

*Role of the Monitoring and the  
Divestiture Trustee in Implementing  
Divestiture of a Business as a Type of  
Remedy*

—

*Points from Croatian Practice*

# Notified concentration

MOL  
Hungarian Oil  
and Gas plc

and

INA-Industrija  
nafte d.d.



Conditional approval → Remedies

# Remedies

- Divestment of Crobenz d.d.;
- Prohibition of transfer of Crobenz's commercial contracts to the Parties;
- Retaining the existing terms and conditions of procurement contracts;
- [.....];

# Overseeing the compliance

*Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004*



## Appointment of the Trustee

Monitoring Trustee  Divestment Trustee

# Monitoring Trustee

- Overseeing the safeguards for the Business;
- Monitoring the Parties' efforts to find a potential purchaser and to transfer the Business;

# Purchaser requirements

- Sufficient financial resources;
- Proven relevant expertise, incentive and ability to maintain and develop the divested business;
- Independent and unconnected to the Parties;

# Divestment Trustee Phase

- *“...in the trustee divestiture period, the divestiture trustee will be given an irrevocable and exclusive mandate to dispose of the business, under the supervision of the Commission, within a specific deadline at no minimum price to a suitable purchaser. The commitments shall allow the divestiture trustee to include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale, in particular customary representations, warranties and indemnities.”*

# Conclusions

- Safeguarding the Business:
  - appointment of the Trustee to the Board?
  - threat of deterioration of the Business – can be avoided by applying *fix-it-first* remedies;



# Conclusions

- Assessment of Purchaser's financial standing:
  - Economic crisis: negative trends even at the strongest companies;

# Conclusions

- Viability of the Business:
  - Buyer's qualifications may influence the assessment;

# Conclusions

- Representations, Warranties and Indemnities:
  - necessary to cooperate with the Seller in order to avoid possible conflict with existing obligations of the Seller;

# Conclusions

- “Minimum price”:
  - negative purchase price?

THANK YOU