at December 31, 2004 was Euro 340.00. Thus, the value to be booked should have been Euro 42,840.00. The actual booking was Euro 53,000.00 (see KAP 2004 Accounts, Note 11, page 15 of **Exhibit Doc. C 70**) and the difference of **Euro 10,160.00** needs to be compensated by the Sellers and the SoM.

431 Finally, the booked investments in Jugobanka, Invest Banka and Beobanka (all in Belgrade) had to be written off completely, as these entities were in insolvency on December 31, 2004. The total booked amount of **Euro 11,000.00** (under the line item "Other" under Note 11 to KAP 2004 Accounts, page 15 of **Exhibit Doc. C 70**) needs to be compensated for by the Sellers and the SoM.

432 Thus, with regard to the issues set forth in this No. 2.a)i)(9) CEAC has a compensation claim against the Sellers and the SoM in the total amount of **Euro 1,005,284.00**.

(10) Inventory

433 As part of the balance sheet item "inventory" (Note 12 page 16 of KAP 2004 Accounts, **Exhibit Doc. C 70**) a value of Euro 4,004,071.00 was attributed to spare parts. CEAC has discovered that as per KAP's own financial records per December 31, 2004, spare parts in the total value of Euro 2,216,027.00 were more than two years old. In **Exhibit Doc. C 72** CEAC encloses an overview and the details of such old spare parts from the general ledger of KAP's accounting department as per end of 2004.

434 In accordance with Montenegrin Accounting Rules, in particular with IAS 2.9 and IAS 2.28, inventories shall be measured at the lower of cost and net realizable value. A new assessment of the net realizable value shall be made for each balance sheet period.

435 As for KAP, no evidence is available that this old inventory in spare parts has any value at all, because many of these are stored in insufficiently protecting warehouses or even outside, being subject to decay or are damaged or of substandard quality. Further, it is common practice in the industry, appropriate and adequate to adjust the value of unmoved spare parts older than two years to nil.

436 The value of these old spare parts per end of 2004, thus, should have been written off in the KAP 2004 Accounts. This would have reduced

the net equity of KAP accordingly and, therefore, CEAC has a compensation claim against the Sellers and the SoM in the amount of **Euro 2,216,027.00**.

(11) Environmental Issues

(a) Legal Framework of The Sellers and the SoM' Environmental Commitments

(aa) Balance Sheet Warranty

437 The warranties in Sections 5.1.28 et seq. SPA-KAP set forth that the KAP 2004 Accounts are in compliance with Montenegrin Accounting Rules and that the KAP 2004 Accounts in particular:

> *"(...) contain (...) provision adequate to cover (...) other liabilities (whether quantified, contingent, disputed or otherwise) (...)"* (Section 5.1.32 SPA-KAP).

438 The KAP 2004 Accounts did not provide for any provisions for any liabilities relating to the environmental situation of KAP.

(ab) Undertakings of the SoM

439 In Section 8.3.1 SPA-KAP the SoM, undertook to

> *"(...) assume full liability for and (...) fully indemnify the Company against any and all liabilities, damages or penalties (...) which in any way relate to (...) any act or omission on the part of the Company occurring prior to the Closing Date and having negative environmental impact to which the claim relates."*

440 Under No. 1.2 of the Annex 5 of the SPA-KAP, the SoM committed to the following:

> *"The Government of Montenegro takes responsibility for the actions in environmental field due to KAP activities in the passed period.*
>
> *(...)*

The most significant liabilities associated with historical activities include:

- *Existing hazardous wastes removal from the Solid Waste Disposal Site at KAP;*
- *Existing PCB-contaminated wastes stored at dedicated storage area at KAP;*
- *Consequences of the current statues of the red mud pond;*
- *Current emissions of the air polluters;*
- *Current level imission (polluter concentration at the bottom layer of the air);*
- *Groundwater contamination sites out of factory in relation to the stated sources;*
- *Damage compensation based on the negative impacts on the environment, in relation to the passed activities of KAP."*

(ac) Environmental Warranty and Amendment of October 2005

441 Under the heading "Environmental", Section 5.1.27 SPA-KAP contains the following warranty:

> *"The environmental conditions at the Company's plant and lands are as set out in the Baseline Report and no material alterations have taken place since that date."*

442 In Section 3.3.1.9 SPA-KAP, the Parties initially agreed that the preparation and submission of a

> *"(...) Baseline Report in form and substance satisfactory to the Buyer"*

was a condition precedent to Closing. Further, in Section 3.3.1.12 SPA-KAP the Parties had agreed that between Signing and Closing of the

SPA-KAP, a memorandum on the terms and conditions of a loan for the Environmental Program shall be agreed upon.

443 Mid of October 2005 the SoM – despite its obligation under Section 3.3.1.9 SPA-KAP – had failed to submit a due Baseline Report. In order not to jeopardize the Closing of the transaction, on October 24, 2005, the Parties agreed to an Amendment to the SPA-KAP (which is enclosed as **Exhibit Doc. C 3**).

444 In this Amendment, the Buyer waived the right to demand a loan for implementing the Environmental Program as it had been agreed upon in Section 8.3.6 SPA-KAP and its Annex 5 (very last sentence). In return, the SoM and the Sellers agreed to insert a new Section 8.3.6 SPA-KAP, which now reads as follows:

> *"The Sellers and the Buyer shall prepare, at the cost of the Sellers, the new Baseline Report by 1st February according to the already agreed Program prepared by the Center for Ecotoxicological Researhes (*read: Research*) of Montenegro. The cost of implementation of this Program shall be bared (*to be read: borne*) by the Sellers, while Buyer shall pay the expenses of the engagement of experts requested by the Buyer (...)"*

445 The Baseline Report as agreed in the Amendment of October 24, 2005 was prepared by the Centre of Ecotoxological Research and submitted in January 2006 (hereinafter referred to as the "**Baseline Report**"). The Centre of Ecotoxological Research is a state organization of the Republic of Montenegro. A copy of the Baseline Report is enclosed as **Exhibit Doc. C 158**.

(b) Expert Opinions

446 Since the beginning of the 1990ies, several expert opinions on the environmental situation of KAP had been prepared. An overview of such expert opinions is summarized in the Baseline Report (**Exhibit Doc. C 158**) under No. 4. Up until its privatization no effective waste treatment, ground water control, air emission control and alike existed at KAP.

447 In the following, CEAC would like to summarize the most recent expert opinions on the environmental problems of the pre-privatization peri-

od and the associated costs. These costs clearly have to be borne by the Sellers and the SoM.

(aa) "Baseline Report"

448 The Baseline Report under No. 1.2 (page 30 of the book 1 in **Exhibit Doc. C 158**) confirms that the SoM assumed the obligation to remove the present contamination of water, air and soil.

449 The Baseline Report summarizes the basic obligations of the SoM in No. 6 (pages 264 et seq. of book 2 in **Exhibit Doc. C 158**), which are:

(aaa) Water

450 In the production of Alumina from the ore bauxite, a left over product emerges, which is called red mud, due to its colour. This mud is alkali rich and must not be spread into the groundwater. Therefore, the red mud is stored in red mud ponds. Two of these red mud ponds exist on the site of KAP, both are very old and already exceeded their expected usable lifetime.

451 As explained in No. 6.1 on page 264 of the Baseline Report (Exhibit C 91), the red mud ponds (in the translation these are referred to as "red sludge basin") are a vast polluter of the ground water. They need to be sealed, so no further contamination of groundwater will occur.

452 The solid waste disposal site, where *inter alia* highly toxic waste was simply dumped without any protection needs to be rebuilt.

453 The contamination with PCBs, though reduced in the meantime, needs to be taken care of.

454 The waste water management needs to be improved.

(aab) Soil

455 The highly polluted land territory of KAP is constantly polluting the groundwater. This relates to the wild dumping of toxic waste and the red mud ponds.

456 Further, it is necessary to reorganize the land on the west of KAP where the fuel oil loading facility is located. There, for the last 15 years the soil is constantly polluted by spilling of mineral oils.

457 Location for reloading and storing of sodium hydroxide is polluting the soil and thereby the ground water as well.

458 Scattered and stored bauxite dust is also a major pollutant to the soil and ground waters.

(ab) RSK Report

459 After the Closing in October 2005 occurred and CEAC took operative control over the KAP, it became clear that the SoM did not want to take the responsibility they contractually assumed with regard to the removal of the existing contamination and the overall catastrophic environmental situation of the site. Therefore, in order to assess the scope of the project to bring the sites of KAP in accordance with applicable laws, and to get a guideline of potential costs involved, Claimant employed RSK in order to establish the scope of SoM's obligation and to be in the position to duly notify the Sellers and the SoM in accordance with the provisions of the SPA-KAP. As **Exhibit Doc. C 73** the RSK Report dated May 10, 2006 (hereinafter referred to as the "**RSK Report**") is enclosed.

460 The objective of the RSK Report was to identify and quantify, post acquisition, environmental liabilities associated with the KAP facilities and the RBN mines, at the closure of the fiscal year 2004. During the period 2003-2006, the Montenegro environmental legislation has not changed such that it will substantially impact the environmental liability cost for the facilities. The major environmental regulatory reference for the site is the Montenegrin Environmental Law of 1996. This Law requires the implementation of an Environmental Protection Program and the preparation of an Environmental Impact Statement (Art. 14 and 17). RSK comes to the overall conclusion that as of the date of the RSK Report an environmental program has not been designed and implemented, consequently, the site is substantially out of compliance.

461 Details to each item are set forth in the RSK Report, in particular No. 4 of said report (page 23 et seq. of **Exhibit Doc. C 73**) which CEAC summarizes as follows:

(aaa) Air Emissions

462 - A major revamp is needed to abate the dust, fluoride and hydrocarbon emissions from the electrolysis operations. Coverage of the pot lines, exhaust system and treatment is required;

463 - The gas collection and filtration systems in the secondary smelter need to be reengineered and re-commissioned;

464 - The bauxite crushing, milling and storage operations need to be upgraded to reduce the fugitive dust emissions;

465 - SO2 emissions must dramatically be reduced by using low sulphur fuels (<0.5 %). The change to lower sulphur containing fuels impacts the operational cost. NOx emissions can only be reduced by using low NOx burners. A conversion of the boilers is required.

(aab) Soil Contamination

466 Oil Contaminated Areas:

It is known that spillage at the oil storage area has been on-going for many years and nearby monitoring wells have recorded the presence of free phase product. The estimated area impacted by such oil spillage is 50m x 70m x 10m deep giving 70,000m³ of impacted soils. This soil needs to be excavated and removed.

467 Solvent Impact:

Solvent management at the site is poor and there were many areas where drums were stored in poorly contained areas and ground staining identified the presence of spills.

468 Electroplating Areas:

There are two redundant electroplating areas on-site where it is likely that internal drains have leaked metal rich liquors into the ground. Given that these units are redundant and impact of metals such as chromium are seen in the groundwater below the site, it is likely that remedial measures comprising excavate and dispose are required.

(aac) Groundwater

469 Comprehensive investigation to review existing groundwater contamination data and where identified, supplemented by the installation of additional wells with associated sampling and laboratory analyses is required. After the collection of sufficient data, RSK points out that a detailed site-specific quantitative risk assessment should be undertaken to determine residual risk, once the identified sources have been contained or remediated.

470 The undertaking of groundwater remediation will depend on the identified contaminants, their relative concentrations, vertical and lateral extent of any identified contaminant plume(s), physical properties of the impacted aquifer and the required timescale(s) required for clean-up to be completed.

(aad) Surface Water and Wastewater Management

471 As groundwater and surface water quality is to be restored, the site will be required to address its poor drainage and lack of wastewater treatment capacity. It is possible that up to 10 kms of new lange diameter surface water drains may be required.

(aae) Hazardous and Solid Waste Management

472 The remedial cost of addressing potential risks to human health and the environment associated with leachate arising from the unlined hazardous waste landfill is considered to be a key liability item. The landfill area is approximately 160,000 m^2 and given an assumed thickness of 7-8 m, there is over 1,200,000 m^3 of hazardous waste in place, possibly underlain by a similar volume of highly impacted soils.

473 It is important to bear in mind that there will be a significant volume of other materials resulting from remedial works undertaken at the site and this volume should be incorporated into the design of any new solid waste landfill facility.

(aaf) Red Mud Management

Red Mud Ponds A & B

474 The red mud pond A is now closed but is uncapped. This condition is allowing wind blown dust carrying high metal content to be blown off-site. Similarly leaching of mud is occurring which is generating a high pH groundwater plume migrating off-site to the south and west of the site. This plume is also likely to be carrying significant concentrations of metals such as aluminum, arsenic and molybdenum.

475 The minimum remedial strategy for this issue would be to provide a clay cap to reduce water Infiltration and to prevent wind blown dust.

476 It is recommended that further assessment and quantitative risk assessment work is done to verify the risk posed and to determine if groundwater remediation measures are required. RSK would anticipate

that once leaching was slowed buffering of the residual high pH material would occur quickly and once this happened metal mobility would be greatly reduced.

(aag) Hazardous Materials

PCB Storage Area:

477 The cost of disposal of both the existing PCB contaminated stockpile of electrical items and the potential as yet un-identified stockpile of PCB containing equipment, according to RSK, is as follows:

478 Given a presence of 50m³ of PCB oil and 285 capacitors and 22 transformers it is assumed that there is approximately 200 tones of waste requiring disposal.

479 RSK anticipates 50 m³ PCB contaminated soils and it is highly likely that there will be hot spots of additional PCB impact in the soil where addition PCB oils have been disposed to ground through spillage. The site estimates that 12t of PCB oil has been lost in this way.

Asbestos:

480 A comprehensive asbestos survey of the site should be undertaken to identify all ACMs, including lagging to above and below ground pipework and tanks. It is envisaged that identified ACMs will be gradually replaced over time, with waste materials being deposited in the new solid waste landfill site. It is important that the landfill is designed to have sufficient capacity for this material.

ODCs:

481 It is known that the site uses and has a stockpile of CFCs on site. These materials are now banned under EU legislation. Disposal of this material is not considered to be material in the context of this site assessment.

(ac) ERM Report

482 Following the service of the Notice of Breach by CEAC to the Sellers and the SoM, no significant action has been taken by the Sellers and the SoM to fulfill their obligations arising from the SPA-KAP with regard to the environmental situation of KAP. The Sellers and the SoM flatly rejected their obligations. Continuously, CEAC and KAP request-

ed that the SoM shall honor their obligations with regard to the due and complete removal of all pre-Closing contaminations and to bring about a solution for the red mud ponds as contractually agreed. Any such requests did not lead to a commencement of any activities on the side of the SoM.

483 Therefore, in order to clearly define KAP's obligations on the one hand and the Sellers' and the SoM' obligations on the other hand, KAP entrusted the company Environmental Resources Management Limited (hereinafter referred to as "**ERM**"), specialized in environmental analysis and project planning for environmental restructuring, to make an in depth analysis of individual steps necessary and associated costs. ERM submitted their report in February 2008 and it is enclosed as **Exhibit Doc. C 159** (hereinafter referred to as the "**ERM Report**").

484 Annex A to the ERM Report contains a detailed overview of all investments necessary to bring the operations of KAP in line with applicable legislation. Also, ERM in Annex A under the column "Responsibility" made an assessment of whether KAP or the Sellers and the SoM are liable for making such investments based on ERM's own legal interpretation of the SPA-KAP. For some specific items the legal assessment of Claimant differs from that of ERM, which will be explained in more detail below.

485 All works relating to the removal of contamination of air, groundwater and soil by solid waste are clearly in the responsibility of the Sellers and the SoM. These responsibilities are summarized in Annex A to the ERM Report under the Nos. 4.3, 5.4, 8.1 and 8.2. Under these numbers, details of the legal framework making such measure necessary are set forth. Also an assessment of the implied costs is made.

486 In detail, the Sellers and the SoM are responsible for the following measures to be implemented:

(aaa) Storage of Hazardous Waste

487 The concrete storage area, where PCB Oils and Equipment is kept, is open and surface water run-off passes through a small settlement tank before discharge to adjoining open ground. The disposal of the material is the SoM's responsibility under the SPA-KAP. The estimated costs to bring this storage area in compliance with the law amount to **Euro 200,000**. (See for details regarding this issue, suggested abatement,

cost estimate and legal framework line 4.3 of Annex A to the ERM Report, **Exhibit Doc. C 159**).

(aab) Solid Waste Storage

488 The 10 ha area used for disposal of various historical wastes from KAP operations is one of the most significant pollution sources in KAP. Different kinds of waste (cathode, anode, waste oil, refractory material, salt cake, waste contaminated with phenols, cyanides, PAH, etc.) were disposed of in an unlined area and stormwater is leaching various pollutants in the groundwater. These materials are uncovered and dust generated in summer disperses across the site and beyond the site boundary.

489 ERM estimates that it consists of one million of cubic meters of waste to be removed. In addition, ERM estimates waste of 25 years of operations at about 1,700 t of cathode/anode waste per year, therefore 59,500 t of cathode/anode waste. The export and incineration of this waste will cost approx. Euro 600 per ton, so this item alone sums up to Euro 36,000,000.00.

490 All in all, ERM estimates an overall amount for the removal and due incineration of the waste of up to **Euro 56,000,000.00**. (See for details regarding this issue, suggested abatement measures, cost estimate and legal framework line 5.4 of Annex A to the ERM Report, see **Exhibit Doc. C 159**).

(aac) Additional Soil Contamination

491 In addition to the Solid Waste Storage, in various parts of KAP's site additional contaminations with toxic substances from various historical sources were identified. On the assumption that 10 hot spots of contamination require treatment across the site, ERM estimates the associated costs to be **Euro 10,000,000.00**. (See for details regarding this issue, suggested abatement, cost estimate and legal framework line 8.1 of Annex A to the ERM Report, **Exhibit Doc. C 159**).

(aad) Groundwater Control

492 Contaminations from various historical sources lead to a constant contamination of groundwater. Based on constant monitoring throughout the last years, it was determined that the main impact from KAP activi-

ties regarding groundwater quality is extended towards south-south-west, i.e. toward Skadar lake.

493 The necessary abatement measures require for a groundwater control around the whole site. ERM proposes a hydraulic barrier system. Such hydraulic barrier sufficient to control the further contamination of groundwater will cost approximately **Euro 10,000,000.00**. (See for details regarding this issue, suggested abatement measures, cost estimate and legal framework line 8.2 of Annex A to the ERM Report, **Exhibit Doc. C 159**).

(aae) Waste Management for Red Mud Ponds A and B

494 In addition, CEAC takes that based on the undertakings in the environmental area of the Sellers and the SoM in the SPA-KAP, taking care of the continuing contamination of the groundwater from the two existing red mud ponds is indeed in the responsibility of the Sellers and the SoM. These issues were included in the Baseline Report as a historical cause of contamination of the groundwater which the Sellers and the SoM undertook to remove.

495 In particular in the Amendment of October 24, 2005, the Sellers and the SoM clearly undertook to bear the costs of the implementation of the Baseline Report. In the Baseline Report, the sealing of the red mud ponds is clearly stated as one of the important issues to implement in order to prevent further contamination of the groundwater.

496 Also, in No. 1.2 of Annex 5 SPA-KAP, the "*Consequences of the current status of the red mud pond*" is clearly stipulated as being an obligation of SoM.

497 Incorrectly, as CEAC takes, ERM noted in Annex A to the ERM Report under line No. 5.1 that this item was a responsibility of KAP.

498 The waste management and in particular groundwater control for the red mud ponds in item No. 5.1 of Annex A to the ERM Report is necessary in order to stop the existing two red mud ponds from continuing to contaminate the groundwater. Further the seeping from the walls of the ponds needs to be stopped and the ponds need to be closed, Red Mud Pond B only once the new pond C will be build and put operative.

499 The costs of these abatement and closure measures will sum up to an amount of **Euro 25,000,000.00**. (See for details regarding issue, suggested abatement measures, cost estimate and legal framework line 4.3 of Annex A to the ERM Report, **Exhibit Doc. C 159**).

(aaf) Summary of ERM Report

500 The ERM Report, for all measures mentioned above in No. 2.a)i)(11)(b)(ac) that are in the responsibility of the Sellers and the SoM comes to an overall investment amount of **Euro 101,200,000.00**.

(c) Claims against the Sellers and the SoM

(aa) Breach of Balance Sheet Warranty

501 The three expert opinions mentioned above come to somewhat differing assessments of the costs of the abatement measures to be taken. All expert opinions, though, clearly state that these measures relating to the past activities of KAP are indispensible in order to bring KAP's plant in compliance with the law. All necessary measures were already necessary at the end of 2004 and at time of Closing of the SPA-KAP. Therefore, for these measures an adequate provision should have been put up in the KAP 2004 Accounts. The fact that such provision was not put up in the KAP 2004 Accounts is therefore a breach of the Balance Sheet warranty of the SPA-KAP. CEAC may claim the necessary amount of provision for the clean up work from the Sellers and the SoM.

502 The amount of such provisions corresponds to the costs related to such measures, i.e. a total of **Euro 101,200,000.00**.

503 At the same time, the lack of due provisions in that respect and the contamination as such is a defect of the sold object. Therefore, CEAC has a claim for damages in the same amount based on §§ 437, 440, 280 BGB. This claim is therefore not subject to any limitation of liability and in particular not the subject to the Cap.

(ab) Sellers' and SoM's Undertakings

504 Irrespective of a breach of warranties, though, and without the liability limits set forth in Section 5.4 SPA-KAP, the SoM in Section 8.3.1 SPA-KAP and in its Annex 5 explicitly committed to bear the costs of the removal of the past contaminations and other environmental problems of KAP. Further, in the Amendment of October 24, 2005 (**Exhibit**

Doc. C 3), the Sellers and the SoM explicitly assumed the liability – again outside any limitation of liability under Section 5.4 SPA-KAP – to pay for the costs of the implementation of the Baseline Report.

505 In the Baseline Report itself (**Exhibit Doc. C 158**), a report that was prepared by a state agency of the Republic of Montenegro, on page 30 under No. 1.2 the author confirmed that

> "*the Government of Montenegro assumed the obligation to remove the present contamination (…)*".

506 The SoM has consistently rejected to start any of the necessary measures in order to accomplish the aim of removing the environmental sins of the past. The request in the Notice of Breach was rejected flatly, and no activity regarding the planning of a project to comply with its undertakings have been made so far. The Sellers and the SoM are, thus, in default with their obligations in that respect.

507 Only for the purpose of caution, the Sellers and the SoM requested to immediately and without any delay implement the measures as requested in Motion 2.b). In order to do so, the Sellers and the SoM were asked by no later than October 30, 2008 to submit to CEAC a detailed plan, coordinated with the operative requirements of KAP, on the implementation of all measures requested in Motion 2.b). By the same date, SoM was requested to produce evidence of executed contracts with duly qualified companies specialized in the respective fields of environmental abatement measures. However, the SoM failed to do so.

(ac) Claim for Payment of Money

508 As laid out above, CEAC takes that the Sellers and the SoM are under the obligation to pay to KAP the amount of money necessary to do the clean up work. Therefore, in the Motion No. 2a), above, CEAC is asking for a payment of the necessary funds to remove the pre-privatization contaminations to KAP, so that KAP is in the position to duly fulfill its obligations arising from Montenegrin and EU environmental laws with regard to the existing contamination of soil and water.

509 Should the Tribunal take the view that a payment to CEAC under Section 5.3.4 SPA-KAP is "*appropriate*" rather than a payment to KAP, CEAC assumes that the Tribunal will notify CEAC thereof.

(ad) Alternative Claim for Performance in Kind

510 In the event the Tribunal takes the view that CEAC or KAP are not entitled to a direct payment of the costs associated with the fulfillment of SoM's environmental obligations, then CEAC in Motion 2.b) requires the Tribunal to order the SoM to fulfill their obligations in kind by removing the historic contamination and implementing the groundwater control.

(ae) Default with Obligation to Perform in Kind

511 Nevertheless, the Sellers and the SoM, for years, are in default with their obligations with regard to the removal of historic contamination of soil and water and the removal of waste on KAP's site. At least with the expiry of the last deadline set forth in the First Arbitration, the SoM will be in default with the performance in kind of their environmental obligations.

512 In accordance with § 281 BGB, in the event of default of the debtor of an obligation in kind, the creditor of such obligation is entitled to demand damages. The amount of damage in this case equals to the amount necessary to fulfill the SoM's environmental obligations.

513 CEAC is, from beginning of November 2008 at the latest entitled to demand payment in cash to KAP.

514 If the Tribunal deems this appropriate or necessary, CEAC is willing to amend the Motion No. 2.a) to the effect that the payment for the costs of the removal of the historic contamination and the implementation of the groundwater control measures shall be effected to an escrow account or into the fiduciary hands of some organization which shall supervise the due use of these funds.

(af) Claim for Indemnification (Motion 2.c))

515 In any event, KAP might in the future face substantial claims by third parties, in particular the inhabitants of settlements surrounding KAP's site that go back to the contamination of air, water and soil caused by KAP's pre-Closing activities. It is necessary to point out that the Sellers and the SoM are in default with their obligation to remove this contamination. Therefore, the Sellers and the SoM are obligated to indemnify KAP also from claims of third parties that only arose after November

30, 2005 but are caused by contaminations that occurred prior to that date.

(12) Provision for Litigation

516 In the KAP 2004 Accounts, no provisions for possible liabilities arising from litigation pending or threatened as per December 31, 2004 were made. After the Closing, CEAC assessed potential exposures from pending litigation procedures. In accordance with IAS 37 an adequate provision needs to be set up for potential liabilities arising from pending litigation matters.

517 CEAC has assessed the outcome of such procedures and determined the necessary provisions for litigation in the amount of Euro 3,983,000.00 in total as of December 31, 2004. This amount was also provided for in the financial statements as per end of 2005 and confirmed by KAP's auditors.

518 The table below shows the necessary provisions as of December 31, 2004 in respect of the following disputes in the Commercial Court in Podgorica:

Cases	**Description**	**Index**	**Provision 000 Euro**	**Note**
Labour disputes	Compensation for damages due to injury at work		744	
Labour disputes	Compensation for endangered health		30	
Labour disputes	Compensation of the material damage (the difference in salary)		80	The reserves based on the material damage are treated as salary difference and tax and contribution would be due
Labour disputes	Compensation of the non-material damage (disabled).		392	The disputes regarding non-material damages are mostly related to disabled

Commercial disputes	Zeljeznice CG	P. 152/01 and P 680/00	117	
Commercial disputes	Rudnik Pljevlja	P 681/02	114	The debt for unpaid goods
Commercial disputes	Sindal in bancruptcy	P 318/02 and P 628/03	105	Debt for goods plus interest
Commercial disputes	Autoremont Osmanagic, Podgorica	P 69/06 and P 68/06	6	Debt for services
Commercial disputes	AD Higijena Podgorica	P 652/05	29	Debt for services
Commercial disputes	JU centar za ekotoksikoloska ispitivanja	P 2730/05	19	Debt for unpaid services
Commercial disputes	Aluminijum Belgrade	XX P/2573/05	14	Membership fee
Commercial disputes	Zeljezara ad Niksic	P. 344/05	112	Debt
Commercial disputes	Vamimontalum	P 527/03	59	
Commercial disputes	Eminent Podgorica	P 1146/98	113	
Commercial disputes	EPCG	P 247/03	1.542	Debt for electricity confirmed by the parties
numerous of lower value labour law related litigations, suppliers' claims and others	Disputes resolved and paid during the year 2005		507	
Total			**3,983**	

519 Therefore, provisions should have been booked in the KAP 2004 Account in the amount of **Euro 3,983,000.00** and CEAC, thus, has a

compensation claim against the Sellers and the SoM in the same amount.

(13) Employment related Adjustments

520 CEAC discovered numerous employment related issues which negatively affect KAP's equity but which are not reflected in the KAP 2004 Accounts. The inaccuracies in the KAP 2004 Accounts and any related entry in the financial records constitute a breach of Sections 5.1.28 through 5.1.39 SPA-KAP, so that CEAC is entitled to compensation according to Section 5.3.4 SPA-KAP in the amount of **Euro 12,706,000.00**.

521 The employment related issues, which were not reflected in the KAP 2004 Accounts, are summarized in the following table in column "December 31, 2004" and explained in detail in this No. 2.a).i)(13) below.

	Description	December 31, 2004 000 Euro	December 31, 2005 000 Euro	November 30, 2005 000 Euro	Total 1.1.2004 – 30.11.2005 000 Euro
aa)	Hardship contributions	9,794	1,156	1,060	10,854
bb)	VAT on workers meals	119	116	106	225
cc)	VAT on employees costs recharged to Vektra	340	303	278	618
dd)	Payroll tax compliance / winter allowance for 2004	437	-	-	437
ee)	Taxes and contributions on night shift allowances	572	60	60	632
ff)	Payroll tax and contributions due	992	1,144	1,049	2,041

	on housing benefits				
gg)	Contributions to the Housing Fund	452	304	304	766
	Total	12,706			

522 All of the above issues relate to KAP's obligation to pay taxes or social security contributions either to the budget of the SoM or to some other state entity of the SoM. For none of these obligations KAP set up due provisions in the KAP 2004 Accounts.

523 CEAC duly brought forward these issues in the Notice of Breaches. Shortly thereafter, the Montenegrin Tax Supervision conducted a tax audit regarding KAP's tax liabilities. On January 18, 2007 the Montenegrin Tax Authority issued the Decision No. 03/11-6-3847/3-06, a copy of which is enclosed as **Exhibit Doc. C 160** in which most of the liabilities set forth in this No. 2.a).i)(13) were confirmed.

524 KAP filed an appeal against this Decision, however, essentially limited to the adjustments of taxable income, not regarding the employment related adjustments. Therefore, the existence of such liabilities and the fact that The Sellers and the SoM are liable for the resulting breach of the balance sheet warranty may hardly be disputed by the Sellers and the SoM.

525 Pursuant to the Decision of the Ministry of Finance No. 04-5282/1 of July 8, 2008, a copy of which is enclosed as **Exhibit Doc. C 161**, deferred payment of certain liabilities set forth in the decision of January 18, 2007 (**Exhibit Doc. C 160**) was approved until December 25, 2008.

526 Pursuant to the Decision the Ministry of Finance No. 04-5420/1 of July 28, 2008, a copy of which is enclosed as **Exhibit Doc. C 162**,

> *"(...) tax liabilities of KAP arising from tax on income of physical entities (tax on individual earning), which belong to the State budget, amounting to Euro 897.394,70 as well as the relevant interest arising from it, were written off."*

527 Further, in the "Explanation" of the Decision of July 28, 2008 it is stated that

> *"at the same time, the Government took over liabilities arising from contributions for mandatory social insurance at the amount of Euro 13.635.577,39 (contributions for pension and disability insurance amounting to Euro 13.034.787,33, contributions for health insurance amounting to Euro 549.666,15 and contributions for unemployment insurance amounting to Euro 51.123,91) with relevant interest (...)".*

528 The Decision of July 28, 2008 is binding and irrevocable only in relation to the tax on income of physical entities/tax on individual earning in the amount of Euro 897,394.70 plus interest. However, the "take over" (presumably: "assumption") of the social contributions in the amount of Euro 13,635,577.39 only becomes binding after having been stated in a separate decision.

529 Thus, insofar as the tax in the amount of Euro 897,394.70 plus interest is identical with KAP's liabilities set forth in this No. 2.a)i)(13) or other Sections of this Statement of Claim, and is therefore settled, CEAC will reduce the overall amount claimed in this Statement of Claim.

(a) Hardship Contributions

530 In accordance with the Montenegrin Law on Pension Insurance, KAP shall pay hardship contributions to the Pension Fund for the workers who work in an environment that is damaging for their health.

531 Hardship contributions are paid in order to compensate workers for hard working conditions and to allow them to retire earlier than if they had worked in a regular environment. The retiring age limit may be reduced to 55 years of age. Under Article 71 of the Law on Pension Insurance, in order to become entitled to this benefit, an employee needs to have worked a minimum of 10 years of effective work on such job.

532 Hardship contributions shall be paid by the employer on a regular, monthly basis, along with social security contributions for pension, healthcare and unemployment insurance. Contributions are calculated based on gross salary, at the rates ranging from 6%, 9%, 12% to 18% depending on the degree of hardship involved.

533 The liability in respect of these contributions is due at the time the social contributions are due, i.e., every month. However, it was general practice at KAP not to pay the above contributions at the time when they become due, but retroactively, at the time when employees retired.

534 As long as due contributions had not been paid these contributions (plus interest) should have been recorded in the accounts as liabilities. On December 31, 2004, Euro 9,794,000.00 of due contributions were unpaid but not booked as liabilities in the KAP 2004 Accounts.

535 **Exhibit Doc. C 74** contains a table with a detailed calculation of due but unpaid hardship contributions until December 31, 2004 ending with the amount of Euro 9,344,051.00.

536 In addition, for disabled employees whose disability is not work related and who left KAP until end of 2005, the unpaid hardship contributions until December 31, 2004 amount to Euro 449,815.00. Out of 141 employees whose disability is not work related, 85 qualified for hardship contributions in the amount of Euro 595,724.00 as set forth in detail in the enclosed **Exhibit Doc. C 75**. A part of this liability (Euro 145,910.00) was paid along with hardship contributions for non-disabled workers, while the amount of Euro 449,815.00 is still due.

537 There is no liability accrued in KAP 2004 Accounts for the unpaid hardship contributions which as per December 31, 2004 amounted to Euro 9,344,000.00 and Euro 449,815.00, i.e. **Euro 9,793,815.00** in total.

538 These liabilities were confirmed by the Decision of Montenegro's Tax Authority of January 18, 2007, page 4 (**Exhibit Doc. C 160).** On page 4 of this Decision, second paragraph, the above mentioned amount of Euro 449,815.00 is explicitly confirmed. In the second to last paragraph of page 4 of the Decision an amount of liabilities of Euro 10,500,022.00 is confirmed. This amount includes the above mentioned Euro 9,344,000.00 of contributions due for the year 2004. This amount plus the corresponding amount for 2005 (as further explained in No. 2.a)iii)(3)(d)(aa) below) of Euro 1,156,000.00, comes to the total of the confirmed liability of Euro 10,500,022.00.

539 The Sellers' and the SoM`s liability to compensate CEAC is not subject to the limitation of liability according to Section 5.4 SPA-KAP. The Sellers and the SoM acted deliberately, as they knew that KAP did not pay the hardship contributions although they positively knew that the

Law on Pension Insurance requires employer's payment of hardship contributions to the Pension Fund for workers who work in an environment that is damaging for their health. At least the SoM shall be and was aware of the Montenegrin Laws.

540 Any reference of the Sellers and the SoM to the limitations of liability pursuant to Section 5.4 SPA-KAP would be a breach of good faith and, thus, contrary to § 242 BGB. It would be contradictory if the Sellers and the SoM were allowed to claim the total amount of this hardship contribution liability without any limitation while CEAC – due to Section 5.4 SPA-KAP- was prevented from claiming the full compensation of the loss sustained as a consequence of the breach of representations and warranties set forth above.

541 At the same time, the existence of overdue hardship contributions as such is a defect of the sold object. Therefore, CEAC has a claim for damages in the same amount based on §§ 437, 440, 280 BGB, to which the limitations of liability do not apply – as set forth in No. 1.e) above.

542 Apart from that, as set forth in No. 1.e) above, the limitations of liability are void pursuant to § 444 BGB and Section 5.4.4 SPA-KAP does not apply to the liability of the SoM.

(b) VAT on Workers Meals

543 Under the applicable collective agreement governing KAP's employment relations, employees are entitled to a meal allowance, the value of which may not be lower than 50% of the minimum labor cost. This amount is considered to be non-taxable personal income.

544 KAP did not provide meal allowances in cash, but regular meals are prepared in the company's canteen. However, no VAT was calculated and paid on such free supply of food to employees.

545 According to Article 5 of the Montenegrin VAT Act, the use of taxpayer's assets by a taxpayer itself or by its employees for their private needs, as well as use of taxpayer's assets for non-business purposes is considered as taxable supply. Accordingly, KAP should have calculated output VAT on the supply of meals in the period in which the supply took place. The taxable amount is the cost value of the provided meals, based on the direct costs of material, minimum staff costs and depreciation. The VAT rate is 17% of the taxable amount. Under the Collective

Agreement, the minimum value of a meal allowance to which employees are entitled is Euro 25.00 per worker monthly.

546 The following table shows the meal costs and the VAT which should have been calculated on the supply of meals in 2004 and 2005:

	Meal costs 000 Euro	**VAT 000 Euro (rounded)**
2004	701	**119**
2005	686	**117**
Total	1,387	**236**

547 A more detailed calculation of the VAT on the meal costs is enclosed as **Exhibit Doc. C 163**.

548 This liability was confirmed by the Decision of Montenegro's Tax Authority of January 18, 2007, page 3 third paragraph, (**Exhibit Doc. C 160**) according to which KAP`s total liability for VAT relating to meals provided to employees amounts to Euro 235,907.00, which is the aggregate number for the year 2004 and 2005 as set forth above.

549 This VAT liability as per December 31, 2004 in the amount of **Euro 119,286.00** was neither stated in the KAP 2004 Accounts nor paid.

550 For the reasons set forth at the end of No. 2.a)i)(13)(a) the Cap pursuant to Section 5.4.4 SPA-KAP does not apply.

(c) VAT on Employees Costs charged to Vektra

551 Under the terms of the Contract on reconstruction and management of KAP Anode Plant, signed between KAP and Vektra, Vektra managed KAP's Anode Plant. The employees who worked in the Anode Plant were formally employed by KAP. KAP paid their salaries, taxes and contributions and subsequently charged these costs to Vektra.

552 According to the applicable Montenegrin VAT law, KAP should have calculated VAT on the employees costs charged to Vektra. However, such VAT was neither booked, nor calculated or paid.

553 The following table shows the employees costs and the VAT which should have been calculated on these costs in 2004 and 2005:

	Employees costs 000 Euro	VAT 000 Euro (rounded)
2004	2,000	**340**
2005	1,785	**303**
Total	3,785	**643**

554 This VAT liability was confirmed by the Decision of Montenegro's Tax Authority of January 18, 2007, page 3 third paragraph (**Exhibit Doc. C 160**), according to which KAP`s total liability for VAT relating to these employees costs amounts to Euro 643,551.00 as per 31 December 2005. This number, which is the aggregate amount for the years 2004 and 2005, corresponds to the numbers in the above table.

555 Out of this total amount, **Euro 340,000.00** for the year 2004 became due as per December 31, 2004, but was not stated in the KAP 2004 Accounts.

556 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(d) Winter Allowance for 2004

557 In 2004, KAP paid winter allowance in the net amount of Euro 405,900.00, without calculating taxes and contributions. KAP should have calculated and paid such taxes and social contributions in the amount of Euro 436,582.00. For a detailed calculation reference is made to **Exhibit Doc. C 164**.

558 This liability was confirmed by the Decision of Montenegro's Tax Authority of January 18, 2007, according to which the tax liability in this respect is Euro 436,582.00 (see **Exhibit Doc. C 160**, page 4, aggregate amount of column 2 to 9 in the first table).

559 There is, however, no statement in the KAP 2004 Accounts regarding this tax liability. Therefore, CEAC has a compensation claim in the amount of **Euro 436,582.00**.

560 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(e) Taxes and Contributions on Night Shift Allowances

561 Prior to the termination of their employment, over 100 handicapped employees raised claims in court against KAP, claiming compensation for the night shift allowance of which they were deprived due to their condition. Unassigned disabled workers received salary but no night shift allowance.

562 All these court decisions were pending already on December 31, 2004. As per August 2008, the court has passed decisions in workers' favor, ordering KAP to make up for this difference for the relevant period. The total amount of Night Shift Allowances that were collected by the employees amounts to Euro 566,074.00.

563 Since these compensations are treated as part of the employees' salary, KAP should have calculated and paid taxes and contributions on these compensations. However, these taxes and contributions were neither paid nor stated in the KAP 2004 Accounts.

564 The breakdown of claims and related taxes and contributions is set forth in the following table:

Date of collection	**Compensations collected Euro**	**Unpaid taxes and contributions Euro**
31.10.2005	119,881	121,080
10.11.2005	223,668	223,668
11.11.2005	52,462	52,462
14.11.2005	171,971	171,971
Subtotal	563,545	569,181
Non work related disabled	2,529	2,555
Total	**566,074**	**571,736**

565 The entire liability for non-recorded taxes and contributions as per December 31, 2004 amounts to **Euro 571,736.00** and, thus, has to be compensated by the Sellers and the SoM.

566 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(f) Payroll Tax and Contributions due on Housing Benefits

(aa) Payroll Tax and Contributions due on Favourable Purchase of Flats

567 KAP sold flats and provided loans under favorable terms to its employees - 76 flats in the period from 2003 onwards. The price of the flats was set at Euro 23.70 per sqm. KAP also provided housing loans to a certain number of employees. These employees were obliged to repay the portion of the loan, equivalent to the number of square meters of the flat purchased multiplied by the above price for one sqm. According to Article 14 of the Personal Income Tax Law, employment income includes vouchers, shares, writing off loans as well as employee's personal expenses paid by the employer. Pursuant to the wording of the law in force as of 2002, resolving housing needs should not have been treated differently than providing other benefits. Following a ruling of the Ministry of Finance in 2005, writing off of housing loans is taxable income of the employee.

568 However, at KAP, the difference related to the price charged to an employee and the value of the flats, and the difference between the amount of a loan to the employee and the amount to be repaid was not treated and taxed as a benefit in kind.

569 The difference between the flats` value as disclosed in KAP books and the loan to be repaid by employees in accordance with Article 14 of the Personal Income Tax Law represents employees' benefit. The liability of KAP arising from this is as follows:

	2004 000 Euro	**2005 000 Euro**	**Total 000 Euro**
Value of flats sold to employees	352	789	1,141

Charged price	16	32	48
Benefit	336	757	1.093
Tax from Benefit	136	305	441
Contributions on Benefit	213	480	693
Surcharge tax on Benefit	20	46	66
Total taxes and contributions due	**369**	**831**	**1,200**

570 KAP is liable for tax and contributions in this respect in the amount of Euro 369,000.00 as per December 31, 2004. These liabilities were neither paid nor booked in the KAP 2004 Accounts. CEAC is entitled to a compensation in the amount of **Euro 369,000.00**.

(ab) Payroll Tax and Contributions due on Writing off of Housing Loans

571 With respect to housing loans provided under favorable terms, the initial liability arose when loan agreements were signed, i.e. in the period 2002-2004. A taxable benefit arose for the employees when the value of the loans was reduced by a total amount of Euro 567,000.00. Relating to this benefit, an amount of taxes and contributions in the total amount of Euro 623,000.00 should have been but was not provided for in the KAP 2004 Accounts.

572 Further, in 2005 the loan agreements were terminated and new agreements signed approving more favorable terms and reducing the debt by an aggregate amount of Euro 286,475.00. Relating to this benefit, an amount of taxes and contributions in the total amount of Euro 313,000.00 should have been but was not provided for in 2005.

573 The related taxes and contributions, which have not been booked, are as follows:

	Benefit 000 Euro	Tax/contribution 000 Euro
Housing loans signed until December 31, 2004	567	623
Housing loans signed/amended in 2005	286	313
Total	**853**	**936**

574 Consequently, as per December 31, 2004 a tax and contributions liability in the amount of **Euro 623,000.00** should have been not stated in the KAP 2004 Accounts. CEAC has a compensation claim in this amount.

575 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

576 The aggregate liability for tax and contributions for the loans (this section (ab)) and the benefits from favorable purchase of flats (section (aa) above) for the years 2004 and 2005 amounts to Euro 2,136.566.00 (Euro 936,000.00 plus Euro 1,200.000.00). This liability was confirmed by the Decision of Montenegro's Tax Authority of January 18, 2007, according to which the tax and social contribution liability in this respect is Euro 2,136,556.00 (see **Exhibit Doc. C 160**, page 3, fourth paragraph).

(g) Contributions to the Housing Fund

577 Under the applicable collective agreement governing KAP's employment relations, KAP is obliged to pay contributions to the Housing Fund in the amount equivalent to 3% of the gross salaries of the employees. The purpose of the Housing Fund is solving housing problems of the employees, either by granting housing loans to employees, or by financing the purchase of flats and selling those flats to employees under special terms. The Housing Fund was established at KAP and was controlled by KAP itself.

578 According to the accounts, KAP was paying the required amount into the Housing Fund. However, a part of those funds was not used for housing purposes but for payments of KAP to its suppliers. In 2004,

Euro 451,702.00 of such funds were transferred to KAP's foreign currency account and used for payment to suppliers. The funds spent by KAP on payment to suppliers were not returned to the Housing Fund.

579 Payments made from the housing fund account to the foreign currency account of KAP are shown in the following table:

	2004 in Euro
Payment order dated 17 September 2004	275,031
Payment order dated 20 November 2004	108,724
Payment order dated 19 December 2004	67,946
Total	**451,702**

580 The liability in the amount of **Euro 451,702.00** should have been booked in the KAP 2004 Accounts.

581 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(14) Tax on Interest paid to Foreign Creditors

582 According to Article 29 of the Law on Corporate Income Tax, interest on loans paid to non-resident entities by Montenegrin taxpayer is subject to 5% withholding tax. This tax shall be withheld from the interest due at the moment of payment. Withholding tax on interest paid to non-resident creditors in 2004 and 2005 was neither paid nor accrued in the KAP Accounts.

583 KAP had debts towards the Swiss based company Glencore and the UK based company SBL/Gerald. The total amount of interest to be paid in 2004 and 2005 was USD 14,357,297.00.

584 The interest was settled via SBL/Gerald acting as an escrow agent in accordance with the provisions of a cash management agreement in 2004 and 2005. Proceeds from the sale of KAP products outside Montenegro were collected by SBL/Gerald and subsequently distributed to creditors abroad. In this way, both principal debt and interest were settled. In 2004 interest in the amount of USD 11,659,000.00 were paid to SBL/Gerald and Glencore. On the basis of the USD/Euro exchange rate of 0.8477 the interest paid amounts to Euro 9,883,334.00 and the relating withholding tax of 5% in 2004 amounts to Euro 494,219.00 – see the following overview:

All in Euro	Interest Paid	Withholding Tax
2004	9,883,334	494,219
2005	2,287,094	114,354
Total	**12,170,428**	**608,573**

585 The liability of KAP for withholding tax of 5% has been confirmed by the Decision of Montenegro's Tax Authority of January 18, 2007, pursuant to which the base value for tax on interest paid to foreign creditors has been determined amounting to Euro 12,171,460.00 (see **Exhibit Doc. C 160**, page 1 under I.). According to the tax rate to be calculated, KAP`s aggregate tax liability for 2004 and 2005 is Euro 608,573.00.

586 The withholding tax on interest was neither paid nor accrued in KAP 2004 Accounts. KAP`s liability on December 31, 2004 was **Euro 494,219.00**. Thus, CEAC has a compensation claim against the Sellers and the SoM in the same amount.

587 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(15) Property Tax

588 Property tax is due on immovable property including buildings, land, and other construction objects. It is paid annually. In its property tax reports, KAP unduly omitted to record property tax liabilities for a part of the property stated in KAP's books. The law provides for the range of applicable tax rates, from 0.08% to 0.8%, while municipal regulations establish the tax rate applicable to taxpayers who own property in the respective municipality. In the Podgorica municipality, the property tax rates range from 0.1% to 0.3%, depending on the type and use of real estate. The taxable amount is the book value of the property as of December 31 of the previous year.

589 CEAC encloses as **Exhibit Doc. C 165** an overview of the book value of land and real estate as per December 31, 2003 and the calculation of property tax for 2004. As set forth in this overview following the trial balance value of immovable property, property tax for 2004 was understated by Euro 71,585.00.

590 Under Sections 5.1.28 through 5.1.39 and 5.3.4 SPA-KAP CEAC has, thus, a compensation claim against the Sellers and the SoM in the amount of **Euro 71,585.00**.

591 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

ii) Summary of Section 2.a)i)

(1) Claims for Payment to CEAC included in Motion 1.a):

Section	Issue	Amount of Claim Motion a)	Alternative Causes of Action
2.a)i)(1)	Construction in Progress	758,000	
2.a)i)(2)	Warehouse for Military Equipment Storage	1,309,000	
2.a)i)(3)	Military Equipment	134,000	
2.a)i)(4)	Business Premises	41,000	
2.a)i)(5)	Evaluation of certain fixed assets	64,534,000	
2.a)i)(6)	Investments in Subsidiaries	52,072,000	
2.a)i)(7)	Placements to / Receivables against Subsidiaries	0	
2.a)i)(7)(a)	Placements	8,442,000	
2.a)i)(7)(b)	Receivables	5,645,000	

2.a)i)(8)	Prerada 2004 Accounts	0	8.075.000 (alternatively to Section 2.a)i)(6)
2.a)i)(9)	Montenegrobanka, Hipotekarna banka, other long term investments	1,005,284	
2.a)i)(10)	Inventory	2,216,027	
2.a)i)(12)	Provision for Litigation	3,983,000	
2.a)i)(13)	Employment Related Adjustments	0	
2.a)i)(13)(a)	Hardship contributions	9,793,815	
2.a)i)(13)(b)	VAT on workers' meals	119,286	
2.a)i)(13)(c)	VAT on employees' costs charged to Vektra	340,000	
2.a)i)(13)(d)	Payroll Tax Compliance/ Winter allowance 2004	436,582	
2.a)i)(13)(e)	Taxes and contributions on Nightshift Allowances	571,736	
2.a)i)(13)(f)	Payroll Tax and contributions on housing benefits	0	
2.a)i)(13)(f)(aa)	Favorable Purchase of Flats	369,000	
2.a)i)(13)(f)(ab)	Writing off of Housing Loans	623,000	
2.a)i)(13)(g)	Contributions to the Housing Funds	451,702	

2.a)i)(14)	Tax on Interest paid to foreign creditors	494,219	
2.a)i)(15)	Property Tax	71,585	
Total		**153,410,236**	

(2) Environmental Issues

The claims brought forward with regard to the environmental situation of KAP refer to the Motion 2:

Section	**Issue**	**Amount of Claim**	**Subsidiary Motion (*Hilfsantrag*)**
2.a)i)(11)	Environmental Issues	101,200,000 (Motion 2.a))	Performance in kind (Motion 2.b.))
2.a)i)(11)	Environmental Issues	Motion to assert obligation to indemnify (Motion 2.c))	

iii) Working Capital

592 Section 5.1.16 SPA-KAP (**Exhibit Doc. C 2**) sets forth that at Closing, i.e., on November 30, 2005, KAP "*will have the working capital as more particularly described in Annex 10 hereto*". Annex 10 to the SPA-KAP summarizes the minimal stock of raw materials and spare parts and provides in its last sentence (page 219 of the SPA-KAP) that "*the other components of the Working Capital shall be agreed upon the Parties prior to the Closing Date*".

593 On November 30, 2005 the parties signed the Appendix to Annex 10 to the SPA-KAP (**Exhibit Doc. C 5** hereinafter referred to as the "**Appendix**") and agreed upon that KAP shall not have other liabilities towards banks, deferred liabilities towards the state, liabilities towards domestic suppliers and liabilities towards the suppliers of strategic raw material as listed in Items I - III of the Appendix and shall have the claims against the parties listed in Item IV of the Appendix.

594 Thus, in Annex 10 and in the Appendix the parties agreed upon each particular component of the Working Capital to which the warranty in Section 5.1.16 SPA-KAP refers. Consequently, any discrepancy to the detriment of KAP with regard to any line item in Annex 10 or the Appendix constitutes a breach of the representation and warranty pursuant to Section 5.1.16 SPA-KAP. Such inaccuracy leads to a loss and damage for CEAC and KAP as KAP had less working capital than expected upon Signing and Closing of the SPA-KAP. For this losses and damages CEAC is entitled to claim compensation for, in particular pursuant to Section 5.3.4 SPA-KAP.

(1) Shortage of Minimal Stock of Raw Materials

595 As per the Closing Date, CEAC had a physical stocktaking process done at the premises of KAP. In this count of all inventories CEAC discovered 10 positions in the list of raw materials where a shortage in comparison to the promised minimal stock contained in Annex 10 to the SPA-KAP existed as per the Closing Date.

596 For the details of the count, the evaluation of the raw materials and an overview of the findings, please see **Exhibit Doc. C 77**. This Exhibit contains an overview of the findings, a spread sheet comparing the findings to the warranted quantities and additional notes. The price per metric ton (mt) applicable at the day of Closing is set forth in the column "Price in EUR" on the spread sheet included in **Exhibit Doc. C**

77. Based on this pricing, the damage caused by the shortage of the various materials is calculated.

597 As an overview, the aggregate shortages in the 10 positions relate to:

Raw Material	**Shortage to Annex 10 in Quantity**	**Shortage to Annex 10 in value**
Bauxite (see count details in **Exhibit Doc. C 77** on page 7, No. 6).	13,255 mt	Euro 263,000
Fuel oil /KAP and port Bar (see count details in **Exhibit Doc. C 77** on page 7, No. 7)	1,943 mt	Euro 447,000
Solid bath (=Cryolite)	50 mt	Euro 15,000
Carbon Material	0.2 mt	Euro 5,000
Grey iron for anode rodding	11 mt	Euro 4,000
Steel stubs	120 pieces	Euro 1,000
Diesel oil (see count details in **Exhibit Doc. C 77** on page 7, No. 13)	10,661 lt	Euro 13,000
Hydrate Alumina (see count details in **Exhibit Doc. C 77** on page 7, No. 10)	1,544 mt	Euro 363,000
Green Anodes	3,000 mt	Euro 867,000
Rodded Anodes (see count details in **Exhibit Doc. C 77** on page 10, line item “Zalivena Anoda”)	227,286 mt	Euro 100,000
Total		**Euro 2,078,000**

598 As **Exhibit Doc. C 166**, CEAC encloses a letter of SoM dated December 14/15, 2005 which includes the results of a separate stocktaking made by the Sellers and the SoM (hereinafter refer to as "**Sellers' and the SoM's Count"**). In this letter the Sellers and the SoM largely confirmed the shortages in raw material as set forth above:

599 The actual amount of bauxite existing on the Closing Date of only 1,745 metric tones instead of the warranted 15,000 metric tones was confirmed by the Sellers' and the SoM's Count and should, thus, not be in dispute.

600 In the Sellers' and the SoM's Count it is confirmed that the stock of fuel oil amounted only to 2,557 mt. In addition, it was stated that the difference in fuel oils was available at any time to KAP in the Port of Bar in the tanks of a company "Montengro Bonus". On behalf of CEAC, a representative was present at the Port of Bar on December 1, 2005, but was not provided access to this stock. This stock was owned by Montenegro Bonus and was held available for KAP, provided however that KAP paid the purchase price for the fuel oil. This does not meet the requirements to count this stock into the Working Capital as per Annex 10 to the SPA-KAP. These fuels were owned by Montenegro Bonus and merely available for purchase by KAP.

601 In the Sellers' and the SoM's Count it is stated that the difference in Solid Bath (=Cryolite) was available in the Port of Bar in the quantity of 160,473 tones. A representative of CEAC was present at the Port of Bar on December 1, 2005 but was not provided with access to this stock. This stock available at the Port of Bar was owed by the company Interlog d.o.o and was not paid for by KAP. Again, stock neither owned nor paid for by KAP cannot be counted into the inventory of KAP and therefore does not form part of the Working Capital as per Annex 10 to the SPA-KAP.

602 The lack of 10,661 mt of Diesel oil was confirmed by the Sellers' and the SoM's Count, as there it is confirmed that only 4,339 mt instead of the promised 15,000mt of Diesel Oil were available at KAP on the Closing Date.

603 The lack of 1,544 mt of Hydrate Alumina was confirmed by the Sellers' and the SoM's Count, as it is confirmed that only 3,006 mt instead of the promised 4,550 mt of Hydrate Alumina were available at KAP on the Closing Date.

604 It is further undisputed between the Parties, that as of Closing there was no stock of green anodes available at KAP. In their Count, the Sellers and the SoM claim that the company Anotech in Podgorica had a quantity of 1,832.19 mt of green anodes on stock. These quantities, though, were the property of the company Anotech and, therefore, can neither be counted into the current assets nor into the working capital of KAP as per Closing.

605 It is further undisputed between the parties that as of Closing there were only 522.7140 mt of rodded anodes available, instead of the promised 750 mt. The Sellers and the SoM confirmed this shortage in their own Count.

606 The Sellers and the SoM warranted that each of the above raw materials were existent as of the Closing Date in the amount as listed in Annex 10, so any shortcoming of any of such raw material constitutes an individual breach. Thus, CEAC has a compensation claim against the Sellers and the SoM in the aggregate amount of **Euro 2,078,000.00.**

(2) Spare Parts

607 Annex 10 to the SPA-KAP sets forth that the *"Approximative value of the spare parts in the warehouses of KAP is 5.700.000 USD."* At the USD/Euro exchange rate as per November 30, 2005, this equals to an amount of warranted value of the spare parts as per Closing Date of Euro 4,833,600.00.

608 On behalf of CEAC an inventory count was performed by a jointly formed commission consisted of two KAP employees (Mr. Patjonkin Vladimir Mr. Aleksej Zaborski) and persons in charge of the warehouse on November 30 and December 1 and 2, 2005. This stock taking included the analysis of obsolete and slow moving spare parts, as of November 30, 2005. For details to the analysis on moving spare parts see **Exhibit Doc. C 78**. This document represents the warehouse by warehouse count of the tools and spare parts as per the Closing Date. The age analysis of spare parts was conducted by the KAP IT department and accounting department based on the inventory analytical evidence.

609 The following table is a summary of **Exhibit Doc. C 78** and a breakdown of value attributable to the spare parts relating to their usability:

Category	Actual findings in 000 Euro	Extrapolated in 000 Euro	Standard price in 000 Euro
A – frequently used	1,639	506	2,145
B – not frequently used but serviceable	1,748	539	2,287
C – not frequently used and not serviceable	82	25	107
Total	3,469	1,070	**4,539**

610 On each first page of the count per warehouse **(Exhibit Doc. C 78)**, the spare parts counted were categorized in the categories A, B and C, which have the following meaning:

> **A** – frequently used tools and spare parts (regardless whether spare parts were older or younger than two years)
>
> **B** –serviceable but older than two years and not frequently used tools and spare parts
>
> **C** –older than two years and not frequently used and not serviceable tools and spare parts.

611 All spare parts which have been used in the last two years as of Closing Date (Category A) have kept their 100 per cent value in **Exhibit Doc. C 78.** Tools and spare parts which were older than two years and belonged to Category B or C, in particular slow moving parts and parts that are not serviceable any longer need to be written down to nil, and thus cannot be included in the determination of the overall value of the spare parts at KAP as per the Closing Date for the purpose of Annex 10 to the SPA-KAP.

612 Accordingly, only spare parts in the value of Euro 2,145,000.00 were available at KAP as per Closing Date. Therefore, CEAC has a compensation claim against the Sellers and the SoM in the amount of the difference to the promised Euro 4,833,600.00, i.e., **Euro 2,688,600.00**.

(3) Discrepancies in Liabilities towards Banks and the State

613 In Appendix to Annex 10 (**Exhibit Doc. C 5**) as part of the overall Working Capital, the Parties agreed to the minimum amount of current receivables and the maximum amount of current liabilities of KAP as per Closing, the accuracy of which was warranted by the Sellers and the SoM.

614 An overview of all discrepancies between Appendix to Annex 10 and the actual situation as per the Closing Date (including the discrepancies of Appendix to Annex 10 to the own general ledger of KAP) is enclosed as **Exhibit Doc. C 79**, giving an overview of this Section and the following Sections.

615 The discrepancies in detail relate to the following:

(a) Deferred Personal Income Tax

616 The amount of Euro 302,150.00 warranted as deferred personal income tax liability in Appendix to Annex 10 to the SPA-KAP was meant to warrant the personal income tax due for the November salary for KAP's employees. The actual amount of income tax costs for the November salary was Euro 585,353.00. The difference between the warranted and the actual amount is Euro 283,203.00.

617 Further, SoM prior to Closing agreed to defer payment of personal income tax. Due to dramatic shortages of cash prior to Closing, KAP was approved deferred payment of personal income tax in the period January through October 2005 of Euro 150,000.00 per month, totaling to Euro 1,500,000.00 for the first ten months of 2005. This amount was also not included in Appendix to Annex 10.

618 CEAC, thus, has a compensation claim against the Sellers and the SoM in the amount of Euro **1,783,203.00**.

619 As SoM explicitly agreed to the deferred payment of the income tax in the year 2005, they deliberately misrepresented the amount of deferred income tax in Appendix to Annex 10. This compensation claim is therefore not subject to the Cap.

620 Also, for the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(b) Credit CKB

621 In Appendix to Annex 10 the total liability of KAP towards the bank Credit CKB as per November 30, 2005 was warranted to be Euro 1,550,000.00. As confirmed by the Credit CKB, the actual amount of liabilities was Euro 1,702,432.00 (see **Exhibit Doc. C 80**). The difference of **Euro 152,432.00**, which mostly relates to unrecorded interests and bank fees, shall be compensated by the Sellers and the SoM.

(c) Credit Podgorica Banka

622 In Appendix to Annex 10 the total liability of KAP towards Credit Podgorica Banka as per November 30, 2005 was warranted to be Euro 769,000.00. As confirmed by Credit Podgorica Banka, the actual amount of liabilities was Euro 849,052.00 (see **Exhibit Doc. C 81**). The difference of **Euro 80,050.00**, which mostly relates to unrecorded interests and bank fees, shall be compensated by the Sellers and the SoM.

(d) Taxes and contributions

623 The following table summarizes the liability of the Sellers and the SoM for the inaccuracies in the Appendix to Annex 10 regarding taxes and contributions (all amounts in 1,000 Euros):

	Description	December 31, 2004 000 Euro	December 31, 2005 000 Euro	November 30, 2005 000 Euro	Total 1.1.2004 - 30.11.2005 000 Euro
(1)	Hardship contributions	9,794	1,156	1,060	10,854
(2)	Payroll tax and contributions due on night shift allowance	572	60	60	632
(3)	Payroll tax and contributions due on housing benefits	992	1,144	1,049	2,041

(4)	Payroll Tax / Summer premiums	0	115	115	115
(5)	Management Board Severance Payment	0	27	27	27
(6)	Tax on interest paid to non residents	494	114	114	608
(7)	Property Tax	72	86	86	158
(8)	VAT on workers meals	119	116	106	225
(9)	VAT on employees costs charged to Vektra	340	303	278	618
		12,383	3,121	2,895	15,278

624 The above enlisted claims in the total amount of Euro 12,383,000.00 relating to 2004 (see column "December 31, 2004") have already been put forward with regard to the inaccuracy of the KAP 2004 Accounts (see No. 2.a)i)(13) through (15) above. Should these claims in respect to the KAP 2004 Accounts not be given, these amounts are **alternatively** claimed hereinafter based on the inaccuracy of the Appendix to Annex 10 (**Exhibit Doc. C 5**). If the Sellers and the SoM omitted to book liabilities of KAP in the KAP 2004 Accounts, they were obliged to enlist these debts in Appendix to Annex 10 SPA-KAP. Such liabilities then have to be considered short term liabilities and, thus, need to be included in the table of the Working Capital. With regard to these issues, it is therefore referred to the explanations in No. 2.a)i)(13 through (15) above.

625 In addition, CEAC has the claims as listed in the above table in column "November 30, 2005" as these items should have been included in the calculation of the Working Capital. These liabilities were all current and due for payment on Closing.

626 Most of the liabilities with regard to which the Appendix to Annex 10 (**Exhibit Doc. C 5**) is inaccurate are confirmed by the Decision of the Montenegrin Tax Authorities of January 18, 2007 (**Exhibit Doc. C 160**). In order to calculate KAP`s liability as of Closing on November 30, 2005, the amounts established in this Decision as per December 31, 2005 are reduced by a flat portion of 1/12.

(aa) Hardship Contributions

627 As explained in No. 2.a)i)(13)(a) above, KAP did not pay contributions for the workers with difficult working conditions when due. KAP`s liability as per December 31, 2005, confirmed by the Decision of the Montenegrin Tax Authorities of January 18, 2007 (**Exhibit Doc. C 160**, page 1), amounts to an aggregate amount of Euro 11,495,544.00. Out of this amount Euro 545,699.00 is payable by the employees and cannot be counted into KAP`s liabilities. The liability of Euro 9,793,815.00 arose prior to December 31, 2004 and is already being claimed in No. 2.a)i)(13)(a) as liability for inaccuracy in KAP 2004 Accounts.

628 According to the Tax Authority's determination of the total amount of due hardship contributions KAP is liable for as per 2004, the remaining liability for hardship contributions relating to 2005 amounts to Euro 1,156,000.00. In the time period from January 1, 2005 through December 31, 2005 this amount became due but was not paid. For further details of the total hardship contributions it is referred to **Exhibit Doc. C 76**. Out of this total liability for 2005, an amount of Euro 1,059,667.00 relates to the time period until Closing Date. Given that the hardship contributions shall be paid by the employer on a monthly basis the liability of KAP in this respect amounts to 11/12 of the amount for 2005, i.e., **Euro 1,059,667.00** for the time period from January 1, 2005 through November 30, 2005.

629 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(ab) Taxes and Contributions on Night Shift Allowances

630 As explained in No. 2.a)i)(13)(d) above, KAP was ordered by four judgments to pay compensation for the night shift allowance to disabled workers. However, KAP had not booked the liability for the related taxes and contributions of Euro 571,736.00 as per December 31, 2004.

631 Since 2005, there are additional litigation procedures pending of disabled workers for such night shift allowances in a total amount of Euro 60,000.00. As stated in the previous court decisions, KAP is obliged to pay such compensations, as well as approximately the same amount, i.e. Euro 60,000.00 of related taxes and social contributions. Thus, KAP was obliged to record in the Appendix to Annex 10 SPA-KAP (**Exhibit Doc. C 5**) Euro 60,000.00 for taxes and contributions relating to litigations still pending. However, these taxes and contributions were not disclosed.

632 With regard to the time period from January 1, 2005 through the Closing Date CEAC is entitled to claim damages in the amount of **Euro 60,000.00** due to this inaccuracy of the Appendix to Annex 10 SPA-KAP.

633 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(ac) Payroll Tax and Contributions due on Housing Benefits

634 As explained above KAP, was liable for tax and contributions due on favorable purchase of flats (see No. 2.a)i)(13)(f)(aa) above) and due on writing off of housing loans (see No. 2.a)i)(13)(f))bb) above).

635 Such payroll tax and contributions due on housing benefits as per November 30, 2005 were not duly reflected in the Appendix to Annex 10 (**Exhibit Doc. C 5**).

636 The following table presents taxes and contributions due on favorable purchase of flats:

	2005 in 000 Euro
Value of flats sold to employees	789
Charged price	(32)
Benefit	757
Tax from Benefit	305
Contributions on Benefit	480
Surcharge tax on Benefit	46
Total taxes and contributions due	**831**

637 KAP`s liability for payroll tax and contributions due on favorable purchase of flats as per December 31, 2005 amounts to **Euro 831,000.00**.

638 Additionally, as provided in the table below, taxes and contributions due on writing off of housing loans arose in 2005 in the amount of **Euro 313,000.00**.

	Benefit 000 Euro	Tax/ Contribution 000 Euro
Housing loans signed until 31. December 2004	567	623
Housing loans signed/ amended in 2005	286	313
Total	**853**	**936**

639 Payroll tax and contributions due on housing benefits, thus, totally amount to Euro 1,144,000.00 as per December 31, 2005. In order to calculate KAP`s liability for the time period from January 1, 2005 through November 30, 2005 the aggregate amount shall be reduced by 1/12. KAP`s liability for payroll tax and contributions due on favorable

purchase of flats and on writing off of housing loans arisen prior to the Closing Date amount to **Euro 1,049,000.00**.

640 As explained in No. 2.a)i)(13)(f)(aa) above, KAP's aggregate liability for tax and contribution due on housing benefits was confirmed by the Decision of the Montenegrin Tax Authorities of January 18, 2007 (**Exhibit Doc. C 160**).

641 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(ad) Summer Premiums

642 In July and August 2005, KAP paid summer incentives, from Euro 2.00 to Euro 50.00 per employee, in order to motivate them to work in hot weather, without calculating and paying respective taxes and contributions as would be due for salary. The total summer premiums amounted to Euro 103,189.00. The Montenegrin Tax Authorities determined Euro 172,430.00 as taxable value and ascertained KAP`s additional tax and contribution liability in the amount of **Euro 115,013.00**. (See Decision of the Montenegrin Tax Authorities of January 18, 2007 (**Exhibit Doc. C 160**) - the calculation of taxes and contributions is set forth in detail in the table on page 3 below, where the aggregate of all amounts regarding taxes and contributions under "Total" sums up to Euro 115,013.00).

643 This liability was not recorded in the Appendix to Annex 10 SPA-KAP (**Exhibit Doc. C 5**) and CEAC has a compensation claim in this amount.

644 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(ae) Management Board - Severance Payment

645 In 2005, the Company made severance payments to four members of the Management Board in the total amount of Euro 240,000.00. The aggregate tax and social contribution liability relating to these payments was Euro 115,249.89. Euro 88,745.89 of the aggregate liability of taxes and contributions were already paid by KAP. The difference of Euro 26,504.00 was neither recorded in the Appendix to Annex 10 SPA-KAP. KAP`s liability of **Euro 26,504.00** has been confirmed by the Decision of the Montenegrin Tax Authorities of January 18, 2007

(see **Exhibit Doc. C 160** - page 4) and shall be compensated by the Sellers and the SoM.

646 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(af) Withholding Tax

647 As explained above in No. 2.a)i)(14) above, tax on interest paid to foreign creditors for the years 2004 and 2005 was determined to be Euro 608,573.00 by the Montenegrin Tax Authorities in its Decision of January 18, 2007 (see **Exhibit Doc. C 160** - pages 1 and 3).

648 Given that in 2004 tax on interest was due in the amount of Euro 494,219.00, KAP`s liability as of November 30, 2005 consequently is **Euro 114,354.00**. Such amount, contrary to the obligation of KAP, was neither paid nor included in the Appendix to Annex 10 (**Exhibit Doc. C 5**).

649 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(ag) Property Tax

650 As explained above in No. 2.a)i)(15) property tax is due on immovable property including buildings, land and other construction objects. It has to be paid annually. Following the trial balance value of immovable property as per December 31, 2004, enclosed as **Exhibit Doc. C 167**, property tax amounting to **Euro 86,215.00** for 2005 was neither paid nor recorded in the Appendix to Annex 10 SPA-KAP (**Exhibit Doc. C 5**). In addition, Claimant refers to **Exhibit Doc. C 168** wherein the book value as per December 31, 2004 is set forth and property tax for 2005 is calculated.

651 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(ah) VAT on Workers Meals

652 As explained in detail in No. 2.a)i)(13)(b) above, KAP`s supply of meals to employees free of charge is considered as taxable supply. Although, KAP should have calculated output VAT on the supply of meals in the period in which the supply took place, this liability was not recorded in the Appendix to Annex 10 SPA-KAP (**Exhibit Doc. C 5**).

653 The following table and the detailed overview of the calculation of VAT on meal costs in 2005, which is enclosed as **Exhibit Doc. C 102**, summarize KAP`s VAT liability as per December 31, 2005:

	Meal costs in 000 Euro	**VAT in 000 Euro (rounded)**
2004	701	**119**
2005	686	**117**
Total	**1,387**	**236**

654 By its Decision dated January 18, 2007, (see **Exhibit Doc. C 160**, page 3), the Montenegrin Tax Authorities confirmed aggregate VAT liability of KAP amounting to Euro 235,907.00 as per December 31, 2005.

655 Euro 119,286.00 for VAT due as per December 31, 2004 is already being claimed in No. 2.a)i)(13)(b) above. On December 31, 2005 additional VAT on the supply of food to employees arose in the amount of Euro 116,621.00.

656 In order to calculate the additional VAT liability on workers meals for the time period from January 1, 2005 through November 30, 2005 the total amount of Euro 116,621.00 for 2005 has been reduced by 1/12, i.e. VAT liability arose prior to the Closing Date in the amount of **Euro 106,902.00**.

657 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(ai) VAT on Employees Costs charged to Vektra

658 Pursuant to the Tax Laws of the Republic of Montenegro KAP is liable for VAT on employees` costs charged to Vektra (see No. 2.a)i)(13)(c) above).

659 The following table shows understated VAT liability on employees' costs charged to Vektra:

	Employees costs in 000 Euro	VAT in 000 Euro (rounded)
2004	2,000	**340**
2005	1,785	**303**
Total	**3,785**	**643**

660 In 2005, KAP`s liability arose in the amount of Euro 303,000.00. The total VAT liability on employees costs charged to Vektra in the amount of Euro 643,000.00 was confirmed by the Decision of Tax Authority of Montenegro of January 18, 2007 (**Exhibit Doc. C 160**, page 3, third paragraph).

661 In order to calculate the additional VAT liability for the time period of January 1, 2005 through November 30, 2005 the total amount related to 2005 has to be reduced by 1/12. Additional VAT liability for this time period, thus, arose in the amount of **Euro 277,750.00**.

662 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(e) Employees Credits and other Obligations

663 In Appendix to Annex 10 SPA-KAP (**Exhibit Doc. C 5**) payables in form of employee credits and other obligations in the amount of Euro 254,755.00 are listed. In fact, the amount of payments withheld by KAP on behalf of its employees such as alimony, insurance, consumer loans etc. is substantially higher and amounts to Euro 517,873.00.

664 Consequently, the difference of **Euro 263,118.00** shall be compensated by the Sellers and the SoM.

(f) Liabilities towards the Housing Fund

665 In accordance with the Collective Agreement, KAP is obliged to pay contributions to Housing Fund for solving housing problems of employees. KAP spent part of those funds not for the housing purposes but transferred amounts to its foreign currency account for the payment to suppliers. For further details it is referred to the explanations in No. 2.a)i)(13)(g) above.

666 Payments made from the housing fund account to the foreign currency account are provided in the following table:

	2005 in Euro
Payment order dated 10 February 2005	77,209
Payment order dated 22 February 2005	62,769
Payment order dated 6 July 2005	89,722
Payment order dated 4 November 2005	74,726
Total	**304,425**

667 The funds paid by KAP to its suppliers (Euro 304,425.00 in 2005) were not returned to the Housing Fund. In the Appendix to Annex 10 (**Exhibit Doc. C 5**) a liability towards Trade Union (Housing Fund) is recorded only in the amount of Euro 70,963.00. Thus, in so far the inaccuracy of the Appendix to Annex 10 amounts to the difference between the liability towards the Housing Fund in 2005 of Euro 304,425.00 and the recorded amount of Euro 70,963.00. CEAC therefore has a compensation claim against the Sellers and the SoM in the amount of **Euro 233,462.00**.

(4) Domestic Suppliers

668 Hereinafter the actual liabilities towards domestic suppliers as of Closing Date, that are higher than those set forth in Appendix to Annex 10 (**Exhibit Doc. C 5**), are explained in detail. The total sum of such excess as explained in this Section is **Euro 4,559,302.00**, and CEAC, thus, has a compensation claim against the Sellers and the SoM in the same amount.

(a) Zeljeznica Crne Gore

669 As per the written agreement as of November 30, 2005 with the creditor Zeljeznica Crne Gore, KAP had liabilities towards the company Zeljeznica Crne Gore in the total amount of Euro 375,567.00 as of November 30, 2005 (see the aforementioned agreement, **Exhibit Doc. C 82)**, thus, **Euro 60,803.00** more than the Sellers and the SoM warranted in Appendix to Annex 10 (Euro 314,764.00). This difference relates to unrecorded invoices.

670 The total amount of liability has been confirmed by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(b) GSP

671 The creditor GSP as per November 30, 2005 had receivables against KAP in the total amount of Euro 112,505.00 as can be seen from the balance of invoices and payments from the general ledger book of KAP as per this date (see **Exhibit Doc. C 83**). Thus, KAP's liability was **Euro 67,768.00** more than warranted in Appendix to Annex 10 (Euro 44,737.00). This difference relates to unrecorded invoices.

672 The total amount of liability has been confirmed by six invoices of GSP, enclosed as **Exhibit Doc. C 170**, and by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(c) Luka Bar

673 As per the independent written confirmation of the creditor Luka Bar, KAP on November 30, 2005 had liabilities towards the company Luka Bar in the total amount of Euro 232,412.00 (see **Exhibit Doc. C 84**), thus **Euro 144,594.00** more than warranted in Appendix to Annex 10 (Euro 87,818.00). This difference relates to unrecorded invoices.

674 The total amount of liability has been confirmed by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(d) Termoelektromont

675 As per the independent written confirmation of the creditor Termoelektromont as of December 9, 2005, KAP on November 30, 2005 had liabilities towards the company Termoelektromont in the total amount of Euro 349,325.00 (see **Exhibit Doc. C 85**), thus Euro **25,950.00** more than warranted in Appendix to Annex 10 (Euro 323,375.00). This difference relates to unrecorded invoices.

676 The total amount of liability has been confirmed by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(e) Vatrostalna

677 As per the independent written confirmation of the creditor Vatrostalna of December 8, 2005, KAP on November 30, 2005 had liabilities towards the company Vatostralna in the total amount of Euro 624,306.00 (see **Exhibit Doc. C 86**), thus **Euro 123,613.00** more

than warranted in Appendix to Annex 10 (Euro 500,693.00). This difference relates to unrecorded invoices.

678 The total amount of liability has been confirmed by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(f) Telekom

679 On November 30, 2005 KAP had liabilities towards the company Telekom in the total amount of Euro 96,171.00, thus **Euro 15,830.00** more than warranted in Appendix to Annex 10 (Euro 80,341.00). This difference mainly relates to two assignations that were not recorded.

680 CEAC encloses the general ledger of KAP in relation to Telekom (see **Exhibit Doc. C 171**). The invoices referred to in the table "open items" are enclosed in **Exhibit Doc. C 172**.

681 The total amount of liability has also been confirmed by Telekom (see **Exhibit Doc. C 173**) and the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(g) Uprava Carina

682 As per the general ledger of the creditor, KAP on November 30, 2005 had liabilities towards the *Uprava Carina* (Customs Office of Montenegro) in the total amount of Euro 2,364,216.00 (see **Exhibit Doc. C 87**), thus **Euro 1,106,216.00** more than warranted in Appendix to Annex 10 (Euro 1,258,000.00). This difference relates to unrecorded customs duties.

683 As **Exhibit Doc. C 174** CEAC encloses copies of the customs duties of KAP towards the *Uprava Carina* which are marked and referred to in the table of **Exhibit Doc. C 87**, "open items", last column.

684 The total amount of liability of Euro 1,106,216.00 has been additionally confirmed by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

685 For the reasons set forth at the end of No. 2.a)i)(13)(a) the limitations of liability pursuant to Section 5.4 SPA-KAP do not apply.

(h) Other domestic Suppliers

686 The total amount of liabilities towards other domestic suppliers as per the Closing Date was Euro 4,913,085.00. In **Exhibit Doc. C 88** CEAC encloses a list of all such liabilities, compiled by the accountants of KAP. This list represents data from accounting and analytical records of the suppliers, i.e., from the general ledger or Syscon system. Therefore, the liabilities towards other domestic suppliers as per November 30, 2005 exceeded the warranted amount of Euro 1,898,556.00 in Appendix to Annex 10 by **Euro 3,014,529.00**.

687 The total amount of liability has been confirmed by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(5) Suppliers of Strategic Raw Material

688 Hereinafter, the actual liability as of Closing Date towards those suppliers of Strategic raw materials, that are higher than those set forth in Appendix to Annex 10 (**Exhibit Doc. C 5**), are explained in detail. The total sum of such excess as explained in this No. 2.a)iii)(5)(a) is **Euro 5,849,923.00**, and CEAC thus has a compensation claim against the Sellers and the SoM in the same amount.

(a) Montenegro Bonus

689 Appendix to Annex 10 (**Exhibit Doc. C 5**) enlists liabilities towards Montenegro Bonus (hereinafter referred to as "**MB**") in the total amount of Euro 5,585,393.00. This amount consists of Euro 1,980,000.00 "deferred excise" under "I. Liabilities towards banks and deferred liabilities towards the State", Euro 269,793.00 under *"II. Domestic Suppliers*" and Euro 3,335,600.00 under "*III. Suppliers of strategic raw materials*". MB is KAP's supplier of heavy oil.

690 Under the line item "deferred excise" in the Appendix to Annex 10 the parties to the SPA-KAP included liabilities of KAP which refer to part of KAP's overall liabilities towards MB. The actual amount of "deferred excises" is a little less than stated therein. The exact amount of owed deferred excise was as per Closing Date Euro 1,961,978.00. This amount is the liability of KAP towards MB for unpaid excise duties on the delivery of oil calculated at Euro 23.00 per ton, which is in accordance with Montenegrin law.

691 On October 25, 2005, the SoM approved deferred payment of these excise duties for the period January through September 2005. End of September 2005, this amount became a due liability of KAP, payable to MB (and MB was to pass these duties on the SoM). Excise duties in the amount of Euro 1,961,978.00 were not settled as of the Closing Date.

692 MB confirmed its receivables against KAP of Euro 9,674,271.00 as per the Closing Date by Fax of December 9, 2005, (see **Exhibit Doc. C 22**), consisting of USD 10,901,744.96 and Euro 429,588.80.

693 In **Exhibit Doc. C 89,** the analytic card is enclosed which is the excerpt from the KAP's general ledger, pertaining to MB as of November 30, 2005. The general ledger showed a Debit of Euro 18,297,480.00 and a Credit of Euro 27,063,536.00, i.e. a balance of Euro 8,766,056.00. CEAC's accountants reconciled the difference between KAP`s general ledger and MB's confirmation of Euro 908,215.00 as follows: KAP should have booked an additional invoice of Euro 559,807.00; MB did not record a set off payment booked by KAP of Euro 348,407.00 until after November 30, 2005.

694 Thus, the correct balance concerning MB as of November 30, 2005 was Euro 9,325,863.00 (consisting of the balance recorded in the general ledger by KAP in the amount of Euro 8,766,056.00 and the additional invoice of Euro 559,807.00 not recorded by KAP). The difference to the aggregate amount of listed liabilities in Appendix to Annex 10 of Euro 5,585,393.00 is **Euro 3,740,470.00**. This amount needs to be compensated by the Sellers and the SoM.

(b) Montmontaza

695 KAP had liabilities towards the company Montmontaza in the total amount of Euro 2,580,047.00 (see **Exhibit Doc. C 90**). The general ledger of KAP as per the Closing Date showed approximately the same amount. Thus, as per November 30, 2005, KAP owed Montmontaza **Euro 890,805.00** more than warranted in Appendix to Annex 10 (Euro 1,689,242.00). This difference relates to unrecorded invoices for electrical energy transit and default interest. CEAC encloses copies of the two invoices in the total amount of Euro 2,563,290.00 as well as of a confirmation letter of the creditor confirming the liability of Euro 940,914.00 and default interest of Euro 16,757.00 as **Exhibit Doc. C 175**.

696 The total amount of liability has also been confirmed by the accounting department of KAP and the auditors of KAP, Deloitte, in the KAP 2005 Accounts.

(c) SGL Karbonski Material

697 KAP had liabilities towards the company SGL Karbonski material in the total amount of Euro 153,059.00 as both invoiced and separately confirmed by the creditor (see **Exhibit Doc. C 176**).

698 The general ledger of KAP as per the Closing Date, enclosed as **Exhibit Doc. C 91**, showed no liability towards this supplier, because the accounting department of KAP did not record the invoice No. 60010626 from SGL Karbonski material as of November 14, 2005 (see **Exhibit Doc. C 176**) in November, but only in December. This invoice should have been booked already in November and, therefore, there was a liability towards this creditor in the amount of the invoice of Euro 153,059.00.

699 Thus, as per Closing Date KAP owed SGL Karbonski material **Euro 8,854.00** more than warranted in Appendix to Annex 10 (Euro 144,205.00).

(d) Eurochem Kausticna Soda

700 KAP had liabilities towards the company Eurochem Kausticna Soda in the total amount of USD 1,861,996.41 (equivalent as per November 30, 2005 to Euro 1,578,973.00). This indebtedness of KAP has been confirmed by creditor on December 5, 2005 (see **Exhibit Doc. C 92)** and by the auditors of KAP. The difference between KAP`s indebtedness and the liabilities of Euro 837,282.00 warranted in Appendix to Annex 10 relates to an unrecorded invoice (No. 74/2005) of November 30, 2005 of USD 775,506.96 (equivalent as per November 30, 2005 to Euro 650,340.00) and unrecorded foreign exchange losses of Euro 104,720.00.

701 Thus, as per November 30, 2005 KAP owed Eurochem Kausticna Soda **Euro 741,691.00** more than warranted in Appendix to Annex 10.

(e) Other Foreign Suppliers

702 The total amount of liabilities towards other foreign suppliers as per the Closing Date was Euro 5,154,737.00. In **Exhibit Doc. C 93** CEAC

encloses a list of all such liabilities, compiled by the accountants of KAP from its general ledger book. These numbers have further been confirmed by KAP's auditors, Deloitte.

703 Therefore, the liabilities towards other domestic suppliers as per November 30, 2005 exceeded the warranted amount of Euro 4,700,000.00 by **Euro 454,737.00**.

(6) Discrepancies in Claims against Third Parties

(a) Customers Abroad

704 In Appendix to Annex 10 SPA-KAP under "*IV. Claims from customers*", the Sellers and the SoM warranted that the Working Capital of KAP as of Closing contained receivables against foreign customers of at least Euro 6,000,000.00.

705 As **Exhibit Doc. C 94** CEAC encloses the general ledger of KAP for the account "*Customers Abroad*" as it was as of November 30, 2005. This list encompasses all foreign customers and comes to an overall total amount of receivables of Euro 3,411,021.00. The only major foreign customer of KAP is Glencore AG in Switzerland which alone owed Euro 3,344,192.00 to KAP on Closing Date. Additional receivables are to be included in the amount of Euro 66,829.00 so that the total of all receivables of KAP against foreign customers sums up to Euro 3,411,021.00.

706 Several receivables in the list enclosed as **Exhibit Doc. C 94** were written off due to non-collectability. These write offs were already made before Closing by the former management of KAP. These worthless receivables cannot count into the calculation of the Working Capital as they are no current, cash generating receivables.

707 Therefore, the Sellers and the SoM shall compensate for the difference between the warranted amount of Euro 6,000,000.00 and Euro 3,411,021.00, i.e. **Euro 2,588,979.00.**

(b) Domestic Customers

708 In Appendix to Annex 10 SPA-KAP under "*IV. Claims from customers*", the The Sellers and the SoM warranted that the Working Capital of KAP as of Closing contained receivables against domestic customers of at least Euro 17,200,000.00. As **Exhibit Doc. C 95**, CEAC encloses

the general ledger of KAP for the account "Domestic Customers" as per November 30, 2005.

709 CEAC was – at the time of Closing when Appendix to Annex 10 was agreed upon – not aware of the fact that the Sellers and the SoM included receivables against the Subsidiaries of Euro 12,533,510.00 in the amount of receivables against "Domestic Customers" in Appendix to Annex 10.

710 As per **Exhibit Doc. C 95**, the amount of Euro 12,533,510.00 includes receivables against Prerada of Euro 6,845,895.00, against Kolasin in the amount of Euro 91,505.00 and against Kovacnica amounting to Euro 5,596,110.00 (see **Exhibit Doc. C 95**, last page, below the table).

711 These receivables cannot be classified as Working Capital. In the years before the Closing Date and after the three Subsidiaries were incurring huge losses and were in poor financial state (see above No. 2.a)i)(6)) passim.). Thus, it is obvious that receivables and placements to the Subsidiaries will not be repaid to KAP. Further, for years already and during 2004 and 2005 the Subsidiaries were only able to stay in business, because KAP constantly injected cash in order to pay for the costs of the Subsidiaries, in particular for the workforce. Based on this obvious fact of non-collectability of these receivables, they were not current receivables and, therefore, should not have been included in the Working Capital.

712 In addition, allowances for doubtful accounts of receivables against other domestic customers were not calculated and recorded for the period ended November 30, 2005. Based upon aging analysis of the claims against domestic customers on Closing Date, adjustments need to be made for receivables that are over eleven months old (see **Exhibit Doc. C 95**, second last column "Provisions"). These provisions for bad debts (other than those against the Subsidiaries) amount to Euro 1,327,496.15. The rationale behind these overall provisions is that the receivables for which in the **Exhibit Doc. C 95** bad debt reserves were booked, already existed on December 31, 2004, and, thus, need to be written off and can by no means be included in a list of Working Capital. These claims are not cash generating, current receivables and therefore cannot be considered as Working Capital as this term is to be defined.

713 Hence, departing from the actual receivables against domestic customers as per the **Exhibit Doc. C 95** of Euro 2,524,407.00, less the allowance to be made in the aggregate amount of Euro 1,327,496.00, the actual collectable receivables against domestic customers were merely Euro 1,196,911.00. CEAC is, thus, entitled to claim compensation for the difference of Euro 16,003,089.00 to the warranted receivables against domestic customers.

714 This amount includes receivables of Euro 12,533,510.00 against the three Subsidiaries as explained above and of Euro 3,469,490.00 against "other" domestic customers. With regard to the amount of receivables against the Subsidiaries Euro 5,645,000.00 are already claimed in No. 2.a)i)(7)(b).

715 However, CEAC shall be compensated by the Sellers and the SoM in the amount of the difference of Euro 12,533,510.00 to the amount of adjustments of the receivables as set forth in No. 2.a)i)(7)(b), i.e., Euro 6,888,510.00. Further, Euro 3,469,490.00 of receivables against "other" domestic customers shall be compensated by the Sellers and the SoM, i.e. **Euro 10,358,000.00** in total.

716 **Alternatively**, in the event that the Tribunal should not follow CEAC's view that impairment of receivables against the Subsidiaries should have been made in the amount of at least Euro 5,645,000.00 (see No. 2.a)i)(7)(b) above) or only in part thereof, the Sellers and the SoM shall compensate CEAC in the amount of Euro 16,003,000.00 or the difference of this amount to the amount the Tribunal adjudges Claimants 2 claim in accordance with No. 2.a)i)(7)(b).

iv) Summary of Section 2.a)iii)

Claims for payment included in Motion 1.a):

Section	Issue	Amount of Claim Motion a)	Alternative Causes of Action for Motion a)
2.a)iii)(1)	Shortage of Minimal Stock of Raw Materials	2,078,000	
2.a)iii)(2)	Spare Parts	2,688,600	
2.a)iii)(3)	Discrepancies in Liabilities towards banks and the State	0	
2.a)iii)(3)(a)	Deferred Personal Income Tax	1,783,203	
2.a)iii)(3)(b)	Credit CKB	152,432	
2.a)iii)(3)(c)	Credit Podgorica Banka	80,050	
2.a)iii)(3)(d)	Taxes and Contributions	0	
2.a)iii)(3)(d)(aa)	Hardship Contributions	1,059,667	9,794,000 (2.a)i)(13)(a))
2.a)iii)(3)(d)(ab)	Court Collected Compensation	60,000	571,736 (2.a)i)(13)(e))
2.a)iii)(3)(d)(ac)	Payroll Tax and contributions due on housing benefits	1,049,000	992,000 (2.a)i)(13)(f)(aa) and (bb))
2.a)iii)(3)(d)(ad)	Payroll Tax compliance / Summer Premiums	115,013	0
2.a)iii)(3)(d)(a	Management Board – Sever-	26,504	0

e)	ance Payment		
2.a)iii)(3)(d)(af)	Tax on Interest paid to foreign creditors	114,354	494,219 (2.a)i)(14))
2.a)iii)(3)(d)(ag)	Property Tax	86,215	71.585 (2.a)i)(15))
2.a)iii)(3)(d)(ah)	VAT on Workers Meals	106,902	119,286 (2.a)i)(13)(b))
2.a)iii)(3)(d)(ai)	VAT on Employees costs charged to Vektra	277,750	340,000 (2.a)i)(13)(c))
2.a)iii)(3)(e)	Employees credits and other obligations	263,118	
2.a)iii)(3)(f)	Liabilities towards the Housing Fund	233,462	451,702 (2.a)i)(13)(g))
2.a)iii)(4)	Domestic Suppliers	4,559,302	
2.a)iii)(5)	Suppliers of Strategic raw material	5,849,923	
2.a)iii)(6)	Discrepancies in Claims against Third Parties	0	
2.a)iii)(6)(a)	Customers Abroad	2,588,979	
2.a)iii)(6)(b)	Domestic Customers	10,358,000	5,645,000 (2.a)i)(7)(b))
Total		**33,530,474**	

v) Other Items

(1) Breach of Glencore Agreement

717 On April 1, 2005 and on April 28, 2005 KAP, signed two loan agreements with Crnogorska Komercijalna Banka A.D. for the total amount of Euro 3,931,300.00 (Euro 1,600,000.00 plus Euro 2,331,300.00 (the latter amount equals USD 3,000,000.00)). These two loans were secured by KAP by means of pledge of aluminium in the quality 99.7%. The pledge was registered in the Register of Pledge. KAP failed to repay the loans on the respective due dates: May 20, 2005 (for USD 3,000,000.00 loan) and August 28, 2005 (for Euro 1,600,000.00 loan).

718 On November 29, 2005 there was a court hearing in the Commercial Court in Podgorica (file number No. 3765/05), in which Crnogorska Komercijalna Banka A.D. sought the seizure of the pledged aluminium and its delivery to the creditor (Crnogorska Komercijalna Banka A.D.). The Court ruled in favour of the bank and established that the outstanding debt of KAP is Euro 4,547,000.00 and ordered to seize and deliver to the bank the aluminium in the quantity required for the settlement of outstanding debt in the amount of Euro 4,547,000.00. Such delivery took place in September 2005 (201,4380 tons), October 2005 (500,9940 tons) and November 2005 (1.486,2640 tons) for the total amount of Euro 4,548,216.33.

719 At the same time, i.e., in November 2005, KAP breached the purchase contract between KAP and Glencore International AG (hereinafter referred to as "**Glencore**") dated April 27, 2001 (hereinafter referred to as the "**Glencore Agreement**") a copy of which is attached as **Exhibit Doc. C 177**. Pursuant to the provisions regarding "Quantity" on page 1 of this agreement it was agreed that initially only 1,000 tons per month and as of 2004 only 1,500 tons per month may be sold to other parties than Glencore.

720 In November 2005, KAP used this quota and sold 1,500 tons to domestic companies. 1.486,2640 tons of aluminium, delivered by KAP to the bank in November 2005, in order to discharge the pledge, were in excess of the quota. Such delivery to the bank resulted in KAP's failure to deliver 1.433,3850 tons of aluminium to Glencore.

721 KAP was forced to deliver the outstanding quantity of aluminium (1.433,3850 tons) to Glencore in December 2005 and January 2006. In

December 2005, KAP delivered 967,4280 tons at the price as of November 2005 and in January 2006 KAP delivered another 465,9570 tons also at the price as of November 2005. The price as of November 2005 was USD 1,997.90 per ton.

722 Between November 2005 and December 2005, the price for aluminium increased by USD 139.15 per ton. This means that KAP's undisclosed breach of the Glencore Agreement resulted in KAP's damage in December 2005 in the amount of USD 139.15 multiplied by 967.4280 tons, i.e., USD 134.569,23.

723 In January 2006, the Replacement Offtake Agreement between KAP and Glencore (see **Exhibit Doc. C 178**) became effective. The price increase between November 2005 and January 2006 amounted to USD 394.40 per ton. This means that KAP's undisclosed breach of the Glencore Agreement in November 2005 resulted in KAP's damage in January 2006 in the amount of USD 394.40 multiplied by 465.9570, i.e., USD 183,773.44.

724 The total damage of KAP as a result of the breach of the Glencore Agreement amounted to USD 318,342.67.

725 In Section 3.1.2 SPA-KAP, the Sellers and the SoM undertook that in the period between Signing and Closing CEAC will be provided with reasonable information on KAP's business and undertook further that "*the Company's business will be carried on as a going concern in the ordinary course of business*".

726 Exceeding the monthly quota established for domestic sales of aluminium, letting a bank execute a pledge on the core production of a commercial entity, and thereby risking not to fulfil existing commitments towards the best customer of the company, is clearly not in the ordinary course of a business. As the Sellers and the SoM undertook that such unusual and potentially damaging transactions outside the ordinary course of business will not happen, the Sellers and the SoM breached the undertakings set forth in Section 3.1.2 SPA-KAP and are liable for the damage arising from such breach. Therefore, the amount of USD 318,342.67 needs to be paid as damages to CEAC. Based on the exchange rate as per the Closing Date this amounts to **Euro 271,655.00**.

727 The limits of liability set forth in Section 5.4 SPA-KAP refer only to breaches of representations under Section 5.1 SPA-KAP and, thus, do

not apply to claims for a breach of the undertakings set forth in Section 3.1.2 SPA-KAP.

(2) Costs of Advisers

728 Until the date of the Notice of Breach, i.e., until May 24, 2006, the total adviser's fees CEAC had to invest in preparing the Notice of Breach and additional and supplemental work necessary to assess the situation and the damage, were Euro 501,265.00.

729 For the time period after the Notice of Breach until CEAC had to invest an additional amount of Euro 944,735.00. This aggregate amount includes cost of advisers of Euro 176,735.00 for the time period of May 25, 2006 until end of 2006, Euro 641,000.00 for the year 2007 and Euro 127,000.00 for the period of January 1, 2008 until July 31, 2008. The advisers' costs totally amount to **Euro 1,446,000.00**.

730 This includes the fees of the auditor Deloitte, the environmental consultants RSK ENSR and ERM, the appraisers from the firm American Appraisal and the costs of the undersigned. All these expenditures were a direct consequence of the inaccuracies of the representations and warranties and the extent other commitments and undertakings had been breached by the Sellers and the SoM. These costs have to be borne by the Sellers and the SoM.

(3) Disputes not Disclosed

731 The following commercial disputes pending or threatened as per Signing and/or Closing of the SPA-KAP were not disclosed to CEAC in Annex 7A to the SPA-KAP, which constitutes a breach of Sections 5.1.24 and 5.1.25 SPA-KAP:

Description	Index	In 000 Euro	Provision 000 Euro	Note
Rudnik Pljevlja	P 681/02	114	114	Debt for unpaid goods
Autoremont Osmanagic, Podgorica	P 69/06 and P 68/06	6	6	Debt for services
AD Higijena Podgorica	P 652/05	29	29	Debt for services
JU centar za ekotoksikoloska ispitivanja	P 2730/05	19	19	Debt for unpaid services
Aluminijum Belgrade	XX P/2573/05	14	14	Membership fee
Zeljezara ad Niksic	P. 344/05	112	112	Debt
			294	

732 Thus, CEAC has a compensation claim against the Sellers and the SoM in the amount of **Euro 294,000.00**.

vi) Additional Claims not included in the Notice

(1) "State debts" pursuant to Annex 12 SPA-KAP

733 CEAC's Motions 3.a) through 3.g) are substantiated as follows:

(a) Provisions of the SPA-KAP

734 In Section 8.2.1 SPA-KAP the SoM assumed the obligation to waive the state debts as set forth in more detail in Annex 12 to the SPA-KAP. Annex 12 in its first line clarifies that to the extent that the debts as set forth in Annex 12 are not owed to SoM but to third parties, the SoM shall assume such indebtedness, i.e. declare assumption of such payables and cause the respective creditors to approve the assumption.

735 In accordance with Section 8.2.2 SPA-KAP the obligation to waive or assume, respectively, KAP's indebtedness shall occur in the proportion

that CEAC and KAP fulfilled its obligations under the Investment Program as further detailed in Annex 2 to the SPA-KAP. At the end of each of the five investment periods as set out in Annex 2, the SoM shall waive or assume, respectively, a proportional part of the debts set out in Annex 12.

(b) Debts included in Annex 12

736 Annex 12 sets forth an aggregate amount of Euro 104,499,873.62 of debts that on the Closing Date KAP owed to the "Ministry of Finance" and third parties, each at that time in some sort affiliated to SoM.

737 The amount of Euro 104,499,873.62 goes back to, *inter alia*, two documents which were prepared in May 2005 and June 2005, respectively, so prior to the execution of the SPA-KAP:

- the "*Summary of KAP's debts towards Government of Republic of Montenegro, state funds and domestic companies*" which was sent from the Ministry of Finance to the Agency of Montenegro for Restructuring of the Economy and Foreign Investments (hereinafter referred to as the "**Agency**") on May 12, 2005. A copy of this Summary is attached as **Exhibit Doc. C 179**;

- a calculation of such indebtedness towards the state and state agencies prepared by the Ministry of Finance Minister and sent to the Agency on June 10, 2005. A copy of this calculation is attached as **Exhibit Doc. C 180**.

738 Accordingly, in the accounts of KAP to the individual bookings of these liabilities the note "*Anex 12 Vlade Crne Gore*" (means: Annex 12 Government of Montenegro) was added. Enclosed as **Exhibit Doc. C 181** is an excerpt from the accounts of KAP detailing the owed amounts and referring for each of the amounts to "Annex 12 Government of Montenegro" (hereafter referred to as the "**Account-Excerpt**").

739 On May 9, 2006 the Account-Excerpt was faxed to the Ministry of Finance and on May 24, 2006 the Ministry of Finance sent back a copy of the Account-Excerpt with a note in handwriting, in which the correctness of the Account-Excerpt, including the total amount of Euro 104,464,615.79, was confirmed. This note was signed and sealed on behalf of the Ministry of Finance. A copy of the Account-Excerpt with the

note, the signature and the seal of the Ministry of Finance is attached as **Exhibit Doc. C 182**.

740 The note of the Ministry of Finance on the Account-Excerpt also explains why the total amount of the Account-Excerpt (Euro 104,464,615.79) deviates by Euro 32,257.83 from the amount stated in Annex 12 (Euro 104,499,873.62): In the amount of Euro 32,257.83 the debts had been reduced before.

741 For a better overview in **Exhibit** Doc. **C 183** a summary of the owed amounts as per creditor is attached. The overall amount of Euro 104,464,615.79 relates

- on the one hand to Euro 71,777,035.44 that KAP owes to SoM

while the remaining amount is owed on the other hand to:

- the company Elektroprivreda EPCG A.D. Niksic, Montenegro, the electricity provider of KAP in the amount of Euro 16,297,377.70;
- the company Rudnici Boksita A.D., Niksic, Montenegro (RBN) in the amount of Euro 5,423,688.00;
- the company Luka Bar A.D., Montenegro, in the amount of Euro 259,921.37;
- the Respondent 1 in the amount of Euro 3,026,125.28; and
- the Montenegro Bank in the amount of Euro 7,680,468.00.

(c) Obligation to waive Debts (Motions 3.a) through 3.c))

742 In its letter to the Agency of May 29, 2008, enclosed as **Exhibit Doc. C 184**, SoM adopted a report about the realization of the Investment Program in the second investment period.

743 With lawyer's letter of July 4, 2008 (see **Exhibit Doc. C 185**), CEAC requested immediate and due declaration of waiver or assumption of

debt, respectively, regarding 36.36 % of the debts referred to in Annex 12.

744 Thereupon the Ministry of Finance stated in its letter to the Agency of July 10, 2008 (see **Exhibit Doc. C 186**) that it

> *"reduced in its files KAP's debt toward Government of Montenegro which was stipulated in Annex 12 of SPA KAP. Having in mind that according to Annex 12 of SPA KAP liabilities towards Government of Montenegro is 104.499.873,62 €, proportional reduction is 29.259.964,61 €, i.e. 28% of total liabilities."*

745 With lawyer's letter of July 18, 2008 (see **Exhibit Doc. C 187**), the Sellers and the SoM stated that at present the SoM are obligated to waive 28.82% of the debts of KAP listed in Annex 12 and that "*thus, the Sellers have fulfilled their obligations under the SP-KAP.*"

746 On the basis of the aforementioned correspondence it is undisputable that SoM pursuant to Section 8.2 SPA-KAP in connection with its Annex 12 are obliged to

- declare a waiver in the total amount of a minimum of 28,82% of its receivables referred to in Annex 12 as set forth in **Exhibit Doc. C 181**, i.e., in the minimum amount of Euro 20.686.141,61 (see **Exhibit Doc. C 183**);
- to assume a minimum of 28.28% of the liabilities referred to in Annex 12 that are owed to third parties as set forth in **Exhibit Doc. C 181**, i.e.,
  - a minimum of Euro 4,696,904.25 of the debts owed to Elektroprivreda EPCG A.D. Niksic, Montenegro;
  - a minimum of Euro 1,563,106.88 of the debts to Rudnici Boksita A.D., Niksic, Montenegro;
  - a minimum of Euro 74,909.34 of the debts owed to the company Luka Bar A.D., Montenegro;

- a minimum of Euro 872,129.31 of the debts to the Respondent 1 (Fund for Development); and
- a minimum of Euro 2,213,510.88 of the debts to the Montenegro Bank, Podgorica, Montenegro.

For details of this calculation see **Exhibit Doc. C 183**.

747 However, SoM have not fulfilled these obligations because

- a declaration of waiver must be issued by the creditor to the debtor;
- an assumption of debts requires a declaration of assumption by the transferee (SoM) and the approval by the respective creditor;
- the declarations of waiver and assumption must clearly refer to the claims and to the portion of each claim which shall be waived or assumed, respectively.

748 The letter of the Ministry of Finance to the Agency of July 10, 2008 (see **Exhibit Doc. C 186**) does not fulfil any of these criteria (and indicates only the willingness to "waive" 28% instead of 28.82% of the debts as accepted in the letter of July 18, 2008 of the Sellers' and the SoM's lawyers - see **Exhibit Doc. C 187**). There is also no other declaration from SoM declaring the waiver or assumption, respectively.

749 With lawyer's letter of July 30, 2008 (see **Exhibit Doc. C 188**), CEAC requested due declaration of waiver or assumption of debt, respectively, pursuant to Section 8.2 SPA-KAP in connection with its Annex 12 immediately, but not later than August 6, 2008. With lawyer's letter of August 8, 2008 (see **Exhibit Doc. C 189**), the Sellers and the SoM stated that CEAC`s request needs to be clarified with SoM. However, the waiver/assumption has not been affected and CEAC has to include this issue in the Statement of Claim and to request the Tribunal to grant Motions 3.a) through 3.c).

(d) Debts are not due for Repayment (Motions 3.d) through 3.g))

750 At the time when the SPA-KAP was signed, KAP by no means would have had the liquidity to discharge the outstanding liabilities set out in Annex 12. Had KAP to pay this amount (or any reduced amount after a partial waiver in accordance with Section 8.2 SPA-KAP) the company would have been insolvent instantly.

751 Also, had the parties to the SPA-KAP intended to have the debts in Annex 12 be repaid immediately, the wording used would not have made sense. A repaid liability cannot be waived or assumed, but it would have been discharged and thus disappeared long before the obligation to waive or to assume the debts would have emerged.

752 In addition, the Sellers and the SoM in Section 5.1.16 SPA-KAP warranted that at Closing, KAP will have the Working Capital more particularly described in Annex 10. Neither in Annex 10 nor in the Appendix to Annex 10 the indebtedness towards Respondent 2 and SoM nor towards the other third party creditors in Annex 12 was included. Therefore, the Sellers and the SoM, if they should not have committed a (deliberate) misrepresentation in a magnitude of Euro 104,500,000.00 at least implicitly agreed that none of the debts in Annex 12 are due for payment, because otherwise they would have had to be included in the Annex 10 as short term liabilities.

753 The provisions in Section 8.2 SPA-KAP in connection with its Annexes 2 and 12, therefore, have to be construed to the effect that the repayment of these debts was deferred until either completely waived or assumed, respectively, or the obligation to waive or assume, respectively, elapses for other reasons.

754 Thus, Respondent 2 and SoM shall not assert their claims included in Annex 12 until the obligation to waive or assume, respectively, has not elapsed. Not only for SoM but also for Respondent 2 this obligation is based upon Section 8.2 SPA-KAP in connection with its Annex 12. In the event that the Tribunal does not follow this view, this obligation is based on Section 5.3.4 in connection with Section 5.1.16 SPA-KAP, because the debts set forth in Annex 12 were not included in the calculation of the Working Capital as per Annex 10 and the Appendix to Annex 10. The limitations of liability set forth in Section 5.4 SPA-KAP would

not apply, *inter alia*, because the misrepresentation would be deliberate.

755 Should any of the liability in Annex 12 towards other creditors than SoM be due for payment, then SoM are under the obligation to indemnify KAP for the time being and as long as the obligation to waive or assume, respectively, has not elapsed. In the event that the Tribunal does not follow the view that this obligation results from Section 8.2 SPA-KAP in connection with its Annex 12, again, Section 5.3.4 SPA-KAP would apply without the limitations set forth in Section 5.4 SPA-KAP.

756 Despite these obvious findings, the Ministry of Finance of Montenegro filed a claim on the return of fuel oil and payment with the Commercial Court in Podgorica, no. I.1916/06. The obligation to return the fuel oil and to make payment is part of the debts mentioned in Annex 12 of the SPA-KAP. Nevertheless, a claim on these debts was submitted and an enforcement decision in favour of SoM was issued on May 15, 2008. On the appeal of KAP referring on Annex 12 SPA-KAP, SoM withdrew its application for enforcement and the court terminated the enforcement procedure by decision of July 3, 2008.

757 Further, one of the Sellers and the SoM initiated litigation in order to recover part of the Annex 12 - debts and refuses insistently to stop this breach of its obligation under the SPA-KAP. On November 2, 2007, Respondent 2 filed a complaint against KAP with the Commercial Court in Podgorica. The subject matters of this complaint are two loans allegedly extended by Respondent 1 to KAP in the year 1998. This concerns a loan in the amount of USD 1,500,000.00 (No. 91-576 of June 2, 1998) and a further loan in the amount of DM 3,437,156.25 (No. 91-719 of June 12, 1998). (See Complaint of Respondent 2 to the Commercial Court Podgorica, a copy of which is enclosed as **Exhibit Doc. C 190**)

758 These loans are part of the amounts set forth in Annex 12:

- Already the "Summary of KAP's debts towards Government of Republic of Montenegro, state funds and domestic companies" of May 12, 2005, to which the amount of debts stated in Annex 12 goes back, included the loans from Respondent 2 in the amount of USD 1,500,000.00 and Euro 1,757,390.00, i.e., DM 3,437,156.25 (see **Exhibit Doc. C 179**, page 2).

- The Account-Excerpt (see **Exhibit Doc. C 181**) contains liabilities of KAP towards Respondent 2 in the total amount of Euro 3,026,125.28 (see column "Fond za Razvoj" in **Exhibit Doc. C 183**). This total amount is the sum of USD 1,500,000.00, i.e., based on the exchange rate of approximately 1.18 Euro 1,268,735.28, and Euro 1,757,390.00. As set forth in No. 2.a)v)(2) the Account-Excerpt was confirmed by SoM as the correct list of the claims included in Annex 12 (see **Exhibit Doc. C 182**).

759 Respondent 2 is under the obligation to immediately discontinue the aforementioned court proceeding. As set forth above, this obligation results from Section 8.2 SPA-KAP in connection with its Annex 12 and, alternatively, from Section 5.3.4 SPA-KAP.

760 With lawyer's letter of July 4, 2008 (see **Exhibit Doc. C 185**) and of July 30, 2008 (see **Exhibit Doc. C 188**), CEAC demanded that the Sellers and the SoM immediately terminate any and all court proceedings aiming at recovering any indebtedness which is included in Annex 12 and requested with regard to all debts included in Annex 12 to submit declarations from the respective creditors that the debts are deferred until either completely waived or assumed or the obligation to waive or assume, respectively, elapses for other reasons.

761 With lawyer's letter of July 18, 2008 (see **Exhibit Doc. C 187**), the Sellers and the SoM gave the incomprehensible answer to the letter of July 4, 2008 that the loans which are the subject matters of the abovementioned litigation initiated by Respondent 1 are not included in Annex 12.

762 As the Sellers and the SoM obviously are trying to recover amounts as set out in Annex 12, CEAC has a necessity for legal protection (*Rechtsschutzbedürfnis*) pursuant to Motions 3.d) through g).

(2) Indebtedness towards Foreign Creditors

763 Section 7.1.9 SPA-KAP in connection with its Annex 9 sets forth that the SoM shall pay any amount of principal, interest and expenses relating to the indebtedness of KAP towards the creditors "Vitol" London,

"Sinochem" and "Jugopetrol", insofar as these amounts exceed USD 10,600,000.00.

764 The actual amount of indebtedness, cost and interest relating to these three creditors are set forth in the following table:

Actually paid to:	EUR	Exchange Rate	USD
Jugopetrol			6,690,000.00
Vitol			360,000.00
Sinochem	4,177,729.50	1.342	5,607,987.44
Total			12,657,987.44
Claimant's liability as per Section 7.1.9 SPA			10,600,000.00
Difference to be paid by SoM			**2,057,987.44**

765 As can be seen from this table, the aggregate liability amounts to USD 12,657,987.44. The amount set forth in Section 7.1.9 SPA-KAP, i.e., USD 10,600,000.00, is exceeded by USD 2,057,987.44. SoM, therefore, are under the obligation to pay an amount of **USD 2,057,987.44** to KAP.

766 SoM were requested to pay that amount but until now refused to do so. Therefore, this additional claim, to which the limitations of liability set forth in Section 5.4 SPA-KAP do not apply, had to be brought forward in the First Arbitration in Motion 4.

vii) Summary of Sections 2.a)v) and 2.a)vi)

Section	Issue	Amount of Claim Motion 1 a. Euro	Amount of Claim Motion 4 USD	Motion not for payment of money
2.a)v)(1)	Breach of Glencore Agreement	271,655		
2.a)v)(2)	Costs of Advisers	1,146,000		
2.a)v)(3)	Disputes not disclosed	294,000		
2.a)vi)(1)	Annex 12 SPA-KAP	0		Motion 3.a) Obligation to waive
				Motions 3.b) and c) Obligation to assume debts
				Motions 3.d) through f) Assertion that liabilities are not due for payment / of obligation to indemnify
				Motion 3.g) Discontinuation of pending procedure
2.a)vi)(2)	Indebtedness to foreign creditors		2,057,987.44	
Total		1,711,655	2,057,987.44	

b) Breaches of Representations and Warranties with regard to RBN

i) 2004 Accounts

767 Before Section 5.1.28 SPA-RBN the term *"Accounts"* is defined as being the *"audited accounts of (RBN) for the financial year ending on December 31, 2004"*, (hereinafter referred to as "**RBN 2004 Accounts**"). An English language translation of the 2004 Accounts of RBN is attached as **Exhibit Doc. C 96**.

768 Section 5.1.28 SPA-RBN states that *"the Accounts have been prepared in accordance with the accounting standards, principles and practices generally accepted in the Republic of Montenegro and in accordance with the law of that jurisdiction."* Further representations and warranties regarding the Accounts and the financial records of RBN are contained in Sections 5.1.29 through 5.1.39 SPA-RBN. Therefore, any inaccuracy of the RBN 2004 Accounts constitutes a breach.

769 Because of the explicit reference to the Montenegrin accounting laws (and pursuant to Section 10.1, second sentence, SPA-RBN), the question whether the Accounts are accurate is to be determined on the basis of the Montenegrin Accounting Rules, in particular on the basis of IAS and IFRS.

770 Section 5.1.30 SPA-RBN specifically sets forth that proper reserves and provisions have been booked, that the current and the fixed assets are not overvalued and that no liability (whether actual or contingent) is understated.

771 CEAC, in conducting detailed investigations in the months after Closing, found that the RBN 2004 Accounts were inaccurate in many material aspects. Any of these findings constitutes the factual basis for a compensation claim insofar as the necessary adjustments to the RBN 2004 Accounts lead to an impaired overall value of RBN as per December 31, 2004 and compared to the value CEAC was entitled to expect when entering into the SPA-RBN. Therefore, any inaccuracy of the RBN 2004 Accounts and the related bookings in the financial records of RBN constitutes a breach under Sections 5.1.28 through 5.1.39 SPA-RBN and causes a loss and damage on the side of CEAC and/or RBN. This loss and damage shall be compensated by the Sellers and the SoM in accordance with Section 5.3.4 SPA-RBN.

772 Some of these findings also lead to an incorrectness of the warranted Working Fund as per the Closing Date November 30, 2005, which form the basis for a compensation claim as well. These claims will be explained in detail in No. 2.b)iii) below.

773 The basis of the claims relating to any inaccuracy of the RBN 2004 Accounts is:

(1) Mining Facility (Pit) in Djurakov Do

774 In the RBN 2004 Accounts , Account No. 14313, the mining facility (pit) Djurakov Do I is booked in the total amount of Euro 1,194,000.00 (see **Exhibit Doc. C 191**).

775 RBN exploits the surface excavations Djurakov Do II, Zagrad and Borova Brda and the pit Biocki stan. However, the pit Djurakov Do I has not been used for 15 years.

776 The annual operating reports of RBN show that there has not been any exploitation in the pit Djurakov Do I in the years 2001 through 2004: In 2001 it was planned to exploit 20.000 t but 0 t were realized. In 2002 through 2004 any exploitation was not even planned. CEAC encloses extracts from the operating reports of RBN for the years 2001 through 2004 as **Exhibits Doc. C 97 through Doc. C 100**.

777 There is no basis to expect future economic benefits from the pit Djurakov Do I. In accordance with IAS 16 “Property, Plant and Equipment” and IAS 36 “Impairment of Assets” it is to be impaired. Therefore, the value of this pit is to be written off to nil in the 2004 Accounts of RBN, bringing down the net equity in the 2004 Accounts of RBN by the amount of **Euro 1,194,000.00.**

778 CEAC, thus, has a compensation claim against the Sellers and the SoM in the same amount.

779 This compensation claim cannot be limited pursuant to the Cap. The Sellers and the SoM acted deliberately when they entered into the SPA-RBN and warranted the RBN 2004 Accounts to be correct. The Sellers and the SoM positively knew that any exploitation of the mining facility (pit) Djurakov Do I was neither conducted nor planned. In accordance with § 276 para. 3 BGB reference to the maximum liability cap is void.

(2) Property Tax

780 Property tax is due on immovable property including buildings, land, and other construction objects. It is paid annually. The law provides for the range of applicable tax rates, from 0.08% to 0.8%, while municipal regulations establish the tax rate applicable to taxpayers who own property in the respective municipality. In the Niksic municipality, the property tax rates range from 0.1% to 0.3%, depending on the type and use of real estate: Land: 0.3%, Production hall: 0.1%, Business premises: 0.2%.

781 The taxable amount is the book value of property as of December 31 of the previous year.

782 RBN was ordered to include mining works and other facilities in the taxable base. Based on their book value as at December 31 of the previous year the property tax liability for these facilities is as follows:

	2003 Euro	**2004 Euro**
Book value of property	5,729,909	5,364,791
Property tax	5,730	5,365
Total property tax as at December 31, 2004	**11,095**	

783 The liability in the amount of **Euro 11,095.00** was not recorded in the RBN 2004 Accounts, and CEAC, thus, has a compensation claim against the Sellers and the SoM in the same amount.

784 For the reason set forth at the end of No. 2.a)i)(13)(a)above the limitations of liability presumed to Section 5.4 SPA-RBN do not apply.

(3) Shares in Hipotekarna Banka

785 In the RBN 2004 Accounts 200 shares held by RBN in Hipotekarna Banka A.D., Podgorica, are booked in the amount of Euro 102,258.00.

786 CEAC learnt that this value does not represent the market value as required by IAS 39 Financial Instruments – Recognitions and Measurements.

787 The share price for Hipotekarna Banka at December 31, 2004 was Euro 340.00. Therefore, RBN´s shares in Hipotekarna Banka should have been booked only with Euro 68,000.00. The difference to the actual booking, i.e., the amount of **Euro 34,258.00**, shall be compensated by the Sellers and the SoM.

(4) Slow Moving Inventory

788 CEAC determined slow moving inventories which were booked in the RBN 2004 Accounts but as per December 31, 2004 were more than one year old. The value of these inventories – insofar as not used in 2005 – amounts to Euro 474,823.00, (material: Euro 71,739, spare parts: Euro 338.114, small inventories: Euro 64.970). CEAC encloses a detailed overview regarding the material as **Exhibit Doc. C 101**, regarding the spare parts as **Exhibit Doc. C 102** and regarding the small inventories as **Exhibit Doc. C 103.** The amounts explained above can be seen from column "2004 provision" of the above Exhibits.

789 Under the applicable Montenegrin Accounting Rules, i.e., presumed to IAS 2.9 and IAS 2.28, inventories shall be measured at the lower of cost and net realizable value. In the mining industry in which RBN is active, it is common practice and appropriate that the value of slow moving inventory older than one year needs to be adjusted to nil, because it does not have any net realizable value.

790 Therefore, the value of these slow moving inventory needs to be written off in the RBN 2004 Accounts, and CEAC, thus, has a compensation claim against the Sellers and the SoM in the amount of **Euro 474.823**.

(5) Trade Receivables

791 In the RBN 2004 Accounts trade receivables in the amount of Euro 6,433,929.00 are booked as of December 31, 2004. The analysis of collected receivables as per November 30, 2005 has shown that these receivables were not paid in the amount of Euro 617,027.00. To a large extent the invoices for these receivables are dated in the year 2003 or before.

792 CEAC encloses a detailed overview as **Exhibit Doc. C 104**. Further, CEAC encloses documents regarding some of the outstanding receivables, namely the receivables from

the customer Birac (USD 433,935) as **Exhibit Doc. C 105**,

the customer Autotransport (Euro 48,657) as **Exhibit Doc. C 106**,

the customer Paleta (Euro 8,004) as **Exhibit Doc. C 107**,

the customer Leotar (Euro 2,930) as **Exhibit Doc. C 108**,

the customer Zeljezara-Promont (Euro 2,646) as **Exhibit Doc. C 109**,

the customer Kamenolom (Euro 2,382) as **Exhibit Doc. C 110**.

793 Pursuant to IAS 39.58 and IAS 39.63, at each balance sheet date, it has to be assessed whether objective evidences indicate that a financial asset is impaired. Should any such evidence exist, the carrying amount of the asset needs to be reduced in the amount of the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the financial asset's original effective interest rate.

794 Most of the invoices for theses receivables booked in the RBN 2004 Accounts were issued before or in 2003 but neither be paid at the balance sheet date nor at Closing. The overdue of payment of receivables indicates the necessity of impairment of these receivables by the mere fact of their overdue and non-collectability. A future cash flow cannot be estimated as present value of the receivables at December 31, 2004.

795 With regard to the trade receivables booked in the RBN 2004 Accounts an impairment in the amount of **Euro 617,027.00** is required under the Montenegrin Accounting Rules, and CEAC, thus, has a compensation claim against the Sellers and the SoM in the same amount.

(6) Interest not accrued for Long-Term Payables

796 This issue which was the subject matter of Section B.II.1 f) of the Notice of Breach is dealt with in this Statement of Claim under No. 2.b)iv)(3) below.

(7) Environmental Issues

(a) Legal Framework of Sellers and SoM's Environmental Commitments

(aa) Environmental Warranty

797 Under the heading "Environmental", Section 5.1.27 SPA-RBN contains the following warranty:

> *"The environmental conditions at the Company's plant and lands are as set out in the Baseline Report and no material alterations have taken place since that date."*

798 The Baseline Report is attached as **Exhibit Doc. C 158**.

(ab) Balance Sheet Warranty

799 The warranties in Sections 5.1.28 et seq. SPA-RBN set forth that the RBN 2004 Accounts are in compliance with Montenegrin Accounting Rules and that the RBN 2004 Accounts in particular:

> *"(...) contain (...) provision adequate to cover (...) other liabilities (whether quantified, contingent, disputed or otherwise) (...)"* (Section 5.1.32 SPA-RBN).

800 The RBN 2004 Accounts did not provide for any provisions for any liabilities relating to the environmental situation or for the costs of closure and rehabilitation of the mines of RBN.

(ac) Undertaking of the SoM

801 In Section 8.2.1 SPA-RBN the SoM undertook to

> *"(...) assume full liability for and (...) fully indemnify the Company against any and all liabilities, damages or penalties (...) which in any way relate to (...) any act or omission on the part of the Company occurring prior to the Closing Date and having negative environmental impact to which the claim relates."*

(b) Expert Opinions

(aa) RSK Report

802 In order to assess the scope of such environmental liabilities and potentially necessary provisions, CEAC entrusted RSK to prepare an ex-

pertise on the required investments, necessary to bring the sites of RBN in accordance with environmental laws. The RSK Report dated May 10, 2006, as submitted as **Exhibit Doc. C 73**, under No. 5 (page 39 et seq.) expands on the environmental liability issues of RBN.

(ab) ERM Report

803 Under No. 4 (page 33 et seq.) of the ERM Report, submitted as **Exhibit Doc. C 159**, ERM also explains the environmental situation of RBN. On the second spread sheet of its Annex A the ERM Report summarizes the environmental issues in detail, including the applicable legal provisions making the abatement measures necessary, a cost estimate and an assessment of the necessary provision to be put up in the books of RBN for the expenditure relating to such issue.

(ac) Summary of Environmental Issues at RBN

804 The bauxite for the KAP production plant is sourced domestically from the sole mining source comprising the Rudnici Boksita mine complex, located approximately 58 km from Podgorica and about 25-28 km from the city of Niksic. The bauxite source comprises four mines: three open pits and one underground:

- Biocki Stan Underground mine, area approximately 100Ha;
- Zagrad -Open cast mine, area 60Ha;
- Djurakov Do II Open cast mine - Open cast mine area approximately 40Ha;
- Borovnik Stitovo II - Closed Underground mine.

805 The underground pits in Djurakov Do I and Borovnik were closed prior to Closing and the open cast mine Borova Brda was closed in 2006.

806 Hereinafter, the key environmental liability issues determined both by the RSK Report and the ERM Report for these sites are explained in detail:

(aaa) Waste Management

807 There are no procedures for handling solid and hazardous wastes arising from the mines. In general the current accepted practice was to

dump the waste directly on the land surrounding the mine causing localized areas of contamination. The principal wastes handled in this way include oil filters, waste truck sump oils, degreasing solvents, PCB containing transformers and capacitors, car and engine parts, household waste, tires etc. The uncontrolled dumping of lubrication oils, fuel oils, and oil containing waste materials from the maintenance shops and truck repairs in general has resulted in localized serious soil and groundwater contamination in the mining areas.

808 Waste Management activities need to be improved and protected waste storage areas need to be designed. The dumped waste around the mines also needs to be removed. Soil contamination caused by dumping of waste and hydraulic oils and oil containing automotive parts need to be addressed and cleaned up. The total estimated cost for these measures are **Euro 600.000** (ERM Report, Annex A second sheet, line 3.1 (Issue Type "Hazardous Material Handling") and line 4.1, **Exhibit Doc. C 159**).

(aab) Mine Closure and Rehabilitation

809 Current mining law, both in Montenegro and in the EU, requires that an owner prior to commencing the exploitation of an ore body is required to plan for and set aside the monies necessary to execute a planned closure of the mine. This closure fund is required to rehabilitate the mine site, and includes setting up budgets regarding dangerous slopes, re-planting new vegetation and woodlands to stabilize the surface, prevent undue erosion and control dust, put in nun-off and mine flood water control to prevent mine-water breakthrough.

810 The Rudnici Boksita mine complex does not have such a fund for future closure after the commercial mining activities are terminated as the operational mine management stated that there was no enforcement program for this law.

811 The closure and re-cultivation measures for the mines need to be designed and financial reserves need to be built up in the financial books of RBN and should have been put up already in the RBN 2004 Accounts. There is no estimated cost for closure, re-grading and re-cultivation of the mines.

812 The ERM Report estimates that the re-working of the spoil tips to fill the mine voids as far as possible followed by a surface re-profiling and re-vegetation for all mines will come at costs between Euro

42,000,000.00 and Euro 191,000,000.00 (see No. 4.9.2 (page 41 et seq.) and lines 5.1 (a) through 5.1 (e) of Annex A second sheet ERM Report, **Exhibit Doc. C 159**). These expenditures do not have to be made immediately, because the various mines have differing projected closing dates in the future. Therefore, ERM calculated the necessary provisions to be put up in the RBN 2004 Accounts, by discounting future expenditures. RBN comes to an overall amount of provisions to be put up of **Euro 19,283,000.00**.

(aac) Groundwater Springs

813 The springs that are used as the water supply for the mines are located above the mining area. This water supply was diverted in the 1990ies as a replacement for domestic supplies for communities surrounding the mines. The reason for this was that the domestic wells of these communities were affected by mine water sediments caused by the lack of a mine water treatment system. Therefore, the diversion of the water is caused by pre-Closing environmental conditions of the mines. RBN does not hold a license to abstract groundwater for domestic use.

814 Therefore, the ongoing costs of maintenance and ongoing maintenance of the water quality are in the responsibility of the Sellers and the SoM. The ERM Report estimates the cost of such measure to be **Euro 4,000,000.00** (see. No. 4.6 and line 3.1 ("Water Supply") of Annex A second sheet and of the ERM Report, **Exhibit Doc. C 159**).

(c) Claims against The Sellers and the SoM

815 The liabilities relating to the waste management are the responsibility of the Sellers and the SoM as these are pre-Closing contaminations. As in the case of KAP, the Sellers and the SoM also assumed any liability for such contamination in Section 8.3.1 SPA-RBN. As the Sellers and the SoM consistently denied any liability in that respect, RBN is entitled that the relevant costs of **Euro 600,000.00** shall be paid to RBN in order to do the clean up work. In addition, this claim is justified based on the balance sheet warranty as no provision for these expenditures were put up in the RBN 2004 Accounts.

816 The necessary provisions for mine closure and rehabilitation should have been booked in the RBN 2004 Accounts in the amount of **Euro 19,283,000.00**. The Sellers and the SoM were fully aware of the legal requirement to put up such provision and of the fact that RBN did not put up such provision in its accounts. Therefore, the Sellers and the

SoM, when selling the shares in RBN, acted intentionally and the limitations of liability of Section 5.4 SPA-RBN do not apply.

817 The costs of **Euro 4,000,000** for the maintenance and monitoring of the water supply of the surrounding settlements shall be borne by the Sellers and the SoM under Section 8.3.1 of the SPA-RBN as being a consequence of a historical environmental problem that the mine waters spill mine sediments into the community wells. In the alternative, the Sellers and the SoM could assume the full liability and responsibility for this water supply and release RBN from any liability in that respect.

818 In addition to the statement s above, RBN's damages increased by the following:

819 Current mining law, both in Montenegro and in the EU, requires that an owner prior to commencing the exploitation of an ore body is required to plan for and set aside the monies necessary to execute a planned closure of the mine. This closure fund is required to rehabilitate the mine site, and includes setting up budgets regarding dangerous slopes, re-planting new vegetation and woodlands to stabilize the surface, prevent undue erosion and control dust, put in nun-off and mine flood water control to prevent mine-water breakthrough.

820 The Rudnici Boksita mine complex does not have such a fund for future closure after the commercial mining activities are terminated as the operational mine management stated that there was no enforcement program for this law.

821 The closure and re-cultivation measures for the mines need to be designed and financial reserves need to be built up in the financial books of RBN and should have been put up already in the RBN 2004 Accounts. There is no estimated cost for closure, re-grading and re-cultivation of the mines and pits.

822 As set forth above, CEAC estimates the overall amount of provisions which should have been put up in the RBN 2004 Accounts of Euro 19,283,000.00 in total relating to the closure of the mines Borova Brda, Djurakov Do 2, Zagrad, Stitovo 2 and Biocki Stan.

823 The following 12 mines are and already were inoperative as per December 31, 2004 too:

- Open pit Crvena Kita
- Open pit Bajo Do
- Open pit Lokve
- Open Pit Kutsko Brdo
- Open pit Podplaninik
- Open pit Kamenica
- Open pit Liverovici
- Open pit Bunici
- Deep mine Gornje Polje
- Open pit Stitovo 1
- Deep mine Velimlje
- Open pit Kosjeric

824 The deep mine Svinji Do was also inoperative as per December 31, 2004 but shall not to be considered separately because it is part of the Biocki Stan deep mine complex which is included in CEAC's Motion 5.b)(iii).

825 With regard to the mines Borova Brda, Djurakov Do 2, Zagrad, Stitovo 2 and Biocki Stan the ERM Report estimates that the re-working of the spoil tips to fill the mine voids as far as possible followed by a surface re-profiling and re-vegetation for all mines will come at costs between Euro 42,000,000.00 and Euro 191,000,000.00 (see No. 4.9.2 (page 41 et seq.) and lines 5.1 (a) through 5.1 (e) of Annex A second sheet ERM Report, **Exhibit Doc. C 159**). These expenditures do not have to be made immediately, because the various mines have differing projected closing dates in the future. Therefore, ERM calculated the necessary provisions to be put up in the RBN 2004 Accounts, by discounting future expenditures. RBN comes to an overall amount of provisions to be put up of **Euro 19,283,000.00**.

826 CEAC encloses as **Exhibit Doc. C 136** a calculation of the costs for closure, re-grading and re-cultivation of the 12 inoperative mines listed above. This table shows the years of active production, the time when the mines and pits became inoperative and, in particular the estimated surface area and the overburden replacement volume.

827 In order to estimate the re-working of the spoil tips to fill the mine and pit voids followed by a surface re-profiling and re-vegetation CEAC refers to the ERM Report, in particular to ERM`s calculation of rehabilitation costs of Euro 200,000/ha and overburden removal of Euro 5/m3 (see **Exhibit C 92**, Annex A).

828 As summarized in **Exhibit Doc. C 195** the total costs for rehabilitation and overburden replacement amount to Euro 16,300,000.00. As per December 31, 2004 the rehabilitation and the overburden removal was neither carried out nor were provisions been recorded in the RBN 2004 Accounts.

829 The Sellers and the SoM were fully aware of the legal requirement to put up such a provision and of the fact that RBN did not record such provision in its accounts. The Sellers and the SoM acted intentionally and, therefore, the limitations of liability according to Section 5.4 SPA-RBN do not apply (§ 276 para. 3 BGB).

830 Only for the purpose of caution, the Sellers and the SoM were requested to immediately and without any delay implement the closure, rehabilitation and overburden replacement with regard to the mines and pits Crvena Kita, Bajov Do, Lokve, Kutsko Brdo, Podplaninik, Kamenica, Liverovici, Bunici, Gornje Polje, Stitovo, Velimlje and Kosjeric as requested in Motion 5.b). In order to do so, the Sellers and the SoM were requested to submit to CEAC by no later than January 31, 2009 a detailed plan, coordinated with the operative requirements of RBN, on the implementation of all measures required in order to close, rehabilitate and remove overburden requested in Motion 5.b)(iii). By the same date, SoM should have produced evidence of executed contracts with duly qualified companies specialized in the respected fields of closure, rehabilitation and recultivation of inoperative mines and pits. However, the SoM Failed to meet the deadlines.

831 Therefore, in total CEAC's compensation claim regarding the environmental issues relating to RBN amounts to **Euro 40,183,000.00**.

832 In the event the Tribunal should only assume a right to claim performance in kind, CECA brings forward the Subsidiary Motion ("*Hilfsantrag*") No. 5.b)). Further, CEAC requests to assert the Sellers and the SoM obligation to indemnify CEAC as set forth in Motion 5.c). For the legal reasons reference is made to No. 2.a)i)(11)(c).

833 Only for the purpose of caution, the Sellers and the SoM were requested in the First Arbitration to immediately and without any delay implement the measures as requested in Motion 5.b). In order to do so, the Sellers and the SoM should by no later than October 30, 2008 have submitted to CEAC a detailed plan, coordinated with the operative requirements of RBN, on the implementation of all measures requested in Motion 5.b). By the same date, SoM should have produced evidence of executed contracts with duly qualified companies specialized in the respected fields of environmental abatement measures.

(8) Employment related Adjustments

834 CEAC discovered employment related issues which adversely affect RBN´s net equity but which are not reflected in the RBN 2004 Accounts:

(a) VAT on Workers Meals

835 Under the collective agreement governing RBN's employment relations, employees are entitled to a meal allowance, the value of which may not be lower than 50% of the minimum labour cost. This amount is considered to be non-taxable personal income.

836 RBN provides part of meal allowance in cash, while a large number of employees are provided with meals in the company canteen. RBN did neither calculate nor pay VAT on the supply of meals to employees.

837 According to Article 5 of the Montenegrin VAT Act, the use of taxpayer's assets by a taxpayer itself or by its employees for their private needs, as well as use of taxpayer's assets for non-business purposes is considered as taxable supply. Accordingly, RBN should have calculated output VAT on the supply of meals in the period in which the supply took place. The taxable amount is the cost value of provided meals, based on the direct materials costs, minimum staff costs and depreciation. The VAT rate amounts to 17% of the taxable amount. On the basis of the invoices received for the supplied food in 2004 (excluding other related costs), the costs of meals provided to employees amounted to

Euro 299,784.00 and the VAT due on supplied food amounts to a minimum of **Euro 50,963.00**.

838 The Montenegrin Tax Control, evaluating taxes of RBN, in particular VAT liability for the time period from 2004 to 2006, orally confirmed the amount of VAT due on supplied food and imposed on RBN to reduce input VAT or pay VAT on supplied food. Prior to finishing the audit and issuance of the Decision dated 16 March 2007, the Management of RBN, namely Mr. Mirolslav Vukovic (Accountant) and Mr. Djoko Krivokapic (Director), and the Tax Inspector, Ms. Goca Pejovic, agreed upon to adjust the VAT and RBN paid the understated VAT in the amount of Euro 50,963.00. Due to this agreement the Tax Inspector did not order on VAT due on supplied food.

839 This VAT liability was not recorded in the RBN 2004 Accounts, and, thus, the Sellers and the SoM have to compensate the amount of **Euro 50,963.00.**

840 For the reason set forth at the end of No. 2.a)i)(13)(a)the limitations of liability pursuant to Section 5.4 SPA-RBN do not apply.

(b) Payroll Tax and Contributions due on Housing Benefits

841 On May 20, 2004, the Managing Board of RBN rendered the Decision on the purchase of flats under favorable terms. In accordance with the Decision, the employees were allowed to purchase the flats that were previously leased to them. The price of the flat was set at Euro 23.70 per sqm, i.e., far below the market value.

842 Most of the purchase contracts were signed during 2004, five were executed in 2005.

843 From the sale of flats, RBN incurred capital loss in 2004 in the amount of Euro 1,814,000.00. As set forth in No. 2.a)i)(13)(f)(aa) above, the benefits realized by employees with regard to the flats should have been treated as salary and were subject to both tax and contributions.

844 As explained in more detail in **Exhibit Doc. C 111** the tax and contribution liability of RBN arising from this as per December 31, 2004 amounts to Euro 795,033.00.

845 The Tax Authorities confirmed in their Decision of March 16, 2007, no. 03/12-5-2610/1, RBN`s general liability for payroll tax on writing off of

housing loans in the total amount of Euro 576,280.00 including surcharge tax and interest. On RBN`s appeal against this Decision in respect of payroll taxes the Ministry of Finance decided on June 14, 2007, Decision No. 04-268/1-2007, that the entire case should be annulled and the case reexamined by first instance Tax Authorities. On October 20, 2007, Decision No. 3/12-5-2610/3, the Tax Authorities, again, confirmed RBN`s payroll tax liability in the total amount of Euro 576,280.00. This Decision has been appealed by RBN and the Ministry of Finance annulled the Tax Authorities` Decision and did refer back the case for reexamination (Decision of December 11, 2007, No. 04-779/1-2007).

846 The liability of RBN, as set forth in **Exhibit Doc. C 111**, was not recorded in the RBN 2004 Accounts, and the Sellers and the SoM, thus, have to compensate the amount of **Euro 795,033.00**.

847 For the reason set forth at the end of No. 2.a)i)(13)(a)the limitations of liability presumed to Section 5.4 SPA-RBN do not apply.

848 The total amount of the claims with regard to the aforementioned employment related issues is **Euro 845,996.00**.

(9)Trade Payables

849 The following trade payables were not recorded in RBN´s books:

Supplier	Amount Euro	Description	Date of invoice	No of invoice	Exhibit
Bozovic	55,033	Stone milling, use of machine for supplying	18.10.2004	03-10/04	**C 112**
Saobracaj inzinjering	53,845	Construction services	16.09.2004	privremena situaci-ja 1	**C 113**
Vodovod	15,300	Water supply	year 2003 and 2004	6 invoices for 2004 and 1 invoice for 2003	**C 114**
MLK d.o.o. Ljubljana	8,079	Material	30.11.2003	173	**C 115**
Trgo Auto	4,760	Maintenance	17.10.2003	55/2003	**C 116**
	1,621		17.10.2003	56/2003	
	138,638				
Other	33,601				
Total	**172,239**				

850 Thus, the trade payables in the RBN 2004 Accounts were understated by **Euro 172,239.00**, and CEAC has a compensation claim against the Sellers and the SoM in the same amount.

(10) Provision for Litigation

851 In the RBN 2004 Accounts, no provisions for possible liabilities arising from litigation pending or threatened as per December 31, 2004 were made. Based on the available documentation, the assessment was performed in accordance with the International Accounting Standards, IAS 37.

852 Such assessment shows that the provisions for contingent liabilities arising from litigation in the total amount of Euro 3,559,078.00 in RBN 2004 Accounts should have been made, as more particularly listed in **Exhibit Doc. C 192**. This table lists all ongoing legal proceedings as of November 30, 2005 in which creditors commenced litigation against RBN. CEAC deducted the liabilities arising from litigation which has commenced only in 2005.

853 The reserves for these proceedings which should have been booked in the RBN Accounts 2004 amount to a total sum of **Euro**

3,559,078.00, and CEAC, thus, has a compensation claim against The Sellers and the SoM in the same amount.

ii) Summary of Section 2.b)i)

Section	Issue	Amount of Claim Motion 1.c)	Motions re. Environmental Issues	Subsidiary Motion (*Hilfsantrag*)
2.b)i)(1)	Mining Facility (Pit) in Djurakov Do	1,194,000		
2.b)i)(2)	Property Tax	11,095		
2.b)i)(3)	Shares in Hipotekarna Banka	34,258		
2.b)i)(4)	Slow Moving Inventory	474,823		
2.b)i)(5)	Trade Receivables	617,027		
2.b)i)(6)	Interest not accrued for Long-term Payables	0		
2.b)i)(7)	Environmental Issues	0	40,183,000 (Motion 5.a) Motion to assert obligation to indemnify (Motion 5.c)	Performance in kind (Motion 5.b.)
2.b)i)(8)	Employment related Adjustments	845,996		
2.b)i)(9)	Trade Payables	172,239		
2.b)i)(10)	Provision for Litigation	3,559,078		
Total		**6,908,516**	**40,183,000**	

iii) Working Fund

854 Section 5.1.15 SPA-RBN sets forth that at Closing RBN "*will have the working fund as more particularly described in Annex 7*". This unambitious wording shows that the Parties agreed that RBN has the Working Fund as summarized in Annex 7 to the SPA-RBN.

855 The heading of Annex 7 to SPA-RBN is "Working Funds (permanent turnover means)". Annex 7 sets forth certain "turnover means" in the amount of Euro 10,318,908.98, certain "deduction items" in the amount of Euro 4,936,058.17 and the balance of the turnover means and the deduction items in the amount of Euro 5,382,850.81.

856 Therefore, any deviation to the detriment of RBN relating to any line item in Annex 7 to SPA-RBN constitutes a breach under Section 5.1.5 SPA-RBN and causes a loss and damage on the side of CEAC and RBN. This loss and damage shall be compensated by the Sellers and the SoM in particular in accordance with Section 5.3.4 SPA-RBN.

(1) Shortage of Fuels and Oils

857 As per Annex 7 to SPA-RBN the Sellers and the SoM warranted that at Closing RBN have fuels as part of its Working Funds in a value of Euro 240,203.79.

858 The finding of the inventory count performed by a jointly formed commission consisting of representatives of RBN, CEAC and Deloitte was that the value of fuels and oils as per November 30, 2005 amounted only to Euro 91,652.00.

859 Details of the stocktaking are summarized in the table below:

Summary of fuel and oil warehouses as of November 30, 2005 in Euro			
Warehouse Code	Name and Location of warehouse	Inventory register before Count	Inventory register after Count
3055	Fuel warehouse – Transport	69,837	32,851
2012	Central fuel warehouse – Seoca	37,433	6,564
2032	Fuel warehouse - Djurakov do	21,904	9,569
7012	Central fuel warehouse – Construction	9,895	10,467
7082	Fuel warehouse – Medjurjecje	7,664	697
2042	Fuel warehouse – Borova brda	7,359	5,594
2022	Fuel warehouse – Zagrad	5,636	16,014
7022	Fuel warehouse – Vinici Medjurjecje	3,755	486
7072	Fuel warehouse – Vrmac	3,443	2,778
	Other warehouses	5,464	6,632
Total		172,390	**91,652**

860 For further details reference is made to **Exhibit Doc. C 117**.

861 Hence, Annex 7 to SPA-RBN recording fuels in the value of Euro 240,203.79 is inaccurate. This amount should have been reduced by Euro 148,552.0 to Euro 91,652.00. The shortage in the amount of **Euro 148,552.00** thus has to be compensated by the Sellers and the SoM.

(2) Electrical Energy

862 Pursuant to Annex 7 to SPA-RBN, on Closing RBN should have had working funds with regard to "electrical energy" in the amount of Euro 30,636.05. However, as per November 30, 2005, RBN had liabilities for electrical energy in the amount of Euro 124,393.35. This liability of RBN is confirmed by the electric power company of Montenegro (El-

ektroprivreda Crne Gore A.D., RBN) – see confirmation letter of Elektroprivreda Crne Gore A.D., RBN, enclosed as **Exhibit Doc. C 118**.

863 The shortage in the amount of **Euro 155,029.00** has to be compensated by the Sellers and the SoM.

(3) Discrepancy in Cash

864 Pursuant to Annex 7 to SPA-RBN, on Closing there should have been a "Transfer Account" (in the Serbian language translation: a "Ziro Racun") in the amount of Euro 223,979.30, i.e. cash accounts kept with a bank in this amount. However, as per November 30, 2005 the total amount of RBN´s cash positions was Euro 72,786.00. An overview as **Exhibit Doc. C 119** is enclosed; the documents referred to in this overview are enclosed as **Exhibit Doc. C 120.**

865 Consequently, Annex 7 to SPA-RBN is inaccurate insofar as the booked value of the transfer account should have been reduced by Euro 151,193.30. The shortage in the amount of **Euro 151,193.30** has to be compensated by the Sellers and the SoM.

(4) Trade Payables

866 Pursuant to Annex 7 to SPA-RBN, at Closing the trade payables should have been Euro 2,998,917.00.

867 However, the trade payables of RBN as per November 30, 2005 amounted to Euro 7,303,139.00 – as it was stated in RBN´s suppliers sub-ledger. The following table contains a detailed breakdown. As indicated in this table notes to some of the trade payables are set forth in **Exhibit Doc. C 121** and sample confirmation letters are attached as **Exhibits Doc. C 122** through **Doc. C 139** which largely confirm the amounts set forth below.

Third parties code	Name	Sub-ledger as of November 30, 2005	Documents in Exhibit	Notes in Exhibit
25	Strabag AG, VIENA	1,231,451	**C 122**	
10	Jugopetrol A.D., Kotor	497,870	**C 123**	
109	Rudnik uglja A.D., Pljevlja	533,344	**C 124**	**C 121**
1103	Mal Magyar	424,984	**C 126**	
536	KAP	408,069		
225	EPCG	149,448		**C 121**

108	Dinamic Company LTD Radanovic	206,881	**C 126**	**C 121**
157	Mehanizacija i programat	206,669	**C 127**	**C 121**
111	Argentarija	157,405	**C 128**	
9	Lovcen osiguranje A.D., Podgorica	152,852	**C 129**	
705	Jugoimport	151,068	**C 129**	
560	Booster	170,961	**C 131**	**C 121**
544	Migcommerce	104,811	**C 132**	**C 121**
1006	Bozovic	120,860	**C 133**	
1123	Volan	115,298	**C 134**	
1027	MLK d.o.o., Ljubljana	113,780		
285	Swift	113,571	**C 135**	
1000	Eurokolor	102,606	**C 136**	**C 121**
73	Mehanic trade	94,972	**C 137**	
77	Balkal A.D., Banja Luka	90,000	**C 138**	
	Others	2,156,239	**C 139**	
	Total	**7,303,139**		

868 The Exhibits indicated in the above table encompass independent confirmation letters of the creditors.

869 The trade payables of RBN towards "other" suppliers in the aggregate amount of Euro 2,156,239.00 is also largely confirmed by independent confirmation letters. In addition, CEAC encloses a detailed breakdown of trade payables towards "other" suppliers as per Closing Date (see **Exhibit Doc. C 193**).

870 Because of the inaccuracy of Annex 7 to SPA-RBN, the difference between the warranted and the actual amount of trade payables, i.e., the amount of **Euro 4,304,222.00**, shall be compensated by the Sellers and the SoM.

(5) Gross Salaries

871 Pursuant to Annex 7 to SPA-RBN, as per Closing the gross salaries should have amounted to Euro 1,800,000.00. However, the total amount of these outstanding gross salaries was Euro 3,114,391.00.

872 A part of Euro 3,064,706.00 of the total amount of gross salaries is explained in detail in the following table:

	General ledger			
Salaries and wages payable	**Sep 05 and prior**	**Oct 05**	**Nov 05**	**Total**
Net salaries and wages payable and other liabilities to employees	139,617	508,378	685,166	**1,333.161**
Taxes on salaries	-	245,238	168,550	**413,788**
Liabilities for contributions - Pension Fund and Liabilities for contributions – hardship	239,683	298,564	226,484	**764,731**
Liabilities for contributions - Health Insurance Fund	127,775	170,798	125,126	**423,699**
Liabilities for contributions - Employment Fund	-	12,619	9,278	**21,897**
Other taxes and contributions on salaries and wages payable	-	62,693	44,737	**107,430**
	507,075	1,298,290	1,259,341	**3,064,706**

873 For further details reference is made to **Exhibit Doc. C 141.**

874 The other part of the total liabilities derived from the sale of flats to employees. As set forth in No. 2.a)i)(13)(a)and No. 2.b)i)(8)(b) above, the benefits realized by employees with regard to the flats sold to them by RBN under favorable terms should be treated as salary and should be subject to both tax and contributions. As set forth in more detail in **Exhibit Doc. C 142**, the tax and contribution liability of RBN arising from this as per Closing amounts to Euro 49,685.00.

875 As summarized in No. 2.b)i)(8)(b) above, the Tax Authorities confirmed twice the general liability of RBN for payroll tax on write off of housing loans. The procedure is still pending and RBN awaits the Tax Authorities` reexamination of this case.

876 Thus, the actual total amount of the gross salary-liabilities on Closing is Euro 3,114,391.00. The difference between this amount and the warranted amount of Euro 1,800,000.00, i.e., the amount of **Euro 1,314,391.00** shall be compensated by the Sellers and the SoM.

(6) Further Liabilities as Part of the "Working Fund"

877 Under the Montenegrin Accounting Rules, RBN´s liabilities with regard to the property tax and with regard to VAT due on food supplied to employees set forth in No. 2.b)i)(2) and No. 2.b)i)(8)(a) above, are also deduction items for the calculation of the Working Fund.

878 The property tax liability is to be calculated as set forth No. 2.b)i)(2) above: Based on the book value of the RBN´s mining facilities as per December 31, 2004 in the amount of Euro 5,653,749.00 this liability amounts to **Euro 5,653.00**.

879 The liability for VAT due on food supplied to employees is to be calculated as set forth in No. 2.b)i)(8)(a) above: On the basis of the invoices received for the supplied food in 2005 (excluding other related costs), the costs of food provided to employees amounted to a minimum of Euro 318,897.00 and the VAT due on supplied food amounts to a minimum of **Euro 54,212.00**.

880 As explained No. 2.b)i)(8)(a) above, RBN`s management and the Tax Inspector agreed upon the adjustment of input VAT and RBN paid the due VAT prior to the decision of the Tax Authorities on March 16, 2007.

881 Thus, the Working Fund of RBN was lower as set forth in Annex 7 to SPA-RBN by an additional amount of Euro 5,653.00 and Euro 54,212.00. The Sellers and the SoM shall compensate the aggregate amount of **Euro 59,865.00**.

882 For the reasons set forth at the end of No. 2.a)i)(13)(a) limitations of liability pursuant to Section 5.4 SPA-RBN do not apply.

iv) Other Items

(1) Disabled Employees

883 Annex 4 to the SPA-RBN ("The Social Program") provides in Section 2.1 lit. (i) the following:

> "*The GoM shall ensure that the Company shall have not more than 1250 employees in total on the Closing Date, provided however that such employees shall be fully capable of performing their respective employment obligations and functions.*"

884 Accordingly, there should have been no disabled employees as of the Closing Date. However, it turned out that 66 disabled employees were not made redundant prior to Closing. In order to terminate their employment, RBN had to pay severance payments in the total amount of Euro 3.444.395 for all 66 disabled employees. As SoM was in breach of Section 2.1 lit. (i) of Annex 4, the SoM is obliged to compensate CEAC for any damage suffered. i.e. all claims or payments necessary in order to terminate the employments with disabled workers. Therefore, the amount of **Euro 3,444,395** has to be paid by the Sellers and the SoM.

(2) Disputes not Disclosed

885 Numerous disputes (totaling to Euro 772,233.36) were pending or threatened as per Signing and/or Closing of the SPA-RBN but were not disclosed to CEAC in Annex 6A to the SPA-RBN which constitutes a breach of the representation and warranty in Sections 5.1.23 and 5.1.24 SPA-RBN. These disputes are listed in **Exhibit Doc. C 194.**

886 Thus, CEAC has a compensation claim against the Sellers and the SoM in the amount of **Euro 772,233.36**.

(3) State Debts of RBN

887 In Section 8.1 SPA-RBN the SoM assumed the obligation to waive the state debts as set forth in more detail in Annex 8 to the SPA-RBN.

888 As acknowledged by the Sellers and the SoM with lawyers' letter of July 18, 2008 (see **Exhibit Doc. C 187**) all of these state debts are to be waived.

889 As set forth with lawyers' letter of July 30, 2008 on behalf of CEAC (see **Exhibit Doc. C 188**), the SoM have not yet properly declared the waiver (see also No. 2.a)vi)(a)(ac) above).

890 Therefore, CEAC requests the Tribunal to grant Motion 6.

(4) Disclaimed Opinion regarding RBN 2004 Accounts

891 Section 5.129 SPA-RBN states that the RBN 2004 Accounts have been audited and the auditor has given an auditor's certificate without qualification. This warranty has been breached as the RBN 2004 Accounts were audited by Deloitte and Deloitte issued a disclaimed opinion, essentially meaning that the auditors saw qualifications that prevented them from confirming that the accounts were prepared in accordance

with Montenegrin Accounting Rules. The Sellers and the SoM did not react to CEAC's request to acknowledge that they – upon demand from CEAC – will indemnify CEAC and RBN from any liability and will compensate any loss or damage arising from the fact that the auditor issued such disclaimed opinion.

892 Therefore, Motion 7. is substantiated.

v) Summary of Sections 2.b)iii) and 2.b)iv)

Section	Issue	Amount of Claim Motion c)	Other Motions
2.b)iii)(1)	Shortage of Fuels and Oils	148,552	
2.b)iii)(2)	Electrical Energy	155,029	
2.b)iii)(3)	Discrepancy in Cash	151,193.30	
2.b)iii)(4)	Trade Payables	4,304,222	
2.b)iii)(5)	Gross Salaries	1,314,391	
2.b)iii)(6)	Further liabilities as part of the "working fund"	59,865	
2.b)iv)(1)	Disabled Employees	3,444,395	
2.b)iv)(2)	Disputes not disclosed	772,233.36	
2.b)iv)(3)	Waiver of State Debts	0	Motion 6: Obligation to waive
2.b)iv)(4)	Disclaimed Opinion	0	Motion 7: Assertion of Respond-

			ent's liability
Total		**10,349,881.66**	

E. Liability of the Respondents 2-5

893 Even in the First Arbitration, SoM failed to clarify that the Sellers (Respondents 2-4) are entities in their own right with the ability to have rights and obligations under their own name. Apparently they are dependent offices of the SoM. However, Respondents 2-4, e.g., in the Settlement Agreement and the SPAs, appeared as separate parties. Therefore, they may be sued under the names under which they appeared in the business sphere.

894 Respondent 5, after Respondent 1's filing for insolvency, colluded with the SoM and by this participated in the tortious actions. Regardless the fact this participation was limited to the last phase of the tortious actions, KAP (acting through the Administrator) is jointly liable for the full amounts of damages.

F. Motions

895 1. a) The Tribunal shall order the Respondents jointly and severally to pay to Claimant the amounts of € 287,012,394.99 and USD 27,790,234.

896 1. b) The Tribunal shall further order the Respondents jointly and severally to pay to Claimant interest on € 205,910,367 in the amount of 8 percentage points above the Base Rate ("**Base Rate**" in accordance with § 247 German Civil Code, *Bürgerliches Gesetzbuch* "BGB") as of 26 May 2006 and to pay interest on the amounts of € 81,102,027.99 and USD 27,790,234 of 8% thereon as of October 1, 2014.

897 2. a) The Tribunal shall further order the Respondents 1-4 jointly and severally to pay to KAP the amounts of Euro 101,200,000.00 and USD 2,057,987.44.

898 2.b) The Tribunal shall further order the Respondents 1-4 jointly and severally to pay to KAP interest on Euro 101,200,000.00 and USD 2,057,987.44 in the amount of 8 percentage points above the Base Rate as of 26 May 2006.

899 3. a) The Tribunal shall further order the Respondents 1-5 jointly and severally to pay to RBN the amount of Euro 40,183,000.

900 3.b) The Tribunal shall further order the Respondents 1-5 jointly and severally to pay to RBN interest on Euro 40,183,000 in the amount of 8 percentage points above the Base Rate as of 26 May 2006.

901 4. a) The Tribunal shall further order the SoM to duly declare in a written document to KAP a waiver of the receivables against KAP which are set forth in the enclosed Exhibit Doc C 181 to the extent as summarized in the enclosed Exhibit C 183 in the column "RoM budget" in the amount of Euro 20,686,141.61 plus any interest due on this amount.

902 4. b) The Tribunal shall further order the SoM to duly declare in a written document to KAP that they assume as their own debt the following payables of KAP towards third parties, plus any interest due on the following amounts:

(i) an amount of Euro 4,696,904.25 of the payables of KAP towards the company Elektroprivreda EPCG A.D. Niksic, Montenegro, which are set forth in the enclosed Exhibit Doc C 181 to the extent as summarized in the enclosed Exhibit Doc C 183 in the column "Elektroprivreda";

(ii) an amount of Euro 1,563,106.88 of the payables of KAP towards the RBN, which are set forth in the enclosed Exhibit Doc C 181 to the extent as summarized in the enclosed Exhibit Doc C 183 in the column "RBN";

(iii) an amount of Euro 74,909.34 of the payables of KAP to-wards the company Luka Bar A.D., Montenegro, which are set forth in the enclosed Exhibit Doc C 181 to the extent as sum-marized in the enclosed Exhibit Doc C 183 in the column "Luka Bar" ;

(iv) an amount of Euro 872,129.31 of the payables of KAP towards the Respondent 1, which are set forth in the enclosed Exhibit Doc C 181 to the extent as summarized in the enclosed Exhibit Doc C 183 in the column "Fond za Razvoj";

(v) an amount of Euro 2,213,510.88 of the payables of KAP towards the Montenegro Bank, Podgorica, Montenegro, which are set forth in the enclosed Exhibit Doc C 181 to the extent as summarized in the enclosed Exhibit Doc C 183 in the column "MN Banka".

903 4. c) The Tribunal shall further assert towards the Respondent 1 that the receivables against KAP which are set forth in the enclosed Exhibit Doc C 181 to the extent as summarized in the enclosed Exhibit Doc C 183 in the column "RoM budget" in the total amount of Euro 71,777,035.44 are not due for repayment at present.

904 4. d) The Tribunal shall further assert towards Respondent 1 that the receivables against KAP which are set forth in the enclosed Exhibit Doc C 181 to the extent as summarized in the enclosed Exhibit Doc C 183 in the column "Fond za Razvoj" in the total amount of Euro 3,026,125.28 are not due for repayment at present.

905 4. e) The Tribunal shall further order the Respondent 1 to duly declare in a written document to RBN a waiver of the receivables against RBN which are set forth in Annex 8 to the Agreement for the Sale and Purchase of the Shares of the company Rudnici Boksita AD Niksic (Exhibit Doc C 6) in the amount of Euro 7,745,396.11 plus any interest due on this amount.

906 5. The Tribunal shall order the Respondents to jointly and severally pay the costs of these arbitral proceedings.

Dr. Matthias Menke
Rechtsanwalt

Florian Wolff
Rechtsanwalt