

EN+ GROUP SAVES BILLIONS BY VIOLATING LEGISLATION, BANK OF RUSSIA UNABLE TO INTERFERE

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The Association of Institutional Investors believes that the non-response of En+ Group to the obvious violations of the Russian laws by Telmamskaya HPP LLC, a company controlled by the En+ Group holding via EuroSibEnergo, resulting in the loss by the minority shareholders of JSC Irkutskenergo of considerable money in the buyout of their holdings pursuant to the mandatory offer is inappropriate in terms of corporate practices and disreputable for a major public company. In an effort to protect investors' interests in decision-making on investing in a company allowing, if not encouraging, such violations, the API has sent a letter of information to the LSE on which En+ Group expects to conduct an IPO. The letter contains a summary of the below information and a request to make it available to all potential purchasers of the group's securities in case of their offering, for familiarization purposes.

On June 27, 2017, Telmamskaya HPP LLC (hereinafter also referred to as the majority shareholder and the Buyer) made a mandatory offer to JSC Irkutskenergo for the purchase of Irkutskenergo shares from its minority shareholders after evading compliance with this legal requirement for almost a year. The obligation to make this offer arose from the acquisition of 40.285% of the voting shares in JSC Irkutskenergo from PJSC Inter RAO UES on June 8, 2016.

In August 2016, less than a month after the expiration of the mandatory offer period stipulated by the legislation on joint-stock companies, the API submitted a petition to the Bank of Russia Service for Protection of Financial Services Consumers and Minority Shareholders seeking consideration of the law violation by Telmamskaya HPP and enforcement of compliance with the law (by making the offer) taking into account the price at which the 40.285% stake in JSC Irkutskenergo was acquired.

In the next few months, the Bank of Russia used all available resources to force the majority shareholder to comply with the law: it limited the number of Telmamskaya HPP's votes at general shareholders meetings of JSC Irkutskenergo to 30 percent of the total number of voting shares (in accordance with article 84.2. of the Federal Law "On joint-stock companies"), imposed an administrative penalty for infringing the established procedure for the acquisition of shares in a public company (this infringement is subject to a penalty of 500 to 700 thousand rubles) and filed a claim to the arbitration court of Irkutsk region in mid-March 2017 seeking invalidation of the shareholder's action or inaction. The regulatory bank could probably have shown more promptness and resolution, but the history of claims filed against PJSC Gazprom over similar evasions of mandatory offers shows that a proper execution of the favorable court ruling cannot be guaranteed. Penalties for non-execution are disproportionately small, especially compared with potential savings on evading mandatory offers.

Under the law in force, the minimum buyout price for mandatory offer purposes is based on the weighted average price in organized trading sessions in the 6-month period preceding the date of

submitting the mandatory offer to the Bank of Russia. If the Buyer or its affiliates effected transactions with such securities in this period, the buyout price for mandatory offer cannot be below the highest price of such transactions.

Accordingly, if Telmamskaya HPP LLC fulfilled the obligation to submit the mandatory offer within six months following the acquisition of Irkutskenenergo shares, even if not within the statutory 35-day period, the price of the mandatory offer could not have been below the price paid for the 40.285% stake (36.45 rubles per ordinary share). The delay in making the offer beyond the 6-month period enabled the Buyer to set the buyout price equal to 17.42 rubles per share (the average weighted stock price) disregarding the price of the transaction with Inter RAO, thereby cutting the maximum possible buyout expenses by almost 9 billion rubles to approximately 7.6 billion rubles against more than 16 billion rubles. The API believes that one of the obvious motives for blatantly missing the deadline stipulated by the law when making the mandatory offer was to evade the legal requirement to set the offer price at least equal to the acquisition price, but the offer was eventually made to demonstrate compliance with the law as En+ Group prepares for an IPO on the London Stock Exchange, according to media reports).

Given the delay in making the mandatory offer, the Bank of Russia had to approve the mandatory offer parameters meeting the weighted average stock price, but totally unacceptable to minority shareholders and compromising the essence of legal regulation.

The current Russian legislation does not provide minority shareholders with opportunities to protect their rights in cases similar to the one referred to above. Furthermore, the judicial system sees no prejudice against the rights of shareholders in such cases believing that the rights are sufficiently protected by limiting the number of the majority shareholder's votes to a level preventing the majority shareholder from using the votes obtained as a result of the transaction. In reliance on that assumption, the court dismissed the claim seeking enforcement of PJSC Gazprom's obligation to make a mandatory offer. The non-execution of the obligation provided for by article 84.2 item 1 of the law does not entail any liability for the majority shareholder, except for a penalty and the limitation of the number of votes and does not allow a shareholder to file a claim to oblige the defendant to make a mandatory offer or to purchase the suer's shares on certain terms, the court noted.

Many of the issues related to mandatory offers may be solved if the State Duma passes draft law no. 1036047-6 "On amending the Federal Law 'On Joint-Stock Companies' and certain other legal acts of the Russian Federation to improve the legal regulation of acquisitions of large blocks of shares in public joint-stock companies)" which it has been considering since April. Prepared in accordance with the Moscow International Financial Centre creation roadmap, the draft law imposes much more stringent restrictions on the voting rights of infringers evading a mandatory offer and, more importantly, gives minority shareholders the right to demand the purchase of their holding by the infringer specifying the minimum price at which they are ready to sell the shares, which shareholders have no power to do today. Consideration of this draft law supported by investors is being continuously delayed.

In this regard, one should pay attention to the draft law the passing of which would have pleased PJSCs evading the obligation to make an offer. The draft law submitted to the State Duma almost at the same time draft law No. 1036047-6 passed the first reading exempted joint-stock companies (including exemption with retrospective effect) from making a public offer where such obligation arose pursuant to orders issued by the President or the Government of Russia. Investors strongly opposed the consideration of this law; the API sent a letter expressing the investment community's position on the

draft law to Vyacheslav Volodin (Chairman of the State Duma), Nikolai Nikolaev (Chairman of the responsible State Duma committee), Igor Shuvalov (First Deputy Prime Minister of Russia), Andrey Belousov (Assistant to the President of the Russian Federation), as well as Dmitry Pristanskov (Head of Russia's Federal Agency for State Property Management / Rosimushchestvo). In April 2017, the draft law was rejected by the State Duma before the first reading.

The API believes that the above case of Irkutskenergo shares has clearly demonstrated, on the one hand, the currently limited influence of the Bank of Russia on infringers of legal requirements, on the other hand, the inadequacy of the statutory punishment for such infringements. The API believes that in addition to passing draft law 1036047-6 allowing shareholders to demand the purchase of their shares, it is necessary to eliminate the possibility of lowering the buyout price by evading making an offer or to increase penalties for such evasion to a level making this infringement economically unjustified.